



Information Technology-Based Co-financing Services and Its Implications for the Basic Concepts of Fintech Lending Risk Mitigation

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Abstract. The Financial Services Authority (OJK) issued POJK Number 10/POJK.05/2022 concerning Information Technology-Based Co-Financing Services (POJK LPBBTI) as a fintech lending which is an improvement from POJK Number 77/POJK.01/2016 concerning Money-Lending Services Based on Information Technology (POJK 77/2016) in order to accommodate the rapid and more contributive industrial development as well as to provide optimal regulation on consumer protection. One of the improvements to the clause is related to risk mitigation arrangements. The new regulation regarding risk mitigation is clearly regulated so that it aims to develop a financial industry that can encourage the growth of alternative financing, facilitate, and Improving access to finance for public and economic actors through information technology-based financial services. Based on this, the problem was formulated based on the legal implications related to risk mitigation in fintech lending after the promulgation of POJK Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services. This study uses a prescriptive legal method with a legal approach. This study found that regulations related to risk mitigation for fintech lending as regulated in POJK Number 10/POJK.05/2022 have been regulated. So fintech lending has strict guidelines that were previously not clearly regulated in the previous arrangement.

Keywords: Financial Services Authority · Risk Mitigation · Fintech Lending

1 Introduction

Article 33(4) of the 1945 Constitution of the Republic of Indonesia states: “The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.” The formulation of the article shows that the Indonesian economy is not run solely on capitalization based on individual freedom to do business nor is it a system of etatism, in which the state dominates the economy, not citizens either as individuals or together with other citizens. The economic system as referred to in the constitution aims to realize prosperity following the ideals outlined following the theory of the welfare state (Welfare State).

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Referring to the article given by Jimly Asshiddiqie that the article in the 1945 Constitution of the Republic of Indonesia after the amendment contains several sources of prosperity and social welfare, economic actors, the medium/form of business, how to use the business object, and the ultimate goal of the business, namely to achieve shared prosperity in order to improve the social welfare of the community [1].

Economic democracy as a tool for realizing public welfare as referred to in the constitution requires support from various parties and groups, both from the legislative, executive, and/or other bodies empowered to develop laws, regulations and guidelines, not just by business. The regulation creates legal ideals in its implementation, namely realizing legal certainty, justice, and expediency.

Economic development as a pillar of the modern economy began in the era of globalization which was marked by the existence of innovations in financial services that were increasingly diverse and developed rapidly in line with the increasing use of information technology in various fields. Peer-to-peer lending (P2P lending) is a revolutionary way for financial institutions to serve a variety of parties in need of funds. The public's need for funding always increases from time to time, which cannot be fully met by intermediary financial institutions such as banks and non-bank financial institutions that conduct ordinary lending and lending operations. Such financing needs are accelerating along with the growth of SMEs and micro businesses (MSMEs), including the demand for credit or financing for the needs of consumer goods and services. The Financial Services Authority (OJK) noted that credit growth until the end of 2018 reached 12.45 percent annually [2].

Several companies have emerged that deal with financial technology (fintech) or financial technology (fintech). For business players, fintech is expected to simplify transaction chains and reduce operational and capital costs. Consumers, on the other hand, get better service, product variety, and cheaper prices.

As a global phenomenon, fintech has also hit the financial industry in various countries, along with increasing connectivity through information and communication technology, as stated by Piotr Danisewicz [3];

“The growth of the internet and its ability to facilitate disintermediation between users has given rise to more specific P2P activities. The first such activity to become widely adopted (around the turn of the millennium) was peer-to-peer file sharing, where users could connect directly to other users on the network who had similar software by installing the necessary software on their computers.”

One of the big changes brought about by the development of information technology is the economic field. The development of information technology has significantly changed the conventional economic system into a digital one. This digital system allows the business world to conduct transactions using electronic media that offer more convenience, speed, and efficiency. The development lending and lending services using information technology (digital lending) expands alternative financing for the public and the business world, as well as a potential source of income for financial service institutions, including for start-up that becomes business partners. In line with the growth of fintech, several problems such as bad credit, consumer protection, dispute resolution between service providers and consumers, improvement of information security systems, as well

as licensing and registration problems, are still homework that needs to be addressed by business actors and OJK, as an institution. The government is given the authority to make regulations and supervision. Fintech in Indonesia provides services other than lending, namely payments, planning, and capital planning and raising.

Focusing on the development of fintech lending or commonly peer-to-peer lending specified by Indonesian regulations, known as Information Technology Based Lending Services, as defined in POJK Number 77/POJK.01/2016. However, Due to the dynamic development of Fintech lending in Indonesia, regulation of POJK No. 77/POJK.01/2016 on information technology based lending services, there are still many legal voids, especially in risk mitigation arrangements in the implementation of its operations. Therefore, the state's role is needed in realizing or creating policies for the establishment of new laws and regulations to solve problems that were not previously or not regulated in POJK Number 77/POJK.01/2016. In response to this problem, the Financial Services Authority as the institution authorized to make regulations and supervision made a new regulation, namely POJK Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services which has legal implications for revoking POJK Number 77/POJK.01/2016.

Based on the description above, in this study, the legal implications related to risk mitigation in fintech lending will be discussed after the promulgation of POJK Number 10/POJK.05/2022 concerning Information Technology-Based Co-Financing Services.

2 Research Method

This research is normative juridical law research, while what is meant by normative juridical research is legal research that bases its analysis on legislation related to the regulation of fintech lending, which is the focus of the research [4]. The data used are library data obtained from primary legal materials such as laws, Financial Services Authority Regulations, and secondary legal materials such as law books and legal journals. The data of this research was obtained by searching the literature. Furthermore, it is analyzed using a descriptive-analytical approach, a way of analyzing by describing the object under study.

3 Findings and Discussion

Legal Implications related to Fintech Lending After the Enforcement of POJK Number 10/POJK.05/2022 concerning Information Technology-Based Co-Financing Services.

The Financial Services Authority or OJK uses information technology-based lending and borrowing services (LPMUBTI) in regulations regarding fintech lending. The definition of LPMUBTI described in POJK Number 77/POJK.01/2016 The provision of financial services to connect lenders and borrowers to conclude loans and loan agreements directly in Rupiah currency through an electronic system using the Internet.

The development of fintech lending is marked by the discovery of unregulated or unregulated issues under POJK No. 77/POJK.01/2016. Therefore, the OJK as the institution authorized to supervise makes a new regulation, POJK Number 10/POJK.05/2022

as a regulatory renewal in fintech lending. With the new POJK, it is hoped that this will solve problems that were not regulated in the previous POJK.

POJK Number 10/POJK.05/2022 changed the name from the Information Technology-Based Lending and Borrowing Service (LPMUBTI) to the Information Technology-Based Mutual Funding Service (LPBBTI). In the new regulation, LPBBTI defined as the provision of financial services to match providers and recipients of funds for direct conventional or Shariah financing through electronic systems using the Internet.

Anto Prabowo, as the Deputy Commissioner for Public Relations and Logistics stated that the POJK LPBBTI was issued to develop the financial industry that can encourage the growth of alternative financing, facilitate and improve access to funding for the public and business actors through an information technology-based funding service. This POJK is also a refinement of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services (POJK 77/2016) to accommodate the rapid and more contributive industrial development as well as to provide optimal arrangements for consumer protection [5].

The reason for the change in fintech lending is that there is supervision that must be carried out by optimally utilizing information technology to increase effectiveness and efficiency. Information technology support in supervision also accommodates the development of an increasingly complex industry. The very fast development and characteristics of the industry require. A more flexible principle-based regulatory model to accommodate industrial developments. The supervisory approach must also be directed at market conduct by involving industry associations. In addition, transparency of fintech lending to the public also needs to be prioritized so that the public can assess the quality of the industry and providers and increase public trust. Likewise, the development of fintech lending has made borrowing and borrowing less precise. Therefore, it is necessary to make adjustments using a universal term, namely information technology-based co-financing services (LPBBTI). Through this new regulation, it is hoped that the needs of OJK regarding the effectiveness and efficiency of supervision can be optimized. This includes accommodating industry needs so that they can develop optimally, be healthy, and contribute, as well as consumer protection needs for protection [6].

In the latest POJK Fintech P2P Lending there are several regulatory refinements. Some of the substance of the regulatory improvements in the new POJK LPBBTI are as follows [7]:

- a. The LPBBTI operator must be established in the form of a limited liability company with a paid-up capital at the time of establishment of at least Rp25,000,000,000 (twenty five billion rupiah);
- b. The Operator is required to have at least one controlling shareholder (PSP);
- c. The operator must first obtain a business license from the OJK;
- d. Conventional Operators converting to Providers based on Sharia principles are required to obtain approval from OJK;
- e. Prospective main parties (PSP, directors, board of commissioners, and DPS) must obtain OJK's approval before performing any acts, duties and functions as a principal party.;
- f. LPBBTI can be done through productive funding and multipurpose funding;

- g. The maximum limit for funding by each lender and its affiliates is a maximum of 25% of the final funding position at the end of the month;
- h. Providers are required to comply with the provisions on the maximum limit of funding economic benefits;
- i. To support government programs, the operator may cooperate with government agencies to become distribution partners for state securities;
- j. The Operator is required to use an electronic system in carrying out its business activities and must be owned, controlled, and controlled by the operator;
- k. Providers are required to submit funding transaction data to the lending fintech by integrating the Operator's Electronic System into the fintech lending data center;
- l. The Operator must always have equity of at least Rp. 12,500,000,000 (twelve billion five hundred million rupiah);
- m. Operators are required to have at least 2 (two) members of the board of directors;
- n. The organizer must have at least 1 (one) member of the board of commissioners and at most equal to the number of members of the board of directors;
- o. Operators based on sharia principles are required to have at least 1 (one) member of the sharia supervisory board;
- p. Operators are required to have an internal audit unit that is run by at least 1 (one) HR person; and
- q. Licensing applications, applications for approval and reporting are submitted through the OJK data communication network system.

In addition to these points, Risk Mitigation changes have occurred in implementing fintech lending. In the regulation of LPBBTI, risk mitigation is regulated in Article 35 of POJK Number 10/POJK.05.2022, which regulates as follows:

- a. Operators are required to implement effective risk management.
- b. The application of risk management as referred to in paragraph (1) shall at least include:
 - 1) active supervision of the Board of Directors, Board of Commissioners, and DPS;
 - 2) the adequacy of risk management policies and procedures as well as the determination of risk limits;
 - 3) adequacy of risk identification, measurement, control, and monitoring processes, as well as risk management information systems; and
 - 4) comprehensive internal control system.
- c. The Operator is obliged to facilitate risk mitigation for Users.
- d. Activities to facilitate risk mitigation for Users as referred to in paragraph (3), at least:
 - 1) perform a Funding risk analysis proposed by the Fund Recipient;
 - 2) verify User identity and document authenticity;
 - 3) collect the optimally distributed funding;
 - 4) facilitate the transfer of Funding risk; and

- 5) facilitate the transfer of risk on the object of the guarantee if there is the object of the guarantee.
- e. Providers must pay attention to the compatibility between the needs and capabilities of the Fund Recipient.
- f. Further provisions regarding risk management by the operator are stipulated by the Financial Services Authority.

Further explanation Fintech Lending actively oversee the board and the board, and DPS; b. adequacy of risk management policies and procedures and setting of risk limits; c. adequacy of risk identification, measurement, control and monitoring processes and risk management information systems; and D. Comprehensive internal control system. What is meant by “Funding risk analysis” is that the operator performs scoring/assessment of prospective Fund Recipients who apply for funding. Prospective Fund Recipients who meet the criteria to receive funds are presented to prospective Fund Givers for selection/granting of funding. The positions of all potential Fund Recipients are equal or all are eligible to be funded.

The operator cooperates with the electronic certification provider in verifying the User’s identity. To ensure the authenticity of documents, the operator shall examine the truth and authenticity of documents submitted by both the Fund Recipient and the Fund Giver, including if there is collateral in the intended process.

In facilitating the Fund Provider to collect until the Fund is paid, the operator may independently collect the Fund until the Fund is paid or transfer it to a third party for collection. In addition, the operator may also represent the Fund Provider to take action to collect or settle payments to the Fund Recipient. In order to transfer the risk of funding, it can be done through the transfer of the risks arising from the funding carried out by the Provider of Funds. What is meant by “transfer of risk on the object of guarantee” is insuring the object of the guarantee. Another risk mitigation that the Operator can carry out is, among others, when there is collateral in the Funding agreement between the Fund Provider and the Fund Recipient, the operator cooperates with other parties who have the authority to accommodate or hold collateral pursuant to the provisions of Acts and Regulations.

POJK Regulation No. 10/POJK.05/2022 concerning Information Technology-Based Co-Financing Services has clearer and firmer regulations than the fintech, namely POJK No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. POJK Number 77/POJK.01/2016 only regulates Risk Mitigation in general without being explained clearly and straightforwardly so that the organizers can mitigate risk without definite guidelines and regulations. This can be proven through Article 21 POJK 77/POJK.01/2016 which states that “Operators and Users must mitigate risks.” In addition, it can also be seen from the article’s explanation that what is meant by “risk mitigation” means all risks inherent in information technology-based lending and credit services, including operational and credit risks.

This regulation proves that the OJK is not yet serious about regulating risk mitigation in implementing fintech lending. Meanwhile, In this case, the development of society faster than the development of laws and regulations is a matter related to matters that

are not or will not be regulated by laws and regulations, because based on this statement a conclusion can be drawn that statutory regulation cannot regulate all human life completely to allow for a situation in which a country's existing regulations are seen as incomplete and do not ensure legal certainty for its citizens, creating a legal void in society [8].

Fair and regular domestic law can be a concrete tool in society. However, In fact, the existing laws are still inflexible and lag far behind the development of society. This creates confusion (chaos) in society about which rules should be used or applied, and lacks certainty about the rules that apply to regulate things or situations as they arise. For this reason, it is very necessary to have a stable, flexible law that can follow these developments without losing the noble values of nationalism that are following the ideals of the nation's founding fathers [9].

The lack of a legal role in certain circumstances or conditions that do not or do not have rules can result in a Legal uncertainty (Rectsonzekerheid) or the situation of the rule of law in society. This is even deadlier and leads to legal confusion. These are some of the impacts that arise from the existence of a legal vacuum in a country. This results in a perception in the community that if there are no rules, it can be done. This perception will eventually lead to the point of confusion that results in chaos in society because there is no clear reference to the laws governing society regarding future events [10].

POJK Number 10/POJK.05/2022 called POJK LPBBTI as a new regulation that has been in effect since its promulgation on July 4, 2022 and at the same time revoking POJK 77/POJK.01/2016 is the answer to problems regarding risk mitigation in the implementation of fintech lending. The promulgation of POJK LPBBTI as an improvement from the previous POJK has implications for legal certainty regarding risk mitigation arrangements. With clear legal certainty, it is hoped that it will create public interest in the development of the financial industry that can encourage the growth of alternative financing and facilitate and Improving access to finance for public and economic actors through information technology-based financing services.

4 Conclusion

Based on the results of the analysis and description of the concept of fintech lending and its implications after the enactment of POJK Number 10/POJK.05.2022 concerning Information Technology-Based Co-Financing Services (LPBBTI), the regulations are stricter than those of POJK 77/POJK.01/2016 which regulates about risk mitigation. So that POJK Number 10/POJK.05.2022 can be used as a solution to problems that occur due to the legal vacuum caused by POJK Number 77/POJK.01/2016. So that is the implication of risk mitigation arrangements for fintech as regulated in POJK LPBBTI, fintech lending must follow the guidelines for risk mitigation as regulated in Article 35 of POJK 77/POJK.01/2016.

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