

Consumer Protection in Lending Fintech Transaction in Indonesia: Opportunities and Challenges

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Abstract. Currently, lending fintech is proliferating. It is because of the high financing needs of the people who have not been reached by the banks. The existence of lending fintech is getting stronger with the issuance of the Financial Service Authority Regulation Number 77 of 2018 concerning Information Technology-Based Money Lending and Borrowing Services. Until August 2019, there were 127 lending fintech registered in the Financial Service Authority. Unfortunately, there is still a problem concerning protecting consumers who make loan transactions with fintech companies, along with the rise of illegal fintech companies. Therefore, this paper tries to analyze the potential development of lending fintech in Indonesia, along with its opportunities and challenges. The study of this research uses normative juridical. This paper concludes that the current regulation is still not enough in providing legal protection to consumers in conducting the transaction in lending fintech. Therefore, it is necessary to make a comprehensive regulation that regulates this so that public trust in the lending fintech company is higher.

1. Introduction

Interconnection between economics and information technologies, mainly the internet, provides innovation that encourages digital economics growth. One of the various innovations of technologies is financial technology or fintech. The flexibility that is not offered by conventional banking drives fintech growth, especially in peer to peer lending. In August 2019, there were 127 peer to peer lending operators registered with the Financial Services Authority [1]. In practice, there are also peer to peer lending operators that are not registered with the Financial Services Authority or popularly known as illegal peer to peer lending. A significant number of illegal peer to peer that has been recorded by the Financial Services Authority from 2018 until August 2019 were 1230 entities [2].

In Indonesia, the development of fintech has been followed by consumer complaints. Indonesian Consumers Foundation stated that consumer complaints related to peer to peer lending were ranked second highest complaints received in 2018, particularly complaints regarding billing methods [3]. The complaints received by the Jakarta Legal Aid Institute until November 2019 were 1330 complaints from 25 provinces in Indonesia. Based on complaints received, the Jakarta Legal Aid Institute found at least 14 (fourteen) violations. There are as follows: (1) Unlimited and high interest; (2) Debt collection not only conducted to the borrower or emergency contact that informed by the borrower; (3) Threats, defamation, fraud and sexual harassment; (4) dissemination of personal data; (5) Distribution of photos and loan information to existing contacts in the borrower's device; (6) Taking



almost all access to the borrower's device; (7) Unclear contact and location of the loan application provider; (8) Unclear admin fees; (9) the application is renamed without notice to the borrower, while interest on the loan continues to grow; (10) The loan has been settled by the borrower, however it is not input into the system; (11) The application cannot be opened or not existed on the Appstore/playstore when the loan repayment is due; (12) Debt collection is carried out by different people; (13) ID's borrower is used by the provider to apply for loans in other application; (14) Virtual account is incorrect, so interest continues to grow and intimidate loan collection remains [4]. The impact of these activities not only creates an emotional loss for the borrower in the form of shame and discomfort; it even causes loss of life[5].

Accordingly, the law should exist to provide legal protection for fintech consumers. Moreover, fintech in Indonesia is predicted to grow 214% in 2018-2020, where the accumulative loan value reaches IDR 223 trillion[6]. Therefore, this paper discussed consumer protection in peer to peer lending fintech service from Indonesia's legal perspective. The consumer on this paper referred to the consumer who applied for the loan or borrower.

2. Methodology

This Paper is normative legal research. The research is using secondary data collected through a literature study with regulations as the primary legal source.

3. Result and Discussion

3.1. Financial technology and consumer protection

There is no universal definition of financial technology. According to Philippon, financial technology involved digital innovations and technology-enabled business model innovations in the financial sector [7]. Financial technology is a new technology industry that applies technology to improve financial activities [8]. Fin-tech is a new financial industry that utilizes technology to enhance financial operations [9]. The similarity of financial technology definition is a fusion between technology dan financial technology[10]. Financial technology is based on the LASIC Principles of 5 key attributes of the business model, which successfully controls financial technology to enhance the goal of creating sustainable social business for inclusive finance. The five characteristics are low margin, light asset, scalable, innovative, and compliance easy [11]. Today, financial technology has several forms, as described in Table 1.

Table 1. Type of fintech [12]

Category	Type of Fintech					
Payment & Transfer	E-commerce payment	Mobile banking	Mobile & Online Wallet	P2P Payment & Transfer	Digital/virtual currency	
Alternative Lending & Finance	Crowdfunding Based, Donation Based)	(Reward-Equity-Based, Hybrid	Alternative Lending (Online Balance Sheet Lending, P2P Lending, Lender Agonistic Marketplace	Emerging/ Developing	Invoice and Supply Chain Finance (Invoice Financing, Supply Chain Finance)	
Others	Robo Adviser	Blockchain	Insurance	Information and Site	Account feeder Aggregator	Online Trading/ Capital Market

Peer to peer lending is a method of debt financing that enables individuals to borrow and lend money without the use of an official financial institution as an intermediary [13]. Peer to peer lending is similiar to the concept of personal loans. In peer to peer lending, fintech provider does not operate

as a bank. They will act as a marketplace or platform to bridge the lender and borrower[9]. The parties involved in peer to peer lending can be dividing into three categories which are a service provider (platform), borrower, and lender (investor). Peer to peer lending providers benefit through services fees obtain from borrowers and lenders. As for the legal relationship between the parties is made based on an agreement.

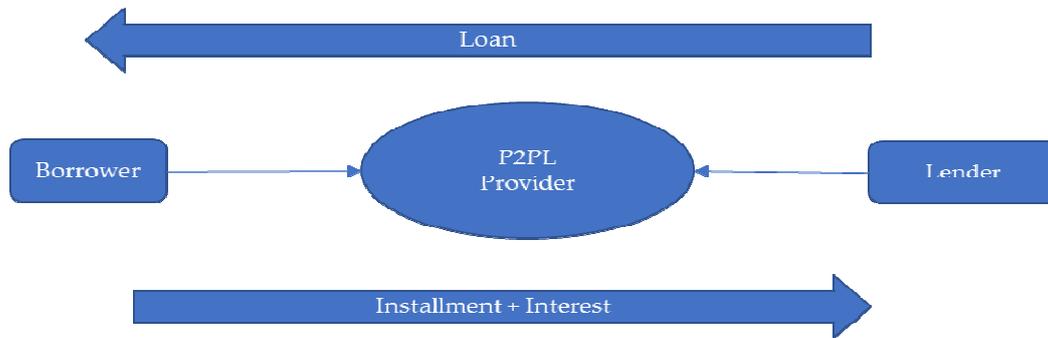


Figure 1. Peer to peer lending scheme

According to Consumer International Organisation, fintech provides benefits to the consumer which are: (i) increased competition and the gains in choice, service, and value; and (ii) increased access, as FinTech opens up financial services to groups of consumers for whom such services had previously been beyond reach, or sub-optimal[14]. However, it also raised some issues related to consumer protection. The Consumer International Organisation highlighted some number of issues around data and privacy, cybercrime, questions on liability, and systemic risks associated with rapid growth [14].

3.2. Consumer protection in lending fintech in indonesia

Before 2016, there is no legislation governing fintech activities in Indonesia, so it is feared could cause harm to the users due to potentially emerging risks. Some risks to be feared in fintech activities are a credit risk, compliance risk, operational risk, and data security[11]. Later on, fintech put under the Central Bank and Indonesia Financial Service Authority. Besides, there are 8 (eight) institutions who authorized related to fintech. It may occur overlap regulation that required harmonization[10]. Central Bank issued 3 (three) regulations related to fintech that are PBI No.19/12/PBI/2017 regarding the Implementation of Financial Technology, Regulation of Board Member No.19/14/PADG/2017 regarding Procedure for Registration, Delivery of Information and Monitoring of Financial Technology Service and Regulation of Board Member No. 19/15/PADG/2017 regarding Regulatory Sandbox. Specifically, Indonesia Financial Service Authority issued a peer to peer lending regulation under the Financial Service Authority Regulation Number 77 of 2018 concerning Money Lending Services Based on Financial Technology (POJK No.77/2018).

Money lending services based on financial technology (also known as peer to peer lending) defined on POJK No.77/2018 as financial services to facilitate lender and borrower in the context of entering into loan agreements that made in Rupiah directly through an electronic system using the internet. Borrowers can be Indonesian citizens or Indonesian legal entities that are domiciled in Indonesia. Meanwhile, the coverage of lenders is more comprehensive because the lenders can come from within and abroad. The lender is an Indonesia citizen, a foreigner, an Indonesian/foreign legal entity, and a business entity and/or international institution. The primary legal relationship between the parties in peer to peer lending is formed based on agreements in the form of electronic documents. There are 2 (two) types of agreements mentioned in POJK No.77 / 2018, namely agreements between peer to peer lending providers and lenders and agreements between lenders and borrowers. However, when the

borrower access to the website of online lending, they also deal with the peer to peer lending related to the privacy statement, both personal data, and access.

As stated clearly in Article 4 of Act No. 21/2011 regarding the Indonesia Financial Service Authority, consumer protection is one of the main objectives of the establishment of the Indonesia Financial Service Authority. Two main goals of consumer protection in the financial service are market confidence and the level of the playing field that provides an opportunity for businesses to develop their business while ensuring protection for consumers. Therefore, the Indonesia Financial Service Authority implements market conduct that maintains a balance between business growth of financial services and also builds consumer confidence through providing consumer protection. Financial Service Authority Regulation Number 1 of 2013 concerning Consumer Protection on Financial Service also stated that market conduct is the behaviour of the financial service provider in designing, compiling and delivering information, offering, making agreement on products and/or services, as well as resolving disputes and handling complaints. According to POJK No.77/2018, consumer protection is carried on based on the principles, as stated in Figure 2.

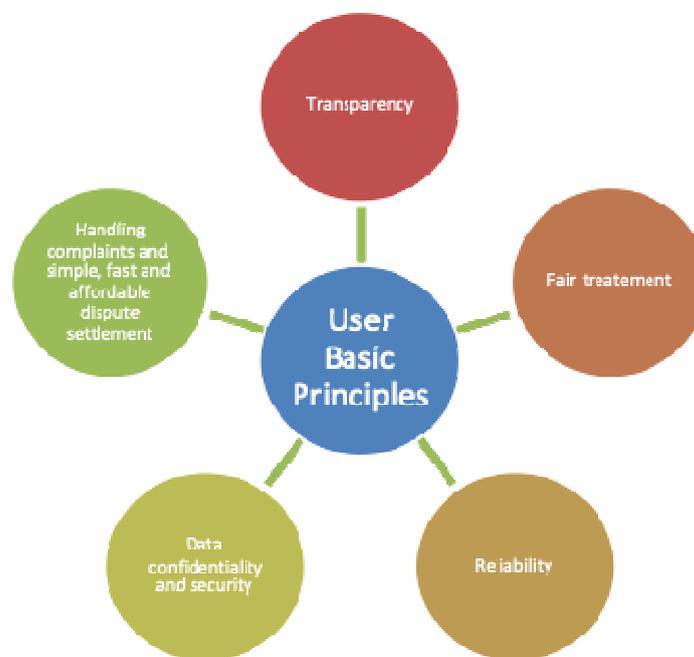


Figure 2. Consumer basic protection principles in financial service

Consumer terminology in the Indonesia consumer protection act is defined as the end consumer, which is the user of goods and services. However, the definition of consumer in the Indonesia Financial Service Authority regulation covers all users of financial service. In the peer to peer lending scheme, borrowers and lenders considered as a consumer. As stated previously, the consumer discussed in this paper is a borrower.

According to Johanes Gunawan, consumer protection can be made on the pre-purchase stage and/or pre-purchase. Protection on the pre-purchase stage can be made by (1) legislation: consumer protection through government regulation; and (2) voluntary self-regulation: consumer protection through business actor regulation itself [15]. About peer to peer lending transaction, Indonesia Financial Service Authority has issued POJK No.77/2018. Besides, Indonesia Financial Service Authority also issued POJK No.1 of 2013 concerning Consumer Protection on Financial Services. As for self-regulation, the Indonesian Fintech Association has published a code of conduct for fintech providers, including peer to peer lending, in July 2018.

Consumer transaction is not a single transaction. There is a prologue that is referred to as pre-transaction. After the transaction, consumers and sellers enter the post-transaction phase. Consumer protection covers all phases [16]. Focusing on POJK No.77/2018, this paper is assessing how far POJK No.77/2018 as the basis of peer to peer lending provides legal protection for consumers as described in Table 2 and Table 3. It is showing that provision on POJK No.77/2018 is not cover the post-transaction phase. Handling complains, and simple, fast and adorable dispute settlement as one of consumer basic protection principles is not described on POJK No. 77/2018. Later on, information as a reflection of transparency principles only covers general provision, as stated in Article 31 of POJK No.77/2018.

Table 2. Classification of Consumer Protection Provision in POJK No.77/2018 Based on Consumer Transaction Stage

Phase	Scope of protection	Article
Pre-transaction	Information	30, 31, 35,
	Information	20
Transaction	Standard clause	36
	Data privacy	26,39
	System failure	25
	Cyber security	28
Post-transaction	Not Available	-

Table 3. Information in POJK No.77/2018

Phase	Type of Information
Pre-transaction	<ul style="list-style-type: none"> - Information of product/services shall complete, honest and not misleading; - Information about acceptance, delay, or rejection of the product and/or service request. - Information on the names and/or logos of financial services provider and Indonesia Financial Service Authority registered and supervised statement.
Transaction	Information related to fee, interest, and penalty as part of the agreement between lender and borrower.
Post-transaction	Not available. However, dispute settlement shall put on the agreement between borrower and lender.

Later on, refer to Article 48 of POJK No.77/2018, each financial services provider shall join to an association appointed by OJK. Indonesia Fintech Indonesia has issued a code of conduct that applied to its members. Using the consumer transaction stage, as mention above, consumer protection on the code of conduct is, as stated in Table 4. It is showing that the code of conduct covered all stages of consumer protection. On the transaction stage, the code of conduct focusing on data privacy and not mentioned at all related to the standard clause, system failure, and cybersecurity, as stated on POJK No.77/2018.

Table 4. Classification of Consumer Protection Provision on the Code of Conduct Based on Consumer Transaction Stage[17]

Phase	Scope of Protection	Article
Pre-transaction	Information	A (1), (2), (3), (5), (9)
Transaction	Information	A (6)
	Data privacy	C (2)
Post Transaction	Complain	A (10)
	Debt collecting	C (3), (4),(5)

Table 5. Information on the Code of Conduct

Phase	Type of Information
Pre-transaction	- Information related to right and obligation in general - Information related fee, method of interest - Information related to borrower risks - Misleading information
Transaction	- Information related to a virtual account - Data privacy
Post-transaction	- Information related to complaining - Information related to debt collecting

4. Conclusion

Indonesia's fintech is possible to increase. It provides benefits for the consumer. Even fintech lending has been regulated under POJK No.77/2018, many consumers complain reported recently. Refer to the consumer transaction stage, POJK No.77/2018 has not covered all stage. Meanwhile, the code of conduct issued by the fintech association has covered all stages. However, it still required further research on whether the regulations have provided consumer protection, both POJK No.77/2018 and the code of conduct, especially on data protection. Besides, it is also necessary to conduct further studies on peer to peer lending that is not registered on the Indonesia Financial Service Authority, which develops significantly today.

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