

LEGAL ASPECTS OF ‘GALI LUBANG TUTUP LUBANG’ IN FINTECH P2P LENDING BUSINESS DURING COVID-19**Hari Sutra Disemadi**International University of Batam
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Telp./Fax: +62-778-7437111 E-mail: hari@uib.ac.id*Submitted: Nov 08, 2021; Reviewed: Nov 29, 2021; Accepted: Dec 13, 2021***Abstract**

This research intends to discuss the problem of the practice of “Gali Lubang Tutup Lubang” in the Fintech P2P Lending business activities during COVID-19 in Indonesia based on the consumer protection perspective. The research method used is normative legal research method with descriptive analytical research specifications. Analytical descriptive research is intended to describe, analyze and explain the problems to be discussed, namely the presence of the problem of the practice of “Gali lubang Tutup Lubang” in the implementation of Fintech P2P Lending during the COVID-19 pandemic in Indonesia. The risk of “over-indebtedness” or excessive debt requires the borrower to choose the practice of “Gali Lubang Tutup Lubang”. This practice is often used in the case of a borrower borrowing money from one person to repay money borrowed from another person (another loan). This problem is considered to be present because of the increase in 'non-performing loans (NPL)' during COVID-19 pandemic and the development of illegal Fintech P2P Lending. The increase in NPLs was caused by banks not maximizing credit relaxation policies. For this reason, the Financial Services Authority as a regulator and supervisor of the financial services sector must be able to provide a sense of security for consumers.

Keywords: *Consumer Protection; Fintech; Gali Lubang Tutup Lubang***INTRODUCTION**

The Industrial Revolution 4.0 which is marked by the extraordinary development of technology and information is considered to be able to provide options for business actors to develop their business¹, where business people can change

the Industrial Revolution 4.0 from a “challenge” to an “opportunity”². In Indonesia, the Industrial Revolution 4.0 has changed many human activities towards the digital era in interacting in all fundamental aspects of the country, especially economic aspects. This revolution has the potential

¹ Leni Rohida, “Pengaruh Era Revolusi Industri 4.0 Terhadap Kompetensi Sumber Daya Manusia,” *Jurnal Manajemen Dan Bisnis Indonesia* 6, no. 1

(October 2018): 114–36, doi:10.31843/jmbi.v6i1.187.

² Jennifer Alexandra, “Dampak Ekonomi Dalam Era Industri 4.0,” 2019.

to empower individuals and society because the implementation of the Industrial Revolution 4.0 is considered capable of being a “strategy” to create a digital-based economy which of course has a Pancasila insight or “Economic Pancasila”. The proper implementation of the Industrial Revolution 4.0 in striving for the performance of the national economy through the use of technology and innovation is expected to produce equitable development and welfare of the Indonesian people³.

The integration between the development of information technology with the media and telecommunications has resulted in an increasingly diverse range of services and products. The convergence of these various technologies is known as telematics (telecommunications, media, and informatics). The development of information technology can be seen in the emergence of various types of technology-based activities, such as e-government, e-commerce, and various other cyber-based activities⁴. The presence of various activities within the scope of “cyberspace” in

Indonesia is a new “trend” in the use of information technology as a consequence of the presence of the Industrial Revolution 4.0⁵.

The consequences of the development of information technology and the internet have also penetrated the financial industry in Indonesia, which is marked by the presence of online loans or better known as Fintech P2P Lending or Financial Technology Peer to Peer Lending⁶. Fintech P2P Lending financial services in Indonesia are organized based on a legal umbrella, which is regulated in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services (POJK No.77/POJK.01/2016). Fintech P2P Lending is an opportunity presented by the Industrial Revolution 4.0 in the practice or method of lending money to individuals or businesses and vice versa, applying for loans to lenders, connecting lenders with borrowers or investors online. P2P Lending allows everyone to provide loans or

³ Ibid.

⁴ Lutfina Zunia Apriliانا and Darminto Hartono, “Tinjauan Yuridis Terhadap Pengaturan Perjanjian Kredit Online Sebagai Bagian Dari Kegiatan E-Commerce Dikaitkan Dengan Perlindungan Data Pribadi Berdasarkan Peraturan Perundang-Undangan” (Tesis: Fakultas Hukum Universitas Diponegoro, Semarang, 2020).

⁵ Rohida, “Pengaruh Era Revolusi Industri 4.0 Terhadap Kompetensi Sumber Daya Manusia”; Alexandra, “Dampak Ekonomi Dalam Era Industri 4.0.”

⁶ Hari Sutra Disemadi, Mochammad Abizar Yusro, and Wizna Gania Balqis, “The Problems of Consumer Protection in Fintech Peer To Peer Lending Business Activities in Indonesia,” *Sociological Jurisprudence Journal* 3, no. 2 (August 7, 2020): 91–97, doi:10.22225/scj.3.2.1798.91-97.

apply for loans to one another for various purposes without using the services of legal financial institutions as intermediaries⁷. So, it can be said that Fintech P2P Lending is a marketplace for lending and borrowing money. Fintech P2P Lending in general has a distinctive advantage, namely that it is more flexible and can allocate capital or funds to almost anyone, in any amount of value, effectively and transparently, and with relatively low interest.

Today, the opportunity for the development of Fintech P2P Lending in Indonesia is considered not only based on the Industrial Revolution 4.0, but also due to the presence of the COVID-19 pandemic. COVID-19 or Coronavirus Disease 2019 is a disease that was first discovered in the Wuhan City, China⁸. COVID-19 is a mutation from the severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2) which originates from non-humans and has been transmitted to hu-

mans. The World Health Organization or WHO as a world health organization states that COVID-19 is a pandemic virus, this is based on the level of spread, severity, and inaction in overcoming COVID-19⁹.

The government has determined that the Indonesian State is in a state of public health emergency as outlined in Presidential Decree No. 11 of 2020 concerning the Determination of the 2019 Corona Virus Disease (COVID-19) Public Health Emergency. Reflecting on the Presidential Decree, the consideration of establishing a Public Health Emergency was due to the extremely fast spread and transmission of COVID-19, this was indicated by the increase in the number of positive cases and the number of deaths. Therefore, Indonesia chose health quarantine policies in several areas as “transmission areas” for the spread of COVID-19. This health quarantine is temporary, that is, only as long as the mitigation of the transmission of COVID-19 is low and stable. In Indonesia, the health quarantine policy of an area is regulated in Law No. 6 of 2018 concerning Health Quarantine (Health Quarantine Law). Given the Health Quar-

⁷ I Wayan Bagus Pramana, Ida Bagus Putra Atmadja, and Ida Bagus Putu Utama, “Peranan Otoritas Jasa Keuangan Dalam Mengawasi Lembaga Keuangan Non Bank Berbasis Financial Technology Jenis Peer To Peer Lending,” *Kertha Semaya: Journal Ilmu Hukum* 2, no. 4 (2014): 1–14.

⁸ Tommaso Lupia et al., “2019 Novel Coronavirus (2019-NCoV) Outbreak: A New Challenge,” *Journal of Global Antimicrobial Resistance* 21 (2020): 22–27, doi:10.1016/j.jgar.2020.02.021; Hari Sutra Disemadi and Ali Ismail Shaleh, “Banking Credit Restructuring Policy amid COVID-19 Pandemic in Indonesia,” *Jurnal Inovasi Ekonomi* 5, no. 02 (April 29, 2020): 63–70, doi:10.22219/jiko.v5i3.11790.

⁹ Ikhsan et al., “Upaya Perlindungan Anak Dalam Peradilan Pidana Di Era Pemberlakuan ‘New Normal’ Selama Pandemi COVID-19 Di Indonesia,” *Jurnal Ilmu Hukum* 9, no. 2 (2020): 225–42, doi:dx.doi.org/10.30652/jih.v9i2.7933.

antime Law, the government has issued Government Regulation no. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 as an effort to accelerate the response to COVID-19.

Through the PSBB policy (Large-Scale Social Restrictions), the Government of Indonesia encourages people to carry out social distancing and physical distancing, namely restrictions on community activities outside the home as an effort to prevent the spread of COVID-19. However, with social distancing and physical distancing appeals, many people prefer to do activities at home¹⁰. It is considered that this will greatly affect and even disrupt economic aspects as one of the fundamental aspects of the country, such as a slowdown in the rate of credit or financing in banking financial institutions due to restrictions on the space for the public or business actors to move. This is one of the opportunities for Fintech P2P Lending to develop its business because the characteristics of Fintech P2P Lending are different from banking, namely providing loan services (credit) to the pub-

lic carried out online.

However, the problem currently faced is the rampant operation of unlicensed (illegal) Fintech P2P Lending which takes advantage of Indonesia's weakening economic conditions during the COVID-19 pandemic. Expressly inconsistent with Article 7 POJK No. 77/POJK.01/2016 which has stated "the implementation is obliged to advance registration and licensing to the Indonesian Financial Services Authority or *Otoritas Jasa Keuangan*". Therefore, every implementation of Fintech P2P Lending must obtain permission from the Financial Services Authority before starting its business¹¹. The existence of this illegal Fintech P2P Lending is considered to cause an alarming situation, namely the practice of "Gali Lubang Tutup Lubang" or commonly expressed with "To Rob Peter to Pay Paul" phrase. The term "Gali Lubang Tutup Lubang" is often used in the case of a borrower who borrows money from one person (loan fund) to pay back money that borrowed from someone else (another loan). The practice of "Gali Lubang Tutup Lubang" in the Fintech P2P Lending in-

¹⁰ Nur Rohim Yunus, "Kebijakan Covid-19, Bebaskan Narapidana Dan Pidanakan Pelanggar PSBB," *Adalah: Buletin Hukum & Keadilan* 4, no. 1 (2020): 1–6, doi:10.15408/adalah.v4i1.15262.

¹¹ Femmy Silaswaty Faried and Nourma Dewi, "Peran Otoritas Jasa Keuangan Dalam Pengaturan Dan Pengawasan Jasa Layanan Keuangan Berbasis Teknologi (Financial Technology)," *Jurnal Supremasi* 10, no. 1 (March 2020): 12–22, doi:10.35457/supremasi.v10i1.845.

dustry itself is present because it is easy for people to access or find loans online to pay previous loans¹². The rise of the practice of “Gali Lubang Tutup Lubang” in the implementation of Fintech P2P Lending has made it urgent to study this problem given the weak position of the community (consumers) compared to the Fintech P2P Lending business actors.

Previous research that examined consumer protection for Fintech P2P Lending has been conducted by Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono which focused on the security of Fintech consumer data in 2019¹³; Nuzul Rahmayani, who focuses on consumer protection related to supervision of Fintech businessmen¹⁴; and then by Ahmad Ridha Jafar who focuses on the supervisory function of the Financial Services Authority related to consumer protection of Fintech P2P Lending¹⁵.

¹² Yuni Astutik, “Bahaya Fintech Ilegal & Maraknya Praktik Gali Tutup Lubang,” 2020.

¹³ Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono, “Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia,” *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (August 2019): 145–60, doi:10.24246/jrh.2019.v3.i2.p145-160.

¹⁴ Nuzul Rahmayani, “Tinjauan Hukum Perlindungan Konsumen Terkait Pengawasan Perusahaan Berbasis Financial Technology Di Indonesia,” *Pagaruyuang Law Journal* 2, no. 1 (2018): 24–41.

¹⁵ Ahmad Ridha Jafar, “FUNGSI PENGAWASAN OTORITAS JASA KEUANGAN (OJK) TERKAIT PERLINDUNGAN KONSUMEN PADA LAYANAN PEER TO PEER LENDING

In contrast to several previous studies, this research will focus on examining the issue of the widespread practice of “Gali Lubang Tutup Lubang” in Fintech implementation. This is due to legal problems in the form of an increase in 'non-performing loans/NPLs' caused by financial institutions such as banks that do not maximize the credit relaxation rules contained in the Financial Services Authority Regulation Number 11 of 2020. This phenomenon is also caused by social problems, namely the lack of public financial literacy. This research is important to do to support financial literacy to the public regarding the problem of the practice of “Gali Lubang Tutup Lubang” in the implementation of Fintech P2P Lending and contributing to the Fintech P2P Lending literature in Indonesia.

METHOD

The research method used is doctrinal research method with descriptive-analytical research specifications. Analytical descriptive research is intended to describe, analyze and explain the problems to be studied, namely related to the problem of the practice of “Gali Lubang Tutup Lubang” in the implementation of Fintech P2P Lending in Indonesia. This research

FINTECH,” *Ahkam: Jurnal Hukum Islam* 7, no. 2 (2019): 215–34, doi:10.21274/ahkam.2019.7.2.

includes a literature study so that this study emphasizes more on secondary data that is relevant to the topic raised. The design of a literature study is a series of activities to obtain secondary data such as primary, secondary, and tertiary legal materials through literature study as a data collection technique, which is then read, recorded and analyzed qualitatively to obtain actual conclusions.

ANALYSIS AND DISCUSSION

The Existence of Fintech P2P Lending in Indonesia

Financial technology (fintech) innovation was first put forward by Clayton M. Christensen and Joseph Bowerdi in 1995 at which time Fintech was still known as “Disruptive Innovation”¹⁶. The term known as Disruptive Innovation is an innovation that has succeeded in transforming an existing system or market, by introducing practicality, easy access, convenience, and economical cost¹⁷. Value-Stream states that “... fintech is the technology that serves the clients of financial institutions, covering not only the back and middle offices but also the coveted front office that for so long has been hu-

man-driven...”¹⁸, then Fintech Weekly states that “...fintech is a line of business based on using software to provide financial services. Financial technology companies are generally startups founded to disrupt incumbent financial systems and corporations that rely less on software...”¹⁹. Reflecting on some of these statements, it can be said that Fintech is a financial business line that utilizes the use of technology software in providing services to the public regarding financial services.

Fintech is a financial business service that utilizes technology and information to improve financial services, which are generally carried out by startups that utilize software, internet, and communication technology as a consequence of the Industrial Revolution 4.0²⁰. In Indonesia, the implementation of Fintech has been legitimized in Bank Indonesia Regulation No. 19/12/PBI/2017 concerning the Implementation of Financial Technology (PBI No. 19/12/PBI/2017) and POJK No. 77/POJK.01/2016. Based on Article 3 PBI No. 19/12/PBI/2017 there are 5 (five)

¹⁶ Joseph L. Bower and Clayton M. Christensen, “Disruptive Technologies: Catching The Wave,” *Harvard Business Review* 73, no. 1 (1995): 43–53.

¹⁷ *Ibid.*

¹⁸ Muliaman Darmansyah Hadad, “Financial Technology (Fintech) Di Indonesia,” 2017.

¹⁹ *Ibid.*

²⁰ Kornelius Benuf, Rinitami Njatrijani, and Ery Agus Priyono, “Pengaturan Dan Pengawasan Bisnis Financial Technology Di Indonesia,” *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 11, no. 2 (2020): 46–69, doi:doi.org/10.28932/di.v11i2.2001.

basic forms of implementing Fintech, one of which is Fintech P2P Lending or information technology-based lending and borrowing services which are further regulated in POJK No. 77/POJK.01/2016. Reflecting on Article 1 number 3 POJK No. 77/POJK.01/2016, Fintech P2P Lending is an implementation of a financial service model to bring together lenders and loan recipients directly by using an electronic system and using an internet network (interconnection-networking).

There are 3 (three) legal subjects in the credit or financing services offered by Fintech P2P Lending, namely lenders, borrowers, and organizers. Lenders and borrowers (loan recipients) based on Article 1, number 9 POJK No. 77/POJK.01/2016 are categorized as users or consumers of Fintech P2P Lending services. Borrowers are parties that have debts because of the electronic agreement for the Fintech P2P Lending service, while lenders are parties who have receivables due to the electronic agreement for the Fintech P2P Lending service. Financial service providers through Fintech P2P Lending are Indonesian legal entities that provide, operate, and manage Fintech P2P Lending itself. Based on Article 2 POJK No.77/POJK.01/2016, the legal entity that is meant to be in the form of a Limited

Liability Company or Cooperative.

It can be said that “borrowers” are parties who need funds for their interests, such as a business, while “lenders” or investors are parties who have capital that they want to be channeled to parties who need funds (borrowers) through the organizer of Fintech P2P Lending²¹. All agreements made between the parties in the chart are contained in an electronic agreement or contract. Regulations related to electronic contracts are contained in Article 1 number 17 of Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law), where the electronic contract must be made through the “Electronic System”. Based on Article 18 paragraph (1) of the ITE Law, the legal force of electronic contracts in implementing Fintech P2P Lending is binding on the parties.

In general, the existence of Fintech P2P Lending in Indonesia has been recognized through existing laws and regulations. As of April 30, 2020, the number of Fintech P2P Lending organizers registered and/or licensed under Article 7 POJK No. 77/POJK.01/2016 as many as 161 organ-

²¹ Achmad Basori Alwi, “Pembiayaan Berbasis Teknologi Informasi (Fintech) Yang Berdasarkan Syariah,” *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 21, no. 2 (2018): 255–71.

izers²². Then, based on Fintech P2P Lending statistics published by the Financial Services Authority, it is stated that 161 providers are divided into 149 Fintech P2P Lending providers with conventional services and 12 Fintech P2P Lending with services based on Sharia principles²³. Reflecting on these statistics it is shown that the accumulated distribution of loans by Fintech P2P Lending nationally reached IDR. 106.06 Trillion; the accumulated accounts of borrowers (loan recipients) nationally reached 24,770,306 accounts, and the accumulated account of lenders (lenders) as a whole reached 647,993 lenders²⁴.

The development of Fintech, especially in the interconnection-networking-based loan sector (Fintech P2P Lending), is because this type of Fintech is more present among the un-bankable society. An “un-bankable society” is dominated by SMEs actors (Small and Medium enterprises) due to the problems faced by SMEs players in obtaining financing from

banks. The problems include the existence of a banking policy regarding “creditworthiness” which requires a “guarantee” in finance²⁵. The guarantees as a condition for creditworthiness are difficult for SMEs actors to fulfill. This problem is considered to be an opportunity for financial services business players in the Fintech P2P Lending sector to offer and attract an un-bankable society to become their consumers (borrowers).

This opportunity is not only owned by legal Fintech P2P Lending but also illegal Fintech P2P Lending in obtaining profits²⁶. Currently, other than 161 Fintech P2P Lending has been registered and/or licensed by the Financial Services Authority, there are also Fintech P2P Lending that is not licensed by the Financial Services Authority. This is expressly inconsistent with Article 7 POJK No. 77/POJK.01/2016 which has stated, “the implementation is obliged to advance registration and licensing to the Financial Services Authority”. As of January 30, 2020, the Financial Services Authority has

²² Otoritas Jasa Keuangan, “Penyelenggara Fintech Terdaftar Dan Berizin Di OJK per 30 April 2020,” 2020, <https://www.ojk.go.id/id/berita-dan-kegiatan/publikasi/Pages/Penyelenggara-Fintech-Terdaftar-dan-Berizin-di-OJK-per-30-April-2020.aspx>.

²³ Otoritas Jasa Keuangan, “Statistik Fintech Lending Periode April 2020,” 2020, <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Pages/Statistik-Fintech-Lending-Periode-Bulan-April-2020.aspx>.

²⁴ Ibid.

²⁵ Hari Sutra Disemadi, “Risk Management in the Provision of People’s Business Credit as Implementation of Prudential Principles,” *Diponegoro Law Review* 4, no. 2 (October 1, 2019): 194, doi:10.14710/dilrev.4.2.2019.194-208.

²⁶ Misbahul Awang Sakti and Budi Santoso, “Kebijakan Terhadap Peran Otoritas Jasa Keuangan Dalam Melaksanakan Pengawasan Fintech Baik Yang Terdaftar Dan Tidak Terdaftar” (Tesis: Fakultas Hukum Universitas Diponegoro, Semarang, 2020).

submitted a list of Fintech P2P Lending that is not licensed, totaling 120 Fintech P2P Lending²⁷. Then on May 22, 2020, the Financial Services Authority found 50 applications that offered illegal online loans (illegal Fintech P2P Lending) under the guise of KSP (*Koperasi Simpan Pinjam*) or the Savings and Loan Cooperative²⁸. It can be said that the existence of Fintech P2P Lending in Indonesia is very much needed by the “un-bankable society” or people who have difficulty obtaining funds or financing from conventional financial institutions such as banks. The existence of Fintech P2P Lending in Indonesia can also be divided into 2 (two) types, namely legal Fintech P2P Lending (licensed) and illegal Fintech P2P Lending (not licensed) which of course is considered to cause problems in the middle of the society later.

P2P Lending Fintech Opportunities during COVID-19 Pandemic and the Rampant Practice of “Gali Lubang Tutup Lubang”

The development of technology and information is moving forward rapidly.

²⁷ Otoritas Jasa Keuangan, “Siaran Pers: Awal Tahun Satgas Temukan 120 Fintech Peer-To-Peer Lending Dan 28 Entitas Penawaran Investasi Tanpa Izin,” 2020.

²⁸ Otoritas Jasa Keuangan, “Siaran Pers: Satgas Temukan Pinjaman Online Ilegal Berkedok Koperasi Simpan Pinjam,” 2020.

The Industrial Revolution 4.0 has been able to change all aspects of community life such as lifestyle, behavior patterns, work methods, ways of fulfilling life's needs, to financial transactions. The advancement of technology has made automation possible in almost all fields²⁹. Technology with a new approach that combines the physical and digital worlds will fundamentally change the pattern of human life and interaction³⁰. Previously mentioned, one of the changes in financial services that resulted from the 4.0 revolution was the presence of digital financial services in the form of Fintech P2P Lending³¹.

The consequences of the Industrial Revolution 4.0 which have supported the development of Fintech P2P Lending in Indonesia. However, the development of Fintech P2P Lending is also supported by the needs and demands of the public for options related to consumer financing institutions other than banking³². Fintech

²⁹ Rohida, “Pengaruh Era Revolusi Industri 4.0 Terhadap Kompetensi Sumber Daya Manusia.”

³⁰ Raymond R. Tjandrawinata, “Industri 4.0: Revolusi Industri Abad Ini Dan Pengaruhnya Pada Bidang Kesehatan Dan Bioteknologi,” *Jurnal Medicinus* 29, no. 1 (2016): 31–39.

³¹ Paolo Pietro Biancone, Silvana Secinaro, and Mohamad Kamal, “Crowdfunding and Fintech: Business Model Sharia Compliant,” *European Journal of Islamic Finance* 12 (2019): 1–9, doi:doi.org/10.13135/2421-2172/3260.

³² Raden Ani Eko Wahyuni, “Strategy Of Illegal Technology Financial Management In Form Of Online Loans,” *JURNAL HUKUM PRASADA* 7,

P2P Lending as part of the e-commerce business is considered to be a good choice for the public regarding financing, this is due to the high level of need and fast service system, uncomplicated procedures, and easy requirements to fulfill³³. These various facilities are considered capable of attracting the public's interest in choosing Fintech P2P Lending to meet their needs, but there are other consequences for the Fintech P2P Lending choice, namely that the loan interest rate is higher than the loan interest rate provided by banks. However, the high-interest rate in Fintech P2P Lending does not affect the interest of consumers, especially borrowers, to continue choosing Fintech P2P Lending. Borrowers pay more attention to the number of installments per month according to their ability to pay from their monthly income³⁴.

The COVID-19 pandemic has af-

ected every fundamental aspect and aspects of people's lives, which slowly starts to slow down and even tends to be "stagnant" if not addressed with innovative thoughts and policies in the business sector, especially Fintech P2P Lending. However, the COVID-19 pandemic in Indonesia is considered an opportunity for the growth and development of the Fintech P2P Lending business due to faster technology adoption, collaboration with established companies, a more conducive environment, and the existence of regulations that underpin it³⁵. Today, the increasing demand for online loan services at several Fintech P2P Lending providers cannot be separated from the influence of the COVID-19 pandemic. The government's appeal to the public to limit community activities outside the home (social distancing and physical distancing) and the prohibition on being in public areas have a significant effect on people's interest in accessing online loan services or Fintech P2P Lending services. Today's, society is more careful about going to banking, which requires consumers to meet and meet face to face in order to submit identity and data verification³⁶.

no. 1 (April 2020): 27–33, doi:10.22225/jhp.7.1.1324.27-33.

³³ Fry Anditya Rahayu Putri Rusadi and Kornelius Benuf, "Fintech Peer to Peer Lending as a Financing Alternative for the Development MSMEs in Indonesia," *Legality: Jurnal Ilmiah Hukum* 28, no. 2 (September 2020): 232–44, doi:10.22219/ljih.v28i2.12865; Apriliana and Hartono, "Tinjauan Yuridis Terhadap Pengaturan Perjanjian Kredit Online Sebagai Bagian Dari Kegiatan E-Commerce Dikaitkan Dengan Perlindungan Data Pribadi Berdasarkan Peraturan Perundang-Undangan."

³⁴ Apriliana and Hartono, "Tinjauan Yuridis Terhadap Pengaturan Perjanjian Kredit Online Sebagai Bagian Dari Kegiatan E-Commerce Dikaitkan Dengan Perlindungan Data Pribadi Berdasarkan Peraturan Perundang-Undangan."

³⁵ Sylke Febrina Laucereno, "Fintech Punya Banyak Peluang Di Tengah Pandemi," 2020.

³⁶ Yusuf Tirtayasa, "Virus Corona Bikin Minat Publik Mengakses Layanan Fintech Meningkat," 2020.

Amid the restlessness of the Indonesian people due to the COVID-19 pandemic, everyone lives in uncertainty, both nationally and globally. So, it takes the ability to innovate by creating business opportunities under current conditions. Today, due to the COVID-19 pandemic, it requires various groups to respond to changes and technology competition in an integrated and comprehensive manner, so that the challenges of the COVID-19 pandemic in the Industrial Revolution 4.0 era can be managed into opportunities³⁷.

During the COVID-19 pandemic, which has urged many people to do activities at home alone, presenting a special opportunity for developing the Fintech P2P Lending business is considered very large, this is due to the implementation of Fintech P2P Lending which takes advantage of the use of technology software to provide services to borrowers regarding financial services³⁸. Fintech P2P Lending services will be very helpful in controlling increasing public access to various financial service products online³⁹. The main

advantages of implementing Fintech P2P Lending are 1). Availability of agreement or contract documents in electronic form online for the benefit of the parties involved (organizers, lenders, borrowers); 2). The financing risk assessment is conducted online (without having to meet in person like the banking industry); 3). Collection of billing information is done online; and 4). Provision of information on the status of financing to related parties is done online⁴⁰. The various kinds of advantages and conveniences offered by Fintech P2P Lending are of course very much needed by the people of Indonesia during the COVID-19 pandemic, which of course is used to help facilitate the needs between borrowers and lenders.

The presence of Fintech P2P Lending business opportunities during the COVID-19 pandemic is due to the cycle that occurs in the community including the accept phase (accepting conditions during the COVID-19 pandemic), then after accepting the situation, enter the adapt phase (adapt to conditions caused by COVID-19) which then do an adjustment phase (adjust). This condition is what be-

³⁷ Edi Muhammad Abduh, "Peluang Bisnis Di Tengah Pandemi Covid-19 Menghadapi Revolusi Industri 4.0," 2020.

³⁸ Hida Hiyanti et al., "Peluang Dan Tantangan Fintech (Financial Technology) Syariah Di Indonesia," *Jurnal Ilmiah Ekonomi Islam* 5, no. 3 (January 2020): 326–33, doi:10.29040/jiei.v5i3.578.

³⁹ Fawzi Bhakti Prestama, Muhammad Iqbal, and Selamat Riyadi, "Potensi Finansial Teknologi

Syariah Dalam Menjangkau Pembiayaan Non-Bank," *Al-Masraf: Jurnal Lembaga Keuangan Dan Perbankan* 4, no. 2 (December 2019): 147–58, doi:10.15548/al-masraf.v4i2.264.

⁴⁰ Alwi, "Pembiayaan Berbasis Teknologi Informasi (Fintech) Yang Berdasarkan Syariah."

comes for the Fintech P2P Lending business, where people are starting to switch to online activities, including obtaining financing. However, this does not stop there, Fintech P2P Lending business players must continue to innovate to find loopholes that can be used as opportunities to maintain business continuity.

The COVID-19 pandemic provides an opportunity for the Fintech P2P Lending business to develop its business. However, it also presents a new problem that must be addressed by related parties in the implementation of Fintech P2P Lending in Indonesia, namely the widespread practice of “Gali Lubang Tutup Lubang” by borrowers. This problem is caused by the reduced ability of debtors to fulfill the achievements of credit agreements made before the COVID-19 pandemic (weakening the ability to pay debtors' debts) and is even very vulnerable to default. This is because borrowers or the public in general cannot work as usual which results in disruption of work which also affects their income. One of the parties who are vulnerable to default in the midst of the spread of COVID-19 are Micro, Small and Medium Enterprises. In addition, the rise of the “Gali Lubang Tutup Lubang” policy due to the increase in NPL is mainly due to the existence of financial institu-

tions that do not maximize the credit relaxation rules contained in the Financial Services Authority Regulation Number 48/POJK.03/2020 concerning Amendments to the Financial Services Authority Regulations. Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy Impact of the Spread of Corona Virus Disease 2019. Observing that the continued spread of COVID-19 globally and domestically is expected to have an impact on debtor performance and capacity as well as increase credit risk in financial institutions, it is necessary to take an economic stimulus policy as a countercyclical impact of the spread of COVID-19. This POJK was issued as an anticipatory and follow-up step to encourage optimization of banking performance, maintain financial system stability, and support economic growth while still applying the precautionary principle and avoiding moral hazard.

The practice of “Gali Lubang Tutup Lubang” in the Fintech P2P Lending service is a result of a borrower or borrower's mistake who misuses the convenience of online loan applications that are faster than banking so that the borrower borrows more than the amount needed and the

amount that can be paid⁴¹. This is known as the risk of “over-indebtedness” or excessive debt that results in bad credit, so the borrower is forced to apply for an online loan again to other Fintech P2P Lending⁴². This practice is known to the Indonesian public as “Gali Lubang Tutup Lubang”.

In Indonesia, the practice of “Gali Lubang Tutup Lubang” in the implementation of Fintech P2P Lending often occurs, as is reported in various online media. An example is women who work as factory workers who have debts on 20 online loan applications (Fintech P2P Lending). This happened because the worker was forced to apply for an online loan to another Fintech P2P Lending to pay off his debt (achievement) on several previous Fintech P2P Lending⁴³. Another example, there is a customer from Fintech P2P Lending who has been “trapped” in the practice of “Gali Lubang Tutup Lubang”. The customer or borrower has borrowed money from more than 70 different Fintech P2P Lending Organizers⁴⁴.

⁴¹ Jessica Taruna, “Hindari Gali Lubang Tutup Lubang Untuk Pinjam Online Cepat,” 2020.

⁴² Yulistyne Kasumaningrum, “Curhat Buruh Terlilit Utang Di 20 Aplikasi Pinjaman Online, Berawal Dari Butuh Mendadak Jadi Gali Lubang Tutup Lubang,” 2020.

⁴³ Ibid.

⁴⁴ Eko Priiliawito and Mohammad Yudha Prasetya, “Nasabah Pinjol Terjebak Pola Gali Lubang Tutup Lubang,” 2019.

The Problems of “Gali Lubang Tutup Lubang” in Fintech P2P Lending Business Activity based on a Consumer Protection Perspective

One of the characteristics and objectives of the law is to protect the community⁴⁵. Reflecting on the 1945 Constitution of the Republic of Indonesia, one of the goals of the Indonesian State is to protect the entire Indonesian nation and all Indonesian blood. The state's goal as stated in the constitution is to create legal protection for the rights of every citizen which needs to be obeyed and implemented as a national identity with a Pancasila perspective. Legal protection is an effort to protect the dignity and dignity as well as the recognition of the rights of citizens as human beings who have a diversity of rights and even interests⁴⁶.

Citizens' interests which become a constant problem today are related to consumer protection. In addition to the objec-

⁴⁵ Hari Sutra Disemadi and Paramita Prananingtyas, “Online Insurance Existence In Indonesia Based On Islamic Legal Perspective As A Protection Of Spiritual Rights.,” *Jurisdictie* 11, no. 1 (June 2020): 48–66, doi:10.18860/j.v11i1.7519; Benuf, Mahmudah, and Priyono, “Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia.”

⁴⁶ Iswi Hariyani, “Perlindungan Hukum Dan Penyelesaian Sengketa Bisnis Jasa PM-Tekfin,” *Jurnal Legislasi Indonesia* 14, no. 3 (2017): 345–58.

tive of providing protection and technology utilization in financial services such as Fintech P2P Lending, law also aims to protect consumers (borrowers and lenders on Fintech P2P Lending services)⁴⁷. In principle, all people are consumers who need to obtain legal protection as part of the legal objectives of which the consequences of legal protection are to ensure justice, certainty and benefit for the parties in the implementation of Fintech P2P Lending and all people in Indonesia⁴⁸.

The rise of the practice of “Gali Lubang Tutup Lubang” carried out by consumers (borrowers) in the implementation of Fintech P2P Lending is the problem of not working the law effectively in the community. The existence of the practice of “Gali Lubang Tutup Lubang” cannot be separated from the lack of legal awareness of the community, lack of financial literacy in the community, and also caused by the development of illegal Fintech P2P Lending. The presence of il-

legal Fintech P2P Lending which provides convenience in online loan services for borrowers is considered to be one of the factors supporting the rampant practice of “Gali Lubang Tutup Lubang”. The ease of accessing the application to the ease of obtaining funds quickly is the “allure” offered by the many illegal Fintech P2P Lending which, if not addressed wisely by the borrower as a consumer, will have a negative impact such as accumulating debt and difficulties in fulfilling their performance⁴⁹.

Due to the large number of illegal Fintech P2P Lending, there is a need for financial literacy for the public regarding the legality of implementing Fintech P2P Lending as regulated in Article 7 POJK No. 77/POJK.01/2016. This financial literacy effort is intended so that the public as consumers can be wiser in submitting applications for financing and prefer Fintech P2P Lending that is licensed by the Financial Services Authority for the sake of Fintech P2P Lending and for the benefit of the consumers themselves. The operation of Fintech P2P Lending in Indonesia must have legality because this is

⁴⁷ Ika Atikah, “Consumer Protection And Fintech Companies In Indonesia: Innovations And Challenges Of The Financial Services Authority,” *Jurnal Hukum Peradilan* 9, no. 1 (2020): 132–53, doi:doi.org/10.25216/jhp.9.1.2020.132-153.

⁴⁸ Kornelius Benuf, “Urgensi Kebijakan Perlindungan Hukum Terhadap Konsumen Fintech Peer To Peer Lending Akibat Penyebaran COVID-19,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (August 2020): 203–2017, doi:10.33331/rechtsvinding.v9i2.427; Disemadi, Yusro, and Balqis, “The Problems of Consumer Protection in Fintech Peer To Peer Lending Business Activities in Indonesia.”

⁴⁹ Pranoto, Munawar Kholil, and Kukuh Tejomurti, “FINTECH LENDING: CHALLENGE AND OPPORTUNITIES OF THE INDONESIA’S LOAN UNBANKED TO DEVELOP THE INCLUSIVE FINANCIAL INDUSTRY,” *Hang Tuah Law Journal* 3, no. 2 (2019): 105–19, doi:doi.org/10.30649/htlj.v3i2.134.

closely related to potential risks related to consumer protection and financial system stability.

In addition to financial literacy for the public, the existence of the Financial Services Authority as a regulator and supervisory agency for the financial services sector is expected to provide protection for consumers, especially Fintech P2P Lending consumers. In view of POJK No.77/POJK.01/2016 only regulates provisions regarding legal Fintech P2P Lending organizers and does not regulate illegal ones. In fact, it is this illegal Fintech P2P Lending organizer that has many problems to the detriment of consumers. Reflecting on Article 4 of Law no. 21 of 2011 concerning the Financial Services Authority (Financial Services Authority Law) which states the purpose of establishing the Financial Services Authority to protect the interests of consumers. It is not wrong to say that the Financial Services Authority is obliged or must be able to protect the interests of consumers who use Fintech P2P Lending services to provide a sense of security for consumers themselves. Therefore, it is necessary to establish new legal regulations that are specific and capable of playing a role as regulation and supervision of illegal Fintech P2P Lending organizers and the Financial Ser-

vices Authority still acting as a supervisor. It is said that because the law should be able to function as a tool of social engineering (law as a tool of social engineering) and is projected as a means of social control that effectively regulates the various interests of society, in this case, consumers of Fintech P2P Lending⁵⁰.

Based on the philosophical basis of the objectives of the Indonesian State as stipulated in the state constitution, namely to "...protect the entire nation of Indonesia and all the blood of Indonesia..." which is then supported by laws and regulations which also recognize the need for consumer protection, such as the Financial Services Authority Law and Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law). So, the enforcement of illegal Fintech P2P Lending is deemed necessary in order to overcome and reduce the practice of "Gali Lubang Tutup Lubang" as an effort to protect consumers.

Protection efforts for Fintech P2P Lending consumers, especially borrowers, can be carried out by ensuring the limits and responsibilities of each party in carry-

⁵⁰ Apriliana and Hartono, "Tinjauan Yuridis Terhadap Pengaturan Perjanjian Kredit Online Sebagai Bagian Dari Kegiatan E-Commerce Dikaitkan Dengan Perlindungan Data Pribadi Berdasarkan Peraturan Perundang-Undangan."

ing out Fintech P2P Lending activities⁵¹. The organizers of the Fintech P2P Lending platform are considered obliged to meet the provisions of the Consumer Protection Law, the organizers are considered obliged to provide reporting facilities, as well as provide complete and correct information on the terms and contracts of the products they sell, notify consumers clearly without anything to be covered up, like the loan interest rate. Meanwhile, consumers are also obliged to provide actual personal data for the convenience of data collection for the benefit of the consumers themselves⁵². The principle of Fintech P2P Lending is basically directed at the mandate of providing legal protection to the interests of consumers (user-centric)⁵³. This is derived as legal principles or at least several important things that must be considered by e-commerce business actors including Fintech P2P Lending organizers, including business must be built on the basis of good faith

⁵¹ Disemadi, Yusro, and Balqis, "The Problems of Consumer Protection in Fintech Peer To Peer Lending Business Activities in Indonesia"; Benuf, "Urgensi Kebijakan Perlindungan Hukum Terhadap Konsumen Fintech Peer To Peer Lending Akibat Penyebaran COVID-19."

⁵² Sakti and Santoso, "Kebijakan Terhadap Peran Otoritas Jasa Keuangan Dalam Melaksanakan Pengawasan Fintech Baik Yang Terdaftar Dan Tidak Terdaftar."

⁵³ Basrowi, "Analisis Aspek Dan Upaya Perlindungan Konsumen Fintech Syariah," *Lex Librum: Jurnal Ilmu Hukum* 5, no. 2 (2019): 959–80, doi:dx.doi.org/10.46839/ljih.v5i2.134.

and respect the principle of trust in good electronic system accountability; electronic business must be efficient and effective so that high economic cost constraints must be removed; business is expected to foster a healthy business competition climate; and businesses are expected to provide convenience and protect the interests of consumers and prevent any attempts to exploit consumer rights⁵⁴.

CONCLUSION

The specific regulation that regulates the implementation of Fintech P2P Lending in Indonesia is POJK Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. This regulation is a policy issued by the Financial Services Authority to regulate and supervise the implementation of Fintech P2P Lending given the fast-technological advances in the digital financial industry that cannot be ignored and need to be managed to provide maximum benefit for the benefit of the community. This law was also issued as an effort to support innovative, fast, cheap, easy and broad financial services as well

⁵⁴ Edmon Makarim, "KERANGKA KEBIJAKAN DAN REFORMASI HUKUM UNTUK KELANCARAN PERDAGANGAN SECARA ELEKTRONIK (E-COMMERCE) DI INDONESIA," *Jurnal Hukum & Pembangunan* 44, no. 3 (September 2014): 314–37, doi:10.21143/jhp.vol44.no3.25.

as to increase financial inclusion for the “un-bankable society”. The existence of Fintech P2P Lending in Indonesia is a consequence of the current Industrial Revolution 4.0, while the challenges of the current COVID-19 pandemic can be used as an opportunity for Fintech P2P Lending players to continue to grow and develop.

The existence of Fintech P2P Lending in addition to providing convenience for the unbankable community who have difficulty obtaining funds from banks is also accompanied by new problems such as the risk of “over-indebtedness” or excessive debt that forces consumers (borrowers) to choose the practice of “Gali Lubang Tutup Lubang” to pay off the loan term. loan time. The rise of this practice is considered to have arisen due to the lack of public legal awareness, lack of financial literacy in the community, and the rise of illegal Fintech P2P Lending. So, in addressing these problems, it is necessary for all parties to play a role in increasing legal awareness, increasing financial literacy so that people are wiser in applying for loans and prefer legal P2P Lending Fintech. In addition, in reducing NPLs financial institutions need to maximize the credit restructuring policy as stated in the Financial Services Authority Regulation

Number 48/POJK.03/2020 concerning Amendments to the Financial Services Authority Regulations. Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy Impact of the Spread of Corona Virus Disease 2019, financial service actors also need to ensure the application of risk management and prudential principles in lending.

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