

REGULATION OF SHARIA INFORMATION TECHNOLOGY-BASED PEER-TO-PEER FINANCING SERVICES IN POJK NO. 10/POJK.05/2022

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Abstract

The regulation of Sharia Information Technology-Based Peer to Peer Financing Services (LPBBTI) is essential for its operational and supportive role in creating a prudent Sharia LPBBTI ecosystem. In July 2022, the Financial Services Authority issued a new regulation, Financial Services Authority Regulation No. 10/POJK.05/2022, which replaced the previous one. This research analyses the legal relationship, operational procedures, and protection of Sharia LPBBTI users under the latest regulation. The study applied normative juridical research and used relevant legal materials obtained through document studies. The findings reveal that POJK No. 10/2022 regulates the legal relationships between parties and protects service users but does not restrict the relationship between recipients and organisers of Sharia LPBBTI. Additionally, the regulation does not provide alternative dispute resolution mechanisms outside the court and only applies to licensed Sharia LPBBTI operators, leaving illegal operators outside its scope.

Keywords: *Legal Protection; Regulation, Agreement; Sharia Compliance; Sharia Peer-to-Peer Financing Services.*

Abstrak

Pengaturan Layanan Pembiayaan Bersama Berbasis Teknologi Informasi Syariah (LPBBTI) sangat signifikan sebagai pijakan operasional dan untuk mendukung ekosistem LPBBTI syariah yang *prudent*. Pada bulan Juli 2022, Otoritas Jasa Keuangan menerbitkan Peraturan Otoritas Jasa Keuangan (POJK) No. 10/POJK.05/2022 yang menggantikan POJK No. 77/POJK.01/2016. Fokus kajian dalam studi ini adalah bagaimana hubungan hukum, operasional, dan perlindungan hukum pengguna LPBBTI syariah diatur dalam peraturan terbaru tersebut?. Penelitian ini tergolong dalam penelitian yuridis normatif dengan menggunakan data sekunder yang dilakukan melalui studi dokumen. Dari hasil analisis kualitatif menghasilkan temuan bahwa POJK No. 10 Tahun 2022 telah mengatur hubungan hukum para pihak tetapi tidak mengatur hubungan hukum antara penerima dana dengan penyelenggara LPBBTI syariah. Adapun beberapa hak pengguna layanan diatur sebagai bentuk perlindungan hukum. Namun di sisi lain, POJK No. 10 Tahun 2022 tidak menyediakan alternatif penyelesaian sengketa di luar pengadilan. Aturan yang terdapat dalam POJK No. 10 Tahun 2022 bersifat teknis dan hanya mengatur penyelenggara LPBBTI syariah yang resmi, sehingga tidak mencakup penyelenggara LPBBTI ilegal.

Kata Kunci: *Layanan Pembiayaan Peer-to-Peer Syariah, Peraturan, Perjanjian, Kepatuhan Syariah, Perlindungan Hukum.*

Introduction

Sharia Information Technology-Based Peer-to-Peer Financing Services (Sharia LPBBTI) entered a new phase in line with issuing Financial Services Authority Regulation (POJK) No. 10/POJK.05/2022 concerning Information Technology-Based Co-Financing Services, which, among other things, regulates the existence of LPBBTI as one of the alternative financing institutions whose operations are subject to Sharia principles or Islamic legal principles. Islamic law principles generally mean a set of commands derived from the Qur'an and Sunnah.¹ In Indonesia, the Sharia LPBBTI is developing well, as proved by the increase in the number of platforms for the Sharia LPBBTI. In August 2022, the Financial Services Authority recorded seven Sharia LPBBTI platforms.² The number of Sharia LPBBTI platforms has more than doubled compared to 2020, which only amounted to two platforms.³ The data shows that LPBBTI is growing well, but this growth is not matched by legal or regulatory infrastructure that guarantees operational accountability.

The development of Sharia LPBBTI is not supported by strong regulations, even though it has a significant role. Usanti, Thalib, and Setiawati concluded that the regulation of Sharia LPBBTI is based on DSN MUI fatwa No. 117/DSN-MUI/II/2018 only.⁴ Fatwa is not a binding legal product.⁵ Therefore, the fatwa cannot be used as a legal basis for the operation of Sharia LPBBTI. Aulia et al. researched the regulatory framework of Sharia financial technology in Indonesia and concluded that Bank Indonesia and OJK have a significant role in regulating Sharia financial technology.⁶ According to Buchak et al., in the growth of financial technology, regulation contributes 60%, and technology contributes 30%.⁷ The results of these studies show that the study of Sharia LPBBTI regulations that focus on POJK No. 10/POJK.05/2022 has not been carried out.

¹ Muhammad Hassan Abbas and Hassnian Ali, "An Empirical Study of Shari'ah Compliance in Islamic Banks of Pakistan," *Journal of Islamic Finance* 8, no. 2 (2019): 21–30.

² Indonesian Financial Services Authority. (2022). Fintech Lending Statistics for August 2022. https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Pages/Statistik_Fintech_-_Lending_-_Periode-Agustus-2022.aspx

³ Indonesian Financial Services Authority. (2020). Fintech Lending Statistics September 2020 Period. <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Pages/-Statistik-Fintech-Lending-Periode-September-2020.aspx>

⁴ Trisadini Prasastinah Usanti, Prawitra Thalib, and Nur Utari Setiawati, "Sharia Principles on Information Technology-Based Financing Services," *Yuridika* 35, no. 1 (2019): 153, <https://doi.org/10.20473/ydk.v35i1.14084>.

⁵ Afif Noor and Dwi Wulandari, "Inconsistency of Guarantee Norms on The Mudharabah Fatwas in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 8, no. 12 (2021): 144, <https://doi.org/10.18415/ijmmu.v8i12.3197>.

⁶ Mahdiah Aulia, Aulia Fitria Yustiardi, and Reni Oktavia Permatasari, "An Overview of Indonesian Regulatory Framework on Islamic Financial Technology (Fintech)," *Jurnal Ekonomi & Keuangan Islam* 6, no. 1 (2020): 64–75, <https://doi.org/10.20885/jeki.vol6.iss1.art7>.

⁷ Greg Buchak et al., "Fintech, Regulatory Arbitrage, and the Rise of Shadow Banks," *Journal of Financial Economics* 130, no. 3 (2018): 453–83, <https://doi.org/10.1016/j.jfineco.2018.03.011>.

However, the existence of Sharia LPBBTI must have rules that can encourage a prudent Sharia LPBBTI ecosystem. The existence of Sharia LPBBTI before the issuance of POJK No. 10/POJK.05/2022 does not have a legal basis, so the position of the parties involved in funding activities is weak and does not get maximum legal protection, both protection for the security of loan funds and legal protection. Protection against guarantees that peer-to-peer funding activities are based on Islamic principles.⁸

The void of norms that regulate the Sharia LPBBTI will be very detrimental to the parties in the Sharia LPBBTI (users of LPBBTI services consisting of funders, recipients of funds, and operators or platforms of Sharia LPBBTI), considering that the interaction of their business activities is uncertain and far from justice. In contrast, the purpose of the state is to create social justice for all people, as mandated in the Preamble of the 1945 Constitution.⁹ For this reason, legal norms, as outlined in a statutory regulation that regulates Sharia LPBBTI, become a necessity or condition sine qua non to create justice, benefits, and legal certainty for all levels of society. As Gustav Radbruch stated, the purpose of the law is to create justice, benefits, and legal certainty.¹⁰ According to him, justice treatment is impartial, does not harm anyone, favours the right, and gives rights to each party as they should. At the same time, expediency means that the existence of regulations must be able to provide benefits to all levels of society, not only for the parties involved in Sharia LPBBTI but also to provide benefits to the general public. Meanwhile, regulations regarding subjective influences must be clear, consistent, and accessible to ensure legal certainty.¹¹

Justice, benefit, and legal certainty are legal objectives that are among the implementations of the principles of the rule of law, as confirmed in Article 1 (3) of the 1945 Constitution, which can realise justice for all Indonesian people.¹² The community must feel social justice in all aspects of life, including financial services and business activities such as Sharia LPBBTI.¹³ For this reason, the regulation of the Sharia LPBBTI becomes very important because it functions as

⁸ Afif Noor et al., "Regulation and Consumer Protection of Fintech in Indonesia," *Linguistics and Culture Review* 6, no. August 2021 (2021): 49–63, <https://doi.org/10.21744/lingcure.v6ns3.1938>.

⁹ Puji Ayu Handayani and Dinie Anggraeni Dewi, "Implementasi Pancasila Sebagai Dasar Negara," *Jurnal Kemasyarakatan* 5, no. 1 (2021): 6–12, <https://doi.org/10.31316/jk.v5i1.1439>.

¹⁰ Hari Agus Santoso, "Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan Pkpu 'PTB,'" *Jatishwara* 36, no. 3 (2021): 325–34, <https://jatishwara.unram.ac.id/index.php/js/article/view/341>.

¹¹ Arif Hidayat and Zaenal Arifin, "Politik Hukum Legislasi Sebagai Socio-Equilibrium Di Indonesia," *Jurnal Ius Constituendum* 4, no. 2 (2019): 133, <https://doi.org/10.26623/jic.v4i2.1654>.

¹² Sarip Arip and Abdul Wahid, "Kemajemukan Visi Negara Hukum Pancasila Dalam Misi Hukum Negara Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 2, no. 2 (2018): 109–24, <https://doi.org/10.24246/jrh.2018.v2.i2.p109-124>.

¹³ Surajiyono, "Keadilan Dalam Sistem Hukum Pancasila," *IKRA-ITH HUMANIORA: Jurnal Sosial Dan Humaniora* 2, no. 3 (2018): 21–29, <https://journals.upi-yai.ac.id/index.php/ikraith-humaniora/article/view/354>.

an operational foothold in carrying out the business activities of the Sharia LPBBTI. The regulation must regulate the mechanism for the legal relationship between the parties and the operation of the Sharia LPBBTI, dispute resolution, and protect the parties in the Sharia LPBBTI.

This study focuses on the regulation of Sharia LPBBTI as stated in POJK No. 10/POJK.05/2022. Does the rule regulate the legal and operational relations of Sharia LPBBTI and provide maximum legal protection for Sharia LPBBTI parties? Comprehensive LPBBTI regulations are significant in achieving consumer protection in Indonesia.¹⁴ Consumer protection is part of protection for human rights, as mandated by the Preamble, articles 28D and 28G of the 1945 Constitution: "The State protects the entire Indonesian nation and the entire homeland of Indonesia, and advances the general welfare by educating the nation's life." This research aims to examine, clarify, and analyze the regulations governing Sharia-based LPBBTI in Indonesia and the measures in place to protect their service users, as specified in POJK. No. 10/POJK.05/2022.

Methods

The research uses a normative juridical approach that conceptualizes law as a norm contained in legislation and is prescriptive research.¹⁵ The data source comes from secondary data sourced from authoritative statutes and regulations.¹⁶ The main source of this study is known as primary legal material and is referred to as POJK No.10/POJK.05/2022. This material is essential for the research. Secondary legal materials such as books, journals, and literary works are also incorporated to support the study. Data collection techniques are carried out through library research by searching, studying, recording, and interpreting matters related to the focus of the study.¹⁷ The results obtained were analyzed using qualitative analysis.

Result and Discussion

Information technology-based financial services are increasing in Indonesia, and the emergence of various information technology-based start-ups characterises them.¹⁸ One of these start-ups is information technology-based joint funding services (LPBBTI) or fintech lending, which provides funding for

¹⁴ Hari Sutra Disemadi, "Urgensi Suatu Regulasi Yang Komprehensif Tentang Fintech Berbasis Pinjaman Online Sebagai Upaya Perlindungan Konsumen di Indonesia," *Komunikasi Hukum* 7, no. 2 (2021): 2, <https://ejournal.undiksha.ac.id/index.php/jkh>.

¹⁵ Afif Noor, "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research," *Jurnal Ilmiah Dunia Hukum* 7, no. 2 (2023): 94–112, <https://doi.org/DOI: http://dx.doi.org/10.35973/jidh.v7i2.3154>.

¹⁶ Peter Mahmud Marzuki, *Metode Penelitian Hukum* (Jakarta: Kencana, 2011). p. 141.

¹⁷ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009). p. 224

¹⁸ Afif Noor et al., "Revolutionizing Indonesia's Financial Landscape: The Impact of Information Technology on the Growth of Financial Technology Start-Ups," *Multidisciplinary Reviews* 6, no. 4 (2023): e2023031.

individuals and companies to fulfil their life needs and business development. As a country with a majority Muslim population, Indonesia requires fintech services based on Sharia principles.¹⁹

Al-Hashfi and Zusryn conducted a study on the role of Sharia-compliant P2P lending in improving the welfare of the Indonesian population. After examining 26 P2P platforms, their findings conclude that Sharia P2P has the potential to grow in Indonesia.²⁰ This shows that Muslim communities that pay attention to Sharia principles anticipate the presence of Sharia P2P as alternative funding to obtain financing quickly and easily. For this reason, the existence of Sharia LPBBTI must be encouraged to grow and develop well with a rigorous legal foundation so that users of these services have their rights well protected.

The Existence of Sharia LPBBTI

Sharia LPBBTI is a part of financial technology developing in almost all parts of the world.²¹ LPBBTI has gained popularity among the community as it generates increased capital, which aids in reducing transaction costs associated with advanced communication technology. This is reflected in the outstanding, which increased by 12.46% on a year-on-year basis and 3.90% on a year-to-date basis to IDR 53.12 trillion as of August 2023.²² As a result, numerous investors are given the chance to lend a specific amount of funds.²³ In LPBBTI, investors can provide loans directly according to the borrower's wishes. This is because LPBBTI is a money lending service carried out through an online platform that helps match lenders directly with borrowers.²⁴ Meanwhile, Rainer Lenz explains that LPBBTI is a type of crowdfunding in which online platforms gather insignificant amounts of money from people in a "crowd" to support more considerable sums for businesses or individuals.²⁵

The normative juridical definition of LPBBTI is stated in POJK No. 10/POJK.05/2022 (after this, referred to as POJK No. 10/2022). The definition explains that LPBBTI provides financial services to connect fund providers and

¹⁹ Leon A Abdillah, Yogi I Mukti, and Desi Puspita, "Indonesian Sharia Fintech Services and Social Media Usage," *Bulletin of Social Informatics Theory and Application* 5, no. 2 (2021): 97–106.

²⁰ Rizqi Umar Al-Hashfi and Alyta Shabrina Zusryn, "Exploring Islamic Peer-To-Peer Lending for the Unbankable," *Airlangga International Journal of Islamic Economics and Finance* 2, no. 2 (2020): 71, <https://doi.org/10.20473/aijief.v2i2.20648>.

²¹ Mansurali Anifa et al., "Fintech Innovations in the Financial Service Industry," *Journal of Risk and Financial Management* 15, no. 7 (2022), <https://doi.org/10.3390/jrfm15070287>.

²² Otoritas Jasa Keuangan, "Pengembangan Dan Penguatan Layanan Pendanaan-Bersama-Berbasis Teknologi Informasi 2023-2028," 2023, 12.

²³ Monica Rosavina et al., "P2P Lending Adoption by SMEs in Indonesia," *Qualitative Research in Financial Markets* 11, no. 2 (2019): 260–79, <https://doi.org/10.1108/QRFM-09-2018-0103>.

²⁴ Daniel Adriana and Wawan Dhewantoa, "Regulating P2P Lending in Indonesia: Lessons Learned From The Case of China and India," *Journal of Internet Banking and Commerce* 23, no. 1 (2018): 1–19.

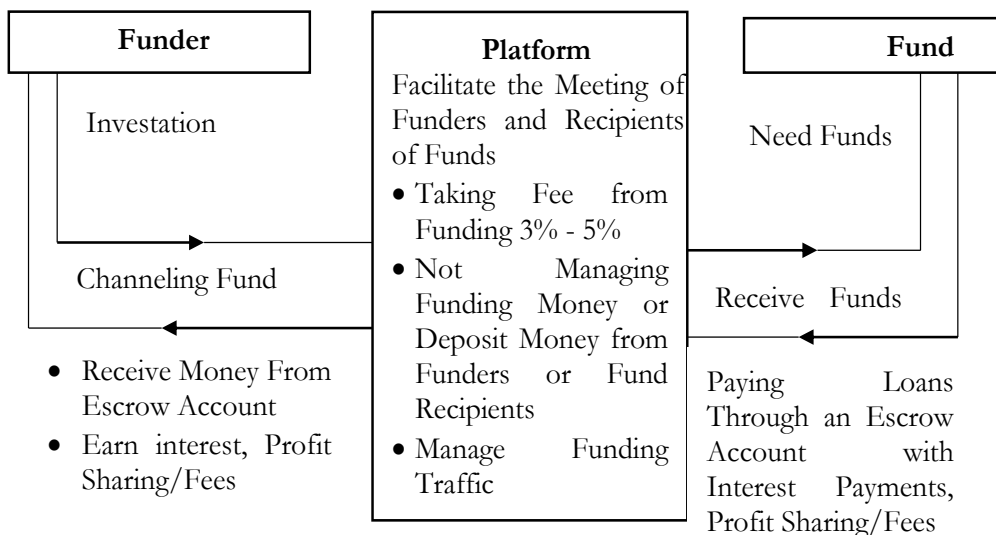
²⁵ Rainer Lenz, "Peer-to-Peer Lending: Opportunities and Risks," *European Journal of Risk Regulation* 7, no. 4 (2016): 688–700, <https://doi.org/10.1017/S1867299X00010126>.

recipients through an electronic internet system, allowing for conventional and Sharia-based funding. Sharia-based funding is managed according to Sharia principles, based on a fatwa or statement of Sharia conformity from the National Sharia Council of the Indonesian Ulema Council (DSN MUI). Applying Sharia principles involves three norms, including the principle of justice, avoiding prohibited activities, and considering benefits.²⁶

Based on this understanding, it can be concluded that Sharia LPBBTI is a funding service that brings together funders and recipients of funds via the Internet based on Sharia principles, which, in its implementation, avoids things prohibited in Islamic law. Sharia LPBBTI must use Islamic law principles as a foothold in business activities.

Sharia LPBBTI's business activities are not very different from those of conventional LPBBTI. Both provide services to their users (funders and fund recipients) by providing, managing, and operating a platform that brings together funders and fund recipients to conduct funding transactions using an electronic system based on the Internet. The relationship mechanism between funders, fund recipients, and LPBBTI operator can be illustrated in the following chart:

Chart 1. Funding Mechanism in LPBBTI



The picture shows that the beneficiary submits a funding application through the platform provided by the LPBBTI operator. The operator will conduct a series of eligibility assessments using the credit score they set using

²⁶ Afif Noor et al., "Issues of Sharia Debt-Based Crowdfunding on Regulations in Indonesia," *Universal Journal of Accounting and Finance* 10, no. 1 (2022): 298–305, <https://doi.org/10.13189/ujaf.2022.100130>.

artificial intelligence technology to reduce financing risk.²⁷ Suppose the LPBBTI operator grants the request for a prospective fund recipient after conducting an assessment in absentia. In that case, the funding request is posted on the organiser's platform so the prospective funder can view and conduct an evaluation to provide funding according to his wishes. Recipients of funds are burdened with the obligation to return the principal of the loan and the obligation to pay interest or profit sharing or fees to the funder. They are obliged to pay loan administration fees to the LPBBTI operator. The LPBBTI operator must ensure that the data provided by the prospective fund recipient is correct. Therefore, the LPBBTI operator will analyse personal data and other related data uploaded by the prospective fund recipient.

Based on this explanation, the LPBBTI operator is a type of business that offers services through a platform's administration, management, and operation. It differs from intermediary institutions such as banks that collect and distribute funds or financial institutions that provide consumer financing and joint venture services. According to Article 2 of POJK 10/2022, the LPBBTI operator is considered a financial service institution, a limited liability company.

In general, the Sharia LPBBTI follows the same regulations and operational procedures as the conventional LPBBTI for all parties involved, including funders, recipients, and operators of the platform. However, there are unique requirements for operators of the Sharia LPBBTI, such as using a Sharia-compliant bank or business to hold funds. Sharia supervisory boards also have specific obligations to oversee operations. While there are some similarities, there are also notable differences between conventional and Sharia LPBBTIs, which are detailed in a table:²⁸

Table 1. Differences between Conventional LPBBTI and Sharia LPBBTI

No.	Conventional LPBBTI	Sharia LPBBTI
1	Money Becomes a loaned commodity.	Funding is done by providing goods or services, and there are no cash loans.
2	Fund recipients are subject to interest, the amount of which is determined by the funder with the direction of the LPBBTI platform	No interest. Recipients of funds provide profits in the form of profit sharing or fees according to the type of contract used.
3	The recipient of the fund is fully responsible for all risks	Funders and recipients of funds bear the risk of funding

Source: Noor, A. et.al. (2021)

²⁷ Renova Hutapea, "Minimalisasi Risiko Kredit (NPL) Pada Fintach Peer to Peer Lending Melalui Kewajiban Pelaporan SLIK OJK," *Jurnal Ilmiah Mandala Education* 6, no. 2 (2020): 241–53, <https://doi.org/10.36312/jime.v6i2.1401>.

²⁸ Noor et al., "Issues of Sharia Debt-Based Crowdfunding on Regulations in Indonesia."

This difference distinguishes between the conventional LPBBTI and the Sharia LPBBTI. LPBBTI Sharia continues to develop dynamically from year to year. In September 2022, the Financial Services Authority (OJK) noted that the number of Sharia LPBBTI providers reached seven platforms, as shown in the following table:²⁹

Table 2. List of Sharia LPBBTI Operators as of September 2022

No.	Platform Name	License Number	License Date
1	Investee	KEP-45/D.05/2019	13 May 2019
2	Ammana.id	KEP-123/D.05/2019	13 December 2019
3	Dana Syariah	KEP-10/D.05/2021	23 February 2021
4	Duha Syariah	KEP-32/D.05/2021	21 April 2021
5	Qazwa.id	KEP-80/D.05/2021	24 August 2021
6	Papitupi Syariah	KEP-90/D.05/2021	8 September 2021
7	Ethis	KEP-104/D.05/2021	17 September 2021

Source: Indonesian Financial Services Authority, 2022

The table reveals that Investee is the pioneering Sharia LPBBTI operator to have acquired a license. In contrast, Ethis, another Sharia LPBBTI operator, has only been granted a permit for approximately one year by the OJK. As per Article 8, paragraph 1 of POJK No. 10/2022, it is mandatory for LPBBTI business operators to possess a business license from the OJK. However, POJK No. 10/2022 does not regulate LPBBTI operators with registered status. Consequently, since the issuance of POJK No. 10/2022, all LPBBTI operators must obtain a license from the Financial Services Authority, with the permit application procedures outlined in Article 8 and Article 9 of POJK No. 10/2022.

Of the seven Sharia LPBBTI operators, only Investee organises conventional and Sharia LPBBTIs using one operating license with No. KEP-45/D.05/2019. Article 24 POJK No. 10/2022 confirms that the operator's business activities, which consist of providing, managing, and operating LPBBTI, can only be carried out conventionally or under Sharia principles. Platforms that carry out conventional business activities may not carry out business activities based on Sharia principles, and platforms whose business activities are based on Sharia principles may not carry out traditional business activities. Therefore, the Investee must either become a conventional LPBBTI operator or a Sharia LPBBTI by conducting business conversions as stipulated in Article 10–14 of the POJK. No. 10/2022.

Regulation of the Legal Relations of the Parties in the Sharia LPBBTI

Sharia LPBBTI services are based on information technology that involves three parties (service provider platform, funder, and recipient of funds) who do not meet each other directly. This has the potential to cause various kinds of legal risks. Risks in Sharia LPBBTI include falsification of the recipient of funds data,

²⁹ Indonesian Financial Services Authority, "Fintech Lending Statistics for September 2022.," 2022.

misuse of personal data, and security of lender funds.³⁰ As an institution subject to Sharia principles, the risk of non-compliance with Sharia principles is also very likely to occur.³¹ For this reason, strong regulations are needed to govern the legal relationship between the parties in Sharia LPBBTI and Sharia compliance in Sharia LPBBTI.

A legal relationship between legal subjects results in the emergence of rights and obligations for the parties.³² This legal relationship was born in LPBBTI because the parties agreed to use the Internet electronically. Using the Internet as a means of conducting transactions makes LPBBTI very flexible because the legal relationship between the parties involved in the funding service can be established at any time as long as it is connected to the Internet.

In addition, using the internet in LPBBTI also simplifies the verification process for funding applications because it only takes hours or a few days. The needed documents can be uploaded on the platform provided by the LPBBTI operator in contrast to the verification process at banking institutions, which requires more detailed supporting papers and takes a long time. The flexibility of transactions at LPBBTI as part of fintech makes this service a financial revolution with the fastest growth in all corners of the world.³³ The ease of making these transactions must be regulated so that the parties have guidelines for making agreements that form the basis of their legal relationship in the LPBBTI.

POJK No. 10/2022 does not explicitly outline the specific form of the legal relationship between parties in Sharia LPBBTI. However, Article 30 of POJK No. 10/2022 suggests that the legal relationship in LPBBTI services is typically established electronically, often called an e-contract.³⁴

Two types of agreements establish the legal framework for the relationship between parties in LPBBTI: the funder and LPBBTI operators and the funding agreement between the funder and the recipient of funds. However, POJK No. 10/2022 does not provide regulations for the agreement between LPBBTI operators and recipients of funds. This lack of regulation weakens the position of the fund recipients as no legal relationship is recognised between the LPBBTI operators and the recipients of funds, despite the recipients being users of the LPBBTI service along with the funders.

³⁰ Noor et al., "Regulation and Consumer Protection of Fintech in Indonesia."

³¹ Yudho Taruno Muryanto, "The Urgency of Sharia Compliance Regulations for Islamic Fintechs: A Comparative Study of Indonesia, Malaysia and the United Kingdom," *Journal of Financial Crime*, 2022, <https://doi.org/10.1108/JFC-05-2022-0099>.

³² Niru Anita Sinaga, "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 1 (2019): 1–20.

³³ S Tamilarasi and A Cheriyan, "Are We Nodding for a Fintech Revolution?—A Study on the Indian Scenario.," *Think India Journal*, no. 10 (2019): 8108–16.

³⁴ I. Made Wirya Darma and Putu Gede Andre Putra Jadnya, "Legal Protection of Parties in Online Credit Agreement (Peer to Peer Lending) A Case Study of PT Vcard Technology Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 6, no. 3 (2019): 511–32, <https://doi.org/10.22304/pjih.v6n3.a5>.

Agreement between the Funder and the Operator in the Sharia LPBBTI

Article 31 of POJK 10/2022 stipulates that the agreement between the funder and the LPBBTI operator is conducted using electronic documents or e-documents.³⁵ This agreement should include essential information such as the agreement number, date of the agreement, parties' identities, provisions on rights and obligations, loan amount or nominal, loan interest rate, service provider's commission, loan period, related costs such as platform/application usage fees, dispute resolution mechanism, and provisions for settlement if the LPBBTI operator is unable to continue operational activities in the future.

Based on the construction of the agreement between the LPBBTI operator and the funder as stipulated in Article 31 of the POJK 10/2022, the LPBBTI operator is the holder of a power of attorney from the funder to do all things related to the electronic funding process. The LPBBTI operator acts on behalf of the funder to manage and provide funding to the beneficiary. Referring to the agreement between the funder and the LPBBTI operator as the beneficiary or representative, the operator LPBBTI for and on behalf of the funder makes a funding agreement with the fund recipient. Based on this explanation, the legal relationship between the funder and the operator of the LPBBTI is a legal relationship born from the agreement to grant power of attorney from the funder to the operator of the LPBBTI to represent the interests of the funder in this information technology-based co-funding service.

This model of agreement, which places the LPBBTI operator as the sole representative or power holder of the funder, has the potential to harm the funder because, in the funding process, it is the LPBBTI organiser who evaluates the feasibility of each funding application submitted by the prospective fund recipient. The lenders strongly believe in the assessment results by the LPBBTI operators, who use credit scoring based on artificial intelligence technology when conducting a funding feasibility test. The agreement model that does not place the LPBBTI operator has the potential to harm the funder in the event of bad credit, and the LPBBTI operator cannot be held responsible because his position in the LPBBTI operation is only as a representative or proxy holder of the funder to manage the funds.

Funding Agreement between Fund Provider and Fund Recipient in Sharia LPBBTI

The funding agreement between the funder and the fund recipient uses electronic documents.³⁶ The position of the funder is represented by the LPBBTI operator, who has obtained a power of attorney or acted on behalf of the funder.

³⁵ Nurhimmi Falahiyati, "Tinjauan Hukum Kontrak Elektronik Dalam Pinjam Meminjam Uang Berbasis Teknologi Informasi (Transaksi Peer To Peer Lending)," *Jurnal Justika* 2, no. 1 (2020): 1–11, [http://www.portaluniversitaskualitas.ac.id:5388/ojsystem/index.php/ JUSTIQA/article/view/325](http://www.portaluniversitaskualitas.ac.id:5388/ojsystem/index.php/JUSTIQA/article/view/325).

³⁶ K A P Dewi, "Aspek Hukum Perlindungan Konsumen Pada Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi," *Jurnal Yustitia*, 2019.

In LPBBTI, the funder does not meet and communicate directly with the beneficiary.³⁷ The interests of the funder and the recipient of the funds are represented or carried out by the LPBBTI operator. In Article 32 of POJK 10/2022, the agreement between the funder represented by the LPBBTI operator and the recipient of the fund must contain several things, including the rights of the parties, the number of loan funds, interest rates, instalment amounts, loan term, details of costs related to loans, dispute resolution procedures, objects of collateral, as well as late fees if the parties agree.

The funding agreement between the funder and the recipient of funds, as drafted by the LPBBTI operator, typically uses a standard contract with predetermined clauses. This practice disadvantages the recipient of funds and the consumer, as they have no opportunity to determine or negotiate the contents or clauses of the agreement.³⁸

In the standard agreement, the clauses are always determined to benefit the LPBBTI operator before being offered to the recipient of the funds. The beneficiary only has the choice to agree to the entire contents of the agreement or not at all (take it or leave it)³⁹ Meanwhile, on the other hand, the recipient of the funds is in dire need of funding. This need makes the recipient of funds no longer pay attention to the contents of the standard agreement in detail and only think that the funding application submitted by the funder is fulfilled by the funder.

Regulation of Sharia Compliance at the Sharia LPBBTI

Institutionally, the use of Sharia principles as the foundation for Sharia LPBBTI makes it a form of Sharia-compliant economic activity that must adhere to Sharia principles.⁴⁰ According to Article 1, paragraph 4 of POJK No. 10/2022, Sharia principles are provisions of Islamic law based on fatwas or statements of Sharia conformity from the DSN MUI. The benchmark for sharia compliance in the implementation of Sharia LPBBTI is based on the standard set in the fatwa issued by the DSN MUI, even though fatwas are not legally binding and do not have legal force in Indonesia.⁴¹

³⁷ Indah Kusuma Wardhani and Fawzia Apriandini, "Perlindungan Hukum Bagi Pemberi Pinjaman Atas Risiko Kredit Dalam Pelaksanaan Pinjam Meminjam Uang Berbasis Teknologi Informasi (Peer to Peer Lending)," *Jurnal Hukum Mimbar Justitia* 6, no. 2 (2020): 129, <https://doi.org/10.35194/jhmj.v6i2.1268>.

³⁸ Nurhafni Nurhafni and Sanusi Bintang, "Perlindungan Hukum Konsumen Dalam Perjanjian Baku Elektronik," *Kanun Jurnal Ilmu Hukum* 20, no. 3 (2018): 473–94, <https://doi.org/10.24815/kanun.v20i3.10969>.

³⁹ Afif Noor, Dwi Wulandari, Aqila-Syarief Muhammad Afif, "Regulating Fintech Lending in Indonesia: A Study of Regulation of Financial Services Authority No. 10/POJK.05/2022," *Qubaban Academic Journal* 3, no. 4 (2023): 42–50, <https://doi.org/10.48161/qaj.v3n4a156>.

⁴⁰ Fery Irawan, "Relevansi Financial Technology Di Tinjau Dari Perspektif Ekonomi Syari'ah," *AL-Bayan: Jurnal Hukum Dan Ekonomi Islam* 6469 (2021): 50–75, <http://jurnal.stainwsamawa.ac.id/index.php/al-bayan/article/view/18>.

⁴¹ Noor and Wulandari, "Inconsistency of Guarantee Norms on The Mudharabah Fatwas in Indonesia."

The legal force of the fatwa issued by the DSN MUI is dependent on its inclusion in a statutory regulation as one of the benchmarks for the application of Sharia principles, as stipulated in Article 1, paragraph 4 of POJK No. 10/2022, which governs Sharia LPBBTI. To guide Sharia LPBBTI in conducting business activities based on information technology, the DSN MUI has issued Fatwa No. 117/DSN-MUI/II/2018 regarding information technology-based financing services based on Sharia principles. This fatwa serves as a crucial guideline for Sharia LPBBTI, as it sets the benchmark for the validity of Sharia LPBBTI implementation. In DSN-MUI Fatwa No. 117/2018, it is stated that information technology-based financing services are allowed as long as they adhere to Sharia principles and comply with the provisions of LPBBTI implementation outlined in the fatwa. The definition of Sharia principles in this fatwa includes avoiding usury, gambling, fraud, harmful things, injustice, and prohibitions.⁴²

To guide the operators of the Sharia LPBBTI to avoid usury, gambling, fraud, harmful things, injustice, and haram, Fatwa No. 117/2018 stipulates several forms of contracts or agreements under sharia principles, including sale and purchase contracts, *ijarah*, *musyarakah*, *mudharabah*, *qardh*, *wakalah*, *wakalah bi al-ujrah*, and standard contracts.⁴³ The DSN MUI fatwa mentions six financing models as part of achieving Sharia compliance in Sharia financial institutions, including Sharia LPBBTI.⁴⁴ Sharia compliance is one of the principles that institutions or companies that declare themselves as business entities subject to Sharia principles must implement.⁴⁵

To ensure adherence to Sharia principles by Sharia LPBBTI, Article 57, Paragraph 1 of POJK No. 10/2022 mandates that LPBBTI operators based on Sharia principles must have at least one member on their Sharia Supervisory Board (DPS) who has received a recommendation from the DSN MUI and does not hold concurrent positions as a member of the DPS at more than three other Sharia financial institutions. As per Article 1, Paragraph 14 of POJK No. 10/2022, the DPS is entrusted with supervising the business activities of Sharia LPBBTI and providing advice to the directors on implementing Sharia principles in their business activities.

⁴² Afif Noor et al., "Agreements on Islamic Debt-Based Crowdfunding in Indonesia," *International Journal of Economics and Management Systems* 6, no. April (2021): 605–10, <https://www.iaras.org/iaras/home/caijems/agreements-on-islamic-debt-based-crowdfunding-in-indonesia%0A> <http://www.iaras.org/iaras/filedownloads/ijems/2021/007-0059> (2021).pdf.

⁴³ Neni Dwijayanti, Muhammad Iqbal, and Muhammad Zulfikar, "The Role of Islamic Fintech P2PL in Increasing Inclusion and Financial Literacy of MSMEs," *Journal of Islamic Finance* 11, no. 1 (2022): 94–101.

⁴⁴ Maulana Reyza Alfaris, Muhammad Waliyam Mursida, and Moch. Irfan Dwi Syahroni, "Model Regulasi Financial Technology Syariah Dalam Kerangka Hukum Indonesia: Studi Perbandingan Malaysia Dan Inggris," *Legislatif* 3, no. 1 (2019): 73–96.

⁴⁵ Muhamad Mujahidin, "Munich Personal RePEc Archive Opportunities and Challenges of Sharia Technology Financials in Indonesia Mujahidin, Muhamad," *Munich Personal RePEc Archive*, no. 94844 (2019).

Regulation of Legal Protection for Users in the Sharia LPBBTI

In a country that upholds the rule of law, the state is obliged to provide legal protection to every citizen and to recognise, guarantee, and ensure the realization of legal justice and equal treatment before the law, as stated in the preamble of the 1945 Constitution.⁴⁶ Therefore, in the context of Sharia LPBBTI, the state must establish regulations that protect users of these services. Legal protection aims to provide certainty to the parties involved in Sharia LPBBTI and ensure that customers feel safe and secure when using these services.

According to Islamic law, business actors must consider six consumer rights, which include the right to accurate and honest information, fairness and protection against fraud, product and service safety, a healthy environment, defense and dispute resolution, and the right to compensation for consumed products, as well as the right to choose and obtain a fair exchange rate.⁴⁷ Based on the view above, the regulation of consumer protection in rules will be able to encourage the realization of consumer protection because it has a legal basis and is philosophically able to protect consumers justly based on Sharia principles so that its existence will provide maximum benefits to parties in Sharia LPBBTI services. Legal foundations and fair treatment of consumers and their benefits are the three legal values, which are, at the same time, the law's aim, as Gustav Radbruch stated.⁴⁸

The regulation of legal protection for Sharia LPBBTI users will be effective if it is stated in norms that bind the community and is enforced by the authorities, accompanied by threats of punishment for those who violate it. These norms must be noted in a written document and based on written law for evidence and guidance in legal actions.⁴⁹ One form of the legal document contained in the legislation is POJK No. 10/2022. Regulations related to consumer protection in Sharia LPBBTI are contained in Article 100 of POJK No. 10/2022. Article 100 states that to realise consumer protection, providers must apply the principles of transparency. One form of openness that has implications for the legal protection of LPBBTI users is contained in Article 101 of POJK No. 10/2022, which requires the organisers to clearly state the name and address of the office of the operator, the coordinates of the global positioning system, the use of an electronic system that clearly states the identity of the operators and administrators as well as their DPS, and the performance of funding, which

⁴⁶ Yeheskiel Minggu Tiranda and Lutfi Trisandi Rizki, "The Legal Ethics in Financial Technology: How Is It Regulated?" 13, no. 3 (2022): 260–69.

⁴⁷ Nurhalis, "Perlindungan Konsumen Dalam Perspektif Hukum Islam Dan Undang-Undang No.8 Tahun 1999," *Jurnal Ius Kajian Hukum Dan Keadilan* 3, no. 3 (2015): 525–42.

⁴⁸ M. Muslih, "Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)," *Legalitas* IV, no. 1 (2013): 130–52.

⁴⁹ Lingga, Virdo, Danial Syah and Herlina Hanum Harahap. "Relevance of the Value of Legal Certainty Appointment of Islamic Law Graduates as Notaries in The Appointment of Islamic Law Graduates as Notaries." *Jurnal Akta* 8, no. 3 (2021): 180–87.

includes the value of the distributed financing, the number of donors, the number of recipients of funds, and the success rate of payments. Protection for Sharia LPBBTI users is also stated in Articles 103 and 104, which stipulate that collections made by the organizers of the recipients of funds must be carried out correctly and not against the law. The operator must ensure that the debt collection follows the norms prevailing in society and the provisions of the applicable laws and regulations. Every debt collection carried out by the LPBBTI operator must be preceded by a warning letter containing the number of days of delay in payment of obligations, the final position of the total funding that has not been repaid or the principal owed, the economic benefits of the financing, and the penalty payable.

Protection for Sharia LPBBTI users is also contained in Articles 31–35 and 44–47 of POJK No. 10/2022. The rights of Sharia LPBBTI users listed in these articles include 1. the right to obtain up-to-date, accurate, honest, and not misleading information provided by the LPBBTI operator; 2. the right to obtain information on the acceptance, postponement, or rejection of loan applications or lending; 3. the right to obtain information in easy-to-understand Indonesian; 4. the right to obtain compensation for losses suffered by LPBBTI users from the organizers due to errors and negligence of the directors or employees of the LPBBTI operators; 5. Operators are required to mitigate risk for users, among others, through conducting a risk analysis of funding submitted by recipients of funds, collecting optimally distributed funding, verifying user identity and document authenticity; and 6. The right to protect the personal data of LPBBTI users, except with the permission of service users, is to be given to third parties.

The LPBBTI operator must grant these rights to its service users by the principles of transparency, fairness, confidentiality, and data security. Additionally, the operator should offer a simple and efficient dispute-resolution mechanism at a reasonable cost. However, POJK No. 10/2022 does not stipulate alternative dispute resolution that can be used as a means of resolving disputes that can occur in the implementation of LPBBTI and does not stipulate strict sanctions in the form of sanctions for service providers who do not provide service user rights and protect service users' data, so that personal data of LPBBTI users is very vulnerable to being misused by LPBBTI operators.

The regulation of Sharia LPBBTI has several weaknesses, including the fact that it is only enforced through the POJK. One limitation is that the POJK only contains technical rules and applies only to licensed LPBBTI operators. It cannot regulate illegal LPBBTI organizers or include criminal sanctions such as imprisonment, as it is not a law. Additionally, the POJK is not hierarchically placed in Law No. 12/2011, which was last amended by Law No. 13/2022 regarding the Establishment of Legislation. Therefore, legal reform in the form of a law that comprehensively covers the existence of Sharia-based LPBBTI in Indonesia is necessary.

Conclusion

The existence of Sharia LPBBTI has been regulated in POJK No. 10/POJK.05/2022, which pertains to information technology-based funding services. POJK sets out the legal relationship between funders and LPBBTI operators, as well as funders and fund recipients, and permits the use of electronic documents with the same legal validity as written documents based on agreements sourced from the fatwa of the DSN MUI. However, POJK No. 10/2022 does not address the legal relationship between fund recipients and Sharia LPBBTI organisers, leaving fund recipients without a binding legal basis despite being service users or consumers of the LPBBTI operator. This lack of regulation weakens the position of fund recipients. Implementing Sharia LPBBTI must align with Sharia principles, as stated in Article 1, paragraph 4 of POJK No. 10/2022. While POJK No. 10/2022 provides legal protection for service users or consumers of Sharia LPBBTI in Articles 31–35, 44–47, and 100–104, it does not impose criminal sanctions, such as imprisonment, on organisers who fail to safeguard LPBBTI users. Therefore, legal reform is necessary to establish a more robust legal framework for Sharia LPBBTI by regulating it in the law.

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