

# Legal Protection On Consumers Of Fintech Peer To Peer Lending Due To Covid-19 Pandemic

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ARTICLE INFO	ABSTRACT
<p><b>Keywords :</b> Consumer; Covid-19; Fintech P2PL; Relaxation.</p> <p><b>How To Cite :</b> Debora, D. (2021). Legal Protection On Consumers Of Fintech Peer To Peer Lending Due To Covid-19 Pandemic. Nagari Law Review, 5(1), 69-75. doi:10.25077/nalrev.v.5.i.1.p.69-75.2021</p>	<p><i>In March 2020, the WHO stated Covid-19 is pandemic disease. The Indonesian government has taken actions to prevent the spreading of Covid-19 by limiting people's activities. Covid 19 has resulted in people who loans at lending institutions, having difficulty paying installments. The government issues policies in response to the Covid-19 effect, such as economic relaxation. However, the policy did not cover consumers Fintech Peer to Peer (P2P) Lending, this created a legal vacuum. The problem in this research is the urgency of legal protection for Fintech P2P lending consumers during pandemic Covid-19. The purpose of this research is for OJK policy to issue a stimulus to Fintech P2P Lending consumers. This research applied juridicial normative methodology. It uses secondary data, which consists primary legal material, namely the OJK regulations on Covid-19 prevention and related literature, analyzed descriptively analytically. The research shows that consumer fintech P2P lending are affected by Covid-19 pandemic, so they need to get legal protection, in the form of stimulus given to lenders and borrower of fintech P2P lending.</i></p> <p style="text-align: right;">©2021 NALREV. Faculty of Law Universitas Andalas</p>

## 1. Introduction

On March 11, 2020, the WHO officially declared that the spread of Corona Virus Disease 2019 (Covid-19) as a Pandemic. Indonesia is among the countries affected by the spread of Covid-19. The widespread spread of Covid-19 with an increasing number of victims ultimately prompted the Government to establish national disaster status through Presidential Decree No. 12 of 2020.<sup>1</sup> The number of deaths from Covid-19 in Indonesia as of October 26, 2020 is 13,299.<sup>2</sup> In order to suppress the spread of Covid-19, the Indonesian government issued Government Regulation No. 21 of 2020 on Large-Scale Social Restrictions (PSBB) in order to accelerate the handling of Covid-19. In addition to the PSBB policy, all agencies and institutions including business entities also implement Work From Home (WFH).<sup>3</sup> The implementation of PSBB and WFH has crippled economic activity which has resulted in a decrease in people's incomes and increased layoffs (layoffs). The decrease in people's

<sup>1</sup> Fakultas Hukum Ubaya, "Implikasi Keppres COVID-19: dari Kedaruratan Kesehatan hingga Darurat Bencana", <https://hukum.ubaya.ac.id/implikasi-keppres-Covid-19-dari-keदारuratan-kesehatan-hingga-darurat-bencana/Implikasi>, diakses tanggal 2 November 2020

<sup>2</sup> Kompas.com, "Update Corona Dunia 26 Oktober: 43,3 Juta Orang Terinfeksi 52.010 Kasus Baru di Perancis", Klik untuk baca: <https://www.kompas.com/tren/read/2020/10/26/082000565/update-corona-dunia-26-oktober--43-3-juta-orang-terinfeksi-52.010-kasus?page=all>, diakses tanggal 2 November 2020

<sup>3</sup> Hukum Online, "Ketentuan Pelaksanaan Work From Home di tengah Wabah Corona, oleh: Bernadetha Aurelia Oktavira", diakses melalui <https://www.hukumonline.com/klinik/detail/ulasan/lt5e7326fd25227/ketentuan-pelaksanaan-i-work-from-home-i-di-tengah-wabah-corona/> November 2, 2020

income has an impact on the ability to meet credit obligations. The Covid-19 pandemic has weighed on the performance of the financial services industry and damaged Indonesia's economy and the welfare of the people.<sup>4</sup>

As an Indonesian government's response to the impact of Covid-19, an economic stimulus policy was issued through OJK Regulation No. 11/POJK.03/2020 on National Economic Stimulus as a Countercyclical Policy on the Impact of Coronavirus Disease 2019 and Perpu No. 1 of 2020. The policy is expected to ease the public including MSMEs and financial services sectors affected by Covid-19.<sup>5</sup> In today's difficult circumstances, both the creditor and the debtor must survive together. Unfortunately, stimulus policies cannot be applied in Fintech Peer to Peer (P2P) Lending financial services, because Fintech P2P Lending services is only a platforms that act to bring lenders and debtors together, so it is different from banks that act directly to distribute loans.<sup>6</sup>

Based on data released by OJK until October 14, 2020, there are 155 fintech P2P lending companies that have registered and licensed.<sup>7</sup> The large number of fintech P2P lending companies indicates that consumers of Fintech P2P Lending are also numerous. Fintech P2P Lending consumers are loan recipients and lenders channeled by Fintech P2P organizers.<sup>8</sup> The number of users of Fintech P2P Lending services (Fintech P2P Lending consumers) until September 2020 i.e total lenders 6810632 entities, loan recipients 2,921,629 entities and lending at Rp.128,698,493,167,175.<sup>9</sup> Fintech P2P Lending Services have an important role in reaching financing to the micro, small and medium enterprises (MSMEs) segment which cannot be served by banks.<sup>10</sup> The absence of a stimulus policy in the Fintech P2P Lending service has created a legal vacuum for legal protection for Fintech P2P Lending consumers due to the onslaught of Covid-19. Whereas the strong collaboration between the fintech P2P lending industry and the government as policyholders is very important to create responsible digital financial ecosystem conditions and support the national economic recovery.

Based on the rationale elaborated above, the problem of this study is elaborated into the following questions : (i) How is the impact of Covid-19 Pandemic for P2P Lending Fintech consumer and (ii) How is the legal protection for Fintech P2P Lending Consumer due to the spread of Covid-19.

## 2. Method

This study used the normative legal research method by reviewing the material law containing normative legal rules.<sup>11</sup> The approach method used is the conceptual approach (conceptual approach) and the statutory approach (statue approach).<sup>12</sup> Data analysis is carried, which consists primary legal

<sup>4</sup> Retno Sari Dewi, (2020), *Perlindungan Konsumen di Era Pandemi Virus Corona*, *Jurnal Fakultas Hukum Universitas Tulungagung*, Vol.6 No. 1., pp. 38

<sup>5</sup> Otoritas Jasa Keuangan, "Kebijakan Stimulus OJK pada Sektor Jasa Keuangan Antisipasi Dampak Virus Corona" <https://www.ojk.go.id/id/berita-dan-kegiatan/info-terkini/Pages/Kebijakan-Stimulus-OJK-pada-Sektor-Jasa-Kuangan-Antisipasi-Dampak-Virus-Corona.aspx> November 2, 2020

<sup>6</sup> CNBC Indonesia, "Bank dan Leasing Mulai Beri Keringanan Cicilan, Fintech Ikutan?", melalui [www.cnbcindonesia.com](http://www.cnbcindonesia.com), November 2, 2020

<sup>7</sup> Economy Okezone, "155 Fintech Pinjol Resmi, Berikut Daftarnya", <https://economy.okezone.com/read/2020/10/22/320/2297597/155-fintech-pinjol-resmi-berikut-daftarnya> November 2, 2020

<sup>8</sup> Kornelius Benuf, (2019), *Perlindungan Hukum Terhadap Keamanan Data Konsumen dalam Bisnis Financial Technology (Fintech) di Indonesia*, *Skripsi, Universitas Diponegoro*, pp.8

<sup>9</sup> Otoritas Jasa Keuangan, *Penyelenggara-Fintech-Terdaftar-dan-berizin-di-OJK-per-5-Agustus-2020.aspx* akses tanggal 24 Oktober 2020

<sup>10</sup> Klik legal.com, "Peran Fintech di Masa Pandemi Covid-19" <https://kliklegal.com/peran-fintech-di-masa-pandemi-Covid-19/> July 2, 2021

<sup>11</sup> B. J. Nasution, (2008), *Legal Research Methods*, Mandar Maju, Bandung, p. 86.

<sup>12</sup> Peter Mahmud Marzuki, (2016), *Penelitian Hukum*, Cetakan ke-12, Penerbit kencana, Jakarta, p 133-136

material, namely the OJK regulations on Covid-19 prevention and related literature, analyzed descriptively analytically

### 3. Main Heading of The Analysis or Results

#### 3.1. The Impact of Covid-19 Pandemic for P2P Lending Fintech Consumer

The Covid-19 outbreak impacted the health sector and contributed to national economic instability. The application of physical distancing has caused the business sector to decline sharply, for non-formal sectors that have credit is certainly having difficulty in paying.<sup>13</sup> According to the Organization for Economic Cooperation and Development (OECD), the worst economic growth since 2009, ranged around 2.4% down from 2.9% in November 2020.<sup>14</sup>

The weakening of business activity has an impact on the government spending burdens. Judging from civil law, the consequences of reduced turnover due to declining consumer demand have an impact on the ability of debtors to fulfill obligations to creditors. The worst thing is defaults for debtors<sup>15</sup> Consumers of financial services institutions are one of the parties who are most likely to experience default as a result of the Covid-19 pandemic. In accordance to LIPI data recorded 39.4 % of business stalled and 57.1 % of businesses experienced a decrease in activity. Only 3.5% are not affected by Covid-19. Debtor default conditions can also occur on a massive scale and across borders of the Country.<sup>16</sup>

Fintech P2P Lending consumer is one of the consumers of financial service institutions in Indonesia. Fintech P2P Lending Service is a marketplace for lending money via online which consists of service providers and service users, known as Fintech P2P Lending consumers. The existence of the Fintech P2P Lending company indicates that Indonesia has entered the industrial revolution 4.0. the impact of this era is big on digital-based technology that society uses.<sup>17</sup> Fintech P2P Lending makes it easy for people who need money loans quickly with requirements that are easy to meet and do not require face-to-face which is very suitable for the current Covid-19 pandemic conditions.<sup>18</sup> The existence of Fintech P2P Lending was welcomed enthusiastically by MSME actors. Before the Covid-19 pandemic, MSMEs which previously had difficulty obtaining business capital had been resolved.<sup>19</sup> National economic growth can be supported by financial services institutions namely Fintech P2P Lending.

P2PL Companies has an important role in reaching out to MSMEs financing that are not underserved by banks. However, the onslaught of Covid-19 left Fintech P2P companies with no choice but to tighten the selection process for which MSMEs who can receive loans as a result of an increasing percentage of defaults. For this reason, it is time for the government to provide legal protection to consumers of fintech P2P lending through policies that are able to respond to the problems facing fintech P2P lending consumers as a result of the Covid-19 pandemic.

<sup>13</sup> Ashinta Sekar Bidari, Reky Viana, (2020), Stimulus Ekonomi Sektor Perbankan Dalam Menghadapi Pandemi Coronavirus Disease 2019 Di Indonesia, *Jurnal Ilmu Hukum Legal Standing*, Vol. 4 No. 1 p. 299

<sup>14</sup> Detiknews.com, Dampak Virus Corona Lebih Buruk daripada Krisis Ekonomi Global 2008, <https://news.detik.com/bbc-world/d-4924577/dampak-virus-corona-lebih-buruk-daripada-krisisekonomi-global-2008> July 2, 2021

<sup>15</sup> Internasional,sindonews, Gagal Bayar Utang Akibat Covid-19,Maskapai Tertua Kedua Dunia Bangkrut-krisisekonomi-global-2008, <https://read/25345/42/gagal-bayar-utang-akibat-Covid-19-maskapai-tertua-kedua-di-dunia-bangkrut-1589256358> July 2, 2021

<sup>16</sup> Kumparan.com, "LIPI: 39,4% Bisnis di Indonesia Gulung Tikar Akibat Pandemi Corona", dalam, <https://kumparan.com/kumparansains/lipi-39-4-bisnis-di-indonesia-gulung-tikar-akibat-pandemi-corona-1tRdz3TxOQd> July 2, 2021

<sup>17</sup> Sri Adiningsih, (2019), Transformasi Ekonomi Berbasis Digital di Indonesia, Gramedia Pustaka, Jakarta, p. 58

<sup>18</sup> Ibid p. 95

<sup>19</sup> Kornelius Benuf, (2020), Urgensi Kebijakan Perlindungan Terhadap Konsumen Fintech Peer To Peer Lending Akibat Penyebaran Covid-19, *Jurnal Rechtsvinding*, Vol. 9 No, 2. p. 210

However, during the Covid-19 pandemic, based on data from the Indonesian Joint Funding Fintech Association (AFPI) recorded the rate of default on repayments by loan recipients to lenders in the P2P lending fintech service increased by 7% , due to a decrease in the success rate of pay to 92.01%. Meanwhile, the outstanding loan value of fintech P2P lending companies as of July 2020 reached Rp 11.93 trillion or decreased by 11.69% from last January's position which is still Rp 13.51 trillion. Judging by the accumulated loans, as of July 2020 amounted to Rp 116.97 trillion, or an increase of 32.36% from January 2020 which is still Rp 88.37 trillion. The increase in accumulated loans for the July 2020 period was smaller than the accumulation for the July 2019 period which amounted to 91.48% from the position in January 2019.<sup>20</sup>

The Government of Indonesia responded to the Covid-19 outbreak by issuing economic stimulus through OJK Regulation No. 11/POJK.03/2020 and Perpu No. 1 of 2020 on State Financial Policy and Financial System Stability for Handling of Coronavirus Disease Pandemic 2019 and/or in the Context of Facing Threats Endanger the National Economy and/or Financial System Stability. The stimulus policy in the form of relaxation issued by the government in response to the impact of the Covid-19 pandemic cannot be applied to P2P lending fintech consumers because P2P fintech does not distribute money directly, but only as an intermediary. Therefore there is a legal vacuum in the legal protection of fintech P2P lending consumers due to Covid-19 pandemic.

### 3.2. *The Legal Protection for Fintech P2P Lending Consumer Due to The Spread Of Covid-19*

The discourse of globalization has awakened the spirit of old debate where laws were transplanted from one place to another.<sup>21</sup> The legal system that exist in the world can be classified from one place to another.<sup>22</sup> The state of law is a State that stands on the law to guarantee justice for its citizens in order to create the happiness of life. By law, the rule of law must reflect justice in the inter-citizen relationship.<sup>23</sup> In Article 28 D paragraph 1 of the 1945 Constitution it is stated that everyone is entitled to recognition, guarantee, protection and certainty of fair law and equal treatment before the law. Legal protection can be interpreted as providing protection for the interests of individuals who are protected by law.

The protection of the law can be done by providing human rights to the people in order to enjoy the rights established by the law. The function of law is to realize protection that are not only adaptive and flexible, but must be predictive and anticipatory. Laws are urgently needed by socially, economically and politically weak societies.<sup>24</sup>

Legal protection can be divided into two parts, namely preventive legal protection and repressive legal protection. Preventive legal protection is taken to prevent or reduce the likelihood of unexpected events occurring. Preventive legal protection aims to realize the legal goal *videlicet* legal certainty for consumers of fintech P2P lending, so as to minimize unexpected events. Preventive measures cost less than the countermeasures of a bad event that has already occurred.

Repressive legal protection is taken social control measures after an incident has occurred or after a violation has occurred. Repressive actions can be acted in two ways: persuasive and coercive. The persuasive way is done by persuading the public to obey positive laws through socialization. Socialization is done for consumers to be wiser in conducting transactions in fintech P2Pn lending.

<sup>20</sup> Tingkat Wanprestasi Fintech P2P Lending Naik Jadi 7% di Masa Covid-19, <http://www.theconomics.com/accelerated-growth/tingkat-wanprestasi-fintech-P2P-lending-naik-jadi-7-di-masa-Covid-19/> July 2, 2020

<sup>21</sup> W. Menski, (2016), *Perbandingan Hukum dalam Konteks Global, Sistem Eropa, Asia dan Afrika*, Nusa Media, Bandung, p. 47

<sup>22</sup> P. d. Cruz, (2016), *Perbandingan Sistem Hukum, Common Law, Civil Law dan Socialist Law*, Nusa Media, Bandung, p. 46

<sup>23</sup> Moh. Kusnadi dan Harmaily Ibrahim, (1998), *Hukum Tata Negara Indonesia*, Sinar Bakti, Jakarta, p. 153

<sup>24</sup> Satjipto Rahajo, (2000), *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, p.53

Meanwhile, the coercative way is to impose strict sanctions on any violations in fintech P2P lending and provide legal certainty to fintech consumers in conducting transactions.

Legal protection is the main form of protection, because it is based on the idea that law is a means to accommodate a person's interests and rights as a whole. The law has the coercion and implementation permanently. This is in contrast to protection implemented through institutions such as economic protection, politically temporary. Legal protection can be done in a variety of ways, one of which is by creating regulations that give rights and guarantee the rights of the subjects.<sup>25</sup>

The spread of Covid-19 cannot be handled under "normal" conditions and through Presidential Decree No. 12 of 2020 on The Determination of Non-Natural Disasters for the Spread of Covid-19 as a National Disaster. As a form of State responsibility in tackling national disasters, a policy was established. One of them concerns national economic stimulus policies. However, this policy does not touch the realm of P2P Lending fintech consumers, so there is a legal vacuum at the moment. As a state the law government should have established a policy in order to provide guarantees of legal certainty and a sense of justice.

To optimize the role of MSMEs including "consumer Fintech P2P Lending" for economic growth and financial inclusion in Indonesia, a policy is needed on how to achieve a balance between the ease and flexibility of financial services offered by Fintech P2P Lending with legal protection aspects for those consumer who affected by the Covid-19 pandemic. Without such a balance, the financial system and economic stability are disrupted. It must be ensured that fintech P2P lending consumers affected by Covid-19 obtain adequate legal protection. The OJK as an institution that regulates and oversees the financial services sector, should have established a policy that can be applied to consumers of fintech P2P lending affected by Covid-19 as a form of legal protection.

#### 4. Conclusion

The onslaught of Covid-19 has an impact on the increasing percentage of MSMEs "fintech P2P lending consumers" who have defaulted. Economic stimulus policies cannot be applied to fintech P2P lending consumers because fintech P2P lending services is only as intermediaries that bring consumers together, not as direct lenders such as banks. Therefore, it is time for the government to fill the legal vacuum to provide legal protection for P2P lending fintech consumers through policies that are able to respond to the problems facing fintech P2P lending consumers affected by the Covid-19 pandemic. OJK as an institution in charge of overseeing and regulating the financial services sector in Indonesia should have established a restructuring policy that can be applied to fintech P2P lending consumers to ease the burden on loan recipients that certainly has an impact on lenders. The policy was formed to fill the legal vacuum and provide legal protection for P2P lending fintech consumers.

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<sup>25</sup> Yuyut Prayutiz, Riska Yulianti, Indra Yutik, (2020), Perlindungan Hukum dalam Sengketa antara Konsumen Kendaraan Bermotor dengan Lembaga Pembiayaan Dihubungkan dengan UU No. 8 Tahun 1999 tentang Perlindungan Konsumen, *PAJOUL (Pakuan Justice Journal Of Law)*, Vol. 01, No. 01., p. 79

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