**PROBLEM AND BUSINESS ACTIVITIES OF PEER TO PEER LEENDING COMPANY IN INDONESIA IN THE CONTEXT OF COMPETITION LAW OF INDONESIA**

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| **ARTICLE INFO** | **ABSTRACT** |
| *Keyword :*  *peer to peer lending, fintech, loan interest, the strengthen of the regulation* | *The development of technology in the monetary sector, financial technology, especially peer to peer lending in recent day increase. Although the development of peer to peer lending disruptive, it brings big opportunity to improve the inclusivity of monetary, efficiency and effectivity of service. Moreover, it is also can stimulate the development of economy. On the other hand, there is a negative side of peer to peer lending services because problem of the regulation which is not strong enough. The problem is, there is no strong legal basis in determination of loan interest which potentially create cartel interest, high rate of loan interest, and illegal peer to peer lending company. This article using normative legal research method, which is using literature review. As the result, this research finds that there are a lot of problem of peer to peer lending, for instance the rate of loan interest is really high. This caused by a notion of cartel which conducted by business actor in determining the rate of the loan interest. There is necessity to know how the association of business actor of peer to peer lending determine the rate of loan interest. Based on this problem it is important to strengthen the regulation which regulate peer to peer lending fintech. Thus, the consumer will gain benefit, and safety in using the peer to peer lending fintech services.* |
| How to cite : |
| Article History : |

1. **Introduction**

Everyone has different needs and economic circumstances. Some people have sufficient economic condition and capacity, while others are not always able to fulfill their needs. Therefore, a lot of people try to look for ways to be able to fulfill 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 financial technology is one of the example platforms in the sectors of financial which quite popular in society.

*Fintech (financial technology)* 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 which combines two things which are technology information and financial services.[[1]](#footnote-0) For some people, financial technology is considered as fresh air because the combination of financial services and technology gives convenience for the society which needs service in financial services sectors. According to some people, compared to the services provided by another form of financial services platform, financial technology is more convenience.

The development of financial technology 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 the existence of financial technology in Indonesia, especially in peer to peer lending fintech. One of the current issues which arise is regarding the interest of peer to peer lending loan.

Talking about regulation, currently, there are no written regulations regarding the amount of interest that can be set by fintech service providers. As the regulator, the Financial Services Authority (OJK) and Bank Indonesia should set the rules related to fintech interest. Regarding the determination of interest in the financial technology 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.[[2]](#footnote-1) The policy made by the Financial Services Authority potentially affects the fintech interest. As the result, fintech interest is considered very high by some people. It is caused by the association has the authority to determine the loan interest in a very high range. It makes consumer of peer to peer lending business in a difficult situation when they have to pay the loan back. Moreover, by giving association authority to determine the interest, it is potentially causing cartel in the fintech business sectors. It is because the member of the association is fintech business actors itself. Besides that, there are some other problems which need to think about related to peer to peer lending fintech businesses such as, the regulation which still needs to develop, an illegal fintech company, and the problem of credit which possibly appears in the future.

Based on the background problem which previously explained, this article would try to explore the following research question:

* 1. **Statement of Problems**
     1. How the development and mechanism of fintech peer to peer lending business in Indonesia from the perspective of competition law of Indonesia?
     2. What is the problem of peer to peer lending business in Indonesia?

1. **Methods**

This research is normative legal research. In normative legal research, research conducted through literature review. That is why this research uses secondary data as the main material and tertiary material will complete the reference. Primary material such as Law or regulation related to the topic of research will be explored and elaborated with secondary and tertiary material to analyze the problem and answer the research question which is set up in this article.

1. **Analysis and Result**
   1. **Peer to peer lending In Indonesia**
      1. **Development of peer to peer lending fintech business In Indonesia**

The development of fintech in Indonesia increases rapidly. It is shown in data from the Financial Services Authority and Fintech Association of Indonesia in 2015-2016. Based on data, from all kind of fintech sector in Indonesia, fintech which concerns in the payment sector reach the biggest percentage with 42.54%. In the second place is fintech in the lending sector with a percentage 17.16%. In the third place is aggregator fintech with the percentage 12.69%. The personal and financial planning sector reaches 8.21% as same as the crowdfunding sector which also reaches 8.21%. While others sector has 11.19%.[[3]](#footnote-2)

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%.[[4]](#footnote-3) In fact, according to research from Business Competition Supervisory Commission predict the number of fintech industry actors will reach 277 companies and 9 million debtors.[[5]](#footnote-4)

Talking about peer to peer lending fintech in Indonesia, based on 2016 data which previously explained, peer to peer lending fintech business placed in the second place. The recent data from the coordinating ministry of for economic affairs of Indonesia in September 4th 2019, peer to peer lending fintech business became the most developed sector compared to the others fintech sector. Ministry data shows the development of loan distribution of peer to peer lending fintech sector to the person/business reached 40%.[[6]](#footnote-5)

Based on peer to peer lending data company registered in the Financial Services Authority until 2018, shows that the peer to peer lending fintech in Indonesia is developing. The development can be seen as follows:[[7]](#footnote-6)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **No** | **Company** | **Platform** | **No** | **Company** | **Platform** |
|
| 1 | PT Pasar Dana Pinjaman | Danamas | 33 | PT Dana Kini Indonesia | Danakini |
|
| 2 | PT Danakita Data Prima | DanaKita | 34 | PT Oriente Mas Sejahtera | Finmas |
|
| 3 | PT Lunaria Annua Teknologi | Koinworks | 35 | PT Digital Synergy Technology | Rupiah plus |
|
| 4 | PT Amartha Mikro Fintek | Amartha | 36 | PT Toko Modal Mitra Usaha | Toko Modal |
|
| 5 | PT Investree Radhika Jaya | Investree | 37 | PT Tunaiku Fintech Indonesia | Tunaiku |
|
| 6 | PT Mitrausaha Indonesia Grup | Modalku | 38 | PT Artha Dana Teknologi | Indodana sistem |
|
| 7 | PT Pendanaan Teknologi Nusa | Danacepat | 39 | PT Finaccel Digital Indonesia | Kredivo |
|
| 8 | PT Simplefi Teknologi Indonesia | AwanTunai | 40 | PT Mekar Investama Sampoerna | Mekar.id |
|
| 9 | PT Aman Cermat Cepat | KlikACC | 41 | PT Dana Pinjaman Inklusif | PinjamanGo |
|
| 10 | PT Mediator Komunitas Indonesia | CROWDO | 42 | PT Perlu Fintech Indonesia | iternak.id |
|
| 11 | PT Akseleran Keuangan Inklusif Indonesia | Akseleran | 43 | PT Kredit Pintar Indonesia | Kredit Pintar |
|
| 12 | PT Digital Alpha Indonesia | UangTeman | 44 | PT Fintek Digital Indonesia | Kredito |
|
| 13 | PT Indo Fin Tek | Dompet Kilat | 45 | PT Crowde Membangun Bangsa | Crowde |
|
| 14 | PT Indonusa Bara Sejahtera | Taralite | 46 | PT Kredit Plus Teknologi | Pinjam Gampang |
|
| 15 | PT Dynamic Credit Asia | DynamicCredit | 47 | PT Mulia Inovasi Digital | Danain |
|  |  |  |  |  |  |
| 16 | PT Fintegra Homido Indonesia | FINTAG | 48 | PT Tanifund Madani Indonesia | Tanifund |
| 17 | PT Sol Mitra Fintec | Invoila | 49 | PT Bursa Akselerasi Indonesia | Indofund.id |
| 18 | PT CREATIVE MOBILE ADVENTURE | KIMO | 50 | PT Semesta Gerakan Persada | SGPIndonesia |
| 19 | PT Digital Tunai Kita | TunaiKita | 51 | PT Tri Digi Fin | KreditPro |
| 20 | PT Progo Puncak Group | Pinjam WinWin | 52 | PT Grha Dana Bersama | Avantee |
| 21 | PT Relasi Perdana Indonesia | Relasi | 53 | PT Kredit Utama Fintech Indonesia | Rupiahcepat |
| 22 | PT iGrow Resources Indonesia | Igrow | 54 | PT Glotech Prima Vista | Do-it |
| 23 | PT Qreditt Indonesia Satu | Qreditt | 55 | PT Layanan Keuangan Berbagi | Danarupiah |
| 24 | PT CICIL Solusi Mitra Teknologi | Cicil | 56 | PT Digital Micro Indonesia | danabijak |
| 25 | PT Intekno Raya | Dana Merdeka | 57 | PT Artha Permata Makmur | cashcepat |
| 26 | PT Kas Wagon Indonesia | Cash Wagon | 58 | PT Seva Kreasi Digital | Danalaut |
| 27 | PT Esta Kapital Fintek | EstaKapital | 59 | PT Dana Syariah Indonesia | Danasyariah |
| 28 | PT Ammana Fintek Syariah | Ammana | 60 | PT Solusi Finansial Inklusif Indonesia | Telefin |
| 29 | PT Gradana Teknoruci Indonesia | Gradana | 61 | PT Modal Rakyat Indonesia | Modalrakyat |
| 30 | PT Mapan Global Reksa | DanaMapan | 62 | PT Kawan Cicil Teknologi Utama | Kawancicil |
|
| 31 | PT Aktivaku Investama Teknologi | Aktivaku | 63 | PT Satustop Finansial Solusi | Sanders |
|
| 32 | PT Karapoto Teknologi Finansial | Karapoto.com | 64 | PT Alfa Finance Indonesia | Kreditcepat |
|

Sources: Financial Services Authority 2018

* + 1. **Business Actor and Business Mechanism of Peer to Peer Lending in Indonesia**

Generally, basic form of financial technology can be distinguished into some forms as follow:[[8]](#footnote-7)

|  |  |
| --- | --- |
| **Business Process** | **Bentuk Interak** |
| Payment (*digital wallets, P2P payments*) | C2C |
| Investment (*equity crowdfunding, P2P lending*) |
| Financing (*crowdfunding, micro-loans, credit facilities*) | B2C |
| Insurance (*risk management*) |
| Cross-process (*big data analysis, predictive modeling*) | B2B |

As the most developing form of fintech, the government should give special attention towards peer to peer lending. In the society, peer to peer lending generally known and called P2P. Peer to peer means “person-to-person” lending. Moreover, peer to peer lending defines as a loan from one person to another. Most cases of peer to peer lending activity are work without any intermediary such as a bank or other institution in the credit sector. Therefore, actually peer to peer means during its transaction process only involve two persons or parties.[[9]](#footnote-8)

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. This 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 Number 77/POJK.01/2016, all the parties in lending services will get protection and safety guarantee in technology and information-based of lending services.[[10]](#footnote-9)

Based on the regulation of Financial Services Authority Number 77/POJK.01/2016, one of the objectives of financial services is the creditor can meet with the debtor. This aims to make a condition where both of parties can meet each other, make a deal together, and bonding their self into a loan agreement with rupiah currency directly by using internet technology and electronic system. The regulation of Financial Services Authority also regulates about the parties who 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 Indonesia legal entity. While for the lenders or creditor in peer to peer lending there is no requirement which requires that the creditor or lenders must an Indonesians or coming from Indonesia. Therefore, there is possibility that the lender coming from foreign parties.[[11]](#footnote-10)

Regarding the agreement, there are two agreements used. First is an agreement between lenders and borrowed. Second agreement is between the organizer (fintech platform) and the lander. The agreement should conduct in electronic form. The content of the agreement regulates about the explication of the information either the transaction to both parties are landers and borrowed. The signing of the document of the agreement must conduct electronically as regulated based on positive law.[[12]](#footnote-11)

Regarding electronic contract in peer to peer lending, actually it is already regulated in article 18 paragraph 1 Law Number 11 2008 concerning Information and Electronic Transaction. Based on the practice and law, the electronic contract has power and binding the parties of the contract as contract generally.

Peer to peer lending company is a form of company which trying to bring together the parties which are landers and borrowed parties. The thing which makes this platform interested for many people is access. The peer to peer lending company gives the parties access rightly, accurate, and fast. Furthermore, whenever the parties need fund, peer to peer lending company will connect them to the lender because nowadays is really easy to connect the parties online. On the other hand, lenders also get the benefit from this kind of transaction mechanism which is from the interest of the money return which paid by the borrowed parties. However, there is still the risk from the transaction.[[13]](#footnote-12)

Along with the development, the consumer of peer to peer lending fintech in Indonesia also increases every day. However, the development also followed by the problem, including the legal problem. Some of the problems are regarding the borrowed (creditor). There are borrowed (the creditor) of peer to peer lending who propose the loan to more than one peer to peer lending company. Moreover, the problem of data protection of the consumer (borrowed) recently is become a spotlight. Another thing which also needs to pay attention is the business activity of peer to peer lending fintech business actor to determining the loan interest. Furthermore, nowadays business actors of peer to peer lending freely to determine the number of interests of loan. This becomes a problem because there is an allegation of violation conducted by business actors, especially in the context of competition law.

Moreover, the activity of business actors in peer to peer lending complicates the consumers in return the loan. It is because the interest is very high. Related to the interest problem in peer to peer lending business, until now there is no written regulation concerning the mechanism of interest’s determination. Thus, the next discussion of these articles will discuss the business activity of peer to peer lending fintech in the perspective of competition law. It is also will discuss the urgency of comprehensive regulation regarding the determination of peer to peer lending interest.

* + 1. **Business Activity of Peer to Peer Lending in Indonesia in the Perspective of Business Competition of Indonesia**

As previously explained, there are some problems that appear along to the development of peer to peer lending services. One of them is related to the business activity of peer to peer lending in the perspective of the competition law of Indonesia. The loan interest becomes an issue that need to be discussed. The way of association in determining the rate of loan interest becomes a spotlight for the Indonesian Competition Commission (KPPU). The rate of the loan interest of peer to peer lending services is quite high. As the result, it is hard for the borrowed (the creditor) to return the loan.

According to the Financial Services Authority, the mechanism that will use to determine the rate of loan interest of peer to peer lending business will depend on the market mechanism. The rates of loan interest will depend on supply and demand in the society as same as the mechanism which used in the bank sector.[[14]](#footnote-13)

However, to determine the rates of loan interest of peer to peer lending sector conducted by the association (Asosiasi Fintech Pendanaan Bersama Indonesia). Based on the association agreement, the maximum rates of loan interest of peer to peer lending is 0,8% per day. Moreover, the maximum fine of the loan is not higher than the loan.[[15]](#footnote-14) Based on the percentage, the total of loan interest in a month can reach 24% and in a year it can reach 292%. It is very high. Dana rupiah is one of the example of peer to peer lending platform which describes how high the rate of loan interest of peer to peer business in Indonesia. In Dana Rupiah, the loan interest in a year can reach 28%. It not include the administration fee yet. Thus, the total interest that should be paid by the borrowed (creditor) can reach 36% per year. Another example which can describe how high the loan interest of peer to peer lending business is Uang Teman. Loan interest in Uang Teman reach 0,8% per day and 24% in a month.[[16]](#footnote-15)

To compare bank interest and peer to peer lending business interest in Indonesia, the average of effective loan interest in people’s business credit (KUR) is only 7% per year. Bank interest for small and medium enterprises (UMKM) non-KUR is quite vesatile. It is about 15%-25% in a year. Compared to fintech interest, the rates of bank interest is lower.[[17]](#footnote-16)

The Establishment of loan interest in peer to peer lending which conducted by association affects the rate of the loan interest, it becomes high. Furthermore, fintech business actor has the opportunity to conduct arbitrary act by using their authority to determine the rate of the loan interest. It will affect the consumer (borrowed) condition. It will hard for the borrower to return the loan. Based on research conducted by Indonesian Competition Commission (KPPU), the average of interest which established by fintech business actors reach 10% per month in recent day.[[18]](#footnote-17) It is a very high rate. The establishment of loan interest rate by peer to peer lending business actors potentially break the principle in competition law.

* 1. **Problem and the Urgency of Establishment of Peer to Peer Lending Regulation in Indonesia**

The development of technology and information in recent days changes a lot of aspects in life, including the monetary sector. The development of technology in the monetary sector is one of the biggest successes. The development in the monetary sector gives a positive impact on economic growth. Thus, it is important to support the growth of economy through the institution of money services through technology and information -based. One of the ways to make it happen is to establishing an effective regulation and maximum supervision towards it. [[19]](#footnote-18)

The development of technology and information in the monetary sector is a big deal. It is necessary to establish the regulation and supervision that concern about it. It is important to guarantee the safety of the consumer based on the principle of consumer protection law. Thus, everyone obtains the benefit of it. The Arrangement, Supervision, and management of digital monetary innovation especially in technology of peer to peer lending aims to minimize the risk.[[20]](#footnote-19)

Nowadays, peer to peer lending fintech gradually eliminate the conventional system in the lending sector. It is caused by peer to peer lending fintech provide the convenient access to everyone especially business actor.[[21]](#footnote-20) It is important to conduct the innovation in the monetary sector. It aims to create business competition in the progressive market. Innovation is a necessity to stimulate business actors to create, develop, and complete a product and services. However, it is also important to control it. Thus, it will not contradict and break the positive law. [[22]](#footnote-21) For instance, the majority of peer to peer lending fintech is not required object guarantee system. It is too risky for peer to peer lending fintech in case the borrowed failed to return the loan.[[23]](#footnote-22) Moreover, the safety of the transaction still a problem. The Issue about the abuse of data and customer fund is needed to pay attention.[[24]](#footnote-23) Research about the complexity of problem which appears through the digital monetary innovation is important to do, especially about the regulation and supervision towards peer to peer lending fintech. The reason why it is important to create a regulation and supervision of peer to peer lending fintech will be explained as following:

* + 1. **Digital Monetary Innovation is Disruptive**

Monetary innovation in peer to peer lending fintech has a positive and negative side. The positive side is innovation like fresh air for the consumer. It is provided efficiency and effectiveness towards the consumer in the monetary transaction field. On the other hand, digital monetary as innovation can gives a negative impact. There is an opinion stated that monetary innovation is disruptive. It is causes instability in the monetary services sector and also creates unfair competition in the monetary services field.[[25]](#footnote-24)

Disruptive Innovation is an innovation which creates successful transformation towards market system by introducing a new market segment which gives a lot of advantage for the consumers such as easy access, economical fee, and convenience. The phenomenon of disruptive innovation cause some problems which need to anticipate as soon as possible to prevent more impact, just like happened to Nokia and Kodak company.[[26]](#footnote-25)

A lot of big company often trapped by their comfort zone. They are not trying to create and innovate. The impact is they are destructed by innovation created by their competitor. For instance, in technology thing. The innovation which created by the competitor gradually become something accepted in society. People start to use and like the new product and innovation because it is over convenience compared to the common technology or product. As the result, step by step the innovation eliminates and replaces the previous technology and product. This is what usually called disruptive innovation.[[27]](#footnote-26)

Like Kodak and Nokia, technology and information in the monetary sector are also entities combine with technology and monetary services. It resulting peer to peer lending fintech. Basically, peer to peer lending fintech is a creative disruption in the monetary market. It brings some changes which significantly different from the previous product. The innovation through peer to peer lending fintech gives a lot of advantage for the consumer which are the effectiveness and the convenience.[[28]](#footnote-27)

Basically, peer to peer lending fintech has a lot of benefits compared to the traditional monetary platform, such as:

1. Increase the Inclusivity of Monetary

Inclusivity of monetary play an important role in national economic growth, development, poverty problem, and in reaching stability of national monetary. Until today, the obstacle towards inclusivity is the access to monetary services is still limited. As an effect it is hard for the middle-class society to involve in the economy system. The system of the economy is not spread evenly in society make the knowledge of the society towards inclusive monetary is low.[[29]](#footnote-28) From financial services authority data, monetary inclusivity in 2019 only reaches 76,19%. Even though there is a significant escalation compared to 2016 which only reaches 67,8%, it is not a good result yet.[[30]](#footnote-29)

Monetary inclusive in Indonesia influenced by the development of information and technology. Based on data from the Ministry of Communications and Informatics of Indonesia, in 2018 shows that the number of internet users reach 150 million with its penetration 56%. Thus, by seeing the number of internet user in Indonesia, peer to peer lending fintech potentially develop. It is because peer to peer lending fintech will help to spread monetary inclusivity widely.[[31]](#footnote-30)

1. Increase Efficiency of Economy and The Effectiveness of Monetary Activity.

By using services with technology and information based on the smartphone will give efficient and effective access to monetary services. The consumer no need to spend a lot of time to access monetary service. Moreover, monetary services institution such as peer to peer lending fintech will reduce the consumer to spend their money on administration fee, operational fee, and salary for the staff.[[32]](#footnote-31)

1. Increase Economy Growth

The development of peer to peer lending fintech indirectly help to increase economic growth. It helps people who need capital and fund to establish and develop their business. Moreover, it will help the development of business and stimulate to open employment, increase the productivity of society which will directly affect the national economy.[[33]](#footnote-32)

There is a lot of benefit of the development of peer to peer lending fintech. It is helps to develop the national economy. That is why It is necessary to support it massively. However, there are some important points to see the weaknesses of peer to peer lending fintech. The problem related to consumer privacy, the consumer who fails to return the loan, standard and regulation regarding loan interest, criteria of user, and criteria of a provider. That is why it is important to pay attention to the problem either create the regulation and supervision to protect the consumer.[[34]](#footnote-33)

Previously business activity in monetary field managed and running by the traditional the monetary institutions. However, since peer to peer lending fintech exists in the middle of society, there are a lot of traditional monetary institutions business hampered. The existence of peer to peer lending fintech for a traditional monetary institution is something dangerous towards the consumer and affect to market and traditional monetary institution. However, stay with old technology is not the right choice. Thus, evaluation of business with technology and information-based is the best choice. Therefore, prepare all the possibility including the possibility of a problem which affected by the existence of peer to peer lending fintech is important. It is necessary to establish a strong regulation to strengthen the digital monetary institution and providing law protection towards the consumer of peer to peer lending fintech.[[35]](#footnote-34)

* + 1. **The Regulation of Fintech in Indonesia is Still Weak.**

Until nowadays regulation concerning peer to peer lending fintech is unsatisfying. As the result, there are some problem appear such as abuse of data, borrowed fail to return the loan, violation towards consumer during loan’s claim, and determination of loan interest.[[36]](#footnote-35)

The arrangement of regulation concerning peer to peer lending fintech in the recent day refers to private law and regulation of financial services authority. In Regulation of Financial Services Authority Number 77/POJK.01/2016 concerning Information Technology-Based Lending Services is only regulating the technical things related to the operator, consumer, contract, risk mitigation, governance of technology and information, education and consumer protection, the principle of consumer recognizing, prohibition, gradual report, and sanction. While, the regulation about loan interest, technical of credit analysis, the procedure of dispute the resolution, personal data protection, and procedure of claim are have not regulated properly. Thus, the business actor is still free and tend to break the law in their business activity.[[37]](#footnote-36)

Until recent days Indonesia has no special regulation concerning private data protection. The regulation about private data protection is still spread out in some different regulations and the arrangement is too general.[[38]](#footnote-37) Furthermore, positive law is not maximum yet to handling the problem about loan interest, bad debt, criteria of consumer selection, dispute resolution mechanism and other problem.

To guarantee the certainty of law, it is necessary to create a proper and strong regulation from the main source of law. Furthermore, along with the development of peer to peer lending fintech in Indonesia, it is important for government to establish the regulation.[[39]](#footnote-38)

The arrangement and supervision towards peer to peer lending fintech is the most important aspect to create a safe business, convenience, and low risk. Thus, it is important for financial services authority to follow and discuss about the development of regulation towards peer to peer lending fintech and maximize the supervision towards peer to peer lending in Indonesia.[[40]](#footnote-39)

* + 1. **There is No Strong Reason in Determination of Loan Interest in Peer to Peer Lending Fintech**

Loan interest in peer to peer lending fintech usually has high rates compared to other monetary institution. Basically, the legal relation between the parties refers to private law based on the agreement between the parties. Which means, as long as consumer agrees with the contract, consumer allows to deal with the contract of peer to peer lending. While when the consumer is not agreed with the contract or hesitate about the contract, the consumer suggests leaving the transaction. Until nowadays, the Financial Services Authority is not arranged the maximum rate of loan interest yet. The provisions concerning interest are only regulated in the code of conduct of the Fintech Lending Association of Indonesia (AFPI) by applying maximum of loan interest which is not more than 0,8% per day. Furthermore, the total of the lateness fee or interest and another fee is not more than 100% from the loan.[[41]](#footnote-40)

Basically, the Financial Services Authority had been regulated about rates of loan interest of peer to peer lending fintech by appointed fintech association (AFPI) to arrange it. There are some reasons why financial services authority does not arrange the rates of loan interest directly. First, the development of innovation in monetary services is moving rapidly.[[42]](#footnote-41) Second, charging of loan in peer to peer lending fintech depend on the cost of fund from each peer to peer lending company, therefore it is difficult to determine the exact standard of loan interest rates.[[43]](#footnote-42) That is why the Financial Services Authority appoints association to arrange the rates of loan interest. It is because the association involved in fintech activity directly.

As the partner Financial Services Authority, based on a letter number S-5/D/05/INKB/2019, AFPI has the authority to facilitate peer to peer lending fintech in Indonesia. Moreover, AFPI also has the authority to make a regulation and supervise the activity of peer to peer lending fintech.[[44]](#footnote-43) The concept of arrangement has been conducted in a code of conduct including the arrangement regarding the maximum rates of loan interest.[[45]](#footnote-44)

Nowadays, it is important to pay attention to the problem of loan interest. Especially there is some problem which caused by it, for instance, the high rates of loan interest which affect to the cumulation of loan interest itself. Juridically in the provisions of article 17 of regulation of financial services authority number 77/POJK.01/2016 concerning Information Technology-Based Lending Services is having been regulated about loan interest. However, the arrangement does not give certainty yet. The provision of loan interest in article 17 is arranged based on fairness consideration and the national economy. This thing creates a free interpretation that causes uncertainty of the law.[[46]](#footnote-45) Therefore it is important to establish a the regulation concerning loan interest which easily to understood. It is also necessary to do to fulfill certainty of law, the standard of fairness, transparency, and fulfil the principles of public interest and consumer protection.[[47]](#footnote-46)

Another problem of loan interest of peer to peer lending fintech is the allegation of cartel which conducted by the association. Since Financial Services Authority gives an authority towards association to arrange the loan interest of peer to peer lending fintech, there is an allegation that association conspires to arrange the interest unfairly which cause the cartel of the interest in peer to peer lending fintech. Cartel towards the interest in the monetary sector is a form of conspiration mechanism in determining the rates of loan interest by business actors.[[48]](#footnote-47) In peer to peer lending fintech cases, it is necessary to emphasize that there is no evidence yet which stated that association conduct interest cartel. However, the condition and regulation of peer to peer lending fintech in Indonesia nowadays give a slit towards association to conduct such kind of act. Moreover, to determine and supervise unfair competition is already conducted by Indonesian Competition Condition.

Based on the concept, the allegation of the cartel of the interest can be seen from the beginning when AFPI as an Association appointed by the Financial Services Authority to organize service of a peer to peer lending fintech. In this case, AFPI establishes the maximum rates of loan interest in peer to peer lending business activity is 0,8% per day. The standard of the interest based on the maximum loan adapted from rates of loan interest in the UK. The first allegation about a cartel of loan interest in peer to peer lending fintech business is when the business actors (members of the association) which are most of the member is the organizer of peer to peer lending fintech together establish the maximum rates of loan interest per day. This condition strongly possible cause a collusion act in determination and controlling the interest of the loan.[[49]](#footnote-48)

Usually most cartels of interest cases caused by tight competition in a particular business. This reason is quite reasonable because the curve of the company registered in the Financial Services Authority in every single day becomes high. Therefore, thing things that need to do to avoid tight competition is to making an agreement among the business actors to deal in establishing the rates of the interest of loan, promotion, and requirements in it.[[50]](#footnote-49)

The second allegation is by seeing that there is an act as though restrict the prevention and distortion through the regulation of maximum rates of loan interest of peer to peer lending fintech. Actually, based on the juridical concept, the authority to arrange the rates of the loan interest is not in association (AFPI). AFPI is not a regulator and/or there is no strong legal standing for AFPI to determine the standard of the interest. Actually, based on the law, that should be the Financial Services Authority and central bank (bank of Indonesia) which has the authority to determine the standard of the interest. By giving authorization to AFPI to determine the rates of loan interest, it will open the opportunity to business actors to establish prohibited agreement and conspiracy, which is a cartel. It is clearly violates article 11 Law Number 5 year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.[[51]](#footnote-50)

* + 1. **High Risk of Bad Credit in Peer to Peer Lending Fintech**

Based on the contract of peer to peer lending fintech, lender and borrower are not acquaintances with each other. This condition potentially causes the borrowed fail to return the loan (bad credit). Furthermore, bad credit potentially happens because there is no object guarantee as a guarantee of debt or loan.[[52]](#footnote-51) Whereas, the objective of guarantee towards a particular object is to give the protection and certainty of law towards creditor in the debt and receivables contract. The Function of object guarantee in debt and receivables contract as a guarantee which can be executed in case the creditor cannot return the loan or debt.[[53]](#footnote-52)

The provisions of Regulation of Financial Services Authority Number 77/POJK.01/2016 concerning Information Technology-Based Lending Services, there is no provisions that regulate about the responsibility of the company explicitly in case bad credit happens. The all the provision about bad credit or problem in credit will back to the lender privately thus potency of bad credit will be higher.[[54]](#footnote-53)

In the provision of Article 37 Regulation of Financial Services Authority Number 77/POJK.01/2016 concerning Information Technology-Based Lending Service, has been determined that company can be sued to responsible for loss caused by the company’s fault. However, to prove it is quite hard since all data analysis is in the peer to peer lending company. Thus, a claim for the compensation is difficult to conduct. Therefore, it is important to establish a regulation concerning the procedure of settlement dispute for bad credit cases.

* + 1. **There are a Lot of Illegal Fintech Company**

The problem about illegal fintech company especially peer to peer lending fintech until nowadays develop rapidly and uncontrol. Based on data from the Financial Services Authority, from July 2018 to October 2019 there are 1475 illegal company or not registered and licensed in the Financial Services Authority.[[55]](#footnote-54)

Actually, the Financial Services Authority has been a long time try to countermeasures the illegal company.[[56]](#footnote-55) Moreover, the Financial Services Authority also try to filtering peer to peer lending company which will register their company by regulatory sanbox procedure[[57]](#footnote-56), registered and licensed procedure.[[58]](#footnote-57)

Even though the arrangement and tight procedure have been conducted towards the business activity of peer to peer lending company, it will not reduce illegal peer to peer lending fintech company to develop. Towards illegal peer to peer lending fintech company, it is important to have strong coordination (in sectoral coordination protocol) among the Financial Services Authority, Bank of Indonesia and the Ministry of Information and Communication to cope with illegal fintech.[[59]](#footnote-58)

1. **Conclusion**

After all the discussion in these articles, there are some important points that can be concluded regarding peer to peer lending fintech problem in Indonesia and in its relation to the competition law of Indonesia as below:

Peer to peer lending business in Indonesia is developing rapidly. It is based on data which shows that there is a lot of peer to peer fintech company which registered in the Financial Services Authority. However, the development of peer to peer lending fintech business need to supervise. The supervision aims to make sure that business actor of peer to peer lending fintech run their business based on the positive law and there is no violation of it. Moreover, there is some new problem appear along with the development of peer to peer lending fintech in Indonesia. For instance, the rates of the loan interest are really high. It needs to evaluate, whether the rate of the loan interest of peer to peer lending is fair enough. Furthermore, the Indonesia Competition Commission needs to supervise all the business activity including peer to peer lending to avoid cartel agreement among business actors.

Generally, the existence of digital innovation through peer to peer lending fintech in Indonesia potentially influence the progressivity and spirit of the national economy. Progressivity in this context is the business activity of peer to peer lending fintech which has big potential to open monetary inclusion, efficiency, and effectivity in the monetary activity. Moreover, it is potentially helping the development of the national economy for a long-term purpose. However, all progressivity cannot be reached if it not be balanced with progressive regulation. Explicitly the main purpose of the monetary activity is to give safe and convenient for the consumer. Moreover, it is also aiming to give benefits for the consumer. Thus, it is important the Financial Services Authority strengthen the regulation concerning peer to peer lending fintech.

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