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## Unefficiency Settlement Of Fintech Lending Disputes And How Legal Framework To Settle It: Indonesia Perspective

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**Abstract:** this article aims to analyze fintech lending dispute resolution's inefficiency and how the ideal concept is to realize the principle of user dispute resolution under the Financial Services Authority Regulation Number 77 / POJK.01 / 2016. The research method used is prescriptive normative legal research using primary and secondary legal materials. According to POJK 77 / POJK.01 / 2016, the results show that dispute resolution on the lending and borrowing services based on the information technology should be done quickly and cheaply. However, there is still no effective and efficient dispute resolution institution established in practice because fintech lending administrators in the standard e-contract clause directly determine one court, which may be very far from the parties' place (lender or borrower). Besides, there is no clear mechanism related to dispute resolution for Fintech Lending users, so Fintech Lending Organizers do not have different guidelines for resolving disputes that result in Fintech Lending Organizers. The complicated mechanism and complexity of resolving fintech lending disputes are not proportional to the loan value, which may be less than the dispute resolution process's cost. The Financial Services Authority must establish an online alternative Dispute Resolution Agency so that the parties can be effective and efficient in resolving disputes.

**Keywords:** Fintech Lending, Dispute resolution, Inefficiency

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### INTRODUCTION

Fintech peer-to-peer lending in the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Borrowing and Lending Services is an information technology-based lending and borrowing service from Lenders to Borrowers. In the process of lending money without using bank intermediaries and credit institutions. The money lending process is available on the Fintech Lending Operator platform so that Fintech Lending Users can use the platform as a forum for lending and borrowing money transactions. In the online lending and borrowing of money, some use collateral and also without collateral (Ekaterina Kalmykova, Anna Ryabova, 2016: 2). The mechanism for lending and borrowing money at Fintech Lending, namely the Fintech Lending Organizer, provides a place to bring together many people who need loans and many people who have excess money and are willing to provide loans without using collateral lending and borrowing transaction. Fintech Lending service facilities can make it easier for people to carry out their daily activities, namely, payments, capital disbursements, loan funds, and investments, without coming to financial institutions. These service facilities can make it easier and provide many benefits to people in all Indonesian regions. Many people in Indonesia have not been touched by banking services or can be called unbanked people. (Timothy R. Lyman, Gautam Ivatury, dan Stefan Staschen, 2008: 38).

The more people who use these fintech lending services, the more the number of licensed fintech lending companies that have been registered with the Financial Services Authority is 127 companies as of 30 September 2019 (<https://www.ojk.go.id/> accessed on 30 November 2019 ). The development of the Fintech Lending service has resulted in many disputes that occur in lending and borrowing transactions because the service has various risks for its users, especially lenders, namely the risk of default and default on profit-sharing in the form of giving interest to lenders, which causes lenders to bear fully at risk.

One of the disputes occurred on the Fintech Lending Platform in Indonesia, namely when the Parties approved the funding transaction in the form of a Loan Funding Agreement. The agreement is in the form of a standard contract that the Fintech Lending Operator has made agreed by the parties so that the agreement made is legally binding on the parties as a law. However, in the standard contract, it creates injustice for one of the parties, especially the borrower, because in the Loan Funding Agreement, there is still a clause containing the dispute settlement clause "When in the implementation of this Cooperation agreement there is a dispute between the two parties either in its implementation or in the interpretation of one of the Articles. In this agreement, both parties

agree to resolve the dispute as much as possible through deliberation to reach a consensus. Suppose both parties have carried out deliberation, but it cannot reach an agreement. In that case, the Parties agree that all disputes arising from this agreement will be resolved at the Registrar's Office at the South Jakarta District Court ". The location selected for the Registrar's Office at the South Jakarta District Court is not under Article 29 letter e of the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning fast, simple, and affordable dispute resolution because, in reality, Fintech Lending users, especially the Lenders or borrowers come from various regions in Indonesia. If a dispute occurs in the lending and borrowing transaction activity, it resolves the dispute and does not find agreement. Still, the organizer has chosen one of the South Jakarta District Court Registrars' offices, making Fintech Lending users, especially the Lenders, feel burdened because they come from different areas.

This study will analyze the peer-to-peer lending fintech dispute resolution using a standard clause mechanism by appointing a court that may be located very far from the borrower. As in the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 Article 29 letter e only regulates the principle of simple, fast, and low-cost user dispute resolution which in practice, the Operators do not apply these principles, causing a sense of injustice and lenders. Feel uncomfortable in funding loans at Fintech Lending. The description above will examine how the ideal concept is in realizing the principle of user dispute resolution based on the Financial Services Authority Regulation Number 77 / POJK.01 / 2016?

### **Methods**

This article uses normative legal research to examine legal norms under legal principles and principles. The nature of the research used in this research is prescriptive by using arguments to solve problems regarding what should be done. This research uses a statutory approach by examining all laws and regulations related to fintech lending (Peter Mahmud Marzuki, 2014: 181). An e-contract between a borrower and a lender that appoints a court that is far from the position of the parties if it is related to the study of modern legal theory initiated by Richard Posner, in the context of contract law, should be able to apply fairly, not just to anyone (equality before the law), but must also pay attention to aspects of economic analysis, in the form of effectiveness and efficiency in law enforcement as stated by Richard A. Posner (1999) in his book *Economic Analysis of Law*, which, among other things, states that in making fair laws, apart from humanitarian considerations, economic aspects are also considered. The legal system must be built based on economic principles, especially profit and loss (Richard A. Posner, 1992). The state must calculate in economic mathematics whether it is commensurate with the losses incurred by a result. The value of a loan that is not comparable to a complicated and expensive dispute resolution process can lead to ineffectiveness and inefficiency in law enforcement in fintech lending dispute resolution.

### **E-Contracts Making Process at Fintech Lending**

Technological developments have brought technology-based financial services, namely Fintech Lending, which are in demand by many people because of their ease of conducting technology-based lending and borrowing transactions. Activities in Fintech Lending are the practice of lending money to individuals or companies online. The Fintech Lending Organizing Platform is likened to a forum that will bring together Lenders and Borrowers. Fintech Lending activities involve at least 3 (three) parties, namely Borrowers, Lenders, and Fintech Lending Operators as intermediaries that bring together Lenders and Borrowers through a platform Fintech Lending Organizer. This activity is useful as a solution for people who need capital to develop their business but can be used as a place to invest for Lenders. The lending and borrowing transaction activities carried out by these parties are based on the agreement or contract that they have agreed. The contract is in the form of an electronic contract (e-contract). E-contract is an engagement or legal relationship carried out electronically by combining the network of a computer-based information system using a communication system based on network and communication services and is supported by a global computer internet (network of network) (Edmon Makarim, 2008: 7). E-contracts making process at Fintech Lending based on the principle of freedom of contract as regulated in the Civil Code, the practice of using e-contracts has been commonly used by the public, and the use of e-contracts is increasingly massive because it is carried out through the internet so that it has broad impact. The principle of freedom of contract is contained in Article 1338 paragraph (1) of the Civil Code, which reads: "all agreements made legally are valid as laws for those who make them." The parties can use the e-contract to carry out the lending and borrowing transactions of the money. However, until now, there are still parties who have not complied with the agreements they have agreed upon, leading to disputes for the parties.

One of the disputes that occurred in Fintech Lending was default on the profit-sharing to give interest to the lender. The dispute is a civil dispute that is detrimental to the lender. Such disputes can occur because the parties do not comply with the agreements that have been agreed upon by the parties so that the parties can resolve the dispute through non-litigation channels, namely outside the court. Business people widely use the non-litigation route because it is easier than the litigation route. Dispute resolution through non-litigation channels can use Alternative Dispute Resolution (APS) or Alternative Dispute Resolution (ADR) following the provisions of the

prevailing laws and regulations, namely Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

There are several alternative forms of dispute resolution, including (WR. Febriana, 2014: 7): Consultation, Negotiation, Mediation, Conciliation, Arbitration, Good Offices, Mini-Trial, Summary Jury Trial, Rent a Judge, Med-Arb. As in Article 4 letter a in the Financial Services Authority Regulation Number 1 / POJK.07 / 2014 concerning Alternative Dispute Resolution Services which states that Alternative Dispute Resolution Institutions listed in the List of Alternative Dispute Resolution Institutions established by the Financial Services Authority include Alternative Dispute Resolution Agencies in the fields of capital markets, insurance, pension funds, finance and pawnshops, banking, as well as guarantee companies that offer Dispute resolution services at least in the form of mediation, Adjudication, and arbitration. Based on the Financial Services Authority Regulation Number 1 / POJK.07 / 2014 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector, it has also regulated dispute resolution through Adjudication, which is currently widely used in financial services because dispute resolution through Adjudication is considered to help customers. Small companies do not have an equal position when dealing with financial service institutions (Iswi Hariyani, 2017: 353). Still, dispute resolution through Adjudication has not been regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The process of resolving disputes through Adjudication is faster and simpler than through arbitration. In this Adjudication process, the applicant, namely the customer, is given the option to approve or reject the Adjudication decision. If the applicant agrees with the decision, the Adjudication decision can take effect, which is final and binding. However, the respondent party, namely a financial service institution, was not given an option right, so it is obliged to accept the Adjudication decision that the applicant has approved. In this case, option right is not in the Arbitration process. (Iswi Hariyani, 2016: 421).

The implementation of Fintech Lending often faces disputes, so that Fintech Lending organizers are required to provide handling of these disputes under Article 29 letter e of the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services, it has also been regulated that User dispute resolution is simple, fast, and affordable. However, Fintech Lending Operators have not applied the principle of simple, fast, and affordable User dispute resolution. One of them is the Fintech Lending Operator with the initials SM, which in settlement of the dispute between the Fintech Lending Operator and the User has appointed one of the Registrar Offices of the South Jakarta District Court. In this case, the Fintech Lending Users, especially the Lenders, come from various regions, if the Loan Funding Agreement classified as the Standard Agreement in the Dispute Settlement Clause has appointed the Registrar's Office of the South Jakarta District Court to resolve disputes with the User, especially the lender, is not under the Article 29 letter e. . So that the lender as a Fintech Lending User in terms of resolving this dispute feels there is no justice because the Fintech Lending Organizer with the initials SM has chosen the Registrar's Office of the South Jakarta District Court as a place to resolve the dispute. Dispute resolution in Fintech Lending through non-litigation channels should be done online. The settlement of disputes in Fintech Lending, if carried out through online media, can benefit the disputing parties and can realize the principle of simple, fast, and affordable user dispute resolution as stated in Article 29 letter e. Online dispute resolution has the same mechanism as stipulated in the Financial Services Authority Regulation Number 1 / POJK.07 / 2014 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector. Still, only the media is through the online system so that Users who come from These various regions feel comfortable in resolving disputes. Still, currently, the Financial Services Authority does not yet have an Alternative Dispute Resolution Agency in the field of Fintech Lending, so that the principle of dispute resolution is based on Article 29 letter e of the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 has not been realized.

Dispute resolution in Fintech Lending through non-litigation channels should be done online, where dispute resolution through Alternative Dispute Resolution can be done through Online Dispute Resolution (ODR) (Iswi Hariyani, 2017: 355). However, until now, the Financial Services Authority has not established an Online Dispute Resolution agency to protect Fintech Lending Users in the event of a dispute between Users or with Fintech Lending Operators. Suppose the Financial Services Authority issues a Financial Services Authority Regulation in forming an Online Dispute Resolution (ODR). It has a legal umbrella in establishing an Online Dispute Resolution Agency (PSD). The Alternative Dispute Resolution Institution can use the method of Negotiation, Mediation, Adjudication, and Arbitration. In this case, conciliation is not required in dispute resolution through ODR because it is deemed the process is the same as mediation. So that if the establishment of an Online Dispute Resolution Institution is formed, the principle of dispute resolution is based on Article 29 letter e of the Financial Services Authority Regulation Number 77 / POJK.01 / 2016, namely simple, fast, and affordable dispute resolution can be realized and create their existence. Justice for Fintech Lending Users, especially Lenders who come from various regions in Indonesia. Online Dispute Resolution is the result of collaboration between Information Technology and Alternative Dispute Resolution so that the online dispute resolution process is faster, easier and cheaper. Online Dispute Resolution Systems have been widely used in several countries such as the United States, Australia, China, Japan, Singapore.

## CONCLUSION

The lending and borrowing transaction activities carried out by these parties are based on the agreement or contract that they have agreed. The contract is in the form of an electronic contract (e-contract). The parties can use e-contracts as a guide in conducting loan transactions in Fintech Lending. However, in practice, there are still parties who have not obeyed the agreed agreement to cause disputes for the parties to resolve disputes through litigation or non-litigation channels. In practice, the Fintech Lending service users resolve disputes through non-litigation (out of court), which is considered an easier, faster, and cheaper process than using the litigation route. The non-litigation route can be pursued using Alternative Dispute Resolution through Negotiation, Binding Opinions, Mediation, Conciliation, Adjudication, and Arbitration.

Practically there are still Fintech Lending Operators whose dispute resolution makes Fintech Lending users feel unfair because like the fintech lending organizer has chosen the South Jakarta District Court to resolve the dispute so that it does not implement the principle of user dispute resolution based on Article 29 letter e of the Financial Services Authority Regulation Number 77 / POJK.01 / 2016. The ideal concept for realizing the principle of dispute resolution based on Article 29 letter, the Financial Services Authority should create a special APS Agency to resolve disputes on online Fintech Lending services or be Online Dispute Resolution (ODR). PSD or ODR is commonly applied in developed countries in technology and e-commerce as an alternative way of resolving disputes via the internet that is fast, simple, easy, and inexpensive.

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