



Existence of Financial Technology (Fintech) on the Role of Indonesian Society

Syifa Rana Tsary; Dahlia

Lecturers of Law Faculty of Universitas Slamet Riyadi Surakarta, Indonesia

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Abstract

This study examines the public's understanding of loans submitted through financial technology (fintech). The formulation of the problem discussed is how is the public's understanding of financial technology in Indonesia and what is the form of community responsibility for online financial technology loans? This research method is normative by approaching legislation and legal materials in the form of laws and literature. The results of this study are that the public as debtors are still unable to distinguish between legal and illegal fintech, because they tend to want to be practical when applying for loans and do not think long about the risks that will be faced in the event of a dispute and if the debtor is negligent on his debt, then he is still responsible for paying off because if you apply In illegal fintech, debtors must be prepared to receive repeated threats, while if fintech is legal, it is attempted through several warnings or litigation under the supervision of the OJK.

Keywords: *Online Loans; Financial Services Authority; Financial Technology*

Introduction

Finance institutions are increasingly developing because of the economic growth following the times. Finance institution assists those with a surplus of funds and those with a lack of funds by acting as the financial intermediary to perform their duty in social, fulfill special needs of society, and achieve their respective goals they have (Imaniyati, 2010:2). Finance institution based on its form is categorized into three types, including bank, non-bank, and financing institution (Muhammad & Murniati, 2004: 17).

Banking carries out a task as an instrument for community empowerment and the power of the national economy, particularly small-medium enterprises and cooperatives. Banking is also considered as an agent of development to support the development of the national economy and stability to improve the living standard of society (Muhammad, 2012:18). Article 1 number (2) of Law Number 10 of 1998 Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) explains; "Bank is a business entity that collects funds from the community in the form of savings and distributes the fund to the public in the form of credit and or other forms in order to improve the living standard of the common people."

The role of financial institutions is supervised by the Financial Services Authority (OJK) as stipulated in Article 5 of Law Number 21 of 2011 concerning the Financial Services Authority

(hereinafter referred to as the OJK Law) stating; "OJK functions to organize an integrated regulatory and supervisory system for all activities in the sector of financial services." Its function is regulated in Article 6 of the OJK Law; "OJK carries out the task of regulating and supervising financial service activities in the banking sector, capital market, insurance, pension funds, financing institutions, and other financial service institutions".

In fact, the community has not been able to take full advantage of banking services because the requirements are quite complicated, such as submitting collateral, conducting surveys, and meeting other conditions that are relatively difficult for the lower-middle-class economy (Vernandito, 2018:2). The Bank even does not necessarily give approval for the loan requested because it is based on many factors.

Nowadays, people's activities cannot be separated from technological advancements that have an impact on various sectors, one of which is finance, marked by the presence of financial technology (fintech). The National Digital Research Center (NDRC), Dublin-Ireland, defines fintech as "innovation in financial services" or "innovation in fintech financial services" that is innovation in the financial sector because of the influence of modern technology. Fintech consists of payments, investments, load, transfers, financial plans, and comparisons of financial products (Ernama, 2017:1-2).

Fintech allows networking between business and individual (Business-to-Peer/B-to-P), individual and individual (Peer-to-Peer/P-to-P), and Government and individual (Government to-Peer/G-to-P) easier. The emergence of Fintech-based *companies* especially those that offer loan or *Peer To Peer Lending* (P2PL) is increasingly obtaining attention from public (Pradipta and Kharisma, 2019:293-301). OJK has the task of regulating and supervising in an integrated manner all economic services, including fintech as regulated in POJK Number 77/POJK.01/2016 concerning Information Technology-Based Loan Servicing, Article 1 point (3); "Information technology-based loan servicing is "the provision of financial service to bring together creditors and debtors directly so they can carry out loan transaction in Rupiah currency through an electronic system using the internet network." The POJK regulates the technology information-based loans or so-called *Fintech Peer To Peer Lending*.

Peer to Peer Lending is an intermediary between individuals who give loans (creditors) and people who receive loans (debtors), which is a marketplace or platform for borrowing money online. Therefore, people who need an exorbitant amount of money can get a loan without having to apply a credit to the Bank requiring collateral. Peer-to-peer lending can be accessed through an application for twenty-four hours. It is clearly different from banking loans where the debtor has to undergo various processes until the signing of the agreement.

The term fintech is increasingly popular and accepted by the public because it creates a variety of services that are more attractive, easy, and convenient to use. Fintech has different models and procedures for providing loans in the form of; business capital, motor vehicles, Unsecured Loans (KTA), Mortgage Loans (KPR), and others. Fintech companies invite people to become investors (funders) who will send money to the company's account number to be distributed to prospective debtors for a period of time and loans according to their needs. Loan amounts may vary depending on company rules. Although peer-to-peer lending is similar to a bank that accepts funds from the public and distributes it through credit or financing, it is not considered as banking, because it does not collect public funds (deposittaking).

Fintech provides considerable benefits for developments in the financial sector, but potential problems are inevitable in every progress. The public must be vigilant about legal and illegal fintech. Therefore, it is necessary to apply the principle of prudence in choosing which platform to apply for a loan. Don't be fooled by attractive and imprecise offers and don't be careless to choose fintech that is illegal and not supervised by OJK. In addition, during the loan period, it is also possible for the community as debtors to experience bad credit problems so that it has an impact on creditors since it is possible for them to lose their money, especially when loans are made online where creditors do not

know the original identity of the debtor and do not hold collateral. Thus, it is important to discuss legal protection provided for both debtors and legal fintech creditors in getting their receivables back.

Based on the explanation above, the researchers were intrigued in conducting research with the title "The Existence of Financial Technology (Fintech) on the Role of Society in Indonesia", with the following research problems: 1) How is the public's understanding of financial technology in Indonesia? 2) How is community responsible for financial technology loans?

Research Method

This research applied a normative method studying and analyzing research objects based on primary legal materials (laws and regulations), secondary legal materials (scientific works, journals, books, documents, and other literature), and tertiary legal materials (legal dictionaries), for inventory purposes of the applicable laws (Waluyo, 1991). This research also used a descriptive qualitative approach. The qualitative approach generates descriptive data either in the written and oral forms obtained from the informants and observed behavior and data that are not stated in variables or hypotheses (Moleong, 2000:2).

Discussion

Article 1754 of the Civil Code (hereinafter referred to as KUHPer) explains; "loan is an agreement in which either party gives to the other party a certain amount of consumables, on the condition that the party will return the consumables in same amount, kind, and condition." According to these provisions, there is a direct meeting between creditors and debtors, while in peer-to-peer lending, creditors do not meet with debtors, they may not even know each other, because their interests are bridged by the platform. *Fintech* can be categorized into: (Tjandra, 2020:90-103)

- a. Third-party payment systems; payment system is made through a third party.
- b. Peer to Peer Lending; an internet-based platform acted as an intermediary between creditors and debtors.
- c. Crowdfunding; a concept of a program published via internet, if the public is interested to provide financial support and then investors will be rewarded according to the agreement.

Fintech is regulated in Article 19 of POJK No. 77/POJK.01/2016 stating; "The agreement for the provision of information technology-based loan servicing between the organizer and the lender is stated in an electronic document." The explanation is further regulated in Article 36 POJK No. 77/POJK.01/2016; "In the event that the organizer uses a standard agreement, the agreement must be prepared in accordance with the provisions of the legislation." Here's how peer to peer lending works: (http://id.m.wikipedia.org/wiki/P2P_Lending)

a. Debtors

- 1) Upload the required documents including; a fund statement within a certain period of time and the purpose of the debtor in the loan.
- 2) Business entities as debtors are usually asked to submit identity documents, proof of company legality, and business financial statements.
- 3) Loan applications can be accepted or rejected depending on the factors. If rejected, the debtor must correct the reasons for the refusal. If accepted, the loan interest rate will be put into the available marketplace so that lenders can see the debtor's loan application.

b.Lenders

- 1) Have access to browse loan application data on the dashboard provided, regarding income, financial history, loan purposes (business, health, or education) along with reasons, and so on.
- 2) If the lenders accept the loan, then they immediately invests a certain amount of funds after making a deposit according to their investment purposes.
- 3) The debtor will pay the loan by installment every month, and the lender will obtain profit in the form of principal and interest. The amount of interest depends on the interest rate on the loan invested.

The benefit of peer-to-peer lending:

- a. For debtors; encouraging financial inclusion, and providing alternative loans that are yet creditworthy, the process is easy and fast, and the competition created encourage a decrease in loan interest rates.

1) Advantages

- a) One of the biggest advantages of P2P Lending is the lower interest rates compared to financial institutions, such as banks. On the other hand, a personal loan may have an interest rate of between 12-20% from a financial institution, even it is still deemed lower than a credit card bill.
- b) The loan application is not as hard as in a bank. The process is faster and easier, and the loan approval is less complicated.
- c) If the debtor has a bad reputation regarding financial loans, he can explain the reason and can apply for a loan for any purpose.
- d) Peer-to-peer lending is a loan without collateral.

2) Disadvantages

- a) Loan interest rates soar when the creditworthiness of the debtor fall.
- b) If the loan payment is late, the bill will be very significant. In case of default, the amount to be paid can be very high.
- c) Loans are only suitable for the short term, the longer the term of the loan, the higher the bill to pay.
- b. For fintech; an alternative investment with a higher return and risk of default with a fairly low nominal. Besides, investors can choose debtor to be given a loan according to their preferences. The use of products is supported by digital technology.

1) Advantages

- a) P2P Lending is officially regulated and supervised by OJK.
- b) The loans given are very easy and fast, especially if the lender has more funds, but doesn't know where to allocate it.
- c) The interest rate on the loan received has a significant value, making it more profitable.
- d) Diversification of investors' investments is easier, thereby increasing the opportunity to obtain greater profits.

2) Disadvantages

- a) Lenders who invest money cannot withdraw money at any time, unlike saving in a bank.
- b) There is a possibility that the debtor will be default so that the loaned funds can be gone.
- c) The risks that arise are overcome by the majority of Peer-to-Peer Lending platforms with guarantees provided to lenders, and can also be minimized by implementing portfolio diversification.
- c. For Banks; cooperation with fintech can reduce costs (for example; the use of non-traditional credit scoring for filtering credit applications), and increase income from third parties, credit distribution channels, and investment alternatives.

1. Public's Understanding on Financial Technology in Indonesia

The “disruptive era” is marked by Revolution 4.0. An era in which society and the government are required to keep up with increasingly rapidly advancing technology, including in business law, such as business to business and business to consumer. The economy is influenced by factors of science and technology that develop, which was originally performed manually, now it becomes massive and creates various innovations, one of which is *financial* Technology (Aminuddin, 2021:81), which has the following criteria:

- a. Innovative;
- b. Has impacts on existing products, services, technology, and/or financial business models;
- c. Beneficial to society;
- d. Can be used widely; and
- e. Other criteria set by Bank Indonesia.

Fintech can be included in the offer category if there is an indication of the person who offers (offeror) the contract wants to be bound and if there is an offer accepted by the person who accepts the offer (offeree). Considering that the form of Fintech is growing, it is necessary to adjust the legal standard for its technical regulation and supervision (Tampi, 2018:276). One of the rules established is Bank Indonesia Regulation (PBI) Number 19/12/PBI/2017 concerning the Implementation of Financial Technology (Fintech), Article 1 point (1) explains: “the use of technology in the financial system produces new products, services, technology, and/or business models can have an impact on monetary stability, financial system stability, and/or efficiency, smoothness, security, and reliability of the payment system”. The followings are the scope of fintech:

- a. Payment methods (digital payment) include authorization, clearing, final settlement, and payment execution.
- b. Market support; utilizing information technology and/or electronics to deliver faster and cheaper information related to products and/or LJK to the public.
- c. Investment and risk management.
- d. Loans, financing, and capital provision.
- e. Other financial services.

The development of disruptive areas cannot be separated from social factors that support technological and communication advancement (Budiharto, et.al, 275-289). The discussion about one of the fintech criteria that is beneficial to the community becomes a special attraction considering the rotation of the business wheel cannot be separated from the consumptive behavior of the society as consumers. It was explained earlier that fintech provides great benefits for developments in the business world and makes it easier for people to meet their daily needs, outside of the scope of financing organized by other financial institutions.

Various attractive offers are enough to entice the public to compete in enjoying loans submitted by fintech companies, whether they have legal status (legal) or whose validity has not been recognized (illegal). Usually, illegal fintech will send various messages to telephone numbers with easy loan offers and promising disbursement of funds in a short time. Legal fintech, on the other hand, tends to make an application that can be downloaded via the Google play store or app store stating that the fintech is under the OJK.

The public is expected to first understand the forms of fintech, both legal and illegal, before applying for a loan, so as not to be trapped in a vicious circle that will harm them. Since the first emergence, fintech has caused quite a lot of reactions, especially over the unfortunate event that befell the victims due to their lack of knowledge and introduction to the fintech platform they proposed. Because,

the requirements were easier, many victims were tempted to take loans with high-interest rates compared to loans from other financial institutions. This happens usually when people really need funds in a short time and tends not to be able to think clearly, so they immediately agree to the fintech offer regardless their legality.

If the public applies for a loan to a legal fintech, then they do not have to worry. It is because the Fintech is supervised by the OJK, so the document data submitted as a condition and their personal identity will be protected. Besides, the fintech also has legal responsibility and an obligation to maintain the confidentiality of the prospective debtor's data. Fintech must apply the basic principle in which user protection consists of; transparency, fairness, reliability, confidentiality, and data security as well as user dispute resolution at a simple, fast and affordable cost.

Due to the confidentiality rule, no incidents during the implementation of the fintech credit agreement and any fault and negligence made by the debtor and harm the creditor will allow the creditor to provide data and/or information about the debtor to other parties in any way unless permitted by the debtor and/or because it is required by the laws and regulations. The followings are potential risks that arise in fintech, namely the risk of consumer data security and transaction errors (OJK, 2017:28), leading to losses to the parties. Crime acts such as wiretapping, burglary, and cybercrime in banking transactions make people hesitate to do online transactions (Christmastianto, 2017:148).

If the public experiences unfavorable actions from fintech companies, they can bring complaints against the OJK, as long as the fintech is proven to be legal and is under OJK supervision. The complaint can be brought via call center *telephone* or come directly to the OJK office, and the OJK is able to act according to its authority. However, if it turns out that a complaint is brought against an illegal fintech loan, then the OJK cannot respond to the complaint. The debtor can only bring the complaints to police for their disadvantages (Jamil, 2019: 114-121). When the debtors are unable to pay off his debt, they will receive threats and terror from the fintech company. Even, it also hires debt collectors to scare and humiliate the debtors by threatening to send immoral images or writings to other parties listed in debtor's cell phone contact.

2. Forms of Community Responsibility for Online Financial Technology Loans

The development of business transactions transforming into financial technology (Fintech) does not affect the legal provisions of the agreement as stipulated in Article 1320 of the Civil Code; the transaction must be agreed, capable, related to a certain matter, and has a lawful cause, the only difference is in how the transaction is carried out that was originally conventional, it is now accommodated by electronic media leading to support for money and electronic wallets. Bank Indonesia as the central bank regulates the Implementation of Financial Technology (Fintech) as stated in PBI Number 19/12/PBI/2017, stating:

- a. That the development of technology and information systems continues to come up with various innovations, particularly related to financial technology to meet the various needs of society, including access to financial services and transaction processing.
- b. That the development of financial technology on the one hand has proven to bring benefits to consumers, business actors, and the national economy, but on the other hand has potential risks which can disrupt the financial system if not it is mitigated properly;
- c. That the financial technology ecosystem needs to be continuously monitored and developed to support the creation of monetary stability, and financial system stability, as well as an efficient, smooth, secure, and reliable payment system to support sustainable and inclusive national economic growth;

- d. That the implementation of financial technology must apply the principles of consumer protection as well as risk and prudent management while still taking into account the expansion of access, national interests, as well as applicable international standards and practices;
- e. That Bank Indonesia's policy response to the development of financial technology must remain synchronous, harmonious, and integrated with other Bank Indonesia policies such as the implementation of payment transaction processing and national payment gateways and need to be coordinated with the relevant authorities;

The law has various purposes for its formation, one of which is to provide protection and control changes, so the development of the nation and state is expected to be in a more positive direction (Warassih, 2018:12). According to the opinion of a legal expert, Satjipto Rahardjo, legal protection provides protection for human rights that have been harmed by others so that they can enforce all the rights granted by law (Muryani, 2019). Therefore, in order to maximize this goal, it is necessary to take action according to the opinion of the legal expert, Philipus M. Hadjon, stating that legal protection for the people should be in preventive and repressive form. Preventive legal protection is aimed to prevent disputes by directing the government to be careful in making decisions, while repressive legal protection aims to prevent disputes in terms of handling and settlement both outside and within the judiciary. The followings are forms of preventive and repressive legal protection in preventing disputes caused by fintech.

- a. Preventive legal protection: Before using fintech loan services, preventive measures can be taken to minimize future disputes, one of which is applying the basic principles of legal protection for service users as regulated in Article 29 of POJK Number 77/POJK.01/2016, namely; principles of transparency, fair treatment, reliability, success, data security, and user dispute resolution at a simple, fast and affordable cost.
- b. Repressive legal protection: If the use of fintech cannot avoid problems that may harm either party, then you can apply for legal protection as an effort to resolve disputes that are mutually agreed upon, either by deliberation, non-litigation, or litigation. In fact, business people are less interested in choosing litigation. It is because they feel it is less efficient and long-winded and prefer the Alternative Dispute Resolution (APS) route carried out outside the court because it is more effective and efficient in terms of time, cost and process, which is regulated in the Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Negligence of the debtor or service provider institution that does not fulfill the obligations as agreed is the cause of the dispute (Balenina, 2019:26-35). In the event that fintech is guilty of negligence, it can be subject to sanctions, based on the relationship between consumers and business actors referring to Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK), criminal sanctions for violating consumer rights. In addition to the UUPK, the implementation of electronic-based fintech can also be protected by Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 (hereinafter referred to as UU ITE), in Article 5 paragraph (1) explaining that; "Electronic information and/or electronic documents and/or their printed results are legal evidence." So, if there are signs of a fintech making a mistake/negligence, then all the uploaded documents are the legal evidence in court, especially in Business Law; business to business, or business to consumer.

In addition to litigation, it can also be directed to the non-litigation realm described above, OJK Regulation Number Kep-01/D.07/2016 ratifies the establishment of 6 (six) APS Institutions, namely; Indonesian Pawnshops and Financing Mediation Agency (BMPPI); Indonesian Guarantee Company Arbitration and Mediation Board (BAMPPI); Indonesian Banking Dispute Settlement Alternative Institution (LAPSPI); Pension Fund Mediation Agency (BMDP); Indonesian Capital Market Arbitration Board (BAPMI); and the Indonesian Insurance Mediation and Arbitration Agency (BMAI) (Karjoko, et.al, 2020:93-103).

Fintech is equal with Financial Services Business Actors because it provides funds to debtors/consumers. If legal fintech violates the provisions of POJK Number 01/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, it can be subject to administrative sanctions, in the form of Written warning; Fines, which are obligations to pay a certain amount of money; Restrictions on business activities; Suspension of business; and Revocation of business activity license.

However, in the implementation of the agreement, faults and negligence are not only made by the creditor, in fact, debtors have the biggest opportunity to be involved disputes. It is because debtors who experience bad credit and even fail to pay cause creditors to lose. If the debtor applies for a loan in illegal fintech, and the fintech takes a non-amicable settlement by spreading unfounded data and issues and defaming the debtor, then the debtor will find it difficult to make complaint about the action. It is because the fintech is not under the supervision of the OJK. Complaints to the authorities are also useless because finding illegal fintech residences is not easy, and debt collectors do not meet the debtor directly, only send chain messages to the debtor and all debtors' friends whose phone numbers are listed in the debtor's contact list. How can fintech find out the mobile number of a fellow debtor? This is because the debtors allow the fintech to access contact in their phone, in which this terms and conditions always appears before applying for a loan. Consequently, fintech is able to browse the entire contents of the cellphone, including the debtor's personal photo.

That will be a different if the debtors apply for a loan through a legal fintech. When the debtors experience bad credit or default, then the fintech will not make coercive efforts and threats such as spreading the debtor's personal data to the public. They will only continue to remind them to make payments as agreed, especially when fintech location is far from the debtors and face-to-face settlement is impossible to be held. Usually, this legal fintech requires collateral or documents that can strengthen their positions, It can be a salary slip document or just a form that must be filled out regarding the description of the debtor's place of work. Therefore, when the debtors experience event of defaults fintech will contact the agency before proceeding to the OJK. However, the problem of bad credit can also be caused by the debtors deliberately not paying and letting the bill run. They even underestimate the notifications that have been sent by fintech. It is because legal fintech will not threaten and spread their data like illegal fintech. Besides, fintech location that is far from debtors' house makes debtors to be reluctant to pay because they think that they will not be found and arrested for not paying their debts.

This kind of problem continues to happen since the first appearance of fintech in the world of public financing and still cannot be solved until today. Although the authorities have succeeded in arresting several fintech that have illegal operations, the number of illegal fintech continues to rise just like he saying "one fall and a thousand spring up." Moreover, at this time, there are also many weird messages sent by fintech operators, who are aggressively offering various attractive options to find prospective debtors with high loan interest and will continue to swell if the debt is not paid off before maturity date. This will certainly raises the concern of ordinary people who cannot differentiate between legal and illegal fintech.

Closing

Conclusion

1. People as debtors still don't understand the difference between legal and illegal fintech because they just simply apply for loans and do not think long and hard about the potential risks to be faced in the event of a dispute. If the fintech is under the supervision of the OJK, the debtors is not necessarily panic when they need for legal protection, but it is different if they make application to an illegal fintech, then all risks will be borne by themselves.
2. In the implementation of the agreement, dispute is possible to happen if one of parties is guilty of negligence or fault. If the debtors are intentionally negligent and do not want to be responsible for

their debt, fintech certainly will be harmed. Illegal fintech will tend to make threats, but legal fintech will give several notification or choose litigation.

Suggestion

1. The government, officials, and academics are expected to continue to socialize the law to the public to provide an understanding of online loans through fintech, introduce legal fintech supervised by the OJK, loan registration procedures, and even how obtain legal protection in the event of a dispute.
2. The public as debtors who have received loans from fintech and they apply for the loan in legal entities where their personal data will not be disclosed, they must have good intentions to pay off their debts, so that this problem will not come before court.

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