


## Politics of Law for the Protection of Debtors as Consumers in Fintech based Loaning Services



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## Politics of Law for the Protection of Debtors as Consumers in Fintech based Loaning Services

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**ABSTRACT.** This study aims to analyze legal protection related to technology-based lending and borrowing services. The research method used is normative legal research, with a statutory approach, namely an approach using legislation and regulations, and a conceptual approach that refers to existing legal doctrines. The data collection technique used was a literature study. The results show that legal protection for debtors as consumers has not been realized because the consumer dispute resolution mechanism for non-PUJK activities has not been regulated, there is no regulation regarding the interest rate ceiling and mechanisms related to the collection process, and because of the lack of strict sanctions against online loan administrators who commit violations.

**KEYWORDS.** Legal protection; Online Loans; Financial Technology

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## Introduction

In the development of ever-increasing technology, people today are very interested in the field of communication. With the development of highly advanced technology, the financial sector also has a more efficient and modern development. In the field of the world economy, currently, it is very important to provide technological innovation in it.<sup>1</sup> With these technological advances, many people use it to do business, one of which is in the financial services business. As the facts in the existing field, there are quite a several online-based applications.

The loan system in the online loan application is implemented using a “peer to peer lending” system, which is the implementation of a loan-loan agreement that maintains the lender and the loan recipient through the internet network.<sup>2</sup> The existence of a peer to peer lending system in Indonesia can certainly have a positive impact, namely that some residents who live in

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<sup>1</sup> Edi Supriyanto & Nur Ismawati, “Sistem Informasi Fintech Pinjaman Online Berbasis Web”, *JUST IT: Jurnal Sistem Informasi Teknologi Informasi dan Komputer*, Vol. 9 No. 2, 2019, p. 100

<sup>2</sup> Ni Nyoman Ari Diah Nurmantari dan Nyoman A. Martana, “Perlindungan Hukum Terhadap Data Pribadi Peminjam Dalam Layanan Aplikasi Pinjaman Online”, *Kerta Wicara*, Vol. 8 No. 12, 2019, p. 2-3

remote or remote areas can easily carry out the process of borrowing money.<sup>3</sup> In this online loan, the implementation of credit extension can be carried out quickly because it is different from the nature of loans from banks that apply the 5C principle, namely Character, Capacity, Capital, Collateral, and Condition as eligibility.<sup>4</sup> The peer to peer lending system does not fully adhere to the 5C principles like banks or other lending and borrowing institutions. The peer to peer lending system uses personal data as a process to identify customers or what is known as KYC (Know Your Customer), assesses Borrower eligibility, and provides services to users, then the Peer to Peer Lending service provider company will verify the data of the Lender, selecting loans with credit scoring, managing the flow of funds between Borrowers and Lenders, and monitoring during the loan period.<sup>5</sup>

The peer to peer lending system was first recognized in the UK through the Zopa company in 2005 and was followed in America. Users were initially attracted to the peer to peer lending concept due to the impact of the 2008 financial crisis. At that time, banks closed new credit lines and gave depositors close to 0% interest rates. Therefore, borrowers must seek alternative sources of funding, and owners of funds actively seek an investment with higher yields. According to Morgan Stanley, peer lending is entering a period of high growth. In 2014 the total market was the US \$ 25 billion and is predicted to reach the US \$ 290 billion by 2020. With more peer lending platforms emerging in other countries, this prediction is very likely to be achieved.<sup>6</sup>

In Indonesia, before the Financial Services Authority (hereinafter referred to as OJK) issued the Financial Services Authority Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services, a peer to peer lending platform exists in society. For example, the Uangteman.com platform has been known in Indonesia since 2015.<sup>7</sup> Information technology-based lending and borrowing services are defined as the provision of financial services to directly bring together

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<sup>3</sup> Alfhica Rezita Sari, "Perlindungan Hukum Bagi Pemberi Pinjaman Dalam Penyelenggaraan Financial Technology Berbasis Peer to Peer Lending di Indonesia", *Thesis*, Universitas Islam Indonesia, Yogyakarta, 2018, p. 97

<sup>4</sup> Huriyah Raih Cita, et.al, "Kedudukan Hukum Kreditur Baru Penerima Pengalihan Piutang Tanpa Persetujuan Agen dan Peserta Sindikasi Lainnya", *Jurnal Bina Mulia Hukum*, Vol. 3 No. 1, 2018, p. 32

<sup>5</sup> Heryucha Romanna Tampubolon, "Seluk Beluk Peer to Peer Lending sebagai Wujud Baru Keuangan di Indonesia", *Jurnal Bina Mulia Hukum*, Vol. 3 No. 2, 2019, p. 193.

<sup>6</sup> KOIN WORKS, <https://koinworks.com/id/education-center/industri-peer-to-peer-lending>, accessed on 23 Desember 2019, 21:34 WIB.

<sup>7</sup> Ratna Hartanto & Juliyani Purnama Ramli, "Hubungan Para Pihak dalam Peer to Peer Lending", *Jurnal Hukum Ius Quia Iustum* Vol. 25 No. 2, 2018, p. 321.

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lenders and loan recipients in rupiah currency through an electronic system using the internet network. Some digital start-ups need to be supervised and regulated in Indonesian regulations. This start-up is directly related to people who do not understand the risks that can occur when borrowing money. In urgent economic needs, it can make someone unable to make a wise decision.

The rapid development of fintech does not necessarily have a positive impact, but many problems arise, especially from fintech-based money lending services. The easy conditions for applying for a loan make many people tempted to apply for a loan, where only with a photo ID and filling in personal data, everyone can easily get funds quickly, but from this convenience, the debtor can be caught in the trap of high loan interest, this is due to the absence of regulations regarding the upper limit on the interest set for this service, as well as the intimidating action of collecting loans which are currently causing unrest in the community.

The number of complaints related to acts of intimidation and terror experienced by debtors during the loan collection process by the P2PL fintech company is now in the public spotlight and has raised serious problems that must be addressed immediately. The Indonesian Consumers Foundation (YLKI) has received many complaints from debtors who are victims of financial services. Of the many reports that have come in, they are dominated by reports related to cases of intimidating billing, abuse, and dissemination of personal data, to the choking of loan interest rates.<sup>8</sup> Debtor's inaccuracy in paying attention to risks when applying for a loan such as not reading the standard clause carefully, understanding the number of interest rates, fines if payment is past the due date, or checking the legality of the fintech organizing company license are a factor in the many complaints related to this fintech-based service problem.

The Indonesian Consumers Foundation (YLKI) urges the public to be careful in making loans from this application-based fintech company because there are many debtors' complaints about how to collect loans, which are often done by threatening, harassment, and misuse of debtor personal data by accessing contacts and collecting through the person whose number is stored in the debtor contact.<sup>9</sup>

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<sup>8</sup> Mochammad Januar Rizki, "Mari Kenali Mekanisme Penagihan yang terdapat di Perusahaan Fintech", *Hukum Online*, retrieved from <https://www.hukumonline.com/berita/baca/lt5b98fc52d2e40/mari-kenali-mekanisme-penagihan-yang-tepat-di-perusahaan-fintech>, accessed on 19 November 2019.

<sup>9</sup> Danang Sugianto, "YLKI sebut Banyak Aduan Soal Aplikasi Utang Online", *News Online DETIK*, retrieved from <https://finance.detik.com/moneter/d-4105636/ylki-sebut-banyak-aduan-soal-aplikasi-utang-online>, accessed on 19 November 2019.

Therefore, this paper analyzes how the legal politics of the protection of debtors as consumers in financial technology-based lending and borrowing services.

## Method

The research approach used in this writing is doctrinal, which is an approach that refers to the legal norms contained in statutory regulations and court decisions as well as legal norms that exist in society. So, the approach used is a statutory approach, namely an approach using legislation and regulations, and a conceptual approach that refers to existing legal doctrines. In this case, the normative juridical object lies in Law Number 11 of 2018 concerning Electronic Information and Transactions, Law Number 21 of 2011 concerning the Financial Services Authority, and POJK Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services. This research seeks to explain the aspects of legal protection related to technology-based lending and borrowing services which are currently becoming popular among the community.

If the definition of law is defined in a limited way as the decision of the ruler, and in a more limited sense, the law is defined as legal decisions (court), the main problem is the duty and obligation of the judge in finding out what constitutes law, the judge can be considered wrong. one law-forming factor.<sup>10</sup> Yudha Bhakti Ardhiwisastra also stated that, of course, judges must study various ways of finding laws that have been provided by legal science, because it is an obligation that must be carried out by every judge in carrying out this noble task. This method of finding is known as the method of legal interpretation and legal construction so that this legal discovery is a legal obligation for judges. Furthermore, he stated that the important task of the judge is to adjust the law to the real things in society, if the law cannot be implemented according to its meaning, the judge must interpret it. In other words, if the law is not clear, the judge is obliged to interpret it, so that he can make a decision that is just and by the purpose of the law, namely to achieve legal certainty.<sup>11</sup>

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<sup>10</sup> Yudha Bhakti Ardhiwisastra, *Penafsiran dan Konstruksi Hukum*, Alumni, Bandung, 2000, p.6.

<sup>11</sup> *Ibid.*, pp.1-2.

## **Legal Protection for Debtors as Consumers in Money Technology-Based Lending and Borrowing Services**

The definition of protection is a place to take refuge, things (actions and so on), whereas the definition of law is the whole of the principles and rules governing the interaction of human life in society and aims to maintain order and includes various institutions and processes to bring into effect the rules as a reality in law.<sup>12</sup> Legal protection is a protection provided to legal subjects in the form of instruments, both preventive and written in nature.<sup>13</sup> In simple terms, legal protection is a form of rule or rule that aims to protect or provide protection in the form of law. While the theory of legal protection, several experts explain this discussion, including:

- 1) Fitzgerald cites the term legal protection theory from Salmond that law aims to integrate and coordinate various interests in society because, in traffic of interests, protection of certain interests can be done by limiting various interests on the other hand. The interest of law is to take care of human rights and interests so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection born from a legal provision and all legal regulations provided by the community which is an agreement of the community to regulate the behavioral relationships between community members and between individuals and the government which is considered to represent the interests of the community.<sup>14</sup>
- 2) Phillipus M. Hadjon stated that legal protection for the people is a government action that is preventive and repressive in nature. Preventive legal protection aims to prevent disputes, which directs government actions to be careful in making decisions based on discretion and repressive protection aimed at preventing disputes, including their handling in judicial institutions.<sup>15</sup>

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<sup>12</sup> Mochtar Kusumaatmadja, *Hukum dalam Pembangunan*, Alumni, Bandung, 2002, p.2.

<sup>13</sup> Wahyu Simon Tampubolon, "Upaya Perlindungan Hukum Bagi Konsumen Ditinjau Dari Undang-Undang Perlindungan Konsumen", *Jurnal Ilmiah Advokasi*, Vol. 4 No. 1, 2016, p. 53.

<sup>14</sup> Satjipto Raharjo, *Ilmu Hukum*, PT.Citra Aditya Bakti, Bandung, 2000, p.53.

<sup>15</sup> *Ibid.*, p. 54.

- 3) According to Satjipto Raharjo, legal protection is to protect human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights provided by law.<sup>16</sup>
- 4) Lili Rasjidi and I.B Wysa Putra stated that law can be used to create protection which is not only adaptive and flexible, but also predictive and antipative.<sup>17</sup>

From the description above, it provides an understanding that legal protection is a picture of the functioning of the legal function to realize legal objectives, namely justice, benefit, and legal certainty. Legal protection is a protection provided to legal subjects by legal rules, both preventive and repressive in nature, both written and unwritten in the framework of enforcing legal regulations.

Wealth Maximization as an embodiment of economic analysis theory in Posner's law focuses on the application of the efficient principle. In this case, Posner translates efficiently as a state where resources are allocated as their maximum value. In economic analysis, efficiency, in this case, is focused on ethical criteria in the context of social decision making concerning the regulation of social welfare.<sup>18</sup> In the discussion in terms of legal protection for debtors as consumers, wealth maximization lies in precisely the ideas and ideas that emerge from regulators to discuss the need for providing legal protection to debtors as an effort to form public welfare.

Richard A. Posner emphasized that observing the economic point of view of the law in Posner's point of view gave birth to the behavioral law or the behavioral economy. The two habits were then synthesized until they merged into the behavioral of law and economy. In this regard, Posner explained that "This (judges as future-looking rule makers) includes assessing what would be the most efficient outcome in circumstances where, because of transaction costs, a transaction would not occur without judicial intervention."

According to Satjipto Raharjo, legal protection is to protect human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights provided by law. Meanwhile, according to Philipus M Hadjon, he believes that legal protection is the protection of dignity, as well as recognition of human rights owned by legal

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<sup>16</sup> *Ibid.*, p. 69.

<sup>17</sup> Lili Rasjidi & IB Wysa Putra, *Hukum Sebagai Suatu Sistem*, Remaja Rosdakarya, Bandung, 1993, p.118.

<sup>18</sup> Richard A. Posner, *Economic Analysis of Law*, Ed. 4, Harvard University Press, USA, 1994, p. 4.



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subjects based on legal provisions of arbitrariness. There are 4 (four) elements of legal protection, namely:

- 1) There is protection from the government to its citizens;
- 2) Legal certainty guarantee. In the 1945 Constitution Article, 28 D paragraph (1) states that everyone has the right to recognition, guarantee, protection, and legal certainty that is just and equal treatment before the law.
- 3) About citizenship rights.
- 4) There are sanctions for those who violate them.

Financial technology (fintech) or financial technology (fintech) is growing rapidly along with advances in internet technology and gadgets such as mobile phones, smartphones, PCs, tablet PCs, netbooks, and notebooks. Armed with gadgets and the internet, everyone can access various kinds of applications that can be used to make human life easier. The payment system can now be done via the internet using an electronic wallet application (e-wallet). The public can also access loan funds through the website of the PM-Tekfin service company without going through banks or financing institutions.

The regulation and supervision of the fintech business in Indonesia have been carried out by 2 (two) independent state institutions, namely Bank Indonesia (BI) and the Financial Services Authority (OJK). BI is in charge of regulating and supervising the “Financial Technology-based Payment System” (SP-Tekfin) service business that issues "electronic wallet" or e-wallet applications. An electronic wallet is a virtual payment facility that can be used to store cash, debit card, credit card, and electronic money data. Meanwhile, OJK is tasked with regulating and supervising the fintech business outside of the monetary and payment system, such as the “Lending-Borrowing Business based on Financial Technology” (PM-Tekfin). A PM-Tekfin service business is carried out by parties in the community (peer-to-peer lending) without involving banks or financing companies. PM-Tekfin users generally come from the younger generation of millennials who are classified as small micro debtors who currently live mostly in Jakarta, Bandung, and surrounding areas. In this case, it is hoped that fintech operators will pay close attention to the aspects of protection of consumer funds and data. The protection of consumer funds needs to be considered so that these funds are not lost due to fraud, abuse, or emergency conditions. Protection of user data is necessary so that consumer privacy data can be

stored safely and not be stolen by other parties via hackers, phishing, viruses, malware, etc.

The implementation of fintech in Indonesia is based on the legal basis issued by Bank Indonesia in Bank Indonesia Regulation Number 19/12 / PBI / 2017 concerning the Implementation of Finance Technology. To carry out the task of establishing and implementing policies in the monetary sector, establishing and implementing policies in the field of financial system stability including macroprudential, as well as establishing and implementing policies in the payment system sector, Bank Indonesia needs to establish regulations, supervision, and monitoring of the operation of finance technology. This regulation, supervision, and monitoring is important so that the implementation of financial technology is properly monitored and directed so that the benefits of financial technology can be enjoyed by the public and various risks including the potential for the emergence and development of unsupervised economic transactions (shadow economy) can be properly mitigated. Also, this regulation and supervision are important to continue to encourage the development of the financial technology ecosystem so that its benefits can be felt by the public. In line with the increasing adoption of financial technology by the public, Bank Indonesia must require finance technology operators to continue to apply the principles of consumer protection as well as risk management and prudence.<sup>19</sup>

One of the finance technology activities regulated in the payment system regime and financial service system in Indonesia is Peer to Peer (P2P) Lending. Information technology-based lending and borrowing services are the provision of financial services to bring lenders together with loan recipients in the context of entering into a loan and borrowing agreement in the rupiah currency directly through an electronic system using the internet network. The legal basis that regulates Peer to peer (P2P) Lending is the Financial Services Authority Regulation (POJK) No. 77 / POJK.01 / 2016 regarding information technology-based lending and borrowing services. This OJK regulation covers institutions, registration, licensing, limits on lending funds, information technology management, activity limits, risk management, reports, and consumer protection education.

Lending and Borrowing based on Financial Technology (PM-Tekfin) act as banking but operate via the internet. PM-Tekfin is different from banking because the source of funds does not come from public fund

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<sup>19</sup> Bank of Indonesia, [https://www.bi.go.id/peraturan/sistem.../PBI\\_191217.pdf](https://www.bi.go.id/peraturan/sistem.../PBI_191217.pdf), accessed on 23 November 2019, 14:47 WIB

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associations. PM-Tekfin may not collect public funds through savings, deposits, or donations. In PM-Tekfin, the community can become a lender and recipient of loans, while the organizing company acts as a facilitator and liaison.

Today's consumer protection law is getting enough attention because it concerns the rules for the welfare of society, not only the community as consumers who get protection, but business actors also have the same rights to receive protection of rights and obligations.

Apart from the Consumer Protection Law, consumer law is found in various applicable laws and regulations, to defend the interests of consumers and contains various rules regarding consumer relations and problems. In the case of PM-Tekfin, it consists of investors and debtors. Both require legal protection. Investors as lenders must be protected by their funds so that they are not lost to the organizer, while debtors as loan recipients must be protected so that their collateral is not lost and the terms of the loan must be rational. OJK pays close attention to the aspects of consumer protection by issuing OJK Regulation Number 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector and Financial Services Authority Circular Letter Number 2 / SEOJK.07 / 2014 concerning Services and Resolution of Consumer Complaints to Financial Service Businesses.

Although the issuance of regulations governing technology-based lending and borrowing activities through POJK Number 77 of 2016 does not mean that their activities are without problems, many problems have arisen that have become national news because of the many complaints in the community. The Jakarta Legal Aid Institute (LBH) on March 23, 2019, announced that it had received around 3000 complaints regarding the P2PL fintech implementation problem that they had received since May 2018. Based on these complaints, LBH Jakarta found many violations of law and human rights experienced by victims Most of the users of this P2PL online or fintech loan application have experienced criminal acts committed by the organizers and parties working with the P2PL fintech application organizer, these include, but are not limited to:

- 1) Dissemination of personal data through electronic media (violation of Article 32 in conjunction with Article 48 of Law Number 19 the Year 2016 concerning Electronic Information and Transactions).
- 2) Threats (article 368 of the Criminal Code)
- 3) Fraud (Article 378 KUHP)
- 4) Defamation (Article 311 paragraph (1) of the Criminal Code)

- 5) Sexual harassment through electronic media (Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) of Law Number 19 of 2016 concerning Electronic Information and Transactions.<sup>20</sup>

Responding to these problems, OJK as the regulator investigated to uncover the problems that occurred, and from the results of the investigation, it was found that many debtors who were victims were users of loan applications that were not legal or whose business licenses were not registered with the OJK. OJK urges the public to be careful when applying for loans, including before applying for a loan, it is necessary to find out in advance about the business license from the P2PL fintech organizer which will be chosen legal or not.

OJK has received registration of 25 companies interested in opening a PM-Tekfin business. Examples of PM-Tekfin companies in Indonesia include Modalku, Credy, Kredina, Borrow, and so on. Most of the loan facilities provided by PM-Tekfin companies are only small, starting from Rp. 500,000, - up to a maximum of Rp. 2,500,000, - with a maximum repayment period of 30 days. Loan interest is generally pegged at 2-3% per month excluding administrative costs.

Providers are required to apply for registration and licensing to the OJK. Operators that will carry out PM-Tekfin service activities submit a registration application to the OJK. In carrying out business activities, PM-Tekfin Operators are prohibited from:

- 1) Carrying out business activities other than the Provider's business activities regulated in the OJK Regulations;
- 2) Acting as a lender or loan recipient;
- 3) Provide guarantees in all their forms for the fulfillment of the obligations of other parties;
- 4) Issuing debt securities;
- 5) Provide recommendations to users;
- 6) Publish fictitious and / or misleading information;
- 7) Offer services to users and / or the public through personal means of communication without the user's consent; and
- 8) Charging any fees to users for filing complaints.

The prohibition provides legal protection for PM-Tekfin users. Operators violating the prohibition may be subject to administrative sanctions in the form of:

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<sup>20</sup> LBH Jakarta, "Tindak Pidana Korban Pinjaman Online", *Report*, retrieved from <http://www.bantuanhukum.or.id/web/laporan-tindak-pidana-korban-pinjol/> accessed on 20 December 2019.

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- 1) Written warning;
- 2) Fines, namely the obligation to pay a certain amount of money;
- 3) Restrictions on business activities; and
- 4) Revocation of license.

Meanwhile, about the protection of personal data in Fintech, it is regulated in the Minister of Communication and Information Regulation Number 20 of 2016 concerning the Protection of Personal Data in Electronic Systems. Personal data is certain personal data that is stored, maintained, and maintained for its accuracy and its confidentiality is protected. Protection of personal data in electronic systems includes protection against the collection, collection, processing, analysis, storage, appearance, announcement, transmission, dissemination, and destruction of personal data. The implementation of personal data protection in electronic systems must be based on the principle of respect for personal data as privacy.

Each owner of personal data has the right to his data in an electronic system. These rights are regulated in article 26, namely the right to the confidentiality of his data; filing a complaint in the context of resolving personal data disputes over the failure to protect the confidentiality of his data by the electronic system administrator to the minister; get access or opportunity to change or update his data without disturbing the personal data management system, unless otherwise provided by the provisions of laws and regulations; get access or opportunity to obtain historical personal data that has been submitted to the electronic system operator as long as it is still by the provisions of laws and regulations; and request the destruction of certain individual data belonging to them in an electronic system managed by an electronic system operator, unless otherwise stipulated by the provisions of laws and regulations.

Users of electronic systems should maintain the confidentiality of the personal data they collect, collect, process, and analyze; use personal data according to user needs only; protect personal data and documents containing such personal data from misuse; and be responsible for the personal data contained in his control, either as an organization under his / her authority or individually, if there is an act of abuse.

Article 2 paragraph (1) Ministerial Regulation Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems, states that protection of personal data in electronic systems includes protection when:

- 1) Acquisition and collection;
- 2) Processing and analyzing;

- 3) Storage;
- 4) Appearance, announcement, delivery, dissemination, and / or opening of access; and
- 5) Extermination.

Based on this Ministerial Regulation, fintech operators, as well as business actors operating their business based on electronic systems, are given the obligation to maintain the confidentiality of consumer data from the time the data is obtained until the data is destroyed. P2PL fintech organizers are of course obliged to protect personal data based on the principles of good personal data protection, including:

- 1) Respect for personal data as privacy;
- 2) Personal data is confidential as agreed and / or under the provisions of the legislation;
- 3) Based on the agreement;
- 4) Relevance to obtain, collect, processing, analyzing, storing, displaying, announcing, sending and disseminating;
- 5) The feasibility of electronic systems used;
- 6) Good faith to promptly notify in writing the owner of the personal data for any failure of protection of personal data;
- 7) Availability of internal rules for managing personal data protection;
- 8) Responsibility for personal data that is under the control of the user;
- 9) Ease of access and correction of personal data by personal data owners; and
- 10) Integrity, accuracy, and validity as well as up-to-date personal data.

The use and disclosure of consumer or debtor data by fintech operators, including disclosures to third parties, can only be done based on the consent of the consumer or the debtor concerned. Exceptions to approval are made in terms of disclosure in the context of implementing laws and regulations. This is also in line with the provisions in Article 26 paragraph (1) of Law Number 19 the Year 2016 concerning Electronic Information and Transactions as follows "Unless otherwise stipulated by laws and regulations, any information through electronic media relating to a person's data must be made with the consent of the person concerned."

Owners of personal data, according to Regulation of the Minister of Communication and Information Technology Number 20 of 2016, are entitled to the confidentiality of their data; has the right to file complaints in the context of resolving personal data disputes; has the right to have access to historical personal data, and has the right to request the destruction of

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certain personal data of hers in the electronic system. This right is regulated in Article 26.

Violation of the provisions regarding data confidentiality by fintech operators is subject to administrative sanctions as stipulated in Article 47 POJK Number 77 of 2016 starting from written warnings, fines, restrictions on business activities, and license revocation. From the consumer side, based on Article 26 paragraph (2) Law Number 19 of 2016 concerning Electronic Information and Transactions, any person whose rights are violated based on the provisions in paragraph (1) can file a lawsuit for losses incurred if it is proven that there is a violation of data misuse. personal information by a third party and fulfils the criminal element of misuse of personal data information and causes loss, then it can be punished with imprisonment of up to 12 (twelve) years and / or a maximum fine of Rp. 12,000,000,000.00 (twelve billion).

OJK is currently supervising fintech operators through 3 (three) methods, namely:

- 1) Offsite, through reports submitted by P2PL fintech organizers to OJK. There are several types of reports by the P2PL fintech organizers to the OJK, which include:
  - a) Periodic reports:
    - (1) Monthly report
    - (2) Quarterly reports
    - (3) Annual report
  - b) Other reports as instructed in the Certificate of Registration and the Association's Code of Ethics, include:
    - (1) Changes in the members of the Board of Directors and / or the Board of Commissioners
    - (2) Additions or changes to electronic system products or services
    - (3) Change of company name and address; and
    - (4) Cooperation with material third parties (for example billing and marketing).

Apart from going through reports, there is also a host-to-host implementation plan with company servers by utilizing the database element structure as referred to in Form 3C POJK 77/2016.
- 2) Market conduct (Semi SRO), according to the provisions of Article 48, all Operators must be registered as members of an association appointed by the OJK. OJK has appointed the Indonesian Joint Funding Fintech Association (AFPI) on January 17, 2019. AFPI has a Code of Conduct

and provides several arrangements that have not been regulated by OJK, including the maximum interest limit and billing records. OJK regularly meets AFPI at least once every week, the presence of AFPI as OJK's strategic partner for all fintech organizers in carrying out the functions and supervision of fintech organizers by the appointment of OJK Number S-5 / D.05 IKNB / 2019.

- 3) Onsite, through a direct inspection mechanism either regularly or at any time. Taking into account the potential risk mapping study of the existing P2PL fintech business process, some findings of intelligence operations that have been carried out by the OJK Market Conduct Directorate, there are at least 4 (four) aspects of consumer protection in the implementation of fintech that should be of concern to both the government and regulators in financial services sector, namely completeness of information and transparency of products/services, handling complaints and resolving consumer disputes, prevention of fraud and reliability of service systems, and protection of personal data.

## **Conclusion**

In terms of legal protection efforts for debtors as consumers, rules and regulations are governing the implementation of this activity, business actors or fintech operators must pay attention to and implement the provisions of OJK Regulation Number 77 / POJK.07 / 2016 concerning Information Technology-Based Lending and Borrowing Services. This regulation includes institutions, registration, licensing, lending limits, and management of information technology providers, activity limits, risk management, reports, and consumer protection education. According to the provisions of Article 29, POJK 77/2016 Providers are required to apply the basic principles of user protection, namely: transparency; fair treatment; reliability; confidentiality and data security, and user dispute resolution in a simple, fast and affordable cost. Also, it must pay attention to other statutory provisions such as the Consumer Protection Law, Consumer Protection POJK, and Consumer Complaint Service POJK.

The complexity of the problems in implementing fintech-based money lending is because this service is still new in the community and the absence of strong and comprehensive rules in regulating the implementation of this activity, as well as the lack of education in the community in utilizing



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and using this service wisely. The authors recommendations for regulators include:

- 1) Encouraging the immediate creation of a consumer dispute resolution mechanism for non-PUJK activities, which includes the implementation of financial technology-based money loans.
- 2) Make a regulation whereby the organizer or lender cannot operate without obtaining a license or permit from the OJK, considering that many illegal operators have not obtained OJK's license but are already operating.
- 3) Implement interest rate ceilings and mechanisms related to the collection process without leaving it to the association.
- 4) Giving explicit sanctions to administrators, whether licensed or not.
- 5) Encouraging the immediate issuance of the Personal Data Protection Law, considering that currently, it has begun to enter into the 4.0 industrial revolution which relies on big data as its pillar.

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