

Case Study on Legal Arrangements for Sharia Peer-to-Peer Lending Financing

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Abstract

The fintech business of peer-to-peer lending has experienced a period of considerable growth in recent years. However, it is still the subject of debate and controversy from the perspective of Sharia law. This article aims to analyze Sharia law on fintech peer-to-peer lending businesses, with a particular focus on usury and gharar banking. The methodology employed in this study is descriptive and analytical in nature. This entailed the collection of data from a range of sources, including literature, legal documents, and expert opinions. The findings indicate that the peer-to-peer lending fintech business can be classified as usury and gharar due to the implementation of several practices by the platform, including high interest rates and a lack of transparency regarding the associated risks. From the perspective of Sharia law, usury and gharar are prohibited, as they contravene the principles of justice and balance. Consequently, fintech peer-to-peer lending businesses must adhere to the tenets of Shariah law, such as abstaining from exorbitant interest rates and ensuring transparency regarding risks. In conclusion, fintech peer-to-peer lending businesses must be meticulously analyzed from the perspective of Shariah law to ensure their halalness in Islam. It is also imperative for the government and regulators to prioritize Shariah law aspects in regulating fintech peer-to-peer lending businesses

1. Introduction

Financial Technology, or Fintech, is the use of online technology to enhance financial services. This phenomenon has emerged alongside the advent of the fourth industrial revolution, a period during which all entities can interact with one another through the Internet of Things (IoT) and Cyber-Physical Systems (CPS), thereby facilitating the creation of new values and optimizing existing ones across industrial sectors. (Prasetyo & Sutopo, 2018). This service employs a variety of mechanisms that diverge from those utilized in traditional bank financing. P2P lending can be accessed by any individual through the completion of an application process that can be initiated at any time, without the necessity of submitting credit information to the bank and without the requirement of collateral. This differs from traditional banking financing, where borrowers must visit a bank branch to sign a credit agreement, undergo a BI Checking process, and provide collateral. (Hariyana, 2019)

P2P lending services offer convenience in disbursement, but present challenges in payment processing. The rationale behind this is that the service in question is subject to a loan interest system, which is set to increase on a daily basis (Alfianurahman, 2019). This system is commonly referred to as the compounding or interest system. Additionally, the loan agreement is usually consumptive in nature, with funds being used to meet day-to-day needs rather than being provided as a form of financing. Furthermore, the actions of the borrower have an impact on others, as they may be affected by the actions of a third party in seeking funds. Those who have not repaid their loans are subject to the consequences of collections carried out on a daily basis. (Purba, 2020)

The implementation of debts should not be unduly burdensome for all parties. In particular, until interest is applied, which in terms of the law of accounts receivable agreements must be paid in the same amount and form. (Cut Nurul, 2021)

The legal basis for debt and credit activities is found in the Qur'an and Al-hadith. One of these is in QS Al-maidah verse (2), which relates to helping in the path of goodness, and not to various things that bring sin. The verse above indicates that providing debt to others is tantamount to assisting them. This is because those who seek to borrow are those who are in need but lack the capacity to meet their needs, thus relying on the assistance of others through debt. Therefore, borrowing and lending activities should not place undue burdens on the various parties involved. The Prophet SAW forgave debt

without requiring an agreement and demonstrated benevolence in this regard (Afryenis, 2016).

In light of the aforementioned evidence, the legality of peer-to-peer lending from a Shari'ah Economic Law perspective is questionable. This is particularly evident in the context of the profit withdrawal process, which is perceived as onerous for fund borrowers due to the application of an interest-based system (Nasari, 2022).

2. Research Method

The research method employed is the descriptive analytic method. Descriptive analysis entails a comprehensive description of the practices employed by peer-to-peer lending fintech businesses and the manner in which sharia law regards these practices. Analytic analysis, on the other hand, entails the systematic and logical examination of the data collected, with the objective of drawing more profound conclusions. In this study, researchers will analyze the data obtained through various research methodologies, including literature research, case studies, comparative approaches, and interpretative approaches. The analysis will result in a description of the business practices of fintech peer-to-peer lending, an identification of the principles of sharia law related to these practices, and an analysis of the suitability of these business practices with the view of sharia law. Therefore, it can be concluded that the research method in this journal is descriptive analytic because it combines detailed description and in-depth data analysis to achieve the stated research objectives.

The following approaches will be employed in this research: The initial stage of the research process is literature research. This involves reading and studying sources related to the research topic, such as books, journals, and articles that discuss sharia law and peer-to-peer lending fintech businesses. In the process of literature research, scholars can undertake a comprehensive search for pertinent sources on the subject matter in question and then analyze the collected data in a systematic manner. A comparative approach may be undertaken by comparing the business practices of fintech peer-to-peer lending with those that are in accordance with the principles of sharia law. This approach permits a comparative analysis of the divergences between the fintech business practices of peer-to-peer lending and those in accordance with sharia law, as well as the evaluation of the functioning of the former. The fintech peer-to-peer lending business may be capable of meeting the standards of sharia law. An interpretative approach may be undertaken by gaining an understanding of the views and interpretations of scholars regarding the principles of sharia law as they relate to peer-to-peer lending fintech businesses. This approach allows for the analysis of a variety of opinions and interpretations held by scholars concerning Islamic legal principles and their applicability to peer-

to-peer lending fintech businesses, with a subsequent evaluation of the compatibility of these practices with these scholarly perspectives (Albi Aggito, 2018)

3. Results and Discussion

Peer to Peer Lending in Indonesia

Peer-to-peer (P2P) lending is a financial technology (fintech) that has gained significant traction in Indonesia. The genesis of the fintech phenomenon can be traced to 2004 in the UK, where a British financial institution initiated a novel approach to providing money-related lending services. The introduction of P2P lending services, offering borrowers access to lower interest rates, prompted a significant number of individuals to register themselves for loans. This led to the establishment of P2P lending companies in Europe, with a similar phenomenon occurring in the United States. The history of P2P lending continues to evolve. The 2008 financial crisis prompted a surge in interest in P2P lending (PANJAITAN, 2021). At the time, numerous banks ceased lending and offered 0% interest to debt depositors. Consequently, borrowers were compelled to seek alternative funding from active fund owners to become high-return investors. Five years later, Funding Circle followed Zopa in August 2010. The company's primary objective is to facilitate the provision of financial resources to small businesses, also referred to as MSMEs. Both Zopa and Funding Circle are affiliated with the P2P Finance Association (P2PFA).

The term "fintech" was first used in Indonesia in September 2015, coinciding with the establishment of the Indonesian Fintech Association. The genesis of the association can be traced back to a meeting convened by the fintech community. Moreover, the process of launching it into the public domain commenced in September 2015, followed by meetings with the chairman of the OJK, which commenced regular meetings in October 2015. The activity persisted until March 2016. In May 2016, the association commenced the process of admitting members. The development of the association continued apace. In June 2016, the association held a number of meetings with the BI governor, who then initiated a series of regular meetings. Subsequently, in September 2016, the fintech association commenced collaborative efforts with the OJK, the BI, and government agencies to facilitate the formulation of Indonesian fintech policies. Ultimately, on August 9, 2019, AFTECH was formally designated as an OJK, a fixed digital financial service provider, as outlined in POJK Number 13/2018.

In fact, Fintech P2P lending represents a form of renewal in the scope of lending and borrowing. Debt transactions in Indonesian society have been a long-standing phenomenon. Consequently, the emergence of these services has been able to develop rapidly.

Party relationships in P2P lending

The nature of the relationships between the parties involved in peer-to-peer (P2P) lending is a topic worthy of further investigation. The contractual relationship between the consumer and business actors in P2P lending services is set forth in OJK rule no. 77 / POJK .01 / 2016, which contains provisions governing technology-based lending services in article 18. This article delineates the essential elements of an agreement pertaining to the implementation of technology-based lending services. Article 18 states that the agreement in the process of implementing technology-based lending services includes:

- a. The agreement between the organizer and the giver
- b. Agreement between the lender and the recipient

In light of the aforementioned details, the operational framework of P2P lending can be delineated as follows:

- a. As a borrower. As a borrower, the primary prerequisite for the execution of a P2P lending agreement is the presence of good faith in the implementation of the agreement, which must then be accompanied by the capacity to engage in legal conduct. The recipient is required to consider various stipulations when undertaking transactions through P2P lending, including the uploading of all necessary documentation to apply for diverse online loans (Hartanto & Ramli, 2018).
- b. As an investor/lender. The POJK no 77 POJK .01/2016, which contains technology-based money lending services, states that the various requirements carried out by lenders if they want to enter into a P2P lending agreement are not listed. However, many platforms that provide P2P lending services have conditions for submitting themselves to become investors.
- c. As a P2P lending service provider. The organizer is initially responsible for the provision, management and operation of technology-based money lending services, with funding derived from the recipient. The organizer collaborates with the P2P lending organizer in alignment with various stipulations outlined in the legislation.

Fintech Implementation: Technology-based P2P Lending in Indonesia

The author's analysis indicates that the existence of services by P2PL is inextricably linked to a set of inherent advantages and disadvantages. Among the key weaknesses associated with this service are the following:

- a. Fewer transaction requirements. Online loan providers offer various conveniences in the implementation mechanism. All transactions are simply done online through P2PL.
- b. The process of applying for a loan is straightforward and expeditious.

c. There is no real credit check.

Despite the introduction of regulations, the industry remains plagued by significant deficiencies. This is evident in the numerous instances of negative practices that are regularly reported by various media outlets, with the frequency of such incidents increasing year by year. Moreover, the previous chapter outlined that, based on data from the Financial Services Authority, from 2019 to 2021 there were a total of 19,711 public complaints pertaining to illegal-based loan services. Of the total number of complaints, 9,270 (47.03%) were classified as serious violations, while 10,441 (52.97%) were categorized as minor or moderate violations.

In light of these observations, the author classifies the various shortcomings associated with the implementation of Fintech Peer-to-Peer Lending in Indonesia as follows: Firstly, the governance of this sector is still in its infancy. For example, there are currently no provisions in place governing the maximum amount of loan interest that can be charged. This lack of regulation allows for a great deal of ambiguity and potential for exploitation. It allows lenders and platform operators to set arbitrary margin fees on loans, which can result in borrowers being unable to repay their loans. This can then result in borrowers resorting to taking out further loans on different platforms in order to repay their existing loans.

Secondly, risk mitigation is still lacking, as evidenced by the absence of dispute resolution provisions in the event of a dispute between the two parties, namely the lender and the loan recipient.

The third issue pertains to inadequate supervision and enforcement of regulations for peer-to-peer lending platforms that have not obtained inclusion on the list or obtained licenses from the OJK. This results in the proliferation of illicit loans. However, it is imperative to recognize that the efficacy of such platforms hinges on the capacity of the supervisory bodies to oversee and regulate their operations.

Fourthly, there has been a paucity of socialisation of the regulatory and institutional framework for peer-to-peer lending. This has resulted in a lack of public awareness of the legality or illegality of such services. Conversely, the prevalence of illicit activities in this sector has been considerable.

In light of these considerations, the author posits that the dearth of public literacy is also shaped by the absence of socialization efforts spearheaded by the government in its capacity as the regulatory authority. In essence, the low level of public literacy as delineated by the Financial Services Authority represents a consequence, rather than a root cause.

MUI Rules and Sharia Principles on Peer to Peer Lending

In accordance with the regulations set forth by the MUI, P2P lending is permitted in Indonesia, subject to two conditions. Firstly, the lending must be based upon the principles of Islamic law and comply with the relevant regulations. Secondly, the lending must be conducted in accordance with the fatwas set forth by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and adhere to a series of clear objectives, transparent mechanisms, and transparent transaction flows. (Suryana., 2018)

Furthermore, P2P Lending must also have a robust risk management system, clear supervision and monitoring mechanisms, and comply with government regulations and provisions. Sharia principles that are relevant to P2P Lending are as follows: firstly, usury. Usury is defined as the practice of giving or taking additional money above the agreed principal amount. It is imperative that P2P lending ensures that the interest rate charged and paid does not exceed the rate determined by Sharia law. Secondly, Gharar refers to uncertainty in a transaction that may result in loss for one of the parties. Therefore, P2P lending must guarantee that there is no element of uncertainty or vagueness in the lending process. Third, justice is a foundational principle of Islamic law. It ensures that all individuals involved in a transaction receive fair treatment and adhere to Islamic principles. P2P Lending must ensure that all parties involved are treated fairly and in accordance with Islamic law. (Wulandari., 2018).

The Law of Peer to Peer Lending According Sharia View

This paper examines the implications of P2P lending from a Shariah perspective. It begins by delineating the benefits offered by the system, then proceeds to discuss the risks, and finally, it outlines the arrangements needed to ensure that the P2P lending process does not contravene Shariah.

From a Shariah perspective, the benefit offered by the P2P lending system is that it provides an alternative to avoiding riba, which is prohibited by Shariah. The implications of P2P Lending from a Shariah perspective, including the benefits offered by the system, the risks, and the arrangements needed to ensure that the P2P Lending process does not contravene Shariah, are as follows. The benefit offered by the P2P Lending system from a Shariah view is that it provides an alternative to avoiding riba, which is prohibited by Shariah.

The regulatory framework that must be established to guarantee that the P2P lending process does not contravene Sharia comprises two key elements: the stipulation of the conditions and terms that both parties must adhere to, and the supervision of transactions by a Shariah authority, such as the Shariah Council, whose responsibility it is to ensure that each transaction is fully compliant with Sharia. The results of the sharia law analysis indicate that the Fintech Peer-to-Peer Lending business is acceptable in Islamic views if it fulfills sharia principles such as transparency,

accountability, and protection of consumer rights. The implementation of these sharia principles can assist in maintaining the compliance of the Fintech Peer-to-Peer Lending business with sharia law, thereby ensuring a positive impact on society and the environment. (Soemitra., 2016)

An analysis of the sharia law implications of the Fintech Peer-to-Peer Lending (P2P Lending) business is a crucial undertaking to ascertain that the business adheres to sharia principles and is accepted within the Muslim community. In this context, a P2P lending platform facilitates the interaction between lenders and borrowers, bypassing the role of traditional banks and financial institutions. This analysis reveals that there are some discrepancies regarding the validity of sharia law in the P2P lending business. Consequently, it is crucial for business players to comprehend the fundamental principles of sharia law and to refer to MUI fatwas and the opinions of scholars. This will enable them to align their businesses with sharia law.

In essence, P2P lending businesses are deemed to be compatible with Islamic teachings if they align with Shariah principles, such as fairness, a profit-sharing policy in alignment with a Mudharabah contract, transparency, and the obligation to conduct a rigorous risk assessment. The understanding and application of Shariah principles in P2P Lending businesses is expected to foster greater confidence among Muslims in these businesses, thereby contributing to the growth of a resilient and thriving Islamic financial ecosystem.

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The legality of P2PL as a technology-based money lending service

A distinction must be made between a debt, which is known as a *qard*, and a loan, or *'āriyah*. The fundamental difference lies in the nature of the transactions. In a debt, as in a loan, the debtor is obliged to return a sum of money or other item of value to the creditor. The debt must be repaid in full at the end of the period of the loan. For example, if a person borrowed money, that money must be returned to the lender at the end of the agreed period. Conversely, lending (*'āriyah*) represents a transaction involving the borrowing and lending of goods. It entails the transfer of benefits rather than tangible items, such as borrowing new clothes, which must be returned by the borrower in the future, rather than replaced with goods of the same value. Therefore, peer-to-peer lending transactions fall within the category of debt-receivable (*qard*) transactions. (Fitriana, Eva, S., & Rina Puspita, 2021)

However, there are notable distinctions between the process of Islamic law-based borrowing and that of peer-to-peer lending (P2PL), an online platform facilitating fund lending. Based on the analysis conducted by the author, the legality of P2PL as an online fund lending service that incorporates interest-based transactions, as defined by Islamic economics, is deemed unlawful.

P2PL transactions are classified as debt-receivable (*qard*) contracts in accordance with the tenets of Sharia economics. The rationale for the permissibility of these transactions is to facilitate beneficial activities. Islam permits debt for those who are in need. This indicates that it is permissible to provide funds to individuals

who require debt and do not consider it makhruh. This is because the individual in debt acquires assets for the benefit of their life, fulfilling their needs (Muhamad Bisri Mustofa & Mifta Khatul Khoir, 2019).

In the MUI National Sharia Council Fatwa Number 117/DSN-MUI/II/2018, it is permitted for P2PL transactions to occur, provided that they are conducted in accordance with Sharia principles. The principles that are understood to be relevant in this context include the avoidance of usury, the avoidance of uncertainty, the avoidance of high speculation, the avoidance of hiding information on defects, the avoidance of haram transactions, and the avoidance of transactions that could harm other parties (Sudarto, A., Mustofa, M. B., & Mu'in, 2022)

Nevertheless, in the context of P2PL services, the giver, who assumes the role of an investor, may find themselves exposed to the risk of gharar. In such a scenario, while the lender may potentially benefit from the doubled interest on the loan, there is also a possibility of financial loss. Investment activities are muamalah activities that are permitted and encouraged according to Islamic teachings. This is because investment allows assets to be made more productive, thereby providing various benefits to investors (Garning, & Robby, 2022)

This is because investors in this service tend to have uncertainties that lead to various risks, such as late payments and default. The setting of double interest in principle is a strategy for lenders/investors to prevent these risks. However, this method will also harm other parties.

Furthermore, the practice of P2PL includes the interest requested by one party as their profit on the principal loan given. This is in accordance with the findings of Question 1. The verse of Al-Hadid (11), which encourages the lending of money to others in return for interest, is a form of charity that Allah will multiply. However, the taking of advantage of the law in the context of lending is certainly prohibited, as stipulated in the contract.

This analysis leads to the conclusion that the interest charged by online lending services is classified as usury. There is a discrepancy between this technology-based lending and borrowing practice and Islamic law.

In addition, the platform organizer is also classified as a practice of riba, gharar (uncertainty), maysir (speculation), and dharar (harming other parties). Virtual purchasing and selling transactions conducted using bitcoin are in accordance with Islamic law, particularly in Indonesia, as the provisions, procedures, and conditions for utilizing bitcoin are not greatly dissimilar to those of virtual transactions conducted with e-money and others. However, bitcoin cannot be used as a commodity because it contains elements of maysir (speculative

gambling), which has the nature of profit and as an investment tool, which also still contains elements of maysir. Furthermore, if bitcoin is used as a business transaction tool, there is an element of gharar (uncertainty). (Jati, H. S., & Zulfikar, 2021) Activities that include elements of uncertainty and speculation, such as trading without the delivery of goods or services or financing systems with interest, as well as insurance activities involving goods or substances deemed haram and the provision of goods or services with an immoral or unwholesome nature, are all examples of transactions or services that fall under these definitions. In this position, the platform organizer is not affected by any potential disputes that may arise between the parties. Furthermore, if there is a profit, the organizer will still receive it. (Harahap, K., Anggraini, T., 2022)

4. Conclusion

Based on the results of the presentation and data analysis previously completed and described, the researchers then obtained conclusions regarding the implementation of fintech in the Indonesian region. P2PL, a money lending service based on information technology, was identified as a promising option. However, the region also presents various challenges. These include the need for further development of the regulatory framework, the necessity of establishing effective risk mitigation strategies, and the importance of ensuring the reliability of the information technology infrastructure. The weaknesses in the regulation include the absence of provisions on the maximum amount of loan interest determination and risk mitigation. The latter is still immature, as it lacks provisions for dispute resolution between the two parties involved in the transaction, namely the service provider and the borrower. The supervision and follow-up to services that have not been registered or licensed by the OJK also warrant further consideration. The lack of socialization of the regulations pertaining to P2PL is another area that requires attention. Furthermore, the classification of the aforementioned service as a debt-receivable transaction (qard) is a matter that needs to be revisited. The practice of interest on peer-to-peer lending from the perspective of Islamic economic law is considered unlawful due to the presence of several elements that contradict its tenets. The binding process between the various parties involved, including providers, borrowers, and recipients, is supported by the following principles: harām, maysīr rarārandaribā. Consequently, the practice is seen as detrimental and not aligned with the Maqāṣid Ash-Sharī'ah, or the objectives of Islamic Sharia law. It is permissible to incur a debt for a good purpose. Investment in the form of a money loan is a form of engagement that is prohibited. From an economic standpoint, it is generally not advisable to charge interest on a loan because doing so places an unfair burden on one party to the transaction.

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