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Legal Protection Against Peer-to-Peer Lending-Based Financial Technology Losses: An Analysis of Islamic Law Contracts and Positive Law

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Abstract

This article discusses the analysis of Islamic legal contracts and positive laws concerning the legal protection against financial technology losses based on peer-to-peer lending. This discussion is based on two raised subtopics namely 1) The importance of legal protection against the losses of the parties involved in this transaction and 2) The analysis regarding the contract used in this transaction, which is based on two perspectives, the Islamic legal contracts and positive law. Furthermore, this qualitative research uses a comparative approach. The data analyzed in this study were both primary and secondary. The primary and secondary data were collected from interviews conducted via different platforms with various related sources and from materials, such as journals, articles, and theses, respectively. The results of this study show the importance of legal protection for every party involved in peer-to-peer lending-based financial technology transactions. Some legal issues that have been frequently experienced, include defaults, misuse of personal data, and even the threat of terror received by debtors. Additionally, reviews regarding the contract in the transaction imposed by the organizer were based on 2 perspectives, namely Islamic law and positive law. The transaction process will only become illegal when it conflicts the Islamic laws with the elements of usury and interest in it. And based on the perspective of positive law itself, if there is a defect or anything contrary to decency or public order, the agreement or contract becomes null and void.

Keywords:

Contract; Financial Technology; Fintech; Peer-to-Peer Lending.

Abstrak

Artikel ini membahas analisis kontrak hukum Islam dan hukum positif tentang perlindungan hukum terhadap kerugian teknologi keuangan berdasarkan

pinjaman *peer-to-peer*. Pembahasan ini didasarkan pada dua subtopik yang diangkat yaitu 1) Pentingnya perlindungan hukum terhadap kerugian para pihak yang terlibat dalam transaksi ini dan 2) Analisis mengenai akad yang digunakan dalam transaksi ini, yang didasarkan pada dua perspektif, kontrak hukum Islam dan hukum positif. Selanjutnya, penelitian kualitatif ini menggunakan pendekatan komparatif. Data yang dianalisis dalam penelitian ini adalah data primer dan sekunder. Data primer dan sekunder dikumpulkan dari wawancara yang dilakukan melalui platform yang berbeda dengan berbagai sumber terkait dan dari bahan, seperti jurnal, artikel, dan tesis. Hasil penelitian ini menunjukkan pentingnya perlindungan hukum bagi setiap pihak yang terlibat dalam transaksi financial technology berbasis *peer-to-peer lending*. Beberapa permasalahan hukum yang sering dialami antara lain wanprestasi, penyalahgunaan data pribadi, bahkan ancaman teror yang diterima debitur. Selain itu, tinjauan mengenai akad dalam transaksi yang dikenakan oleh penyelenggara didasarkan pada 2 perspektif, yaitu hukum Islam dan hukum positif. Proses transaksi hanya akan menjadi ilegal ketika bertentangan dengan hukum Islam dengan unsur riba dan bunga di dalamnya. Dan berdasarkan pandangan hukum positif itu sendiri, apabila terdapat cacat atau sesuatu yang bertentangan dengan kesepakatan atau ketertiban umum, maka perjanjian atau kontrak tersebut menjadi batal demi hukum.

Kata Kunci:

Akad; Teknologi Keuangan; Fintech; Peer-to-Peer Lending.

1. Introduction

The development of an ever-more-advanced and swift era fosters the creation of ever-more-modern technologies.¹ Numerous advancements are occurring in the realm of information and communication technology due to the proliferation of internet services in the digital age.² Technological advancements are characterized by the expansion of e-commerce and platforms offering digital financial services and products.³ One of the digital financial service models is fintech or financial technology, also known as Information Technology-Based Borrowing and Borrowing Services.⁴ According to Article 1 Number 3 POJK 77/POJK.01/2016, fintech is the provision of financial services to bring together lenders and loan recipients for the purpose of entering into a loan agreement in rupiah directly through an electronic

¹ Tom Coughlin, "The Impact of COVID-19 on Consumer Electronics," *EEE Consumer Electronics Magazine* 10, no. 1 (2021): 58–59, <https://doi.org/10.1109/MCE.2020.3016753>.

² Waleed Mugahed Al-Rahmi et al., "Digital Communication: Information and Communication Technology (ICT) Usage for Education Sustainability," *Sustainability* 12, no. 12 (2020): 1–18, <https://doi.org/10.3390/su12125052>.

³ Nur Aini Fitriya Ardiani Aniqoh, "The Role of Digital Economy to Enhancing Sustainable Economic Development," *International Journal of Social Science and Business* 4, no. 4 (2020): 519, <https://doi.org/10.23887/ijssb.v4i4.28881>.

⁴ Ryan Randy Suryono, Indra Budi, and Betty Purwandari, "Detection of Fintech P2P Lending Issues in Indonesia," *Heliyon* 7, no. 4 (2021), <https://doi.org/10.1016/j.heliyon.2021.e06782>.

system utilizing the internet network.⁵ This fintech is administered by new enterprises, also known as startups or start-ups. Whereas, when seen from the perspective of the term "start-up," that is, companies that have just been founded or are in the process of establishing themselves as pioneers, and which are primarily engaged in the field of information technology in the digital world or the internet.⁶ Fintech is an innovation in the financial sector that focuses on consumer legal protection, risk management, and the stability of the financial system.⁷

Because people's requirements are expanding, fintech has permeated society and caused dependence in Indonesia.⁸ And it is not uncommon for individuals to become entangled in fintech transactions. People accept the existence of this service because of the platform's accessibility and standards, which are less stringent than those of banks, financing institutions, and others. In general, peer-to-peer lending-based fintech services are identical to the markets that are now prevalent in the community.⁹ It's only that peer-to-peer lending-based fintech stipulates a maximum loan amount without first performing a poll. So that people who make online loans are typically not observed or evaluated for their ability to repay debts, and it is usual for people to incur debt. And the current approach raises legal issues such as default due to the absence of surveys and the ease with which each party can utilize this service. With the establishment of this system, people's ability to incur debt will be standardized. And even certain parties should not be

⁵ Dwi Tatak Subagiyo, Lorensia Resda Gestora, and Sulistiyo Sulistiyo, "Characteristic of Illegal Online Loans in Indonesia," *Indonesia Private Law Review* 3, no. 1 (2022): 69–84, <https://doi.org/10.25041/iplr.v3i1.2594>.

⁶ Indah Aprilia Sidiki, Fence M Wantu, and Dolot Alhasni Bakung, "Legal Protection Against Consumers In Illegal Online Loans," *Estudiante Law Journal* 2, no. 2 (2020): 327–43, <https://doi.org/10.33756/eslaj.v2i2.14360>.

⁷ Cordelia Onyinyechi Omodero, "Fintech and the Digital Transformation of Financial Services: Implications for Market Structure and Public Policy," *Studia Universitatis Vasile Goldis Arad, Economics Series*, no. 117 (2021), <https://doi.org/10.2478/sues-2021-0018>.

⁸ Adibah Yahya, "Sharia Fintech Development in Indonesia," in *Proceedings of the 1st International Conference on Economics Engineering and Social Science, InCEEES 2020, 17-18 July, Bekasi, Indonesia* (EAI, 2021), <https://doi.org/10.4108/eai.17-7-2020.2302984>.

⁹ S R Tsary and D Dahlia, "Existence of Financial Technology (Fintech) on the Role of Indonesian Society," *International Journal of Multicultural and ...*, no. 21 (2022): 89–98, <https://doi.org/10.18415/ijmmu.v9i8.3921>.

given the option, because everyone's economic potential is unique, resulting in disparities in debt-bearing capacity. However, this becomes easier for any party to access if they have the data needs that the organizer's platform has asked.

Fintech expands because of the convenience of its transactions, but this comes with its own concerns.¹⁰ Both lenders (Lenders) and borrowers (Borrowers) in peer-to-peer lending (P2P)-based fintech transactions must consider the following risks: 1) High risk of interest for borrowers, 2) There is a 3% to 5% service fee that must be paid, 3) The maximum repayment duration is only twelve months, 4) Low credit limit for online loans, The risk of personal information disclosure when applying for a loan online.¹¹

The importance of legal protection in this case as a party involved in this transaction is such as the obligation of the loan recipient to the lender in which there is a written agreement not only to protect the confidentiality of the personal data of the person making the loan.¹² The lender and the borrower then from the transactions carried out give rise to legal relations which then develop and arise when entering into agreements. In making an agreement, look for the inclusion of clauses in accordance with the wishes of each party. Legal protection is needed to avoid risks that could occur, especially if these transactions are carried out online or online. So that related to checking or checking guarantees and the ability to pay becomes difficult to analyze.

In an agreement it is also very necessary to pay attention to electronic contracts in electronic transactions carried out such as financial technology based on peer-to-peer lending.¹³ Where based on the theory of legal certainty if there are

¹⁰ Peterson K. Ozili, "Impact of Digital Finance on Financial Inclusion and Stability," *Borsa Istanbul Review* 18, no. 4 (2018): 329–40, <https://doi.org/10.1016/j.bir.2017.12.003>.

¹¹ Istiqamah, "Analisis Pinjaman Online Oleh Fintech Dalam Kajian Hukum Perdata," *Jurisprudentie* 6, no. 2, Desember (2019): 291-306.

¹² Irwan Aribowo, "ANALISIS ASPEK PERPAJAKAN PADA FINTECH KHUSUSNYA PEER TO PEER (P2P) LENDING UNTUK MENYUSUN ATURAN PERPAJAKAN Vissia Dewi Haptari," *Jurnal Pajak Dan Keuangan Negara (PKN)* 1, no. 1 (2019): 53–63, <https://doi.org/10.31092/jpkn.v1i1.597>.

¹³ Ji Yoon Kim and Sung Bae Cho, "Deep Dense Convolutional Networks for Repayment Prediction in Peer-to-Peer Lending," in *Advances in Intelligent Systems and Computing* (Springer, 2019), https://doi.org/10.1007/978-3-319-94120-2_13.

parties who enter legal relations in this case make an agreement/agreement with other parties. So, when the agreement/agreement/contract is made, the rights and obligations attached to both parties are stated in it, and both parties must follow the rights and obligations listed in the contract, at the implementation stage or at the end.

Contract (*aqad*) is a connection or meeting of consent and *qabul* which results in legal consequences.¹⁴ The contract is also a two-party legal action because the contract is an agreement meeting which represents the will of one party and *Kabul* which states the will of the other party. The purpose of the contract is to give birth to a legal consequence. And in Islamic law itself the contract is considered very important and must be free from prohibited elements such as gambling, obscurity (*garar*), bribery (*risywah*), interest (usury) and vanity.¹⁵

From the increasing number of cases and the increasing number of service users, especially during the pandemic. The community has started to access this service and the organizers until April 22, 2022, have operated as many as 102 companies. And there have been 447 cases of illegal fintech from January to June 2021. So that even on the official OJK website, the public is encouraged to always use the services of peer-to-peer lending-based fintech providers who already have permission from OJK. It explained in Islamic law based on Qur'an Surah al-Maidah verse 2

Meaning:

*"And assist you in practicing virtue and piety, but do not assist one another in vice and hostility. Fear Allah, for Allah's punishments are harsh".*¹⁶

The significance of the passage is to assist each other in pleasing mankind and Allah. Among them is assisting in a positive manner, one of which is via debt

¹⁴ Isdian Anggraeny and Wardah Dinnar Rahmadanti, "The Legality Issue of the Financing Contract at the Sharia Rural Banks (BPRS) and the Solution in Sharia Agreement Law Perspective," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 3 (2020): 646, <https://doi.org/10.24843/jmhu.2020.v09.i03.p14>.

¹⁵ Firdaus, "The Problem of Shari'ah Bank in Applying Islamic Law," *Jurnal Kajian Dan Pengembangan Umat* 2, no. 1 (2019): 14–22.

¹⁶ Kementerian Agama RI, *Al-Qur'an Dan Terjemahannya* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementerian Agama RI, 2019), <https://lajnah.kemenag.go.id/unduhan/category/3-terjemah-al-qur-an-tahun-2019>.

and credit. From this verse, we can deduce that debt is permitted in Islam, so long as it does not become a burden or a source of shame for the borrower. Before incurring debts with others, it is essential to pay close attention to a number of positive characteristics associated with the capacity and capacity to be charged with the obligation to repay debts. Therefore, the author will investigate how peer-to-peer lending-based fintech transactions can be viewed in relation to the application of contracts that are used in accordance with the Civil Code and Islamic law to prevent unauthorized transactions and provide legal protection for consumers or any of their users.

2. Literature Review

In this study, solid literature and references are required to support the authoring of this thesis. Consequently, the author cites various sources, namely thesis by Naurah Aathifah Nursaidi titled "Positive Legal Perspective and Sharia Economic Law Against Legal Protection of Customers (Customers) in Online Loan Transactions (Fintech)"¹⁷ with the conclusion of the research findings, namely that business actors are expected to pay attention to the form of registration and licensing based on a positive legal perspective relating to business actors. The Governance and Risk Management Organizing Institution will provide periodic reports to the OJK as well as a type of legal protection education for consumers. According to sharia economic law, internet payment of accounts payable is acceptable if it complies with Islamic law's regulations. For legal protection based on positive law, reports can be filed with the official OJK association, particularly AFPI for registered and licensed fintech. And for those that are unlawful, reporting can be done directly to prevent their organizers from operating. According to sharia economic law, people who betray their promises are liable to punishment.

¹⁷ Naurah Aathifah Nursaidi, "Perspektif Hukum Positif Dan Hukum Ekonomi Syariah Terhadap Perlindungan Hukum Nasabah (Customer) Dalam Transaksi Pinjaman Online (Fintech)" (Universitas Islam Negeri Alauddin Makassar, 2021), <http://repositori.uin-alauddin.ac.id/20036/>.

A publication by Istiqamah titled "Online Loan Analysis by Fintech in Civil Law Studies" that examines online loan transactions from a civil law perspective.¹⁸ With the conclusion that legal disputes between debtors and creditors are founded on a contract. involved must refer to Civil Code Article 1320 and the Civil Code. Consequentially, an agreement exists whenever an agreement (consensualism) begins with equal will. Similar to online loans, irresponsible parties have several opportunity to harm others by not meeting their responsibilities or achieving their goals; yet, there is no direct oversight due to the great distance involved.

Alfhica Rezita Sari's dissertation is titled "Legal Protection for Lenders in Implementing Peer-to-Peer Lending-Based Financial Technology." With the conclusion that legislative protection is required to ensure legal certainty, especially for lenders in the event of loan default by the borrower.¹⁹ Before legal difficulties develop, the existence of legal protection can be pursued in a preventive and repressive manner by implementing the organizer's fundamental principles.

Article by Dyah Ayu Artanti and Meh Wih Widiatno titled "Electronic Contract Legitimacy in Article 18 Paragraph 1 of the ITE Law in terms of Indonesian Civil Law" that examines the legality of electronic contracts in electronic transactions and the force of engagement in legal electronic contracts.²⁰ With the result that electronic contracts in electronic transactions are executed in accordance with the criteria of Civil Code article 1320. In this situation, the criteria of the agreement must be met, and the parties are bound by the agreement or contract that has been reached. The rights and obligations stipulated in the agreement are adhered to because the agreement or contract formed by the parties has legal force, such as a binding statute.

¹⁸ Istiqamah Istiqamah, "Analisis Pinjaman Online Oleh Fintech Dalam Kajian Hukum Perdata," *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 6, no. 2 (2019): 100, <https://doi.org/10.24252/jurisprudentie.v6i2.10501>.

¹⁹ Alfhica Rezita Sari, "Perlindungan Hukum Bagi Pemberi Pinjaman Dalam Penyelenggaraan Financial Technology Berbasis Peer To Peer Lending Di Indonesia" (Universitas Islam Indonesia, Yogyakarta, 2018).

²⁰ Dyah Ayu Artanti and Men Wih Widiatno, "Keabsahan Kontrak Elektronik Dalam Pasal 18 Ayat 1 UU I.T.E Ditinjau Dari Hukum Perdata Indonesia," *JCA of Law* 1, no. 1 (2020): 88–98, <https://jca.esaunggul.ac.id/index.php/law/article/view/10>.

According to the aforementioned scientific studies, scholars share the same perspective of the legal protection for parties involved in this transaction, which must be examined and can serve as instructional material for the public. Aside from that pertaining to the contract and the validity of the deal based on both Islamic law and positive law, a study and analysis pertaining to the contract in the transaction are conducted. Moreover, there is no scientific paper that compares the two perspectives, namely Islamic law and positive law, from peer-to-peer lending-based fintech transactions to analyze the contract system used and its legal protection that needs to be studied, so it is imperative that this topic be discussed and researched.

3. Research Method

The employed research method is qualitative and relies on data or materials that are directly relevant to the situation at hand. Books, statutes, journals, encyclopedias, the Internet, and other scientific materials pertinent to the situation at hand serve as data sources. This form of research is categorized as library research (library research), even though every scientific endeavor requires a library approach to support its research direction. Using a normative comparative methodology that leads to descriptive research that examines items from a variety of perspectives and ideas. Therefore, the researchers employed a positive legal strategy, consisting of laws and regulations, and an Islamic legal approach, consisting of the Quran and sunnah.

This journal's conceptual framework is based on the concept of comparison, which describes the purpose or explanation of the material by making comparisons between the two things to be discussed. Examining the transaction's legal protection and contract from the views of Islamic law and positive law, based on a two-perspective study of Islamic law and positive law.

4. Result and Discussion

4.1. Comparison of Legal Protection for Peer-to-Peer Fintech Transactions

Contracts based on Islamic law can be particularly characterized as agreements that are determined by *ijab-qabul* based on shara' provisions that have

an effect on the subject and object of the movement of goods.²¹ In the opinion of fiqh experts, a contract is a connection of permission and acceptance with the sharia that has no legal ramifications for the object of the engagement.²² Moreover, the rights and responsibilities of each party must be respected so that they are not violated. The significance of establishing limits to provide protections in the event of a violation of rights between parties to an agreement. The Islamic law contract in this study is a contract method based on the Sharia principles in Islamic law originating from the Qur'an and Sunnah,²³ as well as the opinions of scholars who help provide understanding in answering contemporary problems in this study, whether in the form of ijtihad so as to be able to provide comprehensive understanding. The understanding of Maqashid Shariah, which is a guide that must be followed in order to comprehend the complexities of every law enacted by Allah SWT. In light of the preceding, it is of particular importance for Muslims to prioritize contracts relating to transactions conducted in conformity with Shari'a or not.

In positive law, a contract is defined as an agreement, where Article 1313 of the Civil Code explains that an agreement is an agreement between two or more parties who bind themselves to one or more other parties.²⁴ A contract is therefore a written agreement between two or more parties that gives birth to rights and duties to do or refrain from doing something. Where in the implementation of this transaction electronic contracts are utilized. The positive legal contract in this study is a review of the contract based on the whole legal regulations established by state institutions that authorize to perform or not perform an act, an act in the peer-to-peer lending-

²¹ Intan Mukarromah Mustikawati, Mardi Handono, and Emi Zulaika, "The Perspective of Islamic Law on a Mismatched Object in Online Sales and Purchases Transactions," *Lentera Hukum* 6, no. 2 (2019): 223, <https://doi.org/10.19184/ejlh.v6i2.10839>.

²² Ahmad Maulidizen and Ashilah Raihanah, "The Technique of Determining Ijtihad and Its Application In Life: Analysis Of Istihsan, Maslahah Mursalah, 'Urf, and Syar'u Man Qablana," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 4, no. 1 (2019), <https://doi.org/10.22515/al-ahkam.v4i1.1600>.

²³ Gemala Dewi, "The Application of Islamic Business Contract in the National Law Regulations (the Comparison Between Countries With Civil Law Systems and Common Law Systems)," *Journal of Islamic Law Studies* 5, no. 9 (2019): 86, <https://scholarhub.ui.ac.id/jils/vol4/iss1/3>.

²⁴ I Gusti Ngurah Muliarta, "The Principle of Good Faith in the Sale and Purchase Agreement of Rights Made Before a Notary," *Community Service Journal of Law* 1, no. 1 (2022): 44–48, <https://doi.org/10.55637/csjl.1.1.4477.44-48>.

based fintech transaction process. Including provisions based on the Civil Code and the ITE Law pertaining to electronic legal transactions as well as rules based on governmental entities entrusted with monitoring fintech, especially the Financial Services Authority and Bank Indonesia.

The following table compares illegal and legal platforms based on contracts from the Islamic and good legal perspectives:

Platform Form	Islamic Law Contract	Positive Law Contract
Legal Peer To Peer Lending Based Financial Technology (Already registered with OJK)	Contracts are transparent and accessible to consumers. There is already a system-implementation platform for the sharia. And it contains no element of usury. Because they are closely supervised by the OJK, the risks arising from transactions are assured. Therefore, the legal protection of its consumers is ensured.	The agreement was governed by Civil Code section 1320. This transaction's agreement is accessible and transparent. On conventional legal platforms, this transaction is governed by legally enforceable regulations. Thus offering legal protection and guarantees for its users.
Illegal Peer To Peer Lending Based Financial Technology (Not registered with OJK)	In the contract transaction procedure, there is no legally enforceable agreement, and the only needs are personal information. So that the parties involved can utilize data that does not belong to them. Therefore, based on the contract of Islamic law, which must be unambiguous, the contracting party is not fulfilled.	The lack of transparency and openness on the part of the organizers renders the transaction's contract essentially invalid. Financial Services Authority Regulation No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services is not even followed.

Financial Technology is the most recent innovation in the financial services business, leveraging technology as a transaction-organizing medium.²⁵ According to the National Digital Research Center (NDRC), fintech is an innovation in the financial sector that incorporates modern technical sophistication.²⁶ It is anticipated that its

²⁵ Fitri Yuriyatun, "Analysis of the Performance and Influence of Modalku on MSMEs during the COVID-19 Pandemic," *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.3828364>.

²⁶ Dwi Tatak Subagiyo, "Characteristics of Financial Technology as Financing Alternative Capitalization of Medium Small-Medium Enterprises (MSME)," *Fiat Justisia: Jurnal Ilmu Hukum* 15, no. 2 (2021): 133–58, <https://doi.org/10.25041/fiatjustisia.v15no2.1933>.

presence will make the process more practical and secure. Banking institutions developed the fintech concept from technological advancements in the financial sector. Fintech is regarded as a solution inside the Indonesian financial industry. This fintech is administered by new enterprises, also known as startups or start-ups.²⁷ Where, if observed in the pioneering phase, the primary focus was on technology and information in the digital world or on the internet.

Whereas fintech is a digital-based financial service that has evolved to provide more efficient, secure, and contemporary financial transaction processes for the community. The primary advantages of Information Technology-Based Borrowing and Lending Services are the availability of agreement documents in electronic form online for the parties' needs, the presence of attorneys to facilitate online transactions, the risk assessment of the parties online, the sending of billing information online, the provision of loan status information to parties online, and the provision of loan status information to parties online.²⁸ In contrast to fintech based on peer-to-peer lending, which is limited to offering loan and borrowing transactions alone, fintech is more general and encompasses other financial services industries. With peer-to-peer lending, transactions may be conducted online with or without a guarantee.

Article 1754 of the Civil Code regulates money lending and borrowing services, which differs from peer-to-peer lending-based fintech businesses. Article 1754 of the Civil Code regulates borrowing and borrowing money between parties who have entered into a loan agreement, which then creates a direct legal relationship, namely the lender and the recipient of the loan have the obligation to return the loan in the same amount, and the lender has the obligation to provide a consumable item in a certain amount. In peer-to-peer lending transactions, only the organizer may reach the parties and link the parties' interests, as the lender does not

²⁷ D Sartika et al., "Development of Financial Technology (Fintech) in Indonesia and Its Affecting Factors," *Journal of Positive ...* 5, no. 4 (2021): 469–83, <https://mail.journalppw.com/index.php/jppw/article/view/365>.

²⁸ Sulistyandari, "Fintech Indonesia User Legal Protection in Balance Borrowing Money Based on Information Technology," *SHS Web of Conferences*, 2018, <https://doi.org/10.1051/shsconf/20185406003>.

meet directly with the borrower. Although companies that provide peer-to-peer lending platforms are similar to banks in that they accept deposits and distribute cash through credit or financing facilities, peer-to-peer lending companies are not banks.

In Indonesia, two distinct forms of peer-to-peer lending have emerged:²⁹

1. Productive peer-to-peer lending is an online lending service provider based on business capital requirements.
2. Consumptive peer-to-peer lending focuses more on individual requirements, such as purchasing daily essentials, electronic items, etc. This consumptive peer-to-peer lending is also vulnerable to interest and penalties that exceed the loan's principal amount.

Book III of the Civil Code lists the loan and borrowing arrangement, which will then involve two parties: the lender and the borrower. whereas peer-to-peer lending-based fintech involves multiple participants, including :

Platforms and service providers are Indonesian legal companies capable of operating, managing, and providing online money-lending services. Organizers such as cooperatives and limited liability companies are written as legal entities based on article 2 paragraph 2 with these laws governing online loan providers based on legal entities and not carried out by individuals, including CVs and Firms. This limited liability firm must receive approval from cooperatives and the Ministry of Law and Human Rights before obtaining a license as a fintech peer-to-peer lending service. Simultaneously registering the platform with the OJK and meeting the OJK's standards. The deployment of the platform is intended to become a profit-seeking business enterprise. And must pursue the objective of legal certainty in the sphere of transaction execution so that each party involved in the transaction achieves it.

Creditors or lenders pursuant to article 1 point 8 of PJOK No. 77/POJK.01/2015, namely individuals, legal entities, and/or corporations. In accordance with Article 16, the lender may include foreign nationals, Indonesian nationals, international organizations, and Indonesian and foreign legal entities.

²⁹ Suryono, Budi, and Purwandari, "Detection of Fintech P2P Lending Issues in Indonesia."

The debtor or recipient of the loan under article 1 point 7 POJK No. 77/POJK.01/2016 is a natural or legal person. And clarified in Article 15 that the loan borrower must be an Indonesian citizen with a permanent residence in Indonesia. Loans are available to both Indonesian legal companies and Indonesian citizens.

The method for implementing fintech-based peer-to-peer lending requires the loan recipient to produce only the documentation required to apply for a loan online (which is a relatively quick process),³⁰ such as identity cards such as KTP and financial statements, within a specified time frame. And the lender will later view information about the loan applicant, such as income, financial history, and the purpose of the loan (business, health, education, etc.).

In Islam, accounts payable are referred to as *qardh*, which is an attempt to lend money on the condition that it will be repaid.³¹ *Qardh* is a unique contract requiring the return of property given to another party. *Qardh* is the provision of funds or bills that is equivalent to the approval or agreement of the lender and the person receiving the loan with the responsibility to repay the debt after a specified period of time.³² The *qardh* contract is a subset of the *ihsan* contract, and in Islamic law it is utilized as a contract with a social and charitable character. As a result of the fact that this contract enables persons in need to be aided through debt relief or loan reductions.³³ In reality, this contract contains particular stipulations depending on its definitions, terms, and pillars. *Jumhur fuqahaa* maintains that there are three pillars of *qardh*, namely *ijab* and *qabul*, *muqhridh* and *muqhtarid*, as well as the commodities owed. *Hanafiah*, on the other hand, specifies simply permission and *qabul*, the two pillars of the *qardh* contract.

³⁰ Sulistyandari, "Fintech Indonesia User Legal Protection in Balance Borrowing Money Based on Information Technology."

³¹ Saprida, Choiriyah, and Melis, "Accounts Payable (Qardh) in Islamic Law," *Salam; Jurnal Sosial Dan Bidaya* 7, no. 4 (2020), <https://doi.org/10.15408/sjsbs.v7i4.15168> Abstract.

³² Dede Rapsanjani Maulana, Eva Theresna Ruchjana, and Dian Haki Nurdiannyah, "The Effect of Profit Sharing Financing and Qardh Financing on Net Profit Sharia Bank in Indonesia," *El Dinar* 8, no. 2 (2020): 147–58, <https://doi.org/10.18860/ed.v8i2.10325>.

³³ Shahnawaz Khan, M Kabir Hassan, and Mustafa Raza Rabbani, "AN ARTIFICIAL INTELLIGENCE-BASED ISLAMIC FINTECH MODEL ON QARDH-AL-HASAN FOR COVID 19 AFFECTED SMEs," in *ISLAMIC PERSPECTIVE FOR SUSTAINABLE FINANCIAL SYSTEM* (IU Press, 2020), <https://doi.org/10.26650/B/SS10.2020.017.10>.

According to contemporary muamalah fiqh, it is lawful to borrow money online. Legally (legal-formal/non-physical) handover is considered to have occurred in both i'tibaran (custom) and legally (shariah and positive law) ways of takhliyah (renunciation of ownership rights on one party) and authority to *tasharuf* (manage/manage trade/use to other parties, even if hissan (physical goods) delivery has not occurred).

Article 1754 of the Civil Code specifies that money lending agreements are, in general, loan agreements; thus, all regulations pertaining to agreements on lending and borrowing consumable products also apply to money lending agreements. For online lending and borrowing, all agreements between borrowers and lenders are contained in electronic contracts. Electronic contracts are governed under Article 1 Number 17 of the Information and Electronic Transactions Law (ITE),³⁴ which specifies that electronic contracts are agreements executed through an electronic system between two parties. Article 18 paragraph 1 demonstrates the strength of electronic law by stating that electronic transactions contained in electronic contracts are binding on the parties. An electronic contract is a private deed, however it can be used as proof when the strength of the private deed is lacking. Because the proof of an authentic deed contains two flaws, namely that there is no evidence that the deed was signed by hand. If one of the parties' disputes or denies that it was his signature, the court must establish the veracity of the underhanded act.

Creditors are persons who have receivables as a result of agreements or laws, as stipulated by Article 1 points 8 and 9 of Law Number 42 of 1999 on Fiduciary Guarantees. Because of an agreement or the law, the debtor becomes a party with debt. Article 1132 of the Civil Code explains that all present and prospective immovable and immovable property belonging to the debtor becomes collateral for the debtor's individual contracts. Then, article 1132 stipulates that there are valid reasons for primacy if the items become joint guarantees for creditors. Therefore, debt is the duty of a debtor to pay creditors who are secured by assets.

³⁴ Wahyuddin Naro et al., "Shariah Assessment Toward the Prosecution of Cybercrime in Indonesia," *International Journal of Criminology and Sociology* 9 (2020): 572–86, <https://doi.org/https://doi.org/10.6000/1929-4409.2020.09.5>.

The absence of legal protection for parties engaging in e-commerce transactions is a common legal issue in the field of contracts. Article 1230 of the Civil Code stipulates that the agreement must satisfy the legal criteria of the agreement. Article 1320 of the Civil Code stipulates that for a contract to be legitimate, the parties must be in agreement, capable of entering into contracts, connected to a specific subject, and motivated by a lawful purpose. If in carrying out the agreement, all four conditions must be met for it to be considered a legitimate agreement and legally binding on the parties (*pacta sunt servanda*). Therefore, this transaction's contract or agreement must comply with the criteria of Article 1320 of the Civil Code.

4.2. Analysis of Islamic Law Contract and Positive Law on Legal Protection for Loss-Making Peer-to-Peer Fintech Transactions

In the peer-to-peer lending-based fintech implementation process, it has an effect on the emergence of legal issues that are highly probable.³⁵ When problems emerge, such as the risk of default by the loan recipient, lenders who have routed or lent cash in this transaction will experience losses against the risk of default. A beneficiary of a defaulted loan on the investee's platform, for instance, is pursued using a collection unit or a third party, and efforts are made in line with the law. The lender can even file a lawsuit against the loan recipient, but the investee cannot guarantee its success as a third party or take legal action to collect the remaining loan, so preventing the lender from incurring losses on the funds invested or provided to the loan recipient.

There is a delay in payment from the loan recipient to the lender if there is a default for two consecutive months. The beneficiary of an unsecured loan becomes problematic. An instance of this occurred on a platform for accelerators that does not guarantee loans for lenders. There are two types of loans: loans with collateral and loans without collateral. The issue is unsecured loan funding, which is also a concern with the acceleration platform and the crowddo platform. However, Akselen will

³⁵ Fry Anditya, Rahayu Putri, and Kornelius Benuf, "Fintech Peer to Peer Lending as a Financing Alternative for the Development MSMEs in Indonesia," *Legality: Jurnal Ilmiah Hukum* 28, no. 2 (2020): 232–44, <https://doi.org/10.22219/ljih.v28i2.12865>.

simply conduct a loan feasibility analysis and make every effort to reduce the number of problematic loans.

On the basis of this example, it may be deduced that the organizer provides just a marketplace or container for lenders and borrowers to make online loans on the organizer's platform. The Organizer is not a direct party to the lending and borrowing contract. The agreement is formed between the recipient of the loan and the lender, with the organizer only permitted to transfer monies belonging to the lender to the loan recipient. In this online lending and borrowing agreement, therefore, the organizer bears no liability or obligation. In which only lenders and recipients of loans are involved. Formal repercussions result from the absence of a legal relationship in an online loan and borrowing arrangement between service providers and service users.

When the loan suffers a loss as a result of the organizer's conduct in this instance, platform users are also unable to launch claims against the organizer. The loss in question is a problem such as default or third-party misuse of personal information.³⁶ Nonetheless, the ultimate result is that the administrator has selected, evaluated, and approved loan applications that are deemed to be of sufficient quality to be presented to lenders. As a result of indirect activities taken by the organizers, users are able to access the platform and engage in the loan and borrowing process. So that the organizers are accountable for their activities in the event that users who submit bids make mistakes or omissions. Loan beneficiaries should also be picked appropriately and stringently so that individuals who are eligible to receive loans are high-quality parties and problems like default, which can result in losses, do not arise. The form of the organizer's accountability for not managing and operating information technology-based money-lending services from the lender to the loan recipient. Article 47 of POJK Number 77/POJK.01/2016 provides that administrative consequences, including written warnings, fines for paying a specified amount of

³⁶ Maulana, Ruchjana, and Nurdiansyah, "The Effect of Profit Sharing Financing and Qardh Financing on Net Profit Sharia Bank in Indonesia."

money, restrictions on commercial activities, and cancellation of permits, may be granted to organizers.

There are two types of legal protection for users of peer-to-peer lending-based fintech services: preventive legal protection and dispute resolution. Which party will enter into an agreement using a service that has been registered and applies the basic principles of legal protection based on article 29 of POJK Number 77/POJK.01/2016 concerning technology-based money lending services carrying out the principles of transparency, fair treatment, reliability, confidentiality and data security, and affordable dispute resolution? And restrictive legal protection geared mostly at settling disputes. If a dispute arises, please resolve it as soon as possible using a specified process. Where the party that has suffered a loss can file a criminal complaint And based on complaints about losses, it can also be reviewed based on article 38 POJK Number 1/POJK.07/2013 regarding consumer protection in the financial services sector, which states that financial service actors are required to conduct internal audits of complainants competently, correctly, and objectively; conduct an analysis to ensure the truth of the complaint; submit a statement of apology and offer compensation (redress/remedy) or repair of products and or services if the complaint is found to be true.

In addition to the loss of default, legal issues can occur, such as the misuse of personal information used to register that is then sold to third parties. For each community to utilize services that have gained operating permits and been registered with the OJK, it is necessary to focus and emphasize a number of factors. Where unlawful services are prevalent and facilities are readily available, consumers do not consider the risks or losses they may incur. As a legitimate state, Indonesia should therefore guarantee legal protection. With the organizer's implementation of the concept, it should be explicitly controlled and capable of covering any problems that may develop in this transaction, as well as fulfilling the rights and responsibilities of each person involved and creating a sense of security and comfort to its consumers.

Online debt agreements are one of the civil law actions that are essentially indistinguishable from other debts and receivables governed by civil law.³⁷ Even under Islamic law, this is permitted so long as it does not conflict with Islamic engagement law, as the engagement must essentially meet the pillars and requirements of Islamic engagement law in order to be considered legal and not clash with Islamic law. The essential requirements are that they must be mature, sensible, and free from pressure or compulsion (*Mukhtar*) from other parties or willingly. This is the most important criteria that must be met by individuals who will be involved. And in relation to the object, it must satisfy the conditions of the object of the contract, namely, that it exists at the moment the contract is made, is justified by sharia (halal and beneficial), must be clear and known, and can be transferred.

Regarding *maudhu al-'aqdi* or the purpose of the debt agreement contract, if the contract is conducted online, it must meet the standards for the purpose of the contract to be regarded valid and have legal ramifications. *Ijab* and *qabul* must describe the parties' agreement to execute this online credit contract. Conditions for consent and *qabul* (*ittishal al-qabul bil ijab/tawafuq*) and stating the parties' intent (*jazm al-iradataini*). Where the purpose is to aid and assist those in need of finances or experiencing economic hardships. Then, the following requirements, pillars, and circumstances linked to contracts in peer-to-peer lending-based fintech transactions must be met from the standpoint of Islamic law contracts.³⁸ So that already operating platforms are also necessary to avoid usury and interest practices. And if the operational standards are opposed to Islamic law, you should not utilize or access other registered platforms so that the contract in the transaction can be weighed and deemed genuine.

³⁷ Mayjen Prof et al., "The Legality of Debt Agreement Via Whatsapp Messages," *Jurisprudence* 11, no. 2 (2021): 253–66, <https://doi.org/10.23917/jurisprudence.v11i2.16889>.

³⁸ Jadzil Baihaqi, "Financial Technology Peer-To-Peer Lending Berbasis Syariah Di Indonesia," *TAWAZUN: Journal of Sharia Economic Law* 1, no. 2 (2018): 116, <https://doi.org/10.21043/tawazun.v1i2.4979>.

In addition, in Indonesia itself, peer-to-peer lending-based fintech platforms that apply sharia principles to a variety of contracts,³⁹ including:

1. An ijarah contract that transfers the right to use an item or service for a specified period of time in exchange for a fee or salary.
2. A musyarakah contract is a contract for business collaboration between two or more parties, with each party investing capital. Profits and losses are distributed in accordance with a predetermined ratio (%) or proportionally.
3. The mudharabah contract is an agreement between the owner and the management for business cooperation. The capital owner issues all capital. When earnings are realized, they will be divided in accordance with the predetermined ratio, while losses will be paid by the owner of the capital.
4. The qardh contract is a loan agreement between a lender and a borrower, with the borrower obligated to repay the loan according to the terms and conditions agreed upon.
5. The wakalah contract is a delegation of authority from the principle to the attorney for the representation of certain legal actions.
6. In an agreement based on a positive legal perspective as outlined in Article 1320 of the Civil Code, related terms may be considered valid, namely: 1. agree that those who are bound by the adjustment of the will of each person concerned desire a legal connection.
7. The capacity for engagement Proficiency is a general requirement for being able to lawfully carry out legal activities, such as being an adult, in good physical and mental health, and not banned by a particular legislation.
8. The subject of an agreement is a particular thing. In accordance with Article 1333 of the Civil Code, the items that are the subject of a contract

³⁹ Wardah Yuspin and Muhammad Edi Hermawan, "Dialectics of Sharia Fintech Peer to Peer Lending : Opportunities and Challenges," *Budapest International Research and Critics Institute Journal* 5, no. 2 (2022): 5137–47, <https://doi.org/10.33258/birci.v5i1.4214> 5137.

must be specified, or at least the type must be determined, and the quantity must be determinable or calculable.

Because something is halal if it conforms to the terms of the performance contract or halal clause. The halal clause intended to be binding is based on more than just an agreement.

The organizer, in this example the peer-to-peer lending platform, and the lender reach an agreement on a specific matter. Between the two parties, an electronic document containing the terms of the agreement was created. Therefore, this action signifies that the terms of the agreement have been satisfied without compulsion and that the terms of the agreement have been reached, such as for a legal act. And regarding whether or not competency has been met, as the user will be requested for personal information to determine whether or not his competence has been met. The principles of contractual agreements and engagements in peer-to-peer lending-based fintech transactions have been explicitly met on a legal platform registered with the OJK in accordance with the applicable rules and principles. So that registered platform services may be stated to have legal protection with respect to the implementation of both the agreement and the loan and borrowing processes that will be conducted by its users.

5. Conclusion

As a legal state, Indonesia is obligated to offer legal protection to preserve the rights and responsibilities of each individual when it comes to a matter that is deemed extremely urgent. Thus, the worry in this instance relates to legal issues that arise in peer-to-peer lending-based fintech transactions, such as loss-causing default. Where the parties involved should receive legal protection or the existence of regulations and rules that can reduce the incidence of legal problems in fintech transactions based on peer-to-peer lending, namely terror by the lender to the borrower, usury practices, and high interest rates on services. general fintech that does not comply with sharia law. As long as it does not violate with the Shari'a and does not include aspects such as usury, interest, etc., it is permitted and not forbidden under Islamic law. In Indonesia, Muslims are expected to use platforms

that have incorporated sharia principles and are registered with the OJK, as there are still other platforms that act in the name of sharia but are not registered with the OJK.

Based on the two perspectives of Islamic law contracts and positive law raised regarding peer-to-peer lending-based fintech contracts, it can be concluded that this service provider platform has implemented operational standards that apply Islamic law-compliant principles, such as PT. Ammana Fintech Syariah, and conventional platform services, such as Adakami, with civil law provisions regarding online agreements or contracts in the transaction process. Consequently, this is also of greater significance with regard to the concept and simplicity of accessing this service, so that the organizers choose only high-quality consumers or users and no users suffer issues such as debt or failure to pay. This one will only do harm, thus it's best for each platform to make judicious, user-specific decisions. And for those who wish to conduct this transaction to utilize an OJK-registered platform. Where in Indonesia there are still a large number of unlawful platform organizers working. Due to the ease of criteria, illegal platforms offer far less stringent restrictions, which encourages many individuals to continue using them. Therefore, the authors believe that it is vital to have legislation about sanctions and norms that can protect the rights and responsibilities of each party on each platform, both legal and unlawful. To limit the number of illicit platforms still functioning online. From the discussion of this problem's issue, only a generic description of peer-to-peer lending-based fintech transactions is provided, with no analysis of one of the numerous platforms functioning in Indonesia. Therefore, it can serve as a fresh reference for future study on the same topic that investigates one of the peer-to-peer lending-based fintech platforms.

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