



The Role of The Financial Services Authority in Setting the Interest Rate For Financial Technology Loans As Consumer Protection of Financial Services

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Abstract

The development of modern business in the digital era in the services of non-bank financial institutions, which provides convenience and acceleration in services to consumers of financial services is Financial Technology. Peer-to-peer lending is a fintech product that provides loans to debtors at high interest rates. The maximum loan interest rate set by the Indonesian Joint Funding Fintech Association (AFPI) is 0.8% per day. This determination is very burdensome for the debtor as a consumer of financial services, so there needs to be protection and regulation by the authorized institution. This normative legal research aims to determine the role of the Financial Services Authority in determining the Financial Technology Loan Interest Rate as the Protection of Financial Services Consumers. The results of this study, that the role of the Financial Services Authority as an institution that has the authority to regulate and supervise bank and non-bank financial institutions, has issued Financial Services Authority Regulation no. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. In the POJK, OJK does not set loan interest rates. Peer-to-peer fintech lending providers are encouraged to offer reasonable interest rates and are still within a reasonable range.

Keywords: OJK; Loan Interest; Fintech; Consumer.

Introduction

Submitting a credit application to a bank or finance company must meet the specified requirements. Not all requirements can be met by prospective customers; if they have to provide guarantees, prospective customers will seek other solutions. Currently, there are facilities that can be obtained by prospective customers to obtain loans in an easy and fast way through financial technology (Fintech).

According to the National Digital Research Center (NDRC) in Dublin, Ireland, Fintech is defined as “Financial Services Innovation” or “Financial Services

Fintech Innovation” which is an innovation in the financial sector with a modern sense of technology.¹ Fintech financial transactions include payments, investments, transfers and loans.

Borrowing money through fintech, in addition to providing convenience, also has many problems that must be solved. Borrowing money on a bank or financial institution must pay for loan services or interest. Bank interest is a form of remuneration paid by the bank to the customer, and consists of certain prices that the bank must pay to the customer or the customer who pays the bank. There are two types of distributions: bank deposit interest and bank loan interest. The longer the payment period, the higher is the service paid.²

Loan interest is a service that the borrower must pay the lender for the loan facility received. Bank interest is the service fee that a lender receives for future profits from borrowed money if it is invested.

The loan interest amount set by each bank is different. Generally, it ranges from 11.25% to 13.30% annually. For microcredit, loan interest rates range from 16% to 23% per annum.³ The maximum interest rate is determined by considering the cost advantage of allocating customer funds at the interest rate of the government bonds.

The determination of interest in Financial Technology loans has not been specifically regulated. POJK No. 77 of 2016 concerning Information Technology-Based Lending and Borrowing Services, which regulates the implementation of fintech, does not determine the amount of loan interest.⁴ It is hoped that peer-to-peer fintech lending organizers will set interest rates that are still within reasonable limits.

¹ Ernama Santi et.al., ‘Pengawasan Otoritas Jasa Keuangan Terhadap Financial Technology (Peraturan Otoritas Jasa Keuangan Nomor 77/POJK.01/2016)’ (2017) 6 Diponegoro Law Journal.[2].

² Anju Mahendra, ‘Bunga Bank : Hukum, Faktor Yang Mempengaruhi, Dan Jenisnya’ (*Duniafintech.com*, 2021) <<https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/20649>> accessed 8 July 2022.

³ Jonathan, ‘Mekanisme Penetapan Suku Bunga Pinjaman, Bisnis&UKM’ (*Koinworks.com*) <<https://koinworks.com/blog/mechanisme-penetapan-suku-bunga-pinjaman/>> accessed 8 July 2022.

⁴ Bambang Sugeng Ariadi Subagyo, Zahry Vandawati Chumaida and Mochamad Kevin Romadhona, ‘Enforcement of Consumer Rights Through Dispute Settlement Resolution Agency to Improve the Consumer Satisfaction Index In Indonesia’ (2022) 37 *Yuridika*. [673].

The Indonesian Joint Funding Fintech Association (AFPI) has set an interest rate of up to 0.8% per day. Thus, the interest that the borrower must pay if the tenor is 30 days (per month) is 24%, and the highest accumulated fine is not greater than the loan. The interest in Credit Cards at Commercial Banks is only approximately 2-6%/month. This indicates a significant difference. Fintech institutions still charge high interest, fines, and administrative fees, which are detrimental. Therefore, there is a need for legal protection for consumers of financial services.

The essence of legal protection for consumers of financial services is to protect their interests of consumers of financial services, as well as the risk of loss that befalls them. In the Consumer Protection Act, legal protection for consumers of financial services is implemented based on the principles of benefit, justice, balance, consumer safety and security, and legal certainty. The formulation of Article 2 of the Consumer Protection Law and its explanations are based on the philosophy of national development, namely, the development of Indonesian people wholly based on Pancasila.

Ahmadi Miru and Sutarman Yodo divided the five principles in Article 2 of the Consumer Protection Act, into 3, namely:

1. The principle of benefit which includes consumer safety and security;
2. The principle of justice which includes the principle of balance; and
3. The principle of legal certainty.⁵

Moch. Isnaeni, distinguishes legal protection into 2, namely:⁶

1. External legal protection is legal protection created by authorities through legislation. External legal protection is an effort made by the legislature to prevent harm and injustice.
2. Internal legal protection is a method of protecting the interests of parties and is determined by an agreement established by the parties in the form of contractual terms.

⁵ Ahmadi Miru et.al, *Hukum Perlindungan Konsumen, Edisi Revisi* (11th edn, Rajawali Press 2019).[26].

⁶ Moch. Isnaeni, *Seberkas Diorama Hukum Kontrak* (Revka Petra Media 2017).[41-42].

This research focuses on normative legal studies, namely examining law as a system of norms, principles, norms, statutory provisions, and legal views to answer and solve legal problems. Legal studies of authoritative legal materials, laws and regulations, and legal scientific publications, using the Statute Approach approach, especially the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, and the Conceptual Approach, which begins with the development of views and doctrines related to legal issues, will analyze the Role of the Financial Services Authority in Determining the Interest Rate of Financial Technology Loans as the Protection of Financial Services Consumers.

The Role of the Financial Service Authority in Setting Loan Interest Rates

As business-oriented financial institutions, banks carry out various transactions. The main business of banking is collecting and distributing funds. Other banking transactions will be conducted to support fundraising activities and the disbursement of funds to provide other banking services.⁷

In addition to bank financial institutions in Indonesia, there are non-bank financial institutions. These two institutions have their respective functions. Bank financial institutions collect funds from the public in the form of deposits, which are then channeled back to the community in the form of credit, with the aim of helping people improve their standard of living. Banks, in general, do not serve consumptive and small-sized loans, and they always apply the principle of guarantees and requirements that are not easy for small people.⁸ Non bank financial institutions also channel funds to the public in the form of loans. Along with the increasingly rapid development of the digital era, the development of modern business services for financial institutions has also followed.

⁷ Trisadini P. Usanti dan Abd. Shomad, *Hukum Perbankan* (Kencana 2017).[1].

⁸ Endang Prasetyawati, 'Perlindungan Hukum Terhadap Para Pihak Dalam Pembiayaan Konsumen' (2012) 8 Jurnal Ilmu Hukum.[16].

In the era of digital economic development, the community continues to innovate by providing lending and borrowing services. One form of Financial Technology (fintech) is the distribution of funds through the peer-to-peer (P2P) lending system. This system has more or less the same role as banks, namely as organizers, from parties who have funds (investors) to those who need funds (debtors) whose methods are carried out online. The distribution of funds through P2P Lending systems has rapidly developed in Indonesia. In carrying out its business, the loan and loan service provider uses an electronic system, which is a series of electronic devices and procedures that disseminate information in the field of financial services.⁹

Financial technology is a form of non-bank financial institution that has been influenced by the development of digital technology, aimed at transforming and accelerating services in the financial sector. Financial Technology offers financial service products that provide peer-to-peer financing. Peer-to-peer lending provides credit to the borrower, and such credit carries interest.¹⁰ Peer-to-peer lending is a financial service that synchronizes lenders and borrowers when concluding loan contracts in rupiah currency via an electronic system.

The development of fintech is increasingly rapid, and to maintain the balance of the parties in carrying out the agreement, there must be efforts from the authorities so that business rules continue to run in the right and fair corridor. Legislative institutions must be prepared to anticipate exploitation by parties who are in a better negotiating position than other parties. Clear regulation and supervision are needed to protect the financial technology business so as not to lose consumers of financial services. Law No. 21 of 2011 concerning the Financial Services Authority delegated some of the duties and authorities of Bank Indonesia to the Financial Services Authority (OJK).

⁹ Yusuf Arif Utomo, 'Legal Protection for Problem Debtor Related to the Use of the Artificial Intelligence System in Peer to Peer Lending' (2020) 35 Yuridika.[657].

¹⁰ Antoni Tjandra, 'Kekosongan Norma Penentuan Bunga Pinjaman Financial Technology Peer To Peer Lending' (2020) 3 Jurnal Hukum Bisnis Bonum Commune.[91].

The OJK is responsible for implementing an integrated regulatory and supervisory system for all activities in the financial services sector. The authority of OJK is the task of regulation and supervision.¹¹ Article 6 of the POJK states that it is responsible for regulating and supervising the following: a) financial service activities in the banking sector; b) financial services activities in the Capital Market sector; and c) financial service activities in Insurance, Pension Funds, Financing Institutions, and other Financial Services Institutions.

Based on these provisions, the Financial Services Authority is an independent institution whose task is to regulate and supervise the development of Fintech, because Fintech is part of the financial services sector, both the Bank Financial Industry (IKB) and the Non-Bank Financial Industry (IKNB), regulated and supervised. OJK. Therefore, the role of OJK in regulating fintech peer-to-peer lending must be optimized.

To ensure the implementation of optimal regulations and supervision of the financial services sector, OJK is committed independently to the implementation of its duties and authorities, as referred to in the laws and regulations in the financial services sector.¹²

According to the Directorate of Fintech Regulation, Licensing, and Supervision of the Financial Services Authority, OJK acts as a regulator.¹³

a. Role as Regulator

OJK has issued the rules contained in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services (POJK LPMUBTI) in the development of the Fintech Industry and its role as a regulator of P2P Lending. This regulation was issued with the aim of providing a legal platform and basis for the application of Fintech Peer to Peer Lending in Indonesia, as well as consumer protection for financial

¹¹ Kasmir, *Bank Dan Lembaga Keuangan Lainnya* (Raja Grafindo Persada 2014).[262].

¹² Adrian Sutedi, *Aspek Hukum Otoritas Jasa Keuangan* (Raih Asa Sukses 2014).[62].

¹³ I Wayan Bagus Pramana, 'Peranan Otoritas Jasa Keuangan Dalam Mengawasi Lembaga Keuangan Non Bank Berbasis Financial Technology Jenis Peer To Peer Lending' (2018) 6 *Kertha Semaya*, Fakultas Hukum Universitas Udayana.[6].

services and public trust using Fintech Peer to Peer Lending.

b. Role as Supervisor

The role of OJK as a supervisor, overseeing the implementation of regulations related to the implementation of fintech peer-to-peer lending, namely POJK LPMUBTI. To minimize these violations, they must be linked to the theory of legal protection.

In POJK Number 77/POJK.01/2016, concerning Information Technology-Based Lending and Borrowing Services, the Financial Services Authority does not regulate and determine the interest rate for loans through Financial Technology. Article 17 only states that “The organizer provides input on the interest rate offered by the Lender and the Borrower by taking into account the fairness and development of the national economy”.

An information technology-based lending service provider (hereinafter referred to as an operator) is an Indonesian corporation that provides, manages, and operates such services. POJK does not explain fairness. Correct in the Indonesian dictionary usually means correct and correct. Fairness (rationality).¹⁴ In this case, fairness in setting Fintech loan rates indicates social adequacy.

The information technology-based borrowing-lending service provider (hereinafter referred to as the operator) is an Indonesian legal entity that provides, manages, and operates information technology-based loan services. POJK does not provide an explanation of what fairness means. In the Indonesian Dictionary, what is meant by proper is normal, proper, and fair (rationality).¹⁵ In this case, what is meant by fairness in setting interest rates for technology loans is appropriate for society.

There is no regulated interest rate or maximum limit for determining loan interest through Financial Technology and each financial institution can determine loan interest rates that are not the same. Operators have the freedom to determine interest rates, which can be detrimental to financial service consumers.

¹⁴ Priyo Darmanto et. al., *Kamus Prima, Bahasa Indonesia, Disertai Bahasa Inggris* (Arkola 2007).[731].

¹⁵ *ibid.*[731].

Although not specifically regulated in the POJK, Hendrikus, Director of Financial Technology Licensing and Supervision of the Financial Services Authority, said that interest rules for peer-to-peer lending are indirectly regulated by the OJK. Financial Technology loan interest is regulated by the Indonesian Joint Funding Fintech Association (AFPI).¹⁶ The Indonesian Joint Funding Fintech Association (AFPI) has set an interest rate of up to 0.8% per day. Regulation is issued by the association, so it is a Code of Ethics. Although this is the maximum limit, Fintec providers can use this rule to set high interest rates for borrowers.

The absence of official provisions from the Financial Services Authority as the regulator in determining Financial Technology loan interest rates, financial technology loan providers vary in setting loan interest rates, which is due to the fact that the application process is easy, does not take long, and there is no need for collateral for fixed objects or movable objects; therefore, the interest in fintech loans that are set usually tends to be higher than the interest on loans provided by banks.

Some financial technologies also charge debtors administrative fees. Before the Debtor receives the agreed amount of loan money, the administrative costs will be deducted first; for example, for a loan of IDR 2,000,000.00 (two million rupiah), an administrative fee of IDR 100,000 (one hundred thousand rupiah) will be imposed, and the borrower will only receive IDR 1,900,000 (one million nine hundred thousand rupiah).

In setting loan interest rates, Fintech Lending must refer to government regulations so that there is a definite basis and does not harm consumers of financial services. To supervise bank and non-bank financial institutions in providing loan interests to debtors, the government appointed the Supervisory Department.

The determination of Fintec Lending on high-interest loans burdens financial service consumers. Especially during the Covid-19 pandemic, and the economy is in a slump. With high interest rates, late and administrative fees have been added. To assist borrowing customers affected by Covid-19, the Financial Services Authority

¹⁶ Yanurisa Ananta, 'OJK : Bunga P2P Lending Diatur Secara Tidak Langsung' (*cnbcindonesia*, 2019).

(OJK) issued POJK Number 11/POJK.03/2020 concerning national economic stimulus as a countercyclical policy for the impact of the Spread of Corona Virus Disease 2019. The Restructuring Policy applies to loans given before and after debtors are affected by Covid-19, including micro, small, and medium business debtors. The implementation of this restructuring program applies to banks and the non-bank financial industry and is prioritized for debtors who have good intentions and are affected by their economic conditions due to Covid-19.¹⁷

The implementation of this restructuring has not been able to help ease the burden on consumers of financial services because the Financial Services Authority does not lower interest rates and only regulates the payment method. If only the payment is rescheduled, the debtor will still pay interest on the loan per month, which is his obligation. Debtors, as consumers of financial services, are still disadvantaged by high interest rates.

To prevent losses for consumers of financial services and strengthen the protection of consumers of financial services, the Financial Services Authority issued a new POJK, namely POJK Number 6/POJK.07/2022, concerning Consumer and Community Protection in the Financial Services Sector, which is expected to strengthen the protection of service consumers. finance amid the rapid and dynamic development of innovation and technology. With the entry into force of POJK, it revokes the enactment of POJK Number 1/POJK.07/2013.

In its role as a supervisor and an effort to protect consumers of financial services, in POJK No. 77/2016 concerning Information Technology-Based Lending and Borrowing Services, OJK states that financial technology peer-to-peer lending must be registered with an association appointed by the OJK, namely the AFPI. Therefore, AFPI members who do not comply with the rules of interest rate rates can be expelled, and their operating licenses are revoked. For example, in the case of a fine, the maximum period of 90 days and the principal period may not be exceeded. OJK also encourages the public to always use the services of fintech lending service

¹⁷ Sri Astutik, 'Restructuring Of Consumer Financing Agreements During The Covid-19 Pandemic' (2020) 2 Awang Long Law Review.[107].

providers that are registered or licensed by the OJK. To check the license status of fintech lending service providers, you can contact OJK via telephone number 157 or WhatsApp service 081157157157.

Conclusion

The Financial Services Authority has the authority to regulate and supervise bank and non bank financial institutions and has issued Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services. However, in the POJK, the Financial Services Authority does not set loan interests. Second, Financial Technology loan interest–peer-to-peer fintech lending. set by the Indonesian Joint Funding Fintech Association (AFPI) at up to 0.8% per day.

Based on the conclusions made, the recommendations offered are as follows. First, to provide legal certainty and protect consumers of financial services, the Financial Services Authority must determine the interest rate for Financial Technology loans in the regulations it makes. Second, the Financial Services Authority stipulates strict and severe sanctions in the POJK for providers who do not comply with the provisions for setting interest rates for Financial Technology.

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