

CHAPTER I

INTRODUCTION

A. RESEARCH BACKGROUND

The world has changed rapidly and dynamically, human intelligence put out the capacity for them to create things that able to enhance their life in many living aspects. Humans keep on pulling out strings and working to find out the solution to how to create a better, easier and sophisticated way of living. We call it innovation as a way to describe how all of this imaginative thought is process and transforming as an idea to reality. We have the technology and the internet of things this era, those innovation contains a handful of breakthrough ideas. There are numerous people through their innovation, talent, will and hard work create the biggest impact throughout the world bringing an abundance of changes and improvement.

The breakthrough ideas from inventors who are successfully defying conventional wisdom, old stigma, proving their science and knowledge able to keep them going to endure changes as creating a fast forward-thinking world. These inventors needed further support from the legal institution as providers of security and protection for the matter of legality aspects, in functions of minimalizing risk in the revolutionizing nation of Indonesia.¹The main reason is that the law has power derived from formal authority there is the granting of authority to someone to make happen the purpose of the law which is to realize order, order is the main purpose and first of all laws. the need for order, the basic condition for an organized society.

Supported by National Law Development Agency (BPHN Badan Pembinaan Hukum Nasional), BPHN stating legislation should ideally be able to accommodate the development of technological innovation very rapidly, in this case the legal position must be able to answer problems related to the development of technological innovation, so that later the legislation is expected not to be passive and seemingly reactionary to the existing conditions but must be

¹ Otje Salaman dan Eddy Damian (ed), Konsep-Konsep Hukum dalam Pembangunan dari Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M, (Bandung: PT. Alumni,2002), pg. 5.

futuristic. Vice versa, in global developments that are all digital and electronic, it is also hoped that the development of technological innovation functions as a tool that can develop the law itself. Under these conditions law and technological innovation work together.²

The breakthrough idea writer discussing in this undergraduate project came from Fintech, In a worldwide Fintech has successfully become the new disruptive industry. By adding technology into finance to create a new form of industry displace position of the conventional form of industry, handling every user every banking service to the user's hand putting automation to finance.

³American scholar Clayton M. Christensen and his collaborators beginning in 1995 came up with the term of disruptive innovation of this global phenomenon, Disruptive technologies bring to a market a very different value proposition, Then had been available previously. Generally, disruptive technologies underperform established products in mainstream markets. But they have other features that a few fringe (and generally new) customers value. Fintech making an entrance to the financial world and gain the interest of the population all over the world. There are several categories of Fintech such globally well-known as; Lending, International Money Transfers, Personal Finance, Insurance Payments, Equity Financing and Payments, cryptocurrency. To be more narrow and on point, the category writer selecting is lending, specifically Peer-to-Peer Lending.

The Peer-to-Peer network creates disintermediate movement in varies sectors of market. Besides the finance world, we could also look at Peer-to-Peer in the collaborative and sharing economy. Using technology and innovation which delivered in smart-phone, easy access just on our fingertips. TokoPedia, Bukalapak, and Shopee, producer able to reach the customer directly or individual who is willing to sell their item able to connect to a customer without using any distributor, reseller, retailer, agent, broker or not needing a space for a store. Peer to Peer networks also given the large company in Indonesia such as GO-JEK to

² BPHN, "*Inovasi Untuk Regulasi Yang Lebih Baik Dan Regulasi Untuk Mengakomodir Perkembangan Inovasi Teknologi*", <https://bphn.go.id/news/2019071104390193/Inovasi-Untuk-Regulasi-Yang-Lebih-Baik-Dan-Regulasi-Untuk-Mengakomodir-Perkembangan-Inovasi-Teknologi>, access on 17 November 2019

³ Clayton Christensen, *The Innovator's Dilemma*, (United States, Boston, Massachusetts: Harvard Business Review Press, 1997), pg. 15

links passengers and individuals who privately own the car, with their services those supply and demand able to meet in instant way by direct connection, motorcycle owned by individuals also able to links directly with users who is willing to use their services such as delivery or their own personal driver. The social network have been used by numbers of people to raise money for charity, advertising, self-marketing, and plenty more purposes. Peer-to-Peer Lending work the similar way to how they eliminate intermediates in borrowing market place. The networking system connecting those people with money as lenders with people who is needing money as borrowers.

In Bank Indonesia Regulation No.19/12/PBI/2017 concerning Implementation of Financial Technology the definition used by BI regarding fintech to its categories and criteria has been confirmed.

Definition of Financial Technology / Fintech

Article 1:

Financial Technology is the use of technology in a financial system that produces new products, services, technology and / or business models and can have an impact on monetary stability, financial system stability, and / or the efficiency, smoothness, security and reliability of payment systems.

Implementation of Financial Technology / Fintech category

Article 3 paragraph 1:

1. Payment system;
2. Market supporters;
3. Investment management and risk management;
4. Loans, financing and capital supply; and
5. Other financial services.

⁴Zopa was the first Peer-to-Peer Lending, founded in 2004 by a team of internet banking expert from Egg Banking Company in Buckinghamshire, United Kingdom and launched in 2005. Since its establishment, Zopa has issued more

⁴ Wikipedia, "Zopa", <https://en.wikipedia.org/wiki/Zopa>, access on 10 November 2019

than GBP 3.22 billion worth of loans to borrowers in the United Kingdom.⁵ As a result of the crisis in the late 2000s, many people turn to Peer-to-Peer Lending because of banks were immensely reluctant giving loans and borrowers looking for another alternative. Peer-to-Peer Lending regulated by The Financial Conduct Authority (FCA) as financial regulatory body in the United Kingdom. On 4 June 2019, The Financial Conduct Authority (FCA) published Policy Statement (PS19/14) setting out final rules on loan-based (or 'Peer-to-Peer') and investment-based crowdfunding platforms and providing feedback to Consultation Paper (CP18/20) (Policy Statement).⁶ The Policy Statement primarily focuses on Peer-to-Peer (P2P) platforms, the new rules aim to improve standards in the sector and protect investors, without however stifling innovation.

In Indonesia, Peer-to-Peer Lending is regulated under OJK since 2016, With the current regulatory framework POJK77/POJK.01/2016 information technology-based lending and borrowing services are defined as the platform of financial services to bring together lenders and loan recipients in the context of entering into loan agreements in rupiah directly through an electronic system using the internet network. The Financial Services Authority (OJK) in accordance with Law Number 21 of 2011 concerning the Financial Services Authority, OJK has the authority, duties and functions to regulate, supervise and protect the financial industry in Indonesia. According to Aftech (The Indonesian Fintech Association) low penetration of credit cards in Indonesia is main reason of the emerging Peer-To-Peer Lending, based on data collected from 18 credit card service providers, there are only about nine million unique holders of credit cards throughout Indonesia. This number only reaches nearly six percent of the entire adult population in Indonesia. Meaning there are still more than 90 percent of the adult population who might need these facilities,⁷ as well Peer-to-Peer Lending

⁵ Mārtiņš Šulte, "Revolutionising Finance – The History Of The Peer To Peer Lending Industry", <https://www.lafpa.lv/en/blog/revolutionising-finance-the-history-of-the-peer-to-peer-lending-industry/>, access on 10 November 2019

⁶ Financial Conduct Authority. "Loan-based ('peer-to-peer') and investment-based crowdfunding platforms: Feedback to CP18/20 and final rules", <https://www.fca.org.uk/publications/policy-statements/ps19-14-loan-based-peer-to-peer-investment-based-crowdfunding-platforms-feedback-final-rules> access on 20 December 2019

⁷ Reynold Wijaya, "FinTech Landscape di Indonesia", <https://klcfiles.kemenkeu.go.id/2019/08/4-Reynold-Wijaya-Fintech-Landscape-di-Indonesia.pdf>, access on 11 December 2019

platforms provide loans in particular targeting into unbanked population, which is estimated at around 100+ million in Indonesia.⁸ This new innovation of digitalized money lending or borrowing has many perks to offer as by giving people an alternative way of borrowing and generate their money. In the latest data from OJK in development so far, there have been 127 companies registered and owning a license in OJK on the 13th of August. With the accumulated number of loans, 49,79 Trillion of Rupiah and the number of borrowers accounts in total 11.415.849 entities on the 19 July⁹. Peer-to-Peer Lending is one of the solutions to financial inclusion in Indonesia. Although the development and usage of this services, is still low compared to the average of countries in East Asia and the Pacific. Based on data from the World Bank Global Findex 2017, adults in Indonesia who already have new accounts reach 48.9%. This figure is fairly low, compared to countries in East Asia and the Pacific which reached 70.6%.¹⁰

However, in this fast-growing industry, many people started to have the urgent need of the regulatory body of government to give protection to the people who are using the platform's services. Indonesia's regulatory body has to do a further examination as a function to provide order to the citizen in Indonesia. Mistake was made by the government in China with fairly low regulation of Peer-to-Peer Lending yet the size of the loan in the industry is outstanding it is larger than the rest of the world combine with number reach US\$217.96BN. Despite¹¹ its success that worthy of attention, apparently, the facts that slowly emerge to the people, It is not all that sunny in Chinese Peer-to-Peer Lending sector. Peer-to-Peer Lending has taken its dark turn once trouble started brewing in China back in 2016, when statistics released by the Chinese Banking Regulatory Commission

⁸ Otoritas Jasa Keuangan, "Statistik Fintech Lending Periode November 2019" Otoritas Jasa Keuangan, "Statistik Fintech Lending Periode November", <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Pages/Statistik-Fintech-Lending-Periode-November-2019.aspx>, access on 01 January 2020

⁹ Reynold Wijaya, "FinTech Landscape di Indonesia", <https://klcfiles.kemenkeu.go.id/2019/08/4-Reynold-Wijaya-Fintech-Landscape-di-Indonesia.pdf>, access on 11 December 2019

¹⁰ Yuni Astutik "Pelajari Risikonya Maka Anda Bisa Untung Jadi Lender Fintech" [https://www.cnbcindonesia.com/tech/20190917174522-37-100139/pelajari-risikonya-maka-anda-bisa"-untung-jadi-lender-fintech](https://www.cnbcindonesia.com/tech/20190917174522-37-100139/pelajari-risikonya-maka-anda-bisa), access on 20 December 2019

¹¹ PYMNTS, "Protests Mark China's Ruptured P2P Lending Landscape", <https://www.pymnts.com/news/international/2018/china-protestors-p2p-lending-regulation-fraud-debt/>, access on 20 November 2019

showed that about 40% of P2P lending platforms were, in fact, Ponzi schemes.¹² More concerning when a 31-year-old investor who hanged herself after losing nearly \$40,000 on the platform PPMiao went viral on social media. The number of platforms dropped 52% in 2018, to slightly over 1,000, and is predicted to dwindle to just a few hundred these years.¹³ Lack concern, looseness and absence of regulation was part of reasons for this Peer-to-Peer Lending taking their dark turn in a market.

Indonesia's regulatory body has to cross and examine looking at what has happened in China in order to avoid its citizens of Indonesia to experience that unpleasant thing. In recent days there are many implications has found in Indonesia In June 2019, the Jakarta Legal Aid Institute (LBH Lembaga Bantuan Hukum) had already received 4,500 complaints regarding Fintech lending. The Head of the Indonesian House of Representatives, Bambang Soesatyo said that at present his party was reviewing plans for making regulations related to fintech. In his statement: "At present all proposals from the community are being reviewed in the DPR. Whether the need for urgency, depends very much on what is expected by the public, can come from government initiatives, comes from the DPR all being studied plus and minus,"¹⁴

Over the facts and explanations above within the overflow of technology, Law require to have its presence in community to regulate, along with the operation of Peer-to-Peer Lending to understand why does the law very important and here is definitions of law according to the experts ;

Plato: the law is a well-organized and well-regulated law that also binds the community and government.

Tullius Cicero: the law is the highest product of thinking or reasoning that determines what is good and what is not.

¹² CBN Editor, "Foreigners Misunderstand China's P2P Lending Industry", <http://www.chinabankingnews.com/2019/10/30/foreigners-misunderstand-chinas-p2p-lending-industry/>, access on 20-11-2019

¹³ Maulia Erwinda, "Indonesian P2P lender hatched at Harvard rises in booming market" <https://asia.nikkei.com/Spotlight/Startups-in-Asia/Indonesian-P2P-lender-hatched-at-Harvard-rises-in-booming-market>, access on 20 November 2019

¹⁴ Liputan 6, "DPR Ingin Bikin UU Fintech, Ini Kata Bos OJK" <https://www.liputan6.com/bisnis/read/3932366/dpr-ingin-bikin-uu-fintech-ini-kata-bos-ojk>, access on 20 Oktober 2019

Utrecht: law is a set of guidelines (rules and prohibitions) that govern the order of a society that members of the public should adhere to and if violated can result in action from the government.

Prof. Dr. Van Kan: law is the whole rule of life that compels the protection of human interests in the Society. This law is the most important aspect of the implementation of the constitutional power chain which has the task of ensuring legal certainty for society. Therefore, for equal rights in law is owned by every citizen. From those definitions, law possessed a high position in society as institution with power to take any action regarding the determination of what is good or bad, for purposes of legal protection also protects legal subjects through applicable laws and forced to be obeyed and when violating constitutional elements will be subject to sanctions.

There are 4 elements of the law that must exist in a legal sense or the formulation of a law, namely:

1. The law regulates human behavior or actions in social life that contain commands and prohibitions.
2. Legal regulations are determined by the institution or authorized body. So the law should not be made by ordinary people but by authorized institutions. The nature of this law is binding on the wider community.
3. Enforcement of the rule of law must be forced where the rules are not to be broken but to be adhered to.
4. Having sanctions in every violation, sanctions are strict and regulated in legal regulations.

As in Indonesia, there are two types of law protection, namely:

1. Repressive Law

Within form of sanctions such as imprisonment, fines, and additional punishment is the final protection in based on rules of law that can be given when a dispute has occurred or a violation has also occurred.

2. Preventive Law

In order to prevent the violation, there are guidance provided by the government with sets of steps and rules to be followed. With the aim to prevent a violation and provide guidelines in carrying out an obligation.

In conclusion definition of law, the law is a set of rules made by regulators where people bound to obey. Yet the law not fully have the control to the command of humans will power, people still own the free will of their own conduct. As for the sake of sustainability living in society, The law performs as social control. Any violation of laws might result in action from the government and be subject to sanctions. The problematic issue with OJK Regulation (POJK) Number 77 of 2016 concerning Information Technology-Based Lending and Borrowing Services to regulate Fintech lending, that is not containing any legal sanction, but only blocking and revoking permits if there is proven violation.

The establishment of OJK is a judicial mandate of Act Number 23 of 1999 in conjunction with Act Number 3 of 2004 in conjunction with Act Number 6 of 2009 concerning Bank Indonesia (Bank Indonesia Law). OJK functions to organize a system of regulation and supervision that is integrated to all activities in the financial services sector. This is as stipulated in the provisions of Article 5 of the OJK Law. The banking regulation and supervision function is included in the financial services sector, which was previously the domain of BI's authority. OJK is an independent institution and is free from interference from other parties which has the functions, duties and authority to regulate, supervise, examine and investigate as referred to in Law Number 21 year 2011 about OJK. Writer views for future safety government need to make a move to enact special Fintech laws and its clusters, to be able to function to establish standards, to maintain order, to resolve disputes, and to protect liberties and rights.

As OJK is a receiver of a judicial mandate, according to the review of writer on regulations number 77 /POJK.01/2016 its containing explanation, guidelines and the sanction is only to revoke the license of company of Peer-to-Peer Lending. looking on Law No. 12 of 2011 concerning the formation of laws and regulations in article 7 paragraph 1 stated that the type and hierarchy of legislation consist of:

1. The Constitution of the Republic of Indonesia of 1945;

2. The decision of the People's Consultative Assembly;
3. Law/Government Regulation in Lieu of Law;
4. Government regulations;
5. Presidential decree;
6. Provincial Regulations; and
7. Regency/City Regulations.

Through writer observation regarding the fintech ecosystem, it is not yet possessing particular position of its own law which belong to the hierarchy legislation of Law No. 12 of 2011, Especially concerning the main topic of this undergraduate study is Peer-to-Peer Lending there is not yet a specific act reform to provide complete coverage of legal protection for the Peer-to-Peer Lending where it rules out sanction not only for the platform of Peer to Peer Lending but as well users of Peer to Peer Lending. The writer suggested there is an urgency to reform a law because where most of the material is no longer in accordance with the development and legal needs of the community.

There is been reported numerous cases coming from users of Peer-to-Peer Lending in Indonesia, particularly fraudulent acts, money has become a basic need for survival. The important function of money as a medium exchange, placing human to work hard and smart in order to be able to earn as much as they possibly they can, in the end, number of money has become the measurement of wealth of everybody. There is nothing wrong to earn as much as any individuals want, it is an inevitable encouragement for mankind to be productive. In spite of that in some conduct of obtaining money, many people found conducting financial crimes, crimes facing the financial sector are are money laundering and terrorism financing.

OJK Regulation (POJK) Number 77 of 2016 is mostly covered in the preventive area yet it is lacking repressive nature where law also should be punitive along with the sanction of violation conduct. To provide additional legal protection for customers for example in case of default to pay by borrowers to lenders, in 90-day default to pay in Peer-to-Peer lending levels have been observed to increase. As of July 2019, the percentage was 2.52%. This percentage increased by 73.12% YTD. In fact, the previous month the figure was quite gentle

at 1.75%.¹⁵ Many increase interest rates cases came from a customer of Peer-to-Peer lending, Billing to parties not related to the loan and photo distribution occurred to 1,100 victims. In addition, complaints related to threats, libel, sexual harassment, and fraud were reported by 781 customers.

Peer-to-Peer Lending is a digitalized form of lending, where it operates as a platform or middle-man allowing individuals as lenders and borrowers to meet. Peer-to-Peer Lending is an interesting way for people with extra cash of their income with the interest rate in comparison to saving their cash in a conventional saving account besides that, it is more fast, simple, convenient and easier for a borrower to fulfil their need as its getting handy only by their mobile device. Borrower able to get student loan, pay their credit card, starting up their business and Lenders could set their loan repayment to suits their finances situation. As a way to provide legal protection for users of Peer-to-Peer lending, writer has done observation and research to analyse issues and legal protection which should be provided. Which will be presented in the result of this research and presented in this undergraduate study with the title **“Legal analysis on Peer-to-Peer Lending Users Protection in Indonesia”**

B. Research Question

¹⁵ Otoritas Jasa Keuangan, “Statistik Fintech Lending Periode July 2019”, <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Pages/Statistik-Fintech-Lending-Periode-Juli-2019.aspx>, access on 01 September 2019

Based on the background as described above, the writer can formulate the problem as follows:

1. How are the legal arrangements regarding Peer-to-peer Lending in Indonesia?
2. What are the legal issues that arise in Peer-to-Peer Lending?
3. What is the legal protection for lenders and borrowers as users of Peer-to-Peer Lending services?

C. Research Purposes and Benefits

Based on the formulation of the problem that the author has described above, the objectives of this legal research are as follows:

1. Discovering the legal arrangements according to the system of law in Indonesia regarding Peer-to-peer Lending.
2. To figure out the problems and issues associated with Peer-to-Peer Lending.
3. To acknowledge legal instruments in order of providing legal protection for lenders and borrowers as users of Peer-to-Peer Lending services.

The benefit of writing this research paper are:

1. For academics
Providing information and knowledge of the ecosystem of fintech, specifically in Peer-to-Peer Lending and their regulation. As a reference to having to understand the conceptual framework and business model of Peer-to-Peer Lending as this is kept on developing in the future.
2. For the community
As the prospective users of Peer-to-Peer Lending services able to have comprehensive legal protection. This writing Helping innovator to be able let their invention flourish in a world of Fintech by ensuring the legality aspects
3. For regulators

Recommendation to own a better formulation of the law because in Peer-to-Peer Lending will need a strong core value and ethics as part of obtaining law and order and for the people that work in legal department able to look on the issues face by the community and provide fair and not an unjust law for the people.