

CHAPTER V

CONCLUSION, LIMITATIONS AND RECOMMENDATIONS

A. Conclusion

1. The legal arrangements regarding Peer-to-peer Lending in Indonesia.

The legal arrangement provided from regulators right now still on minimum coverage of scope area for Peer-to-Peer Lending, with regulation from OJK as Indonesia's Financial Service Authority issued regulation of POJK No. 77/POJK.01/2016 concerning Borrowing Services Information Technology Based, contain 52 articles. Adding letter from OJK Money Borrowing then has a derivative regulation in the form of OJK Letter (SEOJK) number 18/SEOJK.02/2017 About Information Technology Governance and Risk Management in Information Technology Based Lending and Borrowing Services.

77/POJK.01/2016 those regulation ruling on how FSP supposedly running their Peer-to-Peer Lending platform. For problematic legal issues haven't been regulated heavily, taking examples of cases from high-interest rates, default loan and billing method. There is no certain regulation coming from an authorized institution or government body that receives delegation of authority based on the law. Disclaimer from many Peer-to-Peer Lending mention government and the FSP itself didn't responsible for risk that might appear, and Peer-to-Peer Lending FSP also didn't appear as part of reporting party for Anti Money Laundry and Combating the Terrorism Funding.

We need Legal Framework which in accordance of the ideals of the welfare state based on the Pancasila and the 1945 Constitution of the Republic of Indonesia. Align to Prof. Romli Atmasasmita's concept of law is the principles, rules of process and institutions, is the driving force for the operation of law in society to achieve the legal goals of certainty, usefulness and justice. The process of developing the function and role of law must be carried out regularly, and rejects that the process of changing

society through law must be revolutionary. The core of the conclusion is the concept of law can be understood as a system of norms, as a system of behavior and as a system of values that is part of a particular community's activities, at certain times and places. The point of this theory is Prof. Romli Atmasasmita, S.H., LL.M. stated that through the performance of BSE (Social and Scientific Engineering) every step of the government in the formation of law and law enforcement is a policy based on a system of norms and logic in the form of principles and rules, and the normative strength of the law must be realized in changing people's behavior and bureaucracy towards the ideal, we are building a democratic rule of law. The democratic rule of law is excavated from three pillars, namely rule by law, protection of human rights and access to justice. The value referred to here is Pancasila as the highest value for making changes to norm systems and systems of social justice. Or it might not be excessive if the integrative law referred to by Romli is said to be law as if it were Pancasila.

Therefore, in the practice of international relations amid globalization, developing countries are often victims of hypocritical developed countries that are more selfish than developing together with other developing countries. In the field of bureaucracy, the integrative legal theory requires the existence of bureaucratic engineering and engineering the community. The point of this theory is the law is create order, order, peace and harmony of life in society. The theory used as The value referred to here is Pancasila as the highest value for making changes to norm systems and systems of social justice. Or it might not be excessive if the integrative law referred to by Prof Romli Atmasasmita is said to be law as if it were Pancasila. a means of engineering the community for development in order to achieve the ideology of the welfare state based on Pancasila and the Constitution 1945 of the Republic of Indonesia. That the main legal task, especially in the area of economic law, is to always maintain and enforce safeguards, so that the implementation of economic development will not sacrifice the rights

and interests of the weak. Only in this way will law still have a role in economic development.

2. The legal issues that arise in Peer-to-Peer Lending.

The Jakarta Legal Aid Institute (LBH) reported that during the 4 - December 2018 period, it had received 1,330 community complaints related to problematic Peer-to-Peer Lending practices. As of June 2019, there were 4,500 complaints about Peer-to-Peer Lending. While the Investment Alert Task Force reported that there were 683 illegal Peer-to-Peer Lending entities, that had ceased operations until July 2019 from the data most of the issues 70% came from Peer-to-Peer Lending.

From most of the cases observed by the writer, users are experiencing an increasing number of their loan interest rates and it is elevated high and fast causing them unable to pay off the loan or other reasons and situation where loan is not being able to fulfil, the issues keep on arises as FSP of Peer-to-Peer Lending hiring the third party as debt collector and from news report which given the methods of billing are abusive, threatening their human right, they did humiliation by accessing personal data of user as attempt of billing. The writer did observe other chances of criminal conduct that can occur in Peer-to-Peer Lending platforms such as terrorism financing and money laundry.

In summary legal issues are

1. Terrorism financing and money laundry
2. Identity theft or threatening data privacy
3. Default loan
4. High-interest rates
5. And illegal Peer-to-Peer lending.

3. Legal Protection For Lenders and Borrowers as Users of Peer-to-Peer Lending services.

In conclusion the legal protection specifically made for Peer-to-Peer Lending is on a minimum standard of providing legal protection and the regulation mostly are regulating Financial Service Provider and basic rule on operation of their business, writer still selecting of picking up law

from other business branches. Quoting the BPHN statement 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 futuristic.

1. Terrorism financing and money laundry

a. Regulations related to Lending are contained in the Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 Money Lending and Borrowing Services Information Technology. Article 42

b. Law No. 9 of 2013 concerning the Concerning Prevention And Eradication Of Criminal Funds Of Terrorism Funding

c. Law of The Republic Indonesia Number 8 of 2010 About Prevention and Eradication of Money Laundering

D. OJK Regulation No.12/POJK.01/2017 The Implementation Of Anti Money Laundering And Prevention Programs Terrorism Funding In The Financial Services Sector

E. Law Of The Republic Of Indonesia Number 9 Of 2013 Concerning Prevention And Eradication Of Criminal Funding Terrorism Funding Criminal Terrorism

2. Identity theft and data protection

a. Regulations related to Lending are contained in the Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 Money Lending and Borrowing Services Information Technology article 26 and article 36.

b. Electronic Information and Transactions Law number 8 year of 2011 Article 26 and 47.

c. Letter Of Financial Services Number 18/SEOJK.02/2017 About Governance And Information Technology Risk Management Loan

Service To Borrow Money Based On Information Technology, VI
Data And Information Management.

3. Intimidative Billing
 - a. Criminal Law Code article 38
 - b. Electronic Information and Transactions Law number 8 year of 2011
Article 29 jo 45(b)
 - c. Letter of Bank Indonesia no 15/17/DASPop2017 no.4
4. For issues of interest rates
Users could refer to the 1250 of Civil Code
5. default loan is still no law regulating it

B. Limitation

In process of writing this thesis writer facing several difficulties which constraint writer to be able having an easy way or method in order of completing this thesis, the hardship struggle and trouble the writer is can be identify below.

1. Limitation Access of Data

In the process of collecting data of cases and information of Peer-to-Peer Lending writer feel like in recent years of 2019 and so on the media has lacking news coverage to covering related news of Peer-to-Peer Lending in comparison with the preceding years, so many news and experience from users of Peer-to-Peer Lending somehow got taken down, writer wasn't able to locate article that is published. The writer did also email LBH (Lembaga Bantuan Hukum) to try to reach out and make a phone call in the attempt of getting data from most of Peer-to-Peer Lending users but didn't get an open arm or positive respond. Association of Fintech being discreet to the public with their code of conduct, the legal arrangement isn't transparently published to the public.

2. Limitation of Language

In the process of understanding how the Peer-to-Peer network system writer facing difficulties of understanding computing languages, it is hardship face by the writer itself to

understand, set up regulation and figure out a legal arrangement for this unconventional industry with advance development of technology system.

3. Limitation of Books

Writer facing hardship obtaining books specifically book about integrative legal theory, many books have borrowed and went missing at the library. The writer had tried an approach of contacting a person who had been borrowing the book previously yet information obtained is book can no longer be found.

C. Recommendation

1. There is still plenty of lacking coverage for Peer-to-Peer Lending issues of default pay, billing way, high-interest rates, anti-money laundry, and terrorism funding is not heavily regulated and causes chaos to users, therefore, there should be a movement to enact a law that could be giving a coverage upon to the regulated issue. Writer suggesting OJK ought to work with legislative body to reforming the constitution that is more comprehensive so that the Fintech and its ecosystem especially Peer-to-Peer Lending by Incorporate the cybersecurity and online dispute resolution forum for users and Peer-to-Peer Lending platform where Peer-to-Peer Lending users could resolve their issues, that hopefully would result the industry to run more smoothly. Ministry of Communication and Information and reportedly has been included Personal Data Protection Bill in the National Legislation Program (Prolegnas) since 2016, OJK needs to be actively involved in submitting the the concept for fintech industry during the National Legislation Program. For OJK as the financial Service authority attempt to re-new the current regulation 77/POJK.01/2016 to write Peer-to-Peer Lending as subject which regulated.

2. The academics shall see this robust of changes brought from Fintech and its products such as Peer-to-Peer Lending owning the money flow that rises up to 200% year to date. Academic ought to start incorporate technology to the education and create a program for students to learn to prep them having the capability to cope with the fast flowing technology that taking over varies aspects in live. In law divisions law students should have learning on how the technology changes the world and how to maintain the order as the changes develop through, as law is the engine that should run in the community to create stability. Academics has known the fate of this world in a future is in the hand of the next generation coming after the millennials and generation z, It's the academics and education system noble duty to prepare the next generation to be a smart, wise, sophisticated, advance yet morally appropriate to obey the law. As them continue flourish the world with innovation and procreate without causing mass disorganize in the community with the spirit of Bhineka Tunggal Ika and Constitution Republic of Indonesia.

3. The community as users of fintech services, population in the Republic of Indonesia shall be able to use this financial opportunity especially the unbanked to gain advantage in order to help their financial situation. Community able to read this thesis in order to behave within the good-will while they are making a financial move they able to use this thesis as way of learning the issues and risk that possible to happen in Peer-to-Peer Lending transaction yet taking part in maintain order in fintech world.