

## Problems in Determining Interest in Peer-to-Peer Lending in Indonesia

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### ABSTRACT

Peer-to-peer lending is considered as the solution for people who require loans with easy terms. However, peer-to-peer lending in Indonesia causes some new problem related to the essential nature of it. Authorization of Indonesian Joint Funding Fintech (AFPI) determines peer-to-peer lending interest-debt possible to violate competition law in Indonesia. The paper aims to describe and analyze the authorization of Indonesian Joint Funding Fintech, which has a big chance to harm competition law in Indonesia. The author uses normative legal research methods and secondary data sources to examine the topic in this study. The result shows that the arrangement of interest-debt in peer-to-peer lending potentially creates a cartel and violates the basic principles of competition law in Indonesia.

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### 1. Introduction

Everyone has different needs and economic circumstances. Some people have sufficient economic conditions and capacity, while others cannot always fulfill their needs. Therefore, a lot of people try to look for ways to be able to meet their needs.

On the other hand, day by day the technology is rapidly developed. Almost every aspect of life today is connected to technology, including the economic aspect. Related to the fulfillment of public needs, the current development of technology extends to financial services sectors, for instance, *fintech* (financial technology). Nowadays, fintech is one of the example platforms in the sectors of financial which quite popular in society.

Fintech is an innovation that develops through the use of technology. It helps to solve the financial problem in society. Nowadays, fintech is considered as a new platform

that combines two things which are technology information and financial services.<sup>1</sup> Fintech is considered fresh air for some people because financial services and technology give convenience to society that needs service in financial services sectors. According to some people, compared to the services provided by another form of financial services platform, fintech is more convenient.

The development of fintech in Indonesia is an important thing and a necessity. It helps the people who need service of financial services with its simple mechanism. However, in its development, there are still many problems that need to be resolved related to fintech in Indonesia, especially in peer-to-peer lending fintech. One of the current issues which arise is regarding the interest of a peer-to-peer lending loan.

Currently, there are no written regulations regarding the amount of interest set by fintech service providers. As the regulator, the Financial Services Authority (OJK) and Central Bank of Indonesia (Bank Indonesia) should set the rules related to fintech interests. Regarding the determination of interest in the fintech business, the Financial Services Authority itself gives authority to the association of fintech to determine the interest. The association of fintech itself contains fintech business actors.<sup>2</sup> The existence of this policy has the potential to impact fintech interest which is considered quite high. The association can determine the amount of interest on fintech loans which is quite high and makes it difficult for consumers to borrow funds through peer-to-peer lending services.

Furthermore, there is a concern regarding the potential for a cartel to occur. The association authorized to determine the interest rate for peer-to-peer lending fintech is the fintech entrepreneur itself. It is contrary to the competition law in Indonesia, which prohibits cartels. Another thing that is important to note is that the interesting setting currently carried out by the Authorization of Indonesian Joint Funding Fintech (AFPI) also can violate the principle contained in the competition law of Indonesia. Seeing this fact, violations of business competition law in Indonesia potentially occur under Law No. 5 of 1999 concerning the Prohibition of Monopolistic and Competition Practices

Based on the background problem previously explained, this article would try to explore the following research question how peer-to-peer lending businesses in Indonesia from the perspective of the competition law of Indonesia?

## 2. Method

The study was normative legal research conducted through literature review. Thus, this research used secondary data as the main material, while tertiary material was also used to complete the reference. Primary material such as laws or regulations related to the research topic was also explored and elaborated with secondary and tertiary material to analyze the problem and answer the research question.

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<sup>1</sup> Arner, D.W., Barberis, J.N. & Buckley, R.P. (2015). The Evolution of Fintech: A New Post-Crisis Paradigm?, *UNSW Law Research Paper No. 2016-62, SSRN Electronic Journal*. Available at <https://ssrn.com/abstract=2676553> or <http://dx.doi.org/10.2139/ssrn.2676553>

<sup>2</sup> Franedy, R. (2019). *Fintech Patok Bunga 0,8% per hari, KPPU Selidiki Potensi Kartel*. Available at <https://www.cnbcindonesia.com/tech/20190827061346-37-94923/fintech-patok-bunga-08-hari-kppu-selidiki-potensi-kartel>. [Accessed on April 21, 2020].

### 3. Analysis and Result

#### 3.1. Peer-to-Peer Lending in Indonesia

##### 3.1.1. Development of Peer-to-peer lending fintech business In Indonesia

The development of fintech increases rapidly, not only in Indonesia but in other countries as well, for instance, in Vietnam (HUYDONG), Germany (SMAVA), the United States (PROSPER), or United Kingdom (ZOPA).<sup>3</sup> In Indonesia, it is shown in the Financial Services Authority and Fintech Association of Indonesia's data from 2015 to 2016. Based on data from all kinds of fintech sectors in Indonesia, fintech in the payment sector reaches the biggest percentage with 42.54%. In second place is fintech in the lending sector, with a percentage of 17.16%. In third place is aggregator fintech, with a percentage of 12.69%. The personal and financial planning sector reaches 8.21%, similar to the crowdfunding sector, which also reaches 8.21%. The rests get 11.19%.<sup>4</sup>

Based on operation years, fintech in Indonesia develops significantly. It can be seen in the data comparison between 2006-2010 until 2015-2016. In 2006-2010, the operating fintech only reached 7.21%. In its development between 2015-2016, the percentage of operating fintech reached 77.48%.<sup>5</sup> In fact, according to research from Business Competition Supervisory Commission, the number of fintech industry actors will reach 277 companies and 9 million debtors.

In the peer-to-peer lending fintech in Indonesia based on 2016 data as previously explained, peer-to-peer lending fintech business placed second. The recent data from the coordinating ministry of economic affairs of Indonesia on September 4, 2019, peer-to-peer lending fintech business became the most developed sector compared to the other fintech sectors. Ministry data shows the development of loan distribution of peer-to-peer lending fintech sector to the person/business reached 40%.<sup>6</sup>

Based on peer-to-peer lending companies registered in the Financial Services Authority until 2021, it shows that the peer-to-peer lending fintech in Indonesia is developing. There are 148 companies of peer-to-peer lending fintech with the business permit and registered in Financial Services Authority. Of 148 companies, 41 companies have business permits, while 107 companies are registered in Financial Service Authority.

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<sup>3</sup> Uyen, T.D. & Ha, H. (2017). The Sharing Economy and Collaborative Finance: The Case of P2P Lending in Vietnam. *Jurnal Ilmiah Ekonomi Bisnis*, 22(2),178855.

<sup>4</sup> Djawahir, A.U. (2018). Teknologi-Layanan Keuangan, Literasi-Inklusi Keuangan, dan Value pada Fintech Syariah di Indonesia: Perspektif SOR (Stimulus-Organism-Response) Model. *2nd Annual Conference for Muslim Scholars*, 439-448.

<sup>5</sup> *Ibid*

<sup>6</sup> Databoks. (2019). Fintech P2P Lending dan Pembayaran Tumbuh Paling Pesat. Last modified 2019, available at <https://databoks.katadata.co.id/datapublish/2019/09/05/fintech-p2p-lending-dan-pembayaran-tumbuh-paling-pesat>.

**3.1.2. Business Sector and Business Mechanism of Peer-to-peer Lending in Indonesia**

Generally, the basic form of fintech can be distinguished into some forms as follow:<sup>7</sup>

<b>Business Process</b>	<b>Type of Interaction</b>
Payment ( <i>digital wallets, P2P payments</i> )	C2C
Investment ( <i>equity crowdfunding, P2P lending</i> )	
Financing ( <i>crowdfunding, micro-loans, credit facilities</i> )	B2C
Insurance ( <i>risk management</i> )	
Cross-process ( <i>big data analysis, predictive modeling</i> )	B2B

As the most developing form of fintech, the government should pay special attention to peer-to-peer lending. Peer-to-peer means “person-to-person” lending. Moreover, peer-to-peer lending defines as a loan from one person to another. Most peer-to-peer lending activities run without an intermediary such as a bank or other institution in the credit sector. Therefore, peer-to-peer implies that its transaction process only involves two persons or parties.<sup>8</sup>

If we can see, the development of peer-to-peer lending business is rapidly increased. As the regulator, the Financial Services Authority tries to arrange the activity of lending. Especially money lending activity with information and technology-based. It is one of the efforts to fulfill the need for legal certainty regarding financial development in Indonesia. Hopefully, through the regulation of Financial Services Authority No. 77/POJK.01/2016, all the parties in lending services will get protection and safety guarantees in technology and information-based lending services.<sup>9</sup>

Based on the regulation of Financial Services Authority No. 77/POJK.01/2016, one of the objectives of financial services is the creditor can meet with the debtor directly or indirectly. The aims are to make a condition where both parties can meet each other, make a deal together, and bond themselves into a loan agreement with rupiah currency directly by using internet technology and an electronic system. The regulation of the Financial Services Authority also regulates the parties who are entitled to use peer-to-peer lending services. Based on the regulation, the parties consist of lenders (creditor) and borrowed parties (debtor). The debtor or borrowed parties should be Indonesians or Indonesian legal entities. In contrast, the lenders or creditors in peer-to-peer lending

<sup>7</sup> Nofie Iman, “Financial Technology dan Lembaga Keuangan Kulonuwun ... I Am Nofie Iman,” 2016, 7, available at <http://nofieiman.com/wp-content/images/financial-technology-lembaga-keu> Iman, N. (2016). Financial Technology dan Lembaga Keuangan Kulonuwun ... I am Nofie Iman. Available at <http://nofieiman.com/wp-content/images/financial-technology-lembaga-keuangan.pdf>.

<sup>8</sup> Kalmykova, E, & Ryabova, A. (2016). Fintech Market Development Perspectives. *Shs Web of Conferences*, 01051:4-8. Available at [https://www.researchgate.net/publication/304002151\\_fintech\\_market\\_development\\_perspectives](https://www.researchgate.net/publication/304002151_fintech_market_development_perspectives).

<sup>9</sup> J Baihaqi, J. (2018). Financial Technology Peer-To-Peer Lending Berbasis Syariah di Indonesia. *Tawazun: Journal of Sharia Economic Law*, 1(2), 116. Available at <https://journal.iainkudus.ac.id/index.php/tawazun/article/view/4979/3203>.

do not require the creditor or lenders to be Indonesian or coming from Indonesia. Therefore, there is a possibility that the lender is a foreign party.<sup>10</sup>

Regarding the agreement, there are two agreements used. First is an agreement between lenders and borrowers. The second agreement is between the organizer (fintech platform) and the lender. The agreement should be conducted in electronic form. The agreement's content regulates the explication of the information either the transaction to both lenders and borrowers. The signing of the document of the agreement must be conducted electronically as regulated under positive law.<sup>11</sup>

The peer-to-peer lending company is trying to bring together the lenders and borrowers. The reason that makes this platform interesting for many people is the easy access. The peer-to-peer lending company gives the parties direct, accurate, and fast access. Furthermore, whenever a party needs funds, the peer-to-peer lending company will simply connect them to the lender because nowadays, connecting the parties online is very feasible. On the other hand, lenders also benefit from this kind of transaction mechanism from the interest of the paybacks. However, the risk from the transaction may still occur.<sup>12</sup>

Along with the development, the consumer of peer-to-peer lending fintech in Indonesia also increases every day. However, the development is followed closely by the problem, including the legal issues. Some borrowers (creditors) propose the loan to more than one peer-to-peer lending company. Moreover, the data protection of the consumer recently grows increasingly weaker. Another thing that also needs to pay attention to is peer-to-peer lending fintech business actors' business activity to determine the loan interest. Nowadays, business actors of peer-to-peer lending freely determine the number of interests of loans. Those issues pose problems because business actors have an allegation of violation, especially in competition law.

Moreover, the activity of business actors in peer-to-peer lending complicates the consumers to return of loans due to the high interest. Ironically, until now, there is no written regulation concerning the mechanism of interest determination. Thus, the next discussion of these articles was about the business activity of peer-to-peer lending fintech from the perspective of competition law. It also discussed the urgency of comprehensive regulation regarding the determination of peer-to-peer lending interest.

### **3.2. Business Activity of Peer-to-peer Lending in Indonesia in the Perspective of Business Competition of Indonesia**

#### **3.2.1. Disruptive Innovation and Loan Interest of Peer-to-peer Lending Business in Indonesia**

Digital financial innovation in peer-to-peer lending fintech (hereinafter abbreviated as fintech peer-to-peer) has negative and positive sides. The positive side is that it provides benefits where the presence of technology and information in the financial sector includes efficiency and effectiveness in accordance with the needs of modern society. However, digital financial innovation also has a negative side. It has a

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<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

<sup>12</sup> Sitompul, M.G. (2018). Urgensi Legalitas Financial Technology (Fintech): PEER-TO-PEER (P2P) Lending di Indonesia. *Jurnal Yuridis UNAJA*, 1 (2), 74



disruptive effect that can cause instability in the financial services sector and cause unfair business competition in financial services if no regulations present.<sup>13</sup>

Disruptive innovation is an innovation whose goal is to tap existing market gaps by simplifying existing innovations without reducing the benefits of the innovations contained therein.<sup>14</sup> The emergence of disruptive innovation is due to the development of technology and information that influences the direction of change in society from what was originally traditional to meeting high needs effectively and efficiently. This all-effective and efficient need then forces producers to innovate massively.<sup>15</sup>

Technological innovation in finance is a renewable entity that combines technology systems with financial services to create peer-to-peer fintech. Fintech peer-to-peer is a creative disruption in the financial market by bringing about quite a several significant changes. The new thing offered in peer-to-peer's fintech services is its effectiveness and efficiency in financial services to provide many benefits to the community.<sup>16</sup> However, in its implementation, peer-to-peer's fintech services bring several shortcomings, including those associated with the arrangement and supervision of loan interest.

The Financial Services Authority indirectly regulates the peer-to-peer fintech loan interest rate by appointing the Indonesian Joint Funding Fintech Association (hereinafter abbreviated as AFPI) to regulate it. The provisions regarding loan interest are only regulated in the AFPI code of conduct by stipulating that the maximum fintech peer-to-peer loan interest is not more than 0.8% per day. Furthermore, total late fees or interest and other fees are not more than 100% of the loan amount.<sup>17</sup> According to the vice-chairman of AFPI, Sunu Widyatmoko, the arrangement of loan interest of peer-to-peer lending is urgent. It is necessary to review the consideration of AFPI in determining the number of loan interest.<sup>18</sup> In Indonesia, the maximum rate of peer-to-peer lending interest in a month can reach 24%. In a year, it possibly reaches 292%. One of the peer-to-peer lending companies, DanaRupiah, has a rate of interest quite high. In a month, the rate interest can reach 28% and even 36% after added the administrative fee of 8%. This phenomenon shows how high the rate of interest of peer-to-peer lending. The government must devise a clear regulation on how to determine the rate of interest of peer-to-peer lending. As a reference, some factors also need to be

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<sup>13</sup> Ikatan Auditor Intern Bank (IAIB), *Pedoman Strategi Audit Intern Bank: Modul Sertifikasi Bidang Audit Intern Bank untuk Audit Manager* (Jakarta: PT. Gramedia Pustaka Utama, 2019), 19.

<sup>14</sup> Johnson, P.S. & Harefa, A.A. (2018). Financial Technology, Regulation and Banking Adaptation in Indonesia. *Fundamental Management Journal*, 3(1), 1-11. available at <http://ejournal.uki.ac.id/index.php/jm/article/view/715>.

<sup>15</sup> *Ibid.* p.7.

<sup>16</sup> Rumondang, A., Sudirman, A., Effendy, F., Somarmata, J. & Agustin, T. (2019). *Fintech: Inovasi Sistem Keuangan di Era Digital*. 1st, Ed. Medan: Yayasan Kita Menulis, N.D. [https://books.google.co.id/books/about?id=obdgdwaaqbaj&redir\\_esc=y](https://books.google.co.id/books/about?id=obdgdwaaqbaj&redir_esc=y).

<sup>17</sup> OJK. (2021) Otoritas Jasa Keuangan, FAQ: Kategori Umum (Tanya Jawab Fintech Lending). "Otoritas Jasa Keuangan". Accessed on March 13, 2021. Available at [https://ojk.go.id/id/kanal/iknb/data-dan-statistik/direktori/fintech/documents/faq\\_fintech\\_lending.pdf](https://ojk.go.id/id/kanal/iknb/data-dan-statistik/direktori/fintech/documents/faq_fintech_lending.pdf).

<sup>18</sup> Hastut, Y.A & Kusumo, R. (2019). Bunga Fintech Setinggi Langit, Gimana Sih Cara Hitungnya? *CNBC Indonesia*. Last Modified 2019. Accessed on March 15, 2021. available at <https://www.cnbcindonesia.com/tech/20190716203423-37-85444/bunga-fintech-setinggi-langit-gimana-sih-cara-hitungnya>.

considered in determining loan interest. For instance, according to Klafft, debt-income ratios and credit rating are the key determinants for loan interest rates.<sup>19</sup>

There are several reasons why the Financial Services Authority does not directly regulate loan interest rates. First, the development of innovation in the financial services sector is scurrying. Second, the charging of loans at peer-to-peer fintech depends on the cost of funds of each peer-to-peer fintech company, so it is difficult to determine the right standard of loan interest rates.<sup>20</sup> This reason then became why the Financial Services Authority appointed AFPI to regulate the peer-to-peer fintech loan interest rate because it considered AFPI directly involved in peer-to-peer 's fintech activities. However, over time due to the tight competition in the peer-to-peer fintech business, each fintech peer-to-peer business actor determines a high loan interest expense, making investors tempted. Then, in the absence of regulations regarding the setting and regulation of loan interest rates in centralized peer-to-peer fintech, it resulted in the diversity of interest rate determinations by each provider of peer-to-peer fintech services.<sup>21</sup> The absence of legal norms in determining and regulating interest rates, which, if not immediately regulated, can create an unhealthy economic ecosystem.<sup>22</sup>

As a partner of the Financial Services Authority, based on letter No. S-5/D/05/INKB/2019, AFPI has the authority to facilitate peer-to-peer fintech in Indonesia. In addition, AFPI also has the authority to make regulations and oversee peer-to-peer's fintech activities.<sup>23</sup> The concept of regulation and supervision has been carried out in a code of conduct, including regulating the maximum interest rate for fintech PTL loans.<sup>24</sup>

The provisions of Article 17 of the Financial Services Authority Regulation No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services have regulated loan interest, but in fact, it has not explicitly provided legal certainty regarding the amount of fintech peer-to-peer interest charges. The provisions regarding peer-to-peer fintech interest, as referred to in Article 17, only state that the charging of peer-to-peer fintech interest is based on fairness and national economic considerations. This provision creates a free interpretation which creates legal uncertainty.<sup>25</sup> Therefore, it is vital to establish regulations regarding the interest of

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<sup>19</sup> Tao, Q., Dong, Y. & Lin, Z. (2017). Who Can Get Money? Evidence from the Chinese Peer-to-Peer Lending Platform. *Information Systems Frontiers*, 19(3), 425-441. Available at <https://doi.org/10.1007/s10796-017-9751-5>.

<sup>20</sup> Masyrafina, I. (2017). OJK Tidak Akan Mengatur Bunga Kredit Fintech. *Republika.co.id*. Last Modified 2017. Accessed on April 15, 2021. Available at <https://www.republika.co.id/berita/ekonomi/keuangan/17/03/14/omt010382-ojk-tidak-akan-mengatur-bunga-kredit-fintech>.

<sup>21</sup> Syafitri, N.R. (2019). Kewenangan Mengatur Suku Bunga oleh Bank Indonesia dalam Peer-to-Peer Lending, 70.

<sup>22</sup> *Ibid.*, 71.

<sup>23</sup> *Asosiasi Fintech Pendanaan Bersama*, "AFPI Bekali Calon Penyelenggara Fintech Lending Indonesia." last modified 2019 Accessed on September 7, 2020, available at <https://www.afpi.or.id/detailpressrelease/afpi-bekali-calon-penyelenggara-fintech-lending-indonesia>.

<sup>24</sup> Khoirunisa, A., Suwandono, A. & Muchtar, H.N. (2020). Implementasi Besaran Bunga Peer-To-Peer Lending Berdasarkan Asas Itikad Baik dalam Pemanfaatan Teknologi Informasi serta Pengawasannya. *Widya Yuridika*, 3(1), 29.

<sup>25</sup> Istiqamah. (2019). Analisis Pinjaman Online oleh Fintech dalam Kajian Hukum Perdata. *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah dan Hukum*, 6(2), 291-306.

peer-to-peer fintech in ensuring the fulfillment of legal certainty, justice, transparency, and fulfillment of public interest and consumer protection principles, which is covered in law No. 5 of 1999.<sup>26</sup> The competition law of Indonesia is not only created to focus on protection towards business actors but also the consumers.

Some factors need to be considered in determining the loan interest in peer-to-peer lending. For instance, in Switzerland, on determining loan interest, particular things can influence the loan interest rate for every borrower. The economic condition of borrowers is one of the things that need to be analyzed before accepting the loan proposal from the borrower. A borrower with homeowner status is usually easier to get the loan compared to others. Moreover, macroeconomic factors also determine the loan interest rate in peer-to-peer lending.<sup>27</sup>

The US and UK use the posted price process. In this process, every platform of P2P lending determines the interest rate of each loan listing based on the information provided by borrowers. The information mentioned the condition of borrowers, including economic condition. These factors will then help lenders reject or agree with the loan proposal, including the interest rate.<sup>28</sup>

The research conducted by Greiner and Wang also finds that economics condition plays a significant role in determining the interest rate of peer-to-peer lending. Credit grade verified bank account, previous successful loan, income ratio, and the homeowner are the part of the economic condition which need to consider before the lender decides to give the loan. It shows that some of the similarities between peer-to-peer lending and the traditional system used in the bank determine whether they will lend the money.<sup>29</sup>

Another research analyzed how the lenders in PPDAL.com verified the borrowers before they lend the loan. PPDAL.com is one of the biggest platforms of peer-to-peer lending in China. There are four verifications in PPDAL.com, identity card, academic degree, mobile phone number, and video verification. Credit grades in PPDAL also depend on determinative factors such as personal debt, debt history, credibility history, etc. It aims to minimize the risk and trust issues of the borrowers.<sup>30</sup> Data verification could be affected by the number of bids. More verification leads to more trust towards the borrower.<sup>31</sup>

### 3.2.2. Cartels in Peer-to-Peer Lending Business Activities in Indonesia

The problem of peer-to-peer fintech loan interest does not stop here but has spread to the alleged cartel being carried out by AFPI. In implementing the peer-to-peer fintech

<sup>26</sup> Tjandra, A. (2020). Kekosongan Norma Penentuan Bunga Pinjaman Financial Technology Peer-to-Peer Lending. *Jurnal Hukum Bisnis Bonum Commune*, 3(1), 96.

<sup>27</sup> Dietrich, A. & Wernli, R. (2017). What Drives the Interest Rates in the P2P Consumer Lending Market? Empirical Evidence from Switzerland. *Ssrn Electronic Journal*.

<sup>28</sup> *ibid*

<sup>29</sup> Martina E, G. & Wang, H. (2010). Building Consumer-To-Consumer Trust in E-Finance Marketplaces: An Empirical Analysis. *International Journal of Electronic Commerce* 15(2), 105-136. Available at <https://doi.org/10.2753/jec1086-4415150204>.

<sup>30</sup> Cai, S., Lin, X., Xu, D. & Fu, X. (2016). Judging Online Peer-To-Peer Lending Behavior: A Comparison of First-Time and Repeated Borrowing Requests. *Information and Management*, 53(7), 857-867.

<sup>31</sup> Lee, E. & Lee, B. (2012). Herding Behavior in Online P2P Lending: An Empirical Investigation. *Electronic Commerce Research and Applications*, 11(5), 495-503. Available at <http://dx.doi.org/10.1016/j.elerap.2012.02.001>.



interest rate setting, there were allegations of an unfair conspiracy to regulate loan interest rates in the peer-to-peer fintech service. Interest cartels in the financial sector are a form of conspiracy mechanism determining loan interest rates by business actors.<sup>32</sup> In the case of peer-to-peer fintech, it needs to be emphasized that there is no evidence that AFPI is engaged in an interest cartel. However, the current conditions and regulations for peer-to-peer fintech in Indonesia provide sufficient space for AFPI to undertake such actions. Thus, an immediate investigation by the authorities is necessary.

Several characteristics of cartel actions can be seen from several things. First, the existence of an agreement between one business actor and its competitors. Second, the business actors intend to set and regulate a price to influence the production or market for goods and/or services. The third is the emergence of monopolistic practices.<sup>33</sup>

As with the cartel characteristics above, the suspicion of a peer-to-peer fintech interest cartel was seen from the start when AFPI, as the Association appointed by the Financial Services Authority to regulate and set the peer-to-peer fintech loan interest rate. In this case, AFPI sets the maximum loan interest rate for peer-to-peer's fintech businesses at 0.8% per day. The alleged occurrence of a loan interest cartel in the peer-to-peer fintech business can be seen from several business actors' behavior. First, AFPI regulates and sets the maximum loan interest rate for fintech peer-to-peer per day, even though it is known that the members of AFPI who regulate and set the interest rate are mostly providers of fintech peer-to-peer services. This condition allows collusion to occur in determining and controlling loan interest rates.<sup>34</sup>

Normatively, the authority to regulate loan interest rates is not the main task and function or authority of the AFPI. AFPI is not a regulator and/or does not have the legal standing to determine the standard for determining loan interest rates.<sup>35</sup> Normatively, considering the provisions of Article 2 of Bank Indonesia Regulation No. 19/12 / PBI / 2017 concerning the Implementation of fintech, Bank Indonesia has the authority to stipulate regulations related to fintech peer-to-peer interest rates.

The role of the Financial Services Authority is stipulated in Article 16 paragraph (2) POJK No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. It functions as a party that helps formulate interest rate policies by analyzing through periodic reports from each reported operator. From this report, OJK can coordinate with BI, which can then be followed up by forming a regulation or policy.<sup>36</sup>

Giving authorization to AFPI to determine the loan interest rate will open up opportunities for business actors to enter into illicit agreements and conspiracies, namely cartels. It violates Article 11 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.<sup>37</sup> Usually, most cartel cases are caused by intense competition in a particular business. This reason is quite

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<sup>32</sup> Handayani, O. & Sulistiyono, A. (2020). Pembadanan Hukum Fintech sebagai Instrumen Pengaturan Persaingan Usaha yang Sehat. *Masalah-Masalah Hukum*, 49(3), 244-255.

<sup>33</sup> Law No. 5 Year 1999 concerning The Prohibition of Monopolistic Practices and Unfair Business Competition Commission for the Supervision of Business Competition of the Republic of Indonesia.

<sup>34</sup> *Op. Cit.* Handayani, O. & Sulistiyono, A., 250.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Op. Cit.* Syafitri, Nina Rachmawati : 85

<sup>37</sup> *Ibid.*

reasonable because the curve of companies registered with the Financial Services Authority is getting higher every day. Therefore, what needs to be done to avoid fierce competition is to agree with business actors to agree on the determination of loan interest rates, promotions, and the terms therein.<sup>38</sup>

### 3.2.3. Peer-to-Peer Lending Business in Indonesia Contradicts the Principles of Economic Democracy

In its legal construction, the regulation and determination of loan interest rates carried out by AFPI, apart from allegedly violating the cartel prohibition, is also an act that violates the principles in the Law on the prohibition of Monopolistic Practices and Unfair Business Competition.<sup>39</sup>The principle referred to here is the principle of economic democracy. The principle of economic democracy also refers more to the interests of the benefit and prosperity of the general public than individuals.<sup>40</sup>

Economic democracy is a national economic concept that contains consequences of morality by specifically highlighting the blend of cultural, economic, and political morals. These three concepts are then combined and matched so that they interact and do not subordinate each other.<sup>41</sup> The concept of economic democracy promoted by Indonesia is directed towards a populist economic concept, which means that the system and/or rules of the economic game must be democratic, sustainable, and uphold people's participation based on a balance between business actors public interests.<sup>42</sup>

In the concept of economic democracy adhered to by Indonesia, when it is connected with regulating and fixing the peer-to-peer fintech loan interest, in reality, it does not provide a sense of justice. It is known that the setting of high interest rates is a characteristic of these services. Consequently, it is regulated in a code of conduct that stipulates the maximum interest on fintech peer-to-peer loans of no more than 0.8% per day and total late fees or interest and other fees no more than 100% of the loan amount.<sup>43</sup> However, the basis for setting the peer-to-peer fintech interest rate does not yet have a legal basis for its determination. It is considered high when compared to interest rates at other financial institutions.

The fixing and setting of such an interest rate by AFPI are an act that does not pay attention to the sustainability of the economy. In the concept of building economic democracy, the goal is to emphasize the sustainability of community life and increase the nation's independence.<sup>44</sup>

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<sup>38</sup> Taswan. (2011). Kebijakan Modal Minimum, Kebijakan Kepemilikan Tunggal dan Penyalahgunaan Posisi Dominan dalam Persaingan Usaha Industri Perbankan. *Benefit Jurnal Manajemen dan Bisnis*, 15, 29–44.

<sup>39</sup> Article 2, Law No. 5 Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition Commission for The Supervision of Business Competition of the Republic of Indonesia Copyright©KPPU Content.

<sup>40</sup> Dewi, I.N. (2019). *Ganti Kerugian kepada Konsumen Akibat Perilaku Kartel di Indonesia dalam Hukum Persaingan Usaha*. Skripsi, Universitas Islam Indonesia, 62.

<sup>41</sup> Dewantara, R. (2017). Rekonseptualisasi Asas Demokrasi Ekonomi dalam Konstitusi Indonesia. *Arena Hukum*, 7(2), 195–209.

<sup>42</sup> *Ibid.*

<sup>43</sup> Otoritas Jasa Keuangan, "FAQ: Kategori Umum (Tanya Jawab Fintech Lending)." accessed on July 20, 2020

<sup>44</sup> Dewantara, R, *Op. Cit.* 197

Delving into the goals of economic democracy of the sustainability of people's lives and increasing the nation's independence, it is necessary to look at the following data. Based on data obtained from the results of the National Labor Force survey (Sakernas) February 2020, the majority of people worked as laborers and employees with a percentage of 39.8%, followed by self-employed workers by 18.8%, self-employed workers with the help of non-permanent workers of 16.4%, free workers of 8.2%, and workers with business status assisted by permanent workers by 3.7%. The above data shows that the average net income per month for self-employed workers is Rp. 1,900,000 (one million and nine hundred thousand rupiahs). The average net income per month is Rp. 1,400,000 for free workers (one million four hundred thousand rupiahs).<sup>45</sup>

Data collected from the Ministry of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia found that in 2017, there were 62,106,900 micro-businesses and then increased by 2% in 2018 into 63,350,222. At the same time, there were 757,090 small businesses and increased by 3.44% in 2018 to 783,132. Finally, 58,627 medium-sized businesses increased by 3.54% in 2018 to 60,702.<sup>46</sup> The maximum asset of a micro business is Rp. 50,000,000 (fifty million rupiahs) with a maximum turnover of Rp. 300,000,000, - (three hundred million rupiahs). Then for small businesses, the maximum assets owned are Rp. 50,000,000, - (fifty million rupiahs) - Rp. 500,000,000, - (five hundred million rupiahs) with a turnover of Rp. 300,000,000, - (three hundred million rupiahs) - Rp. 2,500,000,000 (two billion five hundred million rupiahs). Finally, for medium-sized businesses, assets owned are Rp. 500,000,000, - (five hundred million rupiahs) - Rp. 10,000,000,000, - (ten billion rupiahs) with a turnover of Rp. 2,500,000,000, - (two billion five hundred million rupiahs) - Rp. 50,000,000,000, - (fifty billion rupiahs).<sup>47</sup>

Considering the results of a survey by the National Labor Force with net monthly average income and the number of micros, small and medium enterprises, it is known that in reality, the community's ability to pay the interest expense for peer-to-peer fintech loans is too far. The effect that occurs from an immeasurable increase in interest rates results in a higher risk of default so that it must be caught in a debt circle that is getting stifling day by day.<sup>48</sup> This database is then deemed to violate the principles of economic democracy, which is democratic, sustainable and upholds people's participation based on the principle of balance between business actors and public interests.<sup>49</sup>

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<sup>45</sup> Sub-directorate of Statistical Wages and Income, *Income Statistics February 2020*, ed. Sub-directorate of Statistical Wages and Income (Jakarta: © Badan Pusat Statistik/BPS-Statistics Indonesia, 1377), available at <https://www.bps.go.id/publication/2020/06/19/0dce3c66158f35e8ab006612/statistik-pendapatan-februari-2020.html>.

<sup>46</sup> Depkop. (2018). *Perkembangan Data Usaha Mikro , Kecil , Menengah dan Usaha Besar*. [www.depkop.go.id](http://www.depkop.go.id).  
[https://www.kemenkopukm.go.id/uploads/laporan/1580223129\\_perkembangan\\_data\\_usaha\\_mikro\\_kecil\\_menengah\\_umkm\\_dan\\_usaha\\_besar\\_ub\\_tahun\\_2017\\_-\\_2018.pdf](https://www.kemenkopukm.go.id/uploads/laporan/1580223129_perkembangan_data_usaha_mikro_kecil_menengah_umkm_dan_usaha_besar_ub_tahun_2017_-_2018.pdf).

<sup>47</sup> Article 6 *Law No 20 Year 2008 concerning the Micro, Small and Medium Enterprises* (Indonesia: kppu.co.id, 2008), available at <http://eng.kppu.go.id/newkppu/wp-content/uploads/LAW-OF-THE-REPUBLIC-OF-INDONESIA-20-OF-2008.pdf>.

<sup>48</sup> Yusuf, M. (2019). *Perlindungan Hukum Terhadap Debitur Pada Layanan Pinjaman Uang Berbasis Financial Technology*. Skripsi, UIN Syarif Hidayatullah Jakarta, 2019, 35.

<sup>49</sup> *Op. Cit.* Dewantara, Reka : 200

Allowing the legal norms to be void in setting the stifling peer-to-peer fintech loan interest rate will accelerate the cycle of default events. This uncontrolled interest setting will then also result in a consequence where the rich get richer, and the poor get poorer. In addition, this problem also poses a risk to the emergence of legal issues and the potential for obstruction of the development of micro, small and medium business activities.<sup>50</sup>

#### 4. Conclusion

The arrangement of loan interest as part of business activity in peer-to-peer lending business violates and contradicts Law No. 5 the of 1999 concerning The Prohibition of Monopolistic Practices and Unfair Business Competition. The arrangement of loan interest in peer-to-peer lending in Indonesia contradicts article 11 Law No. 5 the of 1999 concerning The Prohibition of Monopolistic Practices and Unfair Business Competition. In this case better to give Financial Services Authority (OJK) and Bank Indonesia authority to determine the loan interest of the fintech peer-to-peer lending businesses. It is essential to rearrange the loan interest of peer-to-peer lending in Indonesia with some consideration. The loan interest percentage in Indonesia refers to some countries such as the UK, the US, and the EU. In this case, it is necessary to know the county's consideration, which refers to determining the loan interest percentage of peer-to-peer lending businesses. The percentage of loan interest cannot directly be arranged without any clear consideration because the condition in every country is different. For instance, according to Klafft, some factors can influence loan interest percentages, such as debt-income ratios and credit rating. Moreover, the arrangement of loan interest of peer-to-peer lending in Indonesia contradicts the economy democracy principle, which is a basic and important principle of Law No. 5 of 1999 concerning The Prohibition of Monopolistic Practices and Unfair Business Competition.

Giving authority to AFPI to determine the loan interest rate is to create competition among the platform (business actors). Thus, the best price would be created. However, giving AFPI authority, on the contrary, creates the possibility of the cartel, which contradicts Indonesia's competition law. To avoid the possibility of the cartel needs to take over the authority of AFPI to determine peer-to-peer lending businesses' loan interest. As a regulator, Central Bank or Financial Services Authority (OJK) needs to create a proper regulation concerning peer-to-peer lending, especially about the arrangement of loan interest. On the other hand, it is crucial to supervise business actors of peer-to-peer lending businesses and the association in running their business. Alternatively, even the authority to determine the interest rate in peer-to-peer lending still in AFPI, Financial Services Authority (OJK) as the regulator needs to create the guideline on determining peer-to-peer lending rates to avoid the potential of breaking competition law.

Some countries determine the interest rate by conducting some verification towards the lenders. There are similarities between the concept applied in some countries such as Switzerland and China and traditional banks. The profile of the borrowers is an essential thing to know before the lenders lend the money. It would also affect the

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<sup>50</sup> Buhari, A.T. (2020). Bank dan Riba: Implikasinya dalam Ekonomi Islam. *Jurnal Studi Keislaman*, 6(1), 127-136. Available at <http://ejournal.kopertais4.or.id/madura/index.php/alinsyiroh/article/view/3824>.

interest rate that will give to the borrowers depending on their profile. The borrower's profile could be similar to 5C (capital, condition of economic, character, collateral, capacity) of the borrower as applied in the banking system before the bank loaned the loan to the debtor.

Peer-to-peer lending should concern with benefits or income from the business and the borrower's condition. When the borrower fails to pay back the loan, it will also affect the peer-to-peer lending business. Analyzing the borrower's data can reduce the risk of the borrowers failing to pay the debt. On the other hand, it also helps the borrowers avoid not paying the debt back. It is also in line with Law No. 5 of 1999 that protects the business actor and the consumer.

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