

CHAPTER I INTRODUCTION

A. Background

Technological and information advancements cannot be divorced from the evolution of societal attitudes and lifestyles. People's lifestyles are changing in many ways, whether social, cultural, or economic. One of them is the obvious change in the economic sector, specifically in obtaining lending and debt for both finance and consumption.

Lending through third parties and administrative services that have to go through many rules can make it tough for consumers. Then it changes with ease, helping consumers with a quick procedure, but it can cause difficulties for debt that have no limits.¹

Evidence of changes in the economic field is that with the development of the financial industry, one of which is the modification and efficiency of financial services based on technology, it provides convenience in making transactions in lending. There are several types of the financial industry (from now on called "fintech"), namely, financial planning (personal finance), retail investment, crowdfunding, remittances, financial research, and lending.²

Fintech stands for financial technology. The National Digital Research Center (NDRC) defines Fintech as a term that refers to financial services innovation. "Innovation" here means financial innovation given a touch of

¹ Mutia Pratiwi, 2019, "Tinjauan Hukum Ekonomi Syariah Terhadap Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi Berdasarkan Peraturan Otoritas Jasa Keuangan Nomor:77/POJK.01/2016", (Skripsi Fakultas Syariah dan Hukum UIN Raden Fatah Palembang).

² See Article 1 number 3 of the Financial Services Authority Regulation No. 13/POJK.01/2018 concerning Digital Financial Innovation in the Financial Services Sector.

modern technology. In other words, Fintech is a type of company in financial services combined with technology. In addition, it can also be interpreted as a segment in the world of startups that have not been operating for a long time (starting now called startups) that helps maximize the use of technology to sharpen, transform, and accelerate various aspects of financial services.

Therefore, starting from payment methods, fund transfers, loans, fund collection, and asset management, everything can be done quickly and briefly because of modern technology. Thus, it is not surprising if Fintech becomes a necessity that can easily change a person's lifestyle, especially those familiar with or struggling with finance and technology.

Fintech has many services and products that the community can utilize. Therefore, Bank Indonesia divides Fintech into four classifications, namely:

Peer-to-peer lending is a technology-based lending service. The implementation of financial services brings together lenders and borrowers for lending agreements directly through an electronic system that uses the internet network.³

Investment Risk Management is one of the fintech classifications that can monitor financial conditions and do financial planning more easily and practically. This type of investment risk management is usually present and can be accessed through a smartphone. So, it only needs to provide the data needed to be able to control finances.

³ Indra Agung Riyono, 2020, "Tinjauan Masalah Terhadap Implementasi Peraturan Otoritas Jasa Keuangan Nomor 77/Pojk.01/2016 Tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi Pada Aplikasi Akulaku", (Skripsi Fakultas Syariah Institut Agama Islam Negeri Ponorogo).

Payment, Clearing, and Settlement are one of the fintech classifications that provide payment system services both organized by the banking industry and those carried out by Bank Indonesia. Examples of this form of classification include Kartuku, Doku, iPaymu, Finnert, and Xendit. In reality, it is known that several startups have not been operating for a long time or financial startups that have used or provided payment tools for a transaction in an e-commerce application or e-wallet service, where both products are still included in the category of payment, clearing, and Settlement.

A Market Aggregator is a fintech classification that currently refers to portals that collect various financial-related information to be presented to the target audience or users. This fintech classification contains various financial information, financial tips, credit cards, and investments. Therefore, this fintech classification is expected to absorb much information before making financial decisions.⁴ Related to that, Bank Indonesia has issued regulations on the Implementation of Financial Technology No. 19/12/PBI/2017. It aims to regulate and maintain the ease of payment systems in Indonesia.

In general, organizers only manage, provide, and operate fintech peer-to-peer lending services online, as the public usually knows through advertising and other information-based electronic media. Lenders, as fund owners, lend their money through peer-to-peer lending fintech platforms, which will then be channeled through intermediaries providing services to the borrower.

⁴ Rani Maulida, 2019, *Fintech: Pengertian, Jenis, Regulasi Hingga Regulasinya di Indonesia*, <https://www.online-pajak.com/tentang-pajak-pribadi/Fintech>, (Accessed on 23th November 2019).

Fund owners can access all the data to trace the specifics of personal matters in the loan application in the form of the financial history of prospective borrowers, reasons, and destinations. The legal relationship between the organizer and the grantor is born by agreement in electronic documents.

The Financial Services Authority also supervises this lending activity (“OJK”). It is done so that the activity remains on the law’s path. Article 6 of Law No. 21 of 2011 concerning the Financial Services Authority (starting now referred to as the OJK Law) states that the OJK carries out duties and supervision of (a) financial services activities in the banking sector, (b) financial services activities in the capital market sector, and (c) financial services activities in the insurance sector, pension funds, financing institutions, and other financial services institutions.⁵

In addition, the rules relating to lending are regulated in Book III of the Civil Code (starting now referred to as the Civil Code) in Article 1754, which explains that:⁶

“Lending is an agreement by which one party lends another party, at a certain amount of goods that have depleted due to use, provided that the latter party will return the same amount of goods of the same kind and circumstances.”

Based on this, if the agreement decision meets certain conditions in the law, lending activities have legal force to be carried out. However, on the contrary, if the agreement does not meet the requirements, then according to the law, it

⁵ See Article 6 of Law No. 21 of 2011

⁶ Subekti dan Tjitrosudibio, 2004, Kitab Undang-Undang Hukum Perdata, Jakarta, PT. Pradnya Paramita. Cet-34, p.451.

can be declared invalid or void.⁷

A null and void agreement is an agreement that has been agreed upon without any conditions that are not met to make the Agreement invalid and result in the agreement being above the law so that the existing agreement cannot be implemented at all.⁸ In other words, a legal agreement has failed, even if it is the purpose of entering into a treaty. A null and void contract occurs if one of the parties cannot perform the contract, either based on error or against the law.⁹

An agreement may be declared annually and null and void if it has not fulfilled any conditions affirmed in Article 1320 of the Civil Code. In addition, according to Article 1321 of the Civil Code, it is considered invalid if, when agreed, it was born based on fraud, coercion, or given for errors. In Article 1328 of the Civil Code, fraud is one factor in canceling an agreement because of a ruse in an agreement under the influence of others who abuse the situation to cause errors.

Fraud must be demonstrable and not be calculated. Agreeing requires good faith from the party making the agreement and approval to implement the agreement. However, in its implementation, the promise did not go smoothly, so the cancellation of the agreement was very large.

An agreement may be declared null and void if the legal aspects of the agreement that have been made and agreed upon by the relevant parties no

⁷ Fajar Santosa, "Penerapan Konsep Batal Demi Hukum di Peradilan Pidana, Perdata, dan Tata Usaha Negara", *Jurnal Maksigama*, Vol 9 No 1 (2015), p. 52-66.

⁸ Nanin Koeswidi Astuti, "Analisa Yuridis Tentang Perjanjian Dinyatakan Batal Demi Hukum", *Jurnal Hukum Tora*, Vol 2 No 1 (2016).

⁹ Elly Erawati dan Herlien Budiono, 2010, *Penjelasan Hukum Tentang Kebatalan Perjanjian*, Jakarta, Gramedia, p. 6-14.

longer have the legal effect binding on the parties to the agreement as stipulated in Article 1338 of the Civil Code, which states that “All agreements made lawfully apply as law to those who make them.”¹⁰

In addition, Article 1320 of the Civil Code stipulates that the agreement must meet the valid requirements of the agreement, namely the word “agree,” proficiency, “a certain thing,” and “a halal cause.” If the four valid conditions of the agreement are fulfilled, the agreement is valid and binding for the parties. But conversely, if it does not meet the third or fourth condition, which is a certain thing and a lawful cause, the agreement can be null and void.

As explained in Article 1265 of the Civil Code, which determines the void condition that requires the lender to return what was previously received in the event of the intended event. The result caused by the fulfillment of the void condition by the agreement with the condition of cancellation is returning the situation as it originally was, resulting in achievements or something previously received by one of the parties. In this case, the sum of money must be returned. This condition does not delay the fulfillment of the engagement, but the borrower, in this case, is required to return everything previously received.

Thus, the agreement made by the fund owner and the customer, namely the lender, can be canceled because the organizer is illegal, in the sense of not having a permit. The agreement cancellation does not imply the cancellation of all debts but rather the return of the goods or money involved.

¹⁰ See Article 1338 of the Civil Code

Legal certainty is one of the protections of the judiciary; with clarity on the position of obligations and rights based on goals and law, the order will be achieved in society.¹¹ If reviewed under Article 1754 of the Civil Code, which determines, in essence, the activities of the agreement between the two parties, as long as the promise is not contrary to the law, it gives rise to rights and obligations so that it is binding.¹²

The relationship between the organizers and lenders in Fintech peer-to-peer lending is legally defined in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions regarding the implementation of electronic transaction systems.

Several previous studies have examined the null and void, one of which is by Ni Made Ayu Pratiwi (2021), entitled “Due to the Law of Money Lending Agreements Declared Null and Void.” The analysis results found that null and void agreements on loan and borrowing agreements can occur because the objective conditions stipulated in the law are not met. The legal consequences for the parties are not written in the Civil Code rules, where the regulation only contains a lending agreement, and the legal terms of an agreement do not discuss sanctions for the parties in the event of a null and void agreement.¹³

Furthermore, Aupal Abdurrahman Supangkat (2020) conducted research titled “Problems of Financial Technology Implementation Based on Peer-to-

¹¹ Muhamad Rusdi, “Implikasi Dissenting Opinion Hakim Mahkamah Konstitusi Terhadap Kesadaran Hukum Masyarakat”, *Jurnal Widya Pranata Hukum*, Vol 2 No 1 (2019), p. 89- 107.

¹² Gerry Weydekamp, “Pembatalan Perjanjian Sepihak Sebagai Suatu Perbuatan Melawan Hukum”, *Jurnal Lex Privatum*, Vol 1 No 4 (2013), p. 1-11.

¹³ Ni Made Ayu Pratiwi, “Akibat Hukum Perjanjian Pinjam-Meminjam Uang yang Dinyatakan Batal Demi Hukum”, *Jurnal Konstruksi Hukum*, Vol 2 No 2 (2021), p. 36-37.

Peer Lending (Juridical Analysis of Financial Services Authority Regulation No. 77/POJK.01/2016).” This study shows the provisions of the Financial Services Authority Regulation No. 77/POJK.01/2016 concerning information technology-based money lending services are reviewed from the aspect of legal protection for borrowers as consumers and lenders as investors in the concept of a legal state. It is not following the principles of the state of law because it is contrary to the principles of consumer protection and legal certainty, thus disrupting the implementation of Peer-to-Peer Lending-based Fintech services that have implications for the lack of legal protection for borrowers and lenders as users of Peer-to-Peer Lending-based Fintech services that cause many problems in information technology-based lending activities in the community.¹⁴

Another case which successfully revealed by the North Jakarta Metro Police, namely, the illegal fintech crime committed by PT Vega Data Indonesia and PT Barracuda Fintech Indonesia. From it, the police have determined 5 (five) suspects. The two illegal companies have managed 15 applications, but 11 applications have been closed. The closed application is an illegal fintech because it is either not registered or does not register the application with the relevant authorities, namely OJK. Applications closed include Gagah Hijau, Aliansudoku, Kartu Wallet, Kurupiah, Do it Session, Lion Take, Tetapsiap, Uangberes, Dompot Bahagia, Faith Comfort, Kascash, and Tokotunai.

¹⁴ Naufal Abdurrahman Supangkat, 2020, “Problematika Penyelenggaraan Financial Technology Berbasis Peer-To-Peer Lending (Analisa Yuridis Peraturan Otoritas Jasa Keuangan Nomor 77/POJK.01/2016)”, (Skripsi Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta), p.37-38.

Furthermore, in carrying out its actions, PT Barracuda Fintech acts as an application maker, while PT Vega Data acts as a debt collector for the importer of the platform. Although only operating for one year, illegal fintech Toko Tunai has distributed loans of IDR 70 billion, received a return of IDR 78 billion, and added an administrative fee of IDR 25 billion. KasCash has disbursed RP 5 billion and received a return of IDR 13 billion.

The billions of rupiah earned by PT Vega Data and Barracuda Fintech came from some customers who had paid off their debts. The amount has not been included in the 10-20% administrative fee charged to customers every time they borrow money. The data shows that the total number of customers who borrowed at KasCash reached 17,650 people and Tokotunai 84,785 people.

North Jakarta Police Chief, Budhi Herdi, explained that Fintech is not registered with the OJK as described in the Financial Services Authority Regulation No. 77/POJK.01/2016. However, while still carrying out its business practices, it has a great opportunity to harm customers or debtors because if the customer or debtor is no longer able to pay the loan, the organizer of this illegal application uses improper or improper methods, such as terrorizing, suppressing customers, and spreading fake news. In addition, other adverse practices applied are the presence of a cut in administrative fees at the beginning and late fines. Budhi Herdi explained that if there are customers who borrow Rp 1.5 million from this illegal Fintech, at the beginning of the disbursement is directly deducted Four hundred thousand rupiahs for administrative costs, so that what is received directly is only Rp 1.1 million. There

is a late payment fine of Rp 50 thousand per day. This practice is one example of very dangerous practices for customers or debtors.

Based on the information obtained, PT Vega Data Indonesia and PT Barracuda Fintech Indonesia have changed the name of the online loan application up to 15 times under its auspices. Among them, as many as two (2) applications have been detected and announced by the Investment Alert Task Force, namely the “Card Wallet” application on September 7, 2018, and the “BorrowEd It Right” application on February 13, 2019.

It can be revealed because many fintech peer-to-peer lending entities carry out activities through applications spread through short messages, app stores, or play stores. With this mode, the platform has gathered up to 500,000 customers among the lower middle class, with loan values ranging from Rp500,000 to Rp2.5 million. In addition, two suspects have been found, namely, TD, a foreign national aged 38 years, as deputy president director, and OR, as the president director.

Of course, in a lending agreement, some parties must be written clearly in the agreement. The lending agreement is between two parties, which means that, in practice, the lender is the third person in a transaction where the lender authorizes the organizer to process his finances so that the organizer lends the money to the borrower on the condition that it is paid back with interest.

Therefore, the granting of power is explained in Article 1792 of the Civil Code, which explains: “The granting of power is an agreement containing the granting of power to others who receive it to do something on behalf of the person

who gives power.” As a result, the receiver is a party that can do something for a power of attorney because the organizer is the party that accepts the power of responsibility and acts on behalf of a power of attorney. Therefore, the beneficiary, namely the organizer, is directly obliged to fulfill Article 1320 of the Civil Code.

Therefore, in this case, PT Vega Data Indonesia and PT Barracuda Fintech Indonesia did not comply with Article 1320 of the Civil Code because it was known that the two PTs claimed to have a permit to operate and were a legal, financial services business service. But in fact, Fintech is not registered with the OJK as it should be in the Financial Services Authority Regulation No. 77/POJK.01/2016, so it is declared not capable enough to act, contrary to the halal cause under the terms of the agreement’s validity. As a result, there is a legal flaw in the agreement.

As a financial services provider that is not registered with OJK, it has caused losses by billing through third-party intermediaries to consumers as debtors by contacting other parties who do not have a relationship with the borrower of funds, accessing all borrower contacts without permission, and by not having an operational permit so that the company does not have authority over what is promised. Based on the above, the researcher is interested in conducting research in the form of a thesis with the title **“The Null and Void Aspects of the Implementation of Peer-to-Peer Lending Agreements Through Fintech Applications.”**

B. Research Problems

1. What is the null and void aspect of implementing peer-to-peer lending agreements in fintech applications?
2. What is the legal Settlement if there is a null and void in peer-to-peer lending on fintech applications?

C. Research Objectives

1. Describe the null and void aspects of implementing peer-to-peer lending agreements in fintech applications.
2. Describe a legal settlement if there is null and void in peer-to-peer lending on fintech applications.

D. Research Benefits

1. Theoretical Benefit

The Benefit of writing this thesis is theoretically to provide an analysis of the implementation of peer-to-peer lending on fintech applications so that in approving electronic lending agreements, customers who have priority can see the form of legal protection for customers who use peer-to-peer lending on fintech applications based on applicable regulations in legal protection.

2. Practical Benefit

- a. It is expected to benefit researchers to improve legal capabilities and knowledge, especially regarding peer-to-peer lending.
- b. For public and government information on electronic financial services, in the form of electronic lending agreements on economic activities.