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The Phenomenon of Personal Data as a "Pseudo Guarantee" In Fintech: Legal or Not?

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Abstract

The study aims to examine the validity of personal data as a "pseudo guarantee" in fintech lending. The focus of this problem is whether the phenomenon of using personal data as a debt guarantee is justified.

The research method is normative, employing a statute, a conceptual and a historical approach. The analysis uses deductive logic and teleological interpretation.

Novelty of this study is different from offline loan agreements that are based on collateral, fintech is not based on collateral, but personal data has a dual function, first as the main basis for determining whether or not credit is approved and second as a pseudo guarantee if the debtor defaults.

The results show that personal data is the basis of the platform to collect and "execute loans" by disseminating personal data of loan recipients to the contact numbers of people close to the borrower if the debtor defaults. The PDP Law, POJK No. 10/POJK.05/2022 and POJK No. 22 of 2023 prohibit Fintech from providing consumer data to other parties. Fintech organizers are required to keep the confidentiality of borrower data in accordance with the data acquisition agreement with the data owner.

Conclusion, the use of personal data as a "pseudo guarantee" by providing consumer data to other parties if the loan recipient fails, based on POJK No. 10/POJK.05/2022 and Law No. 19 of 2016 is permitted as long as prior written consent is obtained from the owner of the personal data.

Keywords : Personal Information; Fintech; Default; Lending

Abstrak

Tujuan Penelitian untuk mengkaji keabsahan fenomena data pribadi sebagai "jaminan semu" dalam fintech lending. Fokus permasalahannya adalah apakah fenomena penggunaan data pribadi sebagai jaminan utang dapat dibenarkan.

Metode penelitian yang digunakan adalah normatif, dengan menggunakan pendekatan perundang-undangan, konseptual, dan historis. Analisis bahan hukum menggunakan logika deduktif dan interpretasi teleologis.

Kebaruan penelitian ini berbeda dengan perjanjian pinjaman offline yang berbasis agunan, fintech tidak berbasis agunan, namun data pribadi memiliki fungsi ganda, pertama sebagai dasar utama untuk menentukan disetujui atau tidaknya kredit dan kedua sebagai jaminan

semu jika debitur wanprestasi.

Hasil penelitian menunjukkan bahwa data pribadi menjadi dasar platform untuk melakukan penagihan sekaligus "mengeksekusi pinjaman" dengan menyebarkan data pribadi penerima pinjaman ke nomor kontak orang-orang yang dekat dengan peminjam jika debitur gagal bayar. UU PDP, POJK No. 10/POJK.05/2022 dan POJK No. 22 Tahun 2023 melarang Fintech memberikan data konsumen kepada pihak lain. Penyelenggara Fintech wajib merahasiakan data peminjam sesuai dengan perjanjian perolehan data dengan pemilik data melalui konfirmasi melalui formulir aplikasi. Kewajiban untuk merahasiakan data tersebut dimulai sejak awal proses persetujuan pinjaman hingga pengajuan selesai.

Kesimpulan, pemanfaatan data pribadi sebagai "jaminan semu" dengan memberikan data konsumen kepada pihak lain apabila penerima pinjaman gagal bayar, berdasarkan POJK No. 10/POJK.05/2022 dan UU No. 19 Tahun 2016 diperbolehkan sepanjang telah memperoleh persetujuan tertulis terlebih dahulu dari pemilik data pribadi.

Kata Kunci: Data Pribadi; Fintech; Gagal Bayar; Pinjam-Meminjam

1. INTRODUCTION

A loan agreement can create a contract between the lender on one side and the borrower on the other. This contract raises claims and responsibilities, for a debtor and creditor. The lender must hand over the promised money to the borrower and has the right to receive the money-back, while the borrower has the right to receive the loan money and must repay the loan money at the agreed time.¹ Generally, the lender will ask for guarantee (which also called collateral) to reduce the risk of loss to the lender, especially when the borrower defaults. The collateral can be movable property or immovable property. In this case, the word collateral is defined as a specific guarantee which differs from the guarantee (refer to clause 1131 of the Civil Code). The collateral is called a material guarantee which can be in the form of a pawn, mortgage, or fiduciary, so with such a guarantee, if the borrower fails to pay the loan, the lender can sell the goods used as a guarantee and take some or all of the sale proceeds to pay off the debt. Collateral is nothing new when it comes to making money lending agreements because generally, lenders will ask for a guarantee, either in the form of a property guarantee or a guarantee by a third party.²

In banking practice, banks are not allowed to give credit to anyone without adequate guarantee. Banks require collateral as a guarantee to ensure repayment. Credit by the banks follows the principle of *commanditerings verbod* in which the bank will not be liable to any business risk owned by the loan recipient with the credit given³. For this reason, the loan agreement is almost always followed by collateral strengthened by a collateral agreement. A

¹ "Zulharbi Amatahir", "Tinjauan Yuridis Wanprestasi Dalam Perjanjian Kredit Dengan Jaminan Fidusia", "Jurnal Media Hukum" 11, no. 1 (May 5, 2023): 11–23, <https://doi.org/10.59414/jmh.v11i1.447>.

² Dafa Rizky Pradana, Taufiqurrahman Taufiqurrahman, and Farhan Saleh, "PERTANGGUNGJAWABAN PERDATA DEBITUR DALAM PERJANJIAN KREDIT DENGAN JAMINAN PERORANGAN," *Jurnal Ilmu Hukum Wijaya Putra* 1, no. 2 (August 15, 2023): 103–15, <https://doi.org/10.38156/jihwp.v1i2.123>.

³ Siti Nur Adibah et al., "URGENSI JAMINAN FIDUSIA DALAM HUKUM ISLAM DAN PANDANGAN MADZHAB IMAM SYAFI'I," *Journal of Indonesian Comparative of Syari'ah Law* 4, no. 2 SE-Ilmu Syariah (December 30, 2021): 162–73, <https://doi.org/10.21111/jicl.v4i2.7153>.

guarantee agreement means making a promise by binding a certain object as an object of collateral according to the ability of the loan recipient. This guarantee serves as a legal certainty for the return of the credit funds in the agreement.⁴

Meanwhile, the definition of guarantee according to Act No. 7 of 1992 later amended by Law No. 10 of 1998 (Banking Act), is belief in the capacity of the loan recipient to pay off his obligations by what was agreed. To get this belief, before the bank approves the requested credit, the bank assesses carefully several things, namely the nature, potentiality, asset, assurance, and company progress of the loan recipient. After obtaining this belief, the bank and the debtor enter into a written agreement called a credit agreement. The guarantee includes the trait, dexterity, wealth, warranty, and enterprise growth. So, the guarantee is an accessory surety by the customers to the bank to acquire financing facilities (subsection 1 (23) of Banking Law). Guarantee refers to assets promised by the debtor to the bank to be used as a guarantee for credit repayment. If the "debtor" customer fails to pay, the lender has authorization to auction a collateral it has received. In conjunction with the development of digital technology, it has brought implications for technological innovation in the finance enterprise recognized as fintech lending⁵. Technology development is a necessary manifestation of innovation in the funding field and has a major effect on the banking industry⁶. Digital transformation changes the structure of financial intermediation⁷ and allows service providers to serve customers not for long⁸. Fintech is an innovation in financial services from financial technology companies providing credit with easy entry and transactions. Fintech utilizes technology and software to support and serve financial services to end users.⁹ Meanwhile, artificial intelligence systems are applied to analyze fintech lending.

Financial technology lending systems, borrowers and lenders can be easily connected. Each loan application is assessed based on creditworthiness, and the amount and term of the loan are adjusted to the borrower's needs. The applicable interest rate is also determined according to the provisions of each fintech platform. Thus, fintech lending introduces alternatives to access financial services and loans. It has become a solution for those who previously, had limited access to traditional financial institutions. The level of fintech distribution itself has developed, until the end of February 2020, OJK recorded the distribution

⁴ "Tka Atikah", "Urgensi Perjanjian Hukum Jaminan Hak Tanggungan Sebagai Upaya Perwujudan Kepercayaan Kreditur Lembaga Perbankan Di Indonesia", *"Jurnal Hukum Prioris"* "8", no. 1 (2020): 15–38, ["https://doi.org/https://doi.org/10.25105/prio.v8i1.14964"](https://doi.org/https://doi.org/10.25105/prio.v8i1.14964).

⁵ "Yusuf Arif Utomo", "Legal Protection for Problem Debtor Related to the Use of the Artificial Intelligence System in Peer to Peer Lending", *"Yuridika"* 35, no. 3 (2020): "657–76", ["https://doi.org/10.20473/ydk.v35i3.19007"](https://doi.org/10.20473/ydk.v35i3.19007).

⁶ "Paula Cruz-García", "Juan Fernández de Guevara", and "Joaquín Maudos", "Bank Competition and Multimarket Contact Intensity," *"Journal of International Money and Finance"* "113" (2021): "102338", ["https://doi.org/https://doi.org/10.1016/j.jimonfin.2020.102338"](https://doi.org/https://doi.org/10.1016/j.jimonfin.2020.102338).

⁷ Federico Carlini et al., "Banks, FinTech and Stock Returns," *Finance Research Letters* 45 (2022): 102252, <https://doi.org/https://doi.org/10.1016/j.frl.2021.102252>.

⁸ Benedict J Drasch, André Schweizer, and Nils Urbach, "Integrating the 'Troublemakers': A Taxonomy for Cooperation between Banks and Fintechs," *Journal of Economics and Business* 100 (November 2018): 26–42, <https://doi.org/10.1016/j.jeconbus.2018.04.002>.

⁹ Peterson K Ozili, "Impact of Digital Finance on Financial Inclusion and Stability," *Borsa Istanbul Review* 18, no. 4 (2018): 329–40, <https://doi.org/https://doi.org/10.1016/j.bir.2017.12.003>.

of Fintech Lending loans worth IDR 95.39 trillion.¹⁰

As a newcomer in money affairs, winning competition in pecuniary institutions, fintech in providing loans does not use a guarantee (which is also called collateral in the form of objects but uses the borrower information. If the loaner defaults, the lender will contact parties whose data is acquired from the personal data stored on the borrower's smartphone. This action intended to "coerce" to recover the settlement of the outstanding loan. Distribution of information and personal data of the borrower like this certainly has legal consequences. This problem, if left unchecked, will not only conflict with the confidentiality of a person's data but will also create uncertainty about the position of the private information itself. The condition of using someone's data as a basis for loan analysis is a new phenomenon in credit law, as is the control over the private data of the loan recipient that results in it being used as a collection tool when the loan recipient fails to pay, requiring in-depth study.

Study about personal data in fintech lending affairs, there is a study by Afif Noor and Dwi Wulandari entitled Constitutional Basis for Individual Files Security in Fintech Lending Transactions in INA.¹¹ The analysis focuses more on the need for personal data protection in P2PL transactions but does not examine the guarantee. Suyatno's research entitled "Analysis of Shelter of One's Own Information of Fintech Users a Normative Juridical Approach in Indonesia"¹², this study examines the legislation of the Aegis of Fintech Users' Private Details and the sanctions coerced maturity to mishandle individual information. Veronica Novinna's paper entitled Consumer Protection from the Distribution of Personal Data by Third Parties¹³, focuses on the effectiveness of law in Indonesia in protecting consumer personal data, especially for consumers as loan recipients in P2P Lending. Juan Matheus and Ariawan Gunadi's article entitled Formation of a Personal Data Protection Supervisory Agency in the Digital Economy Era: Comparative Study with KPPU, focuses on the need for an institution that plays a role in supervising the circulation of personal data to ensure the implementation of Law No. 27 of 2022.¹⁴ Rivasya Dinda Syaiful and Heru Sugiyono's article entitled Misuse of Consumer Personal Data Through Illegal Fintech Peer To Peer Lending, this study focuses on forms of misuse of consumer data through illegal Fintech peer-to-peer lending.¹⁵ Their studies

¹⁰ "David Chandrawan", "Jenny Widjojo", and "Abdul Munir", "Financial Technology Peer-To-Peer Lending Sebagai Salah Satu Solusi Pembiayaan Bagi UMKM", *"Nilai"* "1", no. 2 "(2023)": "56–65", <https://doi.org/https://doi.org/10.56881/nilai.v1i2.153>.

¹¹ "Afif Noor" and "Dwi Wulandari", "Landasan Konstitusional Perlindungan Data Pribadi Pada Transaksi Fintech Lending Di Indonesia", *"Jurnal Ilmiah Dunia Hukum"*, "2021", "99–110", <https://doi.org/http://dx.doi.org/10.56444/jidh.v0i0.1993>.

¹² Suyatno Suyatno, "Analisa Perlindungan Data Pribadi Pengguna Fintech Berdasarkan Pendekatan Yuridis Normatif Di Indonesia," *YUME: Journal of Management* 5, no. 3 (2022): 481–91, <https://doi.org/https://doi.org/10.37531/yum.v5i3.3299>.

¹³ Veronica Novinna, "Perlindungan Konsumen Dari Penyebarluasan Data Pribadi Oleh Pihak Ketiga: Kasus Fintech 'Peer to Peer Lending,'" *Jurnal Magister Hukum Udayana* 9, no. 1 (2020): 92–110, <https://doi.org/10.24843/JMHU.2020.v09.i01.p07>.

¹⁴ Juan Matheus and Ariawan Gunadi, "Pembentukan Lembaga Pengawas Perlindungan Data Pribadi Di Era Ekonomi Digital: Kajian Perbandingan Dengan KPPU," *JUSTISI* 10, no. 1 (October 18, 2023): 20–35, <https://doi.org/10.33506/jurnaljustisi.v10i1.2757>.

¹⁵ Rivasya Dinda Syaiful and Heru Sugiyono, "Misuse of Consumer Personal Data Through Illegal Fintech Peer To

do not examine the phenomenon of personal data as a “pseudo-guarantee” in financial technology-based lending agreements (fintech lending).

So far, no study has been conducted on personal data as a “pseudo-guarantee” in fintech lending agreements. The survey objective is to fill this void. Specifically, this paper is to analyze the justification for the fact of private data as the basis for loan analysis and whether it is legally justified for personal data to be used as a “pseudo-guarantee” in fintech loans based on Gustav Radbruch's legal philosophy of *Rechtidee*. According to Gustav Radbruch, the things that are always the main concern are the existence of legal certainty, benefit, and justice which are known as the principles of law (*rechtsidee*). Likewise, in examining personal data as a “pseudo-collateral”, these three things need to be considered so that the act of treating personal data as a “pseudo-collateral” by fintech does not conflict with the legal ideals put forward by Gustav Radbruch.

2.METHOD

This research is normative because it seeks to examine legal rules and principles to provide solutions to the individual information used as a guarantee. This research employs a statute approach, a conceptual approach, and a historical approach. The statute approach is used to examine various legislative and government decisions. The laws and regulations are then systematized so that the hierarchy and preferences of the laws and regulations can be known. The conceptual approach is used by exploring the principles and doctrines of legal experts, especially those concerning the law of guarantee and personal data. The historical approach is employed by examining the norms of collateral, starting from collateral on assets, guarantee by third parties, and the potential for developing personal data as a guarantee. The various legal materials found are then systematized using deductive logic. The results of the systematization of legal materials and doctrines of legal experts related to personal data as a guarantee are then interpreted teleologically to produce conclusions as answers to research questions.

3.DISCUSSION

3.1.Characteristics of Fintech as a Lending Service

Fintech has a concept, namely the adaptation of fintech that combines technology and banking institutions to ensure the financial transaction¹⁶ Milne and Parboteeah mention other advantages of fintech lending. First, it offers higher profits for lenders than conventional banks and low costs for borrowers. Second, providing credit access for several categories of loan recipients who cannot access loans from banks. Third, fintech lending has social value compared to conventional banks. Fourth, innovative technology improves the quality and

Peer Lending,” *JUSTISI* 10, no. 1 (January 1, 2024): 189–201, <https://doi.org/10.33506/js.v10i1.3003>.

¹⁶ “Amalia Vanny Shania” and “Dona Budi Kharisma”, “URGENSI PENGATURAN JAMINAN KREDIT DALAM SEKTOR PEER TO PEER (P2P) LENDING DI INDONESIA”, *“Jurnal Privat Law”* 11, “no. 2” “(November 24, 2023)”: 218, “<https://doi.org/10.20961/privat.v11i2.48947>”.

speed of service.¹⁷

The drivers of fintech credit have grown more in several regions in the world, both from the consumer side and fintech companies. From the consumer side, there is unmet demand, consideration of financial products from technology companies that they already use, and consumer preferences that are comfortable with new technologies¹⁸ From the big tech side, in terms of data access, big tech companies have access to a variety of customer information, providing better information to assess the creditworthiness of borrowers, especially for the accuracy of credit assessments or reducing the cost of the intermediation process¹⁹. Technological primacies, because new sophisticated tools such as learning machines and AI can process data through superior filtering technologies²⁰. Tech-savvy but financially underserved communities are becoming more aware of and benefiting from financial technology services.²¹ Fintech has contributed to escalating efficiency of money services institutions and reducing operational costs by providing more possibilities for innovation by applying technologies such as big data, AI and cloud computing and other technologies.²². Efficiency is achieved through decreasing dealing expenses and facts discrepancies.²³

Some of the advantages of fintech loans are that all fund payments are made in the banking system, virtual accounts and escrow accounts are available, the risks of the parties are assessed online, complete legal provisions, loan status information and billing information are submitted online, agreement documents are available in electronic form (Explanation of POJK No. 77 / POJK.01 / 2016).

Various opinions about the basics of fintech. Priyonggojati mentioned three basic forms, namely financing (micro-loans, credit facilities, payments (digital wallets), investments (asset fundrising), risk transfer, predictive modelling, and shield (salvation).²⁴ Meanwhile, article 3 paragraph (1) PBI No. 19 of 2017 about Fintech Applying states there are five basic forms of fintech, namely: (a) payment systems (authorization, clearing, final settlement, payment executor); (b) market aggregator; (c) risk and investment management (online investment products & insure tech); (d) capital, loans, and financing (P2P Lending); (e) other

¹⁷ Shania and Kharisma.

¹⁸ Jon Frost et al., "BigTech and the Changing Structure of Financial Intermediation," *Economic Policy* 34, no. 100 (October 1, 2019): 761–99, <https://doi.org/10.1093/epolic/eiaa003>.

¹⁹ Julapa Jagtiani and Catharine Lemieux, "The Roles of Alternative Data and Machine Learning in Fintech Lending: Evidence from the LendingClub Consumer Platform," *Financial Management* 48, no. 4 (2019): 1009–29, <https://doi.org/https://doi.org/10.1111/fima.12295C>.

²⁰ "Frost" "et al", "BigTech and the Changing Structure of Financial Intermediation".

²¹ Frost et al.

²² "Xiumin Zhang" "et al", "Does Fintech Benefit Financial Disintermediation"? "Evidence Based on Provinces in "China from 2013 to 2018", "Journal of Asian Economics" "82 (2022)": "101516", "<https://doi.org/https://doi.org/10.1016/j.asieco.2022.101516>".

²³ "Haijun Wang" "et al", "Fintech Inputs, Non-Performing Loans Risk Reduction and Bank Performance Improvement", "International Review of Financial Analysis" "90" "(2023)": "102849", "<https://doi.org/https://doi.org/10.1016/j.irfa.2023.102849>".

²⁴ Agus Priyonggojati, "Perlindungan Hukum Terhadap Penerima Pinjaman Dalam Penyelenggaraan Financial Technology Berbasis Peer To Peer Lending," *JURNAL USM LAW REVIEW* 2, no. 2 (November 20, 2019): 162, <https://doi.org/10.26623/julr.v2i2.2268>.

financial services.

The development of vigorously advanced tools such as mobile phones (because the chips are cheap) and advanced-rate computer interconnected has smoothed the direction for the technology of finance.²⁵ Fintech platforms apply data analysis, automated instruction **networks**, structured and unstructured automatic instructions, and cloud web access system to get rapid composite of information on behaviour and valid predictions of forthcoming cases.²⁶ It proposes a variety of fintech applications such as investment and payment apps, peer-to-peer (P2P) lending program, crypto software, and robo-advisors.²⁷ Financial technology points to the blending of database to make better the transmission to consumers of pecuniary institution's product and service offerings.

Fintech takes advantage of the digital era, providing customer-centric solutions.²⁸ Fintech can provide financial services at cheaper costs than those currently offered by commercial banks²⁹, creating value for investors³⁰. Fintech is implementing innovative technological solutions and a customer-centric approach faster than banks³¹. Therefore, to survive in the market, financial services institutions need to keep up with the pace of innovation³². As a newcomer to the financial sector, fintech companies have an entrepreneurial spirit, namely the courage to take risks a key element of the entrepreneurial spirit.³³

3.2.The Phenomenon of Using Personal Data as the Basis for Fintech Lending Analysis

The traditional analysis used by banks in assessing the eligibility of loan recipients so far includes an analysis of 5 (five) things known as the "five analysis" ("feature, quality, fund, security, circumstances"). In addition, banks also rely on financial information systems, such as the Monetary Figure Work System (SLIK), to assess loan recipients' eligibility. The SLIK is an information system whose management is under the responsibility of the OJK. Its purpose is to perform supervising duty and serve banking information, including of providing

²⁵ Huining (Henry) Cao et al., "Fintech, Financial Inclusion, Digital Currency, and CBDC," *The Journal of Finance and Data Science* 9 (2023): 100115, <https://doi.org/https://doi.org/10.1016/j.jfds.2024.100115>.

²⁶ Victor Murinde, Efthymios Rizopoulos, and Markos Zachariadis, "The Impact of the FinTech Revolution on the Future of Banking: Opportunities and Risks," *International Review of Financial Analysis* 81 (2022): 102103, <https://doi.org/https://doi.org/10.1016/j.irfa.2022.102103>.

²⁷ "Haiming Liu" and "Jikong Hu", "The Impact of Bank Fintech on Corporate Debt Default", "*Pacific-Basin Finance Journal*" 86 (2024): "102462", <https://doi.org/https://doi.org/10.1016/j.pacfin.2024.102462>.

²⁸ "Drasch", "Schweizer", and "Urbach", "Integrating the 'Troublemakers'": "A Taxonomy for Cooperation between Banks and Fintechs".

²⁹ "Luca Bellardini" "et al"., "How Do Banks Invest in Fintechs"? "Evidence from Advanced Economies", "*Journal of International Financial Markets, Institutions and Money* 77" "(2022)": "101498", <https://doi.org/https://doi.org/10.1016/j.intfin.2021.101498>.

³⁰ "Mark Chen", "Qinxi Wu", and "Baoshong Yang", "How Valuable Is FinTech Innovation?", "*Review of Financial Studies*" 32 "(May 1, 2019)": "2062–2106", <https://doi.org/10.1093/rfs/hhy130>.

³¹ Julapa Jagtiani and Kose John, "Fintech: The Impact on Consumers and Regulatory Responses," *Journal of Economics and Business* 100 (November 2018): 1–6, <https://doi.org/10.1016/j.jeconbus.2018.11.002>.

³² Drasch, Schweizer, and Urbach, "Integrating the 'Troublemakers': A Taxonomy for Cooperation between Banks and Fintechs."

³³ Md Sohel Saklain, "FinTech, Systemic Risk and Bank Market Power – Australian Perspective," *International Review of Financial Analysis* 95 (2024): 103351, <https://doi.org/https://doi.org/10.1016/j.irfa.2024.103351>.

information on loan recipients. SLIK helps banks in assessing the credit risk of prospective customers. By looking at credit history and financial conditions, banks can identify potential risks that may arise during the credit granting period.

At the same time, the Know Your Clients (KYC) tenet is also applied as an initial step to get to know the loan recipient before the evaluation. The KYC Principle is regulated in PBI 5/21/PBI/2003 regarding KYC truth Enforcement as a legal protection instrument aimed at knowing the customer's identity, all relationship deal actions are monitored, as well as any doubtful proceedings that will be reported (such as regulated by PBI No.11/28/PBI/2009 Concerning Counter-Terrorism Financing Program by Banks). Based on the KYC principle, banks know and identify bad credit customers to reduce risk. By implementing this principle, they not only customers literally but are also expected to find the customer's identity as information, as well as the profile and character information of customer transactions, carried out in banking, allowing banks to understand the profile and behaviour of debtor candidate before the credit evaluation process is carried out, so that the risk to potential problematic loan recipients can be minimized from the start. Improvements in the analysis of potential loan recipients can be made by strengthening the use of more in-depth data and information analysis related to the character and collateral of the loan recipient. Loan recipients who default will get a bad reputation in the banking world and have difficulty in applying for credit in the future because the name of the loan recipient will be recorded in the SLIK and have a detrimental history in the banking world.

Meanwhile, lending using technology starts by submitting a loan application. The consumer only needs to complete the form supplied by the Operator. The executant is required to examine the application. Article 18 of POJK 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services, the stipulation of services based on an agreement that has been mutually agreed upon, namely: (a) approval of the executant and debtor, (b) consent creditor and debtor³⁴. Then this regulation was changed by Regulation OJK No.10 / POJK.05/2022, the contract implementation is no different as Article 30 states that the provision of services based on an implementation of a contract, which is in the form of: (a) contract the Operator and the Capital Supplier; and (b) contract the Money Provider and the Fund Recipient.

Applying for a loan can be simple. Provision is as follows: (a) must enter the website first, (b) users must register on the registration form provided, (c) then the software will analyze and verify loan qualifications, (d) if the loan is accepted, the data will appear on the website where the lender provides a commitment for the loan fund. Financial technology lending offers easy conditions with fast disbursement of funds. Terms and conditions include a National Identification Number (KTP), Household Registration Card (KK), Tax Identification Number (NPWP), driver's license, a bank account, and telephone number. Files are photographed and

³⁴ Currently, Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services has been revoked by POJK Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services. POJK Number 10/POJK.05/2022 also does not regulate collateral in loan agreements (now the term information technology-based joint funding services is used).

uploaded. So, the payment method is easy interbank transfers or convenience stores (Alfamart or Indomaret.)³⁵

Fintech companies primarily rely on hard standard information, big data, and machine learning³⁶. The importance of big data as a tool to analyze consumer purchase data, the enterprise can easily identify trends and patterns of consumer needs³⁷. Humans instinctively understand privacy is important, so the examination, collection, research and analysis of behaviour from various information about humans is the most important new connectivity of Big Data civilization.³⁸

Fintech can use information about specific topics, profile pictures, and consumer behaviour through Facebook likes and tweets to make funding determinations or judgments credit properness individuals and companies.³⁹ Transaction information that someone has made, a person's history of information in financial transactions, purchases, and others have become relevant considerations for creditors to gain confidence in a person's character to be worthy of credit.⁴⁰ This creditworthy status is under consideration for credit applicants who are predicted to be able to repay their credit when due.

Utilization of a human-like computer system in the finance industry, together with a fintech lending system, namely customer profiling communicates and makes decisions based on the detailed profile of each customer⁴¹. Decision-making of approval automatically without human involvement. AI exercises organized and raw files can analyze relation portraits. Using a computational system, the institution of finances can identify the needs and demands of the customer which will lead to amount creations that may be extended like mortgages and overdraft⁴². AI also provide bigger assistance such as transactions and administration activities, and finds out consumer needs.⁴³ AI is widely known to have many advantages for a wide range of business sectors such as finance, but it is necessary to pay attention to

³⁵ Erna Priliasari, "PENTINGNYA PERLINDUNGAN DATA PRIBADI DALAM TRANSAKSI PINJAMAN ONLINE," *Majalah Hukum Nasional* 49, no. 2 (November 28, 2019): 1–27, <https://doi.org/10.33331/mhn.v49i2.44>.

³⁶ Cao et al., "Fintech, Financial Inclusion, Digital Currency, and CBDC."

³⁷ "Patrick Azuka Okeleke" "et al.", "Predictive Analytics for Market Trends Using AI": "A Study in Consumer Behavior," *International Journal of Engineering Research Updates* "7", "no. 1" "(August 30, 2024)": "036–049", <https://doi.org/10.53430/ijeru.2024.7.1.0032>.

³⁸ "Awais Ahmad" "et al.", "Socio-Cyber Network: The Potential of Cyber Physical System to Define Human Behaviors Using Big Data Analytics", " *Future Generation Computer Systems* "92" "(March 2019)": "868–78", <https://doi.org/10.1016/j.future.2017.12.027>.

³⁹ "Ana Alves Leal", "Algorithms", Creditworthiness", and Lending Decisions", "ed. "Dário Moura Vicente", Rui Soares Pereira, and "Ana Alves Leal" "(Cham: Springer International Publishing", 2024)", "321–53", https://doi.org/10.1007/978-3-031-47946-5_17.

⁴⁰ "Tu Le" "et al.", "Fintech and Banking": "Friends or Foes"? "Evidence from Bank–Fintech Cooperation", " *International Journal of Bank Marketing* "42", "no. 7" "(November 20, 2024)": "1513–35", <https://doi.org/10.1108/IJBM-09-2023-0525>.

⁴¹ Agustín Carstens et al., "Regulating Big Techs in Finance," *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.3901736>.

⁴² Khakan Najaf, Md Imtiaz Mostafiz, and Rabia Najaf, "Fintech Firms and Banks Sustainability: Why Cybersecurity Risk Matters?," *International Journal of Financial Engineering* 8, no. 02 (2021): 2150019, <https://doi.org/https://doi.org/10.1142/S2424786321500195>Cite.

⁴³ Liu and Hu, "The Impact of Bank Fintech on Corporate Debt Default."

consumer data.⁴⁴

AI technology systems combine national identification number data (KTP), social media engagement, e-commerce transactions, DOS, and telecom data. Various data provide the actual state and person's character because they manifest the person's behaviour within the computerization world⁴⁵. Innovatory computational is capable of selecting applicants' loan recipients using their files to prevent bad debts.⁴⁶ This is carried out by accessing information through the debtor's mobile phone without the consent of the loan recipient himself. AI system can give all personal data about the prospective debtors such as their networking engagement and cellphone connexions on the candidate loan recipient's mobile phone. The personal data is processed in such a way through AI owned by the fintech lending organizer so that it can know the close people who are often in contact with the Loan Recipient.

Artificial Intelligence is used to analyze the private data of the debtor's perspective whether it is safe or not to be given a loan but it is also used to collect loans that have failed to be paid. In recent years, Artificial Intelligence has shown remarkable advancement, supported by the rapid increase of large amounts of data, from software used to find cultural interests⁴⁷. In addition, Fintech lending innovation also uses "big data" to gather non-standard information from different loan recipients' scales⁴⁸ it pre-screens debts utilizing algorithms to measure the underlying risk of applications⁴⁹. With AI technology, personal data is used as the basis for analysis of providing fintech lending loans.

3.3. Personal Data as a "Pseudo Guarantee" in Fintech Lending

There are various definitions of guarantee (which is also called "collateral") to scholars. According to Rahman⁵⁰, collateral is a liability given by the debtor and/or third party because the creditor has an interest that the debtor must fulfil in a contract. According to Rivai,⁵¹ collateral is rights and power submitted by the debtor to the creditor as security for a loan. According to Usman⁵², collateral is assets owned by a third party or a third party as guarantor in case of failure to pay the debt. According to Hadisoeparto⁵³, collateral is something pledged to a creditor as a guarantee of fulfilling obligations or repayment which has value as

⁴⁴ Najaf, Mostafiz, and Najaf, "Fintech Firms and Banks Sustainability: Why Cybersecurity Risk Matters?"

⁴⁵ "Liu" and "Hu", "The Impact of Bank Fintech on Corporate Debt Default".

⁴⁶ "Utomo", "Legal Protection for Problem Debtor Related to the Use of the Artificial Intelligence System in Peer to Peer Lending".

⁴⁷ "Hendrawan Agusta", "Perlindungan Data Pribadi Penerima Pinjaman Dalam Transaksi Pinjam Meminjam Uang Berbasis Teknologi Informasi" (Peer to Peer Lending)", "KRTHA BHAYANGKARA" "14, no. 2" "(December 7, 2020)": "163-92", "https://doi.org/10.31599/krtha.v14i2.189".

⁴⁸ "Rajkamal Iyer" "et al.", "Screening Peers Softly": "Inferring the Quality of Small Borrowers", "Management Science", "vol. 62" ("Cambridge, "MA: INFORMS", "August 2009)", "https://doi.org/10.3386/w15242".

⁴⁹ Hongfeng Peng et al., "Legal Enforcement and Fintech Credit: International Evidence," *Journal of Empirical Finance* 72 (2023): 214-31, <https://doi.org/https://doi.org/10.1016/j.jempfin.2023.03.007>.

⁵⁰ Hasanuddin Rahman, *Aspek-Aspek Hukum Pemberian Kredit Perbankan Di Indonesia* (Citra Aditya Bakti, 1995).

⁵¹ Rivai H Veithzal and Andria Permata Veithzal, *Islamic Financial Management: Teori, Konsep, Dan Aplikasi Panduan Praktis Untuk Lembaga Keuangan, Nasabah, Praktisi, Dan Mahasiswa* (PT RajaGrafindo Persada, 2008).

⁵² Rachmadi Usman, *Aspek-Aspek Hukum Perbankan Di Indonesia* (Gramedia Pustaka Utama, 2001).

⁵³ Hadisoeparto Hartono, "Pokok-Pokok Hukum Perikatan Dan Hukum Jaminan," *Yogyakarta: Liberty*, 1984.

capital from a contract. By various definitions, there are elements in common with these definitions, especially related to the function of collateral, namely so that the debtor pays off his/her debt. However, the definition relevant to personal data as a pseudo guarantee is the definition put forward by Hadisoeparto, collateral is something that creates trust in which the debtor will pay off the debts.

Bahsan stated that an object eligible to be a collateral object must have at least 2 (two) requirements, legal and economic requirements⁵⁴. Legal requirements mean that the collateral is legal, that its ownership is recognized by law and the process of controlling the collateral object by regulations. The economic requirement is that the collateral object can be bought and sold or cashed so that the loan can be paid off from the results of the auction of the collateral property. The conceptualization of collateral on the personal data of the loan recipient still requires further study.

Based on Bahsan's opinion, 2 (two) requirements are needed to become a collateral object, namely legal conditions and economic requirements as a basis for the possibility of private data becoming a collateral object. First, legally, ownership of private information is recognized by PDP Law, and various laws have also protected ownership of personal data. Second, economically, the possessor of detail is reluctant to sell his information because personal data submitted to Fintech is detailed and private. Based on this analysis, it can be understood that personal data is not included in the qualifications of guarantee objects. This is different from YouTube subscriber data and Instagram followers, which are often the object of buying and selling because the data only contains usernames, which are sometimes not real names, so it does not rule out the practice of buying and selling subscribers and the possibility of becoming guarantee objects is also more open.

In a loan contract in fintech lending, the party that distributes funds as the lender has a high risk, so it requires a "collateral" or "guarantee". Due to business competition, fintech offers loans without collateral so that people who cannot access funding and do not have assurance, fintech lending takes a position to reach out and provide access to them.⁵⁵ However, its loan is safe, fintech uses another method, creating personal data as "pseudo collateral". At the beginning of approval, the loan recipient agrees that the organizer can access personal data on the smartphone of the prospective loan recipient, namely data: (i) location, (ii) camera and (iii) microphone.⁵⁶ The consideration of the 3 (three) data accessed is that it is the most appropriate for using data for P2P Lending purposes. Rationality of the location: to find out the location of the prospective loan recipient or Loan Recipient. In addition, one of the objectives of developing P2P Lending is to increase inclusive finance for all community levels, so that with the accessibility of the location, data on prospective loan recipients or Loan Recipients from anywhere can be presented. But, the rationality of the camera: when applying for a loan, prospective Loan Recipients are required to take a full face

⁵⁴ S E M Bahsan SH, *Hukum Jaminan Dan Jaminan Kredit Perbankan Indonesia* (Rajawali pers, 2020).

⁵⁵ Le et al., "Fintech and Banking: Friends or Foes? Evidence from Bank-Fintech Cooperation."

⁵⁶ Financial Services Authority Letter (SE OJK) No. S-72/NB.213/2019 dated February 12, 2019 regarding "the Order to Restrict Entrance to Private Data on Smartphones of Fintech Lending Consumers"

and close-up selfie together with the relevant KTP so that with the camera being accessible, the P2P Lending application can store the identity data of the Loan Recipient. Rationality of the microphone: this is needed during the loan collection process from the P2P Lending Organizer through the collection section. The locations by the P2P Lending Organizer were initially only based on the Global Positioning System. Further developments on the request from AFPI (the Indonesian Joint Funding Fintech Association) regarding International Mobile Equipment Identity Access Request, finally the OJK issued an approval that the locations based on GPS location and Global System for Mobile Communications IMEI in the context of Electronic Know Your Customer (E-KYC).⁵⁷

The personal data is then processed in such a way through AI owned by the fintech lending platforms so that it can be known who the close persons who often have contact with the Loan Recipient. The AI system will record whoever's phone contact is contacted by the loan recipient and the frequently contacted or contacts the loan recipients. The artificial intelligence network shall note and deduce that the folks are the "closest people" of debt recipients. P2PL platforms have access to derive the personal data of debtor, especially photos and mobile phone contact numbers, and are likely to misuse it for their business interests. The platform can access personal data because when the borrower installs the application provided by the P2PL platform, the platform always asks to be given access to all contact numbers on the debtor's mobile phone.⁵⁸

Fintech is unsecured loans and borrowing and does not want to suffer losses when the borrower fails to pay. Platform secure its loans, the borrower's data has to be used as a "pseudo guarantee" which will be shared when the borrower fails to pay. The legal issue is whether personal data as a "pseudo guarantee" for fintech loans is justified in sharing said personal data. Meanwhile, the organizer complies with the obligation to keep the borrower's data confidential, based on the agreement, which is relevant to obtaining the data. This agreement was realized through confirmation from the owner data through the application form. The obligation to keep this confidential begins from the beginning of the loan approval process until the application is completed.⁵⁹

The confidential material data is private files, the activity of buying and selling and financial transactions. However, the service provider is allowed to collect the borrower's private figure derived from the computational sophisticate if borrowers fail to pay so the borrower's data embraced by the administrator is used as a "guarantee" (pseudo "collateral"). While the borrower fails to pay, personal data as a pseudo guarantee is carried out by distributing the borrower's data to them are frequently contacted. The fintech lending organizer considers this

⁵⁷ Financial Services Authority Letter (SE OJK) No. S-327/NB.213/2019 dated June 20, 2019 concerning Approval of Granting Access to Personal Data in the form of IMEI on Smartphones of Fintech Lending Users

⁵⁸ Noor and Wulandari, "Landasan Konstitusional Perlindungan Data Pribadi Pada Transaksi Fintech Lending Di Indonesia."

⁵⁹ Russel Butarbutar and Bernadete Nurmawati, "Perlindungan Data Pribadi Konsumen Pinjaman Online: Suatu Analisis," *Eligible: Journal of Social Sciences* 2, no. 1 (2023): 181–92, <https://doi.org/DOI:https://doi.org/10.53276/eligible.v2i1.66>.

as a form of fulfilling the debtor's obligations. However, the question is whether personal data as a "pseudo-guarantee" is justified by laws. In law, the platforms have to keep the privacy files of loan recipients starting from the credit agreement process until completion of the loan application.

As regulated in Article 2 of the Reg. of Minister Informatics No. 20 of 2016 in conjunction with Article 4 of Law No. 27 of 2022 regarding the Protection of Personal Data (PDP Law), in conjunction with Article 44 of POJK No. 10 / POJK.05 / 2022 (this POJK replaces POJK No. 77 / POJK.01 / 2016) which stipulates that organizers are required to protect personal data as privacy. There is even a prohibition for financial service (PUJK) in this Fintech to provide consumer data to the other parties as stipulated in Article 22 (1) POJK No. 22 of 2023 that (1) financial service (PUJK) is forbidden: a) providing figures regarding Customer to other parties; b) using data of end user who have terminated product or service agreements; c) using information of prospective user whose application of products or services rejected by PUJK; or d) using details of prospective wearer who withdraw their application of products or services. (2) PUJK is prohibited and requires prospective Consumers to agree to share data or information as a term and condition for using products or services.

In this regard, platforms have written procedures and enforce a blueprint for public safeguarding, especially regarding consumer data protection and/or information and usage mechanisms to delete customer data or information, as stated in Article 8 POJK relating to Protection in the Financial Services. The data and/or information of individual consumers whose confidentiality and security must maintained by Article 19 paragraph (1) of POJK No. 22 of 2023 are files related to complete name, Population ID Number (PIN), address, age; phone number, mom's name, other information given access by the Consumer to PUJK, or other data by the provisions of legislation and regulations. Thus, it is clear that the distribution of personal data without consent is prohibited. Even if Fintech wants personal data as a "guarantee must auctioned" because the loan recipient fails to pay, POJK No. 10/POJK.05/2022 concerning Information Technology Based Co-Funding Services (LPBBTI) requires the consent of the personal data owner for the acquisition, use and uncovering of private data in Fintech, as stated in Article 44 letter (c) that the Operator must ensure that the procurement, exercise, processing, and apocalypse of Individual Data, dealings data, and financial data acquired by the Organizer are built upon the permission of the owner otherwise specified by statutory stipulations.

These provisions are in accord with the PDP Law, articles 20-22 which require that written consent be obtained from the possessor of private information. The requirement consent is also coherent with Law No. 19 of 2016 as for revisions Law No. 11 of 2008 (ITE Law) Article 26 (1,2) set : (1) "Use of personal information via electronic media must be with the consent of the person concerned"; (2) "Any person who feels they have been disadvantage because their rights abused, they have the right to compensation.⁶⁰ In that regard, the

⁶⁰ Suyatno, "Analisa Perlindungan Data Pribadi Pengguna Fintech Berdasarkan Pendekatan Yuridis Normatif Di Indonesia."

personal data, the files proprietor may even seek the administrator to delete his account (Article 48 paragraph (2) of the POJK LPBBI). The basis for issuing limitations on entry to personal information is the power of the OJK to undertake surveillance, assess, judgment, improve customer welfare, and take punitive action to any violation committed by Financial Services Institutions. OJK also has several other competencies as referred to in the financial services legislation.⁶¹

Fintech that treats personal data as a "pseudo guarantee" when the loan recipient fails to pay is a violation that will be imposed punishment. Article 12 of PDP Law determines that sharing private files without consent of the information possessor is a violation and will be subject to sanctions. The conviction can be in the form of a monition, caution, imposition of a fine, restriction of enterprise undertaking, and/or retraction of a permit, even be associated with obstructing the administrator's E-System. The private information holder is entitled to claim and get damages for offenses of employing private detail consumers.

Thus, employing personal data as a "pseudo guarantee" executed through a share of personal data due to a loan that fails to pay is not a solution but rather a violation of privacy rights and against the provisions of applicable legislation and regulations. According to Gustav Radbruch's opinion on law, the things that are always the main concern are the existence of legal certainty, utility, and justice which are known as the basic ideas of law (*rechtsidee*). Likewise, in reviewing personal data as a "pseudo guarantee", these three things should be considered.⁶² Even if for business reasons then taking action to treat personal data as a "pseudo guarantee" by fintech is contradictory to the ideals of law suggested by Gustav Radbruch. The utility of personal data as a "pseudo guarantee" in fintech lending, of course, must pay attention to legal regulations to create legal certainty, and not to commit acts that violate and contradict the law. All activities that are against the law have implications for legal uncertainty for loan recipients but at the next level will also be able to touch on a higher legal side, namely justice for loan recipients.

CONCLUSION

The study indicates that the character of financial technology lending further increases the efficiency of financial services, due to reduced operational costs, transaction costs and information asymmetry. Fintech allows personal data in the form of a person's information history in financial transactions, purchases, and others to be considered by fintech to obtain confidence in the character of a person who is worthy of being given a loan and who is predicted to be able to repay his loan when due. Personal data is processed through Artificial Intelligence and then used to analyze whether someone is *bona fide* to be given a loan or collected when the borrower fails to pay by distributing the borrower's data to other parties.

⁶¹ Agusta, "Perlindungan Data Pribadi Penerima Pinjaman Dalam Transaksi Pinjam Meminjam Uang Berbasis Teknologi Informasi (Peer to Peer Lending)."

⁶² Siti Malikhatun Badriyah, "PROBLEMATIKA PEMBEBANAN HAK TANGGUNGAN DENGAN OBJEK TANAH YANG BELUM BERSERTIPIKAT," *Masalah-Masalah Hukum* 45, no. 3 (July 25, 2016): 173, <https://doi.org/10.14710/mmh.45.3.2016.173-180>.

This phenomenon illustrates that personal data, initially as a basis for credit scoring, has also developed as a "pseudo collateral" in fintech. Because it concerns individual privacy, the consent of all parties is the key to ensuring the practice is not included in acts contrary to applicable laws and regulations.

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