

## **CONSUMER PROTECTION AND FINTECH COMPANIES IN INDONESIA: INNOVATIONS AND CHALLENGES OF THE FINANCIAL SERVICES AUTHORITY**

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### **Abstract**

The article has questions from the background of the research as follows: how to protect consumers fintech transactions from financial technology companies? What are the innovations and challenges of the financial services authority in overseeing and issuing regulations related to fintech? The research method used is normative with the statute approach and conceptual approach. The technique of collection primary legal is carried out by collecting OJK regulations regarding fintech companies, and consumer protection. Meanwhile, the technique of collection secondary legal is the concept or theories related to the main issue complete with bibliography. The Results that found are the fintech companies must be registered in the financial services authority by obeying and implementing OJK regulations. Innovation that OJK did enact Supervisory Technology (Suptech) to develop the financial technology (fintech) corporate ecosystem that is included in the realm of Digital Financial Innovation (IKD) on the OJK portal with the name Gerbang Elektronik Sistem Informasi Keuangan Digital. OJK also established the Innovation Center or Fintech Center in 2018. Challenges OJK must face: fintech lending is to create a balance between increasing financial inclusion and risk management, improving people's understanding of fintech services, infrastructure, cybersecurity and data protection for consumers and fintech must collect more consumer data so that the lending and borrowing process becomes more efficient and effective.

*Artikel ini memiliki pertanyaan utama dari latar belakang penelitian sebagai berikut: bagaimana melindungi konsumen dari transaksi fintech dari perusahaan fintech? Apa saja inovasi dan tantangan otoritas jasa keuangan dalam mengawasi dan menerbitkan peraturan yang terkait dengan fintech? Metode penelitian yang digunakan adalah normatif dengan pendekatan statuta dan pendekatan konseptual. Teknik pengumpulan hukum primer dilakukan dengan mengumpulkan peraturan OJK tentang perusahaan fintech, dan perlindungan konsumen. Sementara itu, teknik pengumpulan hukum sekunder adalah konsep atau teori yang terkait dengan masalah utama lengkap dengan bibliografi. Hasil bahwa perusahaan fintech harus terdaftar dalam otoritas jasa keuangan dengan mematuhi dan menerapkan peraturan OJK. Inovasi yang dilakukan OJK Mengaktifkan Teknologi Pengawas (Suptech) untuk mengembangkan ekosistem perusahaan teknologi keuangan (fintech) yang termasuk dalam ranah Inovasi Keuangan Digital (IKD) pada portal OJK dengan nama Gerbang Elektronik Sistem Informasi Keuangan Digital. OJK juga telah mendirikan Innovation Center atau Fintech Center (OJK Infinity) pada tahun 2018. Tantangan yang harus dihadapi OJK: pinjaman fintech adalah menciptakan keseimbangan antara peningkatan inklusi keuangan dan manajemen risiko, meningkatkan pemahaman masyarakat tentang layanan fintech, infrastruktur, keamanan cyber dan perlindungan data untuk konsumen dan fintech harus mengumpulkan lebih banyak data konsumen sehingga proses peminjaman dan peminjaman menjadi lebih efisien dan efektif.*

**Keywords:** Consumer Protection, Fintech, Financial Services Authority

## **Introduction**

The fintech company in its development globally has received investments reaching 17.4 billion dollars in 2018. A third of fintech consumers worldwide have used more than one fintech service, meaning that 4 percent of customers know the fintech service system so it has risen 22% from the previous year. Broadly, Fintech is defined as a new technological innovation in financial services. The presence of fintech has shifted the conventional financial market system so that consumers have more using digital-based financial systems. The presence of fintech involved startup companies in the process so that

many of the world's to banks including HSBC and Credit Suisse also developed and implemented their fintech programs as well.<sup>1</sup>

The fintech service system offers that the distribution of funds through peer-to-peer, in which consumers can only carry out digital-based transactions through applications available by fintech companies. Service applications become a digital financial breakthrough intended for consumers in the industrial revolution 4.0 era. The presence of fintech in Indonesia has attracted consumers to get funds easily with a fast process without having to wait and complete documents conventionally. Fintech companies in Indonesia have increased for several years. Indonesian Internet Service Providers Association (APJII) in 2017 the number of internet users in Indonesia reached 143.26 million. The high internet service users in Indonesia also increase the growth of Fintech companies. Head of the Fintech Licensing Subdivision of the Directorate of Regulation, Supervision, and Licensing of Fintech Financial Services Authority (OJK), Alvin Taulu said, based on 2018 total transactions for the fintech peer to peer (P2P) industry lending reached IDR 26 trillion.<sup>2</sup> The ease of technology-based service systems has generated state revenue from the benefits of fintech loans with a good repayment process. Another data is an increase in the number of Fintech companies licensed and registered with OJK as of February 2020, totaling 161 companies.

In the implementation turns out that Fintech business has potential risks, potential risks are more than two risks of consumer data security and the risk of transaction mistakes. Personal data is certain personal data that is stored, maintained and protected by the truth and confidentiality is protected. The implementation of personal data permits in an electronic system must be based on the principle of respect for personal data as privacy. The two risks will then bring losses to each party in the Fintech business. The emergence of

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<sup>1</sup> Ryan Browne, "Everything you've always wanted to know about fintech", CNBC (2 October 2017), available on <https://www.cnbc.com/2017/10/02/fintech-everything-youve-always-wanted-to-know-about-financial-technology.html>, accessed 22 Nov 2019

<sup>2</sup> Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono, "Perlindungan Hukum terhadap Keamanan Data Konsumen Financial Technology Di Indonesia", *Refleksi Hukum: Jurnal Ilmu Hukum*, vol. 3, no. 2 (2019), p. 145.

tapping, burglary, and cybercrime in banking financial transaction makes the public may hesitate to conduct online transactions.

The research method used is normative with the statute approach and conceptual approach. The technique of collection primary legal is carried out by collecting OJK regulations regarding fintech companies, and consumer protection. Meanwhile, the technique of collection secondary legal is the concept or theories related to the main issue complete with bibliography.

This research will focus on the issue of consumer protection and fintech companies in the electronic agreement that regulates the confidentiality of consumer data and its implementation, absolutely necessary more definitive arrangements. It is an effort by OJK innovation to create and publish policies more specific to fintech and dare to face the challenges of fintech with permanent policies, not just supervision then. The problem to discuss is how to protect consumers fintech transactions from financial technology companies? What are the innovations and challenges of the financial services authority in overseeing and issuing regulations related to fintech?

## **Consumer Protection**

Consumer protection is generally explained, and justified, by the concept of weaker parties. Consumers are considered weaker than contract partners, professionals, and are considered unable to protect their interests due to lower bargaining power.<sup>3</sup> Describing something as a consumer protection statute implies that there is someone who can be identified as a consumer although the private buyer of goods is probably our paradigmatic consumer, it has been joined by a wealth of other economic actors who can lay claim to forming part of that diverse group. As a result, there is the initial difficulty of identifying our subject matter. To define the Tanzanian government, a consumer is any person who purchases offers to purchase goods or services otherwise than for resale but does not include a person who purchases any goods or services to use them in the production or manufacture of any goods or articles for sale.<sup>4</sup>

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<sup>3</sup> Giesela Ruhl, "Consumer Protection in Choice of Law", *Cornell International Law Journal*, vol. 44, no. 3 (2011), p. 569.

<sup>4</sup> Heike Pisuke, "The influence of social reforms and the information society on consumers in a transition economy", in *Consumer law in the information society*, ed. by

Consumer protection is the protection of buyer's goods and services against low quality or dangerous products and advertisements that deceive people.<sup>5</sup> Legal protection is an action or effort to protect the public from arbitrary acts by the authorities, not by the legal rules to create order and peace to enable humans to enjoy their dignity as humans. Legal protection will not be realized if justice has not been enforced. Justice that is approved by the right, is done fairly and honestly, which is responsible for the actions taken. A sense of justice and law must be upheld based on positive law, to uphold justice in a law that is by the people who want to achieve a safe and peaceful society. Justice must be built by the ideals (*Rechtidee*) in the state of law (*Rechtsstaat*), not the state of power (*Machtsstaat*). Law runs as a commitment to humans, law enforcement must pay attention to 4 elements:<sup>6</sup>

- a. Legal certainty (*Rechtssicherheit*)
- b. Benefits of law (*Zweckmassigkeit*)
- c. Legal Justice (*Gerechtigkeit*)
- d. Legal guarantee (*Doelmatigkeit*)

Az Nasution distinguishes the definition between consumer law and consumer protection law, Consumer law is the whole principle and rules that govern the relationship and problem of the supply and use of products (goods and services) between the provider and users, in the life of the community. Whereas consumer protection law is the whole principle of principle and rules of rules that regulate and protect consumers in relationships and problems of providing and using consumer products (goods and services) between providers and users in social life. Meanwhile, the legal limits of consumer protection as a special part of consumer law are the whole principles of principles and rules of rules that regulate and protect consumers in relationships and problems of supply and users in social life. While the legal limits of

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Thomas Wilhelmsson, Salla Tuominen and Heli Tuomola (Netherlands: Kluwer Law International, 2001), p. 31-33. See also Theodora Mwenegoha, "The Development of Consumer Protection Laws in Tanzania for Electronic Consumer Contracts", PhD. Dissertatuin (Faculty of Law, Bond University, 2015), p. 29.

<sup>5</sup> Cambridge Dictionary, "consumer protection," available on <https://dictionary.cambridge.org/amp/english/consumer-protection>, December 01, 2019.

<sup>6</sup> Ishaq, *Dasar-Dasar Ilmu Hukum*, (Jakarta: Sinar Grafika. 2009), p. 43.

consumer protection as a special part of consumer law are the whole principles of principles and rules of rules that regulate and protect consumers in relationships and problems of supply and users in social life.<sup>7</sup>

Consumer Protection Act is a state intervention to protect individual consumers from unfair business practices (unfair business practices).<sup>8</sup> Interest in aspects of public and private law in consumer protection law choosing the position of consumer protection Act depends on the study of economic law.<sup>9</sup> The problem of consumer protection is not solely individual but a common problem and a national problem because basically everyone is a consumer. Therefore, protecting consumers is protecting everyone. Thus, the issue of consumer law protection is a matter of national law. There are four main reasons why consumers need to be protected:<sup>10</sup>

1. Protect consumers is the same as protecting the whole nation which is mandated by national development goals by following with the 1945 Constitution of the Republic of Indonesia.
2. Protect consumer needs to avoid consumers from the negative influence of the use of technology.
3. Protecting consumers need to grow people who are spiritually, physically healthy as protecting meaningful development as well as to protect the sustainability of national development.
4. Protecting consumers need to get the source of development funds received from the consumer community. The balance of legal protection for businessmen and consumers is inseparable from the regulation of the legal relationship between parties.

With accord to Bellefroid, in general, legal relations both public and private are based on the principles of freedom, equality, and solidarity. People are free to do with limited by the desires of others or the principles of equality, have the same position in the law to exercise

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<sup>7</sup> Az. Nasution, *Hukum Perlindungan Konsumen: Suatu Pengantar* (Jakarta: Diadit Mediam, 2011), p. 37.

<sup>8</sup> Yusuf Shofie, *Perlindungan Konsumen dan Instrumen-Instrumen Hukumnya*, (Bandung: Citra Aditya Bakti, 2011), p. 52-53.

<sup>9</sup> Ahmadi Miru and Sutarman Yodo, *Hukum Perlindungan Konsumen* (Jakarta: Raja Grafindo Persada, 2004), p. 2.

<sup>10</sup> Janus Sidabalok, *Hukum Perlindungan Konsumen di Indonesia* (Bandung: PT. Aditya Bakti, 2014), p. 4.

and strengthen the rights. In this case, the law gives equal treatment to individuals. Meanwhile, the principle of solidarity is actually the reverse side of the principle of freedom. If the principle of freedom that stands out is rights, then the principle of solidarity stands out is an obligation, and it is as if each individual agreed to continue to maintain community life which is a survival mode for humans. Through the principle of solidarity developed is private by reason of maintaining human life.<sup>11</sup> In this connection, the interests of the government as intended in the principle of balance above, which is at once a characteristic of what is known in the study of economic law.

Since the entry of the welfare state, Indonesia has interfered in the people's economy through various policies that have been realized in the form of laws and regulations, including in the contractual relationship between business people and consumers. Arrangement of certain matters relating to the entry of modern state understanding through the welfare state, no longer find the management of economic interests by the people without involving the government as an executive institution in a country, the government as an executive institution is having responsible for advancing the welfare of its people which is realized in National development. Thus, the involvement of the Indonesian government can be seen from the contents of the preamble and article 33 of the 1945 Constitution, as well as in the GBHN and in various laws and regulations that are the implementing regulations, including the consumer protection Act. Article 2 Act No.8/1999 is clearly can be identified in the context of national development, which is the responsibility of the government. Meanwhile, Regulation OJK No. 1/POJK.07/2013 specifically arranging fintech consumer protection, which is the implementation Article 4 Act OJK that the Financial Services Authority is formed with the aim that all financial service activities in the financial services sector are organized regularly, fairly, transparently, and accountably, and can realize a financial system that grows sustainably and stably, and able to protect the interest of consumers and society.

In regulatory jurisdictions of countries that provide for it, consumer protection is a group of laws and organizations designed to

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<sup>11</sup> Bellefroid, Johannes Henricus Paulus, Hoogleraar Fac, Kathol Universeit Nijmegen Rechten and J. J. H. Nieskens, *Inleiding tot de rechtswetenschap in Nederland* (Nijmegen: Dekker & van de Vegt, 1956), p. 13.

ensure the rights of consumers as well as fair trade, competition, and accurate information in the marketplace. The laws are designed to prevent businesses that engage in fraud specified unfair practices from gaining an advantage over competitors. Hence, they may also provide additional protection to those most vulnerable in society. Instead, the consumer protection Act is a form of government regulation that aims to protect the rights of consumers. The government may require businesses to disclose detailed information about products-particularly in areas where safety or public health is an issue. Thus, Consumer protection is related to the idea of consumer rights and to the formation of consumer organizations, which help consumers, make better choices in the marketplace and get help with consumer complaints.

Banks almost turn down low-income, inexperienced applicants, leaving them with few options. Borrower turns to private or informal money lenders. Lenders prey on borrower's low-income status and lack of security to exploit them. The instant influx of cash from lenders solves the borrower's immediate problem but triggers a cycle of inability to repay and contributes to mounting debt. Poor financial capacity and the burden of high-interest rates accumulating over time, trap borrowers and drive over-indebtedness. Borrowers are tethered to the expensive financial product which diminishes their economic prospects. Hence, setting interest rate caps through regulation. Interest rate caps or ceilings are a key component of many countries' credit policies. Providers are incentivized to set reasonable interest rates that do not fluctuate. The government sets interest rate ceilings through banking regulations to address the consequences of the high cost of borrowing and predatory lending. The financial regulator also uses interest rate caps as a form of subsidy to economically vulnerable groups. Thus, providing innovative and incentive-driven structures for interest rates and loan terms.<sup>12</sup> Interest rates and loan terms can ease the financial burden of low-income households and merchants with

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<sup>12</sup> Ximena Cadena and Antoinette Schoar, "Remembering to Pay? Reminders vs. Financial Incentives for Loan Payments", *NBER Working Paper*, no. w17020, 2011, available on <https://www.nber.org/papers/w17020.pdf>, accessed on November 01, 2019.

volatile income streams. Some measures to incentivize manageable interest rates and loan terms include:<sup>13</sup>

- a. Cashback incentive: A monetary award to the consumer for paying back all of their loan installments on time.
- b. Future interest rate reduction:<sup>14</sup> A model that decreases the interest rates on future credit offerings for borrowers with proven repayment habits. Traditionally, lenders treat all of their customers the same. Repeat borrowers with perfect repayment records are charged the same interest and fees as unproven first-time borrowers, which disincentives borrowers from improving their payment habits, as they perceive no benefit in doing so. Borrowers will repay loans on time, saving themselves from credit burden if there are obvious rewards associated with repayment.

Consumer's familiarity with the message text (SMS) communication offers up opportunities to engage them after loan origination to facilitate user understanding of features like repayment requirements. SMS reminders are an almost costless mechanism that can address financial literacy as well as the financial health of borrowers. Simple reminders are sent in coordination with payment due dates, enabling borrowers to keep up with their loan repayment schedule.<sup>15</sup> Digital credit providers, in most cases, lie outside the formal financial sector, which includes banks and microfinance institutions. As a predominantly unregulated industry, providers are free to set rigid and exploitative terms driven by profit-making goals. These practices harm consumers. Developing fair and competitive markets through coordinated market regulations (implementer: government as regulator). In recent years, a variety of institutions and technological products have penetrated financial markets with varied business models and services. Regulators are tasked with developing a

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<sup>13</sup> Ximena Cadena and Antoinette Schoar, Remembering to..., accessed 01 Nov 2019.

<sup>14</sup> Ximena Cadena and Antoinette Schoar, Remembering to..., accessed 01 Nov 2019.

<sup>15</sup> The World Bank Group's Payment System Development Group, Innovative Digital Payment Mechanisms Supporting Financial Inclusion Stocktaking Report, <http://www.afii-global.org/sites/default/files/publications/stocktaking-of-innovative-digital-payment-mechanisms-supporting.pdf>, accessed on November 20, 2019.

financial sector through regulation that meets the needs of diverse individuals and firms.<sup>16</sup>

Indonesia has arranged in the OJK Regulation that every businessman provides specific information written each Article in it, information that is easily understood clearly and not indicated consumer losses in financial sector transactions. Likewise, the Agreement or contract is regulated as well in it. In 2016, the Financial Services Authority has specified regulation technology-based money lending and borrowing services No.77/POJK.01/2016, regarding provision to minimize credit risk, protect the interests of Users such as borrowing funds and user data, and protecting government interests such as anti-money laundering and overcoming the problem of terrorism, as well as problems with the system finance.

### **Peer to Peer Lending in Financial Technology**

Peer to peer lending (P2P) is a relatively new online phenomenon, starting in 2005 in the United Kingdom with the creation of Zopa, and quickly spreading to the United States in 2006 with the founding of San Fransisco-based Prosper Marketplace, Inc. (Prosper). P2P lending companies have flourished amidst the global credit crunch, in part because they are an attractive alternative option for borrowers who are unlikely to qualify for a loan from a traditional bank. In 2009, prosper alone had funded more than 178 million dollars (US) in loans and it is estimated that by 2013 the P2P loan market as a whole will have facilitated over 5 billion dollars (US) in loans.<sup>17</sup>

In peer to peer lending online banking, borrowers appeal directly to a pool of individual lenders using a request which can include textual narratives to justify the loan. Furthermore, almost all interactions between the lender and borrower occur through the website interface where submits a loan request and a lender chooses to

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<sup>16</sup> World Bank, *Global financial development report 2014: financial inclusion (English)*. Global financial development report, Washington, DC: World Bank Group, 2013, available on <http://documents.worldbank.org/curated/en/225251468330270218/Global-financial-development-report-2014-financial-inclusion>, accessed November 20, 2019.

<sup>17</sup> Laura Larrimore, Li Jiang, Jeff Larrimore, David Markowitz and Scott Gorski, "Peer to peer lending: The relationship between language features, trustworthiness, and persuasion success", *Journal of Applied Communication Research*, vol. 39, no. 1 (2011), p. 20-21.

fund that request or not. Beyond the issuance of the loan and the subsequent repayment, the borrower and lender are unlikely to have any future interactions. P2P websites act as the conduit, facilitating the requesting and bidding process and coordinating the payment process if a loan is made. However, unlike traditional banks, P2P sites are not funding the loans, it is the individual lenders who provide the capital and carry the default risk. Thus, peer to peer lending interaction is online, one-time interaction where the stakes are high for both parties and where the variables in the decision-making process are almost exclusively defined by the borrower's profile and request. In such a high-risk context, lenders are highly involved and are motivated to deeply process the loan descriptions and all other information available about the borrower when making funding decisions.<sup>18</sup>

Arner, Barberis, and Buckley were some of the first scholars to examine the evolution of fintech using a broad definition of the term that proposed that all incumbent and new financial companies and industry participants could be regarded as fintech, regardless of their size, business model or product portfolio. The approach is useful in research that employs an evolutionary perspective, as the development of financial technologies is classified into three major, sequential phases.<sup>19</sup>

Very important as fintech companies are already providing financial services to millions of people and are transferring, exchanging or lending billions of dollars. As the economic and social impact of fintech grows, it is increasingly difficult for legislators to communicate their expectations towards them, leading to confusion and potentially opening up hazardous loopholes in the financial system. Policymakers are imposing transparent and rather strict compliance rules on banks in the various areas of risk, liquidity and balance-sheet management, as well as legal compliance, and oblige them to set aside large pools of money to protect credit default events. To comply with the expectations of IT regulation, banks must continue to improve their IT security system using funds, which may equal the smaller total startup equity of fintech. This state of

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<sup>18</sup> Laura Larrimore, Li Jiang, Jeff Larrimore, David Markowitz and Scott Gorski, "Peer to peer lending...", p. 21.

<sup>19</sup> Divid Varga, "Fintech, the new era of financial services", *Vezetéstudomány-Budapest Management Review*, vol. 48, no. 11 (2017), p. 22-23.

unevenness between incumbents and less or non-regulated fintech is creating not just a competitive disadvantage for banks, but generating unforeseeable threats for customers in the form of cyber-attacks, bankruptcies or data-leakages. Legislators are currently struggling to fit fintech into existing legal frameworks, as these were designed for a different environment consisting of large, traditional financial institutions. Too many regulations can burden innovation efforts, while under-regulation can impose an unfair advantage on new entrants due to their lower legal costs and overheads, and create higher social costs due to fraudulent activity and non-existent customer protection.<sup>20</sup>

In Indonesia, P2P Lending regulated through Regulation OJK No. 77/2016 concerning *Layanan Pinjam-Meminjam Uang Berbasis Teknologi Informasi* or P2P Lending. One thing that distinguishes P2P from banks is not face-to-face with the borrower and the lender. The meeting must take place in the information technology platform of the P2P organizer between the borrower and the lender.

Indonesia's Fintech peer to peer lending process must have 4 steps namely member registration, loan application, loan implementation, and loan repayment, as follows:<sup>21</sup>

1. Membership Registration. The lender registers online via a computer or smartphone.
  2. Submitting Loans. Loan recipients approve loans. The lender chooses the recipient of the loan to be funded.
  3. Loan Implementation. Lenders and Recipients of the loan agreement. The lender sends the loaned funds. The borrower receives funds.
  4. Loan Payment. The borrower pays the loan to the lender.
- Prohibition of P2P Lending in Indonesia is set by the Financial

Services Authority or OJK in regulations. If the P2P Lending operator violates this ban, the consequences are revocation of licenses

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<sup>20</sup> John L. Douglas, "New wine into old bottles: fintech meets the bank regulatory world", *North Carolina Banking Institute*, vol. 20, no. 1 (2016), p. 17.

<sup>21</sup> Rio, "Panduan Fintech P2P Peer to Peer Lending OJK Indonesia (Update 2019)", *Duwitmu.com* (May 1, 2019), available on <https://duwitmu.com/kta/fintech-p2p-lending-indonesia/>, accessed December 20, 2019.

and operational prohibitions. OJK stipulates that Fintech P2P Lending in Indonesia is prohibited:

1. Conduct business activities other than information technology-based lending and borrowing services. Organizers are prohibited from carrying out activities other than P2P.
2. Make an offer through a means of personal communication without the user's permission. It is forbidden to offer without permission, for example via SMS or WA.
3. Acting as a creditor (lender) or debtor (borrower). P2P operators are not permitted to be loan recipients or lenders.
4. Provide guarantees in all forms for fulfilling the obligations of other parties. It does not provide guarantees to lenders for loans that the loans are guaranteed to be paid.
5. Issuing debt securities. Cannot issue bonds, for example, because the source of funding for borrowers must be from lenders.
6. Publish fictitious and/or misleading information.
7. Charge a complaint. Complaints must be easy, and free.
8. Providing recommendations to users. The organizer may not provide loan recommendations that should be chosen by lenders.

### **Loan Agreement Transaction**

The law of contract is principal to the effective working of the market. Contracts provide a mechanism through which individuals can express their preferences, create agreements with others, and ensure that those agreements are fulfilled. Contract law furnishes a framework through which the market can function. The classical theory of freedom of contract has been the main principle to the development of contract law and its relationship with the market. As Sir George Jessel famously argued: supposing there is one thing which more than another public policy requires it is that men of full age and competent understanding, shall have the utmost liberty of contracting and that their contracts entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice.<sup>22</sup>

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<sup>22</sup> Peter Cartwright, *Consumer Protection and the Criminal Law: Law, Theory, and Policy in the UK* (Cambridge: Cambridge University Press, 2001), p. 8.

A limitation in the ability of the law of contract to protect consumers is the doctrine of privity of contract. The doctrine states that, in general, a contract cannot confer rights or impose obligations on someone who is not a party to that contract. A consumer cannot generally sue a manufacturer in the contract for producing faulty goods (vertical privity). In *Darlington Borough Council v. Wilshire Northern Ltd.*, Steyn LJ argued that there is no doctrinal, logical, or policy reason why the law should deny effectiveness to a contract for the benefit of a third party where that is the stated intention of the parties.<sup>23</sup>

Agreement or contract in the *Legal Information Institute* is an agreement between private parties creating mutual obligations enforceable by law.<sup>24</sup> A contract is an agreement between two or more people and which must be legally valid and enforceable.<sup>25</sup> The activity of borrowing money directly based on written and unwritten agreements is a practice that has taken place in people's lives. Direct borrowing is much in demand by those who need fast funds or parties who for some reason cannot be given funding by conventional financial services industries such as Banking, Capital Market, or Financing Companies. All economic benefits, losses incurred, and the legal impact of lending and borrowing activities carried out directly are fully the responsibility of the parties following an agreement that has been agreed upon.

The role of the Financial Services Authority (OJK) is to supervise and make a policy of all activities in financial services including fintech based on Act No.21/2011 concerning by applying consumer protection priorities through electronic agreements that refer to article 1 point 3 of Regulation OJK No.77/ 2016. The financial services

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<sup>23</sup> Mitchell describes privity as a rule which is almost universally regarded as unjust, see Catherine Mitchell, "Privity reform and the nature of contractual obligations", *Legal Studies*, vol. 19, no. 2 (1999), p. 230.

<sup>24</sup> Legal Information Institute, "Contract", *Cornell Law School*, last updated July 2019 by Krystyna Blokhina Gilkis, available on <https://www.law.cornell.edu/wex/contract>, accessed December 10, 2019.

<sup>25</sup> Attorney General's Office, *The Law of Contract: Maldives, Act no. 4/1991*, p. 1, available on <http://agoffice.gov.mv/pdf/sublawe/Contract.pdf>, accessed December 10, 2019.

authority is always trying to encourage the fintech system services surely in POJK No. 13/2018 concerning Digital Financial Innovations in the Financial Services Sector. The regulation was deliberately made by the OJK so that the fintech service system innovates and registered in OJK as fintech companies that comply with and implements OJK regulations. In POJK No.13/2018, OJK has compiled all the things needed for the fintech industry, including:

1. Procedure for recording and registering fintech.
2. Implementation of monitoring and technical monitoring.
3. Formation of the fintech ecosystem.
4. Building a culture of innovation.
5. Violation of consumer data protection.
6. Limiting fintech companies to carry out effective risk management.
7. Fintech companies must participate in increasing financial inclusion and literacy.
8. Increasing synergy and collaboration between industry, government, academia, and other centers of innovation.
9. Required to implement anti-money laundering and prevention of terrorism funding programs in the financial services sector.

### **Protection and Supervision by Financial Services Authority**

The development of consumer protection in Indonesia is inseparable from the influence of globalization of each country in the world, especially the United States and Europe that have already issued legal protection for consumers in these developed countries. Intense competition in the business world can change the behavior Lender to conduct unfair business competition relating to digital credit to debtors through P2P Lending. Because the purpose of doing business is to achieve maximum profits so that businesses try to win the competition even though it is done in ways that are contrary to ethics and the law so that not only other business actors are disadvantaged but also consumers. Regulatory and supervisory bodies have the function to regulate consumer financial regulations, making consumers protected by the implementation of existing legal regulations. Some countries, different things for approval and carry

out consumer protection. Regarding the regulator, the main focus in the discussion of consumers relating to financial services.<sup>26</sup>

The OJK is an autonomous agency designed to be free from any interference, having functions, duties and powers to regulate, supervise, inspect, and investigate. The OJK established in 2011 to replace the role of Bapepam-LK in regulating and supervising the capital market and financial institutions, as well as that of Bank Indonesia in regulating and supervising banks, and also to protect consumers of financial services companies. The Financial Authority has formed the whole activities in the financial services sector:

- a. Are working in ordered, fair, transparent, and accountable manners;
- a. Are able to create a financial system which grows continuously and in a stable manner;
- b. Are able to protect the interests of consumers and the society.

OJK has the task of regulating and supervising financial service activities in the Banking sector, Capital market sector, and IKNB sector. The Financial Services Authority has issued guidelines for the regulation of the financial technology industry, better known as financial technology (fintech). In 2018, there are 73 registered and licensed fintech companies. Another data is an increase in the number of Fintech companies licensed and registered with OJK as of February 2020, totaling 161 companies.<sup>27</sup>

The Financial Services Authority (OJK) in Act No.21/2011 prepared some regulations regulating and supervising the development of types of financial service sectors that use technological

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<sup>26</sup> Oya Pinar Ardic, Joyce A. Ibrahim, and Nataliya Mylenko, *Consumer protection laws and regulations in deposit and loan services: A cross-country analysis with a new data set*, (Washington DC: The World Bank, 2011), p. 10-11.

<sup>27</sup> OJK, *Penyelenggaraan Fintech Terdaftar dan Berizin di OJK Per 19 Februari 2020*, (March 4, 2020), available on <https://ojk.go.id/id/berita-dan-kegiatan/publikasi/Pages/Penyelenggara-Fintech-Terdaftar-dan-Berizin-di-OJK-per-19-Februari-2020.aspx>, accessed 26 Mar 2020.

advancements or are called Financial Technology (fintech). OJK also formed a Digital Economy and Finance Innovation Development Team which consists of a combination of some work units at OJK the development of fintech, prepare regulation and development strategies. OJK intensively continues to study the development of this fintech phenomenon, so that the OJK can guard this economic evolution to be able to support the development of the financial services industry going forward and continue to guarantee consumer protection. The presence of fintech, OJK as an authority in the financial services industry, is an opportunity to continue to improve the development of the financial services sector, including encouraging financial inclusion programs. In Regulation OJK No. 3/POJK.02/2018 Chapter XI governs consumer protection in article 31 (1) Providers must apply the basic principles of consumer protection, namely:

- a. Transparency;
- b. Fair treatment;
- c. Reliability;
- d. Maintain the confidentiality of consumer information data and activate the security system.
- e. Handling complaints and solving consumer disputes is simple, fast, and affordable.

Digital financial innovation or Inovasi keuangan digital in the financial services sector decided it was important in supporting faster, cheaper, easier, and broader financial services getting facilitate improving regions. The presence of technology supporting the creation of financial services more efficient to community needs. The role of financial services with low operational costs with a low scale is very appropriate to serve micro, small and medium segments.

In order to minimize the negative impact of innovation, innovation needs to be directed so as to provide maximum benefits for the community and prioritize good governance in order to create consumer protection. In addition, synergies between financial services institutions and non-financial services institutions are needed to create synergy and minimize competition. Innovation needs to be developed

through the development of a digital financial ecosystem that supports the ecosystem in question by involving many elements that interact with each other to get mutual benefits, including related authorities. The coordination between actors in the ecosystem will be facilitated by the Financial Services Authority in the form of the IKD Center (fintech center).

The regulation and monitoring of IKD applies a balanced principle between the principles of consumer protection and prudence with innovation and competition. This principle is carried out in the form of regulation and monitoring by the market participants themselves (market discipline). The authority stipulates principle-based regulations that regulate the principal regulations as a reference for the industry to formulate more detailed implementation regulations or operational standards for business. Lenders are asked to deepen these regulatory principles through the determination of operational standards in detail tailored to market dynamics, technology, and consumer protection to maintain integrity and effectiveness. Organizers need to establish certain institutions for standard setting related to operational aspects, conduct business, and business ethics that are recognized and implemented jointly by their members. The institution intended to coordinate intensively with the Financial Services Authority so that the supervision of IKD runs optimally.

In Regulation No. 77/POJK.01/2016 Information Technology Based Lending and Borrowing Services Article 1 number 3 that the service of borrowing and buying money based on information technology is the operation of financial information services to bring together rupiah currency lenders directly through an electronic system using the internet network. (Information Technology Based Loan and Loan Services is the provision of financial services to bring together lenders and loan recipients so that they can enter into loan agreements and using Rupiah).

## **Conclusion**

OJK seeks to make the latest policy regarding the implementation of fintech which prioritizes consumer protection that is regulated in full in the POJK. The function OJK is to make regulations and an

integrated supervision system for all activities in the financial services sector. OJK has to regulate and oversee financial service activities in the Banking sector, capital market sector and IKNB sector. OJK has issued guidelines for regulating the financial technology industry, better known as financial technology (fintech). Fintech companies must be registered in the financial services authority by obeying and implementing OJK regulations. Innovation that OJK did Enact Supervisory Technology (Suptech) to develop the financial technology (fintech) corporate ecosystem that is included in the realm of Digital Financial Innovation (IKD) on the OJK portal with the name Gesit (Gerbang Elektronik Sistem Informasi Keuangan Digital). OJK has also established the Innovation Center or Fintech Center in 2018. Challenges OJK must face, to create a balance between increasing financial inclusion and risk management, improving people's understanding of fintech services, infrastructure, cybersecurity and data protection for consumers and fintech must collect more consumer data so that the lending and borrowing process becomes more efficient and effective. Regulation OJK No.13/POJK.02/2018 concerning Digital Financial Innovations in the Financial Services Sector. OJK intensively continues to study the development of this fintech phenomenon, so that OJK can maintain the economic evolution to support the development of the financial services industry going forward and continue to guarantee consumer protection. The presence of fintech, for OJK as an authority in the financial services industry, is an opportunity to continue to improve the development of the financial services sector, including encouraging financial inclusion programs.

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