

Problems with Financial Services Authority Regulation Number 77/POJK.01/2016 as the Legal Basis for Sharia Fintech Peer-To-Peer Lending in the Review of Islamic Law



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ABSTRACT: This research analyzes the Financial Services Authority Regulation (POJK) Number 77/PJOK.01/2016 as the legal basis for sharia P2PL fintech in reviewing Islamic law. This research uses a qualitative approach through normative juridical methods. The research results show that Financial Services Authority Regulation Number 77/PJOK.01/2016 needs to be revised to serve as the legal basis for sharia P2PL. Even though there was a fatwa from the National Sharia Council-Indonesian Ulema Council (DSN-MUI) in 2018, this caused legal confusion. This research concludes that special regulations are needed to regulate Sharia P2PL fintech.

KEYWORDS: Fintech, P2PL sharia, Islamic law.

INTRODUCTION

Technology is developing rapidly, and this is a form of the Industrial Revolution 4.0, which is bringing significant changes to society. Many sectors are experiencing changes, from education, culture, social, communication and economics (Lova, 2021). Especially in the economic sector, the Industrial Revolution 4.0, with its information technology, has provided innovations in financing and funding. In Indonesia, this divides the economic sector into three sectors: the banking sector, the capital markets sector, and the non-bank financial industry sector. The monetary sector is affected by technological developments, in which there is a combination of technologies, which is then called financial technology (fintech) (Violina & Supriyatni, 2021).

Financial technology or financial technology (fintech) is the implementation of technology that is used to improve banking and financial services. This fintech utilizes technology in the form of software, internet, communications, and computerization. Meanwhile, the National Digital Research Center in Ireland defines *fintech* as innovation in financial services. It should also be noted that fintech has many types of schemes, including payment start-up, lending, financial planning, retail investment, financing, and financial research (Firdaus et al., 2021).

In the fintech industry sector, Indonesia has great potential. If we look at the valuation of Indonesia's digital economy, we see that it is the largest in the Southeast Asia region. Judging from Google and Tamasek's report in the ASEAN Economy 2020 report, the valuation of the digital economy in Indonesia could reach up to USD 44 billion. So Indonesia is in first position as the country with the most significant digital economy valuation in Southeast Asia; after that, there is Thailand at USD 18 billion, Vietnam at USD 14 billion, Malaysia at USD 11.4 billion, Singapore at USD 9 billion, and the Philippines at USD 7.5 billion. However, despite the enormous potential, the fintech industry in Indonesia still needs to overcome several significant challenges (Mukminat, 2022).

Among the various types of fintech growing in Indonesia, peer-to-peer lending (P2PL) fintech is the fastest growing. P2PL fintech, as a type of fintech lending and borrowing money based on technology, has the advantage of easy terms and a fast process when compared to borrowing through banking. The concept in P2PL is that start-up provide online loan platform facilities. This P2PL start-up is needed for those who need funds intending to open or develop a business. In terms of regulations governing all matters related to P2PL fintech, it is stated in the Financial Services Authority or PJOK Regulation Number 77/PJOK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services (Lova, 2021).

In turn, P2PL, which was initially known in the conventional financial system, has gradually entered the Sharia financial system. As we know, Indonesia is a country with the largest Muslim-majority population in Asia. So, there is always great potential for developing modern financial transactions based on Sharia. To respond to this, the government has issued regulations through the Fatwa of the National Sharia Council of the Indonesian Ulema Council Number 117/DSN-MUI/II/2018 concerning Information

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Technology-Based Financing Services. The presence of this fatwa from DSN-MUI, as a form of response to the actual presence of P2PL sharia fintech in PJOK Number 77 of 2016, has yet to be specifically explained. Even the words "lending and borrowing" in the title of the regulation are not by sharia principles. In Islamic law, the terms lending and borrowing are not known but financing.

However, more than the presence of the 2018 DSN-MUI Fatwa is needed to become the basis for sharia P2PL fintech in addition to PJOK Number 77 of 2016. So, regulations are needed to regulate various matters related to Sharia P2PL fintech. Amid enormous potential, the presence of special regulations regarding sharia P2PL will show the government's seriousness in developing the economy. Apart from that, it also provides legal certainty and protection for actors and consumers who enter the world of sharia P2PL fintech.

METHOD

The author uses a qualitative approach with normative juridical methods in this research. The meaning of normative juridical is normative law contained in statutory regulations by reviewing all laws and regulations that are related to the research carried out (Bachtiar, 2018), in the context of this research, it is normative law relating to Lending and Borrowing Services. Information Technology Based Money or Fintech Peer to Peer Lending. In another sense, normative legal research is a process for researching and studying legal matters such as rules, legal principles, norms, legal doctrine, legal principles, legal theory, and other literature to answer the legal problems being studied. Based on this understanding, normative legal research is a document study that uses legal material sources such as statutory regulations, court decisions, and others (Muhaimin, 2020), namely, in this case, PJOK Number 77 of 2016.

RESULT AND DISCUSSIONS

Sharia Fintech Peer-to-Peer Lending in Indonesia

Fintech is an acronym for financial technology or financial technology in Indonesian, which the National Digital Research Center (NDRC) defines as innovation using modern technology in the financial sector. In another understanding, Fintech is technology-based financial services (Dinar, 2020). As the World Economic Forum conveys, Fintech is the use of technology and an innovative business in the financial sector. This innovation in the financial sector takes the form of a new way of carrying out financial transactions in the form of savings and loan services, investments and e-payments (Hakim Lukmanal, 2022). It can be understood that Fintech is an innovation in financial services that utilizes the role of technology to create efficient and effective financial services.

According to Bank Indonesia, at least Fintech is divided into four types of financial services. Among them:

- a. Payment, transfer, clearing, and settlement. This first type is very closely related to digital payments, electronic wallets, digital currency, and the use of ledgers. How it works with the payment gateway system, which operates using a VPN (virtual private network);
- b. Deposits, lending, and capital raising. This second form is closely related to financial intermediation activities such as crowdfunding and P2P lending platforms, also known as peer-to-peer lending. Peer-to-peer lending is a platform that offers online loans to anyone who needs help to obtain funding. The mechanism is that this platform will be a meeting place between lenders and loan recipients. Where borrowers can see the profile of potential borrowers by accessing the P2P lending platform used;
- c. Risk and investment management. This type of Fintech is usually used to monitor financial conditions and make financial planning more practical and accessible. This risk and investment management usually comes as a platform that can be accessed via mobile phone. Users need to provide the necessary data, and after that, they can control their finances;
- d. Market aggregator (market support). Then, Fintech of this type refers to portals that collect information related to the financial sector, after which it is presented to users. The financial sector information can be found in tips, investments, credit cards, etc. So that users can absorb much information before making financial decisions (Marginingsih, 2021).

In this research, the author will focus more on the peer-to-peer lending (P2PL) type of Fintech. Especially in Indonesia, P2PL has become known since the beginning of 2015. At that time, several P2PL companies tried to open the market and received a good reception. The reason is that P2PL provides a promising solution for those who need loans and those looking to invest. On the one hand, borrowers get loans with a fast and straightforward process; on the other hand, lenders get a return in the form of interest because they have provided loan funds.

The development of P2PL Fintech continues beyond there. Still, it continues to develop over time, such as the emergence of a new model of Fintech peer-to-peer lending, namely Sharia-based Fintech peer-to-peer lending. In this sharia P2PL, online lending and borrowing activities comply with sharia. So, of course, there will be fundamental differences with conventional P2PL. In Sharia P2PL, returns are obtained without deduction through any financing. In contrast, in funding, there is no determination of interest from the lender because everything is determined based on the contract executed at the beginning (Lova, 2021).

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Sharia peer-to-peer lending fintech began to appear in Indonesia in 2017. In the year of its appearance, three Sharia fintech P2P lending companies had been permitted by the OJK to run their businesses. The three companies include PT. Indonesian Sharia Fund, PT. Invastree Radhika Jaya, and Ammana Fintech Syariah. All three fund or capitalize on a business (Lova, 2021). Based on the latest OJK data, 101 Fintech P2P lending companies are licensed as of October 9, 2023. Of this number, only seven companies are registered as Sharia businesses. The seven companies include PT. Ammana Fintek Syariah, PT. Experience Fintek Sharia, PT. Indonesian Sharia Fund, PT. Duha Madani Syariah, PT. Qazwa Mitra Hasanah, PT. Perkasa Alphabet Piranti, and PT. Ethis Fintek Indonesia (OJK, 2023).

If seen in terms of assets, although there are only a tiny number of sharia P2PL Fintech companies, the total assets based on data from the OJK in 2021 reached IDR 74.13 billion. This value is quite far compared to conventional Fintech P2P lending, where total assets are IDR 3,986.22 billion (Ningsih et al., 2022). On the other hand, Sharia P2PL Fintech has several opportunities and can help sectors, such as helping with gross domestic product (GDP) and developing MSMEs. Especially for the development of MSMEs, the presence of Sharia Fintech P2PL can help to gain efficiency and convenience in the financial aspect. Not only that, the presence of Fintech also helps in digital financial management and other things (Sutan Efendi, 2022). Then, the condition of the Indonesian people, the majority of whom are followers of the Islamic religion, it is known that there are 207 Muslims in Indonesia, is another opportunity for the development of sharia P2PL Fintech (Hiyanti et al., 2020).

Besides the vast opportunities, Sharia Fintech P2PL also faces formidable challenges. For example, amid the majority Muslim population reaching 207 million people, not many people understand and are familiar with transaction contracts that are based on Sharia principles. Then, the negative stigma that sometimes occurs in society towards conventional Fintech also impacts Sharia Fintech. The reason is that many people think that there is no difference between conventional Fintech and Sharia Fintech. So, it is challenging to provide knowledge and confirmation of the differences between the two types of P2PL Fintech (Hiyanti et al., 2020). From this perspective, the challenge faced by Sharia Fintech P2PL is educating the public.

Also, the Sharia P2PL Fintech journey is still quite long in Indonesia. Especially regarding licensing, it differs from conventional Fintech, which only requires permission from the Financial Services Authority (OJK). For Sharia Fintech, companies must have minimum capital to exist. After being registered with the OJK, the company must also apply for a sharia label to the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). Later, the MUI DSN will first study the business flow of Sharia Fintech companies that apply for labels. Then, a Sharia Supervisory Board (DPS) will be appointed; after all the conditions are met, the DSN will give a Sharia label (Hiyanti et al., 2020).

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Another challenge that is no less important relates to regulations, where since the emergence of Fintech, the OJK has responded by issuing PJOK regulation Number 77/PJOK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. Unfortunately, these regulations are still general and impact the confusion between Sharia Fintech and conventional Fintech. The reason is that the two types of Fintech have very different substances and terminology. It is undeniable that PJOK Number 77/PJOK.01/2016 appeared first because it was related to conventional Fintech, especially with the word 'lending and borrowing', which does not exist in Islamic law. In Sharia Fintech, lending and borrowing are not used; they are used for 'financing' (Qisthia, 2023). So, several things in Sharia Fintech regulations still give rise to legal uncertainty.

Then, in Sharia Fintech, there is no term interest as stated in Article 19 paragraph (2) and Article 20 paragraph (2) in the PJOK. In article 19, for example, it states that:

1. The agreement for providing Information Technology-Based Money Lending and Borrowing Services between the Provider and the Lender is outlined in an Electronic Document;
2. Electronic documents as intended in paragraph (1) must contain at least: a) Agreement number; b) Date of agreement; c) Identity of the parties; d) Provisions regarding the rights and obligations of the parties; e) Loan amount; f) Loan interest rates; g) Amount of commission; h) Period; i) Details of related costs; j) Provisions regarding fines (if any); k) Dispute resolution mechanism; and l) A resolution mechanism if the organizer is unable to continue its operational activities.

Then, in article 20 it states that:

1. The loan agreement between the Lender and the Loan Recipient is set out in an Electronic Document;
2. Electronic documents as intended in paragraph (1) must contain at least: a) Agreement number; b) Date of agreement; c) Identity of the parties; d) Provisions regarding the rights and obligations of the parties; e) Loan amount; f) Loan interest rates; g) Installment value; h) Period; i) Object of guarantee (if any); j) Details of related costs; k) Provisions regarding fines (if any); and l) Dispute resolution mechanism.

As is known, Sharia Fintech prohibits interest and usury. This is stated in the MUI fatwa Number 117 of 2018, which states that parties are required to comply with general guidelines in information technology-based financing services based on Sharia principles. These service providers must not conflict with Sharia principles, namely, avoiding usury, gharar, maysir, tadbis, dharar, zhulm, and haram.

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Apart from that, sharia fintech, apart from having to comply with OJK regulations, must also refer to the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI Fatwa Number 117/DSN-MUI/II/2018.21). So, these two regulations make Sharia Fintech ambiguous regarding legal aspects. Then, even though the DSN-MUI Fatwa regulates sharia Fintech in detail, based on Law Number 12 of 2011 concerning the Formation of Legislative Regulations, the MUI Fatwa is not included in the hierarchy of laws and regulations in Indonesia (Qisthia, 2023).

Furthermore, if viewed from Islamic law, PJOK Number 77/PJOK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services still needs to apply Islamic law principles. Even in terms of the title, there is no use of the word sharia, and the term used is "lending and borrowing". The term lending and borrowing is unknown in Islam but uses "financing". The word sharia, which is not in the title and emphasizes sharia principles, is not used, showing the government's commitment to developing sharia P2PL Fintech. In this regulation, the word sharia is only mentioned once in article 11 concerning licensing, which reads: "photocopy of legalized and still valid proof of capital fulfillment during the licensing application process on behalf of one of the commercial banks carrying out business activities conventionally or based on principles sharia which is an Indonesian legal entity."

Next, it relates to business activities in Article 5, where no business activities are based on Sharia principles. This business activity, which is based on Sharia principles, does not contain elements of usury, maysir, gharar, haram, and unjust. In PJOK No. 77 of 2016, only a transformation of the principles of justice was found. This is contained in article 29: "Organizers are obliged to apply the basic principles of user protection, namely transparency, fair treatment, reliability, confidentiality and security of data, and resolving user disputes in a simple, fast and affordable manner." However, even though it contains the word fair, it must be explained explicitly. So, these regulations need to meet the standards of justice.

The Urgency of Establishing Sharia Peer-to-Peer Lending Fintech Regulations in Indonesia

It is undeniable that the emergence of various Sharia-Fintech lending platforms can play an important role. Plus, the potential is still huge, even though a few companies are implementing it. The existence of fintech certainly requires regulations that do not depend on entities or intermediaries but must provide a more significant proportion of activity-based regulations. PJOK Number: 77/PJOK.01/2016 concerning Information Technology-Assisted Money Lending and Borrowing Services, it is considered that there is still no information regarding Fintech financing using the Sharia system. It is only limited to the conventional system. You must also comply with DSN-MUI Fatwa Number 117/DSN-MUI/II/2018 concerning Technology-Based Financing Services Based on Sharia Principles. There are also regulations from Bank Indonesia, which are contained in Bank Indonesia Regulation (PBI) Number 19/12/PBI/2017 concerning implementing Financial Technology.

However, from several OJK or Bank Indonesia regulations, there is still uncertainty in separating conventional and sharia fintech rules. So, it must be accepted that the government needs firmness to protect the existence of fintech in Indonesia through a legal or regulatory umbrella where the need for fintech regulation is quickly realized. It is also necessary to establish a National Sharia Fintech Committee (KNFS) as an institution that specifically oversees the development and movement of Sharia fintech in Indonesia (Alfaris et al., 2019). So, the existence of regulations and institutions that specifically deal with matters related to sharia fintech shows the government's commitment to protecting sharia fintech actors and users.

Then, the presence of DSN-MUI fatwa Number 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles is a binding positive law. Because its existence often provides legitimacy for government institutions to make legislative regulations. However, legal regulations regarding sharia fintech still need to be improved. On the other hand, the DSN-MUI firm still needs to accommodate other types of fintech, which have no less potential to provide benefits (Mukminati, 2022). So, it must be accepted that strict regulations to regulate Sharia fintech, especially P2PL, are needed. Apart from providing security for users, they also prove the government's seriousness.

However, we cannot deny that the presence of the DSN-MUI fatwa is significant for the current Sharia P2PL fintech. Also, this DSN-MUI fatwa has the same status as doctrine, meaning it can reinforce a judge's decision in a case. For example, when there is a violation or fraud in Sharia fintech, a DSN-MUI fatwa can be a reinforcement. The presence of this DSN-MUI fatwa also has authority and an essential role in the formulation of binding legislation. It has become a positive law for developing the sharia economy in Indonesia. Where the fatwas contained in the DSN-MUI can be embedded in various legal regulations relating to Sharia financial institutions (Afrelian & Furqon, 2019).

CONCLUSION

Technological developments have provided progress and innovation in the economic sector with the presence of financial technology or fintech. However, there are still several challenges—especially the sharia peer-to-peer lending type, which still faces challenges from a regulatory perspective. Shia fintech P2P lending is based on PJOK Number 77 of 2016 and the DSN-MUI fatwa of 2018. However, this has created legal confusion. Therefore, it is necessary to establish regulations that specifically regulate matters relating to Sharia P2PL fintech. This regulation will show the government's seriousness in the field of Sharia economics and also provide legal certainty to Sharia P2PL fintech players.

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