



Fintech Peer to Peer Lending as a Financing Alternative for the Development MSMEs in Indonesia

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Article	Abstract
<p>Keywords: <i>Peer to peer lending, fintech, MSME; OJK.</i></p> <p>Article History Received: July 11, 2020; Reviewed: July 28, 2020; Accepted: Sept 23, 2020; Published: Sept 30, 2020.</p> <p>DOI: 10.22219/ljih.v28i2.12865</p>	<p><i>The main problem faced by Micro, Small and Medium Enterprises (MSMEs) actors is limited access to finance. The presence of Fintech Peer to Peer Lending companies in Indonesia is the answer to the limited access to finance faced by MSME entrepreneurs. However, the presence of Fintech Peer to Peer Lending for MSMEs in Indonesia can cause legal problems. This study aims to find a juridical basis for the relation between Fintech Peer to Peer Lending organizers and MSME entrepreneurs and to find constitutional protection for Fintech Peer to Peer Lending organizers and MSME entrepreneurs. The method used is juridical empirical, using primary data in the form of primary and secondary legal materials. The study outcomes concluded that the weak legal protection for the lenders (borrowers), which in this case is MSMEs, is due to the insufficiency of strict legitimate rules in managing the Fintech Peer to Peer Lending business. So that the implementation of the Peer to Peer Lending Fintech business needs to be regulated under the Law so that it can be charged with criminal sanctions.</i></p>
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INTRODUCTION

Micro, small and medium enterprises in Indonesia are abbreviated as UMKM, which in this paper is abbreviated as MSMEs are one of the supporting factors in building the strength of Indonesia's national economy (I Made Narsa, Agus Widodo, 2012). The role of MSMEs in Indonesia's economic growth is exceptionally vital, history proves that when economic crisis hit in 1998, MSMEs were able to survive compared to large companies (Ministry of Trade of the Republic of Indonesia, 2013). MSMEs have a role as the foundation of the country's economy that affects the marketplace. Its existence must be supported by various policies and programs from both government and private sectors (Lila Bismala, 2014). The tangible role of MSMEs in enhancing the national economy is that MSMEs can permeate labor so as

to lower the unemployment number, MSMEs also support other sectors such as banking services, as well as contributing to Gross Domestic Product (GDP) (Saputro.J.W., Handayani, Putu Wuri., Hidayanto, Achmad Nizar., and Budi, 2010). MSMEs in Indonesia are exceptionally large in number. Data shows that up to 2018, MSMEs in Indonesia amounted 64,194,057 units consisting of 63,350,222 Micro Business units, the total of 783,132 Small Business units, and 60,702 Medium Enterprise units (Ministry of Cooperatives and MSME, 2020). If the number of MSMEs in Indonesia is developed to the maximum, it will have an impact on the national economic growth in Indonesia which will ultimately actualize the welfare of the Indonesian people.

However, there are at least two main obstacles faced by MSME entrepreneurs in Indonesia in developing their business, namely limited beginning capital and limited capital in running a business (Dewi Anggraini, 2013). These problems will hamper the development of MSMEs in Indonesia as well as hinder national economic growth. Bank Indonesia released data on the development of lending provided to MSMEs from 2013 to 2018 as for the following data:

Table 1: Development of Credit Distribution to MSMEs from 2013 to 2018.

Year	2013	2014	2015	2016	2017	2018
Credit Amount	639,471.5 M	767,577.6 M	830,656.2 M	900,389.8 M	990,377.6 M	1,037,619.1 M

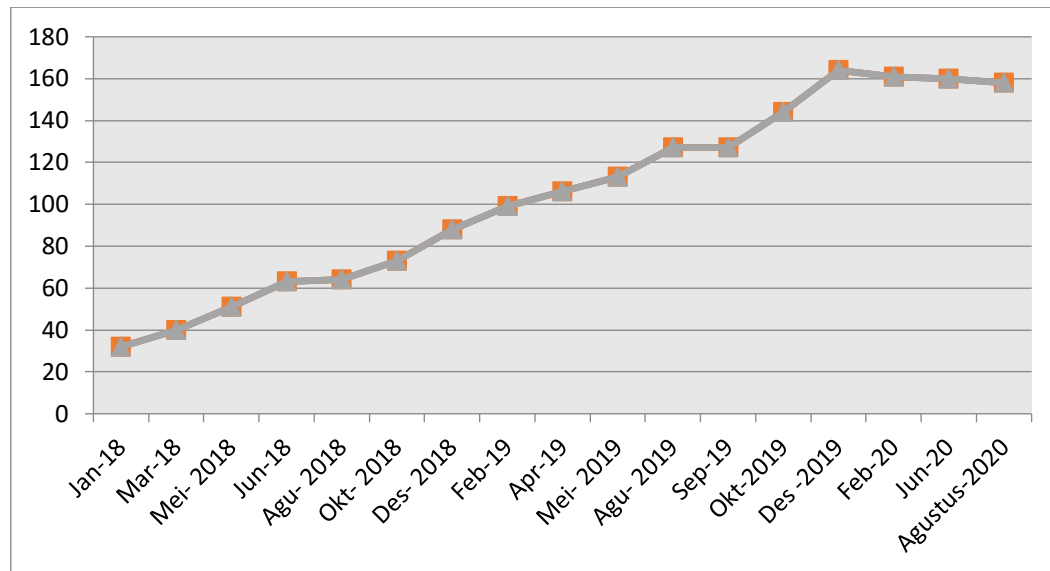
Source: Bank Indonesia, SME Credit Data per September 2018

The data above shows that the amount of credit disbursement to MSMEs in Indonesia continues to increase every year. However, if we compare the amount of funds channeled to MSMEs with the number of MSMEs in Indonesia itself, there will be a disproportion between the two. Where the number of MSMEs is far greater than the number of loans provided to MSMEs, the comparison is; 1,037,619.1 billion in proportion to 64,194,057. Based on this comparison, if divided by the average, MSME gets around IDR 16,300.00 as the minimal amount to be able to develop MSMEs. Based on this description, it can be seen that MSMEs in Indonesia are faced with a quite severe problem, namely limited venture capital. Therefore, it is necessary to provide capital and other financing alternatives besides banks for financing MSME in order to embody the development of MSME in Indonesia can be realized (Pratiwi, Dita Tania, 2020).

Advances of information technology have encouraged the development of digital financial services that can be used as alternative financing for Indonesian citizens. The development of digital financial services in Indonesia has recently shown an increment graph. This can be seen from the number of digital commercial service provider companies which known as Information Technology-Based Lending and Borrowing Company or better known as Fintech Peer to Peer Lending that is currently thriving in Indonesia (Salma, 2019).

The Financial Services Authority (OJK) as a government institution in charge of all types of financial services in Indonesia has released data on the growth of Fintech Peer to Peer Lending. The data can be seen from the following graph:

Graph 1: Fintech Peer to Peer Lending growth in Indonesia



Source: Financial Services Authority Publication, Fintech Provider Registered at OJK (OJK, 2020)

The graph above shows that since January 2018, when the OJK received the Fintech Peer registration to Peer Lending company until August 2020, the number of Fintech Peer to Peer Lending companies in Indonesia has increased. The growth of Fintech Peer to Peer Lending companies in Indonesia is undoubtedly very beneficial for national economic growth and the improvement of people's welfare (Wahid Wachyu Adi Winarto, 2020).

The presence of Fintech Peer to Peer Lending brings "Fresh air" to MSMEs in Indonesia. So far, the need for financial access for its business has been answered by Fintech Peer to Peer Lending. This means that between Fintech Peer to Peer Lending and MSMEs there is a mutual relation, so it is interesting to study the juridical basis of Fintech Peer to Peer Lending relationship with MSMEs and regarding aspects of the legal protection of each party (Prakasa & Supriyo, 2020). So that later if this is known, the practice of MSME financing by Fintech Peer to Peer Lending has a firm legal basis to gain solid trust from the public, especially MSMEs entrepreneurs in Indonesia.

Wahid Wachyu Adi Winarto conducted similar research in this study. In his research paper entitled "The Role of Fintech in Micro, Small and Medium Enterprises (MSMEs)", this study focused on discussing the role of Fintech in Micro and Small and Medium Enterprises. The outcomes of his research concluded that the development of Fintech carried out by financial institutions such as banks, savings and loan cooperatives, and other financial institutions could increase financial literacy

and financial inclusion in MSMEs (Wahid Wachyu Adi Winarto, 2020). Another similar study was conducted by Irma Muzdalifa, Inayah Aulia Rahma, and Bella Gita Novalia in a research paper entitled “The Role of Fintech in Increasing Inclusive Finance at MSMEs in Indonesia (Sharia Financial Approach)”. The focus of their research was on the role of Fintech to improve inclusive finance on MSMEs in Indonesia. The outcomes of the study concluded that the presence of several Fintech companies also contributed to the development of MSMEs (Irma Muzdalifa, Inayah Aulia Rahma, 2020). Other similar research has also been conducted by Budi Rahardjo, Khairul Ikhwan, and Alkadri Kusalendra Siharis in their research paper entitled “The Influence of Financial Technology (Fintech) on the Development of MSMEs in Magelang City”. In the city of Magelang, the research outcomes concluded that Fintech has an important role in improving the performance of MSMEs in the form of increasing operational efficiency enjoyed by its members (Budi Rahardjo, Khairul Ikhwan, 2019).

Based on previous studies that are similar to this study, it can be concluded that this study is different from previous studies that have been conducted. The difference between this research and previous researches lies in the scientific approach and the focus of its discussion. In previous studies, the method used was an economics approach, while this study used a legal approach. The focus of this research has never been discussed in previous studies. In contrast, the focus of this research is the juridical basis of the relation between Fintech Peer to Peer Lending with MSMEs and the legal protection aspects of each party. This study aims to provide a scientific basis for researchers, especially regarding the legal relationship and legal protection of the parties in the implementation of Fintech Peer to Peer Lending in Indonesia.

METHOD

The research method used is juridical empirical (Benuf & Azhar, 2020), which is a research method in which the law, in this case the regulations and agreements as an independent variable, is the benchmark for implementing online loan agreements and statutory legislation (Benuf & Azhar, 2020). In this case, POJK is the basic evaluator for 'Fintech' companies in carrying out their business activities. The legal data used in this study are primary legal data and secondary legal data. Typical legal research never leaves the regulatory aspect. In this case, the study of POJK is the initial basis for this study. A normative review was also carried out on "Peer to peer lending" (P2PL) agreement which is the basis for the legal relationship between the parties. This normative study uses secondary data, namely POJK and Peer to Peer Lending Agreement (P2PL). The activity in this stage is to examine POJK and P2PL so that they do not violate legal principles and agreement principles, but do not contradict the higher legal principles. There is no confusion with parallel legal rules governing the intersecting aspects. Data collection is carried out by field studies and literature studies. The collected data is then analysed using legal principles, legal agreements, and philosophical analysis (Depri Liber Sonata, 2014) which then needs to find a solution. This needs to be done when the existing legal regulations POJK

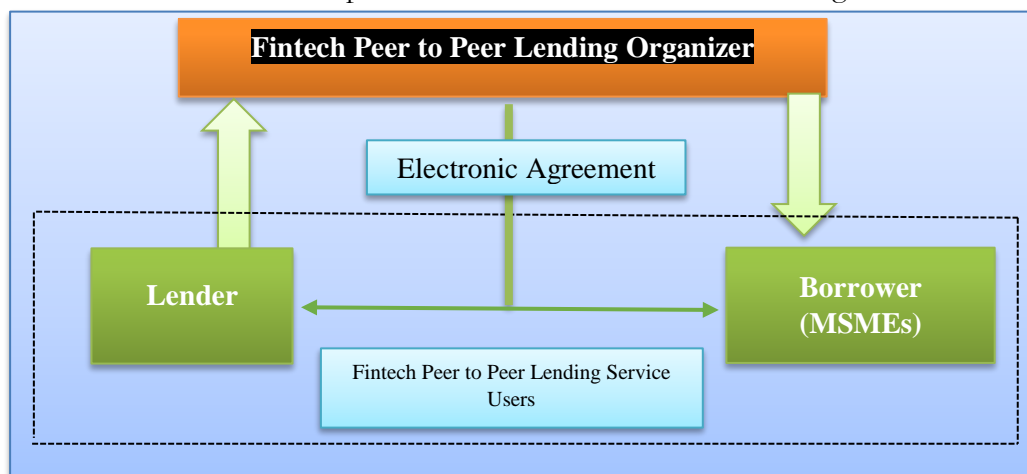
are deemed insufficient to provide a sense of security for the parties, especially for debtors, in this case MSMEs.

RESULTS AND DISCUSSION

The Legal Relationship between Fintech Peer to Peer Lending with SMEs

In essence, a legal relationship is a relationship that contains the rights and obligations of the parties bound by an agreement or law (Titik Triwulan Tutik, 2008) in the context of legal connection between Fintech Peer to Peer Lending with MSMEs. (Noor, 2020) The legal linkage leads to an agreement between Fintech Peer to Peer Lending with MSMEs. In this agreement, there are rights and obligations of each party. The agreement between Fintech Peer to Peer Lending with MSMEs is in the form of electronic loans and loan agreements. Every legal relationship must have consequences where the rights and obligations must be fulfilled, otherwise they will cause legal problems (Valensia, 2020). The legal relationship scheme can be described through the following system:

Scheme 1: Relationship between Fintech Peer to Peer Lending with SMEs



The Fintech Peer to Peer Lending and MSME legal relationship scheme above shows that the organizer of Fintech Peer to Peer Lending, namely the Fintech Peer to Peer Lending company, provides services to lenders as well as to loan recipients. The service provided by this Fintech Peer to Peer Lending organizer presents an online platform to bring together lenders and loan recipients. This means that Fintech Peer to Peer Lending organizers can be seen from two sides, namely from the bottom side of the lender and from the bottom side of the loan recipients, which in this case is the MSME. Fintech Peer to Peer Lending in Indonesia, based on Article 1 point 3 of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology Lending and Borrowing Services is the provision of financial services to bring together lenders and loan recipients in the context of implementing loan agreements to borrow in Indonesian Rupiah directly through an electronic system using the internet network. (Hartanto, Ratna, 2018).

Based on Article 1 point 7 and 8 POJK Number 77 /POJK.01/2016, it is known that both the loan recipient and the lender are classified as Fintech Peer to Peer Lending service users, which then also confirmed by Article 1 point 9 of the POJK. The Fintech Peer to Peer Lending company acts as an intermediary to bring together people or legal entities who want to provide money loans, as well as the people or legal entities that need money loans. The existence of the Fintech Peer to Peer Lending company can make it easier for businessmen in getting the capital fund to start and develop their business. Money for businesses is a determining factor for the continuity and success of the companies they run. If the access to get cash for entrepreneurs is difficult, it will also be challenging for entrepreneurs to carry out their business activities. Therefore, this will harm the national economy. (Kornelius Benuf, 2020)

Article 1 point 7 and 8 POJK Number 77/POJK.01/2016 specifies that, "Loan Recipients are persons and legal entities who have debts due to the Information Technology-Based Lending and Borrowing Service agreements," which in this case are MSMEs. Moreover, it is also stating that, "Lenders are people, legal entities, and business entities that have receivables due to an Information Technology-Based Lending and Borrowing Service agreement" (Syafudin, 2020). Loan and loan agreements are made between the lender and the loan recipient electronically. This platform provided by the organizer of Fintech Peer to Peer Lending brings together lenders and loan recipients (Hendro Nugroho, 2020).

Article 18 of the Financial Services Authority Regulation Number 77/Pojk.01/2016 concerning Information Technology-Based Lending and Borrowing Services determines the agreement on the implementation of Information Technology-Based Lending and Borrowing Services, which includes: the agreement between the Provider and the Lender; and agreements between Lenders and Loan Recipients. Both agreements between the Lender and the Fintech Peer to Peer Lending provider, as well as agreements between the Lender and the loan recipient are submitted through the Electronic Document (Enan Sugiarto, 2016). The agreement outlined in the form of an electronic document is referred as an electronic contract (Priyonggojati, 2019). An electronic contract is regulated under Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 1 point 17 which states, "Agreement of the parties made through an Electronic System".

Electronic contracts are a consequence of developments in information technology that have brought changes to the media used to make agreements. Currently, the media used is electronic or digital (Agus Santoso, 2018). The use of electronic contracts in the implementation of Fintech Peer To Peer Lending in Indonesia allows parties to not need to meet face to face to conduct lending and loan transactions which then has an impact on the efficiency and tremendous effectiveness in conducting a business in Indonesia (Lathifah Hanim, 2011).

The legal relationship between Fintech Peer To Peer Lending organizers with MSME entrepreneurs and lenders is an adequate financing alternative nowadays

(Lastuti Abubakar, 2019). This is because the MSMEs do not need to spend a lot of time and money to be able to get a loan as business capital. MSMEs only need internet access to be able to access loans through Fintech Peer to Peer Lending. It is a different case if MSMEs make loans to conventional banks which will take a lot of time because of the vast bureaucracy to be able to get credits. (Irma, 2019) Moreover, if the distance between MSMEs to traditional banks is far, a lot of costs for transportation will be spent to be able to get business capital loans. (Muzdalifa, Irma, Inayah Aulia Rahma, 2018)

Based on the explanation above, it is known that if the legal relationship between fintech peer to peer lending administrators, MSME entrepreneurs, and lenders is good (Pranoto, Munawar Kholil, 2019), all parties can fulfill their obligations and rights which then creates a positive legal relationship within the parties. The positive thing for lenders is that they will receive a profit from their debt, while Fintech Peer to Peer Lending organizers will receive profits from the transaction. Meanwhile, MSMEs as loan recipients will be benefited from the business capital obtained for their businesses progress and development. However, as previously stated, every legal relationship must have consequences where the rights and obligations must be fulfilled. If the two consequences are not met, it will cause legal problems. This is what must be watched out for so that the implementation of Fintech Peer to Peer Lending in Indonesia requires aspects of legal protection of the parties.

Legal Protection Aspects of Each Party

Legal protection protects human rights that others are harmed, and the security is given to the community so that they can enjoy all the rights provided by the law (Satjipto Rahardjo, 2014). Legal protection is both a characteristic and an objective of law itself (Bambang Eko Turisno, 2012), which becomes the latest means of controlling various changes within the society so that the differences that exist also capable of realizing the development of the nation and state in a more positive direction (Esmi Warassih, 2018). Law can provide solutions to the possible use and utilization of science and technology for the most significant benefit and continuity of human life (Hartono, 1995). Legal protection in the context of conducting Fintech Peer to Peer Lending business is intended to ensure the fulfillment of each party's rights and obligations, especially those who are weak and potentially disadvantaged (Benuf et al., 2019). The dim party, in this case, is the consumer which is the MSME entrepreneur.

The Financial Services Authority (*Otoritas Jasa Keuangan(OJK)*) which is a state agency authorized to ensure legal protection in the implementation of Fintech Peer to Peer Lending in Indonesia was established by the regulations (Benuf et al., 2020). OJK has a very strategic role in making policies to realize the legal protection of the parties in the implementation of Fintech Peer To Peer Lending in Indonesia (Sidabalok, 2010). The parties need to be protected, especially consumers, which is due to the weak position of consumers compared to the area of Fintech Peer to Peer Lending organizers.

All Indonesian citizens are referred as consumers. Therefore, protecting consumers means protecting all Indonesian citizens. Consumers in the fintech peer to peer lending context are lenders and loan recipients, namely MSMEs (Yuli Rahmini Suci, 2017). OJK regulations contain provisions regarding legal protection in the implementation of Fintech Peer to Peer Lending in Indonesia, namely the Financial Services Authority Regulation (POJK) Number 77/Pojk.01/2016 concerning Lending and Borrowing Services for Money-Based Information Technology. Article 29 of the POJK is a quo that determines the basic principles that must be applied by the Fintech Peer to Peer Lending business organizers in realizing the legal protection of its users. These principles are transparency, fair treatment, reliability, confidentiality and data security, and user dispute resolution in a simple, fast, and affordable cost (Tampi, 2016).

The principle of transparency is further regulated under Article 30. The Provider is required to provide and submit the latest information in the form of electronic documents, regarding Information Technology Lending and Borrowing Services that are accurate, honest, clear, and not misleading. The principle of fair treatment requires administrators to submit information to Users about the acceptance, delay, or rejection of requests for Information Technology Based Money Lending and Borrowing Services (Cheyzsa Mega Andhini, 2019). If the information provided is delayed, the organizers must submit the reason behind the delay or rejection, unless otherwise stipulated by statutory provisions. The principle of fair treatment also requires operators to pay attention to the compatibility between what user needs and abilities with the services offered to them (Kornelius Benuf, Ery Agus Priyono, Siti Mahmudah, Siti Malikhatun Badriyah, Bagus Rahmanda, 2020).

The Reliability Principle requires the Provider to include and mention every offer or promotion of services consisting of the name and logo of the Organizer and a statement that the Operator is registered and supervised by the OJK. The Reliability Principle also requires the Organizer to standardize agreements by the principles of the contract and the provisions of the legislation. The Organizer must also be responsible for User's losses arising from errors and negligence, Directors, and Operator employees. The Operator is also required to have standard operating procedures in serving Users which are contained under the Electronic Documents (Muhammad Fachrurrazy, 2020).

The principle of confidentiality and data security prohibits organizers from providing data and information about Users to third parties unless the User is exempted from giving electronic approval, and required by statutory provisions. The principle of resolving User's disputes is simple, fast, and affordable. It requires the organizer to report it electronically each month if a User's complaint is accompanied by a follow-up to the settlement of the referred claim to the OJK.(U Yunus, 2019)

These principles must be implemented in every policy in the implementation of the Fintech Peer to Peer Lending business in Indonesia. If these principles are consistently and thoughtfully executed, the parties' legal protection in implementing Fintech Peer to Peer Lending will be realize (Santi, Ernama, Budiharto Budiharto,

2017). Parties that use fintech peer-to-peer lending as lenders and loan recipients, namely MSMEs, will benefit from the presence of Fintech Peer to Peer Lending. These benefits include easy access to finance. For MSMEs, access to funding is a significant factor as well as a determining factor for the success of their business. Hence if there is no financing, MSME operations cannot run. The presence of Fintech Peer to Peer Lending in Indonesia will positively impact the progress of the national economy if the legal protection aspects of the parties are taken seriously and manifested in various OJK policies so that the constitutional protection aspects of the parties in implementing Fintech Peer to Peer Lending are essential for the success and benefits of the Fintech Peer to Peer Lending implementation in Indonesia.

CONCLUSION

Based on the research outcomes, it is known that the legal relationship between Fintech Peer to Peer Lending with MSMEs is outlined under an electronic agreement. There are 2 (two) electronic agreements that MSME must approve when using Fintech Peer to Peer Lending services. The first agreement is between MSMEs with the organizer of Fintech Peer to Peer Lending, and the second is an agreement between MSMEs and lenders. These two agreements contain the rights and obligations of each party they must fulfill.

The legal protection of the parties in conducting the Fintech Peer to Peer Lending business in Indonesia is based on the principle of transparency, the law of fair treatment, the principle of reliability, the policy of confidentiality and data security, and based on the principle of resolving user disputes in a simple, fast, and affordable cost. These principles are intended as legal protection for Fintech Peer users to Peer Lending services. This is due to users who are consumers as the weak parties in the implementation of Fintech Peer to Peer Lending in Indonesia.

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