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Sept 23 - 24 2020

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 Kaligawe Rd KM 4, Central java

THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER



Our Speaker



Prof. Henning Glasser
 Thammasat University



Prof. Yuzuru Shimada
 Nagoya University



Melissa Crouch
 UNSW Australia



Prof. Henk Adding
 Utrecht University



Assoc. Prof. Dr. Hj. Sri Kusriyah
 Sultan Agung Islamic University

*Democracy In Digital Era : Law,
 Governance, Sosial And Economic
 Perspective In Asia, Australia And
 Dutch*



September 23-24, 2020
 Imam Assafei Buiding, Faculty of Law, Unissula
 Kaligawe Rd KM 4 Semarang, Central Java

THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

THEME : DEMOCRACY IN DIGITAL ERA: LAW, GOVERNANCE, SOCIAL AND ECONOMIC PERSPECTIVE IN ASIA, AUSTRALIA AND DUTCH

Keywords: *Digital Media, Political and Governance Institutions, Electoral Processes, People Representation, Digital Disinformation, Democracy, Digital Economic, Social issue*



Meet Our Speakers



Melissa Crouch
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Utrecht University



Prof. Henning Glaser
Thammasat University



Prof. Yuzuru Shimada
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Assoc. Prof. Dr. Hj. Sri Kusriyah
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This agenda aims to provide insights in theory and practice:

1. To exchange and discuss views on the most important issues on Democracy in Digital Era: Law, Governance, Social and Economic Perspective in Asia, Australia and Dutch and its consequences to Law in countries.
2. To discuss the challenges and practical aspect of Democracy and Governance in a Digital Era.

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- **Full Paper Submission and Transfer** September, 07-22 2020
- **Conference and Presentations** September 24th 2020

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The 2nd

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KATA PENGANTAR

Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "*Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch*" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

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Juridical Review Of The Implementation Of Unsecured Loans On Finansial Technology

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Abstract.

Increasingly complex challenges and an increasingly advanced financial system are the basis for the need for policy adjustments in the economy, including the use of financial technology as a solution to economic activity in the digital era. The purpose of this study was to determine the legal review of the implementation of the fiducia agreement on the Fintech Julo application and what obstacles were faced in implementing online fiducia on the Fintech Julo application. The research methodology used in this research is descriptive. From the research conducted, it can be concluded that the process of implementing the online fiducia agreement on the Julo fintech application is basically the same as the fiduciary guarantee process in general, namely the process of binding a credit agreement as the principal agreement, and the fiduciary binding as an access agreement. In general, the risks that may arise from Fintech companies in Indonesia are: fraud risk, data security risk (cybersecurity), and market uncertainty risk. In providing credit with fiduciary guarantees, credit should only be given for the short and medium term so that the value of the transaction of goods does not experience a significant decrease.

Keywords: *Financial Technology, Banking Law, Fiduciary, Credit online.*

A. Introduction

Article 4 of Act Number 10 of 1998 concerning Banking defines that Indonesian banking aims to support the implementation of national development in the context of increasing equity, economic growth and national stability towards improving the welfare of the people at large.² This provision explains that banks and financial institutions have an important and strategic role not only in driving the national economy, but also directed to be able to support the implementation of development.

The increasing need for capital in both the large and small business sectors in Indonesia is inseparable from the growing economic growth. This is indicated by the number of credit commitments made between creditors and debtors. Creditors broadly consist of 3 (three) groups, namely bank financial institutions, non-

1. Faculty of Law Sultan Agung Islamic University

2. Kasmir, 2006, *Dasar-Dasar Perbankan*, Raja Grafindo Persada, Jakarta, p.18

banks and financing institutions. Meanwhile, debtors can come from the community, individuals, or legal entities that need capital to carry out economic activities.

Fiduciary security is a guarantee of trust that comes from the existence of a feeling relationship between one human and another in which they feel safe, so that a sense of trust in their interaction partner grows, to further provide their property as collateral to the place where they are owed. Regulations related to banks are regulated in Act Number 7 of 1992 as amended by Act Number 10 of 1998 concerning Banking (hereinafter referred to as Banking Law). Article 1 paragraph 2 of the Banking Law defines that a Bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit to improve the standard of living of the people at large, as well as provide services in payment traffic.³

Practices related to credit guarantees are usually regulated by the company internally with reference to the laws that govern it. These internal regulations, among others, regulate acceptable credit guarantee objects, procedures for appraisal, and methods for binding. Collateral has a very important function in providing credit, because guarantees can provide a sense of security for creditors and ensure that bills are fulfilled by debtors. A good form of guarantee for a debtor is a form of guarantee that does not kill his daily business activities, while for creditors a good form of guarantee is a form of guarantee that can provide a sense of security and legal certainty that the credit given can be repaid on time. The provision of bank credit includes various types of guarantees, one of the guarantees known in Indonesia is the fiduciary guarantee, regulated in Law Number 42 of 1999 concerning Fiduciary Guarantee (hereinafter referred to as the Fiduciary Guarantee Law).

Fiduciary guarantees require a guarantee as a form of debt repayment, the guarantee can be in the form of securities or more often used as a guarantee is a certificate of motor vehicle number, provided that only securities are used as collateral. Meanwhile, the goods can still be enjoyed and under the control of the debtor. The transfer of ownership rights referred to solely as a guarantee for debt repayment, not permanently owned by the fiduciary recipient.

The background for the formation of fiduciary institutions was the need for financial service practices.⁴This need is based on the facts that according to our legal system if the object of collateral for debt is a movable object, the collateral is bound in the form of a pledge where the object of guarantee must be submitted to the party receiving the pledge (creditor). If the object of collateral for debt is immovable property, then the guarantee must be in the form of a mortgage (now there is a mortgage) in which the object of collateral is not submitted to the creditor, but remains in the power of the debtor. Cases that are different from the object collateral for debt are still classified as movable property, but the debtor does not give up power over the goods.

One of the fintech applications that make credit loans for borrowers is the Julo application. Julo is used according to the context, is PT Bank Amar Indonesia which is known by the trademark “Julo”, which is a financial technology company that carries out Information Technology-Based Lending and Borrowing Services (LPMUBTI) through a Platform based on the Financial Services Authority Regulation Number. 77/2016 concerning Information Technology-Based Lending and Borrowing Services.

PT JULO TEKNOLOGI FINANSIAL (Company) is a legal entity established under the laws of the Republic of Indonesia. Standing as a company that has been regulated by and under the supervision of the Financial Services Authority (OJK) in Indonesia, the company provides interfacing services as a liaison for

3. Hermansyah, 2011, Hukum Perbankan Nasional Indonesia, Kencana, Jakarta, p.8

4. Resty Femi Lombogia, Perkembangan Lembaga Jaminan Fidusia di Indonesia, Lex Privatum, Vol.I No.4, Oktober 2013, p.6-7

parties providing loans and parties requiring loans including funding from individuals, organizations, or legal entities to certain individuals or legal entities. . The company does not provide any form of advice or funding recommendations regarding the choices on this site. The content and materials available on the JULO website are intended to provide information and are not considered an offer, request, invitation, suggestion, or recommendation to invest in securities, capital market products or other financial services. Companies in providing services are limited to administrative functions. Funds and loans placed in JULO accounts are not and will not be considered as deposits held by the Company as stipulated in the Legislation concerning Banking in Indonesia.⁵The purpose of this study was to determine the legal review of the implementation of the fiducia agreement on the Fintech Julio application and what obstacles were faced in implementing online fiducia on the Fintech Julio application.

B. Research Method

The research methodology used in this research is descriptive. Descriptive legal research is descriptive in nature which aims to obtain a complete picture (description) of a certain situation and at a certain time, or about existing juridical symptoms, or certain legal events that occur in society. The research specification in this research is descriptive analytical. Analytical descriptive research is in researching the status of human groups, an object, a set of conditions, a system of thought, or a class of events in the present. The purpose of this research is to make a systematic, factual and accurate description of the facts, properties and relationships between the phenomena being investigated.⁶

C. Discussion.

1 Juridical Review of the Implementation of Online Fiduciary Agreements on the Julio Fintech Application.

A multi-national company, PT JULO Teknologi Finansial, through its information technology-based loan application service called Julio, offers the fulfillment of people's daily needs through information technology-based lending services. PT JULO Teknologi Finansial provides lending and borrowing services without collateral online through the user's device. There are 3 (three) types of services provided, Julio Cicil for a maximum nominal loan of Rp. 8,000,000 (eight million rupiah) and Julio Mini with a maximum ceiling of Rp. 1,000,000 (one million rupiah).⁷The two services have differences in the tenor or repayment period and the interest rate provided on the Julio Minim service, the maximum limit provided is IDR 1,000,000 (one million rupiah) with a borrowing period of 30 (thirty days) and has an interest of 10 % per month. For Julio Cicil's service, the technology financial company offers a higher ceiling, starting from Rp. 1,000,000 (one million rupiah) to the highest ceiling of Rp. 8,000,000; (eight million rupiah). Loan repayments are made in installments for 2 (two) to 6 (six) months with interest of 3-6% per month.⁸

Meanwhile, for the third type of service, Julio Agunan, this type of service has different requirements from the two previous services. The Julio Agunan service requires the use of collateral as collateral for the loan (fiducia). The JULO Agunan service option is in collaboration with PT. BFI Finance Indonesia Tbk as the donor. The three types of services both require the same requirements, among others, service users must be in the service area of PT. Julio Financial Technology operates. Julio's service operation areas are in 17 (seventeen) areas spread across Indonesia, including 14 areas in Java, namely Sukabumi, Tasikmalaya, Sumedang, Cianjur, Garut, Subang, Cirebon, Purwakarta, Sidoarjo, Gresik, Jember, Pasuruan. , Semarang,

5. <https://www.julo.co.id/about.html> accessed on 21 December 2020 at 21.00 WIB

6. Moh. Nazir, 2003, *Metode Penelitian*, Cetakan Kelima, Ghalia Indonesia, Jakarta, p. 54.

7. <https://www.julo.co.id/product.html> accessed on 21 December 2020 at 21.00 WIB

8. *Ibid.*,

Magelang; and areas on the island of Sumatra, namely Palembang and Bandar Lampung; and 1 area in West Nusa Tenggara, namely Mataram City. Then users who want to apply for money loan services must be 21 (twenty one) years old and over, with a minimum income of Rp. 1,700,000; (one million seven hundred thousand rupiah) per month, and have a personal smart device.⁹

The process of lending and borrowing money without collateral at Conventional Banks is different from the lending and borrowing process in Financial Technology. In the conventional bank lending and borrowing scheme, the bank acts directly as a financial intermediary between depositors (creditors) and debtors. Then the depositors have very limited access to information on the use (distribution) of their money. Meanwhile, the technology financial mechanism that uses the Peer to Peer Lending (P2P) method, such as that applied to the Tunaiku Financial Technology mechanism, continues to use a credit scoring system such as banking and publishes the results on its platform, so that lenders have access to information on who the financing is given.

The mechanism of lending and borrowing money with or without collateral at PT. Julo Financial Tenkologi through the Julo application goes through three (3) stages, namely the Registration Process, the Process of choosing a Loan Product, and Verification of the Loan Process and Fund Disbursement.¹⁰

The first process that a prospective loan recipient must carry out is the Registration process. In this process, users are required to download the Julo application on their device. After that register using a personal mobile number. After that the user will receive a verification code in the form of an OTP code (one time password) as a registration access code. After successfully registering as a user, the user is then required to fill out a personal data form. The personal information requested is personal name, biological mother's name, bank name and loan recipient account number, personal telephone number, date of birth (month, date and year), population identification number, residence address, last education, occupation, work address and the amount of income and expenses per month. After the filling out of the form is uploaded, the user is asked to upload a photo of the Electronic Identity Card (E-KTP) and a photo of the user while holding the E-KTP. If the upload process is successful, the registration process is complete. After that, the data system of PT. JULO Financial Technology will calculate the user's credit score, this score calculation by Julo called Julo Points.

When users get the Julo Agunan loan service option, the Julo application system will be automatically connected to the registration system on the online BFI application owned by PT BFI Indonesia Finance Tbk as a collateral funding partner. This is because in the Julo Agunan service, users are given the option to get a loan with a large nominal, longer tenor and use collateral as a pre-condition. Starting from the motorbike BPKB, car BPKB, house, apartment or land certificate as collateral.

Users who use a house certificate as collateral are entitled to a loan of at least Rp. 50,000,000; (fifty million rupiah) with a tenor of up to five years. Whereas users who use a car BPKB, the user will get a minimum money loan ceiling of Rp. 10,000,000; (ten million rupiah) and a tenor of up to 4 years. For users who choose to mortgage their motorbike BPKB, the user will get a minimum loan ceiling of Rp. 1,000,000; (one million rupiah) with a minimum tenor of 3 (three) months to a year. The requirements for applying for a loan with a car collateral are users who apply for a loan to this service must be Indonesian citizens, 21 to 65 years old or already married, have income and reside in Indonesia. In addition, the criteria for the profile of the vehicle must also meet the requirements for submission, these requirements include: The car is a self-owned vehicle with the original BPKB, the BPKB can be in the name of yourself or someone else,

9. Ibid.,

10. <https://www.julo.co.id/terms-and-conditions.html> accessed on 21 December 2020 at 21.00 WIB

the age of the vehicle is max. 15 years old for sedan, jeep and minibus, max. 10 years for pick up & truck types, the last is registered as black or yellow plate vehicles. By guaranteeing the Car BPKB as collateral, the user will get a monthly flat interest starting from 0.9% and an annual interest rate, starting from 11.5% (according to the condition of the assets & completeness of the documents). The submission process will take approximately 2 days.

For users who use BPKB Motor as collateral, the requirements for self-profile for submission are the same as applying for a loan with a car BPKB. As for the vehicle profile, it must meet the requirements, among others, that the motorbike is a self-owned vehicle with an original BPKB. Then the BPKB can be on behalf of themselves or someone else. Max vehicle age 10 years with the brands Honda, Yamaha, Kawasaki, Suzuki (other brands depending on your closest branch), and the vehicle as collateral is a black plate vehicle.

Users will get a monthly flat interest starting from 2.5% with an interest rate starting from 11.5% per year, besides the loan tenor is 6-24 months. Whereas when applying for a loan with a certificate of house or shop as collateral, the requirements for the profile of the house or shop that must be fulfilled are that the house or shop building is a permanent building, the shop that can be financed must be located in a cluster, complex or settlement, a shop that can be financed min. 2 floors, the lower floor as a business place, generally has an open front design and a commercial area, and finally the house or shop is located in Jabodetabek, Gresik, Sidoarjo, Surabaya.

After the credit application / application is received by Julo through BFI online as the funding institution, the service provider will conduct an in-depth and detailed study of the credit application file submitted. If from the results of the research conducted, the service provider believes that the application file is complete and meets the requirements, then BFI Online will carry out the next stage, namely a creditworthiness assessment. Meanwhile, if it turns out that the credit application file submitted is incomplete and does not meet the specified requirements, then BFI will ask the credit applicant to complete it.

After the credit file research process is complete, the next process is creditworthiness assessment. In the creditworthiness assessment process, many aspects become the assessment points. These aspects include legal aspects. Assessment on this aspect is an assessment of the authenticity and validity of documents submitted by users. Apart from legal aspects, market and marketing aspects are also a concern in the evaluation by officers. In this aspect, what will be assessed is the current and future business prospects carried out by the credit applicant. In addition to the aspects as stated above, other aspects that are also assessed are the technical or operational aspects of the company submitting the credit application, for example regarding the location of the business place, the condition of the building and other supporting facilities and infrastructure. The next process is a loan survey. The survey is an important step for the realization of financing. The process carried out by the executor (account officer from BFI online) has a function to assess the business feasibility of a prospective borrower, reduce risks due to non-payment of financing, and calculate proper financing needs. After the survey process is carried out and the credit risk assessment is complete, the user will get a phone confirmation of the amount of loan funds to be obtained, if the user agrees, the process of disbursing funds into the user's personal bank account will be processed immediately after the user signs the Accounts Receivable Agreement on the online BFI system.

After the system assesses creditworthiness and processes the information data we provide, users are asked to read the Accounts Receivable Agreement (SPHP) form and provide a digital signature on the SPHP form. Users are also asked to record a statement of data authentication provided and a statement of ability to return loan funds on time. After the verification process is complete, the fund disbursement process to the user's personal account will take no later than 24 hours after the verification process is received by the

system.

Based on the research results, the online fiduciary agreement implementation process on the Julo fintech application is basically the same as the fiduciary guarantee process in general, namely the process of binding a credit agreement as the principal agreement, and the fiduciary binding as an access agreement. In every time providing credit to customers, banks and financial institutions always face a risk, namely the non-return of money lent to customers. Therefore, the condition of the customer must be followed continuously from the time the credit is given until the credit is paid off. Considering the risk of not returning the money and the possibility that the object of collateral is sold to a third party, each Credit Agreement must be accompanied by sufficient collateral and has been bound based on the applicable law.

This is recognized by the bank that with the enactment of the fiduciary law, it feels more protected. Because the enactment of this Law means that there are definite, clear and complete legal provisions regarding the rights of creditors and are able to provide maximum legal protection. The regulation of the data in the articles that must be contained in the fiduciary deed indirectly provides a strong grip on creditors, especially regarding which claims are guaranteed, the amount of the guarantee value and how much right of preferred creditors.

The existence of an insurance claim automatically into the fiduciary guarantee deed can provide legal certainty and greatly benefit creditors, in this case the bank. Because if the fiduciary security object is sold to a third party, it will be replaced by the insurance company, it could be an equivalent item or money. One form of providing legal certainty for creditors' rights is the existence of a fiduciary registration agency, namely the Fiduciary Registration Office.¹¹

Regulations regarding guarantees for credit facilities in the banking law are not so difficult if confidence in the ability of debtors to repay their debts can be obtained. The guarantee must be ideal because the guarantee has the task of smoothing out and securing credit, namely by giving the bank the right and power to get the repayment of the collateral (the object of the guarantee) if the debtor is in default, so that the binding must be based on the prevailing laws and regulations.¹²

Likewise, a guarantee with a fiduciary object, the binding must also be fiduciary. From the results of the research, it was found that the bank has relatively the same standards and procedures for binding credit agreements and fiduciary ties, namely starting with the issuance of a Credit Approval Letter (SPK) which is the Bank's notification to the applicant that the credit application has been approved.

The contents of the letter of approval basically contain notification of the main matters approved by the bank in connection with the credit as follows:

- a. Credit limit amountJangka waktu kredit;
- b. Credit interest ratesProvisi;
- c. Administrative fee;
- d. Insurance fee;
- e. Binding fee;
- f. The amount of the principal installments plus interest each month;
- g. Reserve 1 (one) time principal and interest installments;
- h. Forms of binding credit and guarantees (notarized or under hand);

11. Muhammad Moerdiono Muhtar, *Perlindungan Hukum Bagi Kreditor Pada Perjanjian Fidusia Dalam Praktek*, Lex Privatum, Volume INo.2, April-Juni 2013, p.6

12. *Ibid.*,

If the credit applicant agrees to the conditions, requirements, and obligations as outlined in the Credit Approval Letter, the applicant is asked to sign the letter on sufficient stamp duty, as proof of agreement, where the husband / wife of the applicant also signs the agreement. It is also stipulated that the validity period of the letter is between 7 (seven) and 14 (fourteen) days.

This is intended to provide an opportunity for the applicant to study the contents of the agreement letter. For banks and financing institutions, this period is deemed sufficient for the applicant to study and consider the contents of the approval letter and the legal consequences that arise when signing the letter. If the credit applicant exceeds that period of time, the loan approval letter can be withdrawn / canceled by the lender. If the applicant agrees (as evidenced by the signing of the approval letter), then the following procedures are followed in binding fiduciary security at PT. Julo through PT. BFI is as follows:

- a. The creditor conducts a physical inspection of the goods that will be guaranteed to examine the correctness of quality and quantity by identifying the number of goods or units, brand / year of manufacture / capacity / etc. (if the guarantee is in the form of BPKB for motorbikes and cars), receipts or invoices, certificates (if the guarantee is in the form of certificate) and so on.
- b. If it is believed that the data is correct and the ownership of the goods is based on the evidence of ownership, then it is made:
 - (1) Privately Made Deed Agreement and Notarial Deed

The form and content of the credit agreement have been standardized (standard credit agreement), so there is no opportunity and opportunity given to credit applicants to review or change the contents of the credit agreement. Basically, the important points stated in the credit approval letter are restated in the credit agreement.

- (2) Fiduciary Agreement Deed

This Fiduciary Agreement Deed must be drawn up by and in the presence of a notary whose face is the first party as the Fiduciary Giver and the second party as the Fiduciary Recipient. At the time of signing the Fiduciary Security Deed, previously the notary was obliged to read and explain clearly the contents of the deed to the parties. The signing of the Fiduciary Guarantee deed is carried out immediately after the signing of the credit agreement deed. The fiduciary guarantee deed is a form of guarantee for motorized vehicles, so what is guaranteed in this case is a motorized vehicle.¹³

With this fiduciary guarantee, the owner of a motorized vehicle takes legal action to transfer ownership rights to the bank as the creditor (hereinafter referred to as the fiduciary recipient) and because the bank is entitled to the fiduciary object solely and as long as the credit received by the debtor has not been paid. In other words, as long as the debtor has not paid off his credit obligation, the bank is still entitled to ownership of the fiduciary object. Melakukan pendaftaran Akta Fidusia pada kantor Pendaftaran Fidusia yang terdapat pada Kanwil Departemen Hukum dan Hak Asasi Manusia Jawa Tengah untuk diterbitkan Sertifikat Fidusia melalui notaris pembuat Akta Jaminan Fidusia tersebut (Pasal 2 ayat (2) Peraturan Pemerintah No.

13. Dewa Gede Wibhi Girinatha, Marwanto, A.A. Ketut Sukranatha, Pelaksanaan Pendaftaran Jaminan Fidusia Secara Elektronik Oleh Notaris Berdasarkan Peraturan Menteri Nomor 9 Tahun 2013, Kertha Semaya, Journal Ilmu Hukum Vol. 01, No. 09, September 2013, p.8-9

86 Tahun 2000).

Registration of the Fiduciary Security Deed must be done to obtain a Fiduciary Guarantee Certificate and to complete a notarized copy of the deed. In connection with the obligation to register the Fiduciary Guarantee, Article 11 paragraph (1) of the Fiduciary Law states that objects that are burdened with the Fiduciary Guarantee must be registered. In this case the author agrees with the respondent because with the obligation to register the Fiduciary Security, it will create legal certainty for the parties, both for the Fiduciary Giver and for the Fiduciary Recipient so as to provide legal protection for creditors (Fiduciary Recipients).

With the registration of the Fiduciary Guarantee, it will better guarantee the preferred rights of creditors (Fiduciary Recipients) to other creditors for the sale of the objects of the object of the Fiduciary Guarantee. This is in accordance with the provisions of Article 27 paragraph (1) of the Fiduciary Law which states: Fiduciary recipients have precedence over other creditors. If there are more than one creditor and the proceeds from the sale of the debtor's assets are not sufficient to cover their debts to creditors, Preferred creditors are preferred creditors, namely creditors who must be prioritized in their payment among other creditors if the debtor defaults.

From the explanation above, the authors analyze that the implementation of the fiducia agreement on the Julo application through its partner, PT BFI Finance Indonesia, TBK is a legal agreement and is in accordance with the procedures for implementing the fiducia agreement for banks and non-bank financial institutions.

2. Barriers to Implementation of Online Fiduciary Agreements on the Julo Fintech Application and Efforts to Resolve It.

Based on the research results, it can be seen that the main obstacle to the implementation of the credit agreement with the Fiduciary Guarantee arises when there is default from the debtor, which is caused by various factors:

- a. The debtor's business failed;
- b. The credit given is not used properly (not in accordance with the purpose of applying for credit) by the debtor;
- c. The debtor is not in good faith to fulfill his obligations;
- d. The condition of the national economy which also has an impact on the financial condition of the debtor;
- e. Other things that are beyond predictions.

In this condition, the execution effort is an effort that must be done to save the credit which has been distributed from becoming Non Performance Loans (NPL) for the bank. The execution attempt is the last resort taken after the restructuring effort and attempts to approach it by consensus have failed.

However, in practice there are several obstacles in executing the fiduciary guarantee, namely:¹⁴

- 1) Execution confiscation cannot be placed on the object of fiduciary security. Even though Article 23 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Security, stipulates that the fiduciary is prohibited from transferring, pawning or renting the object of fiduciary

14. Yoga Nurdianto, Kendala Jaksa Selaku Eksekutor Dalam Melaksanakan Lelang Eksekusi Terhadap Barang Rampasan Negara Yang Memiliki Status Sebagai Jaminan Fidusia (Studi Di Kejaksaan Negeri Malang), Kumpulan Jurnal Mahasiswa Fakultas Hukum Sarjana Ilmu Hukum Universitas Brawijaya, Februari 2014, p.10

security unless with the prior written consent of the fiduciary. . However, in practice a problem arises, in the event that the holder of the fiduciary security asks for the execution of the fiduciary object it turns out that the object of the fiduciary guarantee has been purchased by a third party in good faith, the third party based on Article 1977 of the Civil Code can believe that the movable property of the person who controls (membezeit) the item is the owner (bezeit geldt als volkomen title).

- 2) It is an obstacle for banks as creditors holding fiduciary in terms of selling fiduciary collateral objects through a selling mechanism on their own power by requesting the assistance of the Auction Office / Auction Hall to sell fiduciary collateral objects in accordance with Article 15 paragraph (3) of the Fiduciary Guarantee Law, however goods that are the object of fiduciary security are not found or controlled by other people, in this case of course the Auction Office / Auction Hall cannot conduct the auction sale of the fiduciary object.¹⁵
- 3) Missing Fiduciary Guarantee Object.
- 4) If we take a closer look at the provisions of Article 15 paragraph (2) of the Fiduciary Guarantee Act, it states that the fiduciary guarantee certificate as referred to in paragraph (1) has the same executorial power as a court decision that has obtained definite legal force.
- 5) The collateral object has been transferred / sold to other third parties.
- 6) The collateral object is missing / missing.
- 7) The collateral object has changed form
- 8) The object of collateral for claims which is only a list / statement letter of granting fiduciary which is not informed on the basis of its issuance cannot be executed.

The executorial power as intended in Article 15 paragraph (2) of Law no. 42 of 1999 is directly enforceable without going through the District Court and is final and binding on the parties to implement the decision. Regarding the execution of court decisions that have obtained legal force, they must still refer to the provisions of Article 195 HIR and thereafter, meaning that the execution of court decisions that have permanent legal force and are of an immediate nature must be carried out under the leadership of the competent Chairman of the District Court.

Because of Article 15 paragraph (2) of Law no. 42. Year 1999 states that the fiduciary guarantee certificate containing the order “For Justice Based on One Godhead” has the same executorial legal power as a court decision which has permanent legal force, then the execution of a fiduciary guarantee certificate entitled “For Justice Based on Divinity. The One and Only One “must also be under the leadership of the competent Chairman of the District Court. As is well known, the process of executing a decision that has permanent legal force or is of an immediate nature including the process of executing a certificate of fiduciary security entitled “For Justice Based on Almighty God” has 3 (three) stages, namely:

- 1) The assignment stage, at this stage the debtor who is in default is warned to fulfill his obligation to pay the debt within 8 (eight) days after being given a warning;
- 2) The execution stage, in the debtor’s hat within 8 (eight) days mentioned above, does not also fulfill its obligation to pay debts to the creditors, then the executing creditors (claimants winning the case or creditors holding mortgages / creditors winning fiduciary guarantees) ask the Chair of the Court authorized to carry out the execution. In the event that the applicant for execution is the holder of a fiduciary guarantee certificate or the holder of a security right

¹⁵. Ibid.,

whose execution seizure is requested is the object of the fiduciary guarantee, the object of the security right. Based on the request for execution seizure, the Chief Court in charge of issuing the execution seizure will then carry out the execution seizure;

- 3) The auction stage, in the event that after the execution of the mortgage right or fiduciary object (collateral) the debtor still does not pay the debt, at the request of the executioner (creditors holding a certificate of mortgage or fiduciary certificate) the authorized court will issue a decision of the public auction / sale. , then the State Auction Office will auction off the object of guarantee of mortgage or fiduciary object. Of course, after all the necessary requirements are met and the proceeds from the sale of the auction have been fulfilled and the proceeds from the sale of the auction after deducting the auction fees and other costs are submitted to the creditors who request the execution. If there is any remaining proceeds from the auction sale, it must be returned to the debtor.

However, in practice, it turns out that this cannot be used as an efficient legal remedy in executing the fiduciary guarantee, considering that the application for execution through the executorial title requires a fairly long time span and requires a large amount of money. So that a simple, fast, inexpensive and efficient execution process is still needed today for the banking world. In addition to the obstacles that arise in terms of implementing the fintech agreement, the author also found several potential risks to Julo's fintech services, including digitization and automation which makes it very prone to action. online crimes such as wiretapping, burglary, and cybercrime (fictitious transactions, carding / use of other people's credit cards, fraud in the marketplace). Prevention of fraud or fraud through Fintech is an important matter that regulators must pay attention to in line with the growing diversity of Fintech product / service offerings. Fintech attempts at Fintech can be in the form of misuse of service sites (phishing), hacking of security systems, and marketing of deceptive products / services. With so many Fintech services using media such as networking sites and applications in promoting and marketing their products / services, the potential for fraud vulnerability will also increase.

In addition, the aspect of protecting personal data is one of the important things that service providers and regulators must pay attention to. This is because the misuse of personal (consumer) data can have an impact on identity theft, abuse of consumer profiles, product offers to consumers whose data is stolen, so that it has an impact on greater risks and losses such as public distrust of Fintech services. Security and maintenance of consumer personal data must be carried out properly because the data is digital so it is relatively easy to steal data and lose it. However, it should also be noted if personal data can be misused by internal parties. So for that, related to the protection of personal data, it can be done with a focus on things such as Fintech service players are required to encrypt data on data related to consumers, Fintech service actors are required to maintain consumer data security, Fintech service actors are required to perform data access management , and Consumers have the right to ask for explanations from the actors regarding the use of the information and data they have provided.¹⁶

In general, the risks that may arise from Fintech companies in Indonesia are: fraud risk, data security risk (cybersecurity), market uncertainty risk (Market Risk). The potential for digital payment vulnerabilities, among others:

- a) Transaction failure occurred but funds were debited.
- b) Data theft when consumers make transactions via telecommunications networks.
- c) The authentication code is sent to the wrong number or user or sim swap (a crime by swapping

¹⁶. Ibid.,

sim cards on a cellphone) to get an authentication code when making payments online.

Therefore, in the 1945 Constitution, the provisions regarding data protection can be found implicitly in articles 28F and 28G (1) regarding freedom to store information and protection of data and information attached to it. The potential vulnerabilities of fintech financing and investment include:¹⁷

- a) In the payment process, consumer data (banking and personal) will be entered into the service provider company database. There are data loss vulnerabilities committed by irresponsible parties,
- b) Foreign citizens can register themselves as investors, so if there is a dispute resolution effort, they must pay attention to the provisions between countries and service providers,
- c) Information about the procedures and procedures for credit assessment by service providers is often not fully explained,
- d) risk assessment errors on credit borrowers, default conditions, and ultimately cause losses to investors.
- e) the issue of unclear investor profile due to not applying the KYC (Know Your Customer) principle and the issue of money laundering(antimoney laundering)”

Some of the risks of online loans that the borrower must understand are for every payment that is past the due date of payment, the borrower will be charged a late fee in accordance with the loan criteria, billing administrative fees, when in arrears, the risk is not only facing billing, but also additional costs due to late payments (late fee). In addition, because the billing process requires extra human resources, the billing fee is charged to arrears; sanctions for borrowers who do not pay online, then the online loan company will carry out collection actions ranging from reminder to intensive: operational risk, bankruptcy and bad credit.

D. Conclusion.

From the research conducted, it can be concluded that the process of implementing the online fiducia agreement on the Julo fintech application is basically the same as the fiduciary guarantee process in general, namely the process of binding a credit agreement as the principal agreement, and the fiduciary binding as an access agreement. In every time providing credit to customers, banks and financial institutions always face a risk, namely the non-return of money lent to customers. Therefore, the condition of the customer must be followed continuously from the time the credit is given until the credit is paid off. Based on the research results, it can be seen that the main obstacle to the implementation of the credit agreement with the Fiduciary Guarantee arises when there is default from the debtor. In general, the risks that may arise from Fintech companies in Indonesia are: fraud risk, data security risk (cybersecurity), and market uncertainty risk. In providing credit with fiduciary guarantees, credit should only be given for the short and medium term so that the value of the transaction of goods does not experience a significant decline. The Financial Services Authority should coordinate and cooperate with other Fintech stakeholders, with the aim of complementing Fintech arrangements, but avoiding duplicative regulations and can mitigate potential risks and challenges in realizing a balance between the development of the national financial system, development of Fintech, and aspects of consumer protection.

17. Erna Priliyasi, Pentingnya Perlindungan Data Pribadi Dalam Transaksi Pinjaman Online (The Urgency Of Personal Protection In Peer To Peer Lending), Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, Majalah Hukum Nasional Vol. 49 No. 2, 2019, p.21-22

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