

Authority of Asosiasi Fintech Pendanaan Bersama Indonesia (AFPI) in Determining the Amount of Loan Interest Rates Limit in Peer to Peer Lending (P2P Lending) Business Activities

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ABSTRACT

OJK function as a regulator and supervisor of the Fintech P2P Lending financial sector. OJK appointed AFPI to help OJK organize Fintech P2P lending based on Letter of Appointment Number S-5 / D.05 / IKNB / 2019. AFPI issues the LPMUBTI code of ethics, which regulates the loan interest rate limit. There is an allegation that AFPI does not have the authority and favors of unfair business competition practices for the determination made by AFPI. This assumption is based on, first, the absence of a clear source of authority. Because OJK is attributively an authorized party in setting loan interest rate limits in the Fintech P2P lending financial services sector based on OJK Law. In the laws and regulations governing Fintech P2P lending, there is no provision that allows OJK to grant such authority. In addition, AFPI is not a government agency / official or an internal part of the OJK and this act was not carried out on behalf of the OJK but on behalf of AFPI itself. This is not included in the conditions of authority that can be delegated or mandated. Secondly, the AFPI's actions have fulfilled the elements referred to Article 5 of the Business Competition Law on Pricing. In addition, AFPI's act also creates barrier for potential business actors to enter the market. where this is not in accordance with the spirit of the Business Competition Law, namely equality of rights for all business actors and the acceleration of economic development to improve public welfare.

Keywords: Fintech Peer to Peer Lending, authority, fixed pricing, loan interest rate limit

1. INTRODUCTION

Financial Technology (fintech) as a form of innovation in the financial sector through information technology, where its use is intended to provide financial solutions.[1] According to Bank Indonesia as stipulated in Article 3 of Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Implementation of Financial Technology, describes several types of fintech in accordance with its operation: investment risk management; market aggregator; payment, clearing, and settlement; peer to peer lending and crowd funding. Fintech Peer to Peer lending ("FP2PL") is a digital platform that aims to bring together lenders and loan recipients in the context of entering into a loan agreement.[2] In Indonesia, this system is often referred to as the Lending and Borrowing Service Based Information Technology /Layanan Pinjam Meminajm Berbasis Teknologi Informasi ("LPUMBTI").

This FP2PL system is in great demand by the Indonesian people, because the existing FP2PL system is simpler than the bank's loan system, where the whole process can be done online, and there are some cuts to

the requirements and processes for borrowing money. In addition, FP2PL can reach people who do not have access to banks.

In the FP2PL system there are several parties, namely users who are divided into lenders and borrowers, and the organizer as a platform provider and acts as an intermediary between lenders and borrowers. As of March 2020, there were 25,418,298 users and 161 companies registered with the Financial Services Authority (OJK).

OJK as the authority in charge of organizing the financial sector as determined in Article 8 and Article 9 of the Law No. 21 of 2011 concerning Financial Authority Service/Otoritas Jasa Keuangan ("OJK") ("OJK Law"), OJK has attributive authority in the administration of FP2PL. Seeing the development of FP2PL in Indonesia, on December 28, 2016 OJK as the regulator and supervisor in the financial services sector formed OJK Regulation No.77/POJK.01/2016 concerning LPUMBTI ("POJK77/2016"). The regulation specifically regulates the FP2PL implementation system in Indonesia, which is related to business activities, registration, licensing, risk

mitigation, reporting, and governance of information technology systems. This regulation is expected to protect the interests of users, both lenders and loan recipients in accessing LPMUBTI.

In addition to establishing regulations, OJK in 2019 established *Asosiasi Fintech Pendanaan Bersama Indonesia* (“**AFPI**”) to assist the implementation of FP2PL in Indonesia based on OJK Appointment Letter Number S-5/D.05/IKNB/2019. This is also in accordance with Article 48 POJK 77/2016, which requires all organizers to join an association appointed by OJK. AFPI has a duty to develop technology-based financial sector; establishing relationships with the global fintech community in order to collaborate and participate with the fintech community in Indonesia to provide education, promote and propose agendas from financial technology; supervise P2P lending providers in Indonesia.[3]

Many efforts have been made by AFPI in carrying out its duties, such as launching information channels and customer complaints FP2PL (JENDELA), the application of standardization and also the certification of risk management and billing processes. And code of conduct (code of conduct) as a guide in carrying out FP2PL business activities.

The code of conduct made by AFPI raises several issues, one of which is related to setting a maximum limit for loan interest rates in FP2PL business activities. With regard to this stipulation, there is a suspicion that AFPI does not have the authority to determine loan interest rate limits. The authority to determine these limits should be at OJK. In addition, this upper limit rate is implemented by several business actors (self-regulated) and applies to all business actors, so there are indications of unfair business competition practices. This is in accordance with the statement of the KPPU Director of Economics, Mr. Zulfirmanasyah. In addition, the maximum interest on loans stipulated in the code of conduct is not in accordance with Article 1767 Paragraph 2 of the Civil Code, which is 6% per year. Based on the things above, the author is interested in researching **AUTHORITY OF FINTECH FUNDECH TOGETHER WITH INDONESIA (AFPI) IN DETERMINING THE AMOUNT OF LOAN INTEREST IN BUSINESS ACTIVITIES OF PEER TO PEER LENDING (P2P LENDING)**.

2. FORMULATION OF THE PROBLEM

1. Does the Indonesian Joint Funding Fintech Association (AFPI) have the authority to determine the maximum loan interest limit in P2P Lending business activities?
2. Does the maximum loan interest rate determined by AFPI included in the type of unfair competition as referred to in Law No. 5 of 1999 concerning The Ban Monopolistic Practices and Unfair Business Competition (“**Competition Law**”)?

3. METHODOLOGY

Based on the title raised by the author, the type of research used is normative legal research. This paper is deductive-prescriptive with secondary legal material, especially OJK law, competition law, POJK 77/2016.

4. RESULT

(1) The Authority of AFPI in Determining The Maximum Loan Interest Limit in P2P Lending Business Activities

The loan interest rate is the price or cost of the loan in the form of an interest rate expressed in percent and within a certain period of time for loanable funds.[4] Interest based on Article 1767 of the Indonesia Civil Code is divided into two, namely interest in the agreement and interest based on the law. Interest in the agreement is determined based on the agreement of both parties and must be determined in writing. Interest according to the law is determined in the article, which is 6% per year.

FP2PL uses a loan agreement as the basis for the agreement. In a loan agreement, the interest rate is agreed or determined by both parties, namely the lender and the recipient of the loan. However, in FP2PL the loan interest rate is not determined by lenders and borrowers but is determined by the organizer. Because in the FP2PL implementation system the organizer is given the right to be able to determine the amount of interest on the loan to be offered on his service / platform. This means that although the agreement used in this case is a loan agreement, the user must agree on an offer set by the organizer.

In practice, the lending rate limits determine the economic and financial conditions in the country. The amount of the loan interest limit is determined by an organ / government agency that is authorized. As in the Bank sector, Bank Indonesia based on the Bank Indonesia Act is the authorized agency in determining the lending rate limit in the banking industry. Therefore, in this case the authority to determine the amount of the loan interest limit is the OJK's.

Authority (formal power) is a right owned by an official or state body whose acquisition and use is regulated in law to act in the context of carrying out its functions and duties.[5] Philipus M. Hadjon stated that every government action was suggested to have to rely on legitimate authority.[6] There are 3 types of authority seen from the sources obtained by the authority, namely:

1) Attributive authority

Pursuant to Article 12 of Law No. 30 of 2014 concerning Government Administration (“**Government Administration Law**”), said that attributive authority is authority that is obtained directly from the editorial of the article in the provisions of legislation that is new or has

no precedence or the authority is attached to a position owned by the government or a state agency or agency in carry out their duties based on the authority established by the legislators.

- 2) **Delegative Authority**
Delegative authority is the authority of a government body and / or official (delegator) delegated to other government agencies and / or officials. This authority comes from attributive authority. The delegated authority cannot be exercised anymore.[7] The authority of a delegation can be sub-delegated again to the sub-delegate.[8] Provisions for sub-delegation apply mutatis mutandis to delegation provisions. The delegation's authority has the following conditions:
 - a) Delegators can no longer use the authority that has been delegated;
 - b) Delegation can only be carried out if there are provisions that govern it in statutory provisions;
 - c) Delegation cannot be carried out on a staffing hierarchy relationship;
 - d) Delegators can ask for clarification regarding the exercise of the authority given;
 - e) Delegators provide instructions regarding the use of that authority.
- 3) **Mandate authority**
Mandate authority is the authority of governmental organs which is permitted to be carried out by other organs / agencies (mandates) on behalf of the mandate giver.[9] There are several elements of the mandate as follows:[10]
 - a) Mandates are given in the staffing hierarchy;
 - b) Mandates only act for and on behalf of the mandator;
 - c) The mandator can still use his authority when his mandate has ended;
 - d) The mandator is obliged to give instructions (explanations) to the mandator and has the right to request an explanation of their implementation;
 - e) Responsibility for the exercise of authority rests with the mandator.

Based on the above matters, AFPI's authority in determining the amount of the loan interest rate limit in the fintech P2P lending financial services sector does not have a clear source of authority, there are several reasons as follows:

- 1) This authority is attributive, because the authority is inherent in the OJK as a state institution tasked with the FP2PL financial services sector based on Article 6, Article 8, and Article 9 of the OJK Law.
- 2) OJK's authority in determining the amount of the loan interest rate limit cannot be delegated to AFPI because it does not meet the conditions of the delegation's requirements, that is, the delegation must be based on statutory

provisions. Because OJK Law does not regulate OJK's authority in making regulations that can be delegated to other parties. In addition, this is also not in accordance with Article 13 of the Government Administration Law, one of which states that the delegation is given to the Government Agency and / or Officer one level below the delegator. Government bodies and / or officials based on the Government Administration Act are elements that carry out governmental functions, both within the government and other state administrators. In this case AFPI is not included in the classification of government agencies and / or officials.

- 3) OJK's authority in determining loan interest rate limits cannot be mandated to AFPI because it does not fulfill the elements of the mandate, that is, the mandate is given in the staffing hierarchy and the mandate acts for and on behalf of the mandator, and in this case AFPI is not part of the internal OJK. In addition, AFPI in determining the amount of the loan interest rate limit is not done on behalf of the OJK, but on behalf of AFPI itself.

So looking at the source of its authority, OJK should have the authority to determine the amount of the loan interest rate limit in the fintech P2P lending financial services sector and AFPI does not have that authority.

(2) AFPI's Actions in Determining The Maximum Limit of Loan Interest in P2P Lending Business Activities are Seen in the Competition Law

Unfair Business Competition occurs when competition between business actors in carrying out production and / or marketing activities of goods and / or services conducted in a dishonest manner, is against the law or impedes business competition.[11] Business Competition Law, divides unfair business competition into 3 forms, namely prohibited agreements, prohibited activities, and dominant positions. Pricing Agreement is a form of prohibited agreement, based on Article 5 of the Business Competition Law, Pricing is an agreement whereby a business actor and a competing business actor agree to set prices for goods or services that must be paid by consumers or customers in the same relevant market.

Behavior is one form of collusion,[12] thus setting a price comes from an agreement. Collusion in this situation aims to have companies in the same market agree and coordinate their actions aimed at eliminating or hampering competition. Coordination in collusion is usually used to agree on several things, namely the agreement of a certain price that is not obtained through the competition mechanism and the implementation of the agreement.

An act included in the category of an unfair business competition act in a business activity requires proof of the elements of the article that have been violated. KPPU in PERKOM Number 4 of 2011 has described the elements in Article 5 of the Business Competition Law, as follows:

- a) Elements of Entrepreneur
The provisions of Article 1 number 5 of the Competition Law explain that a Entrepreneur is an individual person or company, in the form of legal or non-legal entity established an domiciled or engaged in activities within the legal territory of the Republic Indonesia, conducting various kind of business activities in economic sector through contracts, both individually or collectively. AFPI is an association consisting of several business actors domiciled in the jurisdiction of the Unitary Republic of Indonesia and each independently engages in business activities in the FP2PL industry.
- b) Elements of the Contract
Contract according to Article 1 number 7 of the Competition Law is an action by one or more entrepreneurs to bind themselves with one or more other entrepreneurs under any name, either made in writing or not. In this case, the AFPI in its code of ethics stipulates the maximum limit of loan interest rates in FP2PL business activities is 0.8% per day. Business actors in these business activities are bound or obliged to follow the loan interest rate determined by the AFPI.
- c) Elements of Business Competitor
Business Competitor is another business actor that is in the same relevant market. Explanation from the relevant market can be seen in Article 1 number 10 of the Business Competition Law, namely markets related to the range of certain marketing area of the entrepreneurs for the same kind of or type of goods and/or services or substitutes of the said goods and/or services. As explained earlier, AFPI consists of several business actors in the FP2PL industry.
- d) Market Price Elements
Based on *Komisi Perngawas Persaingan Usaha* ("KPPU") No. 4 of 2011 ("PERKOM 4/2011"), prices are costs to be paid in a transaction of goods and/or services according to an agreement between the parties in the market concerned. According to Mr. M. Zulfirmansyah in his interview, the interest rate is the price that must be paid by consumers for loans. The FP2PL organizer company determines the amount of loan interest that must be paid by the consumer (loan recipient) in return for the loan given. The code of ethics created by AFPI regulates that the maximum loan interest rate in the FP2PL market is 0.8% per day.

- e) Goods and / or Services Elements
Based on Article 1 number 17 of the Business Competition Law, service is any service in the form of work or performance traded in the society to be used by consumers or entrepreneurs. The line of business carried out by business actors or organizers in this case is online financial services.

Therefore, the AFPI's act in determining the amount of the loan interest rate limit in FP2PL business activities has fulfilled the elements in Article 5 of the Competition Law, so it can be said that AFPI has carried out an unfair business act, namely Pricing (Fixed Pricing).

PERKOM 4/2011, KPPU mentions several general forms of price fixing actions that are included in violation of Article 5 of the Competition Law, namely an agreement not to sell if the agreed price is not met. In this case, companies that want to try in the FP2PL market must join the AFPI. One of the things that must be done is to agree and abide by the AFPI code of ethics, if the company does not agree with this matter, the company cannot conduct business activities in the FP2PL Market. This includes actions prohibited in the Competition Law, namely the barrier of entry.

Barrier of entry is an act that prevents companies from entering certain business fields. Mr. M. Zulfirmansyah as Director Economic of KPPU explained, that the determination of the upper limit tariff as happened in this case can indeed protect consumers, but this can lead to the emergence of a barrier of entry for companies that want to enter the FP2PL market. Such obstacles are not in accordance with the spirit of the Business Competition Law, which provides equal protection for every business actor in an effort to promote fair business competition.

He gave an example that without setting the upper limit tariff, there will be many companies that enter the market. These companies will compete to survive in the market. The company that will survive is the company whose offer is the most acceptable to consumers. So, without setting the upper limit tariff, consumers or the public can choose their own more profitable offer. In addition, welfare (prosperity) will increase. prosperity will increase because companies will compete with each other and innovate in order to survive in an increasingly stringent business competition. It is also one of the passions in the Business Competition Law, namely the acceleration of economic development in an effort to improve general welfare.

5. CONCLUSION

Based on studies that have been done and based on expert opinion, the theories put forward, then a conclusion can be drawn as follows:

1. AFPI has no authority to determine the amount of the loan interest rate limit in the FP2PL industry, due to the following reasons: first, the authority is attributively owned by OJK as a state institution tasked with conducting the FP2PL financial services sector based on the OJK Law. Second, the authority of the OJK to determine the amount of the loan interest rate limit cannot be delegated to AFPI, because it does not meet the conditions as a delegable authority, that is, the delegation must be based on statutory provisions and the delegation can only be given to government agencies and / or officials regulated in the Government Administration Law. Third, the mandate requirements in the Government Administration Act require that the mandate be given in employment relations and the mandate acts for and on behalf of the mandator. Which in this case, the OJK Law does not regulate that the authority can be delegated to other parties and AFPI is not a body and / or government official or an internal part of the OJK. In addition, AFPI in determining the amount of the loan interest rate limit does not act for and on behalf of the OJK.
2. Determination of the amount of the loan interest rate limit carried out by AFPI has fulfilled the fixed pricing element as stipulated in Article 5 of the Business Competition Law. AFPI is an association of business actors in the FP2PL market, where the business actors agree to establish a code of ethics that applies to all business actors in the said business activities. One of the things regulated in the code of conduct is the loan interest rate limit in FP2PL business activities. All business actors are bound to implement the code of ethics. So that AFPI's actions are included in the fixed pricing agreement. In addition, sanctions for violations of the code of conduct may result in expulsion from AFPI membership, which can result in the revocation of business licenses from business actors. (barrier of entry). Where this is not in accordance with the equality of rights between business actors as referred to in the Business Competition Law. Based on POJK 77/2016 and an explanation delivered by OJK in an interview, stating that one of the requirements for doing business in the FP2PL market is to become a member of the AFPI, then this AFPI action could also create obstacles for potential business actors to enter the FP2PL market (barrier of entry). Where this is not in accordance with the equality of rights between business actors as referred to in the Business Competition Law.

6. SUGGESTION

Based on the conclusion of the author above, the suggestions that can be given by the author are as follows:

1. OJK as a functioning and authorized institution in the operation of the financial services sector regulation and supervision system, should be the party that sets the loan interest rate limit in P2P lending fintech business activities, not AFPI. Because other than the association does not have the authority to do so, if the association regulates it, it can lead to allegations of a conflict of interest in its arrangement.
2. The Government in making a policy, in addition to paying attention to the interests of consumers, must also pay attention to the interests of business actors and prospective business actors and always maintain fair business competition. Because with the stipulation that the organizer is obliged to join in the association and the association makes a policy that applies to all business actors regarding the loan interest rate limit which is the price in P2P lending fintech business activities. In addition, there are also sanctions for violations of the determination made by the association, which can be revoked business license so that unfair business competition practices can occur that hamper the rate of competition.
3. KPPU as one of the authority of institutions in the world of competition in Indonesia is advised to conduct an examination of the determination of loan interest rates conducted by AFPI in fintech P2P lending business activities and provide advice or input to other authorized agencies and / or government officials in order to create a competitive climate healthy business.

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