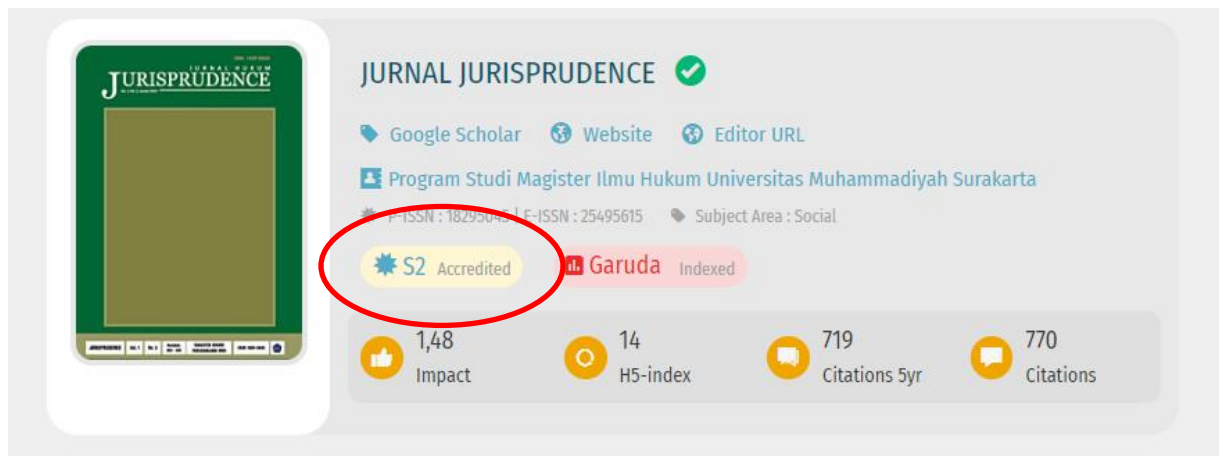


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## Jurnal Jurisprudence



Jurnal Jurisprudence is an academic journal published twice a year by the Magister Law Program of Universitas Muhammadiyah Surakarta. This journal was first published in 2014. The journal, intended as a communication, information, and development medium of law focuses its content on the results of studies in the field of law, conducted through a variety of known paradigmatic perspectives.

This journal encompasses original research articles, short communications, including: penal law, private law, administrative law, constitutional law, islamic law, economic law, sociology law, and land law. In addition, to carry out its function as an opening bridge with other parties within the wider community, the journal openly accepts the contributions of writings from experts from other disciplines who take the object of law studies.

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### Legal Protection for Borrowers and Business Dispute Resolution in Fintech Lending Services

*Lu Sudirman, Hari Sutra Disemadi*

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#### Abstract

**Objective:** This study aims to identify how progressive the legal protection for borrowers as a fintech lending service user is and how the business dispute resolution model for these services is applied in Indonesia.

**Methodology:** This research utilized a normative juridical research method with legal and conceptual approaches. The data used in this research were secondary legal data analyzed using qualitative analysis techniques to draw the right conclusions.

**Findings:** Fintech lending service is an alternative solution for the community to carry out the procedure of fund borrowing by accessing the sites and applications of lending companies without having to go through banking transactions and financing institutions. Although fintech lending contributes to various financial activities, this innovation encounters issues in protecting consumers as borrowers. The rise of personal data misuse, intimidating money collection procedures, and sexual harassment have threatened consumers' sense of security, so law enforcement is urgently needed to overcome these crimes. Regarding the borrower protection in the fintech business, OJK, under its power, has ratified "OJK Regulation Number 77/POJK.07/2016 concerning Information Technology-Based Fund Borrowing Services". However, these regulations cannot protect borrowers, so the problems continue to rise. Furthermore, business disputes that arise in fintech lending need further guidance from independent institutions and the government to protect consumers and business actors when involved in disputes. Applying a non-litigation route, namely Alternative Dispute Resolution (ADR), is recommended with the disputing parties and third parties.

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### Legal Protection for Borrowers and Business Dispute Resolution in Fintech Lending Services

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Submission





## Legal Protection for Borrowers and Business Dispute Resolution in Fintech Lending Services

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#### ABSTRACT

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route, namely Alternative Dispute Resolution (ADR), is recommended with the disputing parties and third parties.

**Implication:** This research is expected to support literacy to the public in selecting the right online financing and loan institutions. In addition, the results of these studies can be a source of reference for legal scholars.

**Novelty/Originality:** In contrast to previous research, this research focuses on studying how important the legal protection of borrowers who use fintech services is and the steps that can be taken to resolve business disputes in the industry that have not yet been specifically identified.

Keywords: Borrower, Business Dispute, Fintech, Legal

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## INTRODUCTION

The development of the Indonesian economy is very dependent on the financial sector as the main provider of funds in terms of economic financing. This region has a strategic role in economic stability and becomes a locomotive for developing the real sector through capital accumulation and technological innovation (Rasbin et al., 2015). Indonesia and other countries are racing against each other to encourage the financial sector to grow to a better level. In facing these challenges, the government with a bank-based system has dominated the state financial sector, which functions as a financial intermediary to collect and distribute public funds (Bidari et al., 2020). However, the uneven distribution of bank services affects the community so that they do not fully feel the government's efforts. In fact, banks are only centered in big cities and often ignore communities in remote areas. It leads to the rise of economic and financial disparities for citizens so that many people are still unfamiliar with banking activities (Fais, 2021). At the same time, the era of digitalization and technology began to contribute to these problems and resulted in a financial innovation that tends to be more practical than banking as old players in the financial sector (Pardosi & Primawardani, 2020).

The era of digitalization has encouraged the development of applicable technology to provide real changes in various lifelines. These developments, particularly interconnection-networking (internet) and gadgets, have become a major part of the complexity of the impact of globalization. In addition, the digital era and technology have influenced human life habits that are difficult to separate from electronic devices (Setiawan, 2017). Technology also plays

a role in bringing about a more modern human civilization so that it helps most of the needs, tasks, and jobs of individuals. The advantages provided by technology start to be applied in the financial service industry to facilitate public financial transactions and shift all conventional activities into digital form. This innovation is commonly known as financial technology (fintech). The presence of financial service technology has become part of a disruptive world change and has also triggered a financial technology-based business model. In addition, fintech is also reconstructing the economic building through a pattern of sophistication in the financial services industry, making it easier for people to transact without meeting face-to-face. (Stevani & Sudirman, 2021) .

As one of the promising businesses in the financial service sector, fintech has spread to almost all e-business and e-commerce transactions (Serfiani et al., 2013). Fintech is used as an electronic transaction tool or a sale-purchase agreement between two parties who trade a product (goods or services) through electronic tools and the internet network based on a price agreement, quantity, quality, delivery time of the traded object, payment terms, insurance, delivery, to after-sales guarantee (Rohendi, 2015). In addition, electronic transactions are also related to transaction payment systems, both cash and credit, or non-cash payment instruments such as e-money, internet banking, virtual payments, and so on. Therefore, electronic transactions and fintech are inseparable in carrying out financial activities.

In the sophistication of the world, people tend to use online payments provided by fintech start-up companies as it is considered easy and practical for everyday use. Fintech, as a breakthrough in the financial service industry sector, relies heavily on advances in technology and scientific thinking. According to the National Digital Research Center (NDRC), financial technology, known as fintech, is an applicative innovation based on modern technology and aims to update the financial sector (Fais, 2021). In its application in the digital era, fintech is believed to be an alternative solution and innovation beneficial for consumers in financial transactions to achieve efficient and effective use of time and energy (Arifiyah, 2018).

One form of fintech that the Indonesian people frequently use is fintech lending, which provides loans by bringing together lenders and loan recipients (*borrowers*) through electronic systems and internet networks. Fintech lending is one of the innovations in the financial system that produces a variety of new products, services, and business models that affect monetary balance, financial system balance, efficiency, security, mobility, and payment system capabilities. Fintech lending has had a positive impact on consumers, businesses, and

the country's economy. However, behind these advantages, fintech lending has risks that threaten all parties involved if not properly mitigated. Therefore, the Indonesian government should increase the application of the principle of consumer protection, risk management, and prudence.

Fintech lending is the latest study in literature and human activities in the financial sector. The ease of access offered by this technology can be easily adopted by various levels of society so that financial operations cannot be separated from the support of this technological sophistication. As a result, start-up companies have been increasingly aggressive in providing capital and loans to the public to support all aspects of economic practice. In 2021 during the COVID-19 pandemic, fintech lending experienced a significant increase over the last 4 months and had recorded a debit balance growth of 49.9% *year on year* (YoY) to Rp 20.61 trillion, which is assessed based on the operator's total assets and liabilities of Fintech lending actors (Sari & Mahadi, 2021). By seeing this phenomenon, the regulators, namely the Financial Services Authority or *Otoritas Jasa Keuangan* (OJK) and Indonesian Bank or *Bank Indonesia* (BI), need to be aware of all forms of crime in fintech lending.

The online loan system applied in this innovation is a Peer-to-Peer (P2P) lending system that provides financial services to bring together lenders and borrowers in a transaction medium to make deals (Putri, 2021). The procedure for loans can be done quickly and easily so that people put this innovation as an alternative to borrowing some funds. However, currently, there are loans without collateral or guarantee, which are legally impossible to happen. The loan providers without collateral must be questioned for their legality and credibility as this offer is a strategy of illegal fintech lending. The ministry of information and technology also explained that from January to June 18, 2021, 447 illegal fintechs were blocked, and that number would continue to increase (Rizkinaswara, 2021). However, this blocking effort is not a long-term solution to eradicate illegal fintech lending and protect borrowers, so it is necessary to initiate a regulation that can provide legal protection for fintech service users. The government must prioritize special regulations related to fintech activities, considering the Covid-19 pandemic conditions have encouraged people to continue to make loans online.

As a legal state, Indonesia must uphold justice and have a responsibility to implement the protection of its citizens through regulations and actions from independent institutions.

When it comes to fintech lending, OJK, as an independent institution in the financial service sector, has various functions, duties, authorities, regulations, supervision, inspections, and investigations. This provision is contained in Article 5 to Article 9, "Law Number 21 2011 concerning the Financial Services Authority". OJK has also ratified "POJK Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services". However, this regulation only explains several articles related to reistration and licensing for fintech lending companies and has not shown legal certainty to borrowers. The legal existence is highly necessary to protect users of fintech lending services as both legal and illegal loan providers commit acts that violate the law and do not have good intentions such as intimidating money collection, user data breach, personal information storage, pornographic files, sexual harassment, defamation, threats, data manipulation, and illegal access (Stevani & Sudirman, 2021).

The previous research identifying this issue included Iswi Hariyani in 2017 regarding "Legal Protection and Dispute Resolution for PM-Technology Services" (Hariyani, 2017) ; Ni Kadek Puspa Pranita & I Wayan Suardana in 2019 regarding "Legal Protection for Customers Using Fintech Services (Financial Technology)" (Pranita & Suardana, 2019) ; Mariske Myeke Tampi in 2019 on "Measuring Financial Technology (Fintech) Progressivity in Business Law in Indonesia" (Tampi, 2019) ; Dona Budi Kharisma, Jamal Wiwoho, & Pujiyono in 2020 regarding "Legal Issues Surrounding Financial Technology Industry in Indonesia" (Kharisma et al., 2020) ; Kalsum Fais in 2021 regarding "Legal Protection for Users of Information Technology-Based Lending and Borrowing Services" (Fais, 2021) ; Nastasya Shinta Devi, Arief Suryono; & Hari Purwadi in 2021 on "Development of Preventive Legal Protection in the Use of Financial Technology (FINTECH) Services in Indonesia" (Devi et al., 2021) ; and Ryan Randy Suryono, Indra Budi, & Betty Purwandari in 2021 on "Detection of Fintech P2P Lending Issues in Indonesia" (Suryono et al., 2021).

The crucial issue of fintech lending caused by the empty regulation regarding borrower protection and procedures for resolving business disputes must be placed by the regulator as a top priority. Furthermore, the results of this study aim to highlight the importance of the existence of a special law related to fintech to protect the rights and security of service users so that they are not treated arbitrarily by loan providers and lenders. Furthermore, another problem that frequently occurs in fintech lending is non-compliance with the agreements that have been made. Therefore, resolving the disputes can be through litigation or non-litigation.

Based on the background, this study aims to identify several research problems: a description of fintech lending activities, the definition of legal protection for borrowers, and alternative solutions for business disputes in the industry.

## **RESEARCH METHOD**

This study employed a doctrinal research method with a statutory and conceptual approach. A statutory approach is carried out by analyzing the rules and regulations related to these legal issues. Meanwhile, the conceptual approach provides an analytical point of view on problem-solving in legal research identified from the aspects of the legal concepts. It can also be scrutinized from the values in the normalization of a regulation related to fintech lending. The conceptual approach also departs from the views and doctrines in law science. This approach is important as understanding the views/doctrines that develop in law science can be a basis for building legal arguments when solving legal issues. By utilizing this doctrinal research method, studies related to the issue of borrower protection and business dispute resolution are viewed from prescriptive legal norm viewpoints (Sonata, 2014). Moreover, the legal approach was carried out by reviewing regulations that had a legal relationship with the issues discussed, namely the problems of fintech lending. There was also a conceptual approach to finding a concept as a research reference based on secondary legal sources (Bachtiar, 2018).

## **RESULT AND DISCUSSION**

### **Peer to Peer Lending Fintech Business Activities: An Overview**

The development of financial-based digital technology has also changed people's habits to transact effectively and efficiently through the grip of a smartphone. With the various conveniences offered by this technology, individuals can easily apply for a loan online without going through a bank administration process that tends to be difficult and time-consuming. In general, digital innovations that support lending and borrowing activities are known as fintech lending. According to OJK, fintech lending or "Information Technology-Based Loan Services" is one of the innovations in the financial industry through the application of technology as a platform (application or website) that can bring together lenders and borrowers to engage in fund borrowing-lending activities without having to meet physically (Keuangan, 2016). The fintech lending in the financial system will result in a new

service, product, technology, or business model, which will impact monetary stability, financial welfare, efficiency, security, transparency, and reliability of the payment system. This financial innovation is an alternative solution to overcome the challenges of conventional lenders by utilizing diverse business combinations ranging from models, applied technologies to innovative approaches.

In order to achieve a wider community in remote areas, fintech lending appears to achieve adequate infrastructure and overcome the risk management challenges that banks usually encounter as incumbent players in the financial industry in serving underutilized segments. Therefore, the role of law is needed to support these activities. Bank Indonesia, the authorized agency in the national payment system, has ratified the BI Regulation and the Governors Member Regulation or Peraturan Anggota Dewan Gubernur (PADG) related to Financial Technology and Regulatory Sandbox (Indonesia, 2020). It regulates the service provider's obligations and the terms and conditions that must be met to obtain a license from Bank Indonesia. Furthermore, OJK has also ratified a regulation related to fintech lending services, namely "OJK Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Loan Services". When viewed in the context of national regulations, there are several laws relevant to fintech lending, such as "Article 1320 and Article 1754-1767 of the Indonesian Civil Code", "Government Regulation Number 82 2012 concerning the Implementation of Electronic Systems and Transactions" as the implementing regulations of "Article 10 Paragraph (2) and Article 11 Paragraph (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions", and "OJK Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector". These regulations state that the presence and opportunity of fintech lending in developing the economy have been recognized in Indonesia.

Behind these regulations, fintech lending has several advantages and disadvantages. In its application. The advantages provided by this technology include 1) being able to provide services to people whom the conventional financial services industry has not served due to strict banking policies and limited industrial services in certain areas; 2) as an alternative financial solution that is more democratic and transparent. In addition, the weaknesses of fintech lending include 1) not having a license to transfer money and being less able to operate large-capitalized business activities compared to banks; 2) several fintech companies do not have physical offices and lack experience in product integrity and security systems

(Ansori, 2019). As time goes on, fintech lending also presents various risks that must be addressed immediately by the government, namely: 1) there is a potential for a decline to lose financial capacity due to abuse, fraud, or force majeure; 2) there is a potential to data misuse due to hacker or malware attacks; 3) there is a potential for money laundering and terrorist financing; and 4) it requires competent risk management so as not to adversely affect the stability of the national financial system (Hutapea, 2020).

Conceptually, the fintech lending system is similar to the concept of an online marketplace that provides a medium to bring together buyers and sellers. Fintech lending establishes a cooperative relationship between one party and another who has financial affairs in the form of fund borrowing and lending without having to process in traditional institutional structures. The parties are fintech lending providers, loan recipients (*borrowers*), and lenders. Based on "Article 1 Number (6) of POJK Number 77/POJK.01.2016", the fintech lending provider is a legal entity in Indonesian jurisdiction that has a role to provide, manage and operate all information technology-based lending and borrowing services. Therefore, the operator must be a legal entity such as a Limited Company or *Perseroan Terbatas* (PT) and cooperative and cannot be run by individuals and non-legal entities such as CV, Firm, or Maatschap. Furthermore, legal entities responsible for fintech lending services are companies (PT and Cooperatives) that have been ratified by the Ministry of Law and Human Rights or Cooperatives (Zuhairi et al., 2020). Generally, fintech lending providers will carry out profit-oriented business activities and involve various parties.

Other parties involved in fintech lending activities are borrowers. According to "Article 1 Number (7) POJK Number 77/POJK.01.2016", a borrower is an individual or legal entity with debts due to an agreement from technology and information-based lending and borrowing services. Moreover, "Article 15 Paragraphs (1) and (2) POJK Number 77/POJK.01.2016" also explains that the borrower must originate and be domiciled in the Republic of Indonesia consisting of individual or *Warga Negara Indonesia* (WNI) or Indonesian legal entities. However, the substance of the article seems ambiguous. It states that the borrower has owed another party that has not been confirmed as if there was a fund borrowing relationship between the borrower and the fintech lending provider. This statement is similar to the banking activities in receiving and distributing money to the public. Therefore, confirmation from the lender is needed in fintech lending activities. As stipulated in "Article 1 Number (8) POJK Number 77/POJK.01.2016," lenders are defined as



individuals, legal entities, or business entities with receivables due to an agreement from information technology-based lending and borrowing services. According to "Article 16 Paragraphs (1) and (2) POJK Number 77/POJK.01.2016", lenders can come from within or outside the country, which consists of five categories, namely Indonesian citizens, foreign citizens, Indonesian/foreign legal entities, Indonesian/foreign business entities, as well as international institutions. The scope of the definition of lender that tends to be wider than that of the fintech lending provider must be guaranteed with legal certainty by applying the concept of "know your customer" to avoid money laundering and terrorism financing.

In carrying out its activities, fund borrowing and lending are divided into 2 (two) parties, namely borrowers and lenders. The borrower initiates the loan application by filling in the data and uploading all the required documents to a fintech lending platform, such as financial reports within a certain time frame and the reasons for applying for the loan. Furthermore, the application can be accepted or rejected due to several factors. If the loan application is rejected, the data uploaded by the borrower does not meet the criteria from the service provider. If the application is accepted, the loan interest rate will be applied and notified in the marketplace so that the lender can see the loan application (Suryokumoro & Ula, 2020). In addition, lenders can browse and view application documents via the dashboard view. Thus, lenders can see several data belonging to the borrower, such as total income, financial history, and the purpose and reason for the loan (Murifal, 2018). Next, the lenders can invest the loans after depositing cash amount according to the investment objectives, and the *borrower* can repay the loan installments per month. The lender will obtain a profit in principal and loan interest based on these installments.

### **Legal Protection Studies for Borrowers**

The concept of legal protection resulted from the development of the 19th-century ethical theory regarding the recognition and protection of human rights. Satjipto Raharjo argued that legal protection is an effort to regulate the people's interests so that there is no conflict of interest and can take advantage of all the rights granted by law (Raharjo, 2014). In general, legal protection is divided into two, namely, preventive and repressive protection. Preventive legal protection aims to prevent disputes and conflicts by directing the government's prudent attitude in making discretionary decisions, while repressive legal protection aims to overcome problems. Furthermore, legal protection has been recognized

constitutionally in "Paragraph 4 of the Preamble to the Constitution of the Republic of Indonesia 1945," which emphasizes that the state is obliged to protect all Indonesian citizens. In the business area, legal protection is highly necessary. Its position is increasingly crucial, considering the rapid movement of technology so that the government is responsible for enforcing the law.

Business models and services in the financial services industry are vulnerable to actions that harm technology users. In the fintech lending business, the risks encountered by borrowers tend to be greater as fraud and abuse frequently occur by irresponsible parties. Furthermore, fintech lending providers registered in the OJK have several restrictions in "POJK Number 77/POJK.01.2016". According to Article 39, the operator is prohibited from providing a user's personal data or information to third parties without the approval and obligations of the laws and regulations. Article 43 also mentions a list of prohibitions on fintech lending in carrying out business activities, including a) carrying out other business activities; b) acting as lender or borrower; c) providing a guarantee model in any form against the fulfillment of obligations of other parties; d) issuing debt securities; e) providing a recommendation to service users; f) disseminating fictitious and misleading information; g) offering services to users through private media without their consent, and h) charging additional fees for submitting user complaints.

In fact, the description of the various prohibitions still does not guarantee the legal protection of borrowers and is a source of problems for the community. This phenomenon is also exacerbated by the rise of illegal fintech lending, evidenced by the public complaints, which increased dramatically, namely around 5,421 complaints to the OJK in March 2021. The highest achievement was in December 2020, reaching 6,787 complaints (Pusparisa, 2021). Moreover, the Jakarta Legal Aid Institute or *Lembaga Bantuan Hukum* (LBH) also received complaints from the public as borrowers, with a total of 4,500 complaints in June 2019 (Respati, 2019). Complaints expressed by borrowers included objections to the facilities, objections to additional fees or fines, objections to bills, as well as problems with the legality of companies and products. Besides, LBH Jakarta found that borrowers experienced many human rights and legal violations by the organizers and parties who cooperated with the service. In addition, their criminal acts also included the dissemination of users' personal data, threats, fraud, acts of slander, and cases of sexual harassment. In order to respond to these problems, OJK, as an independent institution, needs to carry out

investigations and always urges the public to apply the precautionary principle before applying for loans by seeking legal information and business permits from the fintech lending. OJK also needs to design a regulation that can accommodate the community's need for loan protection in online lending and borrowing transactions.

In this case, the Covid-19 pandemic has weakened the responsive legal protection of borrowers. The definition of responsiveness in this context means that the law must be able to overcome the problems encountered by the community and act as a facilitator of various social aspirations and people's needs (Henry Arianto, 2010). Therefore, a responsive legal development plan is needed through the establishment of legal protection regulations for borrowers. This regulation aims to overcome the empty regulation of the legal protection for borrowers in financial transactions. The OJK should formulate these regulations due to its authority to regulate and supervise the financial services sector, including the interests of debtors (Benuf et al., 2020). Furthermore, OJK can provide stricter efforts to resolve illegal acts through written warnings, fines, restrictions on activities, and termination or revocation of business licenses. If there is a loss to the community's interests as a borrower, OJK can carry out legal defense in the form of filing a lawsuit in court. In addition, OJK is required to always provide information related to activities that harm borrowers in fintech lending. Lastly, to overcome the urgency of the legal protection for borrower in the midst of the Covid-19 pandemic, OJK may ratify a policy of providing national economic stimulus to fintech lending users consisting of borrowers and lenders (Benuf, 2020).

As a legal state, the Indonesian government plays an important position in creating a better law enforcement environment. The government can conduct a law review like China to improve the loan industry. Although the results of the law review will result in stricter policies and slow the growth of fintech lending, the implementation can create a healthier and more conducive situation for lending and borrowing activities (Sugangga & Sentoso, 2020). Thus, this regulation will not kill business actors and can protect borrowers based on the laws and regulations. The implementation of these activities needs to be supervised by the government and other private institutions. Furthermore, a crucial problem that often threatens the legal protection of borrowers is the existence of illegal fintech lending. The Investment Alert Task Force or *Satgas Waspada Investasi* (WSI) also admits that controlling illegal fintech lending is not easy, especially for those abroad. These companies work online, and it is easy to change names. As a result, blocking these illegal companies does not guarantee that their activities

will stop as the company can resume operations by simply changing with a different name. Therefore, preventive action plays an important role by implementing socialization, regular sharing of information, and education to the community. Repressive efforts can be made for short-term operations by continuing to block. However, to carry out long-term efforts, the government, *Bank Indonesia* (BI), and OJK need to formulate a policy and create a special independent institution that ensures legal protection for service users, especially borrowers. Thus, the legal protection of borrowers must take a complex path to guarantee legal certainty and justice based on the substance of the Constitution of the Republic of Indonesia 1945.

### **The Resolution Model of Business Dispute in Fintech Lending in Indonesia**

The complex economic growth and technology have given rise to various forms of cooperation. However, increased business activities will always be followed by various problems such as business disputes. According to the opinion of Maxwell J. Fulton, business disputes are conflicts that arise during the exchange process and economic market transactions (Silondae & Ilyas, 2012). In addition, Ali Achmad stated that a dispute is a form of conflict between two or more parties who have different thoughts regarding property rights, causing legal consequences. Therefore, it can be concluded that a business dispute is an act that opposes and results in a conflict between two or more legal subjects, resulting in legal consequences in the form of sanctions. Disputes can arise for various reasons, and the underlying factors include conflicts of interest with the parties involved. Business disputes will harm business actors if they are known by the public leading to the clients', customers', and consumers' distrust of the company. As a result, companies tend to avoid a lawsuit and choose the Alternative Dispute Resolution Institution or *Lembaga Alternatif Penyelesaian Sengketa* (LAPS).

Business disputes can occur in fintech lending services and involve various parties between lenders and borrowers, lenders and service providers, or borrowers and service providers (Hariyani, 2017). The dispute is caused by non-compliance and violations by the parties to the agreement. Therefore, business disputes in fintech lending activities can be resolved through litigation in the form of a lawsuit and non-litigation or outside the courtroom. In litigation, parties harmed during online lending and borrowing activities can propose a civil lawsuit to the court or settlement through an arbitration board or other authorized institutions. In addition, many business actors tend to choose the non-litigation

settlement route for some reasons such as the uncondusive reputation of the courts to business development, long, complex court processes, high costs, judges' verdicts difficult to be executed, and judicial mafia practices eliminating the legal certainty and justice. Furthermore, the nature of the court that tends to determine the win-lose party is also a consideration for business actors to take advantage of the non-litigation route.

A business actor can choose litigation to resolve a business dispute. Generally, the lawsuit submitted to the court is in default of "Article 1238 and Article 1243 of the Civil Code" or an act against the law "Article 1365 of the Civil Code". Therefore, the lawsuit will be processed by the District Court within the scope of the General Court. According to "Article 50 of Law Number 8 2004 concerning General Courts", the District Court has the duty and authority to conduct court procedures such as examining, deciding, and resolving criminal and civil cases at the first level. Furthermore, the Commercial Court can also resolve business disputes as a special court. Based on "Article 300 of Law Number 37 2004 concerning Bankruptcy and Postponement of Payments", the Special Commercial Court is responsible for examining and deciding an application in the form of bankruptcy and suspension of debt payment obligations, as well as having the authority to examine and decide other matters in the commercial sector related to where the determination is made based on enactment. There are several characteristics of a litigation settlement, namely: 1) the formal judicial process; 2) a judge decides as a third party sent by the state; 3) the disputing party does not participate in the decision-making process; 4) the binding force of the legal decision; 5) always being oriented to legal facts and trying to find the perpetrators, and 6) the trial is conducted openly. Besides, business actors can use non-litigation efforts to resolve their business disputes.

Non-litigation settlements can be initiated by consultation and negotiation without involving third parties. If this effort is not successful, the disputing party may appoint a third party to assist in resolving the dispute, such as legal experts, adjudicators, arbitrators, conciliators, and mediators. The Alternative Dispute Resolution or *Alternatif Penyelesaian Sengketa* (APS) outside the courtroom is preferred by fintech lending providers as they are considered quite efficient and effective. APS settlement has been regulated in "Law Number 30 1999 concerning Arbitration and Alternative Dispute Resolution". According to the Law on Arbitration and Alternative Dispute Resolution, APS is a dispute resolution institution through procedural stages that have reached an agreement by the parties, namely non-

litigation settlement including consultation, negotiation, conciliation, mediation, or expert judgment. However, APS is only described in Article 6, and the regulation concerns more on arbitration. In business activities, APS is a dispute resolution with the highest degree because it can lead to peace and conflict resolution that is mutually beneficial or a win-win solution (Artadi & Putra, 2017). Implementing the APS stage is conducted through a case examination by a private assembly appointed by a certain party to save court costs, eliminate publicity, and eliminate complicated examinations.

In terms of the context of legalization, APS has been recognized by OJK through “OJK Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector”. This regulation was also followed by “OJK Decree Number KEP-01/D.07/2016,” which contains a list of Alternative Dispute Resolution Institutions in the financial services sector. However, the resolution of business disputes through conventional and offline APS institutions is not appropriate as fintech lending is an online service. Therefore, an online APS institution is needed that prioritizes simple, fast, and affordable dispute resolution according to the mandate of "Article 29 Letter e POJK Number 77/POJK. 01/2016". In this case, OJK can access a modern APS model, namely Online Dispute Resolution (ODR). According to Joseph W. Goodman, the international community frequently implements three ODR models: fully automatic cyber, software and facilitators, and online technology (Nurpadila & Marpaung, 2021).

In the fully automatic cyber model, business dispute resolution will be carried out by an automated system by bringing the disputing parties to reach an agreement. Furthermore, the software and facilitator model consists of several procedures: appointing a third party as a facilitator and acting as an intermediary for the disputing parties. After that, the facilitator can provide appropriate negotiation proposals and formulate the demands raised during the ODR process. The presence of these third parties is an important key that cannot be replaced by technology in resolving conflicts. Furthermore, the software in the ODR will identify the demands to find a solution. Lastly, the online technology model implements service features such as chat rooms, e-mail, instant messages, and video conferencing. By implementing this model, business disputes will be resolved in negotiation, arbitration, and mediation. Therefore, business dispute resolution can be carried out through various court models and APS. Nonetheless, legal certainty and justice remain absolute requirements to achieve peace that the government and private institutions can immediately respond to legal problems.

## CONCLUSION

The implementation of technology in the financial service industry has facilitated public financial transactions and shifted all conventional activities into digital innovation. This innovation is known as financial technology (fintech). One of the fintech services frequently used by the Indonesian people is the fintech lending service that provides loans by bringing together lenders and loan recipients (borrowers) through electronic systems and internet networks. Conceptually, the fintech lending system is similar to the concept of an online marketplace that provides a medium to bring together buyers and sellers. Fintech lending establishes a cooperative relationship between one party and another who has financial affairs in the form of fund borrowing-lending activity without having to process in traditional institutional structures. However, currently, loans without collateral or guarantees are spreading and that the legality and credibility of the loan providers must be questioned. This problem becomes serious since the COVID-19 pandemic has encouraged people to continue to make loans online, and legal protection is increasingly difficult to carry out.

In this case, the government and private institutions in the financial service industry need to initiate legal protection regulations for fintech lending service users, especially borrowers, as a preventive measure and design a model for resolving business disputes as a repressive measure. OJK, as an independent institution, needs to carry out an investigation and always urges the public to apply the precautionary principle before applying for a loan by seeking legal information and business permits from the fintech lending. In addition, the government can carry out a law review to make stricter regulations to create healthy and conducive lending and borrowing environment. Besides, problems in business disputes in fintech lending activities can be resolved through litigation and non-litigation channels. The party harmed during the transaction process can propose a lawsuit to the District Court and Commercial Court in litigation efforts. Meanwhile, the non-litigation route can be resolved through the modern Alternative Dispute Resolution (APS) model, namely Online Dispute Resolution (ODR), consultation, negotiation, mediation, conciliation, or expert judgment according to applicable regulations.



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