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# APPLICATION OF REGULATION AND COMPLETION OF FINTECH DISPUTE IN LEGAL CERTAINTY

*by* Suparji Ahmad

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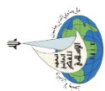
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**PROCEEDING**  
The 3<sup>rd</sup> International Conference on Islamic Epistemology  
**FINANCIAL TECHNOLOGY (FINTECH)  
ON THE PERSPECTIVE OF LAW  
AND SYARIAH ECONOMY**



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# PROCEEDING

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THEME:

“Financial Technology (FINTECH) On The Perspective Of Law And Syariah Economy”

Jakarta, 8 October 2019



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# PROCEEDING

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Theme:

*“Financial Technology (FINTECH)  
On The Perspective of Law and Syariah Economy”*

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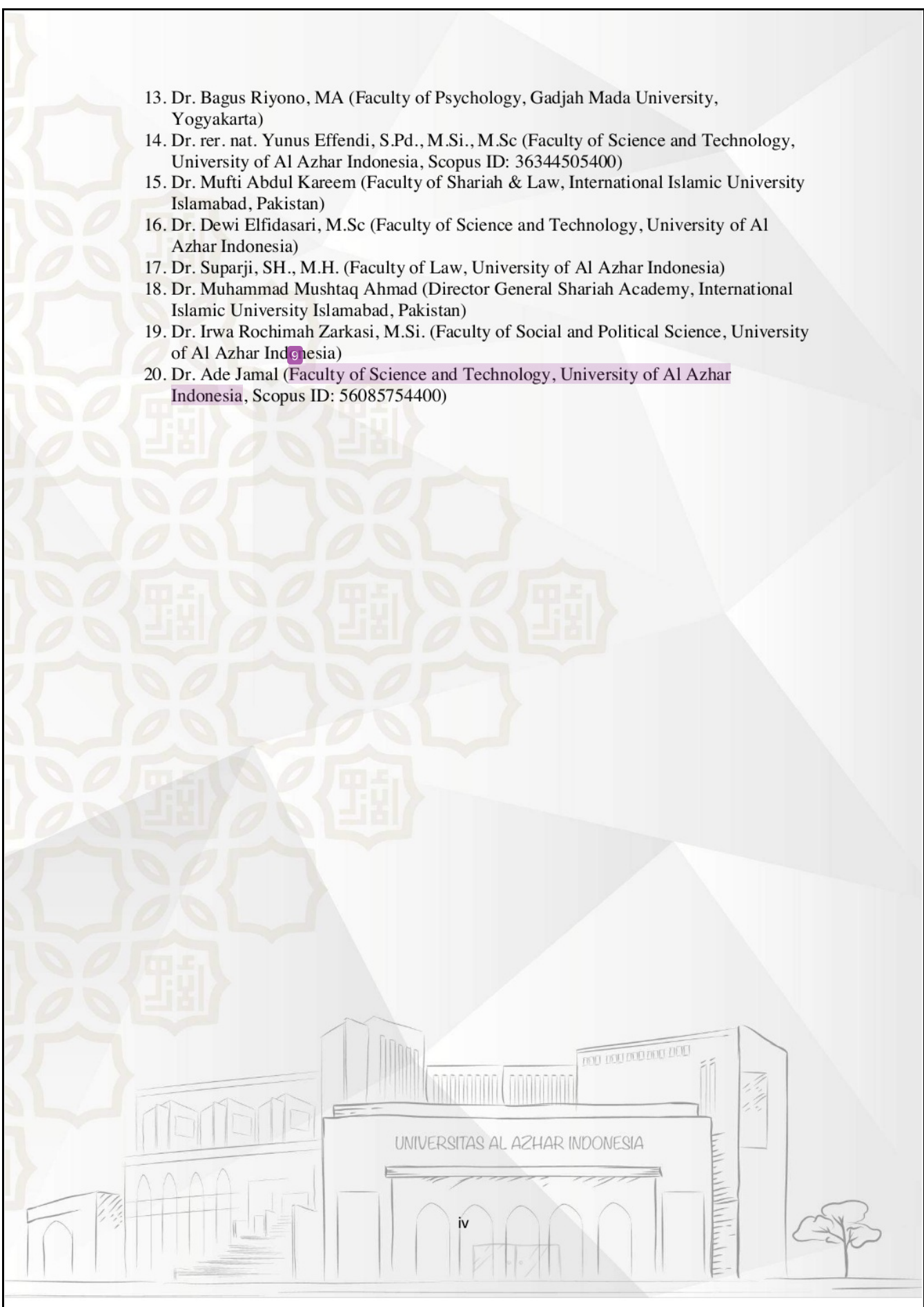
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## PREFACE

First of all, we would like to thank to Allah SWT. as we all know, this 3<sup>rd</sup> International Conference on Islamic Epistemology (ICIE 2019) has been held on 8 October 2019 in the Auditorium Arifin Panigoro University Al-Azhar of Indonesia, located at Jakarta, Indonesia.

This Third International Conference on Islamic Epistemology is conducted through the cooperation between Center for Islamic Integration on Scientific Paradigm, University of Al-Azhar Indonesia (PII-MKU) and the International Institute of Islamic Thought (IIIT) with the basis of similar mission in developing Islamic epistemology into scientific paradigm. The first symposium which has also been conducting through the cooperation of PII-MKU and IIIT as the first program and it has used the theme Islamic epistemology from the perspective of modern scientific paradigm.

We have received more than 32 abstracts. The paper selection process was based on full paper submissions. We thank to all authors who have contributed and participated in presenting their works at this conference. We also gratefully acknowledge the important review supports provided by the scientific members of the program committee. Their efforts were crucial to the success of the conference.

More than 300 persons from Indonesia, Australia, and Malaysia and some ambassadors from various countries have been participated in this conference. About 25 presentations including 6 invited talks were presented during the conference. From 32 abstracts submitted during the conference, 20 papers were accepted for publication after peer reviews.

We would like to express our deepest gratitude and honor to Dr. Habib Chirzin as the co Chairman of IIIT Indonesia Chapter. Also we would like to express our respectful appreciation to all speakers, particularly to Keynote Speakers, HE. Mr. Ibrahim Ali Shoukry from Islamic Development Bank (IDB) and Wimboh Santoso, S.E., M.Sc., Ph.D from Commissioner Board of OJK Indonesia, also Prof. Dr. Sonny Zuhuda from International Islamic University Malaysia at Kuala Lumpur Malaysia who has presented "Financial Technology Regulated System and Its Benefit for the Maslahat of Ummah", and also to the speaker, Mr. Sajid Bokhari from National Australia Bank Limited, Australia, who has presented "Fintech Opportunities for the Halal Industry" and also Dr. Sapta Nirwandar from the Indonesia Halal Lifestyle Center, Indonesia who has presented under the topic "Halal Lifestyle in the Era of Financial Technology", and also to Mr. Mohd. Yazrie bin Mohd. Shukri as entrepreneur and Founder YAZ Venture who has presented under the topic "Industrial Revolution 4.0: A Wake Up (and alarming) Call For The Ummah".

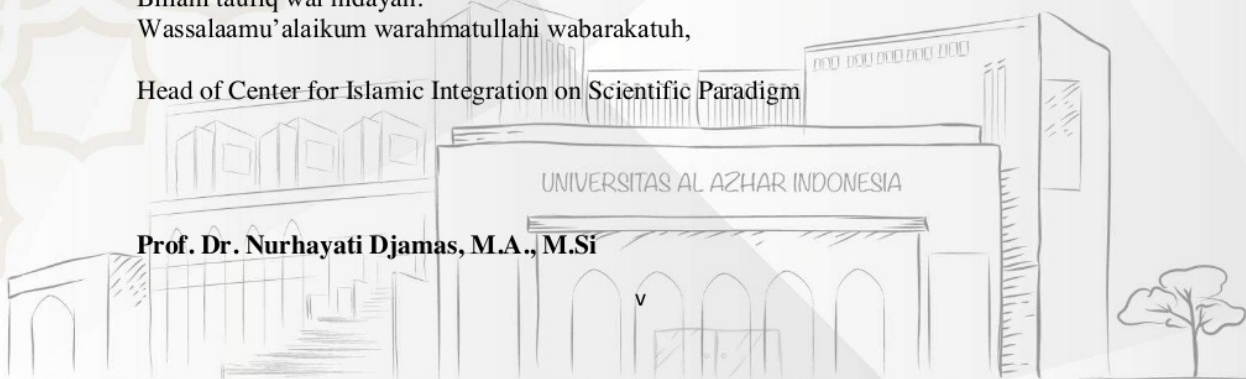
Finally, we also deliver our gratitude to all who have supported this conference. Thank to all sponsors, all participants, our Rector, all of civitas academica UAI and to all of committees who have assisted the success of this conference.

Billahi taufiq wal hidayah.

Wassalaamu'alaikum warahmatullahi wabarakatuh,

Head of Center for Islamic Integration on Scientific Paradigm

**Prof. Dr. Nurhayati Djamas, M.A., M.Si**





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## APPLICATION OF REGULATION AND COMPLETION OF FINTECH DISPUTE IN LEGAL CERTAINTY

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### 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.

**Keywords:** Fintech, Small Court Resolution, Legal Certainty

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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 industry designed by a company that uses technology to make the financial system more efficient.<sup>1</sup>

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

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<sup>1</sup> Oseni Umar A. Ali S. Nazim,(2019), "*Fintech In Islamic Finance, Theory and Practice*", New York, Routledge:5



initiated by Neptel and Zopa in the UK and in Indonesia developed in 2010 through the Go-Jek company.<sup>2</sup>

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.<sup>3</sup>

Oseni Umar A. Ali S. Nazim as following:

Fintech is changing our lives for the better through unending technological applications in the finance industry. The daily lives of human beings, and even nonhumans, are now tied to technological applications where robots have taken over the roles of financial advisors. While regulators and Actmakers try to catch up with the rapid developments in financial technology, it appears the rapid rate of development in the fintech sector is outpacing regulatory frameworks. This uncertain situation is more complicated in a niche industry such as the Islamic financial services industry, which has additional faith-based filters in its product-development process. This therefore makes a case for the need for thought leadership in relation to this uniquely important subject in order to guide policymakers, regulators, and practitioners on the dynamics of fintech in Islamic finance, and provide a good understanding of the Shari'ah and legal and regulatory parameters for fintech solutions.<sup>4</sup>

World bank survey data Indonesian who served by banking service in 2014, as following: 1. Own bank account 37%; 2. Own formal deposit 27 %; 3. Own formal 13%. Pada tahun 2016, Financial Service Authority 2016 said that only 28,9% who have knowledge about banking product, where is the lowest percentage in Asian.<sup>5</sup>

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

<sup>2</sup> Riadi, Ade Bagus (2018) *Aspek Hukum dalam Menjalankan Perusahaan Fintech Lending di Indonesia*, <https://indopos.co.id/read/2018/06/06/140502/aspek-hukum-dalam-menjalankan-perusahaan-fintech-lending-di-indonesia>, 06 Juni 2018, accessed at July 29<sup>th</sup>, 2019

<sup>3</sup> Noor, Ahmad Fikri, (2018) *Bali Fintech Agenda Jadi Acuan Teknologi Finansial Dunia*, <https://www.republika.co.id/berita/ekonomi/fintech/18/10/12/pggitf383-bali-fintech-agenda-jadi-acuan-teknologi-finansial-dunia>, Oct 12<sup>th</sup>, 2018, accessed at July 26<sup>th</sup>, 2019

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

<sup>5</sup> Serfiyani Cita Yustisia, Hariyani Iswi, (2017): 347

technology.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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<sup>9</sup>, where FSA is should be given very broad authority to regulate and supervise the offline and online financial services industry.<sup>10</sup>

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.

<sup>6</sup> 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 kewenangannya” 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 Gubernur tidak hanya sebatas pembentukan peraturan perundang-undangan saja, tetapi juga diberi kemandirian dalam menentukan dan mengatur organisasinya. Sejak pemberlakuan UU 21 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.

<sup>7</sup> Riadi, Ade Bagus, (2018)

<sup>8</sup> 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 2<sup>nd</sup> 2018, accessed at July 26<sup>th</sup>, 2019

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

<sup>10</sup> Seriyani 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 26<sup>th</sup>, 2019

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.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup>

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

<sup>11</sup> Heriani, Novia, (2019) *Persoalan Perlindungan Konsumen di Industri Fintech*, Waspada Fintech Illegal, March 27<sup>th</sup>, 2019, accessed at July 29<sup>th</sup>, 2019

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

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



cooperation; 12. Improve joint supervision by the international monetary and financial system.<sup>14</sup>

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 Fintech 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 teory Actrence M. Friedman each legal system contains three factors which interconnection each other as follows: structure, substance and legal culture,<sup>15</sup> and in legal system contain four elements, as follows:<sup>16</sup>

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

<sup>3</sup> 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

<sup>14</sup> Noor, Ahmad Fikri, (2018)

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

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

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 line), 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, and 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 (litigation) 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

<sup>3</sup> 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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