

## Implementation of Technology-Based Lending and Lending Services in Regulation of the Financial Services Authority Regulation no. 77/Pojk.01/2016



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**ABSTRACT:** The main discussion in this research is about the implementation of Fintech in Indonesia, especially for *Peer to Peer Lending*. People who still feel unfamiliar with technology-based lending and borrowing transactions can cause problems. Problems that arise include, among others, how to protect the law and how to resolve if there is a default according to the Financial Services Authority Regulation Number: 77/POJK.01/2016. This study uses a normative research method that collects primary legal sources, namely legislation, and secondary legal sources, in the form of books, journals, and other articles related to this research. The stage used in this research is library research and field research.

**KEYWORDS:** Legal Protection, Peer to Peer Lending

### INTRODUCTION

One of the technological developments in the development of information technology, especially the internet where along with the advancement of internet technology which is increasingly being used, both by the public and the banking industry in order to improve the efficiency of operational activities and the quality of bank services to customers, such as e-banking or electronic banking services. Electronic banking services (electronic banking) are services for bank customers to obtain information, communicate, and conduct banking transactions through electronic media. Utilization of information technology innovation through digital or online platforms will provide convenience in financial services for people who have not yet reached financial access<sup>1</sup>.

People are increasingly familiar with various transaction options and services, including loan applications. There are various forms and segments of the loan industry, such as consumer bailouts with a nominal value of under three million rupiahs and a loan term of less than one week; or MSME capital loans of up to two billion with loan terms of one to twelve months. If in the past the sources of loans came from friends, family, and banks, now they have turned to alternative financial technology (Fintech) or financial technology<sup>2</sup>.

Financial technology, which is now better known as Fintech, is a form of business that aims to provide financial services using modern software and technology. The apparent goal is to make it easier for the public to access financial products and simplify the transaction process. However, few people think that Fintech is a rival to banking because the entire sector is almost similar to banks. If studied further, the Fintech platform can become an important strategy to improve and accelerate banking through collaboration and partnerships. Fintech and digital platforms offer business models and alternative solutions that can help governments and other financial institutions to expand the reach of adequate financial service delivery<sup>3</sup>.

The development of financial technology, on the one hand, has proven to bring benefits to consumers, business actors, and the national economy. However, on the other hand, it has potential risks that can disrupt the financial system if not correctly mitigated. One of the leading platforms for financial technology is *Peer to Peer* (p2p) Lending.

*Peer to Peer* (p2p) Lending is the practice or method of lending money to individuals or businesses and vice versa, applying for loans to lenders, which connects lenders with borrowers or investors online. *Peer to Peer Lending* allows everyone to provide loans or apply for loans from one another for various purposes without using the services of a legitimate financial institution as an

<sup>1</sup> Hermansyah, Indonesian National Banking Law, Kencana Prenada Media Group, Jakarta, 2014, p. ix

<sup>2</sup> Compass, this is how to distinguish Fintech peer-to-peer Lending from payday loans <https://economy.kompas.com/read/2018/03/09/205533926/ini-cara-membedakan-fintech-peer-to-peer-lending-dengan-payday-loan>. accessed on March 11, 2021. At 16:04 WIB.

<sup>3</sup> Investree, identify the types and benefits, <https://www.investree.id/blog/peer-to-peer-lending/Fintech-menurut-bank-indonesia-kenali-type-dan-benefits>. accessed on March 13, 2021. At 14:29 WIB

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intermediary. This P2P Lending system is very similar to the concept of an online marketplace, which provides a place as a meeting place between buyers and sellers. In *Peer to Peer Lending*, the existing system will bring together the Borrower and the party providing the loan. So, it can be said that Peer to Peer Lending is a marketplace for lending and borrowing money<sup>4</sup>.

*Peer to Peer Lending* services are passionate about bridging the gap in financial access, significantly facilitating financing for MSME business development. This is in line with the financial inclusion program launched by the government, especially the Financial Services Authority (OJK). By offering easy and fast Lending and borrowing procedures and yet taking into account the level of risk carefully, P2P Lending is widely used by those who do not have access to banking, such as creative industries, freelancers, part-timers, farm laborers, fishers, and so on. As a result, this service can fill the high gap in financing for individuals and MSMEs in Indonesia. *Peer to Peer Lending* has become the people's choice in meeting their needs in the development of financial technology.

In the implementation of financial technology in Indonesia, several principles must be implemented. The precautionary principle follows the existing principles in Law Number 10 of 1998 Amendments to Law Number 7 of 1992 concerning Banking. Some things have not been fully regulated in implementing *Peer to Peer Lending* Financial Technology, namely the precautionary principle. Of course, this can harm users of this platform because it does not guarantee legal certainty and protection for platform users. One of the peer-to-peer lending platforms in Indonesia is Investree. Even though Investree has been registered with the Financial Services Authority (OJK) and is the best and most trusted Indonesian peer-to-peer lending site, many risks can occur if you do not apply the precautionary principle in it. The platform founder himself cannot handle them. With the continued development of financial technology (Fintech) in the peer-to-peer lending platform in Indonesia, the urgency for the preparation of the precautionary principle must be implemented immediately so that users will be guaranteed more legal protection.

### PROBLEM FORMULATION

- 1) How is the implementation of *Peer to Peer Lending* associated with the Financial Services Authority regulation no. 77/POJK.01/2016 regarding information technology-based lending and borrowing services?
- 2) What is the legal protection for users of the *Peer to Peer Lending* platform in Lending and borrowing money transactions, and what are the remedies that can be applied in the event of a default?

### RESEARCH METHODS

In this study, the researcher uses a normative juridical approach, namely a legal approach or research using an approach/theory/concept method and an analytical method that belongs to a dogmatic legal discipline. Normative Juridical Research in legal research places the law as a system of norms. It thus does not require a population and sample because this type of research examines aspects of understanding a legal norm in legislation and norms that live and develop in society. In this case, the researcher will study and research banking law, *Peer to Peer Lending*, and financial technology (Fintech) related to the problems raised by researchers in the implementation of *Peer to Peer Lending*.

### THEORETICAL FRAMEWORK

According to Satjipto Rahardjo, "Law is not only a building of regulations, but also a building of ideas, culture, and ideals." Satjipto Rahardjo stated that legal thought needs to return to its basic philosophy, namely law for humans. With this philosophy, humans become the determinant and point of legal orientation. The law is in charge of serving humans, not the other way around. Therefore, the law is not an institution that is separated from human interests. The quality of law is determined by its ability to serve human welfare. This causes progressive law to adopt a pro-justice legal "ideology" and pro-people law.

The purpose of Satjipto Rahardjo's theory above is that the law helps humans to fulfill their needs by employing economic development, for example, through financial institutions. Financial institutions in Indonesia are divided into Bank Financial Institutions, Non-Bank Financial Institutions, and Online Non-Bank Financial Institutions (Fintech). With the existence of Financial Institutions, people can build businesses with capital lent by Bank Financial Institutions and Non-Bank Financial Institutions to help meet their daily needs. With the sophistication of this modern era, getting capital from financial institutions is very easy by way of online credit lending organized by non-bank online financial institutions (Fintech).

### RESEARCH RESULTS AND DISCUSSION

The development of information and communication technology, especially the internet and gadgets, encourages the growth of the online business (online business) and electronic commerce (e-commerce). Millennials are more interested in doing activities on the internet, including buying and selling transactions and making payments online. They like to explore various online shop sites or

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<sup>4</sup> Koinworks, know about peer to peer lending, <https://koinworks.com/blog/ketahui-about-peer-peer-lending/>, accessed on March 13, 2021. At 16:02 WIB

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online malls, which are now mushrooming on the internet. These changes in modern lifestyles have finally contributed to the emergence of a new business model based on Financial Technology (Fintech); Financial Technology (Fintech) is proliferating along with the advancement of internet technology and gadgets such as mobile phones, smartphones, PCs, tablets PCs, netbooks and notebooks. Armed with gadgets and the internet, Everyone can access various kinds of applications that can be used to simplify human life. The public can also access loan funds through the Financial Technology (Fintech) platform without going through banks or financial institutions<sup>5</sup>.

One of the principles in banking is a mainstay for efforts to increase customer trust and, simultaneously, as a means of protection for the depositors. However, in practice, the precautionary principle is not regulated in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning information technology-based lending and borrowing services, even though peer-to-peer lending platforms are still prone to problems. Because the peer-to-peer lending platform is a platform that is practically new in Indonesia, which if it is not stipulated from the beginning of the legislation, it will cause many problems in the future and can affect monetary stability in the country. Furthermore, the precautionary principle is not regulated in the Financial Services Authority Regulation Number 77/POJK. 01/2016, regarding information technology-based lending and borrowing services, it can be said that this POJK cannot fully be used as a reference in the implementation of peer-to-peer lending in Indonesia because it can affect the mechanism for implementing Fintech itself. For this reason, a balance is needed between Bank Indonesia Regulations and Financial Services Authority Regulation Number 77/POJK.01/2016 concerning information technology-based lending and borrowing services in order to increase the trust of providers and prospective customers to Fintech.

In conducting transactions on the peer-to-peer lending platform, every user of peer-to-peer lending services must be guaranteed legal protection without exception. This is in order to increase public trust in the *Peer to Peer Lending* platform. Legal protection is the protection of dignity and worth and the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another. Concerning consumers, it means that the law protects customers' rights from something that results in the non-fulfillment of these rights<sup>6</sup>.

In practice, legal protection for users of Fintech *Peer to Peer Lending* services can be carried out in a Preventive and Repressive manner. Preventive legal protection is a legal protection that aims to prevent disputes from occurring. Thus, this legal protection is carried out before a dispute occurs. Legal protection for *Peer to Peer Lending* Fintech Service Users before a dispute can be done with the efforts of the Fintech service provider. Before the occurrence of a dispute, the Operator's efforts are to apply the basic principles of law for users of Fintech services. These principles are regulated in Article 29 of the Financial Services Authority Regulation Number 77/POJK.01/2016 on Information Technology-Based Lending and Borrowing Services, including the principles of transparency, fair treatment<sup>7</sup>.

Settlement Efforts That Can Be Implemented in the Event of Default as in Article 5 of Law Number 21 of 2011 concerning the Financial Services Authority states that OJK functions to organize a regulatory and supervisory system with integrity for all financial activities services sector. The task of OJK is to carry out the task of regulating and supervising financial service activities in the insurance sector, pension funds, financing institutions, and other financial service institutions. This regulation also provides legal protection for lenders where the Fintech *Peer to Peer Lending* service is the latest form of funding source that is included in the category of other financial service institutions. The Fintech *Peer to Peer Lending* service concept distributes funds from the Lender to the Borrower in a platform provided by the Fintech service provider to create an adequate loan required by the Borrower. *Peer to Peer Lending*-based money lending activities are the authority of the Financial Services Authority (OJK) to regulate and supervise all activities in the financial services sector so that the Financial Services Authority (OJK) must be ready with a mechanism for solving problems that will arise in the future if Default occurs such as Default by the Borrower, causing losses to the Lender in the Fintech *Peer to Peer Lending* service mechanism.

Where the settlement efforts in the event of a Default in the implementation of Fintech peer to peer lending transaction activities can refer to Article 39 paragraph (3) of the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, which states that Consumers can submit applications to the Financial Services Authority to facilitate the settlement of consumer complaints that have been harmed by actors in the Financial Services Business Actor, the Financial Services Authority (OJK) in order to carry out its duties and functions can also conduct socialization related to financial products, especially Fintech. Not only about the ease of use but also the risk and understanding of the customer's ability before taking a loan.

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<sup>5</sup> Iswi Hariyani and Cita Yustitia Serfiyani, Indonesian Legislation Journal <file://C:/Users/User/Downloads/50-108-1-SM.pdf>, Accessed on June 10, 2021, at 13:00 WIB

<sup>6</sup> Haddjon, Philipus M, Legal Protection for the People in Indonesia. A Study on the Principles for Handling Courts in the General Courts and the Establishment of State Administrative Courts, PT Bina Ilmu, Surabaya, 1987, p 25

<sup>7</sup> Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services

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Settlement efforts can be made through Alternative Dispute Resolution Institutions where Consumer Complaints must be resolved first by Financial Services Businesses. Suppose an agreement on the settlement of the Complaint is not reached. In that case, the Consumer and the Financial Services Providers can settle the dispute out of court or through a court where the Out-of-court Dispute Settlement is carried out through an Alternative Dispute Settlement Institution listed in the List of Alternative Dispute Resolution Institutions determined by the Financial Services Authority.

### CONCLUSION

The application of *Peer to Peer Lending* is stated in Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology, in Article 8 paragraph (1) letter C which states that Financial Technology providers registered with Bank Indonesia are required to "apply the principles of risk management and Prudence," in its implementation, the precautionary principle is not regulated in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning information technology-based lending and borrowing services, even though *Peer to Peer Lending* platforms are still prone to problems. Because the peer to peer lending platform is a platform that is practically new in Indonesia, which if not stipulated from the beginning of the legislation, will cause many problems in the future and can affect monetary stability in the country, and because the precautionary principle is not regulated in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning information technology-based lending and borrowing services, it can be said that this POJK cannot fully be used as a reference in the implementation of *Peer to Peer Lending* in Indonesia because it can affect the Fintech implementation mechanism itself. For this reason, a balance is needed between Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology and Financial Services Authority Regulation Number 77/POJK.01/2016 concerning information technology-based lending and borrowing services to increase trust between providers and candidates. Customers to Fintech. 01/2016, regarding information technology-based lending and borrowing services, it can be said that this POJK cannot fully be used as a reference in the implementation of *Peer to Peer Lending* in Indonesia because it can affect the mechanism for implementing Fintech itself.

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Legal protection for users of Fintech *Peer to Peer Lending* services can be carried out in a Preventive and Repressive manner. Preventive legal protection is a legal protection that aims to prevent disputes from occurring. Thus, this legal protection is carried out before a dispute occurs. Legal protection for *Peer to Peer Lending* Fintech Service Users before a dispute can be done with the efforts of the Fintech service provider. Before the Dispute occurred, the organizer's effort was to apply a primary archive of legal protection for Fintech service users. These principles are regulated in Article 29 of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, including the principles of transparency, fair treatment, reliability, data confidentiality and security, and User dispute resolution in a simple, fast and affordable way.

In comparison, Repressive legal protection is legal protection whose purpose is to resolve disputes. This legal protection can only be done after the first Dispute arises. Disputes in the Implementation of Fintech Peer to Peer Lending can occur between Users and other Users or between Users and Operators. If the Dispute does occur, then there is a specific mechanism to resolve the problem. Settlement of this Dispute can be done through court or out of court. As stated in Article 39 of the Financial Services Authority Regulation Number 1 POJK.

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