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Legal Protection for Borrowers for Agreements with Standard Clauses on Implementation *Fintech Lending*

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Abstract

The purpose of this study is to explore legal protection for loan recipients for agreements with standard clauses in implementationfintech. The research method is normative juridical, with a statutory and conceptual approach. The results of the study show that legal protection in standard agreements shows that it has not been realized properly, this is because there are principlestake it or leave it which then set aside the legal norm in the form of the principle of freedom of contract. Besides, there is no embodiment of the principle of consumer protectionfintech lending, namely transparency and complaint service mechanisms. The legal remedies in the agreement tend to prioritize repressive efforts and override preventive measures by not providing education about the complaint mechanism. which leads to injustice for the recipient of the loan.

Keywords: Legal Protection, *Fintech Lending*, Standard Agreement.

A. Introduction

A standard agreement in civil law is basically something that is not allowed, as the Civil Code (KUHPerdata) regulates.[1] The standard agreement in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection is also the same, where it is expressly prohibited not to have an agreement based on a standard agreement.[2] The standard agreement itself is an agreement in which there are certain conditions made by the business actor.[3]

The people's economy, which then experienced growth in various fields, has encouraged the rapid growth of the financial services sector. This growth can then be seen both in terms of business actors and the types of services offered.[4] One of the results of the types of services born from economic development is the existence of technology-based financial services or what is commonly called*financial technology* (*fintech*).[5] Birth*financial technology*

[1] Abdul Halim Barkatullah, "*Framework Sistem Perlindungan Hukum bagi Konsumen di Indonesia"*, (Bandung: Nusamedia, 2017), hal. 47.

[2] David M. L. Tobing, "*Klausula Baku: Paradoks dalam Penegakan Hukum Perlindungan Konsumen",* (Jakarta: Gramedia Pustaka Utama, 2019), hal. 34.

[3] Salim H. S. & Erlies Septiana Nurbani, "*Perkembangan Hukum Kontrak Innominaat di Indonesia (Buku Kedua)*", (Jakarta: Sinar Grafika, 2022), hal. 100.

[4] Agus Satory, Perjanjian Baku dan Perlindungan Konsumen dalam Transaksi Bisnis Sektor Jasa Keuangan: Penerapan dan Implementasinya di Indonesia, *Padjajaran: Jurnal Ilmu Hukum,* Vol. 2, No. 2, 2015, hal. 269-290.

[5] Sri Adiningsih, *"Transformasi Ekonomi Berbasis Digital di Indonesia (Lahirnya Tren Baru*

(*fintech*) in Indonesia then gave birth to a service*financial technology* (*fintech*) *lending* or also called*Fintech Peer-to-Peer Lending* (*Fintech Lending*) or Information Technology-Based Borrowing and Borrowing Services (LPMUBTI). This service is one of the innovations in the financial sector by utilizing technology that allows lenders and loan recipients to carry out lending and borrowing transactions without having to meet in person.[6] The lending and borrowing transaction mechanism is carried out through a system that has been provided by the organizer*fintech lending*, both through the application and the page*website*[7]

Profit from*fintech lending* is the distribution of funding that can be done quickly, mostly without collateral, and the requirements are easy. This is because it can be done only through*smartphone*.[8] *Fintech lending in which there are service users that include lenders (lender) and borrowers (borrower).*[9] The lender is the lender of funds which is then lent to the recipient of the loan. While the recipient of the loan itself is the recipient of funds from the lender.[10]

The lender and the recipient of the loan are certainly bound in a relationship which is at the same time attached to the rights and obligations of each. The two parties are then based on the existence of an agreement which contains the rights and obligations of each party.[11] In practice it is found that the agreement is binding on the parties in the implementation*fintech lending* is to use a standard agreement. This clearly shows that the implementation is contrary to civil law and harms the value of consumer protection for service users.*fintech lending*.[12]

Government regulations and policies in the field of financial services, incl*fintech lending* runs dynamically along with the changes and developments that exist in society, and even tends to facilitate its growth.[13] On the one hand,

Teknologi, Bisnis, Ekonomi, dan Kebijakan di Indonesia", (Jakarta: Gramedia Pustaka Utama, 2019), hal. 91.

[6] Astri Rumondang, Acal Sudirman, Faried Effendy, *"Fintech: Inovasi Sistem Keuangan di Era Digital",* (Medan: Yayasan Kita Menulis, 2019), hal. 125.

[7] Muhammad Arfan Harahap, *"Lembaga Keuangan Nonbank (LKNB)",* (Solok: Insan Cendekia Mandiri, 2021), hal. 223.

[8] *Ibid.,* hal. 225.

[9] Faradila Natasya Sabrina Rahariyanto, dkk., *"Bunga Rampai Isu-Isu Krusial tentang Hukum Bisnis Perdata",* (Klaten: Lakeisha, 2022), hal. 236.

[10] Thomas Arifin, *"Berani Jadi Pengusaha, Sukses Usaha da Raih Pinjaman"*, (Jakarta: Gramedia Pustaka Utama, 2018), hal. 192.

[11] Handri Raharjo, *"Cara Pintar Memilih dan Mengajukan Kredit",* (Jakarta: Media Pressindo, 2012), hal. 8.

[12] Ade Putri Lestari & Laksanto Utomo, "Kepastian Perlindungan Hukum pada Klausula Baku dalam Perjanjian Pinjaman Online di Indonesia*", Supremasi Jurnal Hukum,* Vol. 2, No. 2, 2020, hal. 174-193.

[13] Sri Mulyani, dkk., *"Indonesia 2045: Gagasan Ekonom Milenial Melihat Masa Depan*,

this condition is very beneficial for the interests of consumers, because the desired needs can be fulfilled and the freedom to choose various types of quality services is increasingly wide open. On the other hand, these conditions and phenomena can result in the position of Financial Service Providers (PUJK) and consumers becoming unbalanced.[14] Consumers are only used as objects of business activities for Financial Service Providers (PUJK) to reap maximum profits through the implementation of standard agreements that are detrimental to consumers.[15]

The standard agreement is solely intended to provide convenience or practicality for the parties in conducting transactions.[16] herefore, the rapid development of standard agreements is unstoppable in an era that demands practicality in conducting transactions.[17] The growth and development of standard agreements in society is in the context of efficiency, both in terms of time and cost. This is because the business transactions for which the standard agreement will be made are carried out repeatedly and continuously.[18]

The use of standard agreements in business transactions, when examined further, can cause an imbalance between Financial Services Providers (PUJK) and consumers.[19] This should require a strong legal basis for the government and society to carry out protection efforts as well as a form of legal certainty in Indonesia. The increasingly complex economic system has an impact on changes in legal construction in the relationship between business actors and service users as consumers. Changes in legal construction begin with a change in the paradigm of the relationship.[20]

The construction of legal relations between Financial Service Providers (PUJK) and consumers should be equal

(Jakartaa: Kepustakaan Populer Gramedia, 2021), hal. 280.

[14] Agus Yudha Hernoko, *"Hukum Perjanjia; Asas Proporsionalitas dalam Kontrak Komersial",* (Jakarta: Prenadamedia Group, 2010), hal. 80.

[15] Agus Satory, *Op., Cit*., hal. 269-290.

[16] Celina Tri Siwi Kristiyanti, *"Hukum Perlindungan Konsumen",* (Jakarta: Sinar Grafika, 2022), hal. 139.

[17] Fahdelika Mahendar & Christiana Tri Budhayati, "Konsep *Take it or Leave it* dalam Perjanjian Baku sesuai dengan Asas Kebebasan Berkontrak", *Jurnal Ilmu Hukum Alethea,* Vol. 2, No. 2, 2019, hal. 97-114.

[18] I Gusti Ayu Ratih Pradnyani, I Gusti Ayu Puspawati, & Ida Bagus Putu Sutama, "*Perjanjian Baku dalam Hukum Konsumen",* Program Kekhususan Hukum Bisinis, Fakultas Hukum Universitas Udayana, 2019, hal. 2.

[19] Abdurrahman Konoras, "*Aspek Hukum Penyelesaian Sengketa secara Mediasi di Pengadilan",* (Depok: Rajagrafindo Persada, 2017), hal. 74.

[20] Agus Satory, *Op. Cit.,* hal. 149.

(*equal*), but in reality consumers are in a weak position in front of business actors. The entire range of financial service products tends to be well understood by service providers, but not by consumers.[21] Based on these conditions, legal protection efforts are needed through the formation of legal rules that can protect consumer interests in an integrated and comprehensive manner and can be applied effectively in society.

Legal protection for consumers in Indonesia in the financial services sector has experienced significant developments after the issuance of Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority.[22] The commitment to legal protection for consumers in the financial services sector has been implemented in Indonesia, under the supervision of the Financial Services Authority (OJK).[23] This is stated in the Financial Services Authority Regulation Number 01/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector which was later updated with the Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Public Protection in the Financial Services Sector. Based on this, then on the basis of the latest legal arrangements it is necessary to explore legal protection for loan recipients for agreements with standard clauses in the implementation of*fintech lending*.

B. Methods

The type of method in this research is normative juridical. Normative juridical research is to provide systematic explanations related to rules to then analyze the relation in the relevant statutory regulations.[24] Normative legal research can also be referred to as doctrinal legal research, namely legal research by studying written law in statutory regulations.[25] he approach used in this research is the statutory approach*(statute approach)* and case approach*(case approach)*. The statutory regulatory approach*(statute approach)* can be interpreted as an approach that is carried out through the study of laws and regulations and

[21] Yapiter Marpi, "*Perlindungan Hukum terhadap Konsumen atas Keabsahan Kontrak: Elektronik dalam Transaksi E-Commerce",* (Tasikmalaya: Zona Media Mandiri, 2020), hal. 70.

[22] Agus Satory, *Op. Cit.,* hal. 138.

[23] Agus Satory, *Op. Cit.,* hal. 211.

[24] Kadarudin, *"Penelitian di Bidang Ilmu Hukum (Sebuah Pemahaman Awal),* (Semarang: Formaci, 2021), hal. 161.

[25] Nurul Qamar, *"Metode Penelitian Hukum Doktrinal dan Non doctrinal,* (Makassar: Social Politic Genius (SIGn), 2020), hal. 47.

norms that are related to the legal topic under study. While the case approach*(case approach)* is an approach by conducting an assessment between concrete events that have a relationship with the legal topic under study.[26]

C. Discussion

The agreement in implementing fintech lending is the basis for the latest regulation contained in the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services in chapter 5 concerning business activities, which specifically regulates in the fourth part concerning fintech lending agreements. The agreement in implementing fintech lending between the lender and the borrower must contain the provisions of Article 32 Paragraph (2) of the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services, namely number, date, identity of the parties parties, the rights and obligations of the parties, loan amount, installment value, term, guarantee (if any), related costs, fine amount (if any), use of personal data, and problem resolution mechanisms.

Agreement Number 2022/April/ATH-47/J2VFEW is an agreement contained in the implementation*fintech lending* between the lender and the recipient of the loan as well as the organizers. The loan in the agreement is carried out by the recipient of the loan for educational purposes. Agreement in maintenance*fintech lending* This is basically an electronic agreement, the definition of which has not yet been regulated in the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services. These regulations only regulate in the abstract regarding electronic documents, which are certainly not specific to electronic agreements.

Agreement Number 2022/April/ATH-47/J2VFEW as an electronic agreement is the definition then you can see the provisions of Article 1 number 17 of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, which regulates

[26] I Made Pasek Diantha, "*Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, (Jakarta: Prenada Media Group, 2017), hal. 156-165.

electronic contracts. The definition of an electronic contract based on the provisions of this article is an agreement between the parties that is made through an electronic system. The electronic contract has legal force that binds the parties, as stipulated in Article 18 Paragraph (1) of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. The nature of Agreement Number 2022/April/ATH-47/J2VFEW is thus binding on the parties, so that it can be equated with agreements in general.

Agreement Number 2022/April/ATH-47/J2VFEW which is an electronic contract, although it is binding on the parties, is classified as a private agreement, which is not authentic or notarial in nature. This is because the making of the agreement is not in the presence of a notary or an authorized official. An underhand agreement can still be used as evidence, but the strength of the proof is doubtful or not as strong as authentic evidence. The weakness of the agreement is that there are no witnesses in making the agreement, so that in proving it will certainly experience difficulties.[27]

Agreement Number 2022/April/ATH-47/J2VFEW when associated with the provisions of Article 32 Paragraph (2) of the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Co-Funding Services, basically complies with these existing provisions. However, the contents of the agreement were only made unilaterally by the organizers of the fintech lending. The recipient of the loan in this case does not take part in pouring out the contents of the agreement. The agreement thus applies standard clauses. Agreements with standard clauses in the implementation of fintech lending itself are not specifically regulated in the latest regulations, namely the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services.

The existence of an agreement with standard clauses in the implementation of fintech lending is of course basically a breakthrough to deal with the progress of technology that

[27] Iwan Erar Joesoef, *Hukum Perjanjian (Asas, Teori, & Praktik)*, (Bandung: Citra Aditya Bakti, 2022), hlm. 65.

continues to move forward. Lending and borrowing activities that are carried out without face to face are then all related activities, including in the case of agreements between the parties in which they are carried out without face to face anyway. The standard agreement in implementing fintech lending is to apply the take it or leave it concept. This concept is basically related to the principle of freedom of contract, which means that everyone is free to do or not to do, with the party who entered into a contract, free about what was agreed and free to determine the terms of the contract. The application of agreements with standard clauses allows for an imbalance of position between the parties to the agreement. An agreement with a standard clause is made by a party with a higher position, which in implementing fintech lending is the organizer of fintech lending as a business actor. Users of fintech lending services themselves are in a weak position. The existence of an unequal position of the parties is causing agreements with standard clauses to be one-sided. The party whose position is weak is that it is not possible to negotiate and its position is only in take it or leave it which in Indonesian means "take it or leave it". The purpose of take or leave is to approve or reject agreements that apply standard clauses.

Take it or leave it is given by a party whose position is strong, to then be given to a party whose position is weak. The nature of the Take it or leave it concept is an alternative. When fintech lending users choose to take it, the legal consequence is that they are deemed to have agreed to the contents of the agreement with these standard clauses. Conversely, if you choose to leave it, you are deemed to have refused to be bound by the agreement with the standard clause. The standard agreement on the implementation of fintech lending that applies the concept of take it or leave it thus shows that there is injustice, in which the position between the organizers of fintech lending and the recipient of the loan is unequal. The borrower in this case has basically agreed, but cannot participate in pouring out the contents of the agreement which thus does not fulfill the principle of freedom of contract to be able to determine what will be included in the agreement.

Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint

Funding Services as the latest regulation which forms the basis for implementing fintech lending when reviewed does not specifically regulate agreements with standard clauses. This is of course the application of standard clauses in agreements on the implementation of fintech lending is baseless. The party receiving the loan who does not participate in determining interest, fines, other fees, or resolving when a problem occurs indicates that the position of the recipient of the loan in this case is weak. The position of the organizers in this case tends to be strong, because they can determine these matters easily. The existence of injustice in this case is contrary to the theory of justice according to John Rawls, where justice is a contract theory in which the parties are equal. The existence of an unequal position in the agreement with the standard clause on the implementation of fintech lending itself is actually also contrary to the provisions of Article 100 Paragraph (1) letter b of the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services, which regulates one of the obligations of administrators to treat fairly as an embodiment of protection for consumers, in this case is the recipient of the loan. Agreements with standard clauses that actually conflict with the theory of justice are still applicable, including in the case of organizing fintech lending. This is considering the need to balance technological developments in the everadvancing economy. The standard agreement is that this embodies the value of practicality and convenience. Other than that, standard agreements can still be used and enforced because there are no strict regulations prohibiting the implementation of agreements with standard clauses, especially in the case of organizing fintech lending.

Loan recipients in the implementation of fintech lending who are in a take it or leave it position on agreements with standard clauses are of course then an urgency for the organizers to be able to realize consumer protection for the loan recipients as users of fintech lending. This is in accordance with the provisions of Article 100 Paragraph (1) of the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint

Funding Services. With regard to standard agreements, the form of consumer protection is closely related to the principle of transparency and complaint handling which is the responsibility of the organizer to make it happen as stipulated in Article 100 Paragraph (1) letter a and letter e of the Financial Services Authority Regulation Number 10/POJK.05/2022 regarding Information Technology-Based Co-Funding Services. Transparency is an urgency in implementing agreements with standard clauses, considering that the recipient of the loan does not have the authority to set forth the contents of the agreement in the standard agreement on the implementation of fintech lending, so that information must be clearly transparent by the organizer. This is also related to the provisions of Article 7 letters a and b of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, regarding the obligations of administrators as business actors to have good faith and provide information correctly, clearly and honestly. In addition to the principle of transparency, a form of consumer protection that is an urgency in this case is related to complaint services. When problems occur in the implementation of fintech lending, loan recipients who cannot express their will in an agreement to resolve these problems, of course, the mechanism needs to be regulated clearly and honestly in a standard agreement by the organizers of fintech lending. This is so that loan recipients are not confused and at the same time create legal certainty for loan recipients in solving problems encountered in implementing fintech lending.

Agreement Number 2022/April/ATH-47/J2VFEW which applies a standard clause in the agreement on the implementation of fintech lending, which then does not regulate the complaint service mechanism, actually violates the provisions of Article 100 Paragraph (1) letter a of the Financial Services Authority Regulation Number 10/POJK .05/2022 concerning Information Technology-Based Co-Funding Services regarding the obligation of administrators to carry out transparency as a form of consumer protection for loan recipients. The agreement only regulates deliberations when there are problems, which then do not further regulate the mechanism. This certainly

confuses the recipient of the loan. In addition, this is also contrary to the principle of complaint handling which should be the responsibility of the organizer, as stipulated in Article 100 Paragraph (1) letter e of the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services. The existence of this also actually contradicts the general basis, namely the existence of the implementation of fintech lending where there is no inclusion of a complaint service mechanism in the standard agreement which shows that information was not provided correctly, clearly and honestly. This is contrary to Article 7 letter b of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection. The true good faith of the organizers also reflects that it has not materialized, which is contrary to Article 7 letter a of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection. The occurrence of things like this shows that legal protection for fintech lending users as consumers has not been realized properly.

The existence of an agreement with a standard clause in the implementation of fintech lending as implemented in the Agreement Number 2022/April/ATH-47/J2VFEW indicates an incompatibility with the theory of justice and the theory of legal protection. The theory of justice is as according to John Rawls, that in an agreement there must be an equal position of the parties, with this the standard clause should not be used in an agreement. This shows that the application of agreements with standard clauses, even though there is no legal regulation that explicitly prohibits it, but its application is contrary to legal norms, which in this case relates to the principle of freedom of contract. Regarding the discrepancy with the theory of legal protection itself, according to Setiono, a rule should exist to prevent arbitrariness from the authorities. The party in power in this case is the fintech lending operator who can determine the contents of the agreement with standard clauses.

Legal remedies are basically preventive or repressive. Preventive legal remedies are intended to prevent problems from occurring in an administration. While the repressive legal effort itself is to overcome when

there are problems in the administration.[28] Preventive legal efforts in implementation*fintech lending* which is basically realized by the birth of legal arrangements as a legal umbrella in its implementation, namely the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services. This regulation regulates the existence of education that must be carried out by the administrator for the recipient of the loan. This form of education is related to the principle of transparency, in which educational material is transparent in a standard agreement by the organizers*fintech lending* as stipulated in Article 100 Paragraph (1) letter a of the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services. This is also a form of consumer protection for loan recipients as users*fintech lending*. Agreement Number 2022/April/ATH-47/J2VFEW as the standard agreement that is applied in the implementation*fintech lending* namely when it is found that it does not fulfill the principle of transparency related to the complaint mechanism which is at the same time a separate principle and the principle of fair treatment which is not fulfilled in this case, this shows that preventive legal efforts have not been realized properly. The absence of education regarding the complaint service mechanism is of course the recipient of the loan becomes confused and serious or detrimental problems will easily occur, which will lead to injustice for the aggrieved party.

Repressive legal remedies in implementation*fintech lending* is intended to overcome or overcome the problems that are happening. The legal effort is in the form of sanctions imposed on parties who violate the provisions. Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services basically regulates the imposition of administrative sanctions. Agreement Number 2022/April/ATH-47/J2VFEW as the standard agreement that is applied in the implementation*fintech lending* with no complaint service mechanism, which at the same time violates the obligation of transparency and complaint service, as stipulated in Article 100 Paragraph (1) letter a, letter b, and letter e of the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Joint-Based Funding Services Information

[28] Arief Budiono, dkk., *Praktik Profesional Hukum Gagasan Pemikiran tentang Penegakan Hukum,* Surakarta: Muhammadiyah University Press, hlm. 157.

Technology is then subject to administrative sanctions in the form of written warnings which can also be blocked, restricted to business activities, and/or revoked licenses for business activities. In the Agreement Number 2022/April/ATH-47/J2VFEW it has clearly regulated sanctions for parties who violate the contents of the agreement, which in this case shows that repressive efforts have been realized properly. Legal remedies in Agreement Number 2022/April/ATH-47/J2VFEW are thus likely to emphasize repressive efforts rather than preventive efforts. This shows that efforts to protect the law to prevent problems that could harm the loan recipient in an agreement with standard clauses have not materialized properly.

The recipient of the loan in Agreement Number 2022/April/ATH-47/J2VFEW is that when it is known that there is a basic application of standard clauses in the agreement, they must be vigilant and careful. Regarding the legal remedy itself, basically nothing can be done, because there is indeed no provision that explicitly prohibits agreements with standard clauses. Civil Code (KUHPerdata) and Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Co-Funding Services which are used as the latest basis for implementing*fintech lending* shows the existence of leniency and legal vacuum regarding agreements with standard clauses, which hereby reflects an injustice to the recipient of the loan. Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection which provides a legal umbrella regarding agreements with standard clauses in general is to show that positive law in Indonesia is related to agreements with standard clauses in the administration of*fintech lending* is an inconsistency. The Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection itself basically does not specifically regulate agreements with standard clauses that can be applied in agreements without face to face, as the implementation*fintech lending*. This shows that there is legal protection that has not been realized properly, so that its application creates injustice for the weak.

Legal remedies that can be taken by the recipient of the loan against the application of agreements with

standard clauses in the implementation*fintech lending* which can only be done when violations are found by the organizers that are contrary to what is stated in the contents of the agreement. Agreement Number 2022/April/ATH-47/J2VFEW in Article 8 regarding applicable law and dispute resolution is regulated in number 2. This provision regulates if there are problems in the implementation of*fintech lending* arising from a discrepancy with the said agreement, including in the case of carrying out or not carrying out the obligations attached to it, then the settlement must be resolved amicably by deliberation to reach a consensus in the spirit of mutually beneficial cooperation. The deliberation effort was then not further regulated regarding the mechanism, which of course this was confusing for the recipient of the loan. If the legal effort cannot be resolved, then it can be carried out through litigation or non-litigation. The legal effort is preceded by going through non-litigation channels which can be carried out with alternative dispute resolution. If non-litigation efforts are not successful, then you can take the litigation route by filing a lawsuit in court.[29]

There is a legal remedy in the form of a complaint that should be attached to the recipient of the loan when he finds a problem related to an agreement with a standard clause, which then is not given properly by the organizer, so that the legal remedy cannot be realized properly. Then legal remedies which can only be carried out by the recipient of the loan when the contents of the agreement with the standard clause are violated by the organizer, without explicitly regulating legal remedies that can be submitted against the application of the agreement with standard clauses that violate legal principles or concepts, then it shows that this is an injustice to the recipient of the loan while at the same time illustrating that legal protection for the recipient of the loan has not been properly realized. This is contrary to the theory of legal protection according to Setiono, that a rule should exist to avoid arbitrariness from those in power.[30] The authority in this matter is the administrator*fintech lending* which

[29] Achmad Badarus Syamsi, *Buku Ajar Contract Drafting,* (Pamekasan: Duta Media Publishing, 2018), hlm. 85.

[30] *Op. Cit.,* Yapiter Marpi, hlm. 120.

can determine the contents of the agreement with standard clauses easily. This also contradicts the theory of justice according to John Rawls, where justice should show equality for the parties.[31]

D. Conclusion

Standard clause in administration*fintech lending* is to apply the concept*take it or leave it,* which in this case has left the basis of freedom of contract. Standard clause in the agreement*fintech lending* with this is not in accordance with existing legal norms. Agreement with standard clauses in the administration*fintech lending* then it can still be enforced, as a breakthrough for convenience and practicality in keeping up with technological developments that continue to advance while still paying attention to legal protection for loan recipients as users*fintech lending*. Legal protection for loan recipients in Agreement No 2022/April/ATH-47/J2VFEW is yet to materialize properly. This is because there are no consumer protection principles that have not been realized, namely the principles of transparency, fair treatment, and complaint handling as stipulated in Article 100 Paragraph (1) letter a, letter b, and letter e of Financial Services Authority Regulation Number 10/POJK.05/ 2022 concerning Information Technology-Based Co-Funding Services. In addition, the obligation of administrators to act in good faith and provide information honestly and clearly as stated in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection is yet to be realized either. Legal efforts that can be made on the existence of a smell clause in the agreement*fintech lending* that is, it can be preventive in the form of education and repressive in the form of entangling sanctions, which is then Agreement No 2022/April/ATH-47/J2VFEW emphasizes repressive legal efforts rather than preventive ones. This shows that there is prevention of problems that have not been realized properly, which do not reflect legal protection for the recipient of the loan so that it can easily result in losses for the recipient of the loan.

The government needs an evaluation to produce a firm and clear legal arrangement regarding standard

[31] *Op. Cit.,* S. Salle, hlm. 36.

clauses in the administration*fintech lending*. This is so that inconsistencies in legal arrangements do not occur and legal certainty can be realized properly. This is also a manifestation of legal protection for loan recipients as well as the wider community, so that justice can be properly realized.

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