

# Legal Review of Financial Technology Peer To Peer Lending Based on Indonesian Collateral Law Perspective

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## ABSTRACT

*In fulfilling everyday needs, certainly needing equipment and supporting equipment in practice. However, due to limited capital, the background of the birth of legal entities from the government to the private sector offered a program to lend money which was then used for capital. In the process, this loan is often called a credit agreement in which the minimum requirement is a guarantee that will later be used as a collateral object. The guarantee acts as an addition (accessoir) to the main agreement which is to convince the creditor of the assets of the debtor and their ability to make payments later. Because not everyone has sufficient assets to make a loan, a guarantee institution arises that provides a loan program without using collateral. In connection with the development of technology, a new program was born, namely peer to peer lending based on financial technology. Ease in requirements and track record written in a system is the attraction of this type of loan, but because it is regulated by the system, there can be a mismatch of what is promised.*

**Keywords:** collateral; financial technology; loan

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## INTRODUCTION

At the present time, living in a digital era which all about technology makes it easier for people to communicate and do their jobs, completely automated but in certain context the use of digital still reap limitation.<sup>1</sup> When we talk about fulfilling daily needs, humans are difficult to not to use any kind of technology because technology is along the lines of important objects that where we cannot separate it with our lives.<sup>2</sup> Especially those who works or are in the circle of businessman which always need new technology to make their

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<sup>1</sup> Remus, D., & Levy, F. (2017). Can Robots be Lawyers: Computers, Lawyers, And The Practice Of Law. *Geo. J. Legal Ethics*, 30, 501. p.504

<sup>2</sup> Disemadi, H. S., & Prananingtyas, P. (2020). Online Insurance Existence in Indonesia Based on Islamic Legal Perspective as a Protection of Spiritual Rights. *Jurisdictie*, 11(1), 48-66. DOI: <http://dx.doi.org/10.18860/j.v11i1.7519>.



works become easier.<sup>3</sup> By the time, the need for goods and services will always be needed which makes some businesses asking more equipment to uphold the fulfillment of requests given by the market.<sup>4</sup> In addition, for ordinary workers, housewives, until the college's students or high school's students also have the needs for their respective technology to facilitate what is their current job.

That was the background for several financial institutions to help those people who need loans to be used for personal needs or to be used to make their own business or even helps their business becomes bigger.<sup>5</sup> Besides, in addition to this, legal guidance is needed to control and protect everything that happens along with the process of loans. Legal guidance is a logical consequence and embodies the responsibility for legal development to balance the pace of activities in the fields of trade, industry, company, transportation and activities in development projects.<sup>6</sup>

Based on previous research focusing on financial technology are 1). Kornelius Benuf, Rinitami Njatrijani, Ery Agus Priyono, and Nur Adhim in 2020 who studied the regulation and supervision of financial technology in Indonesia<sup>7</sup>; 2). Raden Ani Eko Wahyuni and Bambang Eko Turisno in 2019 who examined the implementation financial technology peer to peer lending (illegal) in business ethics perspective<sup>8</sup>; and 3). Ika Atikah in 2020 who studied the consumer protection of financial technology in Indonesia.<sup>9</sup> Therefore, the focus of this research is on the legal review of financial technology peer to peer lending (P2P Lending) based on the Indonesian collateral law perspective. Relate to the technology, so do the financial institutions that help us with loans already use technology-based that known as financial technology which mostly the loans is no collateral needed in the agreement. The problem statements raised in this journal are how does a financial institution provides loans without collateral and how does the dispute resolutions in financial technology peer to peer lending in Indonesia.

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<sup>3</sup> Benuf, K., Mahmudah, S., & Priyono, E. A. (2019). Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia. *Refleksi Hukum: Jurnal Ilmu Hukum*, 3(2), 145-160. DOI: <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.

<sup>4</sup> Disemadi, H. S., & Prananingtyas, P. (2019). Perlindungan Hukum Terhadap Nasabah Perbankan Pengguna CRM (Cash Recycling Machine). *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 8(3), 286-402. DOI: <https://doi.org/10.24843/JMHU.2019.v08.i03.p07>.

<sup>5</sup> Alamanda, A.E., & Sartono, T. (2019). Implementation of Brizzi as an E-Money Payment Tools in Indonesia. *Jurnal Hukum Novelty*, 10(2), 130-139. DOI: <http://dx.doi.org/10.26555/novelty.v10i2.a13785>.

<sup>6</sup> Patrik, P., & Kashadi. (2009). *Hukum Jaminan*. Semarang: Badan Penerbit Universitas Diponegoro, p. 1.

<sup>7</sup> Benuf, K., Njatrijani, R., Priyono, E.A., & Adhim, N. (2020). Pengaturan Dan Pengawasan Bisnis Financial Technology Di Indonesia. *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi*, 11(2), 46-69. DOI: <https://doi.org/10.28932/di.v11i2.2001>.

<sup>8</sup> Wahyuni, R.A.E., & Turisno, B. E. (2019). Praktik Finansial Teknologi Ilegal Dalam Bentuk Pinjaman Online Ditinjau Dari Etika Bisnis. *Jurnal Pembangunan Hukum Indonesia*, 1(3), 379-391. DOI: <https://doi.org/10.14710/jphi.v1i3.379-391>.

<sup>9</sup> Atikah, I. (2020). Consumer Protection And Fintech Companies In Indonesia: Innovations And Challenges Of The Financial Services Authority. *Jurnal Hukum dan Peradilan*, 9(1), 132-153. DOI: <http://dx.doi.org/10.25216/jhp.9.1.2020.132-153>.

## METHOD

The research method used is a normative legal research method. This method is a legal research method that emphasizes secondary data.<sup>10</sup> Secondary data in this study is divided into primary legal materials (binding legal regulations), secondary legal materials and tertiary legal materials related to financial technology peer to peer lending (P2P Lending). The legal materials are collected through literature study data collection techniques, which are then analyzed qualitatively to obtain correct conclusions.

## ANALYSIS AND DISCUSSION

Credit is a method of paying for goods or services at a later time, usually paying interest as well as the original money.<sup>11</sup> Another definition, credit is the ability of a customer to obtain goods or services before payment, based on the trust that payment will be made in the future.<sup>12</sup> Came from the same web, as an addition, credit is the money lent and borrowed under a credit arrangement.<sup>13</sup> By then, these credit activities have always been synonymous with money loans where the parties involved consist of 2 (two) parties inside the credit arrangement as mentioned. They are commonly known as lender or creditor and borrower or debtor, where both of them will make an agreement which each clause is the result of an agreement that occurs between the two parties.<sup>14</sup>

In Article 1 number 11 of Law Number 10 of 1998 concerning Banking (Banking Law), state credit is the provision of money or equivalent claims, based on a loan agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest. Relate to that, if we talked about who has access to give loans, based Article 1 number (2) Banking Law as follows, banks are business entities that collect funds from the public in the form of deposits, and distribute them to the public in the form of loans and / or other forms in order to improve the standard of living of the people.

In Indonesia, the financial institutions that provide loans in such credit arrangements are mostly provided by national and/or private financial institutions such as Bank, People's Credit Agency (BPR), or any kind of legal entity which by the Law are allowed to provide money loans. In addition to the statements, there are some conditions that must be obeyed

<sup>10</sup> Ningsih, A. S. (2020). License Revocation of Insurance Companies and Legal Protections of the Policyholders. *Jurnal Hukum Novelty*, 11(1), 95-104. DOI: <http://dx.doi.org/10.26555/novelty.v11i1.a15139>.

<sup>11</sup> Efendi, B., & Lestari, C. R. (2018). Penentuan Nilai Limit Oleh Bank Kreditur Berdasarkan Penaksiran Oleh Penaksir. *Kanun Jurnal Ilmu Hukum*, 20(1), 83-102. DOI: <https://doi.org/10.24815/kanun.v20i1.9934>.

<sup>12</sup> Disemadi, H. S. (2019). Risk Management in the Provision of People's Business Credit as Implementation of Prudential Principles. *Diponegoro Law Review*, 4(2), 194-208. DOI: <https://doi.org/10.14710/dilrev.4.2.2019.194-208>.

<sup>13</sup> Dewi, P. M. (2020). Credit Insurance as an Effort to Overcome Bad Credit Risk in Modern Banking Economy in the Industrial Revolution 4.0 in Indonesia. *UNIFIKASI: Jurnal Ilmu Hukum*, 7(1), 88-95. DOI: <https://doi.org/10.25134/unifikasi.v7i1.2702>.

<sup>14</sup> Chosyali, A., & Sartono, T. (2019). Optimalisasi Peningkatan Kualitas Kredit Dalam Rangka Mengatasi Kredit Bermasalah. *Law Reform*, 15(1), 98-112. DOI: <https://doi.org/10.14710/lr.v15i1.23357>.

by the parties who will make credit agreement. Apart from the specified conditions that applied by each financial institution, a credit analyst must also be carried out by the Bank or any financial institutions before actually providing loan access to the debtor.<sup>15</sup>

Other than that, in some cases the borrower must have at least 1 (one) collateral which the existence of the collateral is make the application of loans can be approved as soon as possible after the borrower submit the application to the related financial institutions. Usually, what is often used as collateral is a land certificate which in regulations is regulated in Law Number 5 of 1960 concerning Basic Rules of Agrarian Matters, in Article 25, Article 33, and Article 39 are mentioned about what type of land title that can be used as collateral that take place as an addition to the main agreement (*accessoir*).

If the borrower lend for loans in a great amount of money, they need to gives the lender at least one collateral that its amount is bigger (furthermore regulated in Indonesian Bank's Regulation No. 19/3/PBI/2017 concerning Short Term Liquidity Loans for Conventional Commercial Banks) than the amount of debt. Where the collateral take place as a guarantee to prove to the lender that the borrower is capable to pay the debts plus the interests. The role of collateral in solving troubled financing is to settle problem financing in a *second way out* way. Before the *second way out* is done, *first way out* must be done by Rescheduling, then by doing Reconditioning and Restructuring. The sale process of collateral is the last step taken in completing problem financing.<sup>16</sup>

Meanwhile, at the present time we are entering the era of globalization which affects the growth of national economy, especially in Indonesia. By giving the credit facilities and funding provided by the banking sector to the community, which it can be used by the entrepreneurs to develop and enlarge their business both that are directly able to reduce unemployment and indirect rates, also help to create income equalization in the community.<sup>17</sup> Other than that, globalization also gives big impact to every technology changing in a country. The increasing of sophistication of today's Internet technology is not only easier for people to access information or entertainment but also to earn money. There have been many new types of businesses popping up due to the sophistication of the internet today, starting from online shops, e-commerce, financial technology and which include the newest, P2P Lending (online).<sup>18</sup>

As mentioned above, we have this newest type of credit they are peer to peer lending. Peer to Peer Lending that is also abbreviated as P2P Lending is a form of crowd-

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<sup>15</sup> Ningsih, A. S., & Disemadi, H. S. (2019). Breach of contract: an Indonesian experience in akad credit of sharia banking. *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 19(1), 89-102. DOI: <https://doi.org/10.18326/ijtihad.v19i1.89-102>.

<sup>16</sup> Kurniawati, A.L. (2017). *Peranan Jaminan Dalam Penyelesaian Pembiayaan Bermasalah Di Bmt Tumang Cabang Delanggu Kabupaten Klaten*. Surakarta: Skripsi Universitas Muhammadiyah Solo, p. 1.

<sup>17</sup> Dewi, P. M. *Op.Cit*, p. 90.

<sup>18</sup> Wahyuni, R. A. E. (2020). Strategy of Illegal Technology Financial Management in Form of Online Loans. *Jurnal Hukum Prasada*, 7(1), 27-33. DOI: <https://doi.org/10.22225/jhp.7.1.1324.27-33>.

funding used to raise loans for people who need to borrow, from people who want to invest.<sup>19</sup> It helps those who needs loans to borrow and lend money without any financial institution as an intermediary, and extends credit to borrowers who are unable to get through traditional way to lend money from financial institutions.<sup>20</sup> The conventional way is already written above when the borrower need to put and/or left the collateral at the financial institutions where the borrower lend from based on the object he/she use as the collateral.

In addition to the definitions of P2P Lending, we can simply say that the main idea of P2P Lending is the money from the savers used to invest will get higher interest by lending out their money instead of saving it, and borrowers getting funds at comparatively low interest rates.<sup>21</sup> At the recent time, P2P Lending typically use an online platform where it is accessible enough to the borrowers and lenders to register themselves, and the is no limit time to access any information through the *app*. Due to the fact of the convenience it receives of P2P Lending based on financial technology is when the borrower applies for loans, no collateral needed. So it does not need any land certificate or anything to be set as collateral.

This P2P Lending turns out into the best solution to those who needs money in fast track. Because the process is easy, no need to use any collateral, not even left the collateral in the financial institution, the installment amount is not high with low interests where the borrower can choose based on the tenor they took, last but not least the requirement is simple and straightforward. Furthermore, to any financial institutions that applies the P2P Lending based on financial technology who do not necessarily use credit card must be pointed as the most best lending system so far. Which as written, each institution has its own rules and policies accompanied by several additional conditions in its provisions to regulate borrowers in applying for loans without collateral based on management's consideration. The additional conditions that applied to the borrowers, some of those are must fulfill the requirements with data which mostly all about personal info of the borrowers, and probably must upload any photocopy of Id-Card, etc to the system.

Need to be noted that there are requirements that must be fulfilled before make application to apply for loans. These 2 (two) important requirements in making agreements in Indonesia are already legal based on Indonesian private law, which is more than 21 years old and/or already married, he/she is allowed to register to this type of loan, no matter

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<sup>19</sup> Hariyani, I. (2017). Perlindungan Hukum dan Penyelesaian Sengketa Bisnis Jasa PM-Tekfin. *Jurnal Legislasi Indonesia*, 14(3), 345-358. <http://e-jurnal.peraturan.go.id/index.php/jli/article/view/136>.

<sup>20</sup> Rahmayani, N. (2018). Tinjauan Hukum Perlindungan Konsumen Terkait Pengawasan Perusahaan Berbasis Financial Technology di Indonesia. *Pagaruyuang Law Journal*, 2(1), 24-41. <http://jurnal.umsb.ac.id/index.php/pagaruyuang/article/view/887>.

<sup>21</sup> Saputra, A. S. (2019). Peer To Peer Lending Di Indonesia Dan Beberapa Permasalahannya. *Veritas et Justitia*, 5(1), 238-261. DOI: <https://doi.org/10.25123/vej.3057>.

who they are, what they do for a living, where they live, etc, and another important requirements is holding Indonesian citizenship and domiciled in Indonesia. But few institutions require borrowers to have income according to the specified minimum limit, which the amount can be different from an institutions to one another. In addition, the numbers of those who enthusiast to this program, makes several financial institutions trying to open lending for students with the principles of P2P Lending based on financial technology.<sup>22</sup>

In addition, this type of loans hold a great risk in it. Relate to the simple requirement which no collateral is needed, also the application submission can also be done by either public or private workers, entrepreneurs, housewives, even students. Those reasons make any bank that applies peer to peer lending becomes extremely careful to every applications that applied to the financial institutions.<sup>23</sup> Even though they use financial technology as a platform to apply, but still makes the related institution becomes more vigilant due to the fact of forgery of personal data, especially if it is not followed by a verification process that held by the institutions.

The regulations and policies that in charge to P2P Lending platforms are regulated by Bank Indonesia (BI) and Otoritas Jasa Keuangan (OJK). First, the BI Regulation No. 19/12/PBI/2017. In this regulation, BI focus on payment aspect and the mechanism, either using e-wallets or payment gateways that will be or been used by the platform. Once registered, BI will put the company in a *regulatory sandbox*, a period over which BI will oversee the financial technology P2P Lending platform products before allowing them go to market. This usually lasts for a period of six months, which under BI's jurisdiction, could be extended to a maximum of another six months.<sup>24</sup> Second, Regulations of OJK well known as POJK, this is Regulation No. 77/POJK.01/2016 relates to the responsibilities and roles of P2P Lending's platform. Which OJK will monitor the P2P platforms through annual reports and audit trails in such electronic documents.

In short, the beginning of the emergence of peer to peer lending in Indonesia as quoted in an interview between the director of the Indonesian Financial Technology Association (Aftech), Aji Satria Sulaeman and CNN Indonesia, explained that the emergence of peer to peer online money lending services originated from on how the credit card penetration in Indonesia was in low percentage. The peer to peer lending cash loan service fills the gap in financing needs in Indonesia and opens access for those who are

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<sup>22</sup> Nugraheni, N., & Aziza, Q. A. (2020). The Existence Of Collateral In Credit Through Peer-To-Peer Lending Services. *Yustisia Jurnal Hukum*, 9(1), 98-115. DOI: <https://doi.org/10.20961/yustisia.v9i1.39783>.

<sup>23</sup> Falahiyati, N. (2020). Tinjauan Hukum Kontrak Elektronik Dalam Pinjam Meminjam Uang Berbasis Teknologi Informasi (Transaksi Peer To Peer Lending). *Jurnal Justiqqa*, 2(1), 1-11. <http://www.portaluniversitasquality.ac.id:5388/ojsystem/index.php/JUSTIQA/article/view/325>.

<sup>24</sup> Siddharta. (2019). *The Fintech Edge First Edition: Peer-To-Peer Lending*, Retrived from kpmg.com/id, June 19, 2020.



not unbanked, but are creditworthy. The peer to peer lending loan service comes with the aim to bring together the lenders with those who need loans. In addition to that, the Indonesian Financial Technology Association also called the financial technology lending platform to offer a number of added values in its services, including ease for borrowers and ease in billing for lenders because the financial technology platform is also responsible for the billing.<sup>25</sup>

In addition to the interviews of CNN Indonesia, the news portal also conducted an interview with the Chairperson of the Indonesian Financial Technology Association (Aftech) Cash Loan Sector, Sunu Widyatmoko, the role of financial technology is also bringing together the lenders with those who applies for loans by finding them with 'risk appetites' that are in accordance with what the lender wants. That was the prospective loan recipients will be selected which carry the minimum risk according to the standards set by the lender. It would be relate to who he/she will give the loan to, also whether he/she will only lend the employees with minimum income of 2 million per month, or will he/she only give loans to small to medium enterprises that need capital to set up their businesses to be bigger, which all of them are the benefits and role of financial technology in peer to peer lending. In addition, the amount of interest that must be paid in peer to peer lending in each month is classified as fixed cost, from the start of the loan to the repayment and the determination of the interest amount is determined by how long the tenor is submitted until the settlement. Whereas for loans that require collateral, usually in installment payments accompanied by interest that can rise and fall following the ups and downs of the dollar exchange rate.

OJK is a state institution established under Law No. 21 of 2011 which functions are to organize an integrated system of regulation and supervision of all activities in the financial services sector both in the banking, capital market and non-financial services sectors. Banks such as Insurance, Pension/Retiring Funds, Financing Institutions, and other Financial Services Institutions. More fully, OJK is an independent institution and free from interference from other parties that have the functions, duties, and authority to regulate, supervise, examine and investigate as referred in Law No. 21.<sup>26</sup> Where the main function of OJK is written on Article 6 of Law No. 21 of 2011 are to regulates and supervise to: 1). Financial service activities in the Banking sector; 2). Financial service activities in the Capital Market sector; 3). Financial service activities in the Insurance, Pension Fund, Financing Institutions and Other Financial Services Institutions sectors. Basic forms of financial technology include payments (digital wallets, P2P payments), investments (equity

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<sup>25</sup> RBC and CNN Indonesia. (2019). *Awal Mula Hadirnya Peer-To-Peer Lending di Indonesia*, Retrived from <https://www.cnnindonesia.com/teknologi/20180830172622-185-326250/awal-mula-hadirnya-peer-to-peer-lending-di-indonesia>, June, 18, 2020.

<sup>26</sup> Otoritas Jasa Keuangan. (nd). *Faq Otoritas Jasa Keuangan*, Retrived from <https://www.ojk.go.id/id/Pages/FAQ-Otoritas-Jasa-Kuangan.aspx>, June 18, 2020.

crowd-funding, P2P Lending), crowd-funding, micro-loans, credit facilities), insurance (risk management), cross-process (big data analysis, predictive modeling), Infrastructure (security).<sup>27</sup>

Also, based on CNBC Indonesia's news as released on September 1, 2018 wrote that since 2018, we (referred as Indonesia) have legal protection to Financial Technology as written on OJK Regulation No. 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector. This rule consist of provisions that covers the supervision and regulation of the financial technology industry. In the matter of fact on why this regulation released by OJK was due to the fact that the growth of financial technology is significantly consistent, in addition to the significant growth of financial technology needs to be managed in order to bring benefits to the society, by then, it can be accounted for, safe, prioritizing consumer protection and having well-managed risks.<sup>28</sup>

Previously, the regulations to peer to peer lending in Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services, where the regulation is considered to be less effective, because the regulations only apply sanctions for online loan applications that are registered or licensed by the OJK and do not apply sanctions financial institutions that operate illegally. And then, there are 4 (four) points important rules regarding to P2P Lending, they are (POJK No 77/POJK.01/2016): Article 3 paragraph (2) : The ownership of owner's share is own by the foreign citizens and / or foreign legal entity as referred to in paragraph (1) letter b, both directly or indirectly at most 85% (eighty-five percent); Article 4: The organizers of legal entities in the form of limited liability companies must have a minimum capital of 1 billion, then for legal entities in form of cooperatives are also required to have a minimum capital of 1 billion at the time of registration. Meanwhile, at the time of the permit application, the minimum capital that must be deposited is 2.5 billion (those are counted in rupiah); Article 6: There is a limit in granting loan funds where the provisions of the maximum limit of the total lending of funds to each loan recipient is 2 billion rupiah; Article 24: In a P2P Lending, an organizer must not touch a dime of loan funds flowing from the lender to the recipient of the loan or known as borrower, and vice versa. They can only accept commissions from every loan transaction that occurs on their platform. Later, lenders will send the loan funds to the virtual account that already given by the institution that provide peer to peer lending. As for the repayment process, the P2P Lending provider must provide an account with an

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<sup>27</sup> Iman, N. (2016). *Financial Technology and Financial Institutions*, (Yogyakarta: Gathering Mitra Linkage Bank Syariah Mandiri), p. 7.

<sup>28</sup> Priyonggojati, A. (2019). Perlindungan Hukum Terhadap Penerima Pinjaman Dalam Penyelenggaraan Financial Technology Berbasis Peer To Peer Lending. *Jurnal Usm Law Review*, 2(2), 162-173. DOI: <http://dx.doi.org/10.26623/julr.v2i2.2268>.



*escrow account*. The borrower must send back their borrowed funds to the account, then distribute it to the lenders.

Meanwhile, POJK No. 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector is also issued as an effort to support innovative, cheap, easy and extensive financial services and to increase financial inclusion, investment, financing and other financial services. This regulations more focused on technology which will later overshadow the loan process by peer to peer lending. Several regulations that important on the principles of Digital Financial Innovation arrangements relate to the regulation above, they are: Article 30 paragraph 1 POJK No. 13/POJK.02/2018: The organizer must maintain confidentiality, integrity, and availability of personal data, transaction data, and financial data managed since the data was obtained until the data was destroyed; Article 31 paragraph 1: Relate to the personal data of the borrower and protection to the borrower as customer in peer to peer lending, the organizer must apply the basic principles consumer protection, namely: (a) transparency; (b) fair treatment; (c) reliability; (d) confidentiality and data / information security consumer; and (e) handling complaints and resolving disputes consumers in a simple, fast, and costly manner affordable.

The 2 (two) Articles above are the Articles which are closely related to financial technology-based of peer to peer lending. By then, the workings of an institution on how they can provide technology-based loans without collateral, of course, must be supported by a platform or internet space that facilitates the people who wants to invest their money to be loaned or more easily called lenders to meet the borrower as people who want to make loans.<sup>29</sup>

What must be done by borrowers and lenders in peer to peer lending especially technology-based is indeed very easy. The borrower only needs to register themselves, mostly few platforms ask their personal data such as name, address and domicile, phone number, e-mail, etc, which sometimes the borrower must upload photos or scans of their id card. Once again, it depends on the regulations from each institution's management even though almost all institutions have the same method in the process of submitting, verifying, and paying for this type of loan. After the borrower register themselves, he/she is allowed to use the access to apply for loan. Then, the relevant institution will conduct analysis and approval of the loan application submitted by the borrower. After the application is approved, the borrower can start to choose on how long is the tenor for repayment of the installment. Because even with fixed interest, if the tenor is paid too long it will hoard interest that is high enough so that the total price to be paid can be 1.5 to 2

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<sup>29</sup> Nafiah, R., & Faih, A. (2019). Analisis Transaksi Financial Technology (Fintech) Syariah dalam Perspektif Maqashid Syariah. *IQTISHADIA: Jurnal Ekonomi & Perbankan Syariah*, 6(2), 167-175. DOI: <http://dx.doi.org/10.19105/iqtishadia.v6i2.2479>.

times higher than what it supposed to be. In addition to the sentences before, most of the online platform that provide peer to peer lending, once let the borrower get the application, he/she must pay the installment and will be notified by e-mail or messages each month, 3 days before the payment date.

Meanwhile, for the lenders, there can be several lenders in a platform that provide peer to peer lending based on financial technology, but there is also a legal entity that provide this loans, where they use only one name as a lender to be used as the first party in a peer to peer lending agreement. Then in the confirmation and verification stage, he will check the ability of the borrower which is not far from the 5C principle applied by the bank in providing access to credit.<sup>30</sup> In the explanation of Article 8 of Banking Law is determined, before giving credit, the bank will make a careful assessment to Character, Capacity, Capital, Collateral, and Condition (of Economy).<sup>31</sup> In addition to the 5C, in this type of loans which is peer to peer lending based on financial technology, the completeness of the personal data that previously filled in by the borrower can also determine whether the application will be accepted or not. Because, when an information of a borrower is complete and clear as crystal, the lender can know clearly who the prospective borrower will be lending and also know the borrower's ability to repay the loan later on, and also affect the amount on giving of limits to borrowers.<sup>32</sup>

When a loan application is not accepted, it can also cause due to several causes, which can be in the form of incomplete filling of personal data, or it can be due to the amount of money the borrower want to borrow exceeds the given limit. However, when a submission of an application that has been through the verification process has been received and approved, the lender will issue a kind of agreement that must be implemented both of which contains the rights and obligations of both as borrowers and lenders. In the agreement includes anyone who is bound in it, the amount of debt borrowed, the nominal amount that must be paid each month that has been accompanied by interest which amount is adjusted to the length of the tenor chosen by the borrower, and the sanction if both of them violate what has been agreed in the agreement. By then, the lender will fund the borrower's needs according to the amount proposed by the borrower, and the lender will receive a loan repayment along with interest.<sup>33</sup>

Because many parties are quiet enthusiastic about the presence of P2P Lending with technology-based, which presenting new financial institutions to do the same thing as

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<sup>30</sup> Disemadi, H.S, *Op.Cit*, p. 200.

<sup>31</sup> Patrik, P., dan Kashadi, *Op.Cit*, p. 2.

<sup>32</sup> Nugraheni, N., & Aziza, Q. A. *Op.Cit*, p. 101.

<sup>33</sup> Wahyuni, R. A. E. (2019). Perkembangan Ekonomi Islam Di Indonesia Melalui Penyelenggaraan Fintech Syariah. *Mahkamah: Jurnal Kajian Hukum Islam*, 4(2), 184-192. DOI: 10.24235/mahkamah.v4i2.5207.

online lending did, but there are also ways to purchase goods that can be used directly.<sup>34</sup> This is happening in Indonesia, where students submit installment applications for goods they want to buy to meet their needs as students. Can be in the form of purchasing mobile phones, purchasing laptops, purchasing backpack, buying shoes, and so on.

One of the institutions that provides peer to peer lending access to students, especially for those who already in college with purchases of goods, namely *cicil.co.id*. This financial institution makes it easy for students to submit applications for the purchase of goods, which for example is a laptop that he will use to work on the report until his thesis later. The student concerned only needs to register to the page or platform owned by Cicil, then just wait to be appended and verified by a student ambassador who will also act as a witness among agreements that occur between students as borrowers and owners of installments as lenders. This student ambassador will also be a witness when there is a dispute between borrowers and lenders, considering that the borrower's age, mostly is still under 21 (twenty-one) years old.

In practice, the payment that came from borrower is not always run smoothly. There are still few borrowers that did default, such as late to pay the installment, do not pay for a long period of time after paying the installment for once, until deliberately not paying the installment right after the lender gave the borrower the money they lend. Therefore, legal protection is needed for both parties, for the lenders as creditors if there is a problem in terms of financing made by the borrower, as well as protection to the borrower as debtor when there is a trap for payments made by creditors. Legal protection itself is a manifestation of legal certainty which in here serves as a preventive and repressive form of all forms of default until violations are committed between the two parties.<sup>35</sup>

Preventive protection has been mentioned above, most of it contain regulations governing how a body or legal entity can transform become a lending institution and supervise the institution annually. There are several basic principles that must be done by the loan provider. The basic principle is regulated in Article 29 POJK Number 77 / POJK.01 / 2016, namely the principle of transparency, fair treatment, reliability, confidentiality and data security, and User dispute resolution is simple, fast and affordable.<sup>36</sup> Then, based on Article 37 POJK Number 77 / POJK.01 / 2016 concerning Information Technology Lending and Borrowing Services based on Article 38 POJK Number 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector, Organizers must provide

<sup>34</sup> Tampi, M. M. (2019). Menakar Progresivitas Teknologi Finansial (Fintech) Dalam Hukum Bisnis Di Indonesia. *Era Hukum - Jurnal Ilmiah Ilmu Hukum*, 16(2), 246-281. DOI: <http://dx.doi.org/10.24912/erahukum.v16i2.4529>.

<sup>35</sup> Faried, F. S., & Dewi, N. (2020). Peran Otoritas Jasa Keuangan dalam Pengaturan dan Pengawasan Jasa Layanan Keuangan Berbasis Teknologi (Financial Technology). *Jurnal Supremasi*, 10(1), 12-22. DOI: <https://doi.org/10.35457/supremasi.v10i1.845>.

<sup>36</sup> Sari, A.R. (2018). *Perlindungan Hukum Bagi Pemberi Pinjaman Dalam Penyelenggaraan Financial Technology Berbasis Peer To Peer Lending Di Indonesia*. Yogyakarta: Skripsi Universitas Islam Indonesia, p. 130

compensation to the injured party due to the error or negligence of the financial institutions.<sup>37</sup>

Other than that, for repressive protection in a credit agreement, it can come from all directions, specifically from the direction of the debtor or creditor. Protection to debtors is usually given when the lending institution is intentional in terms of deception related to the amount of installment payments that must be paid by the debtor and as an addition, is leak the personal information of the debtor that has been registered on the financial institution's platform. Meanwhile, protection must also be given to the lender as creditors from debtors who may intentionally commit defaults and non-performing loans which cause the debtor's reputation to be a little worse in the system.<sup>38</sup>

The trigger for disputes that occur from debtors, for example, is that the interest offered should be lower than interest in other financial services because financial technology uses information technology facilities that are more efficient. Therefore, the financial technology does not serve customers directly and uses fewer employees compared to other loan providers. In addition, financial technology also does not require real assets that are too expensive like conventional financial institutions, which means it also requires costs in financial technology operations.<sup>39</sup> By then, the borrowers feel there is lack of transparency in determining the amount of interest that must be paid, and this is one of the reason on a credit becomes bogged down in its payment process. If this happens, the borrower can make a complaint in advance to OJK as supervisor of peer-to-peer lending based on financial technology and also as a form of consumer protection, which is the heaviest sanction, namely the license from the related loan company revoked by OJK.<sup>40</sup>

By then, when we talking about the settlement of disputes that occur as a result of default conducted by the debtor or borrower, most of the provider of peer to peer lending based on financial technology must be done 3C, they are Rescheduling, Reconditioning, and Restructuring. Same as mentioned before, which is about *first way out* and *second way out*. Because this loan is one form of loans where no collateral is needed, in the case of seizures not carried out for confiscated goods, but regarding the goods submitted for application (in this case, such as the example mentioned earlier, such as *cicil.co.id*). But given to that fact, the agreement that occurs is under the system, then to each debtor who

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<sup>37</sup> Ibid. p. 131

<sup>38</sup> Basrowi, B. (2019). Analisis Aspek Dan Upaya Perlindungan Konsumen Fintech Syariah. *Lex Librum: Jurnal Ilmu Hukum*, 5(2), 959-980. DOI: <http://dx.doi.org/10.46839/ljih.v5i2.134>.

<sup>39</sup> Njatrijani, R. (2019). Perkembangan Regulasi Dan Pengawasan Financial Technologydi Indonesia. *Diponegoro Private Law Review*, 4(1), 462-474. <https://ejournal2.undip.ac.id/index.php/dplr/article/view/5109>.

<sup>40</sup> Jafar, A. R. (2019). Fungsi Pengawasan Otoritas Jasa Keuangan (Ojk) Terkait Perlindungan Konsumen Pada Layanan Peer To Peer Lending Fintech. *Ahkam: Jurnal Hukum Islam*, 7(2), 215-234. DOI: 10.21274/ahkam.2019.7.2.

conducts defaults will be automatically recorded into the system which will then affect his/her status or track record when he/she was lend. And also in the future it will affect its journey in applying for loans to several similar institutions.

## CONCLUSION

The ease of obtaining a loan without collateral is one of the great idea to attract people who needs money especially in emergency situations makes people unhesitating ask for loans. Behind the advantages on P2P Lending based on financial technology that we consider it easy for us all, of course there are still some weaknesses which include the ease in changing the existing system. If it is not used according to good will, it will have a negative impact on the borrower and even lender, or maybe to both of them because it is being used by third party who can change the system. The role of OJK as a supervisor and also to regulate the development of financial technology-based loans in Indonesia should be emphasized, given that there are still many online loan providers that have not been registered yet, as well as settlement institutions for disputes that occur within them. It is expected that every loan that occurs will bring convenience and transparency of both parties more clearly visible.

## REFERENCE

- Alamanda, A.E., & Sartono, T. (2019). Implementation of Brizzi as an E-Money Payment Tools in Indonesia. *Jurnal Hukum Novelty*, 10(2), 130-139. DOI: <http://dx.doi.org/10.26555/novelty.v10i2.a13785>.
- Atikah, I. (2020). Consumer Protection And Fintech Companies In Indonesia: Innovations And Challenges Of The Financial Services Authority. *Jurnal Hukum dan Peradilan*, 9(1), 132-153. DOI: <http://dx.doi.org/10.25216/jhp.9.1.2020.132-153>.
- Basrowi, B. (2019). Analisis Aspek Dan Upaya Perlindungan Konsumen Fintech Syariah. *Lex Librum: Jurnal Ilmu Hukum*, 5(2), 959-980. DOI: <http://dx.doi.org/10.46839/ljih.v5i2.134>.
- Benuf, K., Mahmudah, S., & Priyono, E. A. (2019). Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia. *Refleksi Hukum: Jurnal Ilmu Hukum*, 3(2), 145-160. DOI: <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.
- Benuf, K., Njatrijani, R., Priyono, E.A., & Adhim, N. (2020). Pengaturan Dan Pengawasan Bisnis Financial Technology Di Indonesia. *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi*, 11(2), 46-69. DOI: <https://doi.org/10.28932/di.v11i2.2001>.

- Chosyali, A., & Sartono, T. (2019). Optimalisasi Peningkatan Kualitas Kredit Dalam Rangka Mengatasi Kredit Bermasalah. *Law Reform*, 15(1), 98-112. DOI: <https://doi.org/10.14710/lr.v15i1.23357>.
- Dewi, P. M. (2020). Credit Insurance as an Effort to Overcome Bad Credit Risk in Modern Banking Economy in the Industrial Revolution 4.0 in Indonesia. *UNIFIKASI: Jurnal Ilmu Hukum*, 7(1), 88-95. DOI: <https://doi.org/10.25134/unifikasi.v7i1.2702>.
- Disemadi, H. S. (2019). Risk Management in the Provision of People's Business Credit as Implementation of Prudential Principles. *Diponegoro Law Review*, 4(2), 194-208. DOI: <https://doi.org/10.14710/dilrev.4.2.2019.194-208>.
- Disemadi, H. S., & Prananingtyas, P. (2019). Perlindungan Hukum Terhadap Nasabah Perbankan Pengguna CRM (Cash Recycling Machine). *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 8(3), 286-402. DOI: <https://doi.org/10.24843/JMHU.2019.v08.i03.p07>.
- Disemadi, H. S., & Prananingtyas, P. (2020). Online Insurance Existence In Indonesia Based On Islamic Legal Perspective As A Protection Of Spiritual Rights. *Jurisdictie*, 11(1), 48-66. DOI: <http://dx.doi.org/10.18860/j.v11i1.7519>.
- Efendi, B., & Lestari, C. R. (2018). Penentuan Nilai Limit Oleh Bank Kreditur Berdasarkan Penaksiran Oleh Penaksir. *Kanun Jurnal Ilmu Hukum*, 20(1), 83-102. DOI: <https://doi.org/10.24815/kanun.v20i1.9934>.
- Falahiyati, N. (2020). Tinjauan Hukum Kontrak Elektronik Dalam Pinjam Meminjam Uang Berbasis Teknologi Informasi (Transaksi Peer To Peer Lending). *Jurnal Justiqqa*, 2(1), 1-11. <http://www.portaluniversitasquality.ac.id:5388/ojsystem/index.php/JUSTIQA/article/view/325>.
- Fariied, F. S., & Dewi, N. (2020). Peran Otoritas Jasa Keuangan dalam Pengaturan dan Pengawasan Jasa Layanan Keuangan Berbasis Teknologi (Financial Technology). *Jurnal Supremasi*, 10(1), 12-22. DOI: <https://doi.org/10.35457/supremasi.v10i1.845>.
- Hariyani, I. (2017). Perlindungan Hukum dan Penyelesaian Sengketa Bisnis Jasa PM-Tekfin. *Jurnal Legislasi Indonesia*, 14(3), 345-358. <http://e-jurnal.peraturan.go.id/index.php/jli/article/view/136>.
- Iman, N. (2016). *Financial Technology and Financial Institutions*, Yogyakarta: Gathering Mitra Linkage Bank Syariah Mandiri.
- Jafar, A. R. (2019). Fungsi Pengawasan Otoritas Jasa Keuangan (Ojk) Terkait Perlindungan Konsumen Pada Layanan Peer To Peer Landing Fintech. *Ahkam: Jurnal Hukum Islam*, 7(2), 215-234. DOI: 10.21274/ahkam.2019.7.2.



- Kurniawati, A.L. (2017). *Peranan Jaminan Dalam Penyelesaian Pembiayaan Bermasalah Di Bmt Tumang Cabang Delanggu Kabupaten Klaten*. Surakarta: Skripsi Universitas Muhammadiyah Solo.
- Nafiah, R., & Faih, A. (2019). Analisis Transaksi Financial Technology (Fintech) Syariah dalam Perspektif Maqashid Syariah. *IQTISHADIA: Jurnal Ekonomi & Perbankan Syariah*, 6(2), 167-175. DOI: <http://dx.doi.org/10.19105/iqtishadia.v6i2.2479>.
- Ningsih, A. S., & Disemadi, H. S. (2019). Breach of contract: an Indonesian experience in akad credit of sharia banking. *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 19(1), 89-102. DOI: <https://doi.org/10.18326/ijtihad.v19i1.89-102>.
- Ningsih, A. S. (2020). License Revocation of Insurance Companies and Legal Protections of the Policyholders. *Jurnal Hukum Novelty*, 11(1), 95-104. DOI: <http://dx.doi.org/10.26555/novelty.v11i1.a15139>.
- Njatrijani, R. (2019). Perkembangan Regulasi Dan Pengawasan Financial Technology di Indonesia. *Diponegoro Private Law Review*, 4(1), 462-474. <https://ejournal2.undip.ac.id/index.php/dplr/article/view/5109>.
- Nugraheni, N., & Aziza, Q. A. (2020). The Existence Of Collateral In Credit Through Peer-To-Peer Lending Services. *Yustisia Jurnal Hukum*, 9(1), 98-115. DOI: <https://doi.org/10.20961/yustisia.v9i1.39783>.
- Otoritas Jasa Keuangan. (nd). *Faq Otoritas Jasa Keuangan*, Retrived from <https://www.ojk.go.id/id/Pages/FAQ-Otoritas-Jasa-Keuangan.aspx>, June 18, 2020.
- Patrik, P., & Kashadi. (2009). *Hukum Jaminan*. Semarang: Badan Penerbit Universitas Diponegoro.
- Priyonggojati, A. (2019). Perlindungan Hukum Terhadap Penerima Pinjaman Dalam Penyelenggaraan Financial Technology Berbasis Peer To Peer Lending. *Jurnal Usm Law Review*, 2(2), 162-173. DOI: <http://dx.doi.org/10.26623/julr.v2i2.2268>.
- Rahmayani, N. (2018). Tinjauan Hukum Perlindungan Konsumen Terkait Pengawasan Perusahaan Berbasis Financial Technology di Indonesia. *Pagaruyuang Law Journal*, 2(1), 24-41. <http://jurnal.umsb.ac.id/index.php/pagaruyuang/article/view/887>.
- RBC and CNN Indonesia. (2019). *Awal Mula Hadirnya Peer-To-Peer Lending di Indonesia*, Retrived from <https://www.cnnindonesia.com/teknologi/20180830172622-185-326250/awal-mula-hadirnya-peer-to-peer-lending-di-indonesia>, June, 18, 2020.
- Remus, D., & Levy, F. (2017). Can Robots be Lawyers: Computers, Lawyers, And The Practice Of Law. *Geo. J. Legal Ethics*, 30, 501-588
- Saputra, A. S. (2019). Peer To Peer Lending Di Indonesia Dan Beberapa Permasalahannya. *Veritas et Justitia*, 5(1), 238-261. DOI: <https://doi.org/10.25123/vej.3057>.

- Sari, A.R. (2018). *Perlindungan Hukum Bagi Pemberi Pinjaman Dalam Penyelenggaraan Financial Technology Berbasis Peer To Peer Lending Di Indonesia*. Yogyakarta: Skripsi Universitas Islam Indonesia.
- Siddharta. (2019). *The Fintech Edge First Edition: Peer-To-Peer Lending*, Retrived from [kpmg.com/id](http://kpmg.com/id), June 19, 2020.
- Tampi, M. M. (2019). Menakar Progresivitas Teknologi Finansial (Fintech) Dalam Hukum Bisnis Di Indonesia. *Era Hukum-Jurnal Ilmiah Ilmu Hukum*, 16(2), 246-281. DOI: <http://dx.doi.org/10.24912/erahukum.v16i2.4529>.
- Wahyuni, R. A. E. (2019). Perkembangan Ekonomi Islam Di Indonesia Melalui Penyelenggaraan Fintech Syariah. *Mahkamah: Jurnal Kajian Hukum Islam*, 4(2), 184-192. DOI: 10.24235/mahkamah.v4i2.5207.
- Wahyuni, R. A. E. (2020). Strategy of Illegal Technology Financial Management in Form of Online Loans. *Jurnal Hukum Prasada*, 7(1), 27-33. DOI: <https://doi.org/10.22225/jhp.7.1.1324.27-33>.
- Wahyuni, R.A.E., & Turisno, B. E. (2019). Praktik Finansial Teknologi Ilegal Dalam Bentuk Pinjaman Online Ditinjau Dari Etika Bisnis. *Jurnal Pembangunan Hukum Indonesia*, 1(3), 379-391. DOI: <https://doi.org/10.14710/jphi.v1i3.379-391>.