

Islamic Law Review on Fintech P2P Lending, Regulations and Its Institutions In Indonesia

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ABSTRACT

This article aims to review fintech P2P lending in Indonesia from the perspective of Islamic law. P2P lending has great potential to support financial inclusion in the context of economic empowerment from various layers. However, if this P2P lending practice is not accompanied by adequate legal instruments, this financing model will have a high risk. Legal protection needs to be given to all parties involved in this transaction proportionally. Islamic law needs to review the practice of P2P lending in Indonesia so that in the future it can provide more benefits to the community. From the results of the review, it was found that there are no regulations that support the establishment of Islamic P2P lending. The P2P lending concept cannot accommodate sharia contracts that can be applied to fintech financing. Islamic P2P lending companies in Indonesia are still few compared to conventional ones, and even there is no guarantee of complying with sharia principles.

Keywords: *Islamic law review, fintech, P2P lending, regulations, institutions, Indonesia*

1. INTRODUCTION

Technological developments in the financial services industry are growing rapidly. By having technological supports, the financial services will develop and can reach a wider community (Aulia, Fitria, and Permatasari 2020). Although financial institutions have been using technology for a long time (Feyen et al. 2021), the use of fintech as an alternative institution and its products is something new. Today's fintech encompasses not only the digitization and datafication of global financial markets, but also the emergence of new startups around the world (Arner, Buckley, and Zetsche 2018).

The development of fintech is new era financial services (Varga 2017). Fintech can provide new hope for the community to access financial assistance without being constrained by distance and time (Bollaert et al, 2021). Even fintech can be used as a tool that supports the development of financial inclusion that can be reached by anyone who needs funding (Beck 2020; Arner, Buckley, and Zetsche 2018). Financial inclusion is vital to improving the livelihoods of the poor and disadvantaged. Providing people in developing countries

with access to financial services, such as payments, savings, insurance and credit, helps them to manage their financial obligations and build better futures for their families while also supporting broad economic growth, development and poverty reduction (Arner, Buckley, and Zetsche 2018).

To realize financial inclusion, financing activities are needed. Fintech lending platforms have been growing rapidly in the past decade (Jagtiani and John 2018), that one of them refer to term peer-to-peer (P2P lending). P2P lending is used to describe online marketplaces where lenders (also referred interchangeably as investors) can lend to individuals or small businesses (Mateescu 2015). P2P lending is a financial service in which lenders and borrowers transact directly without the intermediation of traditional financial institutions. P2P lending also has the potential to promote financial inclusion by providing better access for people most needing financing in order to bridge the gap in excessing of financial services within a country (Oh and Rosenkranz 2020).

The implementation of fintech P2P lending in providing alternative financing to consumers is currently faced with several problems, especially issues related to

consumer protection (Disemadi, Yusro, and Balqis 2020; Lestari et al. 2019; Hidayat, Alam, and Helmi 2020), illegal fintech lending (Hadiyati 2022; Suryono, Budi, and Purwandari 2021; Herlambang and Rofii 2022), and non-performing loans. The most important factors causing problems in P2P lending is not existence a specific fintech law (Kharisma 2021). Specifically for Islamic P2P lending, the problem that needs to be studied is related to sharia compliance. This article try to review the concept of P2P lending, regulations, and its institutions from the perspective of Islamic law, so that it is expected to contribute to improving financial services to the public.

2. LITERATURE REVIEW

Significant developments in the financial technology (fintech) industry are believed to have changed the landscape of the financial sector, both locally and globally. On a domestic level, a country with all its innovations is expected to accelerate financial inclusion and reduce the number of people who have not been exposed to financial services (OJK 2020). At the global level, there will be cross-border financial transactions followed by the circulation of funds that penetrate national boundaries (Pekanov and Schratzenstaller 2019; Hornuf and Haddad 2019; Egli 2000; Tsanis and Stouraitis 2022; Sloboda and Demianyk 2020). The opportunities and challenges of global financial transactions are highly dependent on the policies of a country.

Fintech brings about a new paradigm in which information technology is driving innovation in the financial industry. Fintech plays a very important role as a driver of innovation in the financial industry and as a leader in economic innovation with the principle of sharing (Lee and Shin 2018). Fintech is an innovative technology that aims to operate traditional financial services using computer programs and digital information technology (Shin and Choi 2019). P2P lending is one of fintechs that provides excess financial inclusion for people who need the financing both for fulfilment of consumptive need and business capital.

Fintech is a financial industry that applies technology to increase financial activity (Schueffel, 2016). Peer to Peer Lending (P2P) or commonly referred to as information technology based lending and borrowing services which is the organization of financial services to bring together lenders with loan recipients in the context into an agreement (Hidayat, Alam, and Helmi 2020). Fintech lending can be beneficial for marginal groups in the population who have no access to get financing from offline financial institutions (Berg, Fuster, and Puri

2022). This financial service inclusion can only be realized if fintech lending provides easy procedures for anyone who needs collaboration in financing. Therefore the existence of P2P lending fintech will give new hope to deepen financing penetration for the lower class group to get the financial access (OJK 2020).

Fintech lending as the use of technology to provide lending products. The use of technology has two main flavors: first, to improve the customer-lender interaction for faster processing times and lower operational costs. Second, technology can be used to improve screening or monitoring, for example, by using alternative data sources or machine learning methods (Berg, Fuster, and Puri 2022). The transparency and validity of data or information is one of the basic requirements for the realization of fintech services. Therefore, all forms of asymmetric information need to be avoided in fintech (Singh 2017; Cummins et al. 2019).

3. ISLAMIC LAW REVIEW ON FINTECH P2P LENDING

Term fintech P2P lending is a term commonly used in theory as well as in practice. Many academic studies use the term P2P lending as an online-based financial service. Even the term is also used in Islamic financial services by referring to the term Islamic P2P lending (Pişkin and Kuş 2019). Islamic law views that term P2P lending can only be used for disbursement of funds based on a loan agreement (aqd al-qardh) which is actually part of the non-commercial contracts (‘uqud al-tabarru’at). Term P2P lending can not other commercial contracts such as trading, leasing, partnership, and others. Therefore, in order for that term can accommodate all sharia contracts, the term Islamic P2P lending needs to be converted into **Islamic P2P financing**.

The growing diversity of financial services providers and business models often requires expanding the regulatory (Feyen et al. 2021). In Indonesia P2P lending described by Financial Service Authority (OJK) as provider of financial service that bring the borrower to meet the lender in term of loan agreement by using electronic system with internet support. P2P lending itself is regulated by OJK through Regulation Number 77/POJK.01/2016 (Fadhilah and Kitri 2019). Although technically this rule is quite detailed, however this regulation has not accommodated special provisions for the implementation of sharia contracts. Even until now there is no regulation set by OJK that specifically govern Islamic financial technology. Regulation is a symbol of the government's alignment. Without Islamic fintech regulations, it means that there is no alignment.

Meanwhile, the reference for operational of Islamic fintech is the fatwa of National Sharia Council-Indonesian Ulama Council (DSN-MUI) Number: 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles. In this fatwa, several sharia contracts have been described that can be used as the basis for fintech transactions. The enactment of this fatwa is not binding because it has not been adopted into P2P lending regulations and has not been legitimized by any of the regulatory articles. If there is one article of the regulation that legitimizes the fatwa, the fatwa will be binding even though it is not adopted into the regulation (Susanto, 2020).

The legality of Islamic P2P lending can be seen from the licensing aspect of the financial services authority and the form of the contract agreement between the parties. According OJK regulation, fintech P2P lending managed by the administrator company that has obtained operational licenses from OJK. The company act as administrator to facilitate the financial technology that can bring together borrowers and lenders. In this case there are two agreement in fintech lending include: (1) Agreement between the administrator company and the lender; (2) Agreement between the lender and the borrower. In carrying out business activities, the administrator company is prohibited act as a lender and borrower (OJK, 2016). For more illustration can be seen in **Figure 1**.

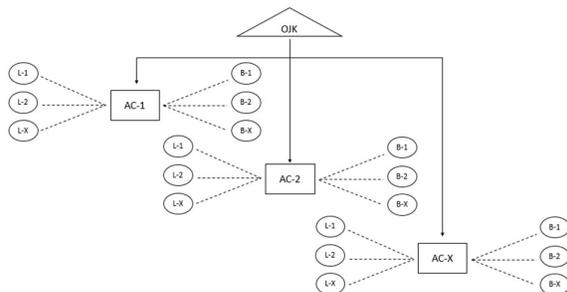


Figure 1 Parties of Fintech P2P Lending

Information:

- OJK : Financial Services Authority
- L : Lender
- AC : Administrator Company
- B : Borrower

In the agreement through fintech, the lender gets a profit from the interest on the loan. Meanwhile, the company as the organizer will benefit from fintech users. According to a review of Islamic law, taking advantage from money lent is prohibited (haram) because it identical with usury (*riba*) (Ahmad, Rehman, and Afzal

2011). Therefore, the administrator company that facilitates the practice of usury is also prohibited. For commercial purposes, Islamic law has provided certain sharia contracts separately which the parties can choose according to their needs.

This regulation has regulated the terms and conditions for establishing an adequate administrator company, however it has not specifically regulated the establishment of Islamic P2P lending. In this case, there is a legal vacuum that regulates Islamic fintech P2P lending. Kharisma said that legal vacuum (*rechtsvacuum*) is a condition when a certain issue or circumstance that emerges from a dynamic society has not been regulated or have been regulated but said regulation is considered inadequate to guarantee the legal certainty (*rechtsonzekerheid*) and lead to legal disorder (*rechtsverwarring*) (Kharisma 2021). The impact is that regulations have not provided legal certainty regarding compliance with sharia principles. Therefore, reviewing the aspects of administrator companies that offer fintech lending is very important to ensure the realization of consumer protection from the perspective of Islamic law.

In Indonesia, P2P lending has increased significantly because this product is able to reach people who do not have access to credit from banks, limited collateral, small business scale, and the most influential is the easy procedure for getting a loan (Ningsih 2016). According to OJK statistical data in August 2022, there are 102 P2P lending companies. Of the total administrator companies, there are 7 (0,007%) P2P lending companies that offer sharia products (OJK, 2022). The data shows that the quantity of Islamic P2P lending is still limited compared to conventional systems.

Islamic P2P lending must be based on sharia principles in carrying out its business activities. To determine compliance with sharia principles, there are several indicators that need to be reviewed, namely: (1) The existence of a sharia supervisory board (SSB); (2) Information about contracts and their implementation on products; (3) The operational whether use single system or dual system. Therefore, testing the completeness of the SSB, the implementation of sharia contracts into products and operational models is very important to measure the quality of compliance with sharia principles. For more information can be seen in **Table 1**.

Table 1. Islamic P2P lending companies

No	Administrator Companies	SSB	Information of Sharia Contract	Operational	
				Single System	Dual System
1	Alami Sharia	√	√	√	-
2	Investree	x	x	-	√
3	Ammana	√	√	√	-
4	Dana Syariah	√	x	√	-
5	Duha Syariah	√	√	√	-
6	Papitupi Syariah	√	√	√	-
7	Ethis	√	√	√	-

The existence of SSB is very important to carry out the supervisory function and to ensure the realization of compliance with sharia principles. SSB should not be just a formality but really professional and independent (Khalid et al. 2018; Fakhruddin and Jusoh 2018). Almost all Islamic P2P lending fintech companies in Indonesia already have and include a SSB profile, except for only one company. In previous research, it has been emphasized that the existence of SSB will further ensure compliance with sharia principles and increase trust for the community (Rusydia 2021; Hanafi, Rohman, and Ratmono 2021).

If traced from the appearance of the website, most of the P2P lending companies do not display information about the implementation of sharia contracts on the products offered. Even though the explanation of the use of sharia contracts in the all product both raising funds and distributing funds is very important for consumers before create account and login to app for using these financial services. The function of sharia contracts is as the basis of a transaction, therefore before making a transaction, the parties are expected to have understood the contracts that will be used.

As a P2P lending provider, administrator company should operate with a single system in one management. The fact is that there is still company that offer products with dual systems of sharia and conventional. Fintech P2P lending that uses a dual system will cause problems from the aspect of compliance with sharia principles. Besides that, the dual system model so far actually shows that the companies using the sharia system are not on the basis of theological awareness, but only for business motive to expand the market share. Consumers who cannot be reached by conventional systems, they will be reached with the sharia system by the companies.

4. CONCLUSION

According to a review of Islamic law, the term fintech P2P lending cannot accommodate sharia contracts that can be used in distributing funds to the public. Because

there are several sharia contracts that can be used for distribution of funds, the right term to use is Islamic fintech financing. The fact that fintech regulations in Indonesia have not specifically regulated Islamic fintech financing so that its development does not have a strong legal basis. Regulation is a symbol of the government's alignment. Without Islamic fintech regulations, it means that there is no alignment. The reference for operational of Islamic fintech is the fatwa Number: 117/DSN-MUI/II/2018.. In this fatwa, there are some sharia contracts that can be used as the basis for fintech transactions. The enactment of this fatwa is not binding because it has not been adopted into P2P lending regulations and has not been legitimized by any of the regulatory articles. If there is one article of the regulation that legitimizes the fatwa, the fatwa will be binding even though it is not adopted into the regulation.

Currently, P2P lending companies are dominated by conventional interest-based systems (usury). As for P2P lending with a sharia label that is currently operating, it was found that there are several weaknesses, namely: (1) There is still Islamic P2P lending companies that do not yet have a sharia supervisory board, the existence of sharia contracts for fundraising and distribution of funds (financing) has not been explained in a transparent manner; (2) The non-transparent use of sharia contracts causes prospective customers fail to recognize the contracts that will be used; (3) The existence of company that use a dual system in offering products shows that the use of sharia approach is only to expand market share, and it is not because of theological awareness.

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