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From: Center for Integration of Islamic Thought <icie.uai@gmail.com>
Date: Sat, Aug 29, 2020, 08:57
Subject: Fwd: Permohonan Perbaikan Tulisan
To: <zulkarnen32@gmail.com>

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From: Aries Machmud <aries_machmud@uai.ac.id>
Date: Fri, Dec 13, 2019 at 1:59 PM
Subject: Re: Permohonan Perbaikan Tulisan
To: Center for Integration of Islamic Thought <icie.uai@gmail.com>

waalaikumsalam ok udah aa revisi

From: "Center for Integration of Islamic Thought" <icie.uai@gmail.com>
To: "suparjiachmad" <suparjiachmad@yahoo.com>, "Aris Machmud" <aries_machmud@uai.ac.id>
Sent: Friday, December 13, 2019 11:11:30 AM
Subject: Permohonan Perbaikan Tulisan

Assalaamu'alaikum warahmatullahi wabarakatuh,

Pak Suparji yth,

Pertama-tama kami mohon maaf tidak dapat segera menerbitkan Proceeding karena masih dalam proses editing oleh 2 editor. Satu editor telah merangkumkan seluruh paper yang masuk, sedang satu lagi masih dalam proses. Dari sekian banyak paper yang masuk, ada beberapa yang perlu perbaikan total karena tidak memenuhi syarat publikasi. Karena menunggu koreksi dari mereka, mohon perkenan dari peserta yang lain untuk bersabar.

Berikut disampaikan beberapa koreksi yang perlu diperbaiki dari paper yang Bapak kirimkan.

Semoga dapat diperbaiki dalam waktu dekat.

Terima kasih atas perkenan dan kesabarannya.

Wassalaam

Fwd: Abstracts of Papers The 3rd ICIE

Kotak Masuk



Center for Integration of Islamic Thought

----- Forwarded message ----- From: Center for Integration of Islamic Thought <icie.uai@gmail.com> Date: Tue, Sep 3, 2019 at 4:35 PM Subject: Abstracts



Center for Integration of Islamic Thought

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From: **Ismail Suardi Wekke** <iswekke@gmail.com>

Date: Tue, Sep 3, 2019 at 4:52 PM

Subject: Re: Abstracts of Papers The 3rd ICIE

To: Center for Integration of Islamic Thought <icie.uai@gmail.com>

Dear Committee

Let me do it before the deadline.

Thank you

On 9/3/19, Center for Integration of Islamic Thought <icie.uai@gmail.com> wrote:

> Dear Sir / Madam,

>

> First of all, thank you for joining our conference scientific committee in

> October 2019. We hereby send you abstracts of papers from our conference

> participants. Please make a review and give us suggestions or corrections

> about this abstract. This process is very important to ensure the quality

> of papers presented at the Conference.

>

> And if you don't mind, please complete this review before Friday 6

> September 2019 (05.00 Indonesia time).

>

> Thank you for your understanding and cooperation.

>

> Regards

> Muhammad Ridhwan

>

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> -

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> (021) 727 92753

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Ismail Suardi Wekke

Sekolah Tinggi Agama Islam Negeri (STAIN) Sorong

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<<https://www.scopus.com/authid/detail.uri?authorId=35076859100>>

Profil <<https://scholar.google.com/citations?user=OZwmJ8AAAAJ&hl=en>> Google Scholar

Advisor Mendeley <<https://www.mendeley.com/profiles/ismail-suardi-wekke/>>

ORCID ID <<https://orcid.org/0000-0002-0996-4928>>



BalasTeruskan

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From: **Center for Integration of Islamic Thought** <icie.uai@gmail.com>

Date: Tue, Sep 3, 2019 at 4:35 PM

Subject: Abstracts of Papers The 3rd ICIE

To: <iswekke@gmail.com>, <ismail@stain-sorong.ac.id>

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APPLICATION OF REGULATION AND COMPLETION OF FINTECH DISPUTE IN LEGAL CERTAINTY

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¹Lecturer. Al Azhar University of Indonesia

²Student, Master Program of Al Azhar University of Indonesia

ABSTRACT

Financial Technology (fintech) is developing rapidly compared to its legal arrangements, the benefits of fintech being a solution for financial inclusion for most people who are not access to bank both individuals and MSMEs, the development of the fintech industry has not been in line with the Acts and regulations, as for the formulation of the problem in this paper is How Certainty Act in the Fintech Industry in Indonesia Based on Existing Regulations ?; What about Bank Indonesia Regulations and OJK Regulations in the fintech industry in the P2P Sector ?; How to Settle Disputes in the Fintech Industry in Indonesia. The methodology used is normative juridical approach to the theory of legal certainty, Bank Indonesia Regulation No. 19/12/PBI/2017 concerning financial technology. FSA Regulation Number 77/POJK.01/2016 concerning Borrowing and Lending Services based on Electronic Transactions as legal protection in this fintech industry, but to ensure legal certainty it is necessary to have a legal level at the Act level and dispute resolution through a small court to resolve this fintech dispute.

Keyword : Fintech, Small Court Resolution, Legal Certainty

1. INTRODUCTION

The development of technology in various fields as a result of the development of the 4.0 era encouraged increased applications in the field of financial inclusion (fintech - digital-based financial technology) or an economic industry designed by a company that uses technology to make the financial system more efficient.

Fintech began to be known in the late 1900s and early 2000s where the first time with the concept of direct loans to consumers (peer to peer (P2P)) was initiated by Nepter and Zopa in the UK and in Indonesia developed in 2010 through the Go-Jek company.

Type in Fintech as following: Peer-to-Peer (P2P) Lending, Crowdfunding, Supply Chain Finance, Robo advisor, Blockchain, Information and Feeder Site. but peer to peer landing is more in spotlight lately in Indonesia.

Fintech has two contrast sides on one side is a blessing where people or SMEs who do not have banking access can be served through the application, but on the one hand there are many problems if the risks are not mitigated and can disrupt the financial system at the macro.

Christine Lagarde - IMF Managing Director - there are 1.7 billion adults in the world who do not yet have access to financial services. Fintech can have a large social and economic impact for them and also for the whole member, by working to take advantage of the progress of fintech and continue to mitigate the risks.

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To ensure the fintech industry meets expectations - providing financial inclusion and consumer protection – bank Indonesia release regulation for fintech industri, Bank Indonesia Arrangement number 19/12/PBI 2017 about financial technology. In article 1 point 1 that fintech as criteria as following: a. Innovative; b. Can have an impact on existing financial products, services, technology and / or business models; c. Can provide benefits to the community d. Can be widely used; e. Other criteria set by Bank Indonesia. And supervision by Financial Service Authority (FSA).

Article 2, that the regulation aims to regulate and encourage innovation in finance based on prudent principle and risk analysis and customers protection and to maintaining monetary stability, financial system stability and payment system that is efficient, smooth, safe and reliable.

The Act has not clearly regulated - UU nomor 21 of 2011 – (Ius Constituendum) than FSA release FSA regulation number 77/POJK.01/2016 about landing based information technology. FSA encourages the plan of revision of regulation FSA in the future , where is FSA should be given very broad authority to regulate and supervise the offline and online financial services industry.

The regulatory sandbox approach as a laboratory test will be an instrument to test business models, products, services and technology for not only innovation startups engaged in fintech, but also for financial services institutions such as banks that innovate business processes. This approach was chosen because the rapid development of digital technology cannot be as fast as the rules.

However, the 2016 FSA Regulation is considered unable to accommodate the rampant consumer protection violations that occur in the online loan sector. Besides the many benefits of the emergence of this financial technology that cannot be denied, there are also many legal issues related to this fintech transaction, especially P2P Lending.

Consumer protection in this financial technology is also protected by Act 11 of 2008 concerning Information and Electronic Transactions, Act 8/1999 on Consumer Protection, Act 7 of 2014 concerning Trade, Civil Code, Government Regulation number 82 of 2012 concerning Operation of Electronic Systems and Transactions and regulations other related. Leaving fintech without strengthening the legal and regulatory framework is prone to abuse, manipulation deviations that ultimately disrupt macroeconomic financial system stability. therefore technological regulations must improve proactive regulations to regulate this fintech application. Through this technology regulation a guide is needed to manage this fintech application. For example in Malaysia there are rules for digital capital market services issued in 2019 Capital Markets and Services (Prescriptions of Securities) (Digital Currency and Digital Tokens). And on March 31, 2016, the United States Office of the Comptroller of the Currency (OCC) which declares fintech with risk management and banking business strategies and good governance and complies with Acts and regulations that protect consumer interests.

As stated above, if risk mitigation is not carried out prudently, problems will arise that can harm consumers, as stated in Act no. 8 of 1999 concerning Consumer Protection, "Consumer protection is based on benefits, fairness, balance, security and consumer safety, and legal certainty".

Of the various violations committed by the fintech industry, the FSA has stopped 231 service providers of landing p2p and made sure all of them are unregistered and unlicensed services By February 2019.

To achieve the development of the fintech industry to serve financial inclusion and also for protection, the World Bank and International Monetary Fund (IMF) proposed 12 elements of the Bali Fintech Agenda policy consisting of Supporting the development of fintech: 1. Supporting the development of fintech; 2. Utilizing new technologies to improve financial services; 3. Encourage competition and commit to open, free and tested markets; 4. The need for financial inclusion for everyone and developing financial markets; 5. Monitor changes in the financial system; 6. Adjusting the supervisory policy and practice framework for technological developments and financial system stability; 7. Protect the integrity of the financial system; 8. Adjusting the legal framework to suit the latest developments; 9. Ensuring monetary stability and the domestic financial system; 10. Develop a strong financial and data infrastructure system to obtain sustainable benefits; 11. Encouraging international information cooperation; 12. Improve joint supervision by the international monetary and financial system.

Three question in problem statement as follows: How is Legal Certainty in the Fintech Industry in Indonesia Based on Existing Regulations. How are Bank Indonesia Regulations and FSA Regulations in the fintech industry in the P2P Sector?. How to Disputes Resolution in the Finteh Industry in Indonesia. To answer question above, this research examine with relevant regulation and alternative dispute resolution with proposed small court which is having permanent legal force, the results of the decision have no other legal remedies, the advantage is there is legally certainty.

2. ANALYTICAL FRAMEWORK AND METHODOLOGY

This part is to draw analytical framework and methodology of this research, as follows: this research used legal normative and concept. Act in book not necessarily the same with Act in action. Although the regulation must be based on benefits, fairness, balance, security and consumer safety, so the authors must examine in field. Based on theory Actrence M. Friedman each legal system contain three factor which interconnection each other as follows. saling berkaitan yakni structure, substance and legal culture, and in legal system contain four element, as follows:

1. Explicit Acts or rules of conduct;
2. Mechanism for enforcing Acts;
3. Mechanism for mediating and adjudicating disputes in accordance with Acts;
4. And mechanism for enacting new or changing old Acts.

So in every legal system that will always be found a set of rules called the rule of Act. From the set of rules or rules of the Act, it can be recognized various attitudes that are required, which are allowed, and which are not allowed or prohibited in various situations. Conceptual framework in this research that fintech is financial service with information technology based on digital approach.

3. DISCUSSION

3.1 Legal Certainty in the Fintech Industry in Indonesia Based on Existing Regulations

Bank Indonesia Regulation number 19/12 / PBI 2017 concerning financial technology and FSA Regulation (POJK) Number 77 of 2016 concerning Information Technology Based Lending and Borrowing Services does not guarantee legal certainty because legal actions imposed on registered fintech companies are only in the form of financial penalties and administrative sanctions in the form of license revocation and business suspension as referred to in article 10 paragraph (2) and (3) in the form of: a. written warning; and / or b. deletion from the list of Financial Technology Providers at Bank Indonesia. b. amercement; c. temporary suspension of part or all payment system service activities; and / or d. revocation of license as a Payment System Service Provider. And also through the courts and alternative dispute resolution,

Loan and loan agreements in fintech are the same as ordinary agreements but through internet (digital online), but in principle the same can be analogous to an agreement based on the "principle of freedom of contract" as stipulated in the Civil Code. article 1338 paragraph 1 of the Civil Code: a) make or not make an agreement; b) entered into an agreement with anyone; c) determine the contents of the agreement, its implementation and terms; d) determine the form of an agreement that is written or oral.

3.2 Bank Indonesia Regulations and FSA Regulations in the fintech industry in the P2P Sector

Bank Indonesia Regulation Number 19/12 / PBI 2017 concerning Financial Technology and FSA Regulation Number 77 / POJK / 2016 concerning Information Technology Based Lending and Borrowing Services, is a regulation issued to support transactions based on financial technology for financial inclusion that is not yet bankable either individuals and MSMEs and consumer protection from misuse of financial technology that can harm consumers.

P2P consumer legal protection is regulated through Act 21/2011 on FSA, Act No. 11/2008 on Information and Electronic Transactions (ITE), Act No. 8/1999 on Consumer Protection, Act No. 7/2014 on Trade, Act No. 8/2010 on Money Laundering, Act No. 40/2007 concerning Limited Liability Companies, Act No. 25/1992 concerning Cooperatives, Act No. 30/1999 concerning Arbitration and Alternative Dispute Resolution, Civil Code (Civil Code), and other related regulations.

The forms of violation of fintech companies are also of a similar type such as intimidative billing, to the dissemination of personal data of consumers, even other modes of diversity continue to emerge due to the weakness of legal regulations governing the provisions of the fintech industry.

It is expected that the Government will enact a Personal Data Protection Act with the aim that the FSA can protect customer data from misuse by illegal fintech. So that in the future to overcome fintech crime can have more legal certainty in addition to being able to provide justice for all people.

In Indonesia a fintech company which commits an offense by leaking consumer personal data may be subject to Article 32 paragraph 3 in conjunction with Article 48 of Act No. 11 of 2008 with a maximum imprisonment of 10 years and or a maximum fine of Rp. 5 billion, and Act no. 19 of 2016 concerning Information and Electronic Transactions (ITE) articles 45A and 45B as a change to Act No. 11 of 2008.

Further concerns regarding the threat of fintech companies to customers can be charged with Article 368 of the Criminal Code (KUHP) and Article 29 in conjunction with Article 45B of the ITE Act. Fintech companies can also be charged under Article 55 of the Criminal Code concerning fraud because they are involved in criminal acts. If the criminal act takes the form of physical violence and the taking of goods, it may be subject to sanctions in accordance with KUHP Article 170, Article 351, Article 368 Paragraph 1, Article 335 Paragraph 1 after the decision of the Constitutional Court.

Many fintech companies in Indonesia are in the spotlight in the form of peer to peer lending (fintech P2P) financial technology, which is fintech, which offers loans directly to consumers or recipients of loans at fixed interest rates. But in reality, many financial technology companies set very high interest rates outside the provisions, so that it can harm consumers. The online loan service industry or peer to peer lending (fintech P2P) financial technology as an alternative to conventional financial services still has a long way to go because of various legal problems inherent in this industry - problematic billing practices to the misuse of personal data by fintech companies to their customers - especially illegal fintech companies not registered or licensed by the Financial Services Authority (FSA) are suspected of committing various violations.

3.3 Disputes Resolution in the Fintech Industry in Indonesia

Dispute resolution in the fintech industry is analogous to a civil case because it relates to freedom of contract - so the realm of civil law - which can be resolved through litigation (court) and non-litigation, but business people prefer to take non-litigation through Alternative Dispute Resolution (APS) or Alternative Dispute Resolution (ADR). Dispute resolution through the APS has been regulated by Act. 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution, Article 29 letter e FSA Regulation number 77 / POJK.01 / 2016 also mandates that the settlement of user disputes must be carried out simply, quickly and at affordable costs.

The form of dispute resolution can be through a small court that is simple and affordable and guarantees legal certainty because the nature of the decision is final and binding. Because of the existing

regulations and legal actions taken for abusing fintech, it is only an administrative sanction for those who are registered, while those who are not registered do the blocking of the fintech company through cooperation with the Ministry of Communication and Information, but it is not certain that the blocked fintech can change form, because of the ease of making the application. So it does not cause a deterrent effect, so it cannot guarantee legal certainty and justice for the community.

For this reason, regulations at the same level are required, especially concerning and related to fraud or online crime (fintech). FSA Regulation Number 1 / POJK.07 / 2013 concerning Consumer Protection of the Financial Services Sector as well as the Financial Services Authority Circular Letter Number 2 / SEOJK.07 / 2014 concerning Services and Settlement of Consumer Complaints to Financial Service Business Actors through the Consumer Dispute Resolution Board (BPSK).

4. CONCLUSION

Bank Indonesia Regulation number 19/12 / PBI 2017 concerning financial technology and FSA Regulation (POJK) Number 77 of 2016 concerning Information Technology Based Lending and Borrowing Services does not guarantee legal certainty given the sanctions applied only to registered finteches and the sanctions are administrative in nature. Whereas for matters relating to criminal offenses as if untouched - examples of leaking personal data of borrowers, use of borrower data, intimidative billing and sexual harassment and many other violations concerning the technology-based financial industry, are very urgent there must be laws concerning the digital-based financial industry and the formation of a small court (small court) that is final and binding to resolve digital disputes. Because P2P loan transactions are small compared to banking transactions where the individual loan value is 2 million to 2 billion, there needs to be a global legal framework considering the digital-based financial industry is cross-jurisdictional, as stated in the 12 elements of the Bali Fintech Agenda, because it is realized or not development This fintech is happening all over the world.

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Serfiyani Cita Yustisia, Hariyani Iswi (2017) “Perlindungan Hukum dan Penyelesaian Sengketa Bisnis Jasa-PM Tekfin, Jurnal Legilasi Indonesia”, Vol. 14 No. 03 - September 2017 0: 347, accessed at July 26th, 2019

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APPLICATION OF REGULATION AND COMPLETION OF FINTECH DISPUTE IN LEGAL CERTAINTY

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¹Lecturer, Al Azhar University of Indonesia

²Student, Master Program of Al Azhar University of Indonesia

ABSTRACT

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1. INTRODUCTION

The development of technology in various fields as a result of the development of the 4.0 era encouraged increased applications in the field of financial inclusion (fintech - digital-based financial technology) or an economic

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The rest (content) is accepted.

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⁴ Oseni Umar A. Ali S. Nazim, (2019) *Op. cit* hal. :3

⁵ Serfiyani Cita Yustisia, Hariyani Iswi, (2017): 347

⁶ Peraturan Bank Indonesia Nomor 19/12/PBI/2017 Tentang Penyelenggaraan Teknologi Finansial Bank Indonesia adalah lembaga negara yang independen dalam melaksanakan tugas dan wewenangnya, bebas dari campur tangan pemerintah dan atau pihak-pihak lainnya, kecuali untuk hal-hal yang secara tegas diatur dalam UU Bank Indonesia. Penambahan frasa “dalam melaksanakan tugas dan kewenangnya” menunjukkan dinamika desain independensi Bank Indonesia yang ditentukan oleh substansi pengaturan dalam UU Bank Indonesia. Salah satu bentuk konsekuensi pemberian independensi kepada Bank Indonesia adalah diberikannya kewenangan kepada Bank Indonesia untuk mengatur atau membuat/menerbitkan peraturan yang merupakan pelaksanaan undang-undang. Keleluasaan dalam mengatur ini merupakan salah satu perwujudan kemandirian yang dimiliki oleh Bank Indonesia. Selain diberi kewenangan untuk mengatur atau membuat/menerbitkan peraturan, Bank Indonesia juga diberi keleluasaan dalam mengatur struktur, kepegawaian, keuangan, dan bahkan penggajian bagi Gubernur, Deputi Kemandirian tidak hanya sebatas pembentukan peraturan perundang-undangan saja, tetapi juga diberi kemandirian dalam menentukan dan mengatur organisasinya. Sejak pemberlakuan UU 21

b. Can have an impact on existing financial products, services, technology and / or business models; c. Can provide benefits to the community d. Can be widely used; e. Other criteria set by Bank Indonesia.⁷ And supervision by Financial Service Authority (FSA).

Article 2, that the regulation aims to regulate and encourage innovation in finance based on *prudent* principle and risk analysis and customers protection and to maintaining monetary stability, financial system stability and payment system that is efficient, smooth, safe and reliable.⁸

The Act has not clearly regulated - UU nomor 21 of 2011 – (*Ius Constituendum*) than FSA release FSA regulation number 77/POJK.01/2016 about landing based information technology. FSA encourages the plan of revision of regulation FSA in the future⁹, where is FSA should be given very broad authority to regulate and supervise the offline and online financial services industry.¹⁰

The regulatory sandbox approach as a laboratory test will be an instrument to test business models, products, services and technology for not only innovation startups engaged in fintech, but also for financial services institutions such as banks

tahun 2011 tentang Otoritas Jasa Keuangan, tugas dan kewenangan BI dalam pengaturan dan pengawasan perbankan dialihkan kepada OJK. OJK juga mengambil tugas dan kewenangan Bapepam-LK di bidang pengaturan dan pengawasan pasar modal, asuransi, dana pensiun, lembaga pembiayaan dan lembaga jasa keuangan lain. OJK adalah lembaga negara independen yang memiliki wewenang untuk mengatur dan mengawasi industri jasa keuangan. Pasal 5 dan Pasal 6 UU 21 tahun 2011 menyatakan OJK berfungsi menyelenggarakan sistem pengaturan dan pengawasan yang terintegrasi terhadap keseluruhan kegiatan di dalam sektor jasa keuangan.

⁷ Riadi, Ade Bagus, (2018)

⁸ Setiawan Heri, Girindra Mutiara, Evangelista Octavianna,(2018),” Aspek Hukum Fintech di Indonesia: Regulasi Startup FinTech oleh BI dalam Pelarangan Perkembangan Penggunaan Bitcoin di Indonesia (AILRC)”, April 2nd 2018, accessed at July 26th, 2019

⁹ Suheriadi,(2019) “OJK Ingin Regulasi Fintech Dibentuk Undang-Undang”, <http://infobanknews.com/ojk-ingin-regulasi-fintech-dibentuk-undang-undang/>, jan 23rd 2019, accessed at July 26th, 2019

¹⁰ Serfiyani Cita Yustisia, Hariyani Iswi (2017)” Perlindungan Hukum dan Penyelesaian Sengketa Bisnis Jasa-PM Tekfin, Jurnal Legilasi Indonesia”, Vol. 14 No. 03 - September 2017 0: 347, accessed at July 26th, 2019

that innovate business processes. This approach was chosen because the rapid development of digital technology cannot be as fast as the rules.

However, the 2016 FSA Regulation is considered unable to accommodate the rampant consumer protection violations that occur in the online loan sector. Besides the many benefits of the emergence of this financial technology that cannot be denied, there are also many legal issues related to this fintech transaction, especially P2P Lending.¹¹

Consumer protection in this financial technology is also protected by Act 11 of 2008 concerning Information and Electronic Transactions, Act 8/1999 on Consumer Protection, Act 7 of 2014 concerning Trade, Civil Code, Government Regulation number 82 of 2012 concerning Operation of Electronic Systems and Transactions and regulations other related. Leaving fintech without strengthening the legal and regulatory framework is prone to abuse, manipulation deviations that ultimately disrupt macroeconomic financial system stability. therefore technological regulations must improve proactive regulations to regulate this fintech application. Through this technology regulation a guide is needed to manage this fintech application. For example in Malaysia there are rules for digital capital market services issued in 2019 Capital Markets and Services (Prescriptions of Securities) (Digital Currency and Digital Tokens). And on March 31, 2016, the United States Office of the Comptroller of the Currency (OCC) which declares fintech with risk management and banking business strategies and good governance and complies with Acts and regulations that protect consumer interests.¹²

As stated above, if risk mitigation is not carried out prudently, problems will arise that can harm consumers, as stated in Act no. 8 of 1999 concerning Consumer Protection, "Consumer protection is based on benefits, fairness, balance, security and consumer safety, and legal certainty".

¹¹ Heriani, Novia, (2019) *Persoalan Perlindungan Konsumen di Industri Fintech*, Waspada Fintech Ilegal, March 27th, 2019, accessed at July 29th, 2019

¹² Oseni Umar A. Ali S. Nazim, (2019), *Op. cit* hal. :10

Of the various violations committed by the fintech industry, the FSA has stopped 231 service providers of landing p2p and made sure all of them are unregistered and unlicensed services By February 2019.¹³

To achieve the development of the fintech industry to serve financial inclusion and also for protection, the World Bank and International Monetary Fund (IMF) proposed 12 elements of the Bali Fintech Agenda policy consisting of Supporting the development of fintech: 1. Supporting the development of fintech; 2. Utilizing new technologies to improve financial services; 3. Encourage competition and commit to open, free and tested markets; 4. The need for financial inclusion for everyone and developing financial markets; 5. Monitor changes in the financial system; 6. Adjusting the supervisory policy and practice framework for technological developments and financial system stability; 7. Protect the integrity of the financial system; 8. Adjusting the legal framework to suit the latest developments; 9. Ensuring monetary stability and the domestic financial system; 10. Develop a strong financial and data infrastructure system to obtain sustainable benefits; 11. Encouraging international information cooperation; 12. Improve joint supervision by the international monetary and financial system.¹⁴

Three question in problem statement as follows: How is Legal Certainty in the Fintech Industry in Indonesia Based on Existing Regulations. How are Bank Indonesia Regulations and FSA Regulations in the fintech industry in the P2P Sector?. How to Disputes Resolution in the Finteh Industry in Indonesia. To answer question above, this research examine with relevant regulation and alternative dispute resolution with proposed small court which is having permanent legal force, the results of the decision have no other legal remedies, the advantage is there is legally certainty.

2. ANALYTICAL FRAMEWORK AND METHODOLOGY

¹³ Sumadikara T. Subarsyah, (2019) "Delik hukum – fintech", <https://www.pikiran-rakyat.com/opini/2019/03/14/delik-hukum-fintech>, March 14th, 2019, accessed at July 26th, 2019

¹⁴ Noor, Ahmad Fikri, (2018)

This part is to draw analytical framework and methodology of this research, as follows: this research used legal normative and concept. Act in book not necessarily the same with Act in action. Although the regulation must be based on benefits, fairness, balance, security and consumer safety, so the authors must examine in field. Based on theory Actrence M. Friedman each legal system contain three factor which interconnection each other as follows. saling berkaitan yakni structure, substance and legal culture,¹⁵ and in legal system contain four element, as follows: ¹⁶

1. Explicit Acts or rules of conduct;
2. Mechanism for enforcing Acts;
3. Mechanism for mediating and adjudicating disputes in accordance with Acts;
4. And mechanism for enacting new or changing old Acts.

So in every legal system that will always be found a set of rules called the rule of Act. From the set of rules or rules of the Act, it can be recognized various attitudes that are required, which are allowed, and which are not allowed or prohibited in various situations. Conceptual framework in this research that fintech is financial service with information technology based on digital approach.

3. DISCUSSION

3.1 Legal Certainty in the Fintech Industry in Indonesia Based on Existing Regulations

Bank Indonesia Regulation number 19/12 / PBI 2017 concerning financial technology and FSA Regulation (POJK) Number 77 of 2016 concerning Information Technology Based Lending and Borrowing Services does not guarantee legal certainty because legal actions imposed on registered fintech companies are only in the form of financial penalties and administrative sanctions in the form of license revocation and business suspension as referred to in article

¹⁵ Kusumastuti (2009), "Peranan Hukum dalam Penyelesaian Krisis Perbankan di Indonesia, Jakarta, Rajawali Press: 15-17

¹⁶ Yudho, Winarno dan Tjandrasari, Heri (1987) "Efektivitas Hukum dalam Masyarakat", In *Hukum dan Pembangunan*, February, (accessed July 24, 2017)

10 paragraph (2) and (3) in the form of: a. written warning; and / or b. deletion from the list of Financial Technology Providers at Bank Indonesia. b. amercement; c. temporary suspension of part or all payment system service activities; and / or d. revocation of license as a Payment System Service Provider. And also through the courts and alternative dispute resolution,

Loan and loan agreements in fintech are the same as ordinary agreements but through internet (digital online), but in principle the same can be analogous to an agreement based on the "principle of freedom of contract" as stipulated in the Civil Code. article 1338 paragraph 1 of the Civil Code: a) make or not make an agreement; b) entered into an agreement with anyone; c) determine the contents of the agreement, its implementation and terms; d) determine the form of an agreement that is written or oral.

3.2 Bank Indonesia Regulations and FSA Regulations in the fintech industry in the P2P Sector

Bank Indonesia Regulation Number 19/12 / PBI 2017 concerning Financial Technology and FSA Regulation Number 77 / POJK / 2016 concerning Information Technology Based Lending and Borrowing Services, is a regulation issued to support transactions based on financial technology for financial inclusion that is not yet bankable either individuals and MSMEs and consumer protection from misuse of financial technology that can harm consumers.

P2P consumer legal protection is regulated through Act 21/2011 on FSA, Act No. 11/2008 on Information and Electronic Transactions (ITE), Act No. 8/1999 on Consumer Protection, Act No. 7/2014 on Trade, Act No. 8/2010 on Money Laundering , Act No. 40/2007 concerning Limited Liability Companies, Act. No. 25/1992 concerning Cooperatives, Act. No. 30/1999 concerning Arbitration and Alternative Dispute Resolution, Civil Code (Civil Code), and other related regulations.

The forms of violation of fintech companies are also of a similar type such as intimidative billing, to the dissemination of personal data of consumers, even other modes of diversity continue to emerge due to the weakness of legal regulations governing the provisions of the fintech industry.

It is expected that the Government will enact a Personal Data Protection Act with the aim that the FSA can protect customer data from misuse by illegal fintech. So that in the future to overcome fintech crime can have more legal certainty in addition to being able to provide justice for all people.

In Indonesia a fintech company which commits an offense by leaking consumer personal data may be subject to Article 32 paragraph 3 in conjunction with Article 48 of Act No. 11 of 2008 with a maximum imprisonment of 10 years and or a maximum fine of Rp. 5 billion, and Act no. 19 of 2016 concerning Information and Electronic Transactions (ITE) articles 45A and 45B as a change to Act No. 11 of 2008.

Further concerns regarding the threat of fintech companies to customers can be charged with Article 368 of the Criminal Code (KUHP) and Article 29 in conjunction with Article 45B of the ITE Act. Fintech companies can also be charged under Article 55 of the Criminal Code concerning fraud because they are involved in criminal acts. If the criminal act takes the form of physical violence and the taking of goods, it may be subject to sanctions in accordance with KUHP Article 170, Article 351, Article 368 Paragraph 1, Article 335 Paragraph 1 after the decision of the Constitutional Court.

Many fintech companies in Indonesia are in the spotlight in the form of peer to peer lending (fintech P2P) financial technology, which is fintech, which offers loans directly to consumers or recipients of loans at fixed interest rates. But in reality, many financial technology companies set very high interest rates outside the provisions, so that it can harm consumers. The online loan service industry or peer to peer lending (fintech P2P) financial technology as an alternative to conventional financial services still has a long way to go because of various legal problems inherent in this industry - problematic billing practices to the misuse of personal data by fintech companies to their customers - especially Illegal fintech companies not registered or licensed by the Financial Services Authority (FSA) are suspected of committing various violations.

3.3 Disputes Resolution in the Finteh Industry in Indonesia

Dispute resolution in the fintech industry is analogous to a civil case because it relates to freedom of contract - so the realm of civil law - which can be resolved through litigation (court) and non-litigation, but business people prefer to take non-litigation through Alternative Dispute Resolution (APS) or Alternative Dispute Resolution (ADR). Dispute resolution through the APS has been regulated by Act. 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution, Article 29 letter e FSA Regulation number 77 / POJK.01 / 2016 also mandates that the settlement of user disputes must be carried out simply, quickly and at affordable costs.

The form of dispute resolution can be through a small court that is simple and affordable and guarantees legal certainty because the nature of the decision is final and binding. Because of the existing regulations and legal actions taken for abusing fintech, it is only an administrative sanction for those who are registered, while those who are not registered do the blocking of the fintech company through cooperation with the Ministry of Communication and Information, but it is not certain that the blocked fintech can change form, because of the ease of making the application. So it does not cause a deterrent effect, so it cannot guarantee legal certainty and justice for the community.

For this reason, regulations at the same level are required, especially concerning and related to fraud or online crime (fintech). FSA Regulation Number 1 / POJK.07 / 2013 concerning Consumer Protection of the Financial Services Sector as well as the Financial Services Authority Circular Letter Number 2 / SEOJK.07 / 2014 concerning Services and Settlement of Consumer Complaints to Financial Service Business Actors through the Consumer Dispute Resolution Board (BPSK).

4. CONCLUSION

Bank Indonesia Regulation number 19/12 / PBI 2017 concerning financial technology and FSA Regulation (POJK) Number 77 of 2016 concerning Information Technology Based Lending and Borrowing Services does not guarantee legal certainty given the sanctions applied only to registered finteches

and the sanctions are administrative in nature . Whereas for matters relating to criminal offenses as if untouched - examples of leaking personal data of borrowers, use of borrower data, intimidative billing and sexual harassment and many other violations concerning the technology-based financial industry, are very urgent there must be laws concerning the digital-based financial industry and the formation of a small court (small court) that is final and binding to resolve digital disputes. Because P2P loan transactions are small compared to banking transactions where the individual loan value is 2 million to 2 billion, there needs to be a global legal framework considering the digital-based financial industry is cross-jurisdictional, as stated in the 12 elements of the Bali Fintech Agenda, because it is realized or not development This fintech is happening all over the world.

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