



## The Concept of Utilitarianism to Realize Consumer Protection in the Financial Services Sector

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### ABSTRACT

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Global changes in the world of financial technology have affected and affected the world of banking and national financial services. Starting from banking, capital markets, financial institutions, financial services and the existence of consumers themselves, both directly and indirectly. The development of financial technology must be an aspect that the OJK needs to pay attention to and anticipate. Because this global change will have a direct or indirect impact on the domestic situation or the structure of financial services. and the efficiency of financial services, known as Financial Technology or Fintech (P2P lending), which is growing rapidly in Indonesia, the advantages of borrowing and borrowing money through P2P-lending services another is that the terms are very easy and the process is fast compared to borrowing money through a bank institution. However, the ease of transactions offered by P2P-lending services actually weakens the position of consumers. Problems 1). Does online lending fulfill a sense of benefit for consumers?, 2). How is the application of the concept of utilitarianism to realize fintech (Financial Technology) consumer protection. The aim is to find out how the benefits of fintech (financial technology) are for consumers.

### KEYWORDS:

Consumer Protection, Financial Technology, Utilitarianism.

### I. INTRODUCTION

The rapid development of globalization has brought changes to the pattern of life of the Indonesian people. The development of information globalization is marked by the development of internet technology (Abdul Halim Barkatullah and Teguh Prasetyo, 2015). Technological progress in the national economy is increased to achieve people's welfare in order to create a better economic life (Wahyuni, 2019). Along with the development of the current era of globalization, all kinds of community activities are inseparable from technological assistance. In general, this is a challenge for the law to be able to keep up with these developments (Yati Nurhayati, et al, 2019). One of the technological developments that has become the latest study material in Indonesia is Financial Technology (Fintech) in breakthrough financial institutions (Immanuel Aditya Wulanata Chrismastianto, 2017).

Likewise, in the financial sector which is now beginning to be integrated with electronic system platforms,

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the role of the internet in information technology has been used to develop the financial industry through modification and efficiency of financial services, known as Financial Technology or Fintech. Fintech itself concerns 3 (three) main aspects, namely payment systems through third parties (Third-party payment systems), Peer-to-Peer (hereinafter abbreviated as P2P) Lending, and also Crowdfunding (Aulia Damayanti, 2021). The existence of Fintech can bring about a more practical and secure financial transaction process (Fauziah Hadi, 2021).

According to the National Digital Research Center (hereinafter abbreviated as NDRC), Fintech P2P Lending is simply the latest breakthrough in the financial world, especially lending and borrowing involving sophisticated technology. However, in a more detailed definition, Fintech P2P Lending can be interpreted as a startup that provides services related to finance. Similar to the NDRC, the definition of financial technology from the Financial Services Authority (hereinafter abbreviated as OJK) itself is not much different. Fintech P2P Lending arrangements in Indonesia are regulated by OJK with OJK Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Service Providers. OJK explained that Fintech P2P Lending is a system designed to operate certain transaction mechanisms related to finance. In Indonesia

alone, Fintech P2P Lending is better known as "online loans" or "loans". Currently, there are 161 (one hundred and sixty one) Fintech P2P Lending companies registered with the OJK, such as Modalku, Investree, and also Amarta.

Easy access to Fintech P2P Lending makes many community groups and MSMEs use this service to develop their businesses or simply borrow some money for personal needs. Fintech P2P Lending provides more benefits for both the owner of the funds and the borrower of funds. Fund owners or creditors get facilities to provide loans directly to debtors with higher returns, while fund borrowers or debtors get the convenience of borrowing directly to apply for credit directly to debtors with easier conditions and a faster process.

Apart from borrowing funds, the service provided by Fintech P2P Lending is an investment that promises a fairly high return per year. This is why many people prefer Fintech P2P Lending to conventional financial services (OJK Minisite, 2020). However, many of the pioneers of Fintech are making technology-based loans that are either unregulated or illegal these days. The reason is that Fintech P2P Lending is carrying out practices that shouldn't be such as dangerous billing, for example intimidation or data theft (Sevilla Nouval Evanda, 2021). However, at present, there are no regulations that specifically regulate the implementation of illegal Fintech P2P Lending.

Many applications offer loans online, P2P lending, fintech lenders, fintech aggregators, to online loan sharks. The definition of P2P lending is the provision of financial services whose role is to bring together lenders and loan recipients in the context of entering into loan and borrowing agreements through an electronic system using the internet network. So if it is concluded that the position of P2P-lending is the provision of financial services to bring lenders together with consumers.

In practice, P2P lending borrows and provides loans online through a platform called a marketplace. While fintech aggregators are technology companies. OJK classifies fintech aggregator companies as Digital Financial Innovations (hereinafter abbreviated as IKD). One thing to watch out for is the presence of online loan sharks. Which has a common feature, namely providing loans with very high interest is almost unreasonable. In Indonesia, loan sharks are like loan sharks who suck blood. Many moneylenders are currently offering high interest loans through online networks. Peer-to-peer (P2P) lending companies or online loans have been operating in Indonesia since 2013.

During the Covid-19 pandemic, P2P Lending services, both legal and illegal, tended to increase in growth. Illegal P2P Lending takes advantage of the economic difficulties of people affected by the corona virus outbreak. Based on OJK data, fintech lending companies are licensed and registered with the OJK as of October 6, 2021, totaling 106 companies. In addition, the number of illegal online loan companies is also increasing. As of June 2021, a total of 3,193 illegal P2P Lending have been blocked. The existence of

illegal P2P Lending has worried the public, as can be seen from the data from the Indonesian Consumers Foundation (YLKI).

Online loans have increased quite significantly over the past 2 years and are included in the 5 biggest complaints, namely 15.2% of complaints in 2020. YLKI data shows that 68.9% of illegal online loan complaints and 31.1% of legal ones are legal. Problems that consumers complain about are billing (57.3%) and rescheduling requests (16.3%). The rest are used identities, data transfer, not feeling like applying for a loan, bad credit, inappropriate disbursement, interest, repayment, payment systems and tenor changes. Apart from YLKI, consumers have also complained to BPKN-RI. BPKN noted that there were 3 (three) complaints in 2021 and 8 (eight) complaints in 2020 regarding online loans.

One of the objectives of the establishment of OJK is to protect the interests of consumers and the public in carrying out activities in the financial services sector. Consumer protection entrusted to OJK is explicitly stated in Article 4 (c) of Law Number 21 of 2011 concerning the Financial Services Authority (hereinafter referred to as UOJK) which states as follows: "OJK was formed with the aim that all activities in the financial services sector: (c) able to protect the interests of consumers and society."

Consumer protection in the financial services sector aims to create a reliable consumer protection system, increase consumer empowerment, and raise awareness among Financial Services Businesses regarding the importance of consumer protection so as to increase public confidence in the financial services sector. Based on the background that has been presented above, there are problems with the application of the concept of justice related to legal protection for consumers related to online lending and borrowing, therefore the issues to be discussed are:

- 1) Does online lending fulfill a sense of benefit for consumers?
- 2) How is the application of the concept of utilitarianism to realize fintech (Financial Technology) consumer protection?

## II. METHODOLOGY

In this study, the authors use a type of normative legal research. Normative legal research is legal research conducted by examining literature or secondary data. Normative legal research using a statutory regulation approach. Research on legal principles is research conducted on legal principles, which are benchmarks for inappropriate behavior or behavior. This research can be carried out in particular on primary and secondary legal materials, as long as these materials contain legal principles (Soerjono Soekanto and Sri Mamudji, 2018).

### III. LITERATURE REVIEWS

#### 3.1. Definition of Consumer Protection Law

According to the Business English Dictionary, consumer protection is protecting consumers against unfair or illegal traders (Peter Colin, 2006). Meanwhile, the Black's law Dictionary defines a statute that safe guards consumers in the use of good and services (Bryan A. Garner, 204). Consumer Protection is a term used to describe legal protection given to consumers in their efforts to meet their own needs against problems that are detrimental to the consumers themselves. The purpose of law is to realize justice, Adam Smith gave birth to the teachings of justice which states the end of the justice source from the injury.

According to G. W. Paton, the rights granted by law do not only contain elements of protection and interest but also for will. Law is essentially something abstract, but in its manifestation it can be concrete. A legal provision can be considered good if the consequences resulting from its application are goodness, happiness, and reduced suffering, according to Az. Nasution consumer protection law is the overall principles and rules that regulate and protect consumers between providers and users in everyday life in society.

#### 3.2. Consumer Protection Purposes

In every law that is made by the legislators, a number of principles or principles are usually known that underlie the issuance of the law. Legal principles are the foundation of a law and its implementing regulations (M. Ali Mansyur, 2007). Sudikno Mertokusumo provides an overview of legal principles as follows: "That the legal principle is not a concrete law, but rather a general and abstract basic thought, or a concrete regulatory background contained in and behind every legal system embodied in statutory regulations, and the judge's decision which is positive law and can be found by looking for common characteristics or characteristics in the concrete regulation (Sudikno Mertokusumo, 1997).

In an effort to provide legal protection to consumers, there are several principles contained therein. Consumer protection is carried out as a form of joint venture between the public (consumers), business actors and the Government as the former of laws and regulations relating to Consumer Protection, this is contained in the provisions of Article 2 UUPK.

#### 3.3. Legal Benefits

In the Big Indonesian Dictionary (KBBI) there is a definition of benefit, namely use or benefit. In the benefits themselves, in their implementation in society, it is hoped that the benefits will be for humans and fellow citizens (Sudikno Mertokusumo and A. Pitlo, 1993). The purpose of law can be seen in the function of protecting human interests to be achieved (Said Sampara et al, 2011), when referring to the flow of Utilitarianism which has the notion that in every purpose of law can provide a form of benefit aimed at society where there is happiness, then measuring happiness against a person is contained in the preparation of legal products that

must provide a positive value in the form of happiness in every society.

According to Jeremy Bentham where he was the originator of the flow of benefit itself where happiness is a concept of enjoyment and life which tends to be liberated in misery (W. Friedman, 1990). This means that here the opinion of Jeremy Betham can be interpreted as expediency is something that will have an impact on happiness where happiness is a pleasure and happiness.

In terms of legal expediency, there are 3 forms of benefit, namely: a. Punishment against someone will be useful in the punishment imposed on someone to improve themselves on the perpetrators of crimes. b. The sentence imposed must eliminate the ability of the perpetrator of the crime to commit a crime. c. The sentence imposed on someone must provide compensation to the victim (Eddy O.S. Hiarij, 2009).

#### 3.4. Definition of fintech P2P lending

The growth of fintech P2P lending is currently growing rapidly and is easily accessible to people who are still having difficulty getting loans and for MSME players who need capital to develop their business. Not only MSME businesses, there are also fintech P2P lending that provide access to loans for those who need funds for education and health care with their own standards, starting from loan creditworthiness, loan nominal and tenor, interest rates, to the level of security.

According to OJK Regulation No.77/POJK.01/2016, fintech lending/peer-to-peer lending/P2P lending is a lending and borrowing service in the rupiah currency directly between the creditor/lender (lender) and the debtor/borrower (recipient). loans) based on information technology. Fintech lending is also referred to as Information Technology-Based Borrowing and Borrowing Services (LPMUBTI). Fintech P2P lending creates an online platform that provides facilities for fund owners to provide loans directly to debtors with higher returns, while borrowers can apply for loans directly to fund owners with easier conditions and a faster process than conventional financial institutions. .

Investment in P2P lending provides a promise of quite high returns per year, but investing must be in accordance with our profile and risk appetite and how to manage it. Therefore, the very first step in the investment process in P2P lending is to understand the risks. The way P2P lending works is as follows:

1. Membership registration. Users (lenders and borrowers) register online via a computer or smartphone;
2. The Borrower makes a loan application;
3. The P2P lending platform analyzes and selects eligible borrowers to apply for loans, including determining the borrower's risk level;
4. Selected borrowers will be placed by the P2P lending platform in the online P2P

lending marketplace along with comprehensive information about the borrower's profile and risks.

5. P2P lending investors analyze and select borrowers listed on the P2P lending marketplace provided by the platform.
6. P2P lending investors make funding to selected borrowers through the P2P lending platform.
7. The borrower returns the loan according to the loan repayment schedule to the P2P lending platform.
8. P2P lending investors receive loan repayments from borrowers through the platform.

For borrowers, the benefits of P2P lending are that the loan application process is faster and easier and there is no need for collateral. But keep in mind too, that borrowing in P2P lending also has risks, namely loan interest rates that are quite high and fines that must be paid.

#### IV. DISCUSSION

##### 4.1. Benefits of Oline Loans for Consumers

Legal protection will be essential because it is a right for people in a country. Then on the other hand legal protection creates obligations for the state, namely the state is obliged to provide protection for all its citizens without exception. Legal protection is the provision of protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law. The law can function to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong economically, politically and to obtain social justice (Basrowi, 2019).

The rapid development of a digital-based economy certainly does not only have a positive impact. One of the negative impacts is the possibility of cases of loss or problems in the community. For example, the rise of digital-based illegal investment offers that have claimed quite a number of victims and harmed society. Illegal business actors offer large yield rewards and lack of user understanding (Sri Adiningsih, 2019). Credit activities carried out through peer to peer fintech companies are valid or not based on the validity of a credit agreement.

The validity of the agreement according to the Civil Code must fulfill all the elements in Article 1320 of the Civil Code. Article 1320 of the Civil Code, determines the terms of the subject (the people) and the object. To declare the validity of an agreement, four conditions are needed, namely 1) the agreement of those who bind themselves; 2) Proficiency; 3) a certain thing a certain thing; 4) A lawful cause. A lawful cause is that an agreement may not conflict with law, decency and public order. Article 1335 of the Civil Code states that: "An agreement without cause or made based on a false or

prohibited cause has no power". Every agreement that occurs must be based on the principle of good faith, Article 1338 of the Civil Code states that: "Agreement must be carried out in good faith" (A Busro, 2013).

The concept of utilitarianism developed in the mid-17th to 18th centuries, developed by Jeremy Bentham and John Stuart Mill. The utilitarian view departs from two factors that influence human behavior, namely pain/suffering and satisfaction/happiness. These factors determine individual actions, related to whether or not the actions taken are correct, as well as the causes and effects of the actions themselves. It is also said that every individual always wants happiness and avoids suffering (Betham, Jeremy, 2000), thus a socially just policy is a policy capable of producing the greatest pleasure or total utility for society.

Mill emphasized that the main goal of a policy is to maximize utility (happiness) for the majority of society, because each individual has different happiness goals, the happiness of the many (society) becomes more important than the happiness of fewer (individuals) (Mill, John Stuart, 2001). Consumer Protection According to Law No. 9 of 1999 concerning Consumer Protection Article 1 paragraph 1 that consumer protection is all efforts that guarantee legal certainty to provide protection to consumers. Fintech comes from the term financial technology or financial technology.

According to The National Digital Research Center (NDRC), in Dublin, Ireland, defines fintech as "innovation financial services" or "innovation in fintech financial services" is an innovation in the financial sector that gets a touch of modern technology. Financial transactions through this fintech include payments, investment, borrowing money, transfers, financial plans and comparison of financial products (5Irma Muzdalifa, Inayah Aulia Rahma, Bella Gita Novalia, 2018).

The existence of Fintech P2P Lending provides the benefits of modern society that requires speed in a process, while these benefits are:

1. Increasing Financial Inclusion in the country

The most important benefit of fintech is helping to increase financial inclusion in the country. The existence of fintech indirectly becomes an accelerator in finance in the country, so that the course of domestic financial transactions will also increase and be better. With increased financial inclusion, the national economy will automatically increase. This helps provide an increase in the welfare of the people in the country.

2. Helping Businessmen Get Business Capital

The benefit of fintech for modern society, especially for entrepreneurs, is to help obtain venture capital. Thanks to fintech, entrepreneurs get funding much more effectively and efficiently, so finding the

required potential investors can be done more easily. That way, the potential for business development is also higher.

### 3. Providing Ease of Financial Services

Various kinds of financial services will now feel faster and easier thanks to using the services provided by fintech. This is one of the benefits of fintech for consumers in Indonesia, where financial activities such as payments can run faster. Moreover, internet network support is very adequate at this time.

### 4. Add Low Interest Loan References

There are other benefits of fintech for modern society which are quite profitable, namely providing additional, broader loan references for consumers. Thanks to fintech, the options for getting loans will be more diverse. Not only that, low interest will certainly benefit business people, so that later more business benefits can be obtained and it is easy to pay off the loan until it is paid off.

### 5. Supporting a Better Standard of Living for the Community

As previously explained, fintech helps provide a better standard of living for society. The higher the financial activity carried out by the community, the economy will increase as well. This helps people to get better welfare and economic level as well.

### 6. Save Operational Costs

In general, fintech provides inexpensive fees compared to other types of financial services. This is also seen as one of the benefits of fintech for consumers. Thanks to this, the operational costs that must be incurred by users or the community will be smaller.

### 7. Flexibility of Financial Activities

The benefits of fintech for the next modern society are to help provide flexibility in financial activities. If previously all financial activities were carried out offline, now this can be done online. This means that people can carry out financial activities from anywhere and at any time without restrictions.

However, the value of the benefits of the existence of peer to peer lending is eroded by the existence of illegal Fintech Peer to Peer Lending ("Fintech P2P Lending") which is one of the main problems to be addressed in law enforcement in Indonesia. The wider distribution has sparked unrest, both to the public and the government. There are many

reports from the public regarding the adverse effects of using illegal Fintech P2P Lending services. Illegal Fintech P2P Lending in Indonesia has developed very rapidly in the last 2 (two) years, coupled with the impact of the COVID-19 pandemic which has encouraged the use of Fintech applications. Starting from 2018 to October 2021, Kominfo has terminated access to 4,906 (four thousand nine hundred and six) Fintech P2P Lending content or online loans that violate laws and regulations (PDSI KOMINFO. 2021).

The Indonesian Joint Funding Fintech Association (AFPI) and the Institute for Development of Economics and Finance (INDEF) have conducted research on the contribution of Fintech Lending to the Indonesian economy. This research analyzes five Fintech Lending companies in Indonesia, including GoPay Later, Shopee Pay Later, OVO Pay Later, Traveloka Pay Later, and Kredivo. Research results show that Fintech Lending contributes up to IDR 60 trillion to Indonesia's Gross Domestic Product (GDP), both directly and indirectly. It was also conveyed that there were four service sectors that felt a major impact from the presence of Fintech Lending, namely banking financial services which increased by IDR 1.95 trillion, pension fund services increased by IDR 3.32 trillion, insurance services increased by IDR 1.51 trillion, and other services increased by IDR 1.87 trillion.

In addition to increasing GDP, the presence of Fintech Lending can also absorb 362,312 workers, with details of the financial services sector totaling 9,791 people, pension fund services totaling 14,620 people, the insurance services sector totaling 7,328 people, and other service sectors such as programmers, application developers totaling 100,883 people. This reduced the poverty rate to 0.7%. In line with the penetration of Fintech Lending which targets the unbankable community, Fintech Lending also plays a role in increasing people's income, including Micro, Small and Medium Enterprises (MSMEs). One of them can be seen from the increase in the income of farmers in the village by 1.23% and the income of traders in the city by 2.59% (Fika Nurul Ulya and Sakina Rakhma Diah Setiawan 2019).

Legal protection is defined as providing protection to individual interests protected by law. Protection aimed at consumers in the business world which is seen both materially and formally is increasingly important, given the increasingly rapid movement of technology as a driving force for the productivity of producers of goods or services to be produced in achieving the goals of a business (Desak Ayu Lila Astuti, A.A Ngurah Wirasila, 2018). Business or services in the financial sector have become a business that is very vulnerable to various detrimental actions by irresponsible persons by taking advantage of the existence of technology to carry out an action, whether it is fraud or misuse which results in losses for users of these services (Celina Tri Siwi Kristiyanti, 2011).

The development of the total distribution of Fintech Lending loans in general has increased every month, with an

average from December 2018 to June 2020 of IDR 4,968,683,426,396. During this period the increase in the number of loan disbursements experienced a positive trend, although in the periods April 2020 and May 2020 there was a decrease in the increase in the number of loan disbursements, as a result of the Covid-19 Pandemic. Fintech Lending has advantages compared to conventional loans, including easy processes and requirements, fast disbursement of funds, and can be used for any purpose (Fitriana Monica Sari, 2019), Fintech Lending does bring many advantages, but still has drawbacks.

#### 4.2. Application of Legal Protection to Realize the Utilitarianism Concept of Fintech Consumer Protection

One of the objectives of the law is expediency. The objective of the law is substantially that the law can guarantee happiness to individuals, then to many people. "the greatest happiness of the greatest number" (the greatest happiness of the greatest number of people). This principle must be applied quantitatively, because the quality of pleasure is always the same, to realize individual and societal happiness, legislation must achieve four objectives: a. to provide subsistence (to provide a living); b. to Provide abundance (to provide an abundance of food); c. to provide security (to provide protection); and D. to attain equity (to achieve equality).

It is hoped that the Consumer Protection Act will provide happiness to the largest section of society whose rights are protected. Bentham argues that the existence of the state and law is merely a means to achieve the essential benefit, namely the happiness of the majority of the people. Bentham's teachings which are individualistic in nature still pay attention to the interests of society, so that the interests of one individual with another individual do not collide, it must be limited so that homo homini lupus does not occur. According to Bentham, for each individual to have an attitude of sympathy for other individuals so that individual happiness will be created and societal happiness will be realized. Bentham mentions "The aim of law is the greatest happiness for the greatest number" (Theresia Anita Christiani, 2016.).

The condition of consumers who are weak and suffer many losses, requires increased efforts to protect, so that consumer rights can be upheld. On the other hand, it should be noted that in providing protection to consumers, it should not actually kill the businesses of business actors, because the existence of business actors is something essential in the country's economy. Therefore, provisions that provide protection to consumers must also be balanced with provisions that provide protection to business actors, so that consumer protection does not actually reverse the consumer's position from a weak position to a stronger one, and vice versa, a weaker business actor. Consumer protection is all efforts that guarantee legal certainty to provide protection to consumers.

Consumer Protection seen from Article 1 Number 3 of the Financial Services Authority Regulation Number

1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector and Article 1 Number 1 of Law Number 8 of 1999 concerning Consumer Protection is an effort to ensure legal certainty for consumers who have carried out their obligations as a result of violations of Consumer rights by Financial Service Providers (PUJK). The objective of consumer protection in the financial services sector is based on the General Explanation of the Financial Services Authority Regulation Number 1/POJK.07/2013 which is to create a reliable consumer protection system, increase consumer empowerment, and raise awareness among financial service businesses regarding the importance of consumer protection so as to increase public trust. in the financial services sector. Based on this description, the importance of Consumer Protection for the Financial Services Sector is to increase Consumer confidence in Financial Services Businesses (PUJK) in using products/services in the financial services sector (Jonker Sihombing, 2012).

Steps taken by the Government cq OJK in implementing benefits towards happiness for people who access loans by providing legal protection. The form of protection provided by the OJK is that if there are and are found to be acts that violate and result in losses, the OJK will ask them to stop their business activities. In addition, OJK will defend the interests of the community as consumers in the form of filing a lawsuit against the parties causing the loss. OJK will also give warnings in the form of warnings to organizers of business activities that are deemed to be deviating so that they can immediately correct them, then OJK will provide information related to activities that could be detrimental to consumers or the general public.

Supervising and also managing business in the field of financial services in its implementation must pay attention to regulations related to this field, namely Law Number 21 of 2011 concerning the Financial Services Authority, Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Law Number 19 of 2016 concerning Information and Electronic Transactions, Law Number 8 of 1999 concerning Consumer Protection, and other regulations related to it. The use of fintech itself consists of creditors and debtors, the conditions given must be rational to apply to consumers or customers (Wayan Bagus Pramana, 2018).

Based on the provisions in Article 3 paragraph (1) letter e of Bank Indonesia Regulation Number 19/12/PBI/2017 of 2017 concerning the Implementation of Financial Technology that application-based or information technology-based loan services are one type of financial technology (fintech) implementation in the category of financial services / other financial. Meanwhile, according to Article 5 paragraph (1) of the Financial Services Authority Regulation Number 77/POJK.01/2016 of 2016 concerning Information Technology-Based Borrowing-Lending Services, the organizer of an information technology-based loan-borrowing agreement is a limited liability company that

provides, manages, and operate information technology-based lending and borrowing services from lenders to loan recipients whose sources of funds come from lenders.

Users of P2P Lending services are entitled to legal protection in practicing this service, in other words the government must guarantee legal certainty in implementing P2P Lending practices. The basic principle in the protection of a user of Information Technology-Based Borrowing-Lending Services is that the organizer is required to carry out the basic principles of transparency, fair treatment, reliability, confidentiality and data security, and resolution of user disputes in a fast, simple, and affordable cost. Organizers are required to provide up-to-date information that is accurate, honest, clear and not misleading. If there is acceptance, delay, or rejection of an application for Information Technology-Based Borrowing and Lending Services, the operator is required to convey this information to the user.

Based on this, legal protection for users of information technology-based money lending services in practice in Indonesia will be described as follows.

#### 1. Preventive Legal Protection

Preventive legal protection is an opportunity for the public to submit an objection (*inspraak*) to their own opinion or in groups before a government decision gets a definitive form. Thus, this legal protection has the goal of preventing very large disputes from occurring. With an act of preventive legal protection, it is hoped that this protection can encourage the government to be more careful in making a decision related to the *freies ermesen* principle, and the public can submit objections or can also be asked for their opinion regarding the planned decision (Philipus M. , Hadjon, 2011).

This preventive legal protection is protection that has the nature of prevention, where before that person and/or group commits an activity or action that is negative or commits a crime that is intended in it so that it will be able to avoid or negate concrete acts. So that integral efforts are needed, between preventive and repressive so that crime problems can be overcome (Ifrani & M. Yasir Said, 2020).

#### 2. Repressive legal protection

Repressive legal protection has a function to resolve disputes in the future. In order to be able to carry out repressive legal protection for the benefit of the Indonesian people, there are various legal entities that partially deal with the problems that arise. These bodies are further grouped into 2 (two) parts, namely:

- 1) Courts within the scope of General Courts;

- 2) Government agencies which are administrative appeal institutions (Zaini Zulfi Diane, 2014),

Judging from the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money-Lending Services, the sanctions that have been stipulated in the LPMUBTI POJK are in Article 47 (1) For violations of obligations and prohibitions in OJK regulations, "OJK has the authority to impose administrative sanctions on the Administrator in the form of:

- 1) Written warning;
- 2) Fines, namely the obligation to pay a certain amount of money/funds;
- 3) Limitation of business activities; and
- 4) License revocation."

Still at the level of benefit for consumers, there are five important principles of consumer protection that are regulated in the OJK Regulation concerning Consumer Protection in the Financial Services Sector. These five principles must be adhered to so that consumer protection can work effectively. The five principles are as follows (Dharu Triasih, 2019):

- 1) Transparency. This principle requires OJK to provide information in an open, clear and easy-to-understand language to consumers about all the products they own. This is important so that consumers can fully understand the products offered;
- 2) Fair treatment. This principle emphasizes that OJK is fair and non-discriminatory to consumers by providing different treatment between one consumer and another, especially based on ethnicity, religion and race;
- 3) Reliability. The meaning of 'reliability' in this principle is everything that can provide accurate services through reliable systems, procedures, infrastructure and human resources;
- 4) Confidentiality and security of consumer data/information. This principle stipulates that maintaining the confidentiality and security of consumer data is only permitted to use data and information in accordance with the interests and purposes approved by consumers, unless otherwise stipulated by laws and regulations;
- 5) Handling of complaints and settlement of consumer disputes in a simple, fast and affordable way. This principle is related to the service/complaint resolution carried out by consumers in solving the problems they face. This consumer complaint

service is facilitated by OJK to make it easier for complaints to be made.

The steps that must be taken by the government are that the implementation must be guided by the Financial Services Authority Regulation No. 77 /POJK.01/2016 concerning Information Technology Lending and Borrowing Services. legal or illegal loans, due to the fact that violations of the law were found by both legal loan companies and illegal loan companies. preventive steps such as conducting more education and outreach to the public, with the aim of more and more people who understand how to choose competent loan services and understand the risks that may occur when using loan services.

With legal protection for consumers, it is expected to provide a balanced legal position between consumers and business actors. This is quite reasonable because so far the position of consumers is weak when compared to business actors. So as to create consumer protection that contains elements of legal certainty, and information disclosure and access to information, raises awareness of business actors regarding the importance of consumer protection so that honest and responsible attitudes develop in business and benefit consumers.

## V. CONCLUSION

1. The existence of Fintech P2P Lending provides the benefits of modern society that requires speed in a process, while these benefits are: Increasing Financial Inclusion in the country, Helping Businessmen Get Business Capital, Providing Ease of Financial Services, Adding Low Interest Loan References, Supporting Living Standards A Better Society, Saving Operational Costs and Flexibility of Financial Activities. However, the value of the benefits of the existence of peer to peer lending is eroded by the existence of illegal Fintech Peer to Peer Lending ("Fintech P2P Lending") which is one of the main problems to be addressed in law enforcement in Indonesia.
2. It is hoped that the Consumer Protection Law will provide happiness to the majority of people whose rights are protected. The condition of consumers who are weak and suffer many losses, requires increased efforts to protect, so that consumer rights can be upheld. On the other hand, it should be noted that in providing protection to consumers, it should not actually kill the businesses of business actors, because the existence of business actors is something essential in the country's economy. Users of P2P Lending services are entitled to legal protection in practicing this service, in other words the government must guarantee legal certainty in implementing P2P Lending practices. The basic principle in protecting a user of Information Technology-Based Borrowing and Borrowing

Services is that the operator is required to carry out the basic principles of transparency, fair treatment, reliability, confidentiality and data security, and fast, simple, and affordable cost resolution of user disputes.

## REFERENCES

1. Abdul Halim Barkatullah dan Teguh Prasetyo, (2005), *Bisnis E-Commerce: Studi Sistem Keamanan Dan Hukum Di Indonesia*,Pustaka Pelajar, Yogyakarta, h 1
2. Yati Nurhayati, Ifrani, A.H. Barkatullah, M. Yasir Said, (2019), "*The Issue of Copyright Infringement in 4.0 Industrial Revolution: Indonesian Case*", *Jurnal Media Hukum*, Vol. 26, No. 2, Desember 2019, h. 122- 130.
3. Imanuel Aditya Wulanata Chrismastianto, (2017), "*Analisis SWOT Implementasi Teknologi Finansial Terhadap Kualitas Layanan Perbankan di Indonesia*", *Jurnal Ekonomi dan Bisnis*, Vol.20, Edisi 1, Fakultas Ilmu Pendidikan Universitas Pelita Harapan Tangerang, hlm. 133.
4. Fauziah Hadi, *Penerapan Financial Technology (Fintech) sebagai Inovasi Pengembangan Keuangan Digital di Indonesia*, terdapat dalam <http://temilnas16.forsebi.org/penerapanfinancial-technology-fintechsebagai-inovasi-pengembangan-keuangan-digital-di-indonesia/>, Akses 5 Desember 2021, Pukul 19.00 WIB.
5. Wahyuni, Raden Ani E. (2019). *Implementation Of Legal Protection By The Government In Order To Empowerment Of Micro Small Medium Enterprise To Realize The Justice Economy (Research Study: The Office of Cooperative and Micro Small and Medium Enterprise Province of Central Java)*. *Diponegoro law review*, Vol. 04, (No.01), p.389.
6. Aulia Damayanti,(2021). *Deretan Kasus Pinjol Ilegal: Dibayar Nggak Lunas-lunas, Korban Bunuh Diri*. Detikfinance; detikcom. <https://finance.detik.com/fintech/d-5779866/deretan-kasus-pinjol-ilegal-dibayar-nggak-lunas-lunas-korban-bunuh-diri/2>
7. Soerjono Soekanto,Sri Mamudji, (2018), *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, h.62
8. Minisite OJK. (2020, February), "*Yuk Mengenal Fintech P2p Lending Sebagai Alternatif Investasi Sekaligus Pendanaan*" Sikapiuangmu; <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/20566>
9. Sevilla Nouval Evanda. (2021, November 11). *Daftar 124 Pinjol Ilegal Tidak Usah Dibayar*. okefinance;okezone. <https://economy.okezone.com/read/2021/11/11/622/2500236/daftar-124-pinjol-ilegal-tidak-usah-dibayar>



10. Peter Colin, (2006), *Business English Dictionary*, Linguaphone, London, h. 61.
11. Bryan A. Garner, (2004), *Black's Law Dictionary*, Eight Edition, St. Paul Minnesota, h.335
12. Az Nasution, (2000), *Hukum Perlindungan Konsumen : Suatu Pengantar \* 1932-*, Publisher: Jakarta : Daya Widya, h..22
13. M. Ali Mansyur, (2007), *Penegakan Hukum Tentang Tanggung Gugat Produsen Dalam Perwujudan Perlindungan Konsumen*, Genta Press, Yogyakarta, h 81
14. Sudikno Mertokusumo, (1996), *Penemuan Hukum: Suatu Pengantar*, Jakarta, h. 5-6
15. W. Friedman, (1990), *Teori dan Filsafat Hukum Idealisme Filosofis dan Problema Keadilan*, diterjemahkan dari buku aslinya Legal Theory oleh Muhamad Arifin, Disunting oleh Achmad Nasir Budiman dan Suleman Saqib, Jakarta, Rajawali Pers, h 112
16. Eddy O.S. Hiariej, (2009), *Asas Legalitas Dan Penemuan Hukum dalam Hukum Pidana*, Jakarta, Erlangga, h. 11.
17. Basrowi, 'Analisis Aspek Dan Upaya Perlindungan Konsumen Fintech Syariah', *Jurnal Lex Librum: Ilmu Hukum*, 5.2 (2019) . h.11
18. Sri Adiningsih, *Transformasi Ekonomi Berbasis Digital Di Indonesia*, (2019). Jakarta, Gramedia Pustaka Utama, h.127
19. A Busro, (2013). *Kapita Selekta Hukum Perjanjian*, Yogyakarta: Pohon Cahaya, h.32
20. M. Agus Santoso, (2014), *Hukum, Moral Dan Keadilan Sebuah Kajian Filsafat Hukum*, Ctk. Kedua, Kencana, Jakarta, h. 85
21. Betham, Jeremy, (2000), *An Introduction to the Principle of Morals and Legislation*, Batoche Books, Kitchener, p.123
22. Mill, John Stuart, (2001), *Utilitarianisme*, Batoche Books, Kitchener, p.45
23. PDSI KOMINFO. (2021). *Siaran Pers No. 385/HM/KOMINFO/10/2021 tentang Jaga Ruang Digital Produktif dan Aman, Menteri Johnny: Kominfo Putus Akses 4.906 Pinjol Ilegal*. Website Resmi Kementerian Komunikasi Dan Informatika RI. [https://www.kominfo.go.id/content/detail/37799/siaran-pers-no-385hmkominfo102021-tentang-jaga-ruang-digital-produktif-dan-aman-menteri-johnny-kominfo-putus-akses-4906-pinjol-ilegal/0/siaran\\_pers](https://www.kominfo.go.id/content/detail/37799/siaran-pers-no-385hmkominfo102021-tentang-jaga-ruang-digital-produktif-dan-aman-menteri-johnny-kominfo-putus-akses-4906-pinjol-ilegal/0/siaran_pers)
24. Desak Ayu Lila Astuti, A.A Ngurah Wirasila, (2018), *Perlindungan Hukum Terhadap Konsumen Transaksi e-commerce Dalam Hal Terjadinya Kerugian*, Kertha Semaya Jurnal, Fakultas Hukum Universitas Udayana, Denpasar, h. 6
25. Celina Tri Siwi Kristiyanti, (2011), *Hukum Perlindungan Konsumen*, Sinar Grafika: Jakarta, h. 5
26. Fika Nurul Ulya dan Sakina Rakhma Diah Setiawan (ed), "INDEF: Pinjaman Online Sumbang Rp 60 Triliun ke Ekonomi Indonesia", Kompas.com, <https://money.kompas.com/read/2019/11/11/144400926/indef--pinjaman-online-sumbang-rp-60-triliun-ke-ekonomi-indonesia>, 11 November 2019.
27. Fitriana Monica Sari, "Ini Keuntungan dan Kerugian Pinjaman Online Langsung Cair", Liputan6.com, <https://www.liputan6.com/bisnis/read/3867964/ini-kelebihan-dankekurangan-pinjaman-online-langsung-cair>, 12 Januari 2019.
28. Jonker Sihombing, *Analisis Hukum Otoritas Jasa Keuangan dan Pengawasan Pasar Modal*, *Jurnal Hukum Bisnis*, Volume 31 No.1 Tahun 2012, h.16.
29. Wayan Bagus Pramana, (2018), *Peran Otoritas jasa Keuangan dalam Mengawasi Lembaga Keuangan Non Bank Berbasis Financial Technology Jenis Peer to Peer Lending*, *Jurnal Kertha Semaya*, Vol. 6, No 3, h. 4.
30. Philipus M. Hadjon, (2011), *Pengantar Hukum Administrasi Indonesia*, Yogyakarta: Gajah Mada University Press, h.10.
31. Ifrani & M. Yasir Said, (2020), "Kebijakan Kriminal Non-Penal Ojk Dalam Mengatasi Kejahatan Cyber Melalui Sistem Peer To Peer Lending", *Al-Adl Jurnal Hukum*, Vol.12, No.1, Januari 2020, h.61-76