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ISLAMIC P2P LENDING AS AN ALTERNATIVE SOLUTION FOR THE UNFAIR CONVENTIONAL PLATFORM IN INDONESIA

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ABSTRACT

Fintech implementation still lacks legal protection for the parties involved. The rules imposed by the Financial Services Authority (FSA/ Otoritas Jasa Keuangan/OJK) have aspects of *riba* that contradict sharia compliance principles. This study determines alternative solutions to unfair practices in conventional Fintech, especially peer-to-peer lending (P2P lending) in Indonesian banking practices. The research uses normative and empirical methods with statutory and empirical data from library research and interviews. The study shows the presence of economic immorality in conventional P2P loan practices, such as *maisyir*, *gharar*, *riba*, *dzalim*, and *haram*, which are contrary to Islamic principles. This necessitates the application of

primary sharia principles in sharia fintech. Thus, Islamic P2P Lending is an alternative solution to Islamic banking's financial technology practices for customers using conventional fintech services. This is due to challenges in conventional fintech, including illegal fintech, intimidation in debt financing, high-interest rates, and the use of unlawful personal data. Therefore, the principles of sharia compliance and good faith are alternative solutions to strengthen sharia fintech and protect consumers.

Keywords: Alternative solutions, Indonesia, Islamic fintech, P2P lending.

INTRODUCTION

According to Yunus (2019), the online loan industry, specifically P2P lending fintech, is rapidly growing as an alternative to conventional financial services in Indonesia. Fintech users and urban middle-class millennials have been the first to *acclimate* this technology. Essentially, online transactions have become a shopping mode on social media and e-commerce platforms, with a complete payment system supported by financial technology (Yunus, 2019). However, that does not dispute the growth, rather highlights some negative aspects of it because of rising legal issues that require special attention. For instance, there was a case about customer intimidation in the course of debt collection by a fintech company in June 2018. The case was discussed publicly on social media, and after the final examination, the Financial Services Authority (OJK) established that the debt collection by a fintech company representative was harsh and violated the law.

It cannot be assumed that fintech violations have increased solely because debtors are the victims in the cases. Some customers submit complaints about the problems to the Jakarta Legal Aid Institute (LAI/ Lembaga Bantuan Hukum/LBH) and the Indonesian Consumers Foundation (ICF/Yayasan Lembaga Konsumen Indonesia/YLKI). In 2018, the foundations received more than 50 complaints about online loans (one type of fintech) (Widiyastuti & Widiyantoro, 2019: 298). Although the prudential principle has been stated and recommended in

OJK regulations (hereinafter referred to as FSA Regulation/Peraturan Otoritas Jasa Keuangan/POJK), there are still many complaints from P2P lending service customers.

OJK established regulations about fintech in POJK No. 77 of 2016 on “Information Technology-Based Lending Services” (hereinafter referred to as POJK No. 77/2016) and POJK No. 13 of 2018 concerning “Digital Financial Innovation in the Financial Services Sector” (hereinafter referred to as POJK No. 13/2018). This regulation is strengthened by DSN MUI in Fatwa No. 117/2018, which guides the National Sharia Board through Fatwa Dewan Syariah Nasional/ Fatwa DSN MUI No. 117/2018 on “Information Technology-based Financial Services under Sharia Principles” (hereinafter referred to as Fatwa DSN MUI No. 117/2018). Therefore, POJK regulates the implementation of fintech, though there are many cases of infringement.

Fintech rules and policies require a quick decision to provide legal protection to the parties. However, technological development is sometimes not in line with laws and policies because it is growing and moving more quickly than its regulation. This is the main challenge faced by fintech applications. According to Mayo, in an unavoidably slow democratic system, it takes too long to act because policy-making involves endless debate, election, and politicization (Mayo, 1960). This slow method is quite unsuitable when dealing with an urgent situation. Additionally, the democratic political system is inherently unsuited to the modern world’s complexities. Anything can be used to gain an advantage in trivial political situations, where laissez-faire wins, or where the government provides few services. It is also disastrous for the government to make changes that result in serious failures.

Studies show that the parties involved in fintech transactions still face inadequate legal protection. Additionally, OJK rules still contain *riba* and other elements not compatible with sharia compliance principles, strengthening the case for sharia fintech based on P2P lending as an alternative solution. This article discusses alternative solutions to the unfair practices in conventional fintech, especially P2P lending in Indonesian banking services. It focuses on the application of various sharia principles to solve the existing challenges.

LITERATURE REVIEW

Terms and Definitions of Peer-to-Peer Lending (P2P Lending) and Financial Technology (Fintech)

There are two essential terms used in this discussion: Fintech and P2P Lending. According to the National Digital Research Center in Ireland, fintech is a technological innovation in financial services. According to Omarini (2018), fintech is a financial innovation supported by technology to produce new business models, applications, processes, or products with material effects. Its operations are closely related to markets and financial institutions and services (Omarini, 2018).

P2P lending refers to lending money to a party through a fintech company, which bridges capital owners and those in financing need. Also called social lending, this is a loan financing method between individuals and businesses through online services without physically meeting (Lee, 2017). It is also defined as the practice of giving loans to individuals or businesses, connecting lenders and borrowers online. Lenders and borrowers do not meet each other. Borrowers obtain loans without any collateral. However, they are bound by an agreement regarding liabilities to the lender. Thus, P2P transactions are based on a written contract.

Legal Basis of P2P Lending

Sharia fintech regulation is a new challenge that aims to standardize and develop sharia fintech rules (Natoor, 2018). According to Rabbani, the rapid growth of Islamic fintech provides opportunities and threats for policymakers and regulators (Rabbani, *et al.*, 2020). Therefore, the legal basis that underlies the relationship between the borrower and the investor depends on several regulations issued by both the Financial Services Authority (FSA/Otoritas Jasa Keuangan/OJK) and Bank Indonesia (BI), Article 1320, 1338 of the Civil Code and agreement provisions contained in Chapter II Book III of the Civil Code.

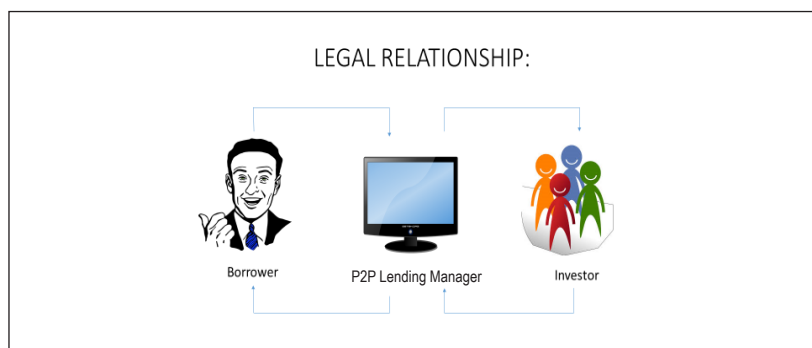
Some regulations issued by OJK include POJK Number 77/POJK.01/2016 on “Information Technology-Based Lending and Borrowing Services,” Regulation of Bank Indonesia No. 19/12/

PBI/2017 on “The Implementation of Financial Technology,” and Regulation of the Board of Governors No. 19/15/PADG/2017 on “Procedures for Registration, Information Submission, and Monitoring of Financial Technology Providers.”

Legal Relations of the P2P Lending Parties

Figure 1

The Legal Relations between Parties in P2P Lending Transactions



P2P lending transactions consist of the following three parties.

1. **Investors** are the parties obliged to choose borrowers and prepare loan capital. They have the right to the return of capital and interest.
2. **Borrowers** are the parties obliged to indicate their loan needs and provide the data needed by the P2P lending websites. If the loan application is approved, they must repay the principal and interest. Their right is the money loaned by investors through P2P lending websites.
3. **The P2P Lending Manager** is the party providing a website or portal that connects people who want to borrow and invest. The *P2P lending manager* conducts risk analysis, arranges rules, provides operational functions, and balances the demand for loans and the supply of capital. It earns its profit from or its rights arise from the interest rate spread (the difference between the loan interest rate spread and the investment interest rate) or provision fees (Amrullah & Krisnadi).

Legal relations between borrowers, investors, and P2P lending administrators are *innominate* agreements because they arise in the era of technology, globalization, and disruption. According to Mahersi and Yogie (2017), fintech is gaining economic actors' attention, especially in financial services. Until 2015, Silicon Valley Bank had recorded more than US\$12M in industrial volume in fintech around the world (Mahersi & Yogie, 2017). Similarly, the growth of fintech in Indonesia is quite rapid, with transactions currently reaching 0.6 percent globally (Setyaningsih, 2018).

Sharia Principles in Islamic Financial Institutions

Financial technology has two functions in these areas: crowdfunding and P2P lending. Crowdfunding is an embodiment of entrepreneurial finance evolution, enabling a pool of investors to raise funds via an online platform. It is a new phenomenon with some contemporary literature. In loan-based funding, funders receive fixed periodic income and expect repayment of the initial investment principal. Donation-based giving occurs when a funder donates without expecting a financial reward from it, such as donation based-giving. Therefore, it is a project to obtain a non-financial reward (Martínez-liment et al., 2018). According to Ismaniyati, P2P lending transactions, also called Sharia P2P Lending, apply sharia principles, including *La Maisyir*, *La Gharar*, *La Riba*, *La Dhalim*, and *La Haram*, and understanding *Maisyir*, *Gharar*, and *Riba*.

The definitions of *maisyir*, *gharar*, and *riba*, according to Ismaniyati, are:

Riba (usury) is the additional unauthorized income (vanity), among others, in the exchange of similar goods, or transactions not equal to the quality, quantity, and time of delivery (*fadhl*). It is also defined as lending and borrowing transactions that require the recipient to refund the received money beyond the loan principal due to the passage of time (*nasi'ah*). *Maysir* is a transaction hanging on an uncertain and speculative circumstance. Finally, *Gharar* is a transaction whose object is unclear, not owned, not known to exist, or cannot be delivered at the time of the transaction, unless otherwise stipulated in Sharia (Ismaniyati et al., 2018).

Compliance with sharia principles in P2P lending transactions is required for Muslims. The returns are obtained in full, and the funding process is easy and manageable through an online platform. Therefore, the effectiveness of P2P lending has no role in determining the interest charged by the lender. This is because all interest is determined through a contract agreed upon by the lender and the recipient. These contracts include *Akad Al Qardh*, *Akad Wakalah Bil Ujrah*, *Akad Mudharabah Muqayyadah*, and *Akad Musyarakah*. According to Iggi (2016), Islamic fintech manifests itself in five business models, including a lending-based (P2P lending) platform, categorized as a contract to *murabaha*, *ijarah*, and *istishna*. The other four models include the zakat-based, *infaq-sadaqah-waqf*-based, *qard-al-Hasan*-based, and *syirkah*-based models (*mudharabah* and *musyarakah*).

According to Fong (2015), harmonizing accounting, finance, and regulations in the industries involved helps manage these risks. Additionally, Todorof (2018) suggested that P2P lending is a form of crowdfunding or social lending. It is a financing institution acting as an intermediary, where individuals borrow and lend money among themselves. However, it takes more time and labor and has more risk than traditional credit institutions. Some P2P elements have been introduced in Islamic financial institutions, including crowdfunding, money transfers, and mobile wallets (Todorof, 2018). Furthermore, Todorof stated that the sharia aspect depends on how quickly Islamic law absorbs innovation, the benefits of P2P lending, the elimination of financial intermediaries, the lower interest rates accessed by borrowers, and the higher returns by lenders on their investment. This is in line with Magee, Yum, and Laccalle (Magee, 2011; Yum et al., 2012; Lacalle, 2018).

METHODOLOGY

This research uses doctrinal and empirical research, conducted by reviewing the applicable laws on P2P financing practices. The data obtained were analyzed qualitatively using a descriptive and analytical approach to explore the challenges of P2P lending and the application of sharia principles as an alternative solution to overcome the challenges.

This research uses the case and conceptual approach. It also uses documents and literature studies to obtain secondary information, including primary and secondary legal material. Primary legal materials are taken from Al-Qur'an verses, Hadith, Fatwa DSN MUI, laws, and fintech regulations, especially on P2P lending. Secondary legal materials include several international and national journal articles, books, and internet articles related to P2P lending and transactions via fintech. Primary legal data include an interview with Mr. Trijono, Head of Innovation at the Fintech Department of OJK, Mrs. Arianti, and Mrs. Saputri as the borrower.

RESULTS

An alternative is needed to the financial technology-based P2P lending services in Indonesia, which face challenges largely due to illegal fintech, intimidating debt collection, high-interest rates, and illegal personal data usage.

The Challenges of Conventional P2P Lending Services in Indonesia: Illegal Fintech

One of the challenges faced by conventional P2P lending services in Indonesia is illegal fintech operators, or fintech operators practicing without an active license.

Based on POJK Number 77 of 2016 on Information Technology-Based Money Lending and Borrowing Services (hereinafter referred to as OJK Regulation No. 77 of 2016), every fintech company providing services to the public must first have permission from OJK. This provision is contained in Articles 7 and 8 of OJK Regulation No. 77 of 2016. A company that is not registered is termed illegal fintech. Article 8, Paragraph 1, of OJK Regulation No. 77 of 2016 states "Organizers who will conduct activities of Information Technology-Based Money Lending and Borrowing Services must apply for registration at OJK."

"Practically, the existence of illegal fintech companies is far more than the registered or licensed companies. According to the latest data, Fintech to fintech near the end of the quote, banned 162 unlicensed fintech, 47 investment entities in 2019, and 404 illegal P2P fintech companies in 2018. However, the number of licensed Fintech is only

78” (*The Jakarta Post*, 2019). This shows that there is a significant difference between the numbers of licensed and illegal fintech companies.

The high number of illegal fintech companies has encouraged strict supervision and regulation of consumer protection in licensed fintech companies. A regulator is needed to mediate disputes between consumers and fintech companies. The safety of consumers using illegal fintech companies’ services is fragile, which encourages dishonest fintech companies to violate their customers’ rights. These violations include stealing personal data, setting high-interest rates, and using intimidating tactics in debt collection. Although people are urged to use licensed fintech services because of increased risks from the above problems, there are still many illegal services being used due to weak community awareness.

Insufficient achievements have been made, despite the efforts of OJK, the Ministry of Communication and Information, and the Republic of Indonesia Police; hence, illegal fintech companies continue to emerge. As a result, law violations by dishonest fintech companies are expected to increase next year, and customer awareness is not expected to catch up with illegal fintech services.

There has been 88 new registration and license of fintech operators since December 21, 2018. Two of them are Islamic fintech offering P2P funding: PT Ammana Fintek Syariah and PT Dana Syariah Indonesia. The public is appealed to use P2P lending fintech services registered and licensed by OJK. Therefore, all parties intending to contract with an Islamic fintech platform should check the list of sharia-registered fintech with OJK for Islamic fintech-based P2P funding that applies the principles of obedience, truth, and goodness.

As a governmental agency, OJK has the authority to govern and prohibit. However, it cannot accomplish this without people listening to it and obeying it. For this reason, Prophet’s Companion Umar bin al-Khatthab stated, “There is no Islam without worshipers (community), worshipers without a leader, and a leader without obedience.” Additionally, Allah SWT said: “*O ye who believe! Obey Allah, and obey the messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to Allah and the messenger if ye are (in truth) believers in Allah and the Last Day. That is better and seemlier in the end*” (An-Nisaa: 59).

Obeying the government is a part of observing the Prophet *sallallaahu 'alaihi wasallam*. According to the friend of Abu Hurairah *radhiyallahu 'anhu* and the Prophet *sallallaahu 'alaihi wasallam*, “Whoever obeys me, obeys Allah Subhanahu wata’ala. Whoever doesn’t obey me, he is disobeying Allah Subhanahu wata’ala. Whoever obeys the leader, obeys me. Whoever doesn’t obey the leader, he disobeys me” (narrated by al-Bukhari and Muslim). Furthermore, the Prophet Al-Imam Al-Bukhari explained that a Muslim must listen and obey the government, provided it does not order immorality. Other commands must still be heard and obeyed. Based on the narration by Al-Imam Al-Bukhari in his Saheeh, Prophet *sallallaahu 'alaihi wasallam* said: “Hearing and obeying becomes an obligation on a Muslim, in terms of what he liked or despised, as long as he is not ordered to commit immorality. However, there is no attitude of listening and obedience if he is ordered to commit immorality” (translated by al-Bukhari).

Intimidating Debt Collection

Fintech companies’ intimidating debt collection is one of the most common law violations today. These companies often use harsh words and threats to their customers to obtain repayment of the debts. According to the Jakarta Legal Aid Institute (JLAI/Lembaga Bantuan Hukum/LBH Jakarta), this law was violated by both the registered and unregistered fintech companies because the fintech companies use third parties for debt collection.

Intimidating borrowers during debt collection is a prohibited practice. These provisions are stated in the Indonesian Fintech Association’s Code of Conduct (CCFIA/Fintech Association/Aftech). The existing code of conduct requires all fintech companies to prioritize goodwill when collecting debts from borrowers. It also requires lending services to have, explain, and submit debt settlement and collection procedures to fintech loan recipients whenever there is a default in loan payments, which in contract law is known as a default. Additionally, each administrator must also inform the customer about the steps taken in the event of delays in the loan payments. These steps include issuing warning letters, rescheduling or restructuring loans, and corresponding with *debt collection*. Warnings can also be given via telephone, email, or other forms of communication. Furthermore, fintech companies must notify their recipients of scheduled visits or communications with debt collection or loan write-off teams.

When using a third party for debt collection, fintech companies must use a party not blacklisted by an authority. Collectors should either be certified or from an association. Moreover, fintech companies are prohibited from using intimidating methods, making physical threats, or physical and mental violence. They are also banned from using other means that are offensive based on ethnicity, religion, race, and inter-group or degrading loan recipients, both in the real world and in cyberspace (cyberbullying).

Intimidation billing should never happen with a sharia contract, including in an Islamic fintech-based P2P lending platform. Everyone has the right not to be treated arbitrarily, which is categorized as a *dzalim* (immoral) deed. Therefore, Islamic fintech applies the *la dzalim* principle, the *amanah* (promise-keeping) principle, and the *ukhuwah Islamiyah* (brotherhood) principle to palatable the billing process in P2P lending. Each party in the *muamalah* should obey the promise as *amanah*, contained in the contract's clause. All difficulties in implementing agreements should be resolved peacefully. Furthermore, there is a prohibition against harming fellow Muslims. As the Prophet Muhammad said: "*It is not perfect the faith of one of you until he loves his brother as he loves himself*" (translated by al-Bukhari and Muslim).

High-Interest Rates

High-interest rates also add to a series of problems in the fintech industry and society. Fintech companies set higher interest rates than traditional banks and finance companies. "If the association has a standard loan interest rate, the Financial Services Authority can easily evaluate the fintech company" (Pranoto et al., 2019). According to OJK, the highest interest rate for registered fintech companies is up to 19 percent per month. However, unregistered companies charge higher interest rates than the registered fintech industry average, usually by 2-3 percent per day (Pranoto et al., 2019).

The high-interest rates certainly cause borrowing problems in the community. Currently, higher fintech interest rates frustrate customers who feel burdened by loan financing, and many customers default on their loans. To reduce loan defaults, a company must clearly explain the interest rates so the community can understand the interest on loans taken out by the customer (Pranoto et al., 2019). OJK, its attitude

toward determining the interest rate to the industry. Furthermore, consumers are encouraged to look at the contract's interest calculation before making a loan through fintech. However, this interest rate problem is likely to continue and overshadow fintech transactions. Therefore, there is a need for an appropriate arrangement to bridge consumers' and investors' interests.

P2P platforms seem to have the primary advantage in every lending transaction. In contrast, Islamic P2P applies the principle of prohibiting interest (*la riba*/no usury) and prohibiting interest. The prohibition on *riba* given in the Qur'an includes Surah Al-Baqarah verse 275–278, Surah Ali Imron verse 130, Surah An-Nisa verse 161, and Surah Ar-Rum verse 39. From the *Hadith Qudsi*, translated by Abu Hurairah, the Messenger of Allah says, “*Allah Almighty, said to me; accompanying two parties who are sharing as long as one of the two does not betray the other if betrayed then I leave the participation*” (translated by Abu Hurairah—according to Hakim, this hadith is valid).

“In sharia, it is not appropriate to use the term P2P ‘Lending.’ However, it is more appropriate to use P2P ‘Funding’” (Silvia and Shomad, 2018) to describe peer-to-peer lending platforms here.

Customers lend money in exchange for interest payments (usury) and a return on capital from time to time. Therefore, the existence of P2P regulation is expected to increase investors' confidence in fintech-based lending services and help micro, small, and medium enterprises to get funds and expand their businesses.

According to Article 1, Point 3, POJK No. 77/POJK.01/2016, “IT-based credit services are the provision of financial services to hold meetings between lenders and loan recipients, build credit, and agreements in rupiah currency directly through an electronic system using the internet network.” Based on the POJK article, the term “sharia fintech based on P2P services” is more appropriate than “P2P services from the Islamic law perspective.”

Sharia fintech based on P2P is a collective fundraising activity, *both individually and institutionally/organizationally*, for new projects or for small- or micro-businesses to finance personal, business, or other needs through existing internet platforms and based on sharia principles. Such a platform uses sharia contracts (*uqud/akad*) between

the givers, the organizing site, and the receivers. Additionally, the object of the project and the financing is to fulfill sharia principles, excluding gambling, interest, *gharar*, and *bathil* substances.

A fintech company needs to sign a contract with OJK to fulfill POJK No. 77 of 2017 concerning Information Technology Based on Credit Services. For example, PT Ammana Fintek Syariah was the first fintech company to register officially in Indonesia with sharia principles. By June 10, 2018, lending companies registered with OJK included 63 conventional and one sharia fintech. However, if a company fails to fulfill its obligation to mitigate risks, OJK will return the registration documents to the fintech candidate. According to Abdullah, technology is a core element in fintech transactions, which provides a platform for founders to expose their projects to many potential supporters. The platform also facilitates communication between founders and supporters, both in real-time and through features such as a comment section, project update capabilities, and email exchange (Abdullah & Oseni, 2017).

Contract, Document, and Technological Issues

A fintech transaction includes the contract between (a) the provider and the lender and (b) lenders and loan recipients, according to Article 18 of POJK Number 77/POJK.01/2016 concerning “Money Lending Service Based on Information Technology.” The Islamic financing contract has a fundamental concept of profit and risk-sharing among the parties following a mutually agreed-upon contract. The development of Islamic fintech platforms and products as Islamic financial services promotes risk-sharing activities (Ng et al., 2015). This is because there is “only” the guidance of the National Sharia Board through *Fatwa* DSN MUI No. 117 of 2018 (hereinafter referred to as *Fatwa* MUI No. 117 of 2018) concerning “Financing Services based on Information Technology under Sharia Principles.”

In their applications, sharia fintech companies implement financial services based on sharia principles. Therefore, fintech companies connect investors and fund recipients to build financial contracts through an electronic system using the internet. In *Fatwa* DSN MUI No 117/2018, many types of *aqad* and their risk-sharing mechanisms are associated with Islamic financial technology transactions. These models of information technology-based financing activities according to sharia principles include the following.

1. Financing services for collecting receivables based on proof of invoice, whether or not accompanied by bail (*qardh*), given to an entrepreneur billing a third party.
2. Funding procurement of third-party-ordered goods (purchase orders), specifically funds provided to an entrepreneur who obtains the orders to procure goods from a third party.
3. Financing for the procurement of goods for an online seller; namely, finances provided to an entrepreneur who conducts online transactions at information technology-based trading service providers (marketplace/e-commerce platforms), that are already in partnership with the service provider.
4. Financing for the procurement of goods for an online entrepreneur with payments through a payment gateway provider, specifically funding provided to an active online entrepreneur selling through their distribution channels and payments made through payment authorization providers online (payment gateways) that cooperate with the service provider.
5. Employee funding, specifically funds provided to employees who need consumptive financing with a salary cut cooperation plan through the employing institution.
6. Community-based financing, meaning funding provided to needy community members, with a payment plan coordinated through the community coordinator or management.

The fatwa also contains prohibited provisions according to sharia financial service-based information technology. These provisions include *riba* (an additional amount given in the exchange of *riba* goods/*riba fadl*, or in addition to what is agreed upon in the principal debt in return for the suspension of payment in absolute terms/*riba nasi'ah*); *gharar* (uncertainty in a contract, either about the quality or quantity of the object of the contract or its submission); *maysir* (a contract carried out with unclear objectives, inaccurate calculations, speculation, or profit); *tadlis* (hiding the object's defectiveness the seller to trick the buyer about the defectiveness); and *dharar* (a harmful or loss-oriented action). Based on these provisions, legal protection for Islamic fintech parties is categorized into two groups based on sharia principles: customer business and customer data protection (interview with Trijono, Head of Innovation at the Fintech Department of OJK, October 9, 2018).

Illegal Personal Data Usage

Based on Article 26 of POJK No. 77 of 2016, the use of personal data is related to confidentiality. Bank Indonesia (BI) also regulates fintech activities by issuing various regulations regarding fintech implementation, including Bank Indonesia Regulation No. 18/40/PBI/2016 on “The Implementation of Payment Transaction Processing,” Bank Indonesia Regulation No. 19/12/PBI/2017 on “The Implementation of Financial Technology,” Member Regulations Board of Governors No. 19/14/PADG/2017 on “Limited Financial Test Room (Regulatory Sandbox),” and Board of Governors Member Regulation No. 19/15/PADG/2017 on “Procedures for Registration, Information Submission, and Monitoring of Financial Technology Administrators.” According to Bank Indonesia Regulation No. 19/12/PBI/2017, the fintech definition used by Central Bank has been confirmed with respect to its categories and criteria.

The vulnerability to misuse of the personal data of fintech customers continues to be a problem. Currently, technological sophistication enables fintech companies to access personal data such as telephone history and contact lists on customers’ mobile phones, enabling fintech companies to discover the customer’s profile without meeting in person. However, most customers are not aware of the terms of service and conditions that allow fintech companies to access their data because it is relatively new to ordinary people.

Fintech companies access personal data from a smartphone once the customer agrees to the terms. This illegal private-data access is the subject of public debate. Additionally, accessing personal data disrupts outsiders not involved in the customer’s loan when the fintech company contacts the customer’s partners and relatives to enable loan collection. There are still no explicit limits on the use of personal data in the administration of these loans. Therefore, the debate is likely to continue to develop in the future fintech industry if there are no exact arrangements about personal information usage.

Illegal personal data usage without permission is a form of betrayal, which is a *dzalim* deed from the Islamic law perspective. However, Islamic fintech based on P2P funding applies the *la dzalim* and *amanah* principles. Additionally, to keep the promise, *amanah*, can be interpreted as maintaining secrecy or trustworthiness. The verse

concerning *amanah* is in *Surah al-Mukminun* verse 8 and *Surah al-Ma'arij* verse 32: “*And those who keep the amanah (who carry them) and their promises.*”

The Prophet Muhammad: “*There will be no doomsday, so that vile words appear, the habit of saying vile, deciding relatives, neighboring ugliness, and so that people who are betrayed are given trust while those who are trustees are considered to be traitors*” (HR. Ahmad, No. 6514, from Abdullah bin ‘Amr Radhiyallahu *anhu*—this hadith is punished by Saheeh Ahmad Syakir *rahimahullah* and Shaykh Syu’aib al-Arnauth *rahimahullah*). Generally, some recommendations could be directed to fintech companies’ managers. New company associations must inform the public about fintech services ready for use. These fintech companies should also engage in effective marketing to increase public awareness (Saksonova and Kuzmina-Merlino, 2017).

Sharia Compliance with Islamic Principles as the Alternative Solution to Financial Technology Based on P2P Services in Indonesia

Based on Indonesian contract law, each party in every transaction must comply with the principle of propriety. According to Article 1339 of the Indonesian Civil Code, the parties are bound by the agreements that are expressly stipulated, and those that, according to the nature of the agreements, shall be imposed by propriety, customs, or the law. Each contract must be in written form to provide proof in the event of a future dispute. This principle is in line with *Surah* of Al Baqarah, verse 282 (Musjtari, 2012). Furthermore, each party that signs a contract with an Islamic fintech company should follow sharia compliance principles. However, the challenges and risks that threaten loss to the parties in Islamic fintech transactions cannot be separated from infringement of sharia compliance principles, whether intentionally or not.

Sharia compliance distinguishes Islamic finance institutions from others, including Islamic banks and conventional banks, according to Luqman Nurhisam. “Sharia compliance is currently a crucial issue because Islamic banks are still adopting conventional banking” (Nurhisam, 2016). This is because banking in Indonesia still recognizes the dual banking system, where conventional and Islamic banks are equally valid and recognized. Hence, in public perception, Islamic banks are not much different from conventional banks.

Several factors cause perceptions of Islamic banks to be similar to those of conventional banks. One of the reasons is that most Islamic banks in Indonesia are still under traditional banks' authority. They do not have particular institutions tailored to the needs of Islamic banks. Therefore, sharia banking law is based on a western pattern, narrowing Islamic banks' scope and activities.

One characteristic of sharia banking is the existence of a Sharia Supervisory Board (DPS). This board is the most influential in the operation of Islamic banks, and the sharia board has a noteworthy role in Islamic banking practice. Additionally, the sharia board is responsible for the optimum implementation of sharia principles in Islamic banks.

According to "Sharia Compliance in Islamic Banking," written by Hafij Ullah with an empirical study of Islamic banks in Bangladesh, 76.05 percent of respondents strongly agreed and 22.16 percent of respondents agreed that sharia compliance was the top priority in conducting all transactions in Bangladesh Islamic banks (Ullah, 2014). However, the highest authority of Islamic banks in Bangladesh does not provide a suitable program to broaden employees' insight into sharia's scope. Also, 9.16 percent of respondents strongly agreed that sharia compliance is the main attraction of Islamic banks in Bangladesh.

Islamic financial institutions, especially Islamic banks in Bangladesh, have three barriers associated with sharia compliance: the government, Bangladesh bank regulations, and Bangladesh's interest-based economic regulations. To ensure sharia-compliant Islamic banks, a sharia audit is conducted by the DPS. However, sharia audits in Islamic banks in Bangladesh face barriers, including the lack of an audit workface, knowledgeable auditors, lack of timely supervision, and modern techniques.

According to Bahri in "Sharia Compliance Levels in Islamic Financial Institutions," there are three essential DPS roles in Indonesia in fulfilling sharia principles in banks: acting "as counselors and advisors to the board of directors and management related to the fulfillment of sharia compliance, mediators between 'National Syariah Council (NSC/Dewan Syariah Nasional/DSN)' and management related to *fatwa* on the product or service proposed by the bank, and as a

representative of the DSN related to the implementation of DSN *fatwa*” (Bahri, 2017). To conduct such supervision, DPS members must have essential scientific qualifications on *Fiqh Muamalah*-Islamic Law of Transaction (Islamic jurisprudence about human relations) and modern Islamic financial economics. Unfortunately, today’s banking promotes DPS because of its attractiveness and popularity among the people, not its knowledge in economics and sharia. Therefore, supervision and other strategic roles are not optimal due to this lack of understanding.

Islamic financial institutions are highly vulnerable to mistakes related to *syar’i* (under sharia) matters. This encourages practitioners to violate sharia provisions to target demands, increase profit rates, and improve performance assessments, which are still predominantly based on financial performance, at each branch of an Islamic financial institution. Furthermore, they are increasingly vulnerable to Islamic banks that have a low level of supervision. Therefore, it is not surprising that there are still so many violations of sharia principles by Islamic financial institutions. This happens particularly when a conventional bank opens a sharia business unit or a conventional financial institution is converted to sharia.

DPS roles include knowing the concepts and mechanisms of Islamic banking operations, the structure and terminology of banks and sharia financial institutions (LKS), and legal documents. It should also include an understanding of basic accounting to read financial statements and be acquainted with *fiqh muamalah*. Supervision of sharia compliance implementation is crucial because its strengths and weaknesses to Islamic banking also affect Islam. If an Islamic bank violates sharia principles, the public will blame both the Islamic bank and Islam. Moreover, the community will assume that Islam does not have an excellent economic system because of these violations. This is the reality of sharia compliance optimization, and it is demanded from Islamic banks as well as Islamic financial icons. This is supported by Bagya Agung Prabowo and Jasri bin Jamal. Furthermore, if Islamic banking is still not fully compliant in practice with the principle of sharia compliance, each party in an Islamic fintech transaction is expected to be more aware of sharia compliance due to its function in sharia principles of avoiding all forms of *riba* (Prabowo & Jamal, 2016). According to Syamsul Anwar, several sources state that the norms of society prohibit usury. Additionally, the Prophet Muhammad,

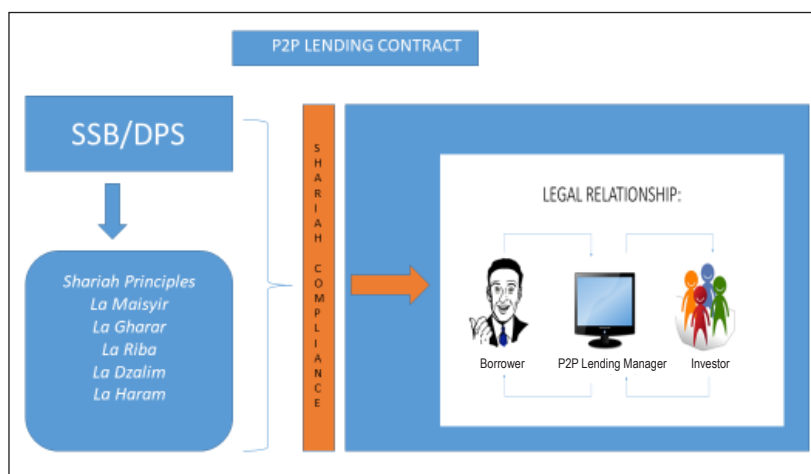
through the Qur'an and his Sunnah, strictly forbade the practice of usury (Anwar, 2007).

Based on Andaleeb's argument, after the financial crisis in 2008 and the onset of the global crash, some banks tried to avoid risks by not investing in profitable, innovative business ideas with high-scale risk. Even if businesses can obtain financing from a bank, the entire procedure for transferring funds is impractical and involves too many documents and too much collateral to complete. Thus, fintech is a reasonably simple approach to fund business ideas (Andaleeb & Mishra, 2016).

Based on the description above, the authors propose a design showing sharia compliance by applying sharia principles as an alternative solution to technology-based financial transactions in P2P in Indonesia. The design is as follows:

Figure 2

P2P Lending Contract



CONCLUSION

Islamic P2P is a viable alternative to Indonesia's unfair conventional fintech lending practices and other challenges. However, fintech

sharia based on P2P financing services still faces issues, such as illegal fintech, intimidating debt collection, high-interest rates, and illicit use of personal data. To establish legal protections for consumers, strengthening sharia financial institutions (LKS) or sharia fintech is an alternative solution to emerging problems. For example, the conventional P2P system involves *economic immorality*, such as *maysir*, *gharar*, *riba*, and *dhalim*. This is different from sharia fintech, which includes sharia compliance with the rules of *la maisyir*, *la gharar*, *la riba*, and *la dhalim*. The principles of sharia compliance and good faith are alternative solutions to strengthen sharia fintech and protect consumers. The government should use these principles to enact satisfactory financial regulations and develop competent and capable human resources in sharia or Islamic economic law.

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