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Digital Asset/Property Legal protection in Sharia Banking Financing and its Role in Indonesian Economic Development

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Abstract

Digital asset/property and Fintech in banking financial transactions have become significant recently in Indonesia, particularly in the context of Sharia/Islamic banking. The purpose of this study was to examine the digital assets guarantee available in the Islamic banking system in the context of Islamic banking and Islamic Financial Technology (Fintech). It also highlights the role of Sharia banking in developing the Indonesian economy. A normative and comparative judicial approach was applied to achieve the study objectives. In addition, descriptive methods of analysis and prescriptive analysis were used to analyze the data. It was found that the Islamic banking system used information and communication technology for executing various financial transactions. Results also showed that no general laws and regulations were available regarding protecting Islamic financial digital property rights and guaranteeing Fintech as per the Financial Services Authority (OJK) and Central Bank of Indonesia (BI). However, the Fatwa issued by the National Sharia Board of Indonesian Ulema (DSN MUI) presented necessary guidelines and legal protection for digital property and Fintech in Islamic banking. The study recommends that Islamic financial institutions should enhance their networks to benefit from digital technologies and attract most customers to this interest-free system.

Keywords: Islamic/Sharia Banking Financing; Digital Asset/property Laws; Fintech; Indonesia

Introduction

Banks are the financial institutions that influence a country's economy, i.e., increase job opportunities, support the business world, and drive economic development (Li et al., 2020; Shams et al., 2020). The banking system is a system or mechanism that includes micro and macro-financial transactions, business activities, and processes for all such activities (Musthaq, 2021). Based on its development, the current banking system is divided into two types: the conventional banking system and the Sharia/Islamic banking system. For the last five decades, Islamic institutions

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and financial systems have rapidly developed and become notorious in various Muslim countries (Jan et al., 2021). Besides, Islamic banking has played an important role in the Muslim community's economic development (Aslam & Haron, 2020).

In addition, the dynamics of the Indonesian economy is based on the micro and macro business sector determined by the banking system imposed by this country. Based on Law Number 7 of 1992, which was later amended as Law Number 10 of 1998 and known as the Banking Act, "the bank is a business entity that collects funds from the public in credit or other conditions to improve citizens' living standards." Besides, Indonesia is an Islamic country where Islamic/Sharia banking started in 1992, and Bank Muamalat was the first Islamic bank in Indonesia (Lutfi et al., 2021). Simultaneously, Article 1 Number 7 Law no. 21 of 2008 concerning Sharia Banking states that banks operate on no interest. In another definition, Sharia banks are operational financial institutions, and their products are developed upon Islamic principles derived from the Holy Quran and Hadith (Jan et al., 2021).

Moreover, Article 1, Number 12 Law no. 21 of 2008 contains a clause, "Sharia principles are principles of Islamic law in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of Sharia" (Rizvi et al., 2020). Based on being a large Muslim majority country (with 87.2% Muslims), strong economic fundamentals, upgraded Indonesia sovereign credit ratings, and an abundance of natural resources, scholars consider that the Indonesian Islamic banking industry has an enormous potential to become a global player in Islamic finance (Fusva et al., 2020; Ridwan & Mayapada, 2020). Hence it is important to understand the Sharia/Islamic banking system and various guarantees, laws, and regulations available in this system in Indonesia (Rizvi et al., 2020).

Furthermore, Sharia banks' activities can be divided into three large parts, i.e., fund collection (funding), channeling (Financing), and services (Ridwan & Mayapada, 2020). At the same time, the main focus of the current study is the financing function of the Islamic banking system and the guarantees linked with this function, especially related to the digital asset/property agreements. Besides, financial property has been defined in book II of the Civil Code of law. The law covers tangible and intangible property. Tangible property can be touched or seen with the five senses and is called physical property. Simultaneously, intangible assets/property can be in the form of rights, i.e., intellectual property rights, patents, cryptocurrency, etc., and is called digital property/asset (Rizvi et al., 2020).

Digital property is electronic information which someone either creates or owns. We live in the digital era, and most of our routine life matters are based on digital technologies. These can either be related to social life or economic and financial transactions (Koroleva & Kudryavtseva, 2019). In this context, there is a Law, i.e., Law No. 11 of 2008, regarding information and electronic transactions in the financial institution sector, amended and supported by Article No. 1 of Law No. 19 of 2016. It states that electronic information can be stored by using data storage services provided by certain parties, and the concerned person can access that information with the help of a distinct username and password (Cahyadin et al., 2020).

In addition, digital assets have become more valuable. For instance, there are thousands of different cryptocurrencies that provide financial opportunities to

investors all over the globe (Corbet et al., 2018; Nasrollahzadeh & Koramaz, 2020). Along with various opportunities, they pose multiple threats and challenges for the investors such as money laundering, etc. (Howson & de Vries, 2022). Therefore, consumer protection is a big regulatory issue in the digital world. Although a very secure block chain technology provides the basis of cryptocurrency transactions, the vast storage and use of currency have created many vulnerabilities (Ranjbar Fallah & Foroughi, 2020). As a result, many high-profile hackers have created security issues in financial transactions over the time (Caliskan & Zhu, 2020; Hamutoglu et al., 2020; Howson & de Vries, 2022).

Likewise, Islamic financial institutions are also embracing financial technology or Fintech in financial transactions to facilitate their customers over time (Maryam Al Naimi & Sobh, 2020; Zouari & Abdelhedi, 2021). Besides, Indonesia is among the largest Islamic nations in Asia. Its Islamic financial market is also growing and competing with conventional financial institutions. The Indonesian joint funding Fintech Association's Chairman (AFSI) asserted that Indonesia's Sharia Fintech system is rapidly growing (Aulia et al., 2020; Yasutomi, 2020). Previously research showed limited discussion about the digital property regulations and the regulatory framework of the technology in different countries, including Indonesia. Besides, Indonesia presents the highest number of Fintech Islamic startups, 31/93 globally identifying Islamic Fintech startups. Hence the regulative framework of digital property guarantees and Fintech has become one of the important topics to be paid attention to and explored in detail (Aulia et al., 2020; Moradi et al., 2020).

In the conventional financial system, the regulatory framework challenges and opportunities for Fintech in Indonesia have been discussed by various scholars (Buchak et al., 2018; Hidajat, 2019). Likewise, several studies have presented an overview and significance of Islamic banking in the Indonesian economy (Fusva et al., 2020; Muller & de Klerk, 2020; Ridwan & Mayapada, 2020; Rizvi et al., 2020; Tolić, 2020). A few studies explained the role of the notary in the Islamic banking service sector (Habanabakize, 2020; Ozer & Akbas, 2020; Setyowati et al., 2021). However, to the best of the authors' knowledge, no study has explained the concept of Islamic Fintech and digital assets/property protection and guarantees in the light of law in Indonesia. The laws and regulations regarding the protection of digital assets in Islamic banking financing have also not been previously explained. Therefore, in order to bridge this literature gap, the current study framed the following research objectives:

- To present an overview of the Islamic banking financing in Indonesia.
- To present an overview of the laws and legal protection system available for Fintech and digital assets/properties in the Indonesian Islamic banking.
- To explain the role of Sharia banking in Indonesian economic development.

Research Methodology

The current study applied the normative and comparative juridical approach. Normative juridical is the problem approach by identifying, analyzing, and interpreting theoretical matters concerning legal principles in conceptions, statutory regulations, legal doctrine, etc. (Lazega et al., 2017). Simultaneously, comparative juridical systems are approaches that compare laws and regulations (Maulin, 2018).

The current study has been applied to compare conventional and Sharia banking in terms of digital property existence and available guarantees and laws. In addition, descriptive methods of analysis and prescriptive analysis have been applied. Descriptive analysis is a method that illustrates, finds facts and laws, and systematically reviews primary and secondary data (Saif-Alyousfi et al., 2018). The prescriptive analysis is a research method that studies the purpose of the law, the value of justice, the validity of the rule of law, legal concepts, and norms (Soni, 2019). The current study applied it related to the legal role of objects in the financing of Islamic banking concerning the development of Sharia economic law in Indonesia. In addition, we used a normative juridical approach based on research specifications with analysis descriptions. The primary data was collected through field studies (field research) using the observation method and interviews from the Chief Bank Syari'ah in Indonesia, Bank Indonesia, Financial Services Authority, Indonesian Banking Development Institute (LPPI), etc.

Moreover, primary legal material has been gathered in the form of agreements, decisions, i.e., international court decisions, comments, recommendations from international organizations or bodies codes of conduct, guidelines, standards, and principles, national legislation, including the 1945 Constitution, Law, Banking Law, Regulation of the Financial Services Authority and other legislation, etc. At the same time, the secondary data collection techniques used in this study are library research (legal documents), international and national journals, legal cases, magazines, newspapers, and encyclopedias. This secondary data also includes statutory regulations, government policy, or even automated and relevant rules to the research topic (Salman & Nawaz, 2018). Finally, we have applied the data analysis activity by data reduction, presentation, discussion, conclusion, and recommendations. Moreover, the research locations of the current study include but are limited to Padjadjaran University Postgraduate Library; Mochtar Kusumaatmadja Library of the Faculty of Law, Padjadjaran University; BJB Sharia Bank Headquarters; Indonesian Banking Development Institute; University of Brunei Darussalam; Financial services authority; and Bank Indonesia.

Results and Discussion

- *Islamic banking financing and Laws in Indonesia*

Based on Article 1, No. 1 of Law 21 of 2008, Sharia/Islamic Banking is “everything concerning Sharia Banks and Sharia Business Units, including institutions, business activities, as well as methods and processes in carrying out their business activities” (Setyowati et al., 2021). In the Indonesian context, the discussion and seed of Islamic banking have existed since the 1970s. Besides, Islamic banks were discussed at the Indonesia-Middle East Relations seminar initiated by the Institute for Social Studies (Maulin, 2018). Although initially, it revolved around the debate on the law of bank interest, zakat, and taxes (Ika & Abdullah, 2011). However, Islamic banks in Indonesia officially operated in 1992 with the establishment of Bank Muamalat Indonesia (BMI), a bank founded on the initiative of the Indonesian Ulema Council (Lutfi et al., 2021). A year earlier, four Sharia Rural Banks had also started operations (Schreuders et al., 2020; Setyowati et al., 2021).

In 1998, while only Islamic banks and business units were operating in Indonesia, however, within ten years, eleven Islamic commercial banks had been established in Indonesia. In April 2019, the Financial Services Authority (OJK) reported that the Islamic financial assets in Indonesia had reached IDR 1,291.48 trillion, in which Islamic banking contributed a percentage of 37.1%, or IDR 479.17 trillion (Aulia et al., 2020). Moreover, Islamic banking enjoyed conceptual advantages proven empirically. These advantages were due to the Islamic economy, which had strong philosophical roots and was the part of Islam (Zouari & Abdelhedi, 2021). This is evidenced in the high response of the global community that accepts and implements the Islamic financial system through banking institutions. This is an interesting phenomenon, which shows that the Sharia-based economic system is in demand by Muslim business people and non-Muslim consumers (Loo, 2010).

In addition, Sharia banks operate on the principle of Islam. The in-depth operation of the Sharia bank follows the Quranic rules, Hadiths, and regulations of the government (Haris et al., 2020). The main difference between Sharia banks and conventional banks is the prohibition of usury (interest) for Sharia banks (Elsa et al., 2018). Interest (Riba) is prohibited while selling and buying. This means paying and receiving interest on borrowed/lent money is prohibited. In their operations, therefore, Sharia banks do not account for any interest for both the collection and distribution of funds from/ to the community, but work on the principle of profit-sharing (Azoitei, 2020). Moreover, unlike conventional banks, Islamic banks do not clearly distinguish between the monetary sector and the real estate sector, such as buying, selling and renting. In addition, Islamic banks can also conduct business activities to obtain compensation for other banking services that are not in conflict with Islamic principles (Choiriyah et al., 2021). Another difference between the conventional and Sharia banks lies in the operational principle used. Sharia banks operate on a revenue-sharing basis, and conventional banks operate on an interest-based system.

The emergence of several Sharia Rural Banks and Bank Muamalat, Indonesia led the government to issue Law Number 7 of 1992 concerning Banking. In this law, banks were directed to operate on a profit-sharing basis. In the second part about commercial bank business, to be precise, Article 6, item (m) states, "Providing financing for customers based on the principle of profit-sharing following the provisions stipulated in the Government Regulation." Operations with profit-sharing principles were deemed insufficient and Sharia principles in Islamic banking operations were included (Cahyadin et al., 2020). In 1998, Law no. 7 of 1992 was amended into Law No. 10 of 1998. This law explicitly stated that banks in Indonesia can operate under the principle of a dual banking system. This is the latest law regulating Islamic banking known as Act Number 21 of 2008 concerning Islamic Banking. This law specifically regulates everything related to Islamic banking operations.

Considering the business activities scope, one can see more variety in Islamic banking products, allowing them more opportunities to cater to the needs of debtors and creditors (Albashir et al., 2018), especially to channelize the finances to individuals, and customizing the financing schemes to customers' needs. In addition to the number of Sharia banking service networks and offices, significant

developments also exist in the aspects of law and or regulation (Zouari & Abdelhedi, 2021). This is very important in providing legal certainty for the parties, and through the completeness of this juridical aspect, public trust can be increased.

- *Sharia Banking Laws and Legal Protection for Digital Assets/Property and Fintech in Indonesia*

Technology advancement has brought enormous changes in almost every industry, including the financial industry/sectors all over the globe (Dalle et al., 2021). Along with the technological era's development, the function and existence of financial services began to shift from conventional forms to digital forms; they no longer had a real physique (Irvani et al., 2017). This led to the emergence of the concept of digital assets/property in the financial system. Besides, the emergence of financial technology or Fintech modified the process of business transactions (Buchak et al., 2018). Depending on business types, Fintech can be classified into various kinds, e.g., investment management through crowdfunding or joint ventures funds, peer-to-peer lending, etc. (Aziz & Nur'aisyah, 2021). All the financial transactions in Fintech are carried out online using websites where multiple kinds of products, platforms, and technologies are available to analyze the credits (Aulia et al., 2020).

Nowadays, financial systems with technological assistance in the form of Fintech have become very popular in Indonesia (Setiawan et al., 2021). In 2009, the Central bank of Indonesia issued a set of regulations about digital property, including electronic money and card payments. Consequently, many Fintech products and services were launched in the market (Aulia et al., 2020). In 2015, a major Fintech player, the Indonesian Fintech Association, was established (Barata, 2019). Gradually, Islamic financial institutions in Indonesia embraced Fintech and started using various digital instruments in financial transactions. Despite the enormous significance of digital assets/property and Fintech in Islamic financial institutions, there are no regulations set by the Financial Services Authority (OJK) and Central Bank of Indonesia (BI), that specifically govern Islamic financial technology (Aulia et al., 2020).

The regulation, POJK No. 13/POJK.02/2018 about Digital Financial Innovation in the Financial Sector, Article 3, covers digital financial innovations, including Islamic digital financing, social/eco crowdfunding, credit scoring and, e-zakat (Sugiarto & Disemadi, 2020). Article 4 asserts the similarity of all these digital financial innovations or Fintech with the conventional financial system. However, no specific laws govern Islamic financial digital assets and services in Indonesia by financial services industry regulators. In contrast, the POJK No. 77/POJK.01/2016 related to P2P digital financial lending is an effort to facilitate and regulate Islamic Fintech.

In addition, the presence of Islamic fatwas from the National Sharia Board of the Indonesian Council of Ulema (DSN MUI) can be considered as an alternative to laws and regulations presented by BI and OJK for smooth functioning of the Islamic digital financial system and protection of digital properties (Aulia et al., 2020). In connection to that, Fatwa related to Islamic digital assets and financial services was presented by DSN MUI in 2018, i.e., DSN MUI No. 117/DSNMUI/II/2018 following Sharia Principles. In this Fatwa, Sharia/Islamic banks were directed to perform their duties and conduct financial transactions based on Sharia principles. They were further directed to avoid interest (Riba) and any other activities against Sharia principles. Moreover, Islamic

Fintech can utilize the contracts like sale contracts (Bai), lease or service contracts (ijarah), loan contracts (qardh), profit-and-loss-sharing contracts (musyarakah) and so on (Haris et al., 2020).

Hence, Fatwa becomes a backbone for the Indonesian Islamic digital financial system. This further represents that, along with traditional Islamic financial transactions in banking/financial institutions, digital transactions are governed by Islamic codes of ethics and principles. Hence, digital property protection is ensured by Islamic laws and regulations in light of Fatwas and the teaching of the Holy Quran and Hadith. Besides, since the conventional Fintech services are governed and regulated by BI and OJK, the Islamic digital services and Fintech are regulated by DSN MUI (Aulia et al., 2020). Simultaneously, in an interview, AFSI reported the application and screening of Fintech by AFSI, which were further be applied to OJK (Aziz & Nur'aisyah, 2021). Moreover, based on the varied nature of the bitcoins and cryptocurrencies, adoption in the Sharia system was still debatable and could be carefully assessed by the DSN MUI, OJK, and BI, so that Islamic Fintech can be promoted and developed in Indonesia.

- *The Role of Sharia Banking in Indonesian Economic Development*

Islamic finance has emerged as one of the fastest-growing financial industries, and it continues to expand in influence and size all over the world. Research shows that Islamic financial institutions' total assets are expected to reach US\$ 3.8 trillion by 2023 (Adzimatinur & Manalu, 2021). In addition, the gradual increasing notoriety of Islamic finance and improvements in the regulatory and legal structures have attracted many investors all over the globe toward the Islamic financial system (Mansoor, 2021). Besides, in Indonesia, one of the biggest reasons for the Sharia Fintech market is the majority of the Muslim population and the utility value of the instruments (Sugiarto & Disemadi, 2020). Besides, citizens show a higher level of interest in various Islamic financing schemes (Aulia et al., 2020).

Moreover, the function of a bank is very crucial for the economy of a country if the role of banking is related to economic aspects. Mehdiabadi et al. (2020) stated that banking is one of the development agents in state life. This is because the main function of banks is as an intermediary financial institution performing various financial tasks, i.e., it collects funds from the investors/citizens and deposits them back to lenders/citizens in financing or credit form (Fusva et al., 2020). This is indicated by the size of the assets, which reflects public confidence in banking institutions. The role of banking can also be seen from the aspect of strengthening the financial sector with the growth of community prosperity which has a very close relationship and has been proven by several empirical studies. Nyikos et al. (2020) reinforced the statement that providing broad access to the community in addition to increasing community prosperity would encourage the strengthening of the financial system.

At the same time, as far as the development of the national economy is concerned, the Islamic banking industry has been proved to be playing an important role worldwide (Boukhatem & Moussa, 2018). The Islamic banking sector's development and growth has provided a great support to uplift the economy and cater to the needs of the people who wanted to avail themselves of the financial services by following

the Sharia laws and regulations (Tabash & Anagreh, 2017). Thus, with the existence of the Islamic banking industry, the economic potential of the *ummah* that was previously hidden is gradually being explored to be utilized for community empowerment. Apart from the economic aspect, the role of the Islamic banking industry for the community is to increase spiritual welfare.

With the development of financial technology, the banking industry has a very important role in supporting national economic growth. In the current digital era, the community's demands are also increasing. Hence, the banking industry has to function properly to equalize the level of welfare of the wider community (Mansoor & Paul, 2022; Riza, 2019). Besides, the need of the Muslim community to carry out digital banking transactions and involve in Fintech and cryptocurrencies transactions following Sharia has a juridical impact in the form of the legality of the operation of Islamic banking (Sugiarto & Disemadi, 2020). However, the juridical aspects required are carried out gradually and continuously. In Indonesia, the development of digital Islamic banking is quite rapid, both from network growth and the provision of facilities from Islamic laws and regulations (Aulia et al., 2020). Meanwhile, although the asset aspect has reached the target, the portion is still not optimal. Moreover, the existence of digital Islamic banking has significantly improved the spiritual welfare of the community, not only the Muslim majority countries but also the non-Muslim nations.

Conclusion, Implications, and Recommendation

Indonesia is one of the largest Islamic nations, where the technology penetration is growing fast, making it one of the largest target markets for financial technology (Setiawan et al., 2021). In the financial service industry, particularly, technological developments are rapid and continuous, beneficial for society in multiple ways, particularly in the form of financial technology (Fintech) that provides rapid access to users from anywhere (Aulia et al., 2020). Along with the traditional financial system, Sharia Fintech in Indonesia has a huge market with an enormous impact on the country's economic development. Moreover, digital assets/properties are becoming more prominent in the Islamic banking system like the conventional banking system.

With the rapid growth of Sharia Fintech, it can be forecast that it will bloom fast and become one of the largest sources of financial transactions in the country (Haris et al., 2020). Besides, research shows that based on a substantial contribution of Islamic finance in the economy and rapid growth of Islamic Fintech startups, many financiers are approaching and contributing towards the potential market opportunities resulting in two higher development rates in the economy (Aulia et al., 2020; Buchak et al., 2018). Moreover, in addition to the growth in a financial system, its security is very important for making it successful and mitigating the risks of investing in such a system (Yang et al., 2019).

Therefore, the current study examined Indonesia's Islamic financial system and provided an overview of digital assets property protection in the law. This study applied the normative and comparative juridical approach. Primary and secondary data were both used to derive the results. The study compared conventional and Sharia banking in terms of digital property existence and available guarantees and laws. In addition, descriptive methods of analysis and prescriptive analysis were also

applied. Descriptive analysis was performed to illustrate and find the facts regarding the availability of Sharia digital property protection laws and regulations in Indonesia. The results revealed that Sharia banking products in the field of funding could be realized in the form of deposits and investments. In principle, the process of preparing funds from the community carried out by Sharia banking was the same as conventional banking, which suggests that, in the Sharia banking system, known products in the form of demand deposits, savings, and time deposits are the means to raise funds from the community. The difference is that in the Sharia banking system, there is no interest as a counter-achievement to depositors or customers, but rather it follows a profit-sharing mechanism and bonus system that varies by each product chosen by the customer.

The study findings revealed that, in the context of the conventional Fintech system, there are several laws regulated by BI and OJK. However, no particular laws were formulated by OJK or BI for Sharia Fintech. Interestingly, Islamic financial institutions fall under the jury jurisdiction of DSN MUI. Hence, a fatwa related to Islamic Fintech was issued by DSN MUI, in 2018 which all the Islamic financial institutions were required to follow. This provides the basis for the Islamic financial system based on Islamic principles. Hence, Islamic financial institutions need to follow the rules and regulations of not only OJK and BI, but also of DSN MUI, in order to proceed with any transactions and enter into digital contracts.

The study recommends having a regulatory framework to monitor the growth of this sector, based on country's laws and regulations. This would provide the basis to avoid the risks associated with financial transactions. There is also a need to provide one window solution by formulating laws and regulations related to Islamic digital property protection and Fintech by providing them with proper license agreements facilities.

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