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# LEGAL ANALYSES ON CONSUMER PROTECTION IN PEER TO PEER LENDING IN INDONESIA

*by Elza Syarief*

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### Abstract

Financial technology (Fintech), particularly Peer to Peer (P2P) Lending is mushrooming in Indonesia. Hence, the Financial Services Authority (*Otoritas Jasa Keuangan / OJK*) issued a Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services. This study focuses on the P2P Lending to find out whether the fintech regulation on the P2P Lending is sufficient to provide legal protection to consumers. It adopts a normative legal approach and utilizes the Legal Protection Theory by Philipus M. Hadjon to examine the OJK Regulation on the P2P Lending. It finds that the OJK Regulation has incorporated both preventive and repressive legal protection. Yet, it remains insufficient to protect consumers against illegal Fintech providers. The P2P Lending disputes may be resolved through Alternative Dispute Resolution (ADR). Adjudication is the best mechanism for the P2P disputes. Yet, its process is not entirely online and there is no online adjudication procedure issued by the ADR institutions.

**Keywords:** Consumer Protection, P2P Lending, Fintech, Indonesia

### INTRODUCTION

A study conducted by the Finance Service Authority found that internet users in Indonesia are expected to reach 200 million by 2020. It also revealed that there were 132.7 million internet users in 2016 or approximately 51.5% of the Indonesian total population. Around 63.1 million or 47.6% of them use smartphones (Napitupulu, et. al., 2017). The advanced information and communication technology have been utilized by banks and non-bank financial institutions in offering financial services to their prospective customers. This approach is referred to as financial technology (Fintech). Types of fintech in Indonesia are digital payment, financing and investment, account aggregator, information and feeder site and personal finance. This study focuses on financing and investment, particularly Peer to Peer Lending (P2P Lending) provided by fintech corporations (providers). The P2P Lending connects the funds owners (investors or lenders) with the funds borrowers (creditors) through an electronic or information technology system.

Ernama, et.al. (2017) claim that at least 142 companies have engaged as fintech providers in Indonesia. For example, CekAja, UangTeman, Borrowing, CekPremi, Bareksa, Kejora, Doku, Veritrans, Kartuku. Although the P2P Lending can reduce the high cost and lengthy process of credit loans in banks or other financial institutions, the P2P Lending also inherits risks (Napitupulu, et. al. 2017). For example, the vulnerability of data loss (banking and personal data), the different dispute resolutions when a dispute involves foreign citizens are investors, lack of explanations pertaining to the procedures and procedures for credit assessment and no insurance guarantee for the P2P Lending process. Due to the potential risks in the P2P Lending, this study aims to examine the legal protection given to P2P consumers in Indonesia to find out whether the fintech regulations, particularly those relating to P2P Lending is sufficient to provide legal protection to consumers.

### METHODOLOGY

As stated previously that in addition to its advantages, consumers may also face risks when engaging in the P2P Lending. Therefore, this study posits two questions:

- a. What types of legal protection are provided to P2P Lending consumers?
- b. What is the appropriate dispute resolution mechanism for P2P Lending consumers?

To answer the above questions, this study adopts a normative legal approach because it is an appropriate method to examine legal instruments on Fintech. The Legal Protection Theory (Hadjon, 1987) classifies two types of protection, namely preventive and repressive protection. It is used to examine the relevant legal instruments governing fintech issued by the Financial Services Authority (*Otoritas Jasa Keuangan / OJK*). The legal instruments are referred to as the primary legal materials. In addition, the secondary legal materials which aim to provide an explanation of the primary legal materials (i.e. journal articles and research results on fintech) is also used in this study. Both legal materials are analyzed by using a qualitative approach since the results focus on the meaning or interpretation of the laws (Sugiyono, 2012). It is presented by applying an inductive approach to explore the concepts (Soebani, 2009) of fintech and to align it with the OJK Regulation.

## FINDINGS

### A. Legal protection for P2P Lending consumers

Based on the Legal Protection Theory by Philipus M. Hadjon, the legal protection for the P2P lending consumers in Indonesia may be classified into:

1. **Preventive Legal Protection.** It aims to prevent disputes between a provider and borrower. The protection is provided by the Indonesian Government by issuing the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services. It contains a preventive protection since it includes a requirement for a provider to open escrow accounts and virtual accounts at banks and set up data centers in Indonesia. The maximum amount of loans that providers can grant to a single borrower is limited to Rp. 2,000,000,000 (two billion rupiah) (OJK, 2017). The Regulation requires parties to the P2P Lending to enter into an agreement, namely an agreement between providers and lenders and an agreement between lenders and borrowers in an electronic form. It stipulates that providers cannot conduct their other businesses outside the P2P Lending Services. (ABNR, 2019).
2. **Repressive Legal Protection.** It aims to protect borrowers by providing sanctions or penalties on providers in the P2P Lending. The Regulation provides administrative sanctions against the provider in the form of: (1) written warning; (2) fines, namely the obligation to pay a certain amount of money / funds; (3) restrictions on business activities; and (4) license revocation.

Apparently, the OJK Regulation has provided both preventive and repressive legal protection. However, cases have been reported by victims of the P2P Lending. For example, SM borrowed Rp. 5,000,000 (five million rupiah) from the INCASH company. Two months later, he was billed Rp. 75,000,000 (seventy five million rupiah) (Sunaryo, 2019). Similarly, AC borrowed Rp. 1,800,000 (one million eight hundred thousand rupiah) from an online loan application. She only received Rp. 1,300,000 (one million three hundred thousand rupiah) and had to return Rp. 1,900,000 (one million nine hundred thousand rupiah) (BBC News Indonesia, 2018). YI's photos were circulated online because of the delay in paying his online loans for two days. He reported it to the OJK, but the OJK responded that "there is no supervision given to illegal Fintech providers because it is not subject to the existing regulations" (Kompas, 2019). Obviously, the legal protection for consumers is merely "law in the book" without "law in action". The failure of the OJK to actively disseminate its Fintech Regulations and to raise awareness of people relating to illegal Fintech providers may be regarded as the insufficient legal protection to consumers.

### B. The appropriate dispute resolution mechanism for P2P lending consumers

Business disputes including fintech in Indonesia are part of civil disputes which can be resolved through a litigation (court) and non-litigation (outside court) mechanism. The court mechanism may take a long time because the decision at the first level court (District Court) can still be appealed to the High Court, and the losing party may apply for a cassation to the Supreme Court. This makes business people prefer to take a non-litigation mechanism through Alternative Dispute Resolution (ADR) which is governed by Law No.30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Hariyani, 2010).

<sup>16</sup> The Financial Services Authority (*Otoritas Jasa Keuangan / OJK*) established a mechanism<sup>10</sup> to handle and resolve complaints in the financial services sector. At the initial stage, the complaints can be resolved through the Internal Dispute Resolution (IDR) mechanism. If the IDR mechanism cannot produce a settlement<sup>23</sup> agreement, consumers can submit a settlement request to the OJK Consumer Services or submit the disputes to the Alternative Dispute Resolution Institution. The OJK issued the OJK Regulation Number 1 / POJK.07 / 2014 concerning<sup>17</sup> Alternative Institutions for Dispute Resolution in the Financial Services Sector. It was followed by the issuance of the OJK Decree Number Kep-01 / D.07 / 2016 dated on 21 January 2016 which authorizes the establishment of six ADR Institutions, namely: (1) the Indonesian Alternative Institutions for Banking Dispute Resolution, (2) the Indonesian Arbitration Board for Capital Market, (3) the Indonesian Insurance Mediation and Arbitration Board, (4) the Indonesian Guarantee Company Arbitration and Mediation Agency, (5) the Indonesian Financing and Pawnshop Mediation Board, (6) the Per<sup>13</sup> Fund Mediation Board. The institutions offer four types of dispute resolution mechanism which may be chosen by disputing parties, namely: binding opinion, mediation, adjudication and arbitration. Although adjudication is similar to arbitration, it is not regulated by Law No.30 of 1999. Nevertheless, the adjudication mechanism is more appropriate for fintech disputes because its process is much simpler and faster. The applicant (consumer) is given the option to approve or reject the outcome of the adjudication decision. If the applicant agrees then the adjudication decision can directly be enforced because it is final and binding. The respondent party (financial service institution) is not given an optional right, so it must accept the decision. This approach is foreign to the arbitration process (Hariyani & Serfiyani, 2016). Although a P2P lending dispute can be resolved by the ADR mechanism, particularly the adjudication mechanism. It is unfortunate that the ADR institutions do not issue the online adjudication procedures. The online mode for an adjudication mechanism is limited to documentation and correspondence only (Hudiyanto, et.al., 2017). Hence, it may be argued that even though the P2P Lending utilizes the online system in its entire operation, its dispute resolution remains to partly use a conventional mode.

## CONCLUSIONS

<sup>19</sup> Study on the legal protection of P2P Lending consumers is relatively new in Indonesia because the OJK only issued the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Information in 2016. Hence, this study merely focuses on normative legal approaches based on the Legal Protection Theory of Philipus M. Hadjon to find out legal protection containing in the OJK Regulation. It does not examine its effectiveness from a socio-legal perspective. The findings and results of the study can be concluded as follows:

1. The OJK Regulation covers both preventive and repressive legal protection for consumers of the P2P Lending. Yet, "law in the book" is not sufficient to protect consumers without "law in action". Therefore, the OJK should actively disseminate its Fintech Regulations and to raise awareness of people pertaining to illegal Fintech providers which are potential to deceive consumers.
2. P2P Lending disputes are best to be resolved through ADR, especially adjudication mechanism. Yet, the online process of adjudication is merely limited to documentation and correspondence. Since there is no online adjudication procedure, it is recommended that the ADR institutions should issue the procedure to facilitate the dispute settlement of P2P Lending consumers.

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