

## THE LEGAL PROTECTION AND DISPUTE RESOLUTION IN PEER TO PEER LENDING-BASED FINANCIAL TECHNOLOGY ASPECT

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### **Abstract**

*The purpose of this research is to find out the legal protection for peer to peer lending consumers in Indonesia and analyze dispute resolution in peer to peer lending. This research was conducted using normative legal research methods. The author uses normative juridical research methods because the research is carried out on the norms that are materialized in the relevant laws and regulations. The results of this study are Legal protection for consumers of peer to peer lending-based financial technology consists of criminal legal protection, civil legal protection, and preventive legal protection with the establishment of rules or regulations that prevent the use of Fintech peer to peer Lending services as a means of economic crime. Fintech dispute resolution can be done by litigation and non-litigation.*

**Keywords:** Consumers; Fintech; Peer lending; Protection.

### **A. INTRODUCTION**

Indonesia is a state of law, which means that the state considers law as the most important system in the implementation of a series of state powers and institutions.<sup>1</sup> Indonesia as a state of law also means that all citizens have laws and obligations to comply with the rule of law in Indonesia. The 4th paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia states that the Indonesian government has a constitutional obligation to protect the entire Indonesian nation and the entire Indonesian homeland and to advance the general welfare, educate the nation's life and participate in implementing world order based on independence, eternal peace and social justice.<sup>2</sup> The purpose of the state in the development of the times with the emergence of information and financial technology is to be realized in the form of consumer protection for every citizen of Indonesia.

Indonesia is currently facing the industrial revolution 4.0, with the existence of the industrial revolution 4.0 economic activities in Indonesia have developed digitally. With the development of the digital economy, it provides convenience to humans in carrying out economic activities. Economic activities can be carried out anywhere quickly, easily and online

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1 Savina Anggun Lestari et al, Analisis Tantangan Negara Hukum Dalam Menegakkan Hukum Tata Negara Di Era Digital, *Jurnal Relasi Publik*, Vol. 1, No. 2, 2023, page. 29-43

2 Indonesian Constitution 1945

only through the internet, such as shopping online, ordering transportation online and also currently developing financial technology.<sup>3</sup>

Peer to peer lending, which is the basis of Fintech, is supervised by the Financial Services Authority (OJK), but in practice Peer to peer lending organizers commit violations. Fintech Peer to peer lenders often make debt collection activities by intimidating and violating the privacy rights of customers as consumers. When loan recipients are unable to pay off their overdue debts, the lenders usually make collections by threatening, intimidating, and even taking physical action. Not only are the loan recipients threatened and intimidated, but also their friends and family members who are considered to be responsible for paying the loan recipients' debts.<sup>4</sup>

The development of peer to peer lending financial technology in Indonesia is growing very rapidly. It was recorded in February 2021 that the total distribution of funds reached IDR 169.5 trillion. The number of loans jumped 899% from 4.36 million customers in 2018 to 43.56 million customers as of December 2020. The rise of the peer to peer lending fintech phenomenon also provides a lot of problems, especially illegal fintech companies. The Financial Services Authority (OJK) recorded as many as 1,026 illegal fintech in 2020 circulating in the community, while in licensing records there are only 148 peer to peer lending fintech companies or online loans registered with OJK. The rise of illegal fintech companies has an impact on the number of complaints to OJK. There were 6,787 complaints in December 2020 and reached 5,421 complaints in March 2021. Not a few customers also make complaints to local Legal Aid Institutions, for example LBH Jakarta received 1330 complaints in December 2018 and continues to increase every year.<sup>5</sup>

The rapid development of fintech in Indonesia on the one hand provides benefits to consumers and provides a negative possibility for law enforcement in the field of consumer protection law. Based on the above, special supervision of fintech peer to peer lending is needed, although the regulations that have been issued are not always able to guarantee protection and justice for the parties considering the rules issued by the Financial Services Authority (OJK) are relatively new. The existence of this fintech, especially peer to peer lending, also affects the legal protection of Fintech PEER TO PEER lending consumers in Indonesia. This is also related to the legality of the business being run because in its implementation, the development of fintech peer to peer lending has great potential for risk,

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3 Deza Pasma Juniar et al, Perlindungan Hukum Terhadap Konsumen Peer to Peer Lending Atas Perbuatan Melawan Hukum Yang Dilakukan Oleh Debt Collector, *Widya Yuridika: Jurnal Hukum*, Vol. 2, No. 2, 2020, page. 107-118

4 Dita Tania Pratiwi and Sri Bakti Yunari, Perlindungan Hukum Terhadap Konsumen (Penerima Pinjaman) Financial Technology yang Berbasis Peer to Peer Lending di Indonesia, *Jurnal Hukum Adigama*, Vol. 3, No. 1, 2023, page. 472-493

5 Nur Afifah Aminuddin, Legislasi Perlindungan Hukum Terhadap Fenomena Financial Technology Peer to Peer Lending di Indonesia, *Jurnal Hukum dan Pembangunan Ekonomi*, Vol. 9, No. 1, 2021, page. 80-94

namely related to consumer protection as stated in Law No. 8 of 1999 concerning Consumer Protection.<sup>6</sup>

Previous research by Raka Fauzan in a journal entitled "Law Enforcement Against Financial Technology Peer To Peer Lending Companies in Money Loan Collection Activities that Violate the Principles of Consumer Protection Associated with Consumer Protection Law," states that "law enforcement in the context of consumer protection in the financial services sector is not optimal because existing legal regulations to protect consumers against actions taken by fintech peer to peer lending companies are not good enough. There is a need for adequate legal regulation and coordination among relevant parties to enforce the law in order to protect consumers against fintech peer to peer lending companies that violate the rights of consumers."<sup>7</sup>

Another study from Azmi Aulia in a journal entitled "Consumer Protection in the Use of Peer To Peer Lending Technology-Based Lending Services," states that "Consumers who use peer to peer lending services need legal protection, because in the implementation of peer to peer lending agreements many cases of default by loan recipients have been found, which raises new problems with the ways of billing carried out by organizers that are not in accordance with applicable regulations, This makes the rights of peer to peer lending consumers have not been fulfilled, namely the right of consumers to comfort, the right to security, and the right to safety in consuming goods and services, as well as the right of consumers to be treated correctly, honestly and without discrimination."<sup>8</sup>

Based on the description above, the purpose of this research is to find out the legal protection for peer to peer lending consumers in Indonesia and analyze dispute resolution in peer to peer lending.

## B. RESEARCH METHODS

This research was conducted using normative legal research methods. The author uses the normative juridical research method because the research is conducted on the norms materialized in the relevant laws and regulations, including Law No. 8 of 1999 concerning Consumer Protection, Financial Services Authority Regulation Number 18/POJK.07/2018, Financial Services Authority Regulation Number 77/POJK.01/2016 and others, as well as OJK regulations supported by information obtained from literature books, newspapers and online media, as well as the work of scholars related to this research. The data is collected through library research and internet research.

6 Hida Hiyanti et al, Peluang dan Tantangan Fintech (Financial Technology) Syariah di Indonesia, *Jurnal Ilmiah Ekonomi Islam*, Vol. 5, No. 3, 2019, page. 326-333

7 Raka Fauzan Hatamia et al, Penegakan Hukum Terhadap Perusahaan Financial Technology P2P Lending Dalam Kegiatan Penagihan Pinjaman Uang Yang Melanggar Asas Perlindungan Konsumen Dikaitkan Dengan Hukum Perlindungan Konsumen, *Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum UNPAD*, Vol. 2, No. 2, 2019, page. 156-172

8 Made Melda Berlianti and Suatra Putrawan, Urgensi Perlindungan Hukum Bagi Konsumen Terhadap Risiko Gagal Bayar Dalam Peer to Peer Lending Akibat Pandemi Covid-19, *Jurnal Kertha Semaya*, Vol. 9 No. 8, 2021, page. 1365-1375

## C. RESULTS AND DISCUSSION

### 1. The Legal Protection for Peer to Peer lending Consumers in Indonesia

Legal protection includes the fulfillment of a sense of justice, certainty and usefulness of law for all members of society which is realized in National policy. The Indonesian state is a state based on law or called a state of law, this is the sound of Article 1 Paragraph 3 of the 1945 Constitution. Law is a set of rules that philosophically provides protection for the community. Here it is reflected that the whole community is a legal consumer who is entitled to legal protection, so that legal protection of consumers refers to the interests of all members of society.<sup>9</sup>

Consumer protection is a term used to describe the legal protection given to consumers in their efforts to meet their needs from things that harm consumers.<sup>10</sup> Consumer protection essentially covers a wide range of topics, not just limited to product liability, privacy rights, unfair business practices, fraud, misrepresentation, and other business/consumer interactions.<sup>11</sup>

The significance of the protection of consumer rights in Indonesia in the Consumer Protection Act is as an implementation of part of the concept of a welfare law state based on the Pancasila philosophy which according to Baschan Mustafa the concept of a welfare law state is as follows: the state prioritizes the interests of the people (welfare state); the state intervenes in all fields of community life; the state adopts an economic system that is more led by the central government; and the state maintains security in a broad sense in all fields of community life.<sup>12</sup>

According to Satijpto Raharjo, legal protection is to provide protection for human rights (HAM) that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Law can be used to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet socially, economically and politically strong to obtain social justice.<sup>13</sup>

Consumer protection in the financial services sector is regulated and supervised by the Financial Services Authority. The Financial Services Authority is an independent institution that was inaugurated on July 16, 2012 in accordance with the mandate of origin 34 of Law No. 3 of 2004 concerning Amendments to Law No. 23 of 1999 concerning Bank

9 Az Nasution, Sekilas Hukum Perlindungan Konsumen, *Jurnal Hukum & Pembangunan*. Vol. 16, No. 6, 2017, page. 568

10 Zulham, *Hukum Perlindungan Konsumen*, Jakarta, Kencana, 2016, page. 12

11 Deza Pasma Juniar, Perlindungan Hukum Terhadap Konsumen Peer To Peer Lending atas Perbuatan Melawan Hukum Yang Dilakukan oleh Debt Collector, *Widya Yuridika: Jurnal Hukum*, Vol. 3, No. 2, 2020, page. 107-118

12 Ahmad Hunaeni Zulkarnaen, Sistem Hukum Hubungan Industrial Pancasila Dan Produktivitas Perusahaan Dan Kesejahteraan Pekerja/Buruh, *Res Nullius Law Journal*, Vol. 1, No. 1, 2019, page. 1-16.

13 Rahardjo, Satijpto, *Ilmu Hukum*, Bandung, PT. Citra Aditya Bakti, 2000, page. 5

Indonesia. Regulations regarding the Financial Services Authority have been regulated in Law No.21 of 2011 concerning the Financial Services Authority.

Legal protection for users of information technology-based lending and borrowing services can be done by applying the basic principles of legal protection for users of information technology-based lending and borrowing services. These principles refer to Article 29 of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services.<sup>14</sup>

As a form of preventive effort, OJK as the regulator and supervisor provides service facilities to consumers in registered fintech peer to peer lending companies in the form of Financial Services Authority Regulation Number 18/POJK.07/2018 concerning Consumer Complaint Services in the Financial Services Sector which is a forum to accommodate consumer complaints including the potential material loss of products and/or services of financial services business actors utilized by consumers. Financial Services Business Actors must receive and record every complaint submitted by consumers and/or consumer representatives. Such complaints may be made orally, among others, by telephone and/or in writing, among others, by letter, electronic mail (email), facsimile, website, and/or electronic media officially managed by Financial Services Business Actors that can be used to submit complaint documents.<sup>15</sup>

Currently, OJK still does not require all registered fintech Peer to Peer Lending players to integrate and connect the complaint system, so that it can be monitored easily. With the integrated system, it can facilitate OJK in monitoring public complaints regarding fintech automatically to monitor the activities of registered fintech Peer to Peer Lending. So far, OJK still uses complaint resolution by forwarding complaints directly to OJK's fintech lending supervisor. Meanwhile, illegal fintech complaints have been forwarded directly to the Investment Alert Task Force and then forwarded to Kominfo to block the application.<sup>16</sup>

Article 38 Number 18/POJK.07/2018 states that the Organizer must also have standard operating procedures in serving Users that are contained in electronic documents for the submission and resolution of complaints, including dispute resolution between Users and Peer To Peer lending Organizers. The dispute resolution mechanism can be done in 2 stages, namely: (i) Financial Services Institution (internal dispute resolution); and (ii) Dispute resolution through a judicial institution or outside a judicial institution (external dispute resolution). Article 25 paragraph (1) of the Financial Services Authority Regulation Number

14 Nurasia Harahap and Relly Anastasya Nasution, Perlindungan Hukum Pengguna Layanan Teknologi Finansial (Financial Technology) Pinjam Meminjam Uang Berbasis Teknologi Informasi (Peer to Peer Lending), *Jurnal Hukum Kaidah*, Vol. 20, No. 1, 2020, page. 63-82

15 Bernadheta Febriana and Michael Geraldo, Urgensi Perlindungan Hukum Bagi Konsumen Peer To Peer (P2P) Lending Di Indonesia, *Jurnal Education and developmentInstitut Pendidikan Tapanuli Selatan*, Vol. 9, No. 4, 2021

16 Nur Hidayatul Fithri, Perlindungan Hukum Terhadap Nasabah Financial Technology Peer to Peer Lending di Indonesia, *Wijaya Putra Law Review*, Vol. 1, No. 1, 2022, page. 1-19

18/POJK.07/2018 states that dispute resolution outside the court is carried out through an Alternative Dispute Resolution Institution which is included in the List of Alternative Dispute Resolution Institutions determined by OJK and included in the agreement and / or financial transaction documents between Financial Services Business Actors and consumers.<sup>17</sup>

Other consumer legal protection is found in Law No. 8 Year 1999 on Consumer Protection, which is intended to provide legal protection to consumers who deal with business actors in the event of losses as a result of actions or deeds committed by business actors. The Consumer Protection Law does not explain in detail the limits of business actors, but business actors regulated in consumer protection are individuals and business entities that carry out activities in the jurisdiction of the Republic of Indonesia.<sup>18</sup>

The Consumer Protection Law as a legal umbrella for consumers in conducting transactions with business actors in various sectors, one of which is in the financial services sector, is no longer adequate in protecting the interests of consumers today and is limited to trading activities that are still traditional in nature, not yet using information technology in the form of the internet as is happening today.<sup>19</sup>

Guaranteeing the confidentiality of consumer data that is neglected is very important from the problem of fintech Peer to Peer lending companies that collect money loans by threatening and disseminating consumer personal data. This arrangement has not been accommodated by the Consumer Protection Law.<sup>20</sup>

Legal protection in the confidentiality of personal data is regulated in Article 45 of the Electronic Information and Transactions Law where legal protection for online loan consumers is given criminal sanctions for violations of personal data which includes defamation. In addition to these criminal sanctions, Article 47 paragraph (1) POJK No. 77/POJK.01/2016 specifically also regulates administrative sanctions, namely in the form of written warnings, fines, restrictions on business activities, and revocation of licenses, especially for legal online loan business actors.<sup>21</sup>

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17 Muhammad Fauzy Daulay et al, Urgensi Perlindungan Hukum Bagi Konsumen Peer To Peer (P2P) Lending di Indonesia, *Jurnal Rectum*, Vol. 4, No. 2, 2022, page. 503-515

18 Asrul Aswar and Resdianto Willem, Penerapan Undang-Undang Perlindungan Konsumen Nomor 8 Tahun 1999 Dalam Memberikan Perlindungan Hukum Yang Adil Bagi Konsumen, *ALDEV: Alauddin Law Development Journal*, Vol. 5, No. 1, 2023, page. 11

19 Mansur, D. M. Arief & Gultom, Elisatris. *Cyber Law Aspek Hukum Teknologi Informasi*, Bandung, Refika Aditama, 2009, page. 21

20 Muhammad Fauzy Daulay et al, Urgensi Perlindungan Hukum Bagi Konsumen, *Op. Cit*, page. 503-515

21 Jeremy Zefanya Yaka Arvante, Dampak Permasalahan Pinjaman Online dan Perlindungan Hukum Bagi Konsumen Pinjaman Online, *IPMHi Law Journal*, Vol. 2, No. 1, 2022, page. 73-87

## 2. The Dispute Resolution in Peer to Peer Lending

The high growth rate of the Fintech business in Indonesia cannot be separated from the various disputes that occur due to losses or defaults experienced by the aggrieved party. Business disputes that arise go hand in hand with the large number of business transactions that occur.<sup>22</sup>

Dispute resolution is a settlement of a case between one party and another. Dispute resolution consists of two ways, namely through litigation (court) and non-litigation (out of court). In the dispute resolution process through litigation is the last means (ultimum remedium) for the parties to the dispute after the non-litigation settlement process does not produce results.<sup>23</sup>

Disputes in the implementation of Peer to Peer Lending-based Fintech can occur between debtors and creditors. If the dispute does occur, there are certain mechanisms to resolve the problem. Parties who feel aggrieved can file a complaint so that the dispute that occurs can be resolved immediately. With the act of complaints from users of Fintech services based on Peer to Peer Lending to the Fintech platform organizer, it makes the organizer must immediately follow up. After receiving a complaint from the aggrieved party in this case the Fintech user, as Article 38 of the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector that financial service actors in this case are Peer to Peer Lending-based Fintech service providers are required to conduct an internal examination of the complaint competently, correctly and objectively; Conduct an analysis to ensure the truth of the complaint; Deliver an apology statement and offer compensatio.<sup>24</sup>

Consumer dispute resolution is divided into 2 parts, namely out-of-court dispute resolution; peaceful settlement of disputes by the parties themselves and dispute resolution through authorized institutions, namely through the Consumer Dispute Resolution Agency (BPSK) using mechanisms through conciliation, mediation or arbitration.<sup>25</sup>

Settlement of Consumer Disputes Outside the Court amicably as referred to in Article 43 Paragraph (2) of the Consumer Protection Law, does not rule out the possibility of an amicable settlement by the parties to the dispute, namely business actors and consumers, without going through a court or consumer dispute resolution body, and as long as it does not conflict with the consumer protection law. In fact, the elucidation of the article states that at every stage an attempt is made to use an amicable settlement by both parties to the dispute. In the

22 Ariella Gitta Sari et al, Online Dispute Resolution (ODR) Wujud Alternatif Penyelesaian Sengketa Bisnis Fintech di Indonesia, *Transparansi Hukum*, Vol. 5, No. 1, 2022, page. 20-39

23 Irwan Triyanto and Widyarini Indriasti Wardani, Penyelesaian Sengketa Tanah Melalui Putusan Perdamaian Oleh Pengadilan (Studi Kasus Putusan Pengadilan Negeri Demak Nomor:5/Pdt.G/2018/Pn.Dmk), *Jurnal Akta Notaris*, Vol. 2, No. 1, 2023, page. 58-67

24 Hanifati Nur Amalina et al, Penyelesaian Sengketa Dalam Peer To Peer Lending (Pinjam-Meminjam Online), *Lontar Merah*, Vol. 2, No. 1, 2019, page. 148-153

25 Law No. 8 of 1999 on Customer Protection

explanation of Article 45 Paragraph (2) of the Consumer Protection Law, it can be seen that the Consumer Protection Law wants peaceful settlement, which is a legal remedy that must first be sought by the parties to the dispute, before the parties choose to resolve their dispute through the Consumer Dispute Resolution Body or a judicial body.<sup>26</sup>

Dispute resolution through the Consumer Dispute Resolution Agency (BPSK) and LAPS-BMPPVI both regulate the settlement of consumer disputes through non-litigation channels, namely dispute resolution outside the court, which basically both in the Law on Consumer Protection and in the POJK LAPS have in common that these two institutional regulations give consumers the freedom to make choices in resolving consumer disputes they face, whether to be resolved in litigation (through the court) or non-litigation (outside the court). In addition, both require the parties to resolve disputes internally first before deciding to resolve disputes through BPSK or LAPS-BMPPVI, which has been explained previously that each financial institution is required to have its own dispute resolution body within the financial services institution so that if a problem occurs between consumers and business actors, consumers first report to the relevant financial services institution and are resolved through the relevant financial services institution. And in the case of dispute resolution at the relevant financial services institution, the institution is not allowed to take advantage of consumer reporting, in other words, to charge a fee to resolve the dispute. At this stage, if no settlement is obtained in the dispute, the parties will determine whether to settle by litigation or non-litigation through BPSK or LAPS-BMPPVI.<sup>27</sup>

Non-litigation settlement of fintech disputes can also be carried out in Financial Services Business Actors (PUJK), dispute resolution is carried out through internal PUJK (Internal Dispute Resolution mechanism), Alternative Dispute Resolution Institutions (LAPS), and limited facilitation from OJK. However, for non PUJK Fintech (startup Fintech), until now the mechanism for resolving consumer disputes has not been determined if the complaint cannot be resolved by the Fintech player itself. Therefore, OJK needs to immediately discuss this matter with Fintech Peer to Peer Lending players who are currently registered and supervised by OJK. OJK needs to develop a standard mechanism for implementing internal dispute resolution (IDR) and alternative dispute resolution (ADR). The goal is for consumers who use P2P Lending services to get clarity on the handling of complaints and disputes. In addition, one of the things that can be considered for the implementation of complaint handling and dispute resolution in Fintech is Online Dispute

26 Perjaka Purba et al, Implementasi Undang-Undang No. 8 Tahun 1999 Tentang Perlindungan Konsumen Terhadap Penyelesaian Sengketa Konsumen Di Kabupaten Buleleng, *Jurnal Komunitas Yustisa*, Vol. 2, No. 3, 2019, page. 156-167

27 Titia Tauhiddah et al, Kewenangan Penyelesaian Sengketa Konsumen Lembaga Pembiayaan Antara Badan Penyelesaian Sengketa Konsumen (Bpsk) Dengan Lembaga Alternatif Penyelesaian Sengketa (LAPS), *De Lega Lata: Jurnal Ilmu Hukum Fakultas Hukum UMSU*, Vol. 5, No. 1, 2020, page. 94-105

Resolution (ODR). ODR is a dispute resolution system that utilizes information technology facilities, such as telephone, email, application, webchat, and video conference.<sup>28</sup>

The findings of this study are the potential risks of the Fintech business in Indonesia must be of concern to the government and OJK, especially regarding legal protection arrangements for consumers, and dispute resolution for each party so that the implementation of the Fintech business in Indonesia can be more effective. each party so that the application of the regulation is actually implemented.

#### **D. CONCLUSION**

Consumer protection in the financial services sector is regulated and supervised by the Financial Services Authority (OJK). The protection consists of criminal law protection, civil law protection, and preventive legal protection by the establishment of rules or regulations that prevent the use of Fintech Peer to Peer Lending services as a means of economic crime. Fintech dispute resolution can be done by litigation and non-litigation. Litigation settlement can be done through civil court, while dispute resolution through non-litigation can be through the Consumer Dispute Resolution Agency (BPSK), LAPS-BMPPVI, and Financial Services Business Actors (PUJK).

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28 Ariella Gitta Sari et al, Online Dispute Resolution (ODR) Wujud Alternatif Penyelesaian Sengketa, *Op Cit*, page. 20-39

- Oleh Debt Collector, *Widya Yuridika: Jurnal Hukum*, Vol. 2, No. 2, 2020;
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