

AN ISLAMIC SPIRIT FOR BUSINESS ETHICS AND LEGAL FRAMEWORK OF FINTECH PEER TO PEER LENDING: Why Does Indonesia Need It?

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Abstract

The growth of Fintech Peer-to-Peer (P2P) lending in Indonesia is one of the supports for national economic development. The positive growth of this financial sector is not supported by proportional rules, resulting in the practices of business ethics violation which is detrimental to society. To overcome these problems, the spirit of Islam can be the basis for determining ethical and business measures into a better legal framework for Fintech P2P Lending. This article applies a normative legal research method using a conceptual approach and legislation relevant to the theme of the study. The research results indicate that Fintech P2P Lending in Indonesia needs to be regulated in a qualified legal framework because the existing rules have not been able to solve unethical actions of businessmen. The business concept in Islam also accommodates ethical issues that must be applied in business activities as a harmless commerce spirit. This Islamic spirit can be used as a source of material law in determining a clear legal framework to uphold Fintech P2P Lending business ethics so as not to harm the Indonesian people.

Pertumbuhan fintech peer-to-peer (P2P) lending di Indonesia merupakan salah satu penunjang pembangunan ekonomi nasional. Pertumbuhan positif sektor keuangan ini tidak diikuti dengan aturan yang proporsional sehingga menimbulkan praktik-praktik yang melanggar etika bisnis dan sangat merugikan masyarakat. Untuk mengatasi permasalahan tersebut, semangat Islam dapat menjadi landasan untuk menentukan

langkah-langkah etis dan bisnis ke dalam kerangka hukum fintech P2P lending yang lebih baik. Artikel ini menggunakan metode penelitian hukum normatif dengan menggunakan pendekatan konseptual dan peraturan perundang-undangan yang relevan dengan tema penelitian. Hasil penelitian dalam artikel ini menunjukkan bahwa fintech P2P Lending di Indonesia perlu diatur dalam kerangka hukum yang mumpuni karena aturan yang ada belum mampu mengatasi tindakan tidak etis dari para pelaku bisnis. Konsep bisnis dalam Islam juga mengakomodir persoalan etika yang harus diterapkan dalam kegiatan bisnis sebagai spirit perdagangan yang tidak merugikan. Semangat keislaman ini dapat dijadikan sebagai sumber hukum materil dalam menentukan kerangka hukum yang jelas untuk menegakkan etika bisnis fintech P2P lending agar tidak merugikan masyarakat Indonesia.

Keywords: Business Ethics, Fintech, Islamic Law, Peer-to-peer lending

Introduction

The Industrial Revolution 4.0 is the main factor in bringing about convergence between the physical and cybernetic worlds, which reforms financial services from the traditional way to technology-based transactions.¹ Rapid technological developments have led to the digitalization trend used by banking, insurance, investment companies, and other financial institutions.² Business digitalization that makes transactions easier is the beginning of the Financial Technology (Fintech).³ The business transformation eventually left the traditional way of dealing. In global competition, the Fintech business is the primary alternative for financial business activists because it can reduce operational costs and expand the economy's scope.⁴ Some countries positively respond to the advancement of finance digitalization⁵. In 2019, Malaysian Government announced that a significant allocation was provided to encourage the transformation of digital-based companies. Singapore, seeing Fintech as a potential business to fundamentally change the financial industry, through the Monetary Authority of Singapore actively improve Fintech innovation which continuously grows and does not interfere with other technology-based

1 P. Gomber, R. J. Kauffman, C. Parker, and B. W. Weber, "On the fintech revolution: Interpreting the forces of innovation, disruption, and transformation in financial services," *Journal of Management Information Systems*, vol. 35 No.1 (2018): 220-265.

2 D. Salampasis, and A. L. Mention, "FinTech: Harnessing innovation for financial inclusion," *Handbook of Blockchain, Digital Finance, and Inclusion*, Vol. 2: 451-461.

3 J. Guild, Fintech and the Future of Finance, *Asian Journal of Public Affairs*, August (2017): 17-20.

4 A. Berman, M. Cano-Kollmann, and R. Mudambi, "Innovation and entrepreneurial ecosystems: fintech in the financial services industry" *Review of Managerial Science*, January (2021): 1–20.

5 R. Idris, "Industrial revolution 4.0: An overview of readiness and potential economic effects in Malaysia from millennial's perspective". *World Scientific News*, No. 118 (2019) : 274.

businesses.⁶ The question is, what is the Fintech potential in Indonesia?

Fintech in Indonesia has considerable potential in the business world. The growth of Indonesian Fintech is indicated to have relatively rapid development, proven by ranked 47th globally, with the country's digital economy value reaching USD 40 billion (IDR 586 T).⁷ Islamic Finance also reported that the type of sharia fintech in Indonesia grew by 272 platforms, 20 of which are Peer-to-Peer (P2P) Lending (or also known as P2PL).⁸ The Global Islamic Fintech noted that Indonesia occupies the 4th position as the most conducive country for the growth of the Fintech Market & Ecosystem.⁹

The banking performance decreased when the Covid-19 pandemic happened due to the limited social movements. Hence, it was an opportunity to create a new fintech industry¹⁰ as people tried to find the convenient and flexible financial access without physically moving.¹¹ The business competition presented through banking, in fact, is not side-by-side with the rapid growth of Fintech in Indonesia. It happens because the banking sector still lacks in developing online-based loan verification to provide more flexible financial services.¹² Based on OJK data in 2020, fintech services in Indonesia experienced a drastic increase of IDR 155.9 trillion, 91.3% from the previous year. These data also noted that the number of lender and borrower accounts grew by 18.32% and 134.59% each year.¹³ Even in 2021, users of fintech services also increase. An indicator of this increase can be seen from the rising number of borrower accounts using fintech services by 45 million, compared to 2020 which was only 43.5 million accounts.¹⁴

6 FAN, Pei Sai. "Singapore approach to develop and regulate FinTech". *Handbook of Blockchain, Digital Finance, and Inclusion*, Volume 1 (2018), 347-357.

7 Santoso, W., "Fintech and the future of finance", paper presented at the *International Seminar on Fintech and The Future of Finance*, 12 March 2020, Universitas Sebelas Maret.

8 Lee, I., & Shin, Y. J. (2018). "Fintech: Ecosystem, business models, investment decisions, and challenges". *Business horizons*, 61, (1), 35-46.

9 Jagtiani, Julapa, and Kose John. "Fintech: the impact on consumers and regulatory responses." *Journal of Economics and Business*, 100 (2018): 1-6.

10 Militcyano Samuel Sapulete, Et.al, "Fintech, Banks, And The Covid-19 Pandemic: Evidence From Indonesia", *Bulletin of Monetary Economics and Banking*, Vol. 24 No. 4 (2021): 581.

11 Fu, J., & Mishra, M.. "Fintech in the Time of COVID-19: Trust and Technological Adoption Furing Crises". *Swiss Finance Institute Research Paper Series*, December (2020): 1–56.

12 Najaf, K., Subramaniam, R. K., & Atayah, O. F, "Understanding the Implications of FinTech Peer-to-Peer (P2P) Lending during the COVID-19 Pandemic", *Journal of Sustainable Finance & Investment* (2021), 1–16.

13 CNBC Indonesia, *Wow! Total Pinjaman Orang RI di Pinjol Tembus Rp 155,9 T*: <https://www.cnbcindonesia.com/tech/20210129101812-37-219599/wow-total-pinjaman-orang-ri-di-pinjol-tembus-rp-1559-t>, accessed on 20 December 2022.

14 Liputan 6, OJK Catat Jumlah Nasabah Pinjaman Online Tumbuh 134,59 Persen di Desember

The excellent potential development of fintech in Indonesia is the main factor in influencing the improvement of the national economy. However, when viewed from a regulatory perspective, the answer is different because the legality of Indonesian fintech law is still not qualified,¹⁵ in contrast to Singapore, which is superior in responding to Fintech in a regulatory manner. It is visible from the role of the Monetary Authority of Singapore, an essential part in issuing The New Payment Services Act 2019 (No. 2 of 2019) as the primary rule that accommodates Fintech in the said country.¹⁶ Since 2018, European countries also had a Fintech Law known as the Payment Service Directive (PSD2). Meanwhile, Indonesia still has no law as the basis of fintech regulations. The legality of Indonesian Fintech, especially P2P Fintech, is only limited to institutional rules contained in the OJK Regulation No. 77/POJK.01/2016 concerning Information Technology-based Lending and Borrowing Services. Institutional controls are only technical and are not yet capable of enforcing all the lines that develop in Fintech, especially in criminal law enforcement, which is one of the issues in the Indonesian P2P fintech.

The legal vacuum of Fintech in Indonesia affects the implementation of business ethics that should exist in the economic sector. According to James Fieser, the urgency of ethics in the business world needs to be upheld as a moral guide for entrepreneurs in avoiding criminal acts, civil lawsuits, and detrimental actions to the company.¹⁷ The urgency of business ethics is not merely for exploiting finance in society to create a capitalism ecosystem. However, business ethics is used to maintain good relations between the company and the stakeholders.¹⁸

As the former US Supreme Court Justice, Earl Warren once said, “Law floats in the sea of ethics”. It means that law must be in harmony with the applicable ethical principles.¹⁹ His statement can be interpreted that ethics are

2020 : <https://www.liputan6.com/bisnis/read/4502202/ojk-catat-jumlah-nasabah-pinjaman-online-tumbuh-13459-persen-di-desember-2020>, accessed on 20 December 2022.

15 Fintech in Indonesia is currently only regulated in the Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 regarding Information Technology-Based Borrowing-Lending Services.

16 Global Legal Insights, *Fintech Laws and Regulations 2021* : <https://www.globallegalinsights.com/practice-areas/fintech-laws-and-regulations/singapore> , accessed on 25 March 2022.

17 James Fieser (2010). *Business Ethic*, available online at: <http://www.utm.edu/staff/jfieser/vita/research/Busbook.htm>. Accessed on 24 March 2022.

18 Geek Wise (2011). *What is Business Ethics?* Available online at: <http://www.wisegeek.com/what-is-business-ethics.htm>. Accessed on 24 March 2022.

19 Earn Warren on Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi* (Jakarta: PT. Sinar Grafika, 2016), Hlm. 15-15.

applicable to the business realm, especially in the 4.0 era, and they become the instrument that forms trust between stakeholders in an increasingly flexible technology-based business world.²⁰ The inadequacy of the Fintech Law, according to Chatterje (2019), is an opportunity for business actors in the Fintech field who are irresponsible for breaking through ethics that results in law violations.²¹ It is manifested in how the legality of Fintech P2PL is considered insufficient to answer the dynamics of fintech problems that are growing in society—considering that in 2019-2021 there were 19,711 public complaints related to illegal P2PL Fintech. Around 52.97% were complaints of minor/moderate violations. The remainings, 47.03%, were violations such as disbursement without the applicant's consent, threats of personal data dissemination, billing to all mobile phone contacts with terror/intimidation, and violent billing and sexual harassment.²²

Research related to fintech is currently considered attractive by researchers because it has potential issues that can develop in the current technological era. Haewon Yum et al. analyzed the effect of flexibility in information technology that has made people prefer access to finance via P2PL rather than banking.²³ This phenomenon is also confirmed by Kolesova et al. regarding the influence of technology in the financial business world. They recommended that the banking sector needs to adapt using technology in their activities.²⁴ However, Hidajat, in his study, claimed that the fintech world is an illegal practice that has committed many ethical violations that were not supported by proportional rules.²⁵ The study was then supported by Wijaya and Herwastoeti's analysis on the forms of criminal and civil liability for unlawful fintech that misused customers' data

20 As one of the business ethics formulations in the International Society For Business, Economics, and Ethics 1996, we are building trust between the strong business class and the lower class entrepreneur on M. Muslim, "Urgensi Etika Bisnis di Era Global", *Esensi*, Vol. 20 No. 2 (2017): 152.

21 Chatterjee, S., "Is data privacy a fundamental right in India? An analysis and recommendations from policy and legal perspective", *International Journal of Law and Management*, Vol. 61, No. 1 (2019): 170-190.

22 OJK. "Infografis OJK Bersama Kementerian atau Lembaga Terkait Berkomitmen Berantas Pinjol Ilegal." <https://www.ojk.go.id/id/beritadan-kegiatan/info-terkini/Pages/Infografis-OJK-Bersama-Kementerian-atau-Lembaga-Terkait-Berkomitmen-Berantas-Pinjol-Ilegal.aspx>, diakses pada tanggal 07 April 2022.

23 YUM, Haewon; LEE, Byungtae; CHAE, Myungsin. "From the wisdom of crowds to my own judgment in microfinance through online peer-to-peer lending platforms". *Electronic Commerce Research and Applications*, 11,5 (2012): 469-483.

24 Kolesova, I. V.; Girzheva, Y. S. "Impact of financial technologies on the banking sector", *KnE Social Sciences* (2018): 215-220.

25 Hidajat, Taofik. "Unethical practices peer-to-peer lending in Indonesia". *Journal of Financial Crime* (2020)

during the outbreak of the COVID-19 pandemic in Indonesia.²⁶

Although there have been several studies on fintech, there is no single study discussing business ethics-based P2P fintech legal framework as legal certainty for customer protection when using digital financial services in Indonesia. This is the fundamental reason why the current researcher wants to conduct a study on the said theme. The researcher aims to examine the Islamic spirit in Indonesian fintech, which requires solutions through legal construction as an instrument in enforcing business ethics of fintech era 4.0. The discussing business ethics apply Islamic principles which are very relevant in Indonesia because it has a constitutional platform based on Pancasila as the nation's ideology, socio-cultural, and Islamic legal awareness of its citizens.²⁷ It also aims to realize sustainable law-based business ethics in the fintech industry, significantly mitigating the losses experienced by consumers when they want to seek financial access. According to Jagtiani & John, the fintech regulation has a role in protecting consumers and maintaining financial stability while creating a safe fintech innovation environment.²⁸

Research Methods

The normative legal research is applied in this study to construct proportional law in the field of fintech based on business ethics. The research method was chosen so the law can be constructed qualitatively through a positive legal inventory approach, as well as applicable legal principles and doctrines.²⁹ In supporting the current research, secondary data were used. Bougie explains that secondary data is research sources from documentation of government regulations and research publications from journals, media, and the internet.³⁰ So, based on the explanation above, the data in this research comes from regulations, articles, journals, and webs that correlate with the discussion of the legal construction of fintech, which is ideally business ethics as the protection of Indonesian consumers. The data were analyzed using content analysis approach. Holsti said that the method is used to open new horizons, to find, to identify, and to process the material through conceptual integration, an indicator of research.³¹ Through the data method, the

26 Wijaya, Hendrik & Herwastoeti. "Criminal & Civil Liability Related to Misuse of Illegal Fintech Customer Data During The Covid-19 Pandemic". *Audito Comparative Law Journal (ACLJ)*, 3, 1(2022): 1-9.

27 Noor, Afif, et al. "Regulation and consumer protection of fintech in Indonesia: The case of Islamic fintech lending". *Linguistics and Culture Review*, 6 (2022): 55.

28 Jagtiani, J. and John, K., "Fintech: the impact on consumers and regulatory responses", *Journal of Economics and Business*, Vol. 100, November (2018): 1-6.

29 Linos, K., & Carlson, M., "Qualitative methods for law review writing". *U. Chi. L. Rev.*, 84 (2017): 213.

30 Bougie, R., "Research methods for business a skill building approach", John Wiley & Sons., (2016).

31 Holsti R., *Content Analysis for the Social Sciences and Humanities* (Massachusetts : Addison-Wesley Publishing Company, 1960), 14.

author wants to analyze the content with various conceptual literacy presented in each argument of the author's analysis.

Discussion

Legal Issues Fintech P2P Lending and Identifying Unethical Issues Practice of Fintech P2P Lending in Indonesia

Fintech as a financial instrument is very helpful for the community in reaching financial services.³² Fundamental legal problems are due to the absence of a single rule equivalent to a law that can guide fintech business ethics in today's modern era. Unlike China, which has an authority that regulates digital transactions, Indonesia still relies on Law No. 19 of 2016 Jo. Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE) as the omnibus law (known in Indonesia as *Undang-Undang Sapu Jagat*) underlying technology-based transactions from e-commerce, digital payments, and Fintech.³³ Even, the legal basis for fintech transactions in Indonesia does not become an apparent legal certainty in the ASEAN Regions because the elements of fintech transactions are only included in the ITE legal framework with electronic attachments,³⁴ as in Article 1 number 2 of the ITE Law which defines electronic transactions using internet media. These rules are the basis of the fintech transaction law with the internet as a medium that connects service providers and customers, either it is a peer-to-peer lending model or crowdfunding (donations, rewards, pre-purchase, and equity).³⁵

These problems should be resolved immediately since Indonesia has considerable potential for fintech development. The total population in Indonesia is 262 million, gross domestic product (GDP) per capita is USD 3,876.8, and 130 million active social media users. These demographic conditions make Indonesia a large and potential market for business and investment, including fintech companies engaged in P2P lending. Without proportional rules, this will lead to many problems. The census conducted by EY in 2018 on fintech companies in ASEAN stated that fintech regulations in Thailand and Indonesia

32 Salampasis, D. and Mention, A. L., "Chapter 18 – FinTech: harnessing innovation for financial inclusion", in Lee Kuo Chuen, D. and Deng, R. (Eds), *Digital Finance, and Inclusion*, Vol. 2, Academic Press, 2018 pp. 451-461

33 Guan, Yue, Dwidja Priyatno, and Anita Kamilah. "A Comparison Between Chinese E-Commerce Laws And Indonesian Information And Electronic Transactions Laws Against Cross-Border Online Services", *International Journal of Scientific and Technology Research*, 8.10 (2019): 3190

34 Kearney, A.T, *Lifting The Barriers of E-Commerce in ASEAN*. (CIMB ASEAN Research Institute, 2015), 72

35 Harrison, R., *Crowdfunding and the Revitalisation of the Early Stage Risk Capital Market: Catalyst Or Chimera?*, *Taylor and Francis* (2013): 37

are considered too strict.³⁶ It is interesting considering that the special rules for fintech in Indonesia are only limited to institutional constraints.³⁷ However, the facts occur paradoxically because Indonesian people are haunted by illegal online loan services. Until 2022, as many as 3,989 illegal P2P services have been closed by the OJK.³⁸ It means that the position of the existing fintech regulations is still not proportional to provide a guarantee for P2P services which have yet to register their legality at the OJK. Fintech P2PL providers, which are not subject to regulations, execute their activities arbitrarily, especially for customers who are late in making payments. In 2018, there were 1,300 complaints to the Jakarta Legal Aid Institute (LBH) regarding illegal P2P cases. This number is considered small because many more victims do not file reports.³⁹

Illegal P2PL is rampant in Indonesia due to several factors. The significant factor is the low level of financial inclusion. This fact is supported by the 2018 OJK survey result, which shows that the level of public financial literacy is only 29.7% and the level of financial inclusion is 67.7%.⁴⁰ The people's low literacy makes them inconsiderate when investigating the legality of a financial institution and the system of lending and borrowing which includes the amount of interest if they pay late. This unfortunate condition will be misused by the illegal lending institutions to trap the public by offering unsecured loans with some "fake" benefits, so the public will choose them over banking institutions.⁴¹ Rules that are not too strict are misused by illegal online lending services. Because they do not follow the rules, they feel free to perform buying and selling transactions and even ignore the 5C principles (Character, Capacity, Capital/Loan to Value, Collateral, and Conditions) to achieve the target in getting bonuses by using the people's powerlessness.⁴² The non-face-to-face transactions of this service have the potential for lack of information disclosure. This is dangerous because

36 Fintech Regulatory Census in Southeast Asian countries conducted by EY, EY, *ASEAN Fintech Census*, 2018

37 Fintech in Indonesia is currently only regulated in the Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 regarding Information Technology-Based Borrowing-Lending Services.

38 Kontan.co.id., *Ini Daftar Perusahaan Pinjol Ilegal yang Ditutup OJK Per April 2022*, available : <https://keuangan.kontan.co.id/news/ini-daftar-perusahaan-pinjol-ilegal-yang-ditutup-ojk-per-april-2022>,

39 Mohammad, K., "Controversy of fintech and loyalty of bank's customers in Indonesia", Infobank, 2019, Page 82

40 Otoritas Jasa Keuangan (2018), *Strategi Nasional Literasi Keuangan Indonesia (Revisit 2017)*, available at: www.ojk.go.id/id.

41 Magee, J.R., "Peer-to-peer lending in the United States: surviving after Dodd-Frank", *NC Banking Institute*, Vol. 15 (2011): 139.

42 Chen, D., Lai, F. and Lin, Z., "A trust model for online peer-to-peer lending: a lender's perspective", *Information Technology and Management*, Vol. 15 No. 4 (2014): 245.

the asymmetry information can create moral hazard that makes business ethics heed and only prioritizes profits by justifying all means.⁴³

Although the census survey reveals that Indonesian fintech rules are in the strict category, from another point of view, the real rules are loose. It is based on Article 4 of the POJK for Information Technology-Based Lending and Borrowing Services regarding the capital requirements for a loan that requires IDR 1,000,000,000 allowing all domestic and foreign investors to participate, especially China. For the additional information, many illegal P2PL services in Indonesia originate from China; those getting the worst sanction from their original country due to their illegal action. The emergence of unlawful and illegal lending institution from China is because many loan services from the country commit fraud due to a lack of strict (loose) supervision,⁴⁴ thus changing their target market to Indonesia; in 2016, 40% of the P2PL platforms were problematic. After the issuance of regulations, many P2P services from China were expanded to other countries.⁴⁵ The number of illegal P2PL that run their business by violating business ethics is uncountable. Generally, those types of P2PL offer short-term loans without collateral but has a very high interest, unclear loan interest calculations, numerous complaints, unavailable phone numbers, imprecise office addresses, and constantly changing service status without prior notice to the borrower.⁴⁶ In addition, all forms of intimidation are often carried out when collecting payments, such as humiliating, cursing, threatening, abusive, and even sexual harassment. Sometimes, billing is done to all customer cellphone contacts by hacking customer's data access.

Legal issues surrounding fintech exist due to the lack of available regulations. The OJK that regulates fintech services only legally accommodate P2P Fintech. The OJK regulations do not bind illegal services; regulators even cannot control technical assistance, so the final thing that OJK can do is to close application access without taking legal action. The limited authority of the OJK is exploited by irresponsible parties by looking for weaknesses in the rules⁴⁷ For example, when the application is closed due to illegal reasons, the developer can recreate

43 Zhu, Z., "Safety promise, moral hazard and financial supervision: evidence from peer-to-peer lending", *Finance Research Letters*, Vol. 27 (2018): 4.

44 Wei, S., "Internet lending in China: status quo, potential risks and regulatory options", *Computer Law and Security Review*, Vol. 31, No. 6,(2015): 803.

45 Shen, Y. and Huang, Y. "Evaluating the regulatory scheme for internet finance in China: the case of peer-to-peer lending AU – Wang, Jingyi", *China Economic Journal*, Vol. 9 No. 3 (2016): 276.

46 Taufik Hidayat, Unethical practices peer-to-peer lending in Indonesia, *Journal of Financial Crime* Vol. 27 No. 1 (2020), 278.

47 Stadler, W.A., "Predatory lending: is the credit CARD act enough?", *Journal of Financial Crime*, Vol. 19 No. 1 (2011): 105.

another application that will be used as the next media in the illegal financial business. On the other hand, the code of ethics for responsible lending by fintech associations does not have binding legal force. The provision of the ethics that are not used as a source of legal material is only used as an appeal; the most severe sanction is being removed as a member. Sanctions available in the OJK Regulations are only administrative types. Firmness in enforcing a healthy fintech business needs stricter rules and sanctions by bringing this case to court.

Fintech problems in Indonesia have severely tarnished the development of the financial business, which can become a competitive arena for economic globalization in the expansion of commerce between countries through intelligent technology.⁴⁸ Indonesia has statistically sturdy capital in growing the digital finance business. Indonesia's population has reached 265.4 million, 143.2 million of which are citizens who actively use the internet and are active users of social media.⁴⁹ This situation makes Indonesia have a more advanced position in readiness to step into the world of financial inclusion. The possession of business ethics can accompany the development of an increasing digital financial business. Prioritizing ethics in business is very crucial because technical business activities will always be side by side with available rules to avoid harming any party and, instead, to uphold economic democracy.⁵⁰ That way, the ethical foundation in business will select the right actions and anticipate wrong actions.⁵¹ Moral values need to be reinforced because, in the technology era, many companies take careless actions. All they care is about profit, even though they have to violate the applicable legal framework.⁵²

In the deontological theory, ethics cannot only rely on the awareness of individual business actors. The deontological theory, which defines ethical compliance as one should act and know what to do, must familiarize ethical awareness through a guidance based on the laws ratified by the authority.⁵³ From

48 Yu, H.-C., Wang, W.-Y., & Chang, C. The Pricing of Intellectual Capital in the IT Industry. *SSRN Electronic Journal* (2011).

49 World Bank Report, *Developing Countries Economic Overlook (Indonesia)*, 2018

50 M. Rizky Mahaputra & Farhan Saputra, "Application of Business Ethics and Business Law on Economic Democracy that Impacts Business Sustainability", *Journal of Law Politic and Humanities*, Vol. 1. No. 3, May (2021): 115.

51 Velasquez, M. G., *Business ethics: Concept and cases* (New York: Prentice Hall, 2009).

52 Anshari, Muhammad, et al. "Financial technology with ai-enabled and ethical challenges." *Society*, 58.3 (2021): 191.

53 Micewski, Edwin R., and Carmelita Troy. "Business ethics—deontologically revisited." *Journal of Business*

the deontological perspective, an ethical foundation in the business world is crucial since nowadays the modern era is considered as the primary period. This situation causes the public to participate in monitoring and assessing whether the company's ways of seeking profit are rightfully conducted or not. On the other hand, the deontological approach to business ethics provides freedom of contract.⁵⁴ So, according to Immanuel Kant, the applicability of the deontological theory in a law-based state provides business flexibility which are still limited by ethics and morals (not harming one another).⁵⁵

The mandate substance from the deontological theory is a challenge for Indonesia in realizing a healthy fintech business climate. The ethical values in the loan business will be pretty tricky to learn because no legal framework supports the ideals of business ethics according to the deontological theory. It is because the legality of borrowing is only regulated to the extent of institutional regulations that only discuss technical issues. In comparison, the principles that become the soul of the rules are not listed. Whereas in the laws, there should be principles such as the principle of prudence, consumer protection, equality, transparency, etc., which are correlated. These principles are the basis for the business actors to work according to ethics that become the boundaries in conducting the loan business. In addition, there are no specific boundaries in determining the freedom of contract.

Unethical and unlawful P2P practices have been identified in Indonesia, for example the determination of a high-interest rate. Subagiyo et al. found that the interest rate applied by illegal online loan service is more than 0.8%, and the accumulated late payment fines can reach 100% of the principal loan.⁵⁶ The research also found that the P2P provider platform applied an interest rate of 167.9% per year on applicable loan services. The P2P provider finally had to deal with the OJK because the interest rate was not in accordance with the maximum limit determined in POJK No. 10/2022.⁵⁷ The similar practice was also found in another P2P provider that applies 4% to 10% interest rates per day. If illustrated, when the customer applied for a loan of IDR 5,000,000

Ethics, 72.1 (2007): 18.

54 Dierksmeier, Claus, and Peter Seele. "Blockchain and business ethics." *Business Ethics: A European Review*, *Business Ethics, The Environment & Responsibility*, 29.2 (2020): 354.

55 Keienburg, J., *Immanuel Kant und die Öffentlichkeit der Vernunft*. (Berlin, Germany: De Gruyter, 2011.)

56 Subagiyo, Dwi Tatak; Gestora, Lorensia Resda; Sulistiyo, "Characteristic Of Illegal Online Loans In Indonesia". *Indonesia Private Law Review*, 3.1(2022): 69-84.

57 Bisnis Tempo, *Bunga Pinjol 167,9 Persen per Tahun, OJK Panggil Fintech Lending*: <https://bisnis.tempo.co/read/1620105/bunga-pinjol-1679-persen-per-tahun-ojk-panggil-fintech-lending> Accessed on 21 Auguts 2022.

for one month, then within the specified period, he/she must return IDR 80,000,000.⁵⁸ These phenomena made the members of the Indonesian Fintech Association (AFPI) to put their heads together, in 2021, to cut the interest rates to 50% so that the daily interest rate for loans is 0.4% per day. It is an attempt to make online loans more affordable, as well as an effort to deal with illegal P2P.⁵⁹ Even though there are rules from institutions and associations, they cannot be imperatively binding because they are only technical regulations. It also complements the existing legal from Bank Indonesia and the OJK, which is still less credible and has no legal force to realize legal protection for consumers.⁶⁰

Another problem in P2P Indonesia is the unethical debt collectors. This often makes a headline in the news showing how P2P fintech debt collectors intimidate customers, thus, destroying the image of the fintech world. The police have prosecuted several individuals for intimidating customers and threatening to spread personal data.⁶¹ There was once a court case of intimidation from illegal loans in Decision Number 438/Pid.Sus/2020/PN.Jkt.Str. The trial discovered that the general narrative used by the debt collectors is considered rude. They sent a spoken threat via Voice Note (WhatsApp Messenger App) containing cursing words. This threatening act is categorized as defamation under the ITE Law and the Criminal Code, which can lead to imprisonment.⁶² In different case, P2PL providers often promote their services which contain deceit by giving sweet promises. However, when the customer takes the loans, the promise and the contract do not match.⁶³

58 Sindonews, *Bunga Pinjol Tertinggi di Indonesia Banyak Makan Korban*. <https://ekbis.sindonews.com/read/575764/178/bunga-pinjol-tertinggi-di-indonesia-banyak-makan-korban-1634829050?showpage=all>, Accessed on 21 August 2022.

59 Kontan, AFPI sepakat memangkas bunga pinjaman fintech hingga 50% : <https://newssetup.kontan.co.id/news/afpi-sepakat-memangkas-bunga-pinjaman-fintech-hingga-50>.

60 Kharisma, Dona Budi. *Urgency of financial technology (Fintech) laws in Indonesia*. International Journal of Law and Management, 2020., 320.

61 Tempo, *Tagih Korban dengan Ancaman, 5 Pengelola Pinjol Ilegal Ditangkap Polisi* : <https://metro.tempo.co/read/1602232/tagih-korban-dengan-ancaman-5-pengelola-pinjol-ilegal-ditangkap-polisi> Accessed on August 21, 2022.

62 Rafael, Alfin; Ishak, Sugandi. *Analysis of Unlawful Collection Actions Regarding Online Loans from Illegal Fintech (Case Study on Decision Number 438/Pid. Sus/2020/PN. Jkt. Utr)*. In: 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021). Atlantis Press, 2022, 232.

63 An example of a ruse is Fintech usually offers tenor installments with a more extended period (90 – 120 days). Still, when the customer agrees, the tenor is only seven days with an interest of 1% per day. Gatra.com, *Polisi Beberkan Cara Pinjol Jebak Warga, Uang WNI Masuk Kantong WNA*, : <https://www.gatra.com/news-527538-ekonomi-polisi-beberkan>

Furthermore, the loan amount that customers apply in fintech P2P does not match with the total funds they receive. One case happened in West Jakarta. A man applied for a loan as much of IDR 1,750,000. The fintech provider only agreed to lend IDR 500,000, but eventually the man only got IDR 245,000. This was different from the initial promotion since the total cut was almost 20%.⁶⁴ Such P2P practices are very detrimental and have a tragic impact on society. For example, there was a victim of a middle-aged woman in Wonogiri Regency who died due to illegal online lending.⁶⁵ It happened because the woman was in debt and had difficulty to pay it off. A similar case also occurred in Depok, where a man was found to commit suicide because he could not pay off his 12-million debt.⁶⁶ There were still many similar cases due to the illegal loan scheme which is harmful.⁶⁷

The Business Ethics-Oriented Legal Framework for Indonesian Fintech P2P Lending in Islamic Spirit Perspective: A Challenge for a State

The Islamic financial system can be a solution to overcome the fintech problems. As in 2008, the Islamic financial system played an important role in the global financial crisis recovery.⁶⁸ Islamic values in the trade sector must be studied to integrate them into the platform implementation guidelines. This abstraction is very pivotal because it can solve the problems of the previous fintech implementation, which has caused much harm to society. Integrating the implementation of Islamic-based fintech is a challenge for stakeholders of fintech P2P operators in Indonesia, where most of the population is Muslim. The legal uncertainty in fintech needs to be evaluated because it causes confusion for each fintech platform entity due

cara-pinjol-jebak-warga-uang-wni-masuk-kantong-wna.html, Accessed on 19 August 2022.

64 Pikiran-Rakyat.com, *Ungkap Kasus Pinjaman Online Ilegal, Bareskrim Tangkap 5 Debt Collector yang Kerap Bully Peminjam*, <https://www.pikiran-rakyat.com/nasional/pr-012071595/ungkap-kasus-pinjaman-online-ilegal-bareskrim-tangkap-5-debt-collector-yang-kerap-bully-peminjam>, Accessed 20 August 2022.

65 Kompas, *Kasus Teror Pinjol Ilegal Kembali Terjadi, Ibu Rumah Tangga Bunuh Diri*: <https://www.kompas.tv/article/219780/kasus-teror-pinjol-ilegal-kembali-terjadi-ibu-rumah-tangga-bunuh-diri?page=all>.

66 Detik, *Terlilit Utang Pinjol, Ibu di Depok Ditemukan Tewas Gantung Diri*: <https://news.detik.com/berita/d-5793546/terlilit-utang-pinjol-ibu-di-depok-ditemukan-tewas-gantung-diri>.

67 Okezone, *5 Kasus Pinjol Berujung Tragis, Bunuh Diri hingga Tewas Dibakar*, <https://nasional.okezone.com/read/2021/10/18/337/2488108/5-kasus-pinjol-berujung-tragis-bunuh-diri-hingga-tewas-dibakar>.

68 Haddad, C., Hornuf, L., The emergence of the global fintech market: economic and technological determinants. *Small Bus Econ*, 53 (2019): 81-105.

to rights and obligations that must be upheld.⁶⁹ It is essential because the legal position has an urgency to realize ethical values and trust in supporting the state's economic growth to achieve profitability goals.⁷⁰ It means the regulator becomes an essential actor in overcoming this problem by looking at all the challenges and opportunities that are not only based on business opinion but also ethical and Islamic values.⁷¹ Such circumstances encourage the regulators to balance the innovation in the financial stability sector by considering the consumer protection and provoking the relevant stakeholders to be more honest.⁷²

The negative phenomena of the fintech business schemes described in this article are an important note for Indonesian stakeholders. State officials must immediately act to reform regulations in order to overcome real problems that still need to be accommodated. In answering this issue, this article uses the legal system theory initiated by Lawrence M. Friedman. This legal system is well-known for its components divided into structure, substance, and legal culture. In addition, the concept of the Islamic financial system is also part of strengthening the analysis of each component of the legal system through indicators of sharia provisions. Analysis with a legal system approach will be more helpful in finding the urgency and initial position of the law itself against the current problems. The analysis of the legal system will not succeed if it cannot identify the factors that can degrade the law itself.⁷³

In terms of structure, the State has a central role in protecting its people through fair and valuable laws in financial access in the cyber era. According to H. Easterbrook, even though we are now in the cyber age, legal system must always be prioritized in establishing principles as guidelines.⁷⁴ Frank Pasquale & Arthur J. Cockfield explained the development of the technological era from time to time, and the history reminded legal experts to be involved in internalizing legal principles in modern technology.⁷⁵ The development of the

69 Chen, Shi, "Challenge of Technological Regulation from FinTech Perspective." 3 *Tsinghua Financial Review* (2018): 39–40

70 Müller, János, and Ádám Kerényi. "The Need for Trust and Ethics in the Digital Age—Sunshine and Shadows in the FinTech World." *Financial and Economic Review* Vol.18 No.4 (2019): 6.

71 Dembinski, P., *Ethics and responsibility in finance* (1st ed.). (Routledge, 2017).

72 Herzog, L., "Professional Ethics in Banking and the Logic of "Integrated Situations": Aligning Responsibilities, Recognition, and Incentives". *Journal of Business Ethics*, 156, 2 (2019): 531-543.

73 RAZ, Joseph. *The concept of a legal system*. (Oxford: Clarendon Press, 1980), 1

74 Frank H. Easterbrook on Birnholz, Françoise, and Kelsey Barthold. "Back to the Future: Sorting Old Law from New Technology in Blockchain Smart Contract Applications & Assessing the Need for Regulation." *Geo. Wash. L. Rev. Arguendo*, 89 (2021): 98.

75 Pasquale, Frank, and Arthur J. Cockfield. "Beyond Instrumentalism: A Substantivist Perspective on Law, Technology, and the Digital Persona." *Mich. St. L. Rev.*, (2018): 827.

technological era that has changed the world also needs to be responded from the Islamic perspective. Every technological sophistication must be in line with Islamic boundaries.

During the current development of business innovation, legal protection by the state for its people is a must. It is because the digital economy business through the fintech ecosystem allows the non-physical business mechanism between sellers and consumers. There is still nevertheless a binding contractual relationship. As Friedman said, in the contract, there are certain aspects in the article that contain rules for binding the agreement.⁷⁶ In addition, the construction of fintech law based on an Islamic basis is also important, as studied by Laldin M.A. The Islamic financial system has the advantage of being able to form a financial service ecosystem that is transparent, easily accessible and flexible for all groups.⁷⁷

Based on the explanation above, there is no reduction in the essence of the agreement, only changing the business mechanism with Islamic basis collaboration. Changes in the instrument are carried out visually through gadgets or computer technology.⁷⁸ This kind of business innovation can potentially harm the customer,⁷⁹ thus Islamic values are needed to a business scheme. In Islamic finance, there are similarities in values and ethics considered as the guideline. Hence, the Islamic values needs to be internalized into fintech entities with technological and regulatory interventions to become an adaptive business through laws to avoid losses between fintech business parties.⁸⁰ Friedman reflects on how the dynamics of law can affect social changes. The development of the modern era in society can be a factor of law establishment. Friedman's point is that there are challenges to law establishment in today's era since modern approaches in legal studies have a high level of convergence.⁸¹ The legal role is to defend the interests that can bring up ethical values to guide business so

76 Friedman's concept of a legally binding agreement on Kagramanto, L. Budi, and Cita Yustisia Serfiyani. "The Principles Of Contract In Donation Based Crowdfunding." *Yuridika*, Vol.34 No.1(2019): 93.

77 Laldin, M.A., FinTech and Islamic Finance. *IFN Islamic Finance News* Vol.15 67 (2018).

78 Rustad, L, Michael, *Internet Law*, Thomson Reuters, (St Paul: Minnesota, 2009).

79 Giesela Ruhl, "Consumer Protection in Choice of Law", *Cornell International Law Journal*, vol. 44, no. 3 (2011): 569.

80 Bagby, John W., and Nizan G. Packin. "RegTech and Predictive Lawmaking: Closing the RegLag between Prospective Regulated Activity and Regulation." *Mich. Bus. & Entrepreneurial L. Rev.* 10 (2020): 132.

81 Friedman explained two critical topics regarding the legal position in community movements that can be a source of law. Still, on the other hand, community resistance has the potential to impact due to the absence of high-intensity legal convergence to accommodate this situation at Jianfu Chen, and David Wishart. "Law in Context for the digital age." *Law in context* Vol.36 No.1 (2019): 8.

that society avoids the terrible impacts.⁸² Consumer protection in the digital finance innovations must exist to prevent vulnerabilities affecting the society, considering that digital business procedures are different.⁸³ The success of legal convergence efforts in accommodating fintech will strengthen the business entity in the contemporary era⁸⁴ and accelerate the country's economy.

In terms of substance, Indonesia needs concrete and proportional rules to solve P2P problems. The adoption of Islamic values into formal rules is still not well-established. Every fintech implementation issue is due to the lack of the internalization of Islamic values into regulations as an instrument in responding technological development in the financial sector.⁸⁵ S. Alexander stated that from a legal system perspective, the presence of a proportional law will be an instrument that can monitor financial markets and become the basis for law enforcement in a dispute.⁸⁶ It means that the proportional fintech rules can monitor the implementation of a conducive business. If there are parties who are harmed, this instrument can immediately be an assistant for the injured party.

From an Islamic perspective, the regulation of business ethics in fintech is part of the mandate in upholding QS: An-Nisa (29) regarding the prohibition of wrongly consuming other people's assets. When there are business ethics guidelines in fintech, according to QS. An-Nisa arrangement is an effort to create a business that is proportional to the principle of balance in avoiding business violations that violate Islamic principles⁸⁷. The rule model helps prevent the non-ethical actions of fintech operators described in the previous discussion. Some applicable regulation contexts are, first, regarding the importance of ethics during the promotion period of P2P. It is crucial so the society is not trapped to the tricky advertisement. Regarding advertising in business, one can indeed do it with high creativity in captivating the hearts of potential customers. However,

82 Hertzberg, B., *How to Prevent AI Dangers With Ethical AI*, 2020 <https://www.gartner.com/smarterwithgartner/how-to-prevent-ai-dangers-with-ethical-ai/> , Accessed on 20 August 2022.

83 Rosadi, Sinta Dewi, and Zahra Tahira. "Consumer protection in digital economy era: law in Indonesia." *Yustisia Jurnal Hukum* Vol.7 No.1 (2018): 86.

84 Ahmad, Maqbool, et al. "Effects of Digital Convergence on Contemporary Economies." *IJICTDC* Vol.3 No.2 (2018): 51.

85 Alzubaidi, I.B., Abdullah, A., "Developing a Digital Currency from an Islamic Perspective: Case of Blockchain Technology", *International Business Research*, 10 (2017): 1-9.

86 Styhre, Alexander. *The Financialized Economy: Theoretical Views and Empirical Cases*. Routledge, (2021).

87 Atif, Mohammad, et al. "Islamic FinTech: The digital transformation bringing sustainability to Islamic finance." *COVID-19 and Islamic Social Finance*?. Routledge (2021), 91-103.

the process needs to be limited by law, and there is a consumer protection as the front line in protecting service users against products and advertisements that are of low quality or those containing elements of fraud.⁸⁸

The promotions of fintech providers often show the superiority of products that gives many advantages to people. The products offered are always tempting and attracting for public. L. Saunders, in his research, actually warns consumers to be more cautious toward such suspicious promotions. Saunders revealed that behind the sweetness of the promotions, there is something hidden until, the consumers start agreeing to use services and make themselves aware eventually of the inappropriateness of promotional offers.⁸⁹ This kind of advertisement is not in line with the business ethics because it only seduces consumers without presenting the real facts.

Making a good and ethical advertisement on fintech products also means to realize Islamic values in business world. As in the word of Allah SWT. in QS: Al-Azhab (70) commands Muslims to say the right words. This Islamic foundation is the basis for implementing fintech with misleading promotional advertisements, especially those not following the initial promotion commitments. The essence of Al-Azhab (70) intends to oblige fintech business owners to advertise their products properly without deceiving consumers⁹⁰. The rules in this field will undoubtedly become an essential instrument in upholding business ethics and morals, which are parts of religion's teaching.⁹¹ It is also crucial in the sharia perspective, which prioritizes eliminating difficulties (problem-solving) rather than prioritizing promotion.⁹² According to sharia principles, P2P fintech providers are required to use ethics as a basis to maintain the truth of every statement in the advertisement of financing services through actions because this can carry a conducive economic climate and avoid losses for each party.

Second, the substance of fintech regulations in enforcing ethics is in the evaluation of disproportional loan interest rates and funding policies. Determining the interest rate of limited criteria for funding service only on

88 Cambridge Dictionary, "*consumer protection*," available on <https://dictionary.cambridge.org/amp/english/consumer-protection>, Accessed on 19 August 2022.

89 Saunders, Lauren. *FinTech and Consumer Protection: A Snapshot*. National Consumer Law Center, March, 2019, 3.

90 Alam, Nafis, et al. "Challenges and success factors for Islamic fintech." *Fintech and Islamic Finance: Digitalization, Development and Disruption* (2019): 159-173.

91 Omer, Hafiz Fazle. "Ethics of Business Advertisement." *Al-Idab* Vol.39 No.1 (2021): 24

92 Todorof, Maria. "Shariah-compliant FinTech in the banking industry." *Era Forum*. Vol. 19. No. 1. Springer Berlin Heidelberg (2018): 2.

institutional regulations is less applicable imperatively. These factors give P2P platforms free space to provide accessible services but can increase unaffordable customer debt.⁹³ As a result, the consumers will use different fintech platform to take another loan for the sake of paying the first loan. They eventually end up with bigger debt and lower credit value after their credit card balance increases again.⁹⁴ Currently, the regulation on interest rates for financial services is only imperatively binding for banks. Meanwhile, the criteria for fintech interest in Indonesia are on AFPI authority, which are not binding. This situation is used by non-bank financial services to avoid credit rules and to set too high interest rates.

The discourse on interest rates on loans is still a hot issue in Islamic finance. Technically, interest is considered similar with *riba* (usury) which is prohibited in Islamic teachings. The study on the prohibition of interest has different approaches during the last centuries, especially by *ulamas* (Islamic scholars) who have a permissive attitude towards *riba*.⁹⁵ On the other hand, a substantial study on the prohibition of *riba* interest is criticized by the experts of modern finance who consider the increase in the return of principal loans as a profit.⁹⁶ However, the implementation of P2P in Indonesia is conventional, with an interest scheme for profit sourced from loan repayment. The issue of high-interest rates from P2P needs to be responded by regulators to rule the provisions of reasonable loan interest rates for conventional P2P fintech so as not to harm the society, mainly the middle and lower economic groups.⁹⁷

Without question, there are different models between conventional and Islamic fintech. The interpretations are also diverse which affect the interest in using fintech services. However, we should note here that conventional fintech needs to be embraced through the legality of regulations so there is a risk sharing in a mutually beneficial business between the provider and the customer adapting the context of the Islamic spirit in the modern business world. The regulations for the fintech business scheme in ethics-oriented P2P

93 Lauren Saunders et al., *National Consumer Law Center, Misaligned Incentives: Why High-Rate Installment*

94 Sudheer Chava & Nikhil Paradkar, “*Winners and Losers of Marketplace Lending: Evidence from Borrower Credit Dynamics*”, Georgia Institute of Technology, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3178322. , Accessed 20 August 2022

95 Injadat, E.M.M., Futures and forwards contracts from perspective of Islamic law. *J. Econ. Polit. Econ.*, 1, (2) (2014): 241–252.

96 Investment & Finance: Islamic Finance (2017). <http://www.investment-and-finance.net/islamicfinance/questions/what-is-the-difference-between-qimar-and-maysir.html>, Accessed on 20 August 2022.

97 Hanifah, Rokhmatun, et al. Tantangan Hukum Peer To Peer Lending dalam Mendorong Pertumbuhan Industri Financial Technology. *Pandecta Research Law Journal* Vol.16 No.2 (2021): 201.

can apply murabaha contextual approach that can be internalized as general principles. Murabaha prioritizes a clear contract against the price and profit margin agreed upon by the seller and the buyer. Murabaha approach prioritizes transparency containing the clear contract—stating the price and the profit based on the seller-buyer’s agreement⁹⁸—, the profit margin of administration fees, financing period and deadline, installments, and so forth which are mutually known by each party.⁹⁹

In this context, the principle of murabaha essentially needs to be applied as the basis for organizing any fintech so there will be no crime.¹⁰⁰ The transparency principle in a contract is to avoid hidden costs, fraud, and other irresponsible acts and to ensure the ethical transactions for realizing *maslahah* (mutual benefits) and preventing harms (*mafsadah*). This should be executed through regulations to support sharia principles in modern finance.¹⁰¹ This is in accordance with the Quran verse in Surah An-Nisa [4]: 29, “O you who believe, do not eat each other’s property unjustly, except it is a trade amongst you, by mutual consent...”

Third, personal data protection is another substance that needs to be regulated in enforcing ethics in the P2P fintech sector. Personal data protection in the fintech business is pivotal because, in the digital business era, the business motives can access private data including collection, recording, storage, adaptation, disclosure, and transmission.¹⁰² Personal data protection is urgent to reduce the risk of others accessing and sharing personal data without owner’s consent.¹⁰³ The urgency of this regulation is due to many threats received by society that their data will be publicly shared by the third party—cases which are currently happening in Indonesia due to the growth of fintech.¹⁰⁴ This kind of protection

98 Andalusi, Zainul Arif. “Future Package Financing Products With Akad Murabahah In The Perspective Of Sharia Economic Law.” *AHKAM: Jurnal Ilmu Syariah* Vol.19 No.2 (2019): 375.

99 Usanti, Trisadini Prasastinah, Prawitra Thalib, and Nur Utari Setiawati. “Sharia Principles on Information Technology-Based Financing Services.” *Yuridika* Vol.35 No.1 (2020): 166.

100 Celia de Anca, “From collaborative finance to community-based finance, (eds) Oseni, Umar A., and S. Nazim Ali., *Fintech In Islamic Finance* (Routledge: 2019), 3-14.

101 Mohamad Akam Laldin & Hafas Furqani, *Setting the Shari’ah Parameters,* (eds) Oseni, Umar A., and S. Nazim Ali., *Fintech In Islamic Finance.* (Routledge, 2019) 118.

102 Llyod, J, Ian, *Information Technology Law* (Oxford University Press: Oxford, 2014).

103 Zarza, Á. G., *Exchange of information and data protection in cross-border criminal proceedings in Europe.* (Heidelberg, Germany: Springer) 2015.

104 Takidah, Erika, and Salina Kassim. “Indonesia’s Islamic Fintech For Sustainable Development: A Barrier Analysis.” *TIJARI International Journal of Islamic Economics, Bussiness and Entrepreneurship* Vol.1 No.3 (2021): 41.

will have clear sanction for those misusing people's personal data.¹⁰⁵

In Islam, personal data is a private sector that needs to be respected and protected. As in QS. An-Nur (27) prohibits Muslims from entering other people's homes without permission or greeting. Then the Hadith History of Bukhari states, "if someone peeps at you without your permission, then you stab him with a stick so that his eyes are blind, then there is no "diyat" on you"¹⁰⁶. The Islamic legal argument above is the basis for why in Islam, the issue of privacy needs to be respected. From this Islamic foundation, Muslims are ordered to ask permission first before entering the privacy of others. Thus, the content of Islamic law is the basis for guidelines for personal data protection in fintech. Business platforms are prohibited from accessing customers' data because, in Islam, personal data is included in privacy which needs to be respected.

The personal data misuse is usually done by platform personnel for billing purposes, not only contacting the borrowers but also all contacts stored in the borrowers' cellphone.¹⁰⁷ Even though there is legal access based on prior agreement, it does not mean that companies are free to share consumer's personal data. The strict rules for restricting data access are needed because they are related to personal data protection. In solving this problem, it is essential to have a law for the benefit of the future fintech world prioritizing moral and ethics so the personal data is protected (and cannot be misused) based on the state's laws.¹⁰⁸ This shows that an ethical fintech model must have a shared orientation and not abuse the consumers by selling their data, having minimal security controls, and other inappropriate practices.¹⁰⁹

Another factor that is very influential in realizing a business ethics-oriented P2P Fintech entity through positive law is the support from the socio-cultural in the community. This issue is a homework for Indonesian government because the people have a few knowledge on financial inclusion. Based on the OJK

105 Suwana, F., *Indonesia urgently needs personal data protection law*. Retrieved August 22, 2019, from <https://theconversation.com/indonesiaurgently-needs-personal-data-protectionlaw-91929> Accessed 20 August 2022

106 Abu Abdullah Muhammad bin Ismail bin Ibrahim ibn Mughirah bin Bardizbah Al-Bukhari Al-Ja'fi, *Shahih Bukhari*, Ad-Diyat, Juz , (Beirut -Libanon : Darul Fikri, 1981 M), 45.

107 Subawa, I. Made Mulyawan. "Protecting personal data in financial technology in indonesia." *International Journal of Business, Economics and Law*, 22, 1 (2020): 59.

108 Bogusz, C.I. (2019): *Digital traces, ethics and insight. Data-driven services in FinTech*. In: Teigland, R. – Siri, S. – Larsson, A. – Puertas, A.M. – Bogusz, C.I. (eds.): *The Rise and Development of FinTech*, Chapter 11.

109 Vasquez, Oliver, and Leire San-Jose. "Ethics in Fintech Through Users' Confidence: Determinants that Affect Trust." *Ramon Llull Journal of Applied Ethics* Vol.13 No.1 (2022): 101.

data, the literacy rate of the Indonesian people is only 29.7%, and the level of financial inclusion has reached 67.7%. A higher level of financial inclusion indicates that Indonesians use financial services without having adequate knowledge on finance. This is then exploited by illegal P2P fintech to offer products whose profits are unreasonable and detrimental to consumers.¹¹⁰ Legal support is needed so that every stakeholder in the fintech world is involved in providing socialization of financial inclusion. With proper education, there will be cognitive traits played by regulations so that people understand and embrace laws that can change people's behavior toward the applicable fintech legal provisions. The provisions will make the law to have a proportional standard that can affect the development of the economic sector.¹¹¹

Fintech education needs to be instilled in the community to increase interest in using non-bank financial services as one of contributions to the country's economy. Without adequate education, according to Ooi Chee Keong et al., there will be a decline in public interest to use the Fintech platform due to their fear of fraud.¹¹² They do not want to have similar bad experience as those fallen into the trap and got threats of intimidation when the payment is due,¹¹³ and the fear that their personal data might be shared by irresponsible personnel.¹¹⁴ This is what previously said to be able to reduce the use of fintech services which have great opportunities as part of the main financial services with a significant commitment to inclusive ethics.¹¹⁵ This understanding, according to Cosseboom, strengthens religious moral of Muslims in Indonesia as the Islamic spirit which not only pursuing profits, but also understand the spiritual code of ethics as a balance.¹¹⁶ This is important so people will strive to get out of poverty life without venturing outside the boundaries of business ethics which violates Islamic norms.

110 Hua, X., & Huang, Y., "Understanding China's fintech sector: development, impacts and risks". *The European Journal of Finance*, 27(2021): 321

111 Katharina Pistor, 'Standardization of Law and Its Effect on Developing Economies', *American Journal of Comparative Law*, 97 (2002): 98

112 Keong, O. C., Leong, T. K., Bio, C. J., P"erceived Risk Factors Affect Intention To Use FinTech". *Journal of Accounting and Finance in Emerging Economies*, 6. 2 (2020): 456

113 Lwin, M., Wirtz, J., & Williams, J. D., *Consumer online privacy concerns and responses: A power responsibility equilibrium perspective*. *Journal of the Academy of Marketing Science*, 35(4), 2007, Page 572–585

114 Ryu, H.-S. "What makes users willing or hesitant to use Fintech?: the moderating effect of user type", *Industrial Management & Data Systems*, Vol. 118 No. 3, 2018, Page 541-569.

115 Vasquez, Oliver, and Leire San-Jose. *Ibid.*, Page 99

116 Cosseboom, L.: *Shariah-compliant P2P lending is the 'Wild West' in Indonesia*, https://www.salaamgateway.com/en/story/shariahcompliant_p2p_lending_is_the_wild_west_in_indonesiaSALAAM01082017053423/, Accessed on 20 August 2022

Conclusion

Proportional rules do not exist amid the positive growth of the fintech P2P lending in Indonesia. These problems eventually lead to unethical practices by the providers of the P2P platform harming the community. Some of unethical and harmful actions are setting very high interest rate, collecting debts with intimidation, and misusing the consumers' personal data. Some unethical and dangerous actions are conducting business that does not match promotional advertisements, lacking transparency in funding policies for business gain, and misusing personal consumer data. The state has a role in controlling the P2P fintech business in Indonesia through legal that is more qualified than the existing rules. Determining the legal framework can align with the Islamic spirit to produce more proportional rules in enforcing P2P fintech business ethics and preventing harm to society. Complete fintech regulations will effectively control and prevent various risks of the modern financial industry that remains within Islamic boundaries.

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