

The Financial Services Authority Supervision To Financial Technology Peer-To-Peer Lending In Relation To Consumer Rights In Aceh

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Abstract:

Discussion: Bank of Indonesia Regulation Number 19/12PBI/2017 on Financial Technology defines Financial Technology (fintech) as the technology-based financial system that develops products, services, technologies, and new business models. Fintech also influenced the monetary stability, financial system stability, efficiency, continuity, safety, and reliability of the payment system. As the borrower to peer-to-peer (P2P) lending, consumers have the rights for legal protection in the form of contract, debt counselling, protection against interest rate fluctuation, and other additional fees. Consumer Protection for technology-based lending services is regulated in Article 1 Act Number 8 the Year 1999 on Consumer Protection; Article 1 BI Regulation Number 19/12PBI/2017; and Article 4 to Article 26 Financial Services Authority (OJK) Number 77/PJOK.01/2016. In P2P lending, there are several issues that the debtors faced: the increasing number of illegal fintech companies, debt collection via intimidation, high-interest rate, and personal data misuse. Article 26 OJK Regulation Number 77/PJOK.01/2016 states that the financial services providers must protect the privacy and confidentiality of consumer's data. Article 6 to Article 8 explains that if a P2P company is not registered in OJK, such company will be perceived as illegal. During debt collection, The Indonesia Fintech Association (AFI) Code of Conduct required all of the P2P companies to promote goodwill.

Research Method: This study utilizes juridical empirical research through a qualitative approach. A qualitative approach is a method of analysis that delivers descriptive data analysis—data from respondents which can be in writing, oral, or subject's behaviours that are studied as a whole. The data were received from respondents and informants. This research refers to Act Number 8 the Year 1999 concerning Consumer Protection and Financial Service Authority Regulation Number 77/PJOK.01/2016 concerning Financial Technology Peer-to-Peer Lending.

Conclusion: Presently, consumers of P2P services require the government (or other related-institutions) immediate attention. The government's failure to provide the necessary education for the public can result in the consumers' financial loss. In OJK Regulation Number 1/PJOK.07/2013 concerning Consumer Protection in the Financial Services Sector, OJK supervision provides legal protection for consumers. However, in terms of illegal P2P companies, the consumers' legal protection is limited, as OJK does not have the authority to supervise unlicensed P2P companies. If a P2P company violates a certain rule, OJK—collaborating with the Minister of Communications and Information—may remove or block the registered company from their (OJK) list.

Key Word: fintech, Consumer Protection, Financial Services Authority

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I. INTRODUCTION

Peer to Peer lending (P2P) is a technology-based lending service that connects both lender and borrower online. The Article 1754 Civil Code states: "A loan for consumption is an agreement, in which one party provides another with a specific amount of consumable items, with the condition that the latter mentioned shall return the same types of items of the same amount and quality. Particularly, P2P can be found in OJK Regulation Number 77/POJK.01/2016 concerning Financial Technology Peer-to-Peer Lending. The P2P is a type of financial services that joins both the lender and the borrower into creating a loan agreement (in rupiah) directly through the electronic system and the internet.

P2P involves two main parties: the lender and the borrower. The lending process does not require a third party (agent), unlike banks and credit institutions.¹ There are several kinds of P2P services, for example, Kredivo, UangTeman, RupiahPlus, TunaiKita, DanaRupiah, KreditCepat, DanaCepat, and RupiahCepat.² The development of fintech as a technology-based financial services pushes OJK—the regulator and supervisor for financial services—to issue OJK Regulation (POJK) Number 77/POJK.01/2016 concerning Financial Technology Peer-to-Peer Lending. The regulation imposed the fintech companies to register their companies' on OJK. Article 7 POJK states that after the registration, the fintech company will have the license to operate. However, to optimize fintech roles for Indonesian economic development and financial inclusion, further study, on how to reach a balance between the ease and flexibility provided by fintech and the consumers' legal protection, is required. The absence of such balance can potentially damage the public's trust in the financial system and economic stability. The consumer protection must be ensured, for example, by providing complete information, benefit, risk, cost, and privacy on the financial services products.³

The Consumer Protection Act is a legal shelter that integrates and strengthens the enforcement of legal protection for consumers. Moreover, there is always a chance for new regulation on consumer protection to be developed.⁴ After all, Act Number 21 the Year 2011 concerning OJK emphasizes that OJK must protect the consumers of financial services. In Article 4 OJK Act, OJK is established to ensure that the overall activities in the financial service sector are:

1. implemented in an organized, fair, transparent and accountable manner;
2. capable of actualising the financial system that grows in a sustainable and stable manner;
3. capable of protecting consumers and public interests.

To achieve its purpose, Article 5 OJK Act explains: “The function of OJK is to establish an integrated regulatory and supervisory system for all activities in the financial services sector.” The Article shows that OJK as a supervisor of financial services is closely related to consumer protection, in which consumer protection becomes the framework for the regulation. Without a reliable and systematic supervision, consumer protection can not be enforced. Moreover, fintech has been developing at a rapid pace. However, until this paper is finished, OJK only issued a regulation concerning fintech, which is the OJK Regulation Number 77/POJK'01/2016 on Financial Technology Peer-to-Peer Lending (PJOK LPMUBTI).

Although OJK has regulated the fintech P2P lending, illegal fintech service continues to appear. Such a problem arises because of the OJK lack of supervision, even though OJK itself has the authority to oversee the fintech service as not to violate the consumer's rights. In addition, lack of socialization to the public also become the reason for such violation, as the public have limited understanding concerning fintech services. Nevertheless, there are four categories of law violations that are highlighted in P2P.

First, the Illegal P2P Companies. Before operating, fintech companies must be licensed from OJK. Article 7 and Article 8 PJOK LPMUBTI states that the unregistered companies are illegal. Unfortunately, the number of illegal P2P companies is higher than the registered or licensed companies. OJK, which is part of The Investment Alert Task Force (*Satgas Waspada Investasi*) have stopped the activities of 404 illegal P2P companies.⁵ Consumer protection is strictly regulated in licensed P2P companies. If a dispute happens between the consumer and the company, the regulator exists as a mediator for both parties. On the other hand, consumers involved in illegal P2P companies are vulnerable. Lack of supervision provides the opportunity for illegal companies to infringe on their consumer rights. The violation may be in the form of data theft, high-interest rate, and intimidation. These are the potential breaches that may always occur as long as illegal P2P companies exist.

Second, Intimidation Tactic. The P2P companies' intimidation tactics are well-known among the public. The companies frequently use vulgar words and threaten violence for the customer that failed to pay. The P2P companies are not allowed to intimidate their consumers. As stated in the Indonesian Fintech Association (AFI) Code of Conduct, all of the fintech companies must promote goodwill during collecting payment from the borrower.

Third, High-Interest Rate. The high-interest rate becomes an addition to another problem within the fintech industry.⁶ The P2P companies' advertise the low-interest rate, however, in practice, the fintech industries employ the high-interest rate, even higher than banks and credit institutions. Previously, OJK mentioned that the

¹ Subhan Zein, “Tinjauan Yuridis Pengawasan Otoritas Jasa Keuangan terhadap Aplikasi Pinjaman Dana Berbasis Teknologi (*Peer to Peer Lending/Crowdfunding*) di Indonesia, *Jurnal Bisnis dan Akuntansi Universitas Suryadarma*, Vol. 4, No.2, p. 117, 2019.

² <https://duwitmu.com/cta/10-pinjaman-online-24-jam/>, accessed on February 15, 2020, 17.41 PM.

³ Otoritas Jasa Keuangan, *Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Perlindungan Konsumen Pada Fintech*, Jakarta: Cetakan ke 1 Otoritas Jasa Keuangan, 2017, p. 5

⁴ Az Nasution, *Hukum Perlindungan Konsumen, Suatu Pengantar*, Jakarta: Diadit Media, 2002, p. 7.

⁵ <http://www.harnas.co/2018/12/12/404-fintech-ilegal-dihentikan>, accessed on February 18, 2020, 22.31 PM.

⁶ <https://www.hukumonline.com/berita/baca/lt5c1c9d0759592/ragam-masalah-hukum-fintech-yang-jadi-sorotan-di-2018> accessed on May 6, 2019, 15.55 PM.

licensed P2P companies' interest rate had reached 19% per month. On the contrary, the interest in illegal P2P companies is above the average rate. Moreover, illegal companies can even charge their interest to 2-3% per day. The interest rate has turned into an issue that shadowed the fintech industry. Therefore, there must be an appropriate regulation that can accommodate both the consumers and providers interest.

Fourth, Personal Data Misuse. For a layman, debt collection using private data is an unfamiliar method. Often, when people sign the term of condition, they are unaware of the fact that the P2P company has access to their data. People frequently assume that it is normal for the lender to use the borrower personal data for collecting payment. However, the use of personal data for collecting payment becomes a public debate. Accessing private data may violate the law and disturb another party—that does not have a connection to the loan. As loan providers may contact the consumer's co-worker and family to collect the payment.

II. MATERIAL AND METHODS

This research is a juridical empirical study, which is empirical or socio-legal research that studies the law. It studies the law not only as perspective and applied discipline but also as an empiric or legal fact. The data were collected from respondents and informants, especially the overall responses received when the researcher thoroughly collected the data.⁷

III. RESULT

This study aims to understand how the Financial Services Authority (OJK) supervise the technology-based lending services (P2P) related to consumer rights in Aceh. OJK must protect the consumer rights, as stated in OJK Regulation Number 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector. To achieve that purpose, OJK must actively regulate and supervise fintech products without ignoring the aspect of consumer protection. With the fintech services, there must be discussions on how to balance between the ease and flexibility of fintech technology and the regulation and consumer protection aspects. Regulators may supervise P2P by taking into account factors such as safety, consumer protection, services, inclusivity, and risk mitigation (especially risk of digital technology and cybercrime). Fintech service is a full risk business, because it mainly involves money-related service. Thus, it must be supported by strict regulations, as an effort to actualise the healthy practice of P2P companies.⁸OJK must provide legal protection for every P2P consumer. Legal protection is justice, created from a rational mind, exercised with just, honesty, and responsibility upon one's action. The government provides two types of legal protection, which are preventive and repressive. The legal protection is enforced by the government institutions, in this case, OJK.

Management is established to monitor, apart from planning, organizing, and implementing. Supervision is an activity that monitors and controls the overall company's activities, including budget preparation, the company's activity, records, and reports on the results of its activities. Supervision must become routine or continuous.⁹Sujatmo stated that the purpose of supervision is to identify and understand the truth regarding the activity that becomes the object of supervision, whether it is in accordance or not, as a material for improvement in the future.¹⁰The functions of OJK are to perform the integrated regulation and supervision to the whole activities in the financial services sector. OJK has the authority to regulate and supervise,¹¹OJK's role in supervising P2P must be optimized. OJK has the roles as:

a. Financial Services Authority as a Regulator

OJK has a role in regulating the financial technology peer-to-peer lending, as stated in POJK LMUBTI. The regulation aims to provide a legal foundation for fintech companies in Indonesia. It also protects the consumers and the public's trust—the potential consumers of P2P companies.

b. Financial Services Authority as a Supervisor

OJK supervises the implementation of regulations relating to fintech P2P lending (PJOK LPMUBTI). The purpose is to reduce violations related to the consumer protection theory. There are two types of legal effort that may be enforced by OJK:

⁷ Mukti Fajar dan Yulianto Achmad, “*Dualisme Penelitian Hukum Normatif dan Empiris*”, Pustaka Pelajar, Yogyakarta, 2009, p. 180.

⁸ Sari, (A.R), “*Perlindungan Hukum Bagi Pemberi Pinjaman Dalam Penyelenggaraan Financial Technonology Berbasis Peer to peer lending di Indonesia, Jurnal Fakultas Hukum Ekonomi dan Bisnis*, Yogyakarta, 2018.

⁹ Kasmir, *Bank dan Lembaga Keuangan Lainnya*, Jakarta: PT Raja Grafindo Persada, 2014, hlm. 320

¹⁰ Sujatmo, *Aspek-Aspek Pengawasan Di Indonesia (Cetakan ke 3)*, Jakarta: Sinar Grafika, 1994, p. 96.

¹¹ Kasmir, *Op.Cit.*, p. 72.

1). Preventive Effort

OJK implemented preventive effort to prevent any violation. In this situation, OJK summons all of the P2P services to supervise, educate, and socialize the operation and regulation concerning technology-based loans. Subsequently, it will increase the lender's understanding of consumer's rights and provide better protection for the consumers. Also, lenders need to understand the legal consequences of violating their consumers' rights. The higher lender's understanding will be, the smaller the chance of breaching the rights. For repressive effort, there are three actions that OJK may perform to improve the regulation regarding P2P lending in Indonesia:

- a). OJK or other related-regulators may impose Trustmark (which can be logo, picture or emblem) in all of the licensed P2P companies' website and application (apps). The Trustmark indicates that the companies have been audited by either the regulator or chosen-third party;
- b). implementing digital signature certificates that can authenticate the consumer's identity automatically through their signature;
- c). implementing biometric verification that can identify one or more consumer biological traits, which can be fingerprints, hand geometry, retina patterns, and sound waves (voices).¹²

P2P services, as it mitigates potential risk such as fraud, forgery or identity theft, and hacking. Trustmark have been implemented to protect e-commerce businesses, and now there are several Trustmark providers.

2). Repressive Effort

To address the unlicensed P2P, as a supervisor, OJK may:

- a). Collect and manage information on unregistered P2P companies;
- b). after collecting enough information, OJK will be cooperating with the Investment Alert Task Force (task force created by OJK);
- c). after coordinating with the Investment Alert Task Force, OJK will summon the unlicensed P2P companies and offer to license their companies. If they refuse, then OJK will stop their services;
- d). if after the summons and warning the unlicensed P2P to keep operating, OJK will issue a letter of recommendation for the Ministry of Communications and Information to remove and block the application and services of unlicensed P2P.

With these rules, consumers will feel secure and the enforcement of regulations concerning P2P are regulated appropriately. This provides protection for consumers to use P2P services. To ensure the optimal application of regulation and supervision, OJK works independently to create and enforce their duty and authority, as mentioned in regulation on the financial services sector.¹³

2. Legal Consequences for Illegal Fintech Company

OJK issued the PJOK LPMUBTI as a response for protection of the P2P consumer from financial providers, as at that time there was no regulation concerning P2P lending in Indonesia. PJOK LPMUBTI specifically controls technology-based loan services. Article 7 PJOK LPMUBTI stipulates: "the provider must register and receive a license from the Financial Services Authority.", which means that every financial provider must register and be licensed to start their services. Collected from OJK list per 30 April 2020, there are 161 registered and licensed P2P companies.¹⁴In contrast, from July 2018 to March 2020, there are 2402 unregistered (illegal) P2P companies.¹⁵The high number of unregistered P2P companies have become an issue to confront. The violation will create legal consequences that affect P2P companies. Article 7 PJOK LPMUBTI listed the legal consequences for not registering and licensing their companies, which are:

- a).OJK will not supervise unregistered fintech. If a consumer experiences financial loss, OJK will not be held responsible. In other words, consumers are responsible for their losses incurred from fintech companies.
- b).If a fintech company operates without registering and licensing from OJK, OJK may stop the company's service.
- c).OJK will issue a letter of recommendation to the Ministry of Communications and Information to remove and ban the fintech application or lending services found in social or electronic media.

In this case, OJK has the authority to impose an administrative penalty for violation in the financial services sector, as stated in Article 9 point g OJK Act. Further, Article 47 PJOK LPMUBTI listed the penalty

¹² Otoritas Jasa Keuangan, *Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Perlindungan Konsumen Pada Fintech*, Jakarta: Cetakan ke 1 Otoritas Jasa Keuangan, 2017, p. 74.

¹³ Adrian Sutedi, *Aspek Hukum Otoritas Jasa Keuangan*, Jakarta Timur: Raih Asa Sukses, 2014, p. 62.

¹⁴ <https://www.ojk.go.id/id/berita-dan-kegiatan/publikasi/Pages/Penyelenggara-Fintech-Terdaftar-dan-Berizin-di-OJK-per-30-April-2020.aspx>, accessed on June 10, 2020, 17.11 PM

¹⁵ <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/20548>, accessed on June 10, 2020, 17.13 PM

consists of a written warning, fines—a duty to pay a certain amount of money—, business limitation, and revoking the companies license.

IV. DISCUSSION

Consumer protection on P2P services must be given extra attention, as most people became the victim of illegal as well as the licensed P2P services. OJK, as the regulator and supervisor, must regard the issue of fintech services seriously. The government must issue new rules regarding P2P companies' violations, for instance, the consumers' data theft and intimidation. In practice, OJK has a difficult time imposing legal penalties upon problematic P2P companies. The absence of a law that can accommodate such an issue becomes the main obstacle for OJK. OJK also is required to actively provide education and socialization regarding fintech services—including the rights and obligations of both the lender and the borrower—and provide a list of unlicensed P2P companies that the public can avoid. All of these are important to reduce the number of violations committed by P2P companies.

V. CONCLUSION

The enforcement of rules involving P2P companies' violations has yet to be optimized. There are several reasons for such issues, namely the majority of the public have not reported the violations of their rights to OJK. Most people do not have enough information regarding the institutions responsible for such cases. Also, there are other factors such as the related-institutions lack of socialization to identify legal or illegal P2P services (through registration and license in OJK), which limit the public awareness. Therefore, the public often uses illegal P2P services rather than licensed services. Even though the unlicensed P2P companies have a higher risk of violating their consumers' rights, such as personal data misuse and collecting payment through intimidation.

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