CHAPTER I

INTRODUCTION

1.1 Background

The development of information technology, especially in interconnection-networking (internet), has a significant influence on all lines of human life. Due to the development, modern life is very dependent on technology.[1] Along with the development of the era of globalization, most community activities cannot be separated from technological assistance. In fact, in the future, technology is believed to be used as the main alternative for the implementation of many activities, especially business activities.[2] The use of technology provides ease of communication and interaction between people. Technological progress seems limitless, and its strength is able to spread to various sectors, one of which is the financial sector.

The financial sector is also changing rapidly due to the increased use of technologies by financial institutions as the financial sector is at the forefront of technological innovation and is widely recognized as one of the most extensive technology users among the service sectors.[3] Therefore, to keep up with the development, financial institutions are now beginning to shift to technology-based financial institutions. Technology advances allow for

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[1] Barda Nawawi Arief '*Kebijakan Penanggulangan Cyber Crime dan Cyber Sex'* (2005) 1 Jurnal Law Reform 11.

[2] M. Arsyad Sanusi, *Hukum Teknologi dan Informasi*, Tim Kemas Buku, Bandung, 2005, p. 3

[3] Iman N, *Innovation in Financial Services: A Tale from E-banking Development in Indonesia*, International Journal Of Business Innovation and Research, 8(5), 498–522, 2014

innovation in the ways businesses and individuals perform financial activities. Therefore, as technology progresses, it impacts financial sector business models and how people attain financial services.

The term used to describe the technological advances in financial services is called Financial Technology, commonly referred to as Fintech. Fintech stands for the dynamic industry in the intersection of finance and technology.[4] Fintech is also described as a new form of financial services industry that combines technology and financial services such as payments, remittances, and asset management.[5] However, the financial services business is not new to Fintech. In fact, the financial services industry is one of the key buyers of information technology products and services. All sectors of the financial services industry have been impacted by the growth of Fintech, such as banking, capital markets, payments, insurance, asset management, and real estate, as well as industrial platforms and infrastructure.

According to The National Digital Research Center (NDRC), Fintech is an innovation in the financial sector. Financial Technology, or Fintech, uses technology to provide customers with financial services and goods.[6] According to Bank Indonesia, Fintech is described as the use of technology

[4] Kim, Y., Park, Y.J., Choi, J. and Yeon, J., An Empirical Study on the Adoption of "Fintech" Service: Focused on Mobile Payment Services, 2015.
[5] Lee, T.H. and Kim, H.W., An Exploratory Study on Fintech Industry in Korea: Crowdfunding Case., 2015
[6] Central Bank of Ireland, "Explainer-What is "fintech" and How is it Changing Financial Products", https://ceFntralbank.ie/consumer-hub/explainers/what-is-fintech-and-how-is-it- changing-financial-products, accessed on 4 August 2020.

in the financial system that produces new products, services, technology, and/or business models that impact monetary and financial system stability and/or payment system performance, smoothness, protection, and reliability.[7] Fintech aims to provide a financial solution by providing a more practical way of accessing funds. It enables individuals to conduct financial transactions virtually without the need to physically going to financial institutions. Also, it allows individuals to conduct long distanced financial transactions in a time-efficient and effective manner.[8]

The Internet, big data, cloud computing, blockchain, and artificial intelligence are specifically included in the usage of Fintech. Fintech also delivers many innovations in financial sectors, which include: financial services innovation, market-based lending platform innovation, payment innovation, and smart trading innovation. Through the use of Fintech, the financial industry can be more effective in many aspects such as: operations, reducing costs, increasing efficiency, and optimizing user experience.[9]

As fintech companies are seen as an innovation that brings many benefit, they are gaining popularity around the world, including Indonesia, and they are increasingly sought after by the public for various reasons, including:

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[7]Bank Indonesia, "Teknologi Finansial", <https://.bi.go.id/id/sistempembayaran/fintech/Contents/default.aspx>, accessed on 4 August 2020.
[8] Ibid
[9] Zhang Miao, Yang Juanjuan, "Research on Financial Technology and Inclusive Finance Development", Shanghai University, 2018.

1. Widespread use of the internet and smartphones, so that online financial transactions are crucial;
2. Fintech is considered more practical than the more rigid conventional financial industry;
3. The rise of digital technology-based businesses;
4. A more straightforward online financial industry for start-up business players.[10]

For the reasons mentioned above, it can be seen that Fintech's rapid growth is owed to companies offering a variety of financial services that help the community in running the economy more effectively and efficiently, especially in the financial sector.[11] There are many types of financial services provided by Fintech, one of them is a peer-to-peer lending (P2P lending).

P2P lending is a loan service among the society, where the community can obtain from a company that built the platform. The term P2P lending provided by Fintech describes the loan origination process between private individuals on online platforms where financial institutions operate only as intermediates required by law.[12] The activity of lending and borrowing money has long been carried out in communities where money is used as a means of payment. The debtor borrows an amount of money from the lender

[10]Tim Jurnalistik Legalscope, Perkembangan Fintech di Indonesia, http://www.legalscope.id/perkembangan-fintech-di-indonesia/ accessed on 24 July 2020

[11] Farah Margaretha, 'Dampak Elektronik Banking Terhadap Kinerja Perbankan Indonesia' (2015) 19 Jurnal Keuangan dan Perbankan.

[12] A. Bachmann and et al, "Online Peer-to-Peer Lending - A Literature Review," Journal of Internet Banking and Commerce, August 201 1, vol. 16, no. 2, Vols. Vol. 16, no.2, no.August, Pp. 2-19, 2011.

in order to finance his needs related to his daily life or to meet the needs of funds to finance his business activities. Hence, lending and borrowing money has become part of social life.

Fintech companies that offer P2P lending services match debtors and lenders, thereby benefiting from loan relationships and processing transactions. P2P lending permits individuals to borrow and lend without the need for banks as intermediaries. Moreover, in P2P lending, financial transactions undertake among unrelated individuals or peers. Hence, the parties in peer-to-peer lending are the creditors who are willing to issue loans for the debtor and the P2P company acts as the intermediary.[13] As a result, P2P lending services have gained popularity amongst debtors due to their lower interest rates, lower cost structure, and simplified application process.[14]

In Indonesia, P2P lending has also been thriving significantly. High mobile and internet penetration and burgeoning demand from both debtors and lenders have the road to a boom of P2P lending platforms.[15] Based on data gathered by the Indonesia Financial Services Authority (OJK) from September 2018, there are 67 platforms that have been registered. In addition, the channeled loans made from P2P lending have also been calculated, and the loans constituted more than IDR 9 trillion (USD 600 million), with an annual average growth of about 300%. The number of debtors account was

[13] Eric Chaffee and Geoffrey Rapp, "Regulating Online Peer-to-Peer Lending in the Aftermath of Dodd-Frank: In Search of an Evolving Regulatory Regime for an Evolving Industry", Wash. & Lee Rev. 69, no.2 (2012), Pg. 491.
[14] Derayah Financial, *A Concept Study on Peer-To-Peer Lending*, 2017
[15] KPMG, *The Fintech Edge, First Edition: Peer-To-Peer Lending*, 2018

more than 1.4 million accounts, while the lenders' accounts were more than 135 thousand accounts. Furthermore, until the end of February 2020, OJK also recorded that the Fintech Peer-to-Peer (P2P) lending industry was worth Rp. 95,39 trillion and had increased 225.58% from 2019.[16] An example of financial technology in the peer-to-peer (P2P) lending sector in Indonesia is Modalku.[17]

Although the new entry of peer-to-peer loans provides flexibility, transparency, convenience, versatility, and ease of use in loans, the OJK mentioned that there are at least two potential risks to Fintech's business in its implementation, namely the risk of consumer data security and the risk of error in transactions.[18] Moreover, in reality, Jakarta Legal Aid Institute (LBH) states, that with the emergence of P2P Lending service there are other risks that threaten the debtors in this fintech business. Those risks include the high interest costs that must be paid by the customers, unfair billing processes, and the distribution of consumers' personal data.[19]

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[16] Kontan, Antisipasi Kredit Bermasalah, 111 Anggota AFPI Sudah Melapor Ke Fintech Data Center (FDC), https://pressrelease.kontan.co.id/release/antisipasi-kredit-bermasalah-111-anggota-afpi-sudah-melapor-ke-fintech-data-center-fdc, accessed on 25 July 2020.
[17] M. D, Hadad, China's peer-to-peer lenders face crisis, investors face ruin,Financial Technology in Indonesia, IBS Dcutsche Wellc, Jakarta,https://www.dw.com /cn/ chinas-peer-to-peer-lenders-face-crisis-investors-face ruin/a-1763 1861>, accessed July 26, 2020.
[18] OJK, Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Perlindungan Konsumen Pada Fintech (Departemen Perlindungan Konsumen OJK 2017) p. 28.
[19] Yudho Winarto, (2018), LBH Jakarta Terima 500 Pengaduan Terkait Fintech Bermasalah, https://keuangan.kontan.co.id/news/lbh-jakarta-terima-500-pengaduan-terkait-fintech-bermasalah?page=all accessed on November 6, 2020.

Therefore, the P2P Lending service is still vulnerable to legal issues, especially in consumer protection matters.[20] The definition of a consumer according to the Consumer Protection Law is any person using goods and/or services available in the community for the benefit of themselves, their family, other people, and living beings and it is not used for sale. Debtors in P2P lending are also regarded as consumers because debtors have used the services provided by the P2P institution and, hence, debtors as consumers certainly have rights that must be fulfilled by the other parties in P2P lending business.

Even more so, the problems mentioned before are often caused by Fintech companies operating illegally without license and authorization. The legality of the company in Financial Technology refers to the licenses issued by the Financial Services Authority (OJK). Each fintech company must obtain a must obtain a permit business, approval, registration, endorsement, or effective statement from OJK in order to be legal. The characteristics of illegal peer to peer lending services are not having official permission, unclear identity with changing office addresses and contact numbers, very easy disbursement of funds for loans, high fines and interest, access to all debtor data as collateral, and the existence of terror when debtors' debts are in arrears.

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[20] Andri Madian, "Risiko Investasi P2P Lending dan Cara Mengatasinya", https://www.akseleran.com/blog/risiko-investasi-p2p-lending-cara-mengatasinya/ , accessed on 25 July 2020.

The emergence of illegal Fintech companies operating without OJK's license and authorization causes the rise of online crime such as wiretapping, burglary, and cybercrime in banking financial transactions that makes people reluctant to engage in online financial transactions.[21]

The risk of Fintech's P2P lending business in Indonesia can be seen through a case in December 2019, where the North Jakarta Metro Police succeeded in exposing the practice of illegal 'Vega Data' fintech services in the Penjaringan area, North Jakarta. In this case, the police arrested a Chinese citizen as the boss of the debt collector. It is practiced illegally, but Vega Data management also carries out threats and defamation through Information and Electronic Transactions to bill consumers. In practice, the perpetrators send blast messages to several mobile numbers randomly. They offer online loan services without collateral. Managers also apply terms and conditions that harm consumers or debtors. One of them is the provision under which Fintech can access personal data in the form of contact telephone numbers in consumer phone books. In the effort to collect, the debt collector also threatens consumers and sends 'terror' to consumer contacts by spreading slander.[22]

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[21] Imanuel Adhitya M. Chrismastianto, 'Analisis SWOT Implementasi Tekonologi Finansial terhadap Kualitas Layanan Perbankan di Indonesia' (2017) 20 Jurnal Ekonomi dan Bisnis

[22] Yoki Alvetro, detikNews, Fintech Ilegal di Jakut Dibongkar Polisi, Bos-Debt Collector Ditangkap. https://news.detik.com/berita/d-4833685/fintech-ilegal-di-jakut-dibongkar-polisi-bos-debt-collector-ditangkap/2 diakses accessed on 1 August 2020.

Moreover, there is also a case that happened at the beginning of July 2020, the Financial Services Authority (OJK) Alert Investigation Task Force found 105 illegal lending peer-to-peer (P2P) FinTech companies. The rise of illegal peer-to-peer lending fintech deliberately exploits the weakening condition of the people's economy due to the Covid-19 pandemic. Both P2P Lending and illegal investment offer loans to the public through applications and text messages on mobile phones. The total number of illegal peer-to-peer lending companies that the Investment Alert Task Force has handled from 2018 to June 2020 in 2591 companies. The OJK emphasized that providing personal data on illegal P2P lending is very dangerous because it can be disseminated and used to intimidate the debtors.[23]

Although Indonesia has taken legislative measures by issuing OJK Regulation (POJK) No. 77/POJK.01/2016 on. Information Technology-Based Lending Services (LPMUBTI). The OJK's Regulation stipulates provisions that include, but are not limited to, financial intermediaries, requirements for lender and borrower, agreements, risks, and protection. On top of that, in the interest of greater transparency, OJK has facilitated the partnership of Indonesian P2P platforms with banks. It is further supported by POJK 77/POJK.01/2016 that, with the exception of group lending, both lender and borrower is required to have bank accounts.[24] The regulation also

[23] Rahajeng Kusumo Hasututi, CNBC Indonesia, Ini Daftar 105 Fintech Ilegal yang Disikat OJK, Waspadalah!,https://www.cnbcindonesia.com/tech/20200703130417-37-169997/ini-daftar-105-fintech-ilegal-yang-disikat-ojk-waspadalah, accessed on 1 August 2020.
[24] KPMG, *The Fintech Edge, First Edition: Peer-To-Peer Lending*, 2018

requires business actor involved in the information technology-based lending business to register their business officially. However, this regulation is considered ineffective as there are still many business actors with illegal applications that continue to run their businesses

Hence, the legal protection of customers of this Fintech service still raises a broad host of concerns. These concerns arise due to many illegal lending peer-to-peer (P2P) FinTech companies still operating in Indonesia. It is therefore important to ensure consumer protection for debtors with regard to the security of the transaction and investment, and consequently, to prevent fraud and further problems.

Due to the issues mentioned above, the author hopes to discuss, analyze, and review fully regarding this problem so far as to help public and legal practitioners to avoid any problem arising from Peer-to-Peer (P2P) based Financial Technology (Fintech) services operating without permits in Indonesia, and also to give the best possible recommendation regarding this issue. Based on the foregoing, the author decided to make this thesis with the title of *"Juridical Analysis of Debtor Protection on Peer-to-Peer (P2P) Based Financial Technology (Fintech) Services Operating Without Permits in Indonesia*". The author realizes that there have been other theses written that was written similarly to this thesis titled:

1. *"Perlindungan Hukum Bagi Penyedia Dana Dalam Peer-to-Peer Lending di Dalam Industri Teknologi Finansial*" (2017), written

by Chrismanto Marulitua Saragih from Universitas Pelita Harapan,

2. "*Perlindungan Hukum Bagi Pemberi Pinjaman dalam Penyelenggaraan Financial Technology Berbasis Peer-to-Peer Lending di Indonesia"* (2018), written by Alfhica Rezita Sari from Universitas Islam Indonesia.
3. *"Legal Aspects of Peer-to-Peer Lending and Unsecured Loans*" (2019), written by Cindy Kristiawati from Universitas Pelita Harapan,
4. "*The Implementation of Legal Principles of Conventional Banking to Enhance Consumer Protection in Peer-to-Peer Lending." (2020), written by Louisa Graciella from Universitas Pelita Harapan.*

However, the differences between the past theses, and this thesis is the issues discussed. This thesis not only discusses the legal regulations on Peer-to-Peer Lending based Financial Technology (Fintech) services under Indonesia's law but also discusses the legal protection of debtor rights for Fintech services that operate without permits in Indonesia.

1.2 Formulation of Issues

In regard to the topic of this thesis and the legal issues that have been discussed above, the author will discuss the following formulation of issues:

1. How is Peer-to-Peer (P2P) lending based Financial Technology (Fintech) services are supervised and regulated under Indonesia's positive law?
2. How is the legal protection of debtor for Fintech services that operate without permits in Indonesia?

1.3 Research Purpose

The purpose of this research paper is to answer the formulation of issues mentioned above, which are namely:

1. To discuss and analyze supervisory regulations on Peer-to-Peer (P2P) lending based Financial Technology (Fintech) services under Indonesia's positive law.
2. To identify and analyze the legal protections of debtor rights for Fintech services that operate without permits in Indonesia.

1.4 Research Benefit

The formulation of this thesis is expected to contribute to both theoretical and practical benefits, which includes:

1.4.1 Theoretical Benefit

Theoretically, the author hopes this comparative research could provide a thorough insight into the matters discussed in this thesis. The theoretical benefits of this research are to contribute to the development of Indonesia legislation, particularly in the field of supervision of Peer-to-Peer (P2P) lending-based Financial Technology (Fintech) services in Indonesia, as well as related legal protection of debtor rights on Fintech services that operate without permits in Indonesia. Further, the result can also be used to provide more references for any further research regarding this issue.

1.4.2 Practical Benefit

Practically, the author hopes that this research paper would provide solutions and answers to the issues and to provide suggestions to the Government of Indonesia in regulating Debtor Protection on Peer-to-Peer (P2P) lending based Financial Technology (Fintech). Moreover, the research can be used as a reference or considerations in the formulation of civil law reforms in Indonesia.

1.5 Framework of Writing

To facilitate the reader in the discussion of this research paper, the author will briefly detail chapter by chapter in order to provide a clearer direction of the discussion. The systematics of writing this research will be divided into five chapters. The five chapters are:

CHAPTER I: **INTRODUCTION**

The first chapter consists of five main points, which are the background of the issue, the formulation of issues, objectives of the research, as well as the benefits of the research, which will be then further divided into theoretical and practical benefits, and lastly, the framework of writing.

CHAPTER II: LITERATURE REVIEW

The second chapter will discuss and elaborate theoretical foundation and conceptual framework to assist the author in analyzing the issues formulated in the first chapter. All the combined literature will be summarized in this chapter in order to formulate develop an area for further research. The theoretical framework, which gives details to underlying concepts of the issues, will be done through identifying relevant theory, examining key variables of the issues, and identifying critical questions arising from the issues. In contrast, the conceptual framework will be done through gathering information from law journals, opinions of experts, and prevailing laws in Indonesia.

CHAPTER III: RESEARCH METHODS

In the third chapter, the author will discuss matters regarding the type of research, the type of data, data analysis technique, and the type of research approach. Followed by the types of research, data, data analysis technique, and research approach that the Author uses to discuss the issues in this thesis.

CHAPTER IV: RESULT OF RESEARCH AND ANALYSIS

In the fourth chapter, the author will discuss the issues raised in this research and the solutions to the issues in reference to the theoretical foundation and the normative analysis to solve the issues. This chapter will be divided into two sub-chapters, and each sub-chapter will answer each research question as set out in chapter two of this paper. The first sub-chapter will consist of the analysis of supervisory regulations on Peer-to-Peer (P2P) lending based Financial Technology (Fintech) services in Indonesian positive law. While the second sub-chapter will provide a thorough analysis of as legal protection of debtor rights in Fintech services operating without permits in Indonesia.

CHAPTER V: CONCLUSION AND RECOMMENDATION

In the fifth chapter, the author will summarize and provide a conclusion for the problems explained in chapter four. Aside from providing a conclusion, the author will also provide recommendations on those particular issues and the possible regulations that can be formulated and implemented regarding the legal protection of debtor rights in Fintech services operating without permits in Indonesia in regard to a creation of better legal policy for the general public.