

THE SELF REGULATION ON PEER TO PEER (P2P) OF LENDING INDUSTRY IN INDONESIA AS PROBLEMS AND PROSPECTS

Mukti Fajar Nur Dewata
Universitas Muhammadiyah Yogyakarta
muktifajar_omy@yahoo.co.id

Reni Budi Setianingrum
Universitas Muhammadiyah Yogyakarta
reni.setianingrum@law.umy.ac.id

Abstract

The purpose of this research is to find out that the industrial revolution 4.0 has had a significant impact, especially in the use of technology and the internet in daily human activities, both in personal life and in economic activities. This study used a normative legal research method that examines various legal theories related to financial technology both in Indonesia and other countries. The P2P lending service carries out business activities by providing, managing, and operating money-borrowing services by utilizing information technology as a liaison. Peer to Peer (P2P) Lending in Indonesia is regulated in POJK No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. This regulation is the basis for the implementation of P2P Lending business activities or online borrowing, which is one type of fintech, including regulations regarding supervision carried out by the Financial Services Authority (OJK) on the implementation of these business activities. However, in practice, lending by P2P Fintech has attracted a lot of controversies because there are still many problems, including interest arrangements, the rise of illegal fintech applications and also the weakness of consumer protection where these things have not been fully addressed and regulated by POJK No. 77/POJK. 01/2016.

Keywords: *Financial; P2P; Regulation; Technology.*

A. INTRODUCTION

Industrial revolution 4.0 has had a big impact on all sectors of human life, especially technology and the internet. They bring a humongous role in supporting all activities of human life. As evidenced by data published by the Association of Indonesian Internet Service Providers (APJII), internet users in Indonesia in 2018 increased by 27.91 million (10.12%) to 171.18 million people. Consequently, the internet users in the country have increased to 64.8% of the total population of 264.16 million people.

The impact of the increasingly rapid development of technology and the internet also influences the Indonesian financial industry, as indicated by the emergence of financial technology (fintech). One of the fintech services increasingly on the rise is peer-to-peer (P2P) lending services. P2P lending is

a technology platform that digitally brings together borrowers who need business capital with lenders who expect competitive returns.

P2P lending companies continue to increase yearly, with a total of 161 companies registered and licensed by the Financial Services Authority as of February 2020.¹ This phenomenon occurs because P2P lending activities bring innovation in the financial sector by offering convenience, flexibility, and benefits to service users, most of which are from the Micro, Small and Medium Enterprises sectors.²

Although this business promises alternative funding for the community, there are still many controversial things, including the imposition of relatively high-interest rates. It is noted that the average loan interest charged is 19% per year,³ higher than the average bank loan interest, which is in the range of 11% per year.⁴ In addition, there are still many business actors who have not yet obtained a permit from the OJK⁵, the vulnerability of breaking into customers' personal data⁶ and collection activities using unpleasant means.⁷ Overall, this shows that regulations in the financial technology sector are still very weak, and collaboration between the Government, the private sector and the community is urgently needed.

The development of illegal peer-to-peer lending (fintech lending) companies in Indonesia in recent years is worrying. The high development of illegal fintech lending is due to the absence of strict regulations and supervision and the absence of a special party that oversees illegal fintech lending activities. Based on data compiled from the Financial Services

1 Financial Services Authority, *Fintech Operators Registered and Licensed at OJK As of February 19, 2020*, OJK, March 4, 2020, quoted on <https://www.ojk.go.id/id/berita-dan-kegiatan/publikasi/Pages/Penyelenggara-Fintech-Terdaftar-dan-Berizin-di-OJK-per-19-February-2020.aspx> in December 20, 2021, 13:30 WIB.

2 Amalina, H. N., Ramdani, M. G., Ashiddiq, M. R., Sulistiyani, I., & Lokania, L, *Penyelesaian Sengketa Dalam Peer To Peer Lending (Pinjam-Meminjam Online)*, *Lontar Merah*, Vol.2 No.1, 2019, page.148-153.

3 Putera, Andri Donnal, *Benarkah Bunga Pinjaman Di Fintech Lending Terlalu Tinggi*, Kompas, 06 March 2018, quoted on <https://ekonomi.kompas.com/read/2018/03/06/173700826/benarkah-bunga-pinjaman-di-fintech-lending-terlalu-tinggi> in December 20, 2021, 13:52 WIB

4 Halomoney, *Suku Bunga Pinjaman Bank 2018 Di Indonesia: Mana Paling Rendah?*, Halomoney, 2018, quoted on <https://www.halomoney.co.id/blog/suku-bunga-pinjaman-bank-2018-indonesia-mana-paling-rendah> in December 20, 2021, 13:56 WIB.

5 Rizky, Mochamad Januar, *Blokir 803 Aplikasi, Pemerintah Diminta Proaktif Cegah Fintech Ilegal*, Hukumonline, March 9, 2019, quoted on <https://www.hukumonline.com/berita/baca/lt5c836c8848419/blokir-803-aplikasi--pemerintah-diminta-proaktif-cegah-fintech-ilegal> in December 20, 2021, 13:57 WIB.

6 Heriani, Fitri Novia, *Tak Semua Aduan Fintech Ilegal Dapat Ditindaklanjuti Satgas*, Hukumonline, February 14, 2019, quoted on <https://www.hukumonline.com/berita/baca/lt5c6569e5912b7/tak-semua-aduan-fintech-ilegal-dapat-ditindaklanjuti-satgas> in December 20, 2021, 14:00 WIB.

7 Rizky, Mochamad Januar, *Gagal Bayar Pinjaman Fintech, Bisakah Dikenakan Pidana?*, Hukumonline, February 6, 2019, quoted on <https://www.hukumonline.com/berita/baca/lt5c5a9577a5fba/gagal-bayar-pinjaman-fintech--bisakah-dikenakan-pidana> in December 20, 2021, 14:01 WIB.

Authority from July 2018 to July 2020, there were 2588 illegal fintech lending providers operating in Indonesia.⁸

The governance model currently applied in the current regulation of peer-to-peer lending in Indonesia is self-regulatory governance. Therefore, the supervision of peer-to-peer (P2P) lending in Indonesia is currently carried out by OJK and the peer-to-peer (P2P) lending association appointed by the OJK. However, there are still many problems in peer-to-peer (P2P) lending in which the Government still cannot fully protect the interests of the parties. The purpose of the research is to find out that the industrial revolution 4.0 has had a significant impact, especially in the use of technology and the internet in daily human activities, both in personal life and in economic activities.

B. RESEARCH METHODS

The approach used in this paper is a normative juridical approach. A juridical normative approach is a legal research approach that is carried out by examining library materials or secondary data as a basis for research by conducting a search of the regulations and literature relating to the problem under study.⁹ Data analysis used in this study is descriptive-qualitative by analyzing data/information obtained through descriptive research with library research which is then systematically compiled and described qualitatively.¹⁰

C. RESULT AND DISCUSSION

1. Overview of Peer-to-Peer Lending (P2P)

According to Article 1 No. 3 of the Financial Services Authority Regulation No. 77/Pojk.01/2016 concerning Information Technology-Based Borrowing-Lending Services (POJK No. 77/POJK.01/2016), P2P lending or Information Technology-Based Money-Lending Services is the provision of services financial services to bring together lenders and loan recipients in order to enter into lending and borrowing agreements in rupiah currency directly through an electronic system using the internet network.

P2P Lending is a technology platform that brings together digitally between Borrowers who need business capital and Lenders. P2P Lending gives hope for a competitive return even with small capital for each

8 Financial Services Authority, *List of Illegal Peer To Peer Lending Fintech Companies (July 2018 – July 2020)*, OJK, 2020, quoted on <https://sikapiuangmu.OJK.go.id/FrontEnd/CMS/Article/20548>. in July 20, 2021, 08:40 WIB.

9 Ahmad Rofiq, Hari Sutra Disemadi, and Nyoman Serikat Putra Jaya, Criminal Objectives Integrality in the Indonesian Criminal Justice System, *Al-Risalah* Vol.19 No.2, 16 December 2019, page.179–190

10 Andi Aina Ilmih, Kami Hartono, Ida Musofiana, Legal Aspects Of The Use Of Digital Technology Through Sharia Online Transactions In Traditional Markets In Increasing Community Economy, *International Journal of Law Recontruction*, Vol. 3 Issue 11, September 2019, page.114-122

lender. This P2P Lending service can allocate loans to almost anyone and in any amount in an effective and transparent manner.¹¹

Basically, the P2P Lending system is very similar to the concept of a marketplace for online lending and borrowing activities that provides a place for buyers and sellers to meet. In the case of P2P Lending, the existing system will bring together the borrower with the party providing the loan. As an alternative to borrowing through official institutions such as banks, cooperatives, credit services, the government and so on, the process is much more complex. People can apply for loans to the public through the P2P Lending system. It is far remote from the nature of loans from banks that apply the 5C principles: Character, Capacity, Capital, Collateral, Condition as a reference for eligibility and in general are loans in the form of money and/or other forms provided through approval, with a term and interest.¹²

The excellent response to the development of technology and information in the field of financial services can be seen from the rapid development of peer-to-peer lending financial technology companies in Indonesia. Based on data compiled from the OJK as of January 10, 2021, there are 149 fintech lending companies that have obtained business licenses and are registered with the OJK. Of the total No. of fintech lending companies, 41 companies have obtained business licenses, and the remaining 108 companies have obtained registered status through OJK.¹³

This fintech lending digital financial innovation basically provides excellent benefits in increasing financial inclusion. By definition, financial inclusion is the availability of access to financial products, institutions and services in accordance with the capabilities and needs of the community in an effort to improve welfare.¹⁴ One of the important components in financial inclusion is to encourage national economic growth, create financial system stability, reduce social disparities between individuals and between regions, and support poverty eradication programs.¹⁵ With

11 Tampubolon, H. R, Seluk-Beluk Peer to Peer Lending Sebagai Wujud Baru Keuangan di Indonesia, *Jurnal Bina Mulia Hukum*, Vol.3 No.2, March 2019, page.191.

12 Cita, H.R., Abubakar, L., & Mulyati, E, Kedudukan Hukum Kreditur Baru Penerima Pengalihan Piutang Tanpa Persetujuan Agen & Peserta Sindikasi Lainnya, *Jurnal Bina Mulia Hukum*, Vol.3 No.1, 2018, page. 32

13 Financial Services Authority, *Registered and Licensed Fintech Lending Operator at OJK as of January 10, 2021*, OJK, January 18, 2021, accessed in <http://www.ojk.go.id/id/kanal/iknb/financial-technology/pages/Penyelenggara-Fintech-Lending-Terdaftar-dan-Berizin-di-OJK-per-10-January-2021.aspx>. in March 21, 2021, 16:59 WIB.

14 Financial Services Authority, *2019 National Financial Literacy and Inclusion Survey*, OJK, December 1, 2020, quoted on <https://www.ojk.go.id/id/berita-dan-kegiatan/publikasi/Documents/Pages/Survei-Nasional-Literasi-dan-Inklusi-Kuangan2019/BOOKLET%20Survei%20Nasional%20Literasi%20dan%20Inklusi%20Keuangan%202019.pdf>. in March 22, 2021, 13:26 WIB.

15 See the Attachment to the Presidential Regulation of the Republic of Indonesia No. 82 of 2016 concerning the National Strategy for Financial Inclusion.

low financial inclusion, it can be analyzed that the consequences are quite serious, which can have a negative impact on financial behavior.¹⁶

Regulations regarding Peer to Peer (P2P) Lending are regulated in POJK No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. This regulation is the basis for the implementation of P2P Lending business activities or online borrowing, which is one type of fintech, including regulations regarding supervision carried out by the Financial Services Authority (OJK) on the implementation of these business activities.

With the high No. of internet users' enthusiasm in Indonesia, it will be very potential if the financial inclusion index continues to increase and fintech lending companies have room to grow rapidly in Indonesia because they expand the reach of financial inclusion.¹⁷ However, this rapid development, if not regulated carefully, will certainly cause various problems. This statement is based on the consideration of several problems that arise, including the misuse of user data,¹⁸ high-interest rates on loans,¹⁹ which then result in a potential default event where the borrower fails to repay the loan.²⁰

In carrying out its supervisory and regulatory functions, the Financial Services Authority has also collaborated with several related parties such as fintech operators, the general public and other related institutions such as fintech associations. The Fintech Association here has an important role in assisting the Financial Services Authority in carrying out its supervisory function. The association as the long arm of the OJK is one of the concrete forms that is realized in order to carry out the OJK assistance task in formulating regulations.

The position of the association is normatively regulated in Article 21 paragraph (1) of the Financial Services Authority Regulation No. 13/POJK.02/2018 concerning Digital Financial Innovation. In Article 21 Paragraph (3), the same regulation has also been mentioned related to the authority of the association in setting standards with a market discipline approach that applies to its members.

In this provision, it is known that associations have a role in formulating standard operating procedures, industry standards, and codes of conduct or code of conduct that must be obeyed by every

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- 16 Hidajat, Taofik, 2015, *Literasi Keuangan*, STIE Bank BPD Jateng, Semarang, page.3
 - 17 Rizkinaswara, Leski, *Internet Users in Indonesia*, Kominfo, 14 August 2019, quoted on <http://Aptika.Kominfo.Go.Id/2019/08/Pengguna-Internet-Di-Indonesia/> in March 22, 14:38 WIB
 - 18 Muhammad Eriq MA, *Perlindungan Hukum Bagi Konsumen Fintech Lending yang dirugikan Dalam Transaksi Peminjaman Uang Secara Online*, Ph.D. Dissertation, Law Faculty of Universitas Jember, 2019, page.43
 - 19 Suhermi, S., & Hosen, M, Implikasi Hukum Pasca Pencabutan Izin Perusahaan Pinjaman Berbasis Teknologi (Peer To Peer Lending) Oleh Otoritas Jasa Keuangan, *In Prosiding Seminar Hukum & Publikasi Nasional (Serumpun)*, Vol.1 No.1, 2019, page.51
 - 20 Syaifudin, A, Perlindungan Hukum Terhadap Para Pihak Di Dalam Layanan Financial Technology Berbasis Peer To Peer (P2P) Lending (Studi Kasus di PT. Pasar Dana Pinjaman Jakarta), *Dinamika: Jurnal Ilmiah Ilmu Hukum*, Vol.26 No.4, 2020, page.411-414

member of the association. In addition, the association is also a forum and bridge for service users so that they can take full advantage of fintech lending services and obtain legal protection and avoid access to unhealthy fintech lending services.

The provisions regarding the arrangements made by the association for its members are not without basis. This refers to the approach taken by OJK, which is Principle-Based Regulation and Activity Based Licensing, where the role of OJK is only as a regulator that makes principles-based regulations while further regulations related to rules of the game, business ethics, business conduct, and standard operating procedures for fintech business will be regulated and formulated later by industry players through the association which is now manifested in the Code of Conduct of the Indonesian Fintech Association July 2018 regarding the Responsible Provision of Information Technology-Based Lending and Borrowing Services.

As a preventive measure for the above problems, OJK has regulated, enforced and implemented a feasibility test for the implementation of fintech lending in Indonesia through a regulatory sandbox mechanism. The regulatory sandbox is a mechanism organized by OJK to conduct due diligence in order to assess the reliability of business processes, business models, governance of fintech lending providers and financial instruments used.²¹ This trial in the regulatory sandbox process is mandatory so that the overall fintech lending financial service provider can run effectively, minimize risk, provide protection to users, and be responsible.²²

The regulation, enforcement and implementation of due diligence through the regulatory sandbox mechanism is currently regulated in Board of Governors Regulation (PADG) No. 19/14/PADG/2017 regarding the regulatory sandbox for financial technology. Then related to the regulation and supervision carried out by OJK regarding the regulatory sandbox itself, it is regulated in the provisions of the Financial Services Authority Regulation No. 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector.

After going through the due diligence process through the regulatory sandbox, the next fintech lending service provider, keeping in mind Article 8 and Article 11 of the Financial Services Authority Regulation No. 77/POJK.01/2016 concerning Technology and Information-Based Borrowing-Lending Services, obliged to register and obtain business licenses for fintech lending service providers to the OJK. Registration and licensing with the OJK is an obligation for every fintech lending service provider who wants to carry out fintech lending business activities.

Apart from the rules regarding the registration procedure for fintech lending providers as described above, the Financial Services

21 See Article 1 No. 4 Financial Services Authority Regulation No. 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector.

22 Ibid, Article 2

Authority Regulation No. 77/POJK.01/2016 concerning Technology and Information-Based Borrowing and Borrowing Services also regulates several things such as arrangements regarding service providers, service users, agreements electronic activities carried out, risk mitigation, technology and information system governance, user education and protection, know-your-customer principles, prohibitions, periodic reports, and sanctions. However, what are considered to be shortcomings of these rules are the provisions relating to loan interest, technical credit analysis, dispute resolution procedures, personal data protection and billing implementation, which have not been properly accommodated so that they are still very risky and have not fulfilled the purpose of legal protection for service users.²³

In a more concise manner, it can be explained that digital financial innovation in the process of obtaining business legality must pass at least three stages of the process. First, the process of recording and applying for regulatory sandbox testing for fintech lending to the OJK. Second, the implementation of the regulatory sandbox process with a maximum period of 1 (one) year can be extended for 6 (six) months. Third, if it has successfully passed the regulatory sandbox process and has obtained the recommended status, the fintech lending service provider can proceed to the registration and licensing process for the implementation of fintech lending.²⁴

After the operator has gone through several testing processes and fulfilled the registration and licensing requirements, it does not mean that the operator is free from norms in running fintech lending financial services. In implementing this digital financial service activity, the provider has an obligation to apply consumer protection principles, provide education and financial literacy to consumers, maintain good digital financial governance, maintain the confidentiality of consumer data, and apply risk management and prudence in providing services.²⁵

In carrying out fintech lending business activities, both service providers and service users are required to carry out risk management. If in the future it can be proven that the fintech lending provider failed to carry out risk management either due to negligence or intentional harm to fintech lending service users, then the organizer can be held legally responsible.²⁶

Risk management is an important issue that must be addressed to avoid potential problems. Provisions regarding risk management have been regulated in the Regulation of the Financial Services Authority No.: 18/SEOJK.02/2017 concerning Implementation of Information

23 Ridayani, Asna, *Perlindungan Hukum Bagi Pengguna Jasa Peer To Peer Lending Terhadap Keterlambatan Pembayaran Pinjaman & Finansial Teknologi*, Final Project, Law Faculty of Universitas Jember, 2019, page.73

24 Nababan, M. G., Maria, S. S. S., & Deristiandra, M. P. P, *Penguatan Regulatory Sandbox & Scoring System Dalam Penerapan Prinsip Kehati-Hatian Pada Peer-To-Peer Lending*, Vol.3 No.1, 2019, page.61

25 Loc.Cit, Article 18

26 Ibid. Article 37

Technology Governance and Risk Management in Information Technology-Based Lending Services.

In addition, in seeking to maximize legal protection in the implementation of fintech lending, OJK has formed a Digital Economy and Finance Innovation Development Team (hereinafter abbreviated as PIDEK), a combination of several work units at OJK. The main task and function of PIDEK are to review and study the development of fintech to be able to prepare all the arrangements and development strategies that will be carried out.²⁷

Then, with the increasing public interest and response in the fintech lending financial services sector, the OJK then formed a new work unit named the Digital Finance and Microfinance Innovation Group and the Directorate of Fintech Regulation, Licensing and Supervision. Apart from the two new work units, OJK has also established a Fintech Expert Forum (fintech advisory forum), which functions as a place to provide facilities and ensure inter-institutional coordination, both ministries and related parties with fintech lending business actors so that it is hoped that it can run smoothly and can provide benefits. The direction of the development of the fintech industry is getting better in the future.²⁸

In membership, this fintech expert forum comes from individuals who are considered to have expert competence in the field of digital financial innovation, including those from the Financial Services Authority, Bank Indonesia, Ministry of Finance, Coordinating Ministry for Economic Affairs, Ministry of Trade, Ministry of Industry, Ministry of Home Affairs, Ministry of Communication and Information Technology, and finally the Ministry of Law and Human Rights. In addition, several agencies are also involved in seeking the convenience of using fintech lending, such as the Creative Economy Agency, the Indonesian Clearing and Guarantee Corporation (KPEI), the Indonesia Stock Exchange (IDX), the Association of State-Owned Banks (HIMBARA), the Indonesian Police Criminal Investigation Agency (BARESKRIM POLRI), Indonesian Fintech Association, Indonesian General Insurance Association (AAUI), Indonesian Life Insurance Association, Indonesian Securities Companies Association (APEI), University of Indonesia and Bandung Institute of Technology.²⁹

From the various benefits offered by fintech lending services, on the other hand, various problems become the weaknesses of fintech lending. Some of the problems that occurred, such as personal data protection, default events, loan interest, illegal fintech lending, certification in the field of technology and information on fintech lending. Some of these problems will then be discussed one by one in detail as follows:

a. Fintech Lending Technology and Information Certification

27 Financial Services Authority, *Study on Consumer Protection in the Financial Services Sector: Consumer Protection in Fintech*, Department of Consumer Protection, Jakarta, 2017, page.48

28 *Ibid*, Page 49

29 Loc. Cit. Financial Services Authority, 2017, page.49

The basic problem of certification in the field of technology and information for fintech lending providers is related to coordination with the Ministry of Communication and Information related to technology and information assessments. The problem lies in the constraints of cross-sectoral coordination because they cannot go hand in hand. This condition is due to the absence of a central department in the implementation of fintech lending at the OJK for the purpose of solving all fintech lending problems. Apart from that, the rhythm of the development of digital financial innovation fintech lending is so fast that the speed of regulation is unable to keep up, so much of the problem solving is delayed.³⁰

b. Default Event

A default event is when the borrower fails to return the funds belonging to the lender.³¹ The occurrence of a default event is one of the implications of the high-interest rate on loans so that the result is that the loan borrower is reluctant or unable to repay the loan (default).³²

c. Fintech Lending Interest

Until now, the Financial Services Authority and Bank Indonesia have not regulated the limitation of loan interest rates in the provision of fintech lending financial services. Indirectly, OJK only appointed the Indonesian Joint Funding Fintech Association (AFPI) to provide regulation and supervision of fintech lending interest rates. The loan interest rate provisions are regulated in the AFPI code of conduct with maximum loan interest of 0.8% per day and late fees or interest and other fees of not more than 100% of the loan amount.³³

However, there are irregularities in the determination and supervision of loan interest rates carried out by AFPI. This discrepancy is seen from the lack of legal standing of the AFPI's authority to regulate, especially the main tasks and functions of regulating and supervising interest rates are not actually under the authority of the AFPI.³⁴

a. Illegal Fintech Lending Development

30 Fachrurrazy, M., & Siliwadi, D. N, Regulasi & Pengawasan Fintech Di Indonesia: Perspektif Hukum Ekonomi Syariah, *Jurnal Hukum Keluarga Islam & Kemanusiaan*, Vol.2 No.2, 2020, page.167-168

31 Syaifudin, A, Perlindungan Hukum Terhadap Para Pihak Di Dalam Layanan Financial Technology Berbasis Peer To Peer (P2P) Lending (Studi Kasus di PT. Pasar Dana Pinjaman Jakarta), *Dinamika: Jurnal Ilmiah Ilmu Hukum*, Vol.26 No.4, 2020, page.411-414

32 Suhermi, S., & Hosen, M, Implikasi Hukum Pasca Pencabutan Izin Perusahaan Pinjaman Berbasis Teknologi (Peer To Peer Lending) Oleh Otoritas Jasa Keuangan, *In Prosiding Seminar Hukum & Publikasi Nasional (Serumpun)*, Vol.1 No. 1, 2019, page.51

33 Financial Services Authority, *Frequently Asked Questions: Fintech Lending*, OJK, 2020, quoted on <https://Ojk.Go.Id/Id/Kanal/Iknb/Data-Dan-Statistik/Direktori/Fintech/Documents/Faq-Fintech-Lending/>. accessed in Thursday, March 27, 2021, 19:47 WIB.

34 Handayani, Oti and Sulistiyono, Adi, *Pembadanan Hukum Fintech Sebagai Instrumen Pengaturan Persaingan Usaha Yang Sehat*, *Masalah-Masalah Hukum*, Vol.49 No.3, 2020, page.250

According to the Financial Services Authority (OJK) records, there were 1,026 illegal fintech companies in 2020. This No. decreased compared to the previous year's 1,490 companies. Even now, OJK has only granted business licenses to 148 registered loans.³⁵

The development of illegal fintech lending companies in Indonesia is currently very concerning because it causes a lot of harm to the general public. The impact of the high development of illegal fintech in Indonesia is the violation of the principle of legal protection for consumers. Weak supervision of illegal fintech lending companies has resulted in many illegal fintech lending companies committing various law violations against consumers, one of which is the widespread theft of personal data.³⁶

b. Consumer Protection Problems in Billing

Currently, with advances in technology and information, there are many loopholes in the violation of the right to protection of consumers. One of them is related to unfair online loan collection procedures to customers.³⁷ In November 2020, based on data from the Indonesian Fintech Funding Association, 3,726 of these reports were received, the majority with a percentage of 46% being reports due to unethical billing.³⁸

Online loan collection using rough methods such as threats, slander, fraud, dissemination of personal data, even sexual harassment is often carried out, especially by illegal Fintech lending companies.³⁹ As a result, many customers experience depression and, even in some cases, result in suicide because the customer was unable to repay the loan.⁴⁰

35 Pusparris, Yosepha, *Masalah di Balik Pesatnya Pertumbuhan Fintech Pinjam-Meminjam*, Katadata, April 22, 2021, quoted on, <https://katadata.co.id/ariayudhistira/analisisdata/608059aa0ace4/masalah-di-balik-pesatnya-pertumbuhan-fintech-pinjam-meminjam> in December 20, 2021, 14:08 WIB.

36 Ningrum, Ivana Elvina, *Perlindungan Konsumen Atas Kerugian Dalam Penyelenggaraan Peer To Peer Lending (Tunaiku) Yang Batas Terdaftar Di Otoritas Jasa Keuangan*, Final Project, Law Faculty of Universitas Islam Indonesia, 2019, Page 79

37 Harahap, I., Yalid, Y., & Pratiwi, R, Peningkatan Pemahaman Anggota Koperasi Ainul Zahroh Kantor Pusat Sidomulyo Barat Terhadap Aspek Legal Fintech, *COMSEP: Jurnal Pengabdian Kepada Masyarakat*, Vol.2 No.1, 2021, page.28

38 Maizal Walfajri, *AFPI: Penagihan Tidak Beretika Paling diadukan Konsumen Fintech P2P*, Keuangan. Kontan, November 24, 2020, Cited from <https://keuangan.kontan.co.id/news/afpi-penagihan-tidak-beretika-paling-diadukan-konsumen-fintech-p2p>. in April 26, 2021, 09.35 WIB

39 Bf, Ari Rahmad Hakim, Wisudawan, I Gusti Agung, & Setiawan, Yudi, Pengaturan Bisnis Pinjaman Secara Online Atau Fintech Menurut Hukum Positif Di Indonesia, *Ganec Swara*, Vol.14 No.1, 2020, page.465-470

40 Hiyanti, H., Nugroho, L., Sukmadilaga, C., & Fitrijanti, T, Peluang & tantangan fintech (financial technology) syariah di Indonesia, *Jurnal Ilmiah Ekonomi Islam*, Vol.5 No.3, 2019, page.330

2. Self-Regulation in Peer-to-Peer Lending (P2P) in Indonesia

Self-regulation is a general term that includes self-reinforcement and self-punishment. Self-reinforcement works primarily through its motivational effect. When an individual set performance standards for themselves, they assess their behavior and determine whether it meets self-determined reward criteria or not. Because many activities do not have absolute measures of success, individuals often set their standards in a relative way.⁴¹

According to Bandura (1997), Self-regulation is how humans are able to regulate themselves, influence their behavior by regulating the environment, creating cognitive support, and carrying out consequences for their own behavior. Self-regulation is the ability to regulate one's own behavior and is one of the main drivers of human personality. To achieve an optimal goal, a person must be able to regulate his own behavior, directing that behavior in order to achieve the desired goal.⁴² Self-regulation is understood as law formulated by private institutions to regulate professional and commercial activities.⁴³

From the regulation in which business actors regulate their own business activities, it can be concluded that the financial technology sector can be regulated by market players themselves (self-regulation)⁴⁴ through the social contract of the parties involved. According to Jean Jacques Rousseau, this social pact is the basis for the formation of associations that have free power to regulate and defend their interests and are obeyed by their members⁴⁵.

The application of self-regulation is considered as one of the appropriate governance models for the financial technology industry, which is growing and mutating rapidly. This is because self-regulation is based on the fact that there are limitations of government law (limit of law) in regulating a complex society. So this self-regulation focuses on social processes in "regulated autonomy": allowing private actors (business actors in this case represented by associations) such as corporations to be free to regulate themselves.⁴⁶ This is to overcome the crisis of the interventionist state (crisis of state intervention) from the inability of the law to meet the demands of various community problems

41 Kelland, Mark D, *18.4: Self-Regulation And Self-Efficacy*, August 17, 2020, quoted on [https://socialsci.libretexts.org/Bookshelves/Psychology/Book%3A_Personality_Theory_in_a_Cultural_Context_\(Kelland\)/18%3A_Social_Learning_Theory_and_Personality_Development/18.04%3A_Self-Regulation_and_Self-Efficacy](https://socialsci.libretexts.org/Bookshelves/Psychology/Book%3A_Personality_Theory_in_a_Cultural_Context_(Kelland)/18%3A_Social_Learning_Theory_and_Personality_Development/18.04%3A_Self-Regulation_and_Self-Efficacy) in December 20, 2021, 14:13 WIB.

42 Musyriyah, C, *Pengaruh Metode Tutor Sebaya (Peer Tutoring) Dalam Meningkatkan Self Regulation Siswa*, Dissertation, UIN Sunan Ampel Surabaya, 2016, page.20

43 *Ibid*

44 Anthony Ogus and Emanuela Carbonara, *Self-regulation, Chapter 13 in Production of Legal Rules*, Edward Elgar Publishing (2011), https://www.researchgate.net/publication/265402203_3_Self-regulation

45 Rousseau, Jean Jacques, *Prinsip Kontrak Sosial atau Prinsip Prinsip Hukum Politik*, Penerbit Dian Rakyat, Jakarta, 1989, page.14 – 15

46 Dewata, Mukti Fajar Nur, *Tanggung Jawab Sosial Perusahaan: Studi Tentang Penerapan Ketentuan CSR Pada Perusahaan Multinasional, Swasta Nasional & BUMN di Indonesia*, Pustaka Pelajar, Yogyakarta, 2010

that continue to change.⁴⁷ It is similar when the law is dealing with a disruptive sharing economy.

In accordance with the mandate of the law, OJK is the supervisor of financial service institutions, but in practice, supervision with this market discipline approach can be delegated to other parties. The choice of fintech supervision through a self-regulatory organization (SRO) in the implementation of market implementation can also be done because the SRO is near the market and industry, so its policies are in line with market dynamics. However, the neutrality and integrity of these SROs must be maintained.

OJK has appointed three financial technology or fintech organizations: the Indonesian Fintech Association (AFTECH), the Indonesian Joint Funding Fintech Association (AFPI), and the Indonesian Sharia Fintech Association (AFSI) as Self-Regulatory Organizations (SRO) and the three organizations have developed a code of ethics together or join the code of conduct. This regulation was launched at the 2019 Indonesia Fintech Summit and Expo.

A self-regulatory organization (SRO) is an institution authorized by law to regulate its members through its own regulations.⁴⁸ The implementation of self-regulation in the P2P Lending sector is the appointment of the Indonesian Fintech Association (AFTECH) as a Self Regulatory Organization (SRO). AFTECH was established in 2016 and is a forum for fintech providers to advocate and collaborate with various stakeholders to encourage technological innovation and strengthen the competitiveness of the national fintech industry. AFTECH was officially appointed by the Financial Services Authority (OJK) as the Association for Digital Financial Innovation Providers (IKD) on August 9, 2019, based on POJK No. 13/2018.

In September 2019, AFTECH, the Joint Funding Fintech Association (AFPI), and the Indonesian Sharia Fintech Association (AFSI) launched the Code of Conduct for Financial Technology Operators in the Responsible Financial Services Sector. This Code of Conduct is binding on each member of AFTECH, AFPI and AFSI.

AFPI itself then issued a code of conduct for the provision of information technology-based lending and borrowing services in a responsible manner. The code of conduct for the provision of information technology-based lending and borrowing services is a set of process principles and guidelines that bind each member to provide ethical guidance and responsible behavior for providers who offer Information Technology-Based Lending and Borrowing Services. This code of conduct is binding on every member of the association that offers information technology-based lending and borrowing services and is also binding on

47 David Hess, Social Reporting: A Reflexive Law Approach to Corporate Social Responsiveness, *Journal of Corporation Law*, Vol.25, 1999, page.42

48 Indonesian Capital Market Arbitration Board, *Dictionary*, Bapmi, 2021, quoted on <http://www.bapmi.org/in/glossary.php> in December 20, 2021, 14:18 WIB.

other providers who provide support services for providers of Information Technology-Based Borrowing-Lending Services (LPMUBTI).⁴⁹

The code of conduct is prepared by referring to three basic principles:⁵⁰

- a. Product transparency and service product offering methods, including disclosure of information related to rights and obligations, risk information, borrowing fees and interest;
- b. Prevention of excessive borrowing, including the prohibition of predatory lending, prohibition of granting and adding loans without the agreement of the parties and the obligation to verify and assess loan recipients;
- c. The application of the principles of good ethics, including good ethics in the event of errors and or negligence of employee management and electronic systems, handling of personal data, collection of defaulted loans, use of third parties in the collection, prohibition of the use of physical and mental violence (including cyberbullying), and customer data are reported to Fintech Data Center.

AFPI has the authority to impose sanctions on organizers who do not comply with the provisions in the code of conduct. The sanctions that can be imposed are as follows:⁵¹

- a. written reprimand
- b. publication of the names of members and the violated provisions to the Financial Services Authority and to the public
- c. temporary suspension from association membership
- d. permanent termination of membership of the association, and or
- e. other sanctions regulated in the standard operating procedures for personal data protection or other association regulations.

The determination of sanctions is carried out in accordance with the procedures for imposing sanctions by the ethics committee of the association based on the considerations of the ethics committee of the association based on the following factors: the frequency of violations committed by the organizers, the impact resulting from violations by the organizers, elements of intent and negligence, other factors deemed relevant by the ethics committee of the association, including the scale of the operator's business.

Concretely, several actions can be taken by fintech associations and/or organizers in tackling the spread of illegal fintech. First, carry out a campaign that aims to educate the public about a strict prohibition on every community from applying for loans at illegal fintech. Some of the

49 Fintech Association Indonesia, *Pedoman Perilaku Pemberian Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi Secara Bertanggung Jawab*, July 2018, quoted on <https://docplayer.info/89059615-Pedoman-perilaku-pemberian-layanan-pinjam-meminjam-uang-berbasis-teknologi-informasi-secara-bertanggung-jawab.html> in December 20, 2021, 14:21 WIB.

50 *Ibid*

51 *Ibid*

risks that will be faced are so complex and dangerous to consumers, lack protection, are not monitored, and have the potential to cause privacy problems.⁵²

Second, expand the reach of literacy about the importance of legal fintech and the dangers of illegal fintech. Fundamentally, the awareness that must be built is related to the importance of digital literacy, fintech licensing, data confidentiality, billing procedures, agreement analysis, loan impact and problem-solving efforts. It is done because the level of knowledge and understanding of the community regarding aspects of fintech lending is still very low.⁵³ Overall, the association's involvement in tackling the spread of illegal fintech lending is limited to the two points mentioned above. Meanwhile, related to efforts to take firm action against other illegal fintech, this can be done by reporting to the Investment Alert Task Force (SWI) and the Directorate of Cyber Crime of the Police so that later with Google Indonesia they can take action in the form of blocking the illegal fintech site.⁵⁴

D. CONCLUSION

The application of self-regulation is considered as one of the appropriate governance models for the financial technology industry, which is growing and mutating rapidly. This theory is believed to be able to overcome the crisis of the interventionist state from the inability of the law to meet the demands of various evolving social problems, especially when the law deals with disruptive Fintech P2P Lending. But, the function of the Self Regulatory Organization have not been maximized, and this is indicated by the many complaints from the public at the Financial Services Authority and the low level of public understanding regarding the procedures, rights and obligations of the parties in the financial technology industry resulted in the public/consumers being at a disadvantage as a weak party. Based on these facts, further Government involvement is necessary for regulating the financial technology industry sector, especially in law enforcement in accordance with several laws and regulations related to the P2P lending business.

52 Harahap, I., Yalid, Y., Pratiwi, R, Peningkatan Pemahaman Anggota Koperasi Ainul Zahroh Kantor Pusat Sidomulyo Barat Terhadap Aspek Legal Fintech, *Jurnal Pengabdian Kepada Masyarakat*, Vol.2 No.1, 2021, page.28

53 *Ibid*, Page 30

54 *Ibid*, Page 31

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