



The Existence of the Financial Services Authority in the Settlement of Non-Performing Loans Based on Peer to Peer Lending

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Abstract

The Financial Services Authority (OJK) is an autonomous institution tasked with overseeing and regulating all financial sector activities in Indonesia, including the supervision of banking operations such as lending, sectoral activities, and innovative financial products. In recent years, there has been a significant surge in the adoption of Financial Technology (FinTech), particularly in the form of Peer-to-Peer (P2P) Lending. OJK, being responsible for organizing and supervising financial sector activities, actively monitors the advancements in P2P Lending to ensure compliance with OJK Regulation No. 77/POJK.01/2016, which pertains to Information Technology-Based Direct Lending Services (LMPUBTI) or Peer-to-Peer Lending. This study aims to elucidate OJK's role in addressing non-performing loans (NPLs) associated with P2P Lending in Indonesia, as well as to outline the sanctions imposed by OJK for violations of financial regulations. The research methodology employed is a normative juridical approach, which involves analyzing existing literature or secondary data using a qualitative perspective.

Keywords: *Credit Completion; Peer Peer Lending; OJK*

Introduction

The financial system serves as a key indicator of a country's advancement. The financial system is a fundamental component of a country's economy, largely responsible for providing various services and supporting institutions (Gazali & Usman, 2016). The practice of direct lending and borrowing of money, via both written and unwritten agreements, has been a common occurrence in people's lives. The public has a high demand for immediate lending and borrowing services, either because to their urgent need for cash or because they are unable to get financing from traditional financial institutions like banks and capital markets (Ernama et al., 2017).

The advancement of electronic technology in the current digital age facilitates human interaction over the internet, namely through virtual-based information technology or virtual world information

technology (Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM RI, 2008). In the digital economy age, the community is constantly creating new ways to provide lending and borrowing services. These services are defined by the use of Information Technology-Based Money Lending Services. The shift in contemporary lives has led to the emergence of a novel business approach, namely the use of information technology to facilitate borrowing and lending money. This practice, often referred to as Peer To Peer Lending or P2P Lending, involves the exchange of loans between individuals over an online platform (Priyonggojati, 2019). P2P lending serves as a platform for individuals, namely lenders and borrowers, to establish a mutual agreement. With the continuous progress of financial instruments, many financial institutions have expanded, including securities institutions, insurance institutions, Islamic banking institutions, conventional banks, and other financial institutions. Financial institutions serve as middlemen between individuals or entities with surplus money and those in need of funds. They play a crucial role as financial intermediaries within the community. P2P lending services enable users to engage in online loan transactions without requiring prior acquaintance. This idea intends to revolutionize credit by eliminating intermediaries in loan transactions.

Consequently, this facilitates simplicity through the utilization of terms offering adaptable collateral, broad coverage, and enhanced convenience. Peer-to-Peer (P2P) Lending emerges as an alternative financing avenue for the community, distinct from traditional sources such as banking institutions or cooperative legal entities, which may entail complex procedures at times. P2P lending entails a loan arrangement wherein individuals, legal entities, or businesses borrow funds from others through an agreement facilitated by information technology-based money lending services. The borrower, or loan recipient, refers to the individual or legal entity obligated to repay a debt resulting from an agreement with an information technology-based money lending service. Additionally, the loan service provider, also known as the organizer, is a legal entity in Indonesia that offers, manages, and operates borrowing and lending services specifically related to information technology-based money. The process of online lending and borrowing via Marketplace Lending or Peer-to-Peer Lending is straight forward. These services connect borrowers and lenders through an online platform, rendering P2P Lending highly popular due to its expedited process. Moreover, the proliferation of electronic transactions has spurred the emergence of online payment systems, enabling internet users to access loans or credit by acquiring virtual currency through information technology networks. The regulatory oversight of the money lending and borrowing industry in Indonesia is carried out by two distinct governmental entities: Bank Indonesia (referred to as BI) and the Financial Services Authority (known as OJK). BI's primary responsibility lies in overseeing and regulating business activities, particularly in the domain of electronic financial transactions, such as e-wallet applications. The burgeoning Fintech sector has attracted the attention of both the public and regulatory bodies responsible for supervising the financial services industry, particularly OJK and BI. The proliferation of internet and smartphone users has underscored the necessity for online financial transactions. Fintech is perceived as more practical than the traditional financial industry owing to its flexibility, and the surge of digitally-driven businesses has contributed to Fintech's growth in Indonesia. At present, OJK has enacted two policies specifically targeting Peer-to-Peer (P2P) Lending: Financial Services Authority Regulation Number 77/PJOK.01/2016, which deals with Information Technology-Based Money Lending (PJO No. 77/PJOK.01-2016), and Financial Services Authority Circular Letter Number 18/SEOJK.01/2017, concentrating on Information Technology Governance and Risk Management in Information Technology-Based Money Borrowing Services (SEOJK No 18/SEOJK.01-2017). However, despite these regulatory efforts, there remain shortcomings in adequately addressing the concerns arising from breaches of agreements within the P2P lending system. Notably, there is a lack of clear procedures for resolving issues associated with borrowing and lending money within this framework. As a result, there is a need for further refinement and enhancement of these regulations to ensure the effective resolution of disputes and the protection of stakeholders' interests within the P2P lending landscape.

Method

In this research, a normative juridical approach, also known as doctrinal research, is employed, focusing on analyzing legal materials, particularly various regulations applicable in Indonesia. The primary reference material in this study comprises regulations issued by OJK concerning the supervision of Peer-to-Peer (P2P) Lending in the context of Financial Technology (Soekanto, 2010). The research methodology primarily utilizes a statutory approach, which involves the examination and analysis of laws and regulations published by authorized organizations pertaining to the legal issues under investigation. The statutory approach entails scrutinizing both primary and secondary data sources, which encompass legal documents responsible for providing and elucidating legal information (Bachtiar, 2018). By utilizing this method, the study delves into comprehensively understanding the legal framework surrounding P2P Lending and its supervision by OJK. Furthermore, descriptive research serves as the overarching research type utilized in this study. Descriptive research aims to elucidate and explain the investigated data in a descriptive manner, contributing to the enhancement of existing theories or the generation of new theoretical frameworks. Through descriptive analysis, this research endeavors to provide a comprehensive understanding of the regulatory landscape governing P2P Lending in Indonesia, particularly focusing on OJK's role in supervising and regulating this burgeoning sector of Financial Technology.

Result and Discussion

The role of OJK is pivotal in addressing the challenges posed by problem loans originating from Peer-to-Peer (P2P) lending activities. As the regulatory authority overseeing the entirety of the financial services sector, OJK is tasked with establishing a comprehensive regulatory and supervisory framework that encompasses all facets of financial operations, including P2P lending. In optimizing its position as the supervisor of P2P lending, OJK has assumed a regulatory role and has introduced specific regulations aimed at tackling loan issues within the P2P lending domain. These regulations, namely PJOK Number 77/PJOK.01-2016 and SOJK Number 18/SEOJK.01-2017, delineate the parameters within which P2P lending activities are to be conducted, ensuring compliance with existing laws and regulations (Asikin, 2017).

The regulatory landscape governing lending and borrowing activities conducted through information technology intermediaries in Indonesia is characterized by a comprehensive framework comprising various laws and regulations (Prahassacitta, 2019). These statutes collectively serve to establish a robust and structured environment for Peer-to-Peer (P2P) lending operations, ensuring adherence to legal standards, protecting consumer rights, and fostering fair and transparent practices within the financial services sector. Firstly, Law Number 21-2011 concerning the Financial Services Authority (OJK) holds significance in providing the overarching regulatory framework for financial activities in Indonesia. This law empowers OJK to regulate and supervise financial institutions, including those involved in P2P lending, thereby ensuring stability, integrity, and efficiency within the financial system. Law Number 19-2016, which amends Law Number 11-2008 on Electronic Information and Transactions (ITE), addresses the digital aspects of financial transactions, providing guidelines and regulations pertinent to online lending and borrowing activities. This law plays a crucial role in adapting legal frameworks to the digital age, ensuring the security and reliability of electronic financial transactions, including those facilitated by P2P lending platforms. Consumer protection is another vital aspect addressed by Law Number 8-1999 on Consumer Protection. This law safeguards the rights of consumers engaged in financial transactions, including borrowers utilizing P2P lending services. It establishes mechanisms for resolving disputes, ensuring transparency in lending practices, and protecting consumers from unfair or deceptive practices by financial service providers. Similarly, Law Number 7-2014 on Trade contributes to the regulatory landscape by addressing commercial transactions and trade

practices, which may impact P2P lending activities. This law promotes fair competition and consumer protection within the marketplace, thereby indirectly influencing the operations of P2P lending platforms. Additionally, laws such as Law Number 8-2010 on Money Laundering, Law Number 40-2007 on Limited Liability Companies (PT), Law Number 25-1992 on Cooperatives, and Law Number 30-1999 on Arbitration and Alternative Dispute Resolution (APS) complement the regulatory framework by addressing specific aspects relevant to financial transactions, corporate governance, cooperative activities, and dispute resolution mechanisms.

Together, these laws and regulations form a comprehensive regulatory framework governing P2P lending activities in Indonesia. By adhering to these legal standards, P2P lending platforms are required to operate ethically, transparently, and in compliance with established norms and guidelines, thereby promoting trust and confidence among stakeholders and contributing to the stability and development of the financial services sector in the digital era. In addition, the OJK also functions as a regulator to mitigate infractions in the Fintech sector, namely in the context of POJK LPMBTI. The efforts performed by OJK are closely linked to the principle of legal protection.

a. Preventive Efforts

The OJK's efforts in preventing infractions. This endeavor was undertaken by convening all P2P Lending operators and providing guidance, instruction, and dissemination of information on the implementation and relevant regulations governing P2P Lending.

b. Repressive Efforts

The supervisory procedure conducted by OJK on P2P lending providers that fail to obtain licenses is outlined as follows: Initially, OJK gathers and scrutinizes data pertaining to unregistered and unlicensed P2P lending providers. Subsequently, this information is shared with the Investment Alert task force established by OJK. The task force then issues summonses to these providers, directing them to cease their operational activities and provide an explanation. If these providers persist in their operations despite being summoned, OJK takes action by issuing a letter of recommendation to KOMINFO to remove and block the application and service provider for P2P lending fintech.

According to Regulation 6 POJK No. 77/POJK.01/2016, the organizer mentioned is defined as an entity operating as an Other Financial Services Institution, such as a legal entity, limited liability company, or cooperative. OJK recommends that these organizers engage in a thorough process of selecting, reviewing, and approving loan applications submitted by borrowers to mitigate potential credit disputes. In cases of trade or commercial transaction disputes involving electronic systems, affected parties have the option to resolve disagreements through legal proceedings or alternative dispute resolution methods. The resolution process may involve discussion, consultation, mediation, conciliation, or arbitration, as mandated by the law (Priyonggojati, 2019).

OJK's efforts in regulating the financial services sector, particularly in the realm of Peer-to-Peer (P2P) lending, have been multifaceted and dynamic. Among these initiatives, PJOK No. 1/PJOK.07-2014 stands out, as it aims to establish Alternative Dispute Resolution Institutions within the financial services sector. However, despite this regulatory framework, the effective enforcement of these regulations has encountered challenges, necessitating the exploration of more robust measures. In response to the evolving landscape of P2P lending and the associated business challenges, OJK has proactively introduced an online Alternative Dispute Resolution Institutions. This innovative approach seeks to provide a precise, accessible, and cost-effective mechanism for resolving disputes arising within the P2P lending sphere. Article 29, letter E of PJOK number 77/PJOK.01/2016 underscores the importance of conducting user dispute resolution in a straightforward, expedient, and economically viable manner,

emphasizing OJK's commitment to ensuring fair and efficient resolution processes. Moreover, OJK's recognition of the complexities inherent in the Fintech sector has led to the establishment of a dedicated Digital Economic and Financial Innovation Development Task Force. This task force is tasked with supervising and overseeing Fintech entities, ensuring compliance with regulatory standards and fostering innovation within the sector. The issuance of Regulation Number 77/POJK.01/2016 on December 29, 2016, further solidifies OJK's regulatory framework by providing comprehensive guidelines for Information Technology-Based Lending and Borrowing Services, commonly known as Loan Services Information Technology-Based Borrowing (LPMUBTI) (Ernama et al., 2017).

OJK's initiatives underscore its proactive stance in adapting to the changing dynamics of the financial services sector, particularly in light of the emergence of P2P lending and Fintech innovations. Through regulatory frameworks, innovative solutions, and dedicated supervisory mechanisms, OJK aims to ensure the integrity, stability, and inclusivity of the financial system, while also fostering a conducive environment for technological innovation and financial inclusion.

c. Implementation of the Law in the Settlement of Non-Performing Credit Disputes Based on P2P Lending

When disputes arise between borrowers and lenders in the context of Peer-to-Peer (P2P) lending, either party may opt to file a complaint, thereby initiating the resolution process. To safeguard consumers within the financial services industry, OJK has implemented protective measures, notably highlighted in Article 38 of POJK Number 1/POJK.07/2013, which underscores the importance of consumer protection in financial services. In the P2P lending-based Fintech sector, service providers are mandated to conduct internal investigations of complaints competently, accurately, and objectively. These investigations involve meticulous analysis to verify the accuracy of complaints. If deemed valid, providers are required to issue sincere apologies and provide compensation or rectify products and/or services accordingly (Ibrahim, 2018).

OJK-regulated firms typically adhere to a code of ethics billing system and assume liability in the event of breaches of agreements or regulations by the loan company. Penalties, including license revocation, may be imposed as outlined in Article 47 of POJK 77/2016. OJK possesses the authority to impose administrative penalties on administrators found to be in violation of regulatory obligations, ranging from written warnings to fines, limitations on business activities, and even license revocation. Furthermore, aggrieved parties have the option to pursue civil legal action or resort to Alternative Dispute Resolution (ADR) mechanisms for resolving disputes. ADR methods, such as negotiation, mediation, and adjudication, are outlined in POJK Number 1/POJK.07/2014 concerning APS Institutions in the Financial Services Sector. Adjudication, while less complex than arbitration, shares similarities with it as an ADR method, offering parties a viable avenue for resolving disputes outside of traditional legal proceedings (Hariyani & Serfiyani, 2016).

According to OJK regulations, if a borrower defaults on a loan due to the lender's mistake or negligence, the lender is obligated to offer compensation. Disputes can be resolved outside of court through alternative dispute resolution institutions or by submitting complaints to OJK for assistance in reaching a settlement, as outlined in Article 39 paragraph (1) of POJK Number 1/POJK.07/2013 regarding Consumer Protection in the Financial Services Sector. P2P lending, as a form of financial service, is susceptible to impacts from Fintech firms. The resolution of disputes may be conducted through internal dispute resolution mechanisms, Alternative Dispute Resolution Institutions (ADR), and facilities provided by OJK as the supervisory agency, offering protection and legal assistance, in accordance with PUJK (Fintech 0.2) regulations.

Conclusion

As the regulatory authority overseeing financial sector activities, OJK has implemented various measures to actively supervise the implementation of Peer-to-Peer (P2P) Lending Financial Technology. These measures include the issuance of OJK Regulations aimed at providing legal protection and ensuring certainty within this domain, particularly concerning the use of information technology intermediaries for lending and borrowing purposes. These regulations encompass provisions related to dispute resolution methods, engagement of Alternative Dispute Resolution Institutions in the Financial Services Sector, and the establishment of a Digital Economic and Financial Innovation Development Task Force tasked with overseeing Fintech entities. One significant regulatory development occurred on December 29, 2016, when the OJK (Financial Services Authority) introduced Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending-Lending Services (LPMUBTI). This regulation offers comprehensive guidelines governing the provision, management, and operation of Information Technology-Based Borrowing-Lending Services. Through this regulation, OJK seeks to establish clear parameters and standards to govern P2P lending activities, ensuring transparency, accountability, and consumer protection within the digital lending landscape. Moreover, OJK extends its assistance in resolving grievances from consumers, particularly users of P2P Lending services, who have incurred harm due to financial service providers, notably Fintech businesses. The resolution of disputes under PUJK (Fintech 0.2) may involve internal dispute resolution mechanisms, engagement with Alternative Dispute Resolution Institutions (LAPS), and utilization of facilities provided by OJK as the supervisory agency, ensuring protection and legal certainty for all parties involved.

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