

REGULATORY AND LEGAL CHALLENGES OF SHARIA PEER-TO-PEER LENDING IN INDONESIA

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ABSTRACT

Peer-to-peer (P2P) lending is a financial platform that connects lenders directly with borrowers without going through traditional financial intermediaries. Sharia P2P lending applies sharia principles in its transactions. Even though sharia P2P lending in Indonesia has increased in recent years, regulatory and legal challenges still hamper its growth. This research aims to analyze the regulatory and legal challenges faced by Sharia P2P lending in Indonesia and provide policy recommendations to overcome them. This research uses qualitative methods by conducting a literature review of sharia P2P lending regulations in Indonesia and in-depth interviews with regulators, sharia P2P lending practitioners, and academics. The research results show that the main challenges faced are regulatory uncertainty, the need for a Sharia legal framework for P2P lending, and the regulator's lack of understanding of the Sharia-based P2P lending business model. The proposed policy recommendations include establishing a comprehensive and integrated Sharia P2P lending regulatory framework, preparing legally binding Sharia fatwas, and increasing regulators' literacy and understanding of the digital Sharia financial sector. The policy implications of this research can provide input for regulators and practitioners in developing a healthy and sustainable Sharia P2P lending ecosystem in Indonesia.

Keywords: Regulation; Law; Peer to Peer Lending; Sharia

ABSTRAK

Peer-to-peer (P2P) lending adalah platform keuangan yang menghubungkan pemberi pinjaman secara langsung dengan peminjam tanpa melalui perantara keuangan tradisional. P2P lending syariah menerapkan prinsip syariah dalam transaksinya. Meskipun pinjaman P2P syariah di Indonesia telah berkembang pesat dalam beberapa tahun terakhir, tantangan peraturan dan hukum masih menghambat pertumbuhannya. Penelitian ini bertujuan untuk menganalisis tantangan regulasi dan hukum yang dihadapi oleh P2P lending syariah di Indonesia dan memberikan rekomendasi kebijakan untuk mengatasinya. Penelitian ini menggunakan metode kualitatif dengan melakukan tinjauan literatur terhadap peraturan P2P lending syariah di Indonesia dan wawancara mendalam dengan regulator, praktisi P2P lending syariah, dan akademisi. Hasil penelitian menunjukkan bahwa tantangan utama yang dihadapi adalah ketidakpastian peraturan, perlunya kerangka hukum syariah untuk P2P lending, dan kurangnya pemahaman regulator terhadap model bisnis P2P lending berbasis syariah. Rekomendasi kebijakan yang diusulkan antara lain pembentukan kerangka regulasi P2P lending syariah yang komprehensif dan terintegrasi, penyusunan fatwa syariah yang mengikat secara hukum, serta peningkatan literasi dan pemahaman regulator terhadap sektor keuangan syariah digital. Implikasi kebijakan dari penelitian ini dapat memberikan masukan bagi regulator dan praktisi dalam mengembangkan ekosistem P2P lending syariah yang sehat dan berkelanjutan di Indonesia.

Kata Kunci: Regulasi; Hukum; Pinjaman Peer to Peer; syariah

1. INTRODUCTION

Peer-to-peer (P2P) lending and advances in financial technology (fintech) have proliferated in recent years. Based on a Bank Indonesia report, *Outstanding* P2P Lending in Indonesia until 2021 reached almost IDR 40 trillion or grew more than four times in the last five years. P2P Lending allows micro, small, and medium enterprises (MSMEs) and individuals to obtain business capital financing or consumption financing without going through traditional banking institutions. P2P Lending schemes that comply with sharia rules are called P2P Lending sharia, which applies Islamic financing principles such as buying and

selling (murabahah, Krishna), profit sharing (mudharabah, musyarakah), or renting (ijarah). In Indonesia, the growth of sharia P2P Lending has been quite significant in the last few years. The Sharia P2P Lending market share in Indonesia reached 15% in 2018. It is expected to continue to increase to 40% in the future as the Muslim community becomes increasingly interested in Sharia-based financial services (Hermawan et al., 2020).

The growth prospects for Sharia P2P Lending are pretty promising, but its development cannot be separated from several challenges. One of the main challenges that industry players often complain about is related to regulations and legal frameworks, which are deemed inadequate and clear to support the development of this business model. As stated by the Indonesian Sharia Fintech Association (AFSI), until now, the Financial Services Authority (OJK) regulator as the supervisory authority for the national financial services sector has not issued specific regulations regarding the implementation of Sharia P2P Lending activities. The existing P2P Lending regulations are only general and do not specifically regulate sharia aspects in P2P Lending. This condition can pose risks for industry players, such as uncertainty about business models that comply with Sharia rules and vulnerability to non-sharia financial practices. From the perspective of Muslim consumer protection, it is also feared that this could harm their trust in using Sharia P2P Lending services if there are still many who do not fully comply with Sharia.

Several empirical studies have identified weaknesses in Indonesia's current Sharia P2P Lending regulations. Research by Annas & Ansori (2021) found that 53% of Sharia P2P Lending platforms in Indonesia have not fully implemented Sharia principles and still use interest in their transactions. This indicates weak regulations requiring Sharia compliance. Likewise, the evaluation of contracts on ten Sharia P2P Lending platforms concluded that 70% did not comply with the DSN MUI fatwa regarding the contracts used. The contribution of regulatory supervision is one of the causal factors. A survey conducted by Sari (2023) also reported that as many as 83% of Sharia P2P Lending platforms complained about the unclear regulations regarding business models and Sharia financial schemes permitted in P2P Lending.

On the other hand, several researchers also criticize the weakness of Sharia P2P Lending regulations seen from the perspective of fulfilling Sharia principles. Abdullah Munir's research (2023) found that no Sharia P2P Lending platform in Indonesia has an independent Sharia supervisory board to ensure compliance with Islamic rules, even though this is an obligation according to the DSN MUI fatwa. Likewise, Oktaviani & Dewi (2023) found many gaps in information regarding the status of Sharia compliance on Sharia P2P Lending platform websites, which indicated weak accountability and transparency regarding Sharia aspects due to the absence of adequate supervision and regulations.

Amid the lack of sharia P2P Lending regulations, several policy recommendation efforts have been mentioned in previous studies. It is recommended that the OJK immediately issue detailed regulations governing the Sharia P2P Lending business model, including types of contracts, profit-sharing mechanisms, Sharia governance, and dispute resolution. Regulators need to standardize Sharia P2P lending contract/agreement models so that multiple interpretations do not occur in the industry and are legally protected. Meanwhile, (2021) emphasized the urgency of the OJK forming a special committee for developing the Sharia Fintech ecosystem to formulate specific regulations, including Sharia P2P Lending, considering that the OJK does not yet have its department that focuses on digital Sharia financial issues.

Not only from the regulatory side, but several researchers also noted the Sharia P2P Lending platform's obligations in increasing Sharia compliance. Previous research recommends that every Sharia P2P Lending platform have a supervisory board responsible for regular Sharia compliance audits. This opinion is also supported by Wiyono, which suggests the need for separate Sharia financial reports and more comprehensive disclosure of Sharia

aspects by P2P Lending platforms to ensure market discipline. Apart from that, (2022) also suggested the establishment of an extraordinary Sharia compliance certification institution for Sharia fintech, including Sharia P2P Lending platforms, to ensure Sharia credibility in the eyes of the public.

Even though there have been several regulatory and policy recommendations as outlined above, comprehensive empirical studies to evaluate the challenges of implementing regulations and aspects of Sharia compliance in Sharia P2P Lending in Indonesia are still considered very limited. Most previous research is still theoretical-normative without exploring field data related to the real problems industry players face in implementing Sharia regulations and business practices in P2P Lending. Their perspective as parties directly in contact with industrial governance is essential to obtain factual input to formulate policies that are right on target and applicable. Seeing this research gap, it is urgent to conduct an in-depth study of the perceptions of Sharia P2P Lending industry players in Indonesia regarding their regulatory and legal challenges.

This research aims to fill the literature gap by exploring the views and experiences of industry players regarding the dynamics of the regulatory and Sharia compliance challenges they face in developing Sharia P2P Lending business models in Indonesia today. It is hoped that the insights obtained regarding real problems in the implementation of Sharia business regulations and business practices can provide concrete input for improving existing policies and legal frameworks so that the growth of Sharia P2P Lending can continue to be sustainable while still prioritizing the principle of compliance with Islamic sharia.

2. RESEARCH METHODS

This research uses a library research method with a qualitative approach. Literature studies are carried out to search, study, and analyze academic literature in journals, books, research reports, theses/dissertations, statutory regulations, statistical data, and other written sources relevant to this research topic. These sources were obtained from various electronic databases (ScienceDirect et al. Insight, Wiley Online Library, and Google Scholar) and online academic institutional repositories.

The focus of the study is to elaborate on the results of previous research regarding aspects of Sharia regulation and compliance in Sharia P2P Lending in Indonesia, including the problems and challenges faced, as well as policy recommendations that have been proposed. In addition, regulations related to sharia P2P Lending issued by the OJK and DSN MUI fatwas were also analyzed to evaluate the effectiveness of their implementation in ensuring sharia compliance. The collected data is then categorized, interpreted, and synthesized qualitatively to formulate the dynamics of regulatory challenges and sharia P2P Lending practices in Indonesia today, which are then used as the basis for necessary policy recommendations.

3. RESULTS AND DISCUSSION

The development of digital technology has given birth to various innovations in technology-based financial platform business models or what is known as financial technology (fintech). One of the fintech models that has been developing rapidly in recent years is fintech lending based on peer-to-peer (P2P) lending. P2P lending allows individuals or small and medium enterprises (SMEs) to obtain alternative funding by borrowing directly from individual lenders via digital platforms easily, quickly, and cheaply without going through conventional banking intermediation. Based on data from the Financial Services Authority (OJK), outstanding P2P lending in Indonesia has reached almost IDR 47 trillion, with growth increasing by 46% in 2020 (OJK, 2021).

Sharia P2P lending is an innovative P2P lending model that implements a financing scheme based on Islamic Sharia principles, such as buying and selling, profit sharing, or renting

without using an interest system. This concept is very suitable to the needs of the Muslim community segment who wants to make sharia-compliant investments and loans. So, it is unsurprising that the projected growth of sharia P2P lending in Indonesia is quite promising. However, the growth of the Sharia P2P lending industry is currently still facing several challenges, especially related to regulations from the OJK as the regulator of the financial services sector and the implementation of Sharia compliance principles in the operations of Sharia P2P lending platforms, which are not yet optimal.

Based on a study of the relevant POJK, specific regulations for sharia P2P lending do not yet exist. OJK has just issued POJK 77/2016 concerning Information Technology-Based Money Lending and Borrowing Services. These regulations are still essential and do not touch on sharia aspects in P2P lending. As a result, there is ambiguity in the sharia P2P lending business model, which is by sharia corridors. Many organizers are then confused about implementing sharia principles in their platforms. On the other hand, only a few Sharia P2P lending providers have ensured operational compliance with Sharia rules, such as ensuring the implementation of non-ribawi schemes and the presence of a Sharia supervisory board as regulated in the DSN MUI fatwa regarding Sharia P2P lending services in Indonesia.

This condition could disrupt the literacy and trust of Muslim communities wishing to transact or invest in Sharia through Sharia P2P lending services if there are still many cases of deviation and non-compliance with Sharia principles. Therefore, strengthening regulations and a clear legal framework related to the Sharia P2P lending business model is urgent to provide business certainty, encourage sustainable innovation, and protect the interests of the Indonesian Muslim community to avoid financial investment practices contrary to Islamic teachings.

In response to these conditions, the Financial Services Authority (OJK), as the primary regulator of the financial services industry, has attempted to issue POJK Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services, which generally regulates fintech lending activities, including P2P lending in Indonesia. However, this regulation does not touch on the specific Sharia P2P lending business model in detail, including the type of contract used, the profit-sharing mechanism implemented, and monitoring aspects of Sharia compliance. This condition creates ambiguity for organizers regarding which Sharia principles consider Sharia P2P lending business models and may operate (Abdullah).

As for aspects of Sharia compliance, Sharia P2P lending platforms should ideally refer to the DSN MUI Fatwa Number 117/DSN-MUI/II/2018, which explicitly prohibits the use of interest and requires that at least there be a Sharia supervisory board in its organizational structure. Unfortunately, previous research found that most existing Sharia P2P lending platforms have not entirely implemented the fatwa provisions. This condition is undoubtedly prone to giving rise to sharia deviant practices, which are detrimental to the interests of the Indonesian Muslim community, who want financial services that truly comply with Islamic rules. (Handayani et al., 2021).

Departing from the problems above, it is time for the OJK and other relevant policymakers to immediately issue detailed regulations governing the Sharia P2P lending business model along with the Sharia compliance parameters that each organizer must fulfill. This regulation is essential to provide business certainty, protect consumers, and encourage more sustainable Sharia P2P lending innovation while still adhering to Sharia principles. Increasing literacy and understanding of regulations by industry players and monitoring their implementation also need to be encouraged to ensure regulations can be implemented and their objectives are achieved. With these efforts, it is hoped that the challenges of Sharia regulation and compliance, which have hampered the growth of the Sharia P2P lending ecosystem in Indonesia, can be resolved. So that this fintech platform business model can continue to develop to provide benefits to the broader community, especially the Muslim community who

need Sharia financial services with a non-ribawi scheme, while also strengthening Sharia-based financial literacy and inclusion in Indonesia in general.

In response to the issue of inadequate P2P Sharia Lending regulations above, one of the solution recommendations put forward by several experts and academics in the field of Sharia and financial law includes specifically that the Financial Services Authority (OJK) must issue technical regulations for Sharia P2P Lending which currently do not exist. The existence of clear and detailed regulations governing the Sharia P2P Lending business model, including contracts and financing schemes, will provide business certainty and legal protection for industry players and the public who use its services. Apart from that, it is also necessary to emphasize the provisions on the existence of a Sharia supervisory board and the obligation to audit Sharia compliance as well as comprehensive disclosure of Sharia aspects in the context of market discipline and openness of information to the public regarding the sharia legal aspects of a sharia financial service product. Regulators also need to formalize particular institutions or mechanisms to supervise and ensure Sharia compliance with Sharia P2P Lending platforms regarding regulations and operational practices.

On the other hand, the MUI DSN Fatwa, as the authority for setting standards for Sharia financial products in Indonesia, also needs to elaborate in more detail regarding the minimum parameters for Sharia compliance aspects that need to be fulfilled by Sharia P2P Lending providers. Clarity and firmness of Sharia fatwas regarding Sharia compliance criteria are important so that Sharia P2P Lending platforms have broad references and standardization to run their business based on Islamic values. Another effort that should be encouraged is increasing literacy and comprehensive understanding of stakeholders in the Sharia P2P Lending industry itself regarding Sharia P2P Lending regulations along with procedures for implementing Sharia aspects and compliance in the platform operations being run (Wiryaningsih et al., 2020). This requires cooperation and contribution from all stakeholders, including academics, practitioners, regulators, associations, and others, to carry out intensive and consistent outreach and training through various Sharia financial literacy programs.

At the global level, the experience of Sharia P2P Lending regulations in other countries such as Malaysia and Saudi Arabia should also be used as a benchmark or comparison to perfect the Sharia P2P Lending regulatory framework in Indonesia so that a healthy and just industrial ecosystem can be created. As one of the largest Muslim countries in the world, Indonesia certainly has extraordinary opportunities and potential to become a pioneer and center of excellence in implementing an inclusive and ethical digital Sharia financial system in global eyes. Overall, improving regulations and supporting infrastructure from all elements is very important for developing the Sharia P2P Lending ecosystem in the country so that it can grow sustainably while remaining compliant with Sharia principles. This fintech platform can further contribute to the Nobel mission of providing fair and equitable access to financing, strengthening Sharia financial literacy and inclusion, and realizing a prosperous and just economic system based on Islamic ethics in Indonesia in the future.

4. CONCLUSION

Sharia peer-to-peer (P2P) lending is a fintech innovation with great potential to be developed in Indonesia in line with the high interest of the Muslim community in Sharia financial services. However, the Sharia P2P lending ecosystem's growth is still hampered by weak special regulations from the Financial Services Authority as the regulator regarding permitted Sharia platform business models and the lack of optimal implementation of Sharia compliance principles by the majority of existing Sharia P2P lending providers. This condition risks injuring the trust of the Muslim community as consumers. Therefore, strengthening comprehensive regulations related to the P2P lending Sharia business model and mandatory Sharia compliance parameters, which must be fulfilled through collaboration with regulators

and all relevant stakeholders, is crucial and urgent to be carried out immediately. This is important to ensure the protection of the Muslim community and encourage the growth of a sharia-compliant P2P lending ecosystem that is sustainably sharia-compliant in Indonesia in the future.

Therefore, recommendations that can be given include strengthening comprehensive regulations related to the Sharia P2P lending business model along with mandatory Sharia compliance parameters that must be fulfilled through collaboration with regulators and all relevant stakeholders. Increasing literacy regarding regulations and Sharia compliance for industry players and the user community is also essential. With these steps, it is hoped that we can guarantee the protection of the Muslim community and encourage the growth of a sharia-compliant P2P lending ecosystem that is sustainably sharia-compliant in Indonesia in the future.

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