



## Legal study to overcome illegal peer to peer lending in the era of industrial revolution 4.0

Galang Rizki Putratama\*, Joko Setiyono

Master of Law Study Program, Faculty of Law, Diponegoro University Jl. Imam Bardjo, SH, Nomor 1-3 Kampus Undip  
Pleburan, Semarang, Indonesia

### Abstract

In the era of Industrial Revolution 4.0, the development of digital technology continues to grow rapidly. It has a big impact on human life in everyday life. In Indonesia, the development of information technology mainly touches on the economic sector, one of which is financial technology (Fintech). The rapid growth of technology and digital development can also be seen from the many start-up companies in the technology sector, one of which is Fintech P2P Lending, the regulations of which are regulated in Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. However, the rapid development of fintech has also given rise to illegal fintechs, which do not have permits or are not registered and still operate freely in Indonesia. On the other hand, regulations and handling in Indonesia are inadequate in protecting fintech users. Complaints and problems in fintech activities, especially P2P Lending for users, for example, include the security of personal data, billing procedures, payment failures, fraud, etc., which are often concerns by investors and borrowers. Therefore, there should be supervision and protection regarding regulation and overcoming illegal P2P Lending fintech actors. The type of research in this Scientific Article was normative juridical. This study uses approaches including statutory approaches and conceptual approaches. The selected research was qualitative research, with secondary data as the source of the research.

**Keywords:** Peer to peer lending, industrial revolution 4.0, digital technology

### Introduction

The Industrial Revolution is entering a new stage characterized by cyber technology and artificial intelligence developing in various aspects of life. The development of Industry 4.0, which has touched the Internet of Things (IoT), can connect and facilitate communication between machines, devices, sensors, and humans via the Internet network and allows automation to achieve effective and efficient productivity (Baenanda, 2019) <sup>[1]</sup>. The development of information technology, especially interconnection-networking (Internet), has had a major influence on all aspects of human life. Information and communication technology development has made world relations seem limitless and quickly caused significant social, economic, and cultural changes.

The manifestation of the Industrial Revolution 4.0 in the financial sector is shown by financial technology (fintech). Fintech is the use of technology in the financial system that creates new products, services, technologies, and/or business models and can have an impact on monetary stability, financial system stability and/or efficiency, smoothness, security, and reliability of payment systems (PBI No. 19 /12/PBI/2017, Article 1). The development of the fintech industry in Indonesia is in line with the increasing number of internet and smartphone users in Indonesia. Results of the 2016 Indonesian Internet User Statistics survey conducted by the Association of Indonesian Internet Service Providers (Otoritas Jasa Keuangan, 2017) <sup>[5, 6, 7]</sup> stated that Indonesian Internet users in 2016 were 132.7 million users or around 51.5% of the total population of Indonesia and 63.1 million or 47.6% of this number were mobile device (smartphone) users. In 2018, within 2 years, the number of Internet and smartphone users increased

Based on survey results, 93.9% of Indonesia's population connects the internet daily with smartphone media. This fact shows that the Indonesian people have opened up to technological developments. Technology that provides convenience to the public also causes changes in consumer behavior patterns in product or service transactions, including in financial service transactions. Fintech comes together with the needs of the community in terms of convenience.

The development of fintech in Indonesia currently shows an increase every year. Bank Indonesia statistical data records that the total fintech transactions in Indonesia in 2017 reached IDR 202.77 trillion. This number increased by 24.6 percent compared to 2016. Meanwhile, Bank Indonesia also noted that fintech business actors increased from 140 companies in 2017 to 188 companies (Hukum Online, 2019) <sup>[3]</sup>.

One of the fintech services that has received attention is the Fintech Peer-to-Peer Lending (Fintech P2P Lending) service. Fintech P2P Lending provides financial services to bring together lenders and loan recipients in the context of entering into loan agreements through an electronic system using the internet network. Fintech P2P Lending has the distinct advantage of performing an interface function through off-balance sheet funding. Fintech P2P Lending services are also more flexible. They can allocate capital or funds to anyone, in any amount, effectively and transparently, and with low interest (Wijayani, 2017) <sup>[9]</sup>. Financial Service Authority noted that as of August 2019, the number of companies registered or licensed by the Financial Service Authority was 127. As of July 2019, borrowers in Fintech P2P Lending companies reached 11,415,849 entities with a loan value of IDR 49.79 trillion,

originating from 518,640 funding providers (Margaretha, 2015) <sup>[4]</sup>.

Risks can arise regarding the personal data of Fintech P2P Lending consumers, such as personal data theft, system damage that can allow data breaches to occur, and misuse of personal data controlled by the business actor himself or other parties who can access consumer personal data. This makes consumers who are consumers required to research beforehand when using Fintech P2P Lending, both as investors and borrowers. In this case, the Financial Service Authority works with the Ministry of Communication and Information to block the illegal Fintech P2P Lending. However, other problems arise when Fintech P2P Lending opens a new website or application with another name on the website or digital content provider.

Many illegal Fintech P2P Lending consumers have become victims in various cases. One of them is a debtor who cannot pay the creditor. The debtor receives threats and disseminates the consumer's personal data. This clearly violates Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Law Number 19 of 2016 concerning the First Amendment to the Electronic Information and Transactions (ITE) Law, as well as Ministry of Communication and Information Regulation Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems (PM 20/2016). The owner of personal data, according to PM Regulation Number 20 of 2016 Article 26, has the right to keep his data confidential; has the right to file a complaint in the context of resolving personal data disputes; has the right to get access to obtain historical personal data; and has the right to request the destruction of certain individual data belonging to him in the electronic system.

Cases that occur with Fintech P2P Lending consumers are not only threats to consumers or borrowers but also involve collection by threatening, intimidating, and collection from third parties who have nothing to do with the debtor. This third party was obtained from misuse of access to personal data through a list of contact numbers (Ministry of Communication and Information, 2019). Apart from this case, another case occurred with Fintech P2P Lending consumers, namely, one debtor borrowed from more than one Fintech P2P Lending application. This is because borrowers cannot pay off payments with interest in a relatively short time, resulting in debtors borrowing from other Fintech P2P Lending applications. Such cases leave the debtor or borrower in debt to several P2P Lending Fintechs, such as in the case of a taxi driver who committed suicide because he was unable to pay an online loan. According to data from the Jakarta Legal Aid Institute (LBH), as of June 2019, there were 4,500 complaints about Fintech P2P Lending. This fintech method includes accessing contacts on the borrower's cellphone, distributing photos of the Resident's Identity Card (KTP), and distributing the borrower's personal photos.

### **Formulation of the Research Problem**

Based on the background description above, the author can identify several main problems that will be discussed:

1. How to overcome illegal Fintech P2P Lending in Indonesia?
2. What is the concept of intersectoral coordinating protocol to face the industrial revolution 4.0?

### **Research Methods**

The type of research in this scientific article was normative juridical research. Normative juridical writing or legal research is library research on secondary data (Soemitro, 1998) <sup>[8]</sup>. This legal research uses an approach commonly used in legal research, including the statutory and conceptual approaches. Legal research through a statutory regulation approach examines all laws and regulations related to the legal issues being handled. A conceptual approach by analyzing and criticizing the supervision of Fintech P2P Lending in the era of the Industrial Revolution 4.0. The selected research is qualitative research, where the form of the research data is information in the form of words or is called qualitative data. Based on research sources using secondary data.

### **Discussion**

#### **1. Countermeasures for Fintech Peer to Peer Lending in Indonesia Today**

In line with the development of the internet of things-based industries, which encourage effectiveness and efficiency in various aspects of life, Fintech is an implementation of technology in financial aspects in the current digital revolution era. Innovation in information technology-based financial services is represented by online lending and borrowing services through a platform currently known as Fintech P2P Lending.

The implementation of Fintech P2P Lending in Indonesia is under the auspices of the Financial Services Authority as the organizer of an integrated regulatory and supervisory system for all activities in the financial services sector. This is confirmed in Article 5 of Law Number 21 of 2011 concerning the Financial Services Authority. Apart from being under the auspices of the Financial Services Authority as a financial services system, implementing Fintech P2P Lending is also under the supervision of Bank Indonesia as a payment system regulation. Fintech P2P Lending activities in Indonesia have a legal umbrella with the issuance of Financial Services Authority Regulation Number 77 / POJK.01/ 2016 concerning Information Technology-Based Money Lending and Borrowing Services and Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology.

As stated in Article 7 of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services, Fintech P2P Lending service providers who will operate are required to register and obtain permits with the Financial Services Authority. The Fintech P2P Lending approval for registration will be given by the Financial Services Authority by issuing a certificate of registration. Providers registered with the Financial Services Authority must apply for a license as information technology-based lending and borrowing service providers within a maximum period of one year from the date of registration with the Financial Services Authority. Activities for organizing Fintech P2P Lending services can only begin when they have received permission from the Financial Services Authority. For Fintech P2P Lending service providers who already have proof of registration but do not submit a permit application, the provider is no longer registered with the Financial Services Authority and can no longer apply for re-registration.

Even though the Financial Service Authority has issued a registration and licensing mechanism for this information technology-based loan provider service, there are still Fintech P2P Lending practices that are not licensed by the Financial Services Authority or are currently illegal in Indonesia. In 2018, the Financial Service Authority, together with the Investment Alert Task Force (SWI), discovered 404 Fintech P2P Lending entities that did not have business permits following POJK Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. In contrast, 2019 the number increased to 683 entity (Otoritas Jasa Keuangan, 2019) <sup>[5, 6, 7]</sup>. Based on search results, entities of unknown origin accounted for 42%, followed by 22% from Indonesia. In comparison, 15% came from the United States, and the rest from other countries. (Otoritas Jasa Keuangan, 2019) <sup>[5, 6, 7]</sup>.

Implementing countermeasures against illegal Fintech P2P Lending in Indonesia has been attempted by the Investment Alert Task Force (SWI) Joint Financial Services Authority with the Ministry of Communication and Information. The handling of illegal Fintech P2P Lending is attempted by the Financial Services Authority together with the Investment Alert Task Force (SWI) by publishing a list of legal Fintech P2P Lending that can be accessed by the public on the Financial Services Authority's website through this list the public can identify the legality of the Fintech P2P Lending service providers currently available.

Preventive actions have been taken by the Investment Alert Task Force in synergy with the Indonesian Joint Funding Fintech Association (AFPI) by conducting education through social media and outreach to the public regarding the characteristics of illegal Fintech P2P Lending. This education is intended to make people more adept at selecting currently available lending and borrowing service providers to avoid illegal Fintech P2P Lending practices. Furthermore, SWI appealed to the public so that before making loans to Fintech P2P Lending, they understand the following matters:

- a. Borrow from Fintech P2P Lending registered with the Financial Service Authority.
- b. Borrow according to your needs and abilities.
- c. Borrow for productive purposes.
- d. Understand the benefits, costs, interest, terms, penalties and risks before deciding to make a loan to Fintech P2P Lending.

The explanation regarding the list of legal Fintech P2P Lending, supported by outreach and appeals to the public, does not decrease the number of illegal Fintech P2P Lending practices. In fact, many people still tend to use illegal Fintech P2P Lending services rather than services licensed by the Financial Services Authority. Efforts to deal with illegal Fintech P2P Lending services continue to be intensified by the Financial Services Authority and SWI. The next effort is to disseminate details of Fintech P2P Lending service providers who do not have a Financial Services Authority permit. Details regarding the Fintech P2P Lending service providers not licensed by the Financial Services Authority are then submitted to the Minister of Communication and Information, who will block access for these Fintech P2P Lending service providers. Even though the Financial Services Authority, the Investment Alert Task Force, and the Ministry of Communication and Information

have attempted countermeasures by blocking access for illegal Fintech P2P Lending, in fact, these illegal Fintech P2P Lending service providers can operate again using different identities on different platforms through websites and digital content providers such as Google Play store and App Store.

Reflecting on the large number of Fintech P2P Lending practices that are not licensed by the Financial Service Authority despite efforts made through education and blocking access, this confirms that the implementation of dealing with illegal Fintech P2P Lending in Indonesia is currently considered less effective. In eradicating illegal Fintech P2P Lending service providers, in the author's opinion, an intersectoral coordinating protocol concept is needed to overcome the widespread practice of illegal Fintech P2P Lending as an implementation of consumer protection in welcoming the era of technological development that is before our eyes.

## **2. The Concept of Intersectoral Coordinating Protocol to Face the Challenges of the Industrial Revolution 4.0**

In terms of "substitution potential," it can be said that Fintech P2P Lending is unlikely to be able to coordinate very large amounts. Therefore, traditional and investment banks remain important in large-scale finance, especially in handling project finance. However, Fintech P2P Lending has the greatest substitution potential for smaller amounts (for example, small businesses and individual consumer credit). However, regulators urgently need to monitor this area as the numbers are growing phenomenally and with various risks involved. This is because consumer credit and small business finance demand social attention and public interest, and problems in this environment often trigger significant social responses (Y. Chiu, 2016) <sup>[10]</sup>.

Fintech P2P Lending that has been registered will be supervised by the Financial Services Authority in its ongoing operations. The legal Fintech P2P Lending system starts with the borrower completing the terms and conditions, and then the investor provides a loan. Meanwhile, in the transaction process, Fintech P2P Lending is carried out via a virtual account in the payment gateway. This process is supervised by Bank Indonesia. Meanwhile, illegal Fintech P2P Lending is difficult to monitor by the Financial Services Authority because it is not registered. This causes illegal Fintech P2P Lending to not have clear boundaries in its operations, which, of course, has the potential to harm users. Illegal P2P Lending fintech can abuse consumers, such as in several cases, namely threats to consumers who fail to pay, excessively high loan interest, fines, and misuse of personal data. Things that can be done to tackle illegal Fintech P2P Lending are not only at a repressive level but also at a preventative level. The following is a further explanation of these two strategies:

### **a. Preventive**

Actions that can be taken to prevent and anticipate the development of illegal P2P Lending fintech include optimizing public outreach regarding P2P Lending Fintech and providing an understanding of how to recognize legal and illegal P2P Lending Fintech, as well as knowing the risks of using illegal P2P Lending Fintech. Apart from that, the public must also understand the importance of protecting personal data changing the lifestyle of Indonesian people in terms of consumerism due to the existence of Fintech P2P

Lending. Urging the public to avoid being easily tempted by offers and ease of making loans in illegal Fintech P2P Lending, increasing the branding of legal Fintech P2P Lending so that the public knows which Fintech P2P Lending has been registered and supervised by the government. Apart from that, the features or services of legal Fintech P2P Lending are always being improved by fintech companies by exploring the wider community, enhancing collective agreements, and improving the system for resolving disputes that arise between borrowers and investors.

#### b. Repressive

Control after illegal Fintech P2P Lending problems can be overcome by using the intersectoral coordinating protocol concept, which effectively eradicates illegal Fintech P2P Lending. This concept begins with the main tasks and functions of SWI by preventing unlawful acts in raising public funds and managing investments, one of which is through monitoring activities carried out in a coordinated manner (Otoritas Jasa Keuangan, 2019) <sup>[5, 6, 7]</sup>.

The Investment Alert Task Force findings will periodically be forwarded to Bank Indonesia, the Financial Services Authority, and the Ministry of Communication and Information for follow-up. Bank Indonesia, as an institution whose main tasks are to regulate and maintain the smooth running of the payment system, has a responsibility so that the wider community can obtain payment system services that are efficient, fast, precise, and safe. This payment system supervision function, apart from having the authority to grant operational permits to parties carrying out activities in the field of payment systems, also has the authority to supervise the operation of payment systems carried out by Bank Indonesia and other parties outside Bank Indonesia (Bank Indonesia, 2019) <sup>[2]</sup>.

#### Closing

Based on the material above, there are 2 (two) conclusions:

- a. The handling of illegal Fintech P2P Lending, which has been carried out by the Financial Services Authority together with the Investment Alert Task Force and the Ministry of Communication and Information by blocking applications, is considered less effective because, in fact, illegal Fintech P2P Lending service providers can operate again by opening new applications. Therefore, an intersectoral coordinating protocol concept is needed to overcome the widespread practice of illegal Fintech P2P Lending as an implementation of consumer protection in welcoming the era of technological development that is before our eyes.
- b. The concept of an intersectoral coordinating protocol through three institutions, namely the Financial Services Authority, Bank Indonesia, and the Ministry of Communication and Information, is the right concept as a solutive solution to tackling the development of illegal Fintech P2P Lending in Indonesia. This concept began with an investigation into illegal Fintech P2P Lending providers by the Investment Alert Task Force. The Investment Alert Task Force findings will periodically be forwarded to Bank Indonesia, the Financial Services Authority, and the Ministry of Communication and Information for follow-up. This

system allows fast and accurate processing in dealing with illegal Fintech P2P Lending practices.

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