



## Illegal Fintech Lending (Review of Financial Services Authority Regulation Number: 77/PFINANCIAL SERVICES AUTHORITY.01/2016)

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### **Abstract:**

*This study discusses the effectiveness of the application of the financial services authority number: 77/financial services authority.01/2016 concerning Information Technology-Based Money Lending Services. This study uses normative juridical research (normative law research). Normative juridical research refers to legal norms contained in legislation, Court decisions, legal theory and scholar's opinions and norms that exist in society. The approach used in the study is a normative juridical approach, then the approach taken in this paper is the approach to legislation, case approach and conceptual approach. In the study concluded that there are five (5) factors that cause the ineffectiveness of the application of this regulation are as follows; 1). Legal factors; 2). Law enforcement Factors; 3). Factors of law enforcement means; 4). Community factors; 5). Cultural factors.*

**Keywords:** *Fintech; Online Money Lending; Financial Services Authority; Effectiveness.*

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## Introduction

The financial system is basically an order in the economy of a country that has a very important role, especially in providing financial services by financial institutions and other supporting institutions (Gazali and Usman 2012). The financial system plays an important role in enhancing the growth and health of a country's economy in a sustainable and balanced manner. The financial system functions as a facilitator for domestic and international trade, mobilizing deposits



into various investment instruments and acting as an intermediary between savers and lenders. Stability and development of the financial system is very important so that people believe that the Indonesian financial system is safe, stable and able to meet the needs of the use of financial services.

Financial institutions do not only go through conventional models, but are now starting to switch to the use of information technology. This condition was triggered by the development of science and information technology (Riswandi 2005). One of the current advances in the financial sector is the adaptation of fintech or financial technology. Fintech or the abbreviation of financial technology is the result of a combination of financial services and technology which ultimately changes the business model from conventional to moderate, which initially pays face to face and carries a certain amount of cash, can now make remote transactions by making payments that can be made in just seconds. (Syafri 2020)

According to The National Digital Research Center (NDRC), the term fintech is an innovation using modern technology in the financial sector. Of course, this innovation gets a touch of modern technology. The existence of *fintech* can bring a more practical process of financial transactions. Fintech is the implementation and utilization of technology to improve banking and financial services in general by startup companies by utilizing the latest software, internet, communication and computerization technologies. So, starting from payment methods, fund transfers, loans, fundraising, to managing assets, it can be done quickly and concisely thanks to the use of modern technology. (Setiyono, Sriyono, and Prapanca 2021)

In general, many people think that fintech is only an online money lending service, but there are many types of fintech currently developing in Indonesia,



namely: Asset Management, Crowdfunding, E-Money, Insurance, Peer To Peer Lending, Payment Gateways, Remittances, and Securities. (Syaifudin 2020) One of the things that is most in demand among Indonesians today is the type of *fintech* based on *peer to peer lending* (P2P Lending). Therefore, the government through the Financial Services Authority made regulations as the legal basis for the implementation of fintech P2P lending through the Financial Services Authority Regulation Number: 77/Financial Services Authority.01/2016 concerning Information Technology-Based Money Lending Services with the aim of providing a legal umbrella for the user community. (Lestari, Arifin, and Sudarmanto 2022)

The definition of P2P lending is stated in Article 1 Number 3 of the Financial Services Authority Regulation Number 77 of 2016 which states that "Information Technology-Based Money-Lending Services is the provision of financial services to bring together lenders and loan recipients in the context of entering into loan agreements in rupiah currency directly through an electronic system using the internet network.

In particular, Article 18 of the Financial Services Authority Regulation Number 77 of 2016 explains that the agreement to implement information technology-based money lending services includes:

1. Agreement between the Administrator and the Lender; And
2. Agreement between the Lender and the Borrower.

If the *P2P* lending fintech operator is proven to have violated these obligations, then Article 47 Number 1 which reads; For violations of the obligations and prohibitions in this financial services authority regulation, financial services



authority has the authority to impose administrative sanctions on administrators in the form of :

- a. written warning;
- b. Fines, namely the obligation to pay a certain amount of money;
- c. Restrictions on business activities; And
- d. License revocation.

Because it is also an agreement, the lending and borrowing of money based on fintech P2P lending must refer to the provisions of Article 1320 of the Civil Code, there are 4 (four) conditions needed for an agreement to be legally valid, namely (Miru 2007):

1. Agreed that they bind themselves;
2. Capable of making agreements;
3. A particular thing or object; And
4. A lawful cause.

The terms of the agreement include subjective terms and objective conditions. If the subjective conditions listed in points one and two are not met, then the agreement made can be canceled by one of the parties and if the objective conditions listed in points three and four are not met, then the agreement is null and void.

The Financial Services Authority, hereinafter abbreviated as financial services authority, is an institution that carries out government functions in the framework of regulating and supervising the activities of the financial services sector, each party is prohibited from interfering in the implementation of the duties and authorities of



the financial services authority. The point is that in order to guarantee optimal regulation and supervision of the financial services sector, financial services authority must be able to work independently in making and implementing its duties and authorities as referred to in Law Number 21 of 2011 concerning the Financial Services Authority. (Adrian Sutedi 2014)

Financial services authority was formed with the aim that all activities in the financial services sector can be carried out in an orderly, fair, transparent and accountable manner, able to realize a financial system that grows in a sustainable and stable manner, and is able to protect the interests of consumers and society, which is realized through a system of regulation and supervision that is integrated into all activities in the financial services sector.

Financial services authority carries out regulatory and supervisory duties on financial service activities in the banking sector, capital market, insurance, pension funds, financing institutions and other financial service institutions, including conducting supervision, inspection, investigation, consumer protection and other actions against financial service institutions, actors, and/or supporting financial services activities, including licensing authority to financial service institutions.

It is undeniable that the development of the P2P lending fintech industry has developed very rapidly. noted that loan disbursement for the January-September 2022 period reached IDR 168.32 trillion, growing 45.40% year on year (yoy) from the same period the previous year of IDR 115.77 trillion. Although it is believed that this growth will continue next year, the level of default also needs to be a concern for industry players. Referring to financial services authority statistics, the accumulation of financing until September 2022 has also exceeded the realization

throughout 2021. Fintech P2P lending recorded a growth of 7.92% on a current year year to date (ytd) basis compared to January-December 2021 loans of IDR 155.97 trillion. Meanwhile, lending to the productive sector from fintech P2P lending did increase in value, but the portion became lower. Productive loans for the January-September period reached IDR 79.97 trillion or 47.50% of the total disbursement. Meanwhile, in January-September 2021, productive loans amounted to 61.06 trillion, covering 52.74% of the total disbursement. (BeritaSatu.com n.d.)

But behind its rapid growth, the P2P lending fintech industry is also posing serious problems, especially to the rise of the illegal P2P lending fintech industry. The financial services authority recorded that there were 1,026 unlicensed or illegal fintech industries in 2020 circulating in the community, while the data that researchers obtained on January 3, 2022 in the licensing records contained only 103 fintech P2P lending industries registered with the financial services authority. The rise of the illegal P2P lending fintech industry has had an impact on the number of complaints to financial services authority. There were 6,787 complaints in December 2020 and reached 5,421 complaints in March 2021 and continue to increase every year. (Hidayah 2022)

*Table 1. Data on Illegal Fintech P2P Lending Cases in Indonesia*

Number of Illegal Fintech P2P Lending in Indonesia		Number of Online Loan Complaints to the Financial Services Authority	
Year	Number of Cases	Year	Number of Complaints
2018	404	December 2020	6,787
2019	1,490	January 2021	2,274
2020	1,026	February 2021	3,673
2021	133	March 2021	5,421

*Source: Financial Services Authority, 2021*



Based on the data presented by the financial services authority, there are still many illegal P2P lending fintech industries found which causes more and more cases that are detrimental to consumers. The illegal P2P lending fintech industry uses a loan circulation system that is very easy in the process of disbursing loan funds, so that it can attract the interest of its consumers. However, behind this convenience there are several potential problems or risks that they will get in the future.

### Problem Statement

The emergence of financial companies in the field of technology-based lending and borrowing services (peer-to-peer lending or P2P lending) has received increasing public attention, so that a legal umbrella was issued in the form of Financial Services Authority Regulation Number 77/Financial Services Authority/01/2016 concerning Services Lending and Lending Money Based on Information Technology. Even so, the regulations issued by the financial services authority were apparently not enough to prevent the emergence of online loan services that were not registered with the financial services authority until now. (Hs, Hafidz, and Zainuddin 2022)

### Method

The type of research used in this research is normative law research . Normative juridical research refers to legal norms contained in statutory regulations, court decisions, legal theories and scholarly opinions as well as existing norms in society. Often also called legal dogmatics (*rechtsdogmatiek*) or dogmatic legal science includes all scientific activities directed at studying the contents of a concrete positive legal order. (Muhammad 2004)

The approach used in this research is a normative juridical approach, so the approach taken in this paper is the statutory approach , the case approach and the



conceptual approach . This statutory approach is carried out by examining all laws and regulations related to the legal issue being studied. The data analysis technique used in this study was through library research. Next, it will be described and explained further regarding what things were obtained and happened therein. The data analysis used is a qualitative descriptive analysis, namely research that aims to compile a picture or portrait of a problem regarding patterns and problems. Furthermore, the data that will be presented in the object of this study is data obtained from literature studies which can be used as a guide to assist in solving problems and creating solutions.

## Discussion

Fintech in Indonesia is known as information technology-based money lending and borrowing services. Regarding fintech, it has been regulated in the Financial Services Authority Regulation Number 77/Financial Services Authority/01/2016 concerning Information Technology-Based Money Lending Services. Information Technology-Based Borrowing and Borrowing Services (fintech) is the provision of financial services to bring together lenders and loan recipients in order to enter into loan agreements in the rupiah currency directly through an electronic system using the internet network. The Fintech concept adapts technological developments that are integrated with the financial sector in banking institutions. Fintech is a solution in the field of finance in Indonesia. Fintech as a digital-based financial service that is currently developing can facilitate the public to make financial transaction processes more practical, safe and modern. (Suryadi and Efendi 2022)

It is important to know in advance about the regulation and supervision of the fintech business in Indonesia. The fintech business referred to in this study is Fintech Peer to Peer Lending, so the regulation and supervision referred to is also the





regulation and supervision of the peer to peer lending fintech business in Indonesia. It is known that in Indonesia currently the fintech business in Indonesia is at least regulated and supervised by the Financial Services Authority (Financial Services Authority) and Bank Indonesia (BI), apart from that because fintech in its implementation utilizes information technology, with electronic contract instruments, so fintech is also regulated and supervised by the ministry Communication and Informatics through Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. (Benuf et al. 2020)

Related regulations regarding P2P lending are contained in the Financial Services Authority Regulation Number: 77/Financial Services Authority/01/2016 concerning Information Technology Borrowing and Borrowing Services. Regarding what is regulated in the regulation, it is divided into several chapters, namely as follows: general provisions, implementation, use of information technology-based money-lending services, agreements, risk mitigation, information technology governance, user education and protection, electronic signatures, principles and technical identification of customers, prohibitions, periodic reports, sanctions, other provisions, transitional terms and closing terms.

### **1. Effectiveness of Implementation of Financial Services Authority Regulation Number 77 of 2016 Against Illegal Fintech P2P Lending**

The implementation of *fintech P2P lending* is based on agreements made between organizers, lenders and loan recipients. In the agreement that binds between the organizer and the recipient of the loan is related to the loan process that will be obtained by the recipient of the loan and the lender through intermediary providers as well as the mechanism for paying or repaying the loan.



The regulatory and supervisory function of FINANCIAL SERVICES AUTHORITY for *fintech P2P lending* has two forms of electronic agreements, namely agreements between organizers and lenders and agreements between lenders and loan recipients, all of which are stated in electronic documents.

Based on Law Number 21 of 2011 concerning FINANCIAL SERVICES AUTHORITY which is stated in Article 5 it explains that, "FINANCIAL SERVICES AUTHORITY functions to organize an integrated regulatory and supervisory system for all activities in the financial sector". So that FINANCIAL SERVICES AUTHORITY regulates and supervises 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).

The purpose of regulation and supervision by FINANCIAL SERVICES AUTHORITY is to minimize risks and support sustainable and stable economic growth. So that regulation and supervision are very important for the sustainability of *fintech* in Indonesia (Murdadi 2012). Because this relates to the legality of the business being carried out and in practice this *fintech development* has potential risks related to consumer protection, financial system stability, payment systems and economic stability.

In the context of illegal *fintech*, the FINANCIAL SERVICES AUTHORITY as a *stakeholder should* take action against illegal *fintech*, and even prevent the emergence of illegal *fintech* itself. To find out the effectiveness of implementing FINANCIAL SERVICES AUTHORITY regulations Number 77 of 2016 regarding Information Technology-Based Lending and Borrowing Services, we first need to discuss the effective size of a law first. According to Soerjono Soekanto, legal



effectiveness is an action or legal reality that can be known if someone states that a rule of law succeeds or fails to achieve its goals, then it is usually known whether its influence succeeds in regulating certain acts or behaviors so that they are in accordance with their goals or not.

Furthermore, Soerjono Soekanto believes there are 5 (five) factors that can be used to measure the effectiveness of a law, namely (Soekanto 1976) :

1. The legal factor itself (laws).
2. Law enforcement factor.
3. Facility factors or facilities that support law enforcement.
4. Community factor.
5. cultural factors.

Based on the factors that the author has described above, the effectiveness of implementing financial services authority regulations Number 77 of 2016 regarding Information Technology-Based Borrowing and Borrowing Services can be measured through these factors, as follows:

1. The legal factor itself

Financial services authority Regulation Number 77 of 2016 has not yet accommodated all the implementation of Fintech P2PL activities. There are still many things that have not been accommodated in this regulation. One of the things that can be found in Chapter V regarding risk mitigation is financial services authority regulation Number 77 of 2016. Chapter V shows that there is protection for transaction processes through escrow accounts and virtual accounts . This is of course not optimal, because the mitigation process must be comprehensive in order to protect service users and service providers. Chapter V does not contain a description of the



standard processes for identifying, measuring, and monitoring and controlling credit risk. This is one of the things that has been overlooked in Financial Services Authority regulation Number 77 of 2016. Thus, from a legal perspective, financial services authority regulation Number 77 of 2016 is not yet comprehensive.

In addition, the regulation on standardization of interest must be clarified again. This refers to Article 17 paragraph (1) which states that, "The Organizer provides input on the interest rates offered by the Lender and Borrower taking into account fairness and the national economy. Of course, the formulation of the article above, especially the word "fairness", has a very broad interpretation and can result in a blurring of the norms contained in the formulation of the article. So that it is necessary to clarify related to the meaning of the word fairness in order to create legal certainty in society.(Putra and Budiana 2019)

If seen in Article 18 it does not mention between the Provider and the Borrower. Even though it is not stated clearly in the regulations, the Provider and the Borrower should have a legal relationship. This is because the Borrower submits a loan application to the Lender through the Operator. This means that the agreement is born when the Borrower agrees to all the terms of the P2P lending service determined by the Operator. (Hanifah et al. 2021)

## 2. Law enforcement factor

On this factor, the performance of the financial services authority as a law enforcer who is responsible for this matter and has an obligation to implement this rule is not optimal. This can be seen by the lack of mastery of industrial aspects and business environment. financial services authority is still very passive in enforcing this regulation. This can be seen from the large number of illegal Fintech in Indonesia, according to data released by the Investment Alert Task Force quoted by



CNBC Indonesia that there were 80 illegal online loans (pinjol) found by the Investment Alert Task Force. With this addition, there are 4,432 illegal loans that have been closed since 2018. This high enough number indicates that the prevention process carried out by the financial services authority is not optimal. This can be seen from the fintech service providers being closed after a case occurred in their service.

### 3. Facility factors or facilities that support law enforcement.

Regarding the facility factor, to be honest, it is quite capable, especially regarding problematic *fintech reporting*. For reporting problematic fintechs, financial services authority through SWI opens a reporting service through the financial services authority *consumption service 157*, via email [consumer@Financial Services Authority.go.id](mailto:consumer@Financial Services Authority.go.id) or [alertinvestasi@Financial Services Authority.go.id](mailto:alertinvestasi@Financial Services Authority.go.id). However, in terms of prevention, the financial services authority has not been supported by qualified supporting facilities or infrastructure. This can be seen from the data I previously described above, where the number of illegal fintech services is still rampant.

### 4. Community factor

The community factor in this case is very influential. This is because the Indonesian people still lack understanding of Indonesian law, especially regarding regulations governing online borrowing provided by Fintech. This is certainly one of the problems that often causes cases and losses to the community. Moreover, people often do not read the terms and conditions of fintech service providers (Widjaja 2022). Communities who tend not to do research beforehand make their position even more vulnerable to service providers who do not apply clear rules, which can cause losses.

### 5. Cultural factors



Indonesian society is a society that has a close relationship with debts. Debt has become an economic driver for the majority of Indonesians. This can be caused by several factors such as; 1). Economic needs; 2). Consumerism behavior; 3). Social status; 4). Easy access to financial services. (Santoso, Widowati, and Kusnilawati 2022) These factors encourage people to be fond of debt. This infatuation is one of the factors which according to the author is one of the reasons that causes the popularity of *fintech* online loan service providers in Indonesia.

### Conclusion

Based on what has been explained above, the authors found several factors that led to the ineffective enforcement of Financial Services Authority regulation Number 77 of 2016 concerning Information Technology-Based Money Lending Services, the factors are as follows; 1). Legal factors that are still not comprehensive; 2). Law enforcement factors that have not optimally carried out their duties; 3). Inadequate law enforcement support facilities; 4). Community factors that still don't have confirmation regarding loans; 5). The cultural factor of debts - debts that are close to the people of Indonesia. These factors cause the application of these rules is still not optimal.

### Recommendation

Financial services authority was formed with the aim that all activities in the financial services sector can be carried out in an orderly, fair, transparent and accountable manner, able to realize a financial system that grows in a sustainable and stable manner, and is able to protect the interests of consumers and society, which is realized through a system of regulation and supervision that is integrated into all activities in the financial services sector. But behind its rapid growth, the P2P



lending fintech industry is also posing serious problems, especially to the rise of the illegal P2P lending fintech industry. The financial services authority recorded that there were 1,026 unlicensed or illegal fintech industries in 2020 circulating in the community, while the data that researchers obtained on January 3, 2022 in the licensing records contained only 103 fintech P2P lending industries registered with the financial services authority. Based on the data presented by the financial services authority, there are still many illegal P2P lending fintech industries that are causing more and more cases that are detrimental to consumers.

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