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Legal Construction of Interest Rate Determination in Information Technology-Based Lending Services in Indonesia

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Abstract--There is a legal vacuum regarding determining loan interest rates in Article 17 paragraph (1) POJK No. 77/01/2016 concerning Information Technology-Based Lending and Borrowing Services (ITBLBS). With this legal vacuum, O.J.K. has given the authority to AFPI to self-regulate the determination of loan interest rates at ITBLBS. With authority as an S.R.O. (*Self Regulating Organization*) institution owned by the Indonesian Joint Funding Fintech Association (IJFFA). The method used is normative legal research by analyzing primary, secondary, and tertiary legal materials related to the research title. The interest rate in the *code of conduct* that IJFFA determines as the principle of operation in ITBLBS directly affects the inflation rate. However, Bank Indonesia, as the institution authorized and responsible for targeting inflation in terms of controlling interest rates circulating in the fintech market, is not given any authority based on Article 17 POJK NO. 77 of 2016. This is in contrast to the inflation targeting objective, which is the authority of B.I. It can be concluded that the determination of interest rates in the existing ITBLBS is normatively out of sync between the objectives of the legislation and the objectives of the IJFFA *code of conduct*.

Keywords---cartel, code of conduct, fintech, interest rate, self-regulating organization (S.R.O).

Introduction

The law functions to provide accuracy and order as proposed by *the positivism school of law* (Huijbers, 1993). In achieving public order, rights and obligations must be balanced. According to the dogmatic school adopted by John Austin, in principle, the law is solely for legal certainty. As a value, the essence of legal certainty is a matter of protection from arbitrary actions. The state is the first to be responsible for potentially providing legal protection for its citizens because the state is a subject that receives constitutional and legal orders to carry out the public interest according to reasonable legal provisions. The community expects legal certainty because the community will be more orderly with legal certainty. The law is tasked with creating legal certainty because it aims to bring order to society (Mertokusumo, 2007).

The state must provide legal protection to shape people's lives in a better and more conducive direction. According to Satjipto Raharjo, legal protection is the protection of human rights (H.R.) that are harmed by others, and that protection is given to the community so that they can enjoy all the rights granted by law (Rahardjo, 2000). So, in this case, as a state of the law, Indonesia is obliged to protect the community with laws made and can respond to community developments so that the law is not left behind by people who move very quickly (Lathif, 2017). The economic conditions of the people in Indonesia vary from year to year (Fuady, 2006). This, of course, makes the law continue to move with the community; even the law must be able to reach the changes that occur in society quickly to prevent conflicts and problems that arise as a result of the law being unable to respond to the development of society and the business world in solving legal problems that arise. exist in society (Darji Darmodiharjo, 1995).

The development of information technology, especially *interconnection-networking (internet)*, has significantly influenced human life. Today, modern life is very dependent on technological advances (Benuf & Azhar, 2020; Arief, 2005). Today's technology is borderless and continues to experience significant developments. Technology and the internet have an essential role in supporting the activities of human life. Information *technology* has changed society and created a new profession in human work (Sjahdeini, 2009). In line with this, the banking industry has also positioned itself as a technology-based financial services industry driver. The development of the business world is growing along with the increasing development of information technology; the development of technology and the internet has penetrated the trading industry and the Indonesian financial industry (Adisanjaya & Ramantha, 2018; Jaya et al., 2020).

The direction of legal development begins to focus on the economic paradigm, so the study of the relevance between law and economics is increasingly complex and comprehensive; law and economics are understood as aspects that cannot stand alone but have a reciprocal relationship. This correlation can be seen from the instinctive essence of humans who always want the maximum profit, but on the other hand, human activities in the economy need to be limited by law so that they do not take actions that harm others (Suyikno, 2015).

The development of science and technology is a factor that affects the pattern of the economic system. The economy, which was basically built conventionally and simply, is currently accelerating the birth of innovations in technology, one of which is *financial technology*. The use of digital technology in Indonesia is extensive; of course, it impacts several sectors; one form of progress in the current financial industry is the birth of fintech (*financial technology*) (Afnan, 2020). *Financial technology*, which is one of the disruptive innovations that restructure aspects of the financial industry and affect people's lifestyles, needs to be balanced with the fulfillment of accommodative legal development to accelerate in dealing with technical problems and services.

The role of the internet in information technology has been used to develop the financial industry (*financial industry*) through modification and efficiency of financial services, known as *peer-to-peer lending* (P2PL) *financial technology* or also known as Information Technology-Based Borrowing and Lending Services rapidly, which allows individuals to borrow without collateral (Brill, 2010).

Even though it facilitates human financial and financial aspects, information technology-based lending and borrowing services is not a system that in its construction does not have any problems that surround it, such as setting very high-interest rates and fintech institutions, which substantially and technically hinder the use of fintech in Indonesia, thus requiring P2PL fintech in Indonesia. Indonesia needs clear regulations. Without regulation, it will only lead to scandal (Lee & Shin, 2018; Jünger & Mietzner, 2020).

Substantially, the absence of standardization in setting interest rates is an obstacle in maximizing the benefits of this Information Technology-Based Lending and Borrowing Service (Saunders & Schumacher, 2000). This is contained in Article 17 paragraph (1) PJOK No. 77/PJOK .01/2016, which states that; "The organizers provide input on the interest rates offered by lenders and loan recipients taking into account the reasonableness and development of the national economy".

In the formulation of the article above, it can be seen that determining loan interest is only based on considerations of Fairness and the development of the national economy. POJK itself does not explain the parameters or measures of "fairness." The unclear element of "fairness" can lead to uncertainty and losses for users of Information Technology-Based Borrowing-Lending Services, especially loan recipients.

The Indonesian Joint Funding Fintech Association (IJFFA), as a *self-regulating organization* (S.R.O.), is authorized by the O.J.K. to regulate its standardization of fintech loan interest rates (Jagtiani & John, 2018). In this case, there is no protection for borrowers from the state; this is because the POJK itself opens up opportunities for *fintech platforms* to deviate from the provisions to be used as a powerful weapon in making money-borrowing agreements with mutually agreed interest rates by the P2PL fintech association, which in this case is IJFFA. The "*self-regulated*" policy reflects the adage of freedom of contract, which frees the Information Technology-Based Lending and Borrowing Service *Platform* to regulate its own rules. In the absence of regulation regarding interest

rate determination by O.J.K., O.J.K. has delegated the authority to determine interest rates to *self-regulatory organizations* (S.R.O.s) in the *peer-to-peer lending fintech* industry (Lykourentzou et al., 2010).

The delegation of authority to determine interest rates through the S.R.O. institution indicates that the state is half-hearted in improving the level of the community's economy. The state seems to have legalized digital moneylenders because the S.R.O. agency, AFPI, charges high-interest rates to borrowers (Rudebusch, 1995). Legally, the S.R.O. institution should be independent to maintain its neutrality and integrity because it does not represent the fintech industry players. However, in reality, the determination of the fintech interest rate is determined by the fintech association (IJFFA), which operationally acts as the direct organizer in this information technology-based lending and borrowing agreement service (Diorditsa et al., 2021). In addition, the Business Competition Supervisory Commission also assesses the existence of a cartel agreement in determining interest rates by several *platforms* in an association that sets interest rates jointly between business actors (Fonseca & Normann, 2014; Rothschild, 1999).

This *Self Regulation Organization* (S.R.O.) is an organization that carries out the regulatory authority in the capital market industry. S.R.O. has binding regulations and provisions for capital market players as a supervisory function to prevent prohibited stock trading practices so that the implementation of S.R.O. can create a more efficient capital market and will ultimately improve the national economy (Anwar, 2019; Carson, 2011). In contrast to *fintech*, S.R.O.s use the F.S.A.'s authority to regulate the determination of interest rates on interest fact for people, especially highly rated borrowers. The urgency of structuring the legal construction of information technology-based lending and borrowing services is getting stronger, with 4,500 complaints from the public to L.B.H. Jakarta relating to Financial Technology cases until June 2021.

In dealing with these technical and service problems, balancing them with the fulfillment of accommodative legal developments is necessary (Kokorina et al., 2021). To minimize this problem, the state must reformulate the construction of the legal component both in terms of substance and in terms of the legal structure of information technology-based lending and borrowing services so that it can provide legal protection guarantees in the development of information technology-based lending and borrowing services in Indonesia to create a legal order, which is ideal.

The development of Information Technology-Based Lending and Borrowing Services presents a considerable challenge for regulators, in this case, the government, to maintain the potential benefits of digital-based financial innovations, especially Information Technology-Based Lending and Borrowing Services. Due to the increasing development of the digital-based economy in Indonesia, it requires regulation and supervision, especially for creating legal certainty for loan recipients (Rinartha et al., 2018).

The legal problem that so far is that there is insufficient regulation in information technology-based lending and borrowing services is needed to become the basis

for future regulations on how Information Technology-Based Borrowing and Borrowing Services should be regulated in order to prevent arbitrary actions of organizers and associations so that the state can protect people who broader than the risks associated with business conduct, to prevent deceptive or immoral practices.

Method

The components of ideal legal development become more effective and efficient include culture, substance, and structure (Wignjosoebroto, 2012). In this case, the author tries to analyze by connecting empirical facts with academic studies from several multidisciplinary points of view but still in a normative study that needs to be studied comprehensively related to the issues that occur that show the ineffectiveness of the current legal construction of lending and borrowing money services is good. In terms of legislation and institutionally. So to protect all people and realize legal certainty, it is not enough to have financial service authority regulations. However, a comprehensive and firm regulation is needed that regulates all factors related to legal certainty and legal protection for the community to remember the risks posed if there is no regulation. that is certain, considering the benefits for the community. After that, it can be determined whether the regulation is proportional and efficient or not for the community.

Discussion

Substantial Analysis of Interest Rate Determination Concepts in Conventional Information Technology-Based Lending and Borrowing Services According to POJK No. 77/01/2016 Regarding Information Technology-Based Lending and Borrowing Services. Parameters “Fairness” and “National Economic Development” in Determining ITBLBS Interest Rates.

The regulation of interest standardization is contained in Article 17 paragraph (1) POJK No. 77/PJOK .01/2016 states that; "The organizers provide input on the interest rates offered by lenders and loan recipients taking into account the reasonableness and development of the national economy".

From the formulation of the article above, it can be concluded that there is no certainty regarding the standard for setting interest rates but only based on considerations of Fairness and the development of the national economy. When we interpret it, the word fairness will give rise to a broad meaning. According to the Big Indonesian Dictionary (KBBI), Fairness comes from the word reasonable, which means normal as it is without being embellished by others, according to the existing conditions as it should be. Fairness is a natural matter (Indonesia, 2008).

If the formulation of Article 17 POJK No. 77 of 2016 is understood from the goals and ideals of the law, the word fairness cannot be separated from justice, expediency, and legal certainty. Gustav Radbruch, as quoted by Mertokusumo, (2007) states that there are 3 (three) elements of legal ideals that must exist proportionally, namely legal certainty (*rechtssicherheit*), expediency (*gerechtigkeid*),

and justice (*zweckmaszigkeit*). These three elements of legal ideals are the primary legal values that must be realized. Therefore, scholars often refer to these three legal ideals as legal goals. According to [Atmadja & Gede \(1993\)](#), the law must perfectly fulfill the three fundamental values, which are also the objectives of the law, namely: 1) *Juridical doctrine*, the value of legal certainty, where the binding force is based on a higher rule of law; 2) *Sociological doctrine*, sociological value, meaning legal rules that are binding because they are recognized and accepted in society (recognition theory) and can be enforced even if society rejects it (coercive theory). 3) *Philosophical doctrine*, philosophical value, meaning that the rule of law is binding because, following the ideals of the law, justice is the highest positive value.

Fairness must be interpreted with certainty to avoid misinterpretation and multiple interpretations from the parties involved. Fairness is a natural thing, while reason is a situation that should be. As should be a situation where an event does not violate its nature and applicable norms, there is a kind of habit that repeats itself, such as the sun rising from the east and set in the west ([Putra, 2019](#)).

Regarding setting interest rates, the word fairness follows the rules for setting interest rates as banks and other financial service institutions. So that certainty in the rules can provide a sense of justice and protection for the community without high-interest rates from either party. In addition, it also provides a sense of justice for other financial service institutions in terms of fair business competition ([Putra, 2019](#)). While in the explanation of POJK No. 77/2016 states that Article 17 Paragraph (1) states that Fairness can be measured through the inflation rate or national interest (Explanation of Article 17 Paragraph (1) POJK No. 77/2016).

The effect of inflation and economic development on fintech interest rates

Inflation can be interpreted as an increase in goods and services in general and continuously within a certain period. Low and stable inflation is a prerequisite for sustainable economic growth, which will ultimately provide benefits for improving people's welfare. Meanwhile, interest rates are closely related to creditors (banks) and debtors (borrowers). In principle, the interest rate is the price for the use of money or as rent for the use of money for a certain period, which is generally in percentage.

According to [Indriyani \(2016\)](#), inflation is the continuous rise in the prices of goods or a state economy that shows a tendency to increase the general price level (*price level*). According to Siwi Nur Indriyani, the characteristics of inflation describe three things: *First*, the occurrence of price increases, the increase in the price of certain goods or services increases from the previous price. *Second*, it is general or systemic, i.e., an increase in the price of certain goods is followed by an increase in the price of other goods or services. *Third*, it takes place continuously. Namely, the increase in the price of a particular good or service occurs not only for a moment but also continuously takes place.

Due to demand pressure (*demand-pull inflation*) and production cost pressures (*cost push inflation*), inflation can occur. Inflation due to demand pressure is caused by increased demand for goods and services. Demand pressure causes the economy's output to increase, but it is accompanied by inflation, as seen from the higher general price. Due to pressure on production costs, inflation occurs due to increased production costs caused by various things such as an increase in the minimum wage—the increase in fuel, the increase in the price of essential inputs. The increase in production costs will result in higher industrial sector output prices, which reduces aggregate supply (Rahardjo, 2000).

In a closed economy, the interest rate will be determined by the conditions of the national market itself. In such an economy, Fisher's equation applies where the nominal interest rate is the same as the actual interest rate plus inflation expectations (Edwards & Khan, 1985). As stated by Fisher, inflation also plays a vital role in determining interest rates. If prices are anticipated perfectly, meaning that people immediately anticipate what will happen, then high-interest rates will be associated with a fast inflation rate.

For producers, forecasts of rising prices for goods and services will encourage sales delays to gain greater profits—the supply of goods and services decreases. As a result, excess demand grows and accelerates the rate of inflation. For that, inflation must be controlled. So, since the 1990s, the state has implemented an *inflation targeting* policy that aims to shape and direct people's expectations to a low inflation rate as a target. This *inflation targeting* policy is carried out by the monetary authority, in this case, is Bank Indonesia.

The importance of controlling inflation is based on the consideration that high and unstable inflation harms the socio-economic conditions of the community; High inflation will cause the real income of the community to continue to fall so that the standard of living of the community falls and ultimately makes everyone, especially the poor, poorer. Unstable inflation will create uncertainty (*uncertainty*) for economic actors in decision-making. Unstable inflation will complicate people's decisions in consumption, investment, and production, reducing economic growth.

The interest rate is one of the benchmarks that trigger economic growth. The policies made by Bank Indonesia can impact various sectors of economic activity. This economic activity includes the circulation of financial/banking flows which include: savings, investment, inflation is strongly influenced by the movement of the rupiah exchange rate. Countries with a strong exchange rate (having a large number of transactions) have a strong influence on the fundamentals of the world economy so that policies are central to the state. Market players and investors will respond to this interest rate to take advantage of this moment to get maximum profit (Melati, 2016).

Based on the above, it can be concluded that inflation is essentially a condition where there is a continuous increase in the price of certain goods or services over a certain period. Regarding the context of the parameters for determining the number of interest rates in the ideal ITBLBS, apart from considering the inflation rate, it also considers matters relating to the national interest.

Factors of national interest in setting interest rates

Etymologically, national interest comes from the concept in French, *raison d'état*, namely the goals and ambitions of the state, whether economic, military, or cultural. In addition, when viewed from the state's interest in the economic sector, as stated in Article 33 Paragraph (4) of the Constitution of the Republic of Indonesia, it is essentially oriented towards the realization of balance, progress, and national economic unity through economic democracy implemented with the following principles: principle; (1) togetherness, (2) efficiency with justice, (3) sustainability, (4) environmental insight, and (5) independence (Arifin, 2019).

Institutional analysis of fintech interest rate determination by S.R.O. institutions legal construction of interest rate determination in information technology-based lending and borrowing services

If viewed from one of the state's interests in the economic sector, it is to maintain the stability of the national economy and the value of the rupiah in the form of monetary policy mandated by Bank Indonesia. As for one form of monetary policy carried out, among others, through controlling the money supply and interest rates (Gultom, 2014).

Explicitly, Article 17 POJK No. 77 of 2016 as a lex specialist in ITBLBS authorizes associations of fintech operators to determine loan interest rates. On the other hand, there is a *code of conduct* issued by AFPI that limits the behavior of information technology-based money-lending service providers to standardize fintech loan interest rates. The interest used in the information technology-based lending and borrowing service market is the basis for the implementation because all circulating interest rates in ITBLBS directly affect the inflation rate (Law No. 6 of 2009 concerning Monetary Policy). However, as the institution authorized and responsible for targeting inflation to control interest rates circulating in the ITBLBS market, it is not authorized based on Article 17 POJK NO. 77 of 2016. This is in contrast to the inflation targeting objective, which is the authority of B.I. One of the crucial factors in the effectiveness of inflation targeting is circulating interest in intermediation activities, as stated in the research of Roeroe et al. (2020). then it is appropriate to apply this in ITBLBS so that the presence of B.I. in setting ITBLBS interest rates is an absolute must so that the inflation target can run effectively.

In this case, according to the researcher, it seems appropriate that in determining the ITBLBS rate, it becomes the realm of monetary policy and B.I. Acts as a representative of the government in setting interest rates in ITBLBS. Thus, inflation targeting can run effectively, and it will automatically impact the success of monetary policy and maintain the stability of the rupiah value. If the stability of the rupiah's value is achieved and maintained, it will directly affect the resilience of the national economy, which impacts the welfare of the community (Ruslina, 2016). As mandated in the 1945 Constitution and Pancasila, the ideal condition as a parameter of social welfare is when the stability of the rupiah value is achieved and national economic resilience is running effectively and improving people's welfare (Ramadoni & Sukarmi, 2020).

The purpose of Law no. 6 of 2009 concerning Bank Indonesia, in line with the determination of interest rates by Bank Indonesia with attributive authority possessed by Bank Indonesia, will provide space for B.I. to integrate into monetary policy aimed at targeting inflation (Ramadoni & Sukarmi, 2020) If B.I. is given the authority to set interest rates in the ITBLBS, the monetary policy mechanism can achieve the inflation targeting objective. Therefore, it is appropriate for B.I. to be given the authority to regulate economic activities by setting the ITBLBS interest rate so that it will be more effective in achieving the legal goals of public welfare compared to the AFPI setting interest rates, which according to researchers, that IJFFA is not a representative of the state but is a forum for business associations who promise and agree to determine the number of interest rates jointly.

It can be concluded that the determination of interest rates in current information technology-based lending and borrowing services is normatively out of sync between the objectives of the legislation and the objectives of the IJFFA Code of Conduct. The IJFFA Code of Conduct stipulates the loan interest rate of 0.8% per day, affecting the implementation of Article 17 POJK No. 77 of 2016, which indirectly resulted in disharmony in legal objectives at the level of Law no. 6 of 2009 concerning Bank Indonesia and Law no. 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition aimed at the welfare of the community.

This can lead to a conflict of interest and create a dominant position of IJFFA by determining the interest rate threshold that is the reference for ITBLBS organizers (Handayani, 2021). According to Guntur, Commissioner of KPPU, the behavior of setting interest rates in ITBLBS is an indication of a price-fixing cartel and deserves to be questioned. Because every industry must carry out efficient business activities, one of which makes it easier for the community in terms of costs (Ulya, 2021).

The problem of not regulating the LPMUBTI loan interest rate by the O.J.K. became systemic and did not stop with the determination of the 0.8% loan interest rate by IJFFA but had spread to allegations of a cartel carried out by IJFFA. There are allegations of conspiracy to regulate loan interest rates at ITBLBS. The interest cartel in the financial sector is a form of conspiracy mechanism for determining loan interest rates by business actors (Handayani, 2021). The condition of the vacancy of interest setting norms in POJK No. 77.POJK.01/2016, concerning information technology-based lending and borrowing services, allows IJFFA to enter into price cartel agreements (Handayani, 2021). Therefore, it is necessary to conduct further investigations by O.J.K. and the competent authorities. Allegations of a loan interest cartel in ITBLBS can be seen in. First, IJFFA as the organizer of ITBLBS directly regulates and determines the amount of loan interest rates. Second, in general, IJFFA is an organizer directly involved in ITBLBS; this condition allows for collusion in determining and controlling loan interest rates.

Indications of a cartel in determining interest rates by IJFFA in information technology-based lending and borrowing services

Normatively, the authority to regulate loan interest rates is not the primary duty and function or authority of the IJFFA. It is not a regulator and has no legal standing to set standards for setting loan interest rates (Handayani, 2021). Normatively, in Article 2 of P.B.I. No. 19/12/P.B.I./2017 concerning Fintech Implementation, B.I. is authorized to stipulate provisions related to ITBLBS interest rates. The role of O.J.K. is regulated in Article 16 paragraph (2) of POJK No. 77/POJK.01/2016 as a party that helps formulate interest rate policies by analyzing through periodic reports from each organizer. From this report, O.J.K. can coordinate with B.I., which can be followed up by forming regulations or policies. This violates Article 11 of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Usually, most cartel cases are caused by intense competition in certain businesses (Handayani, 2021). The authority given to IJFFA to determine loan interest rates will open up opportunities for business actors to enter into prohibited agreements and collusion, namely cartels.

Regarding the standardization of interest rates set by IJFFA, interest is one source of financial service income originating from interest as a certain percentage calculated from the loan principal that the debtor must pay within a certain period. At the same time, the creditor receives a fee that is compensation to the lender. (creditors) because they have given up debtors to benefit from their funds (Handayani, 2021).

Information Technology-Based Lending and Borrowing Service Providers members of the Indonesian Joint Funding Fintech Association appointed by the O.J.K. as the official association that oversees the providers registered and licensed at the O.J.K. based on letter No. S-5/D.05/2019 that IJFFA is given the authority to set interest rates for fintech loans. Let us look at the characteristics of the cartel agreement. It can be concluded that the determination of interest rates on information technology-based lending and borrowing services fulfills the elements of a cartel, including, First, there is a *concerted action* or joint action that jointly agrees on the amount of loan interest. If seen from the IJFFA membership, all registered and licensed organizers automatically become members of the association. This means that it is very likely that Information Technology-Based Lending and Borrowing Services enter into a collusive oligopoly, where providers who are supposed to compete fairly in products and services for the welfare of the community, especially loan recipients, but jointly coordinate their activities, agree and conspire to set loan interest rates for borrowers. So that it can control the interest rate to get a profit above reasonable, they were second, hiding behind associations whose members are the organizers of the fintech companies themselves. The association becomes a means or a place to cover the cartel's activities that they mutually agree on in information technology-based lending and borrowing services. Third, it aims to limit competition among business actors (organizers). Fourth, the interest rate determined is considered a reference *code of conduct* in carrying out business operations (Cole, 2007; Barrett et al., 2012).

From this, we can analyze that Business Competition Supervisory Commission can investigate this activity because this is the point of KPPU's investigation. After all, the determination of loan interest rates by IJFFA cannot be categorized as a *monopoly by law* as determined by BI-7DRRR by B.I., so this is appropriate. It is categorized into a prohibited agreement (Cartel). The determination of loan interest by associations and not regulators does not have a solid legal basis, compared to the BI-7DRRR reference rate determined by Bank Indonesia.

Article 51 of Law Number. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition states, "monopoly and or concentration of activities related to the production and or marketing of goods or services that affect the livelihood of many people as well as production branches that are important to the state are regulated by law—and organized by State-Owned Enterprises and or bodies or institutions established or appointed by the government. Based on this article, the determination of BI-7DRRR, which is based on Law no. 23 of 1998 concerning Bank Indonesia, can be excluded from Law no. 5 of 1999 so that it cannot be categorized as a cartel (*monopoly by law*). Therefore, we can conclude that if the determination of the interest is carried out through the regulator, then it is not under KPPU's authority; KPPU cannot carry out investigations because if the policy is made through the regulator is an excellent point for KPPU's investigation.

AFPI legality as S.R.O. in fintech institutions

Article 6 paragraph (1) of Law no. 21 of 2011 concerning the Financial Services Authority (from now on referred to as Law 21/2011) explicitly states that O.J.K. carries out the task of regulating and supervising financial service activities (currently including technology-based lending and borrowing services). This means that in ITBLBS, there are 2 (two) regulators, namely O.J.K. and IJFFA.

As an S.R.O., IJFFA in carrying out its functions may experience a conflict of interest. Conflict of interest often occurs when the S.R.O. institution is an institution directly involved in the *regulatory* and supervisory functions. Conflicts of interest arise because IJFFA is difficult to be objective in making rules, monitoring, and taking action against AFPI members who commit violations. IJFFA is faced with two different interests, namely the community's interests as service users (fund borrowers) and the interests of facilitating IJFFA members as ITBLBS organizers. This means that there is no independence from the S.R.O. institution in ITBLBS; an example can be taken from the determination of interest rates at ITBLBS; with such a high-interest rate, IJFFA can be said to be unable to perform a practical regulatory function because it creates *moral hazard* from the organizers as IJFFA members.

Transparent supervision and law enforcement will be tough to achieve because IJFFA is not an independent institution implementing S.R.O. policies. For example, if an IJFFA member violates the code of conduct, the IJFFA member will make maximum efforts to defend himself by utilizing his position, influence, data, and information to avoid the imposed sanctions. In this case, it can be concluded that legal action will be weaker due to the S.R.O.'s reluctance to take action against its members. Following the establishment of the O.J.K., so that the

financial services sector is organized regularly, somewhat, transparently, and accountably, can realize a financial system that grows sustainably, is stable, and can protect the interests of all people. Article 4 of Law NO. 21 of 2011 concerning the Financial Services Authority). If O.J.K. cannot solve this problem correctly, it will weaken the IJFFA institution as an S.R.O. institution in ITBLBS.

Related characteristics IJFFA correlation function in carrying the mandate of the F.S.A., visible from IJFFA is function. It has several functions to perform, among others; First, as a policy research institute fosters an inclusive financial sector and is technology-based in Indonesia. Second, it connects other international funding fintech institutions to establish a relationship with the global community. Third, collaborate and participate actively in funding the fintech community in Indonesia through educational activities, a variety of science, caring for promoting and advancing the agenda of financial technology. Fourth, oversee the funding of fintech online service providers in Indonesia. Fifth, holding seminars for organizers fintech certified peer-to-peer lending as a condition for formally registering their organization in the F.S.A.

Regarding the IJFFA's function, which can be concluded as a facilitator, the IJFFA is charged with *front-line responsibility* for making regulations and ensuring its members' compliance with regulations (Fleckner, 2005). The nature of the IJFFA SRO arrangement only covers matters of a technical, operational, and managerial nature. This is due to the assumption that the S.R.O. is a designated institution and is considered to be more knowledgeable about market habits so that the O.J.K gives it some regulatory authority. The delegation of part of this authority does not eliminate the authority of the O.J.K. in regulating bank and non-bank financial institutions, including ITBLBS.

The O.J.K. still holds the regulator's primary function at ITBLBS as a regulatory task in the macro domain. In addition, O.J.K. has the authority to regulate the microdomain to AFPI as a *front-line responsibility*. O.J.K. is still given more expansive authority as mandated by Law 21/2011, including rejecting the code of conduct issued by the IJFFA. This characteristic is called an *approval agreement*, namely the need for O.J.K. approval in determining the IJFFA code of conduct.

The government must monitor an effective S.R.O. Government intervention is required in the business activities of information technology-based lending and borrowing services to realize legal certainty and optimal legal protection for ITBLBS users (Rahadian & Hadiprajitno, 2014).

The concept of S.R.O., which requires that there is a conflict of interest, then proper handling is needed to eliminate conflict, not eliminating conflict, but providing assurance to the community that conflicts are handled in the right way, and providing assurance to the community that the existence of conflicts will not affect the actions and policies of the institution (Carson, 2011).

The S.R.O. very much needs a comprehensive approach in dealing with conflicts of interest as a regulatory agency; according to ICSA, in managing conflicts of interest S.R.O.s must ensure that potential conflicts of interest in regulatory

activities and law enforcement are adequately managed by preparing structures, policies, and procedures correctly, can in the form of (Anwar, 2019); 1) Make clear boundaries between regulatory activities and supervisory activities; 2) Create a separate organ or body to oversee the S.R.O. regulatory function; 3) Separating the organizational structure related to regulation and trade/operations; 4) Regulatory responsibilities by the S.R.O. must be clearly defined; 5) Develop policies and procedures in dealing with conflicts of interest.

In this case, it is necessary to have adequate supervision of the institutions that are given the authority of the S.R.O. S.R.O. at ITBLBS must be supervised by O.J.K. as the primary regulator with a macro regulatory authority. AFPI is an object of regulatory oversight by O.J.K., who is given responsibility for the public interest related to ITBLBS operations, including parties who are business actors and consumers in ITBLBS. The purpose of the O.J.K. supervisory function at the S.R.O. institution at ITBLBS is to meet legal requirements and responsibilities and carry out its regulatory functions effectively (Anwar, 2019).

Conclusion

Article 6 paragraph (1) of Law no. 21 of 2011 concerning the Financial Services Authority expressly states that O.J.K. carries out the task of regulating and supervising financial service activities (currently including technology-based lending and borrowing services). This means that in ITBLBS, there are 2 (two) regulators, namely O.J.K. and IJFFA. By delegating the authority to set interest rate standardization to IJFFA as an S.R.O. institution, transparent supervision and law enforcement will be very difficult to achieve because IJFFA is not an independent institution in implementing S.R.O. policies. It is better to determine the interest rate not with IJFFA but with Bank Indonesia as the executor of monetary policy so that inflation targeting can be effective. One form of monetary policy carried out by B.I Control the money supply and interest rates.

The authority to regulate loan interest rates is not the primary duty and function or authority of the IJFFA. It is not a regulator and has no legal standing to set standards for setting loan interest rates. As a result of the legal vacuum in determining interest rates and the authority given to IJFFA to determine loan interest rates, there are opportunities for organizers to enter into prohibited agreements and collusion, namely cartels. This violates Article 11 of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

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References

Adisanjaya, K., & Ramantha, I. W. (2018). Company area within effectiveness of accounting information system. *International Research Journal of Management, IT and Social Sciences*, 6(1), 8-18. <https://doi.org/10.21744/irjmis.v6n1.431>

- Afnan, E. (2020). Financial Technology: Sistematis Mapping Studi. *Jurnal Sekretaris dan Administrasi Bisnis*, 4(1), 90-104.
- Anwar, B. A. (2019). Karakteristik Bursa Efek Sebagai Self-Regulatory Organization. *Justitia Jurnal Hukum*, 3(1).
- Arief, B. N. (2005). Kebijakan Penanggulangan Cyber Crime dan Cyber Sex. *Law Reform*, 1(1), 11-27.
- Arifin, M. Y. R. (2019). Perekonomian Nasional Dalam Perspektif Undang-Undang Dasar 1945 Negara Republik Indonesia. *Celebes Equilibrium Journal*, 1(1), 26-31.
- Atmadja, I. D. G., & Gede, D. (1993). Manfaat Filsafat Hukum dalam Studi Ilmu Hukum. *dalam Kerta Patrika*, (62-63).
- Barrett, D. E., Casey, J. E., Visser, R. D., & Headley, K. N. (2012). How do teachers make judgments about ethical and unethical behaviors? Toward the development of a code of conduct for teachers. *Teaching and Teacher Education*, 28(6), 890-898. <https://doi.org/10.1016/j.tate.2012.04.003>
- Benuf, K., & Azhar, M. (2020). Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Gema Keadilan*, 7(1), 20-33.
- Brill, A. (2010). Peer-to-peer lending: Innovative access to credit and the consequences of Dodd-Frank. *Legal Backgrounder*, 25(35), 1-4.
- Carson, J. W. (2011). Self-regulation in securities markets. *World Bank Policy Research Working Paper*, (5542).
- Cole, S. (2007). Implementing and evaluating a code of conduct for visitors. *Tourism Management*, 28(2), 443-451. <https://doi.org/10.1016/j.tourman.2006.03.010>
- Darmodiharjo, D. (1995). *Pokok-pokok filsafat hukum: apa dan bagaimana filsafat hukum Indonesia*. Gramedia Pustaka Utama.
- Diorditsa, I., Katerynychuk, K., Kyrenko, S., Vasylykivska, I., & Bepal, O. (2021). The issues of interpretation of “health”, “pain” and “suffering” concepts in modern multidisciplinary science. *Linguistics and Culture Review*, 5(S4), 327-343. <https://doi.org/10.21744/lingcure.v5nS4.1579>
- Edwards, S., & Khan, M. S. (1985). Interest rate determination in developing countries: A conceptual framework. *Staff Papers*, 32(3), 377-403.
- Fleckner, A. M. (2005). Financial futures in foreign exchange. *Journal of Banking Law and Economics*, 17(2), 96-111
- Fonseca, M. A., & Normann, H. T. (2014). Endogenous cartel formation: Experimental evidence. *Economics Letters*, 125(2), 223-225. <https://doi.org/10.1016/j.econlet.2014.09.014>
- Fuady, M. (2006). *Aneka Hukum Bisnis*. PT Aditya Bakti, Bandung.
- Gultom, M. S. (2014). *Analisis kebijakan moneter Islam M. Umer Chapra* (Doctoral dissertation, Pascasarjana UIN Sumatera Utara).
- Handayani, O. (2021). Kontroversi Sanksi Denda Pada Vaksinasi Covid-19 Dalam Perspektif Undang-Undang No. 36 Tahun 2009 Tentang Kesehatan. *KRTHA BHAYANGKARA*, 15(1), 84-102.
- Huijbers, T. (1993). *Filsafat hukum dalam lintasan sejarah*. Kanisius.
- Indonesia, K. B. B. (2008). Departemen Pendidikan Nasional. *Jakarta: Pusat Bahasa*.
- Indriyani, S. (2016). Analisis pengaruh inflasi dan suku bunga terhadap pertumbuhan ekonomi di Indonesia tahun 2005–2015. *Jurnal Manajemen Bisnis Krisnadwipayana*, 4(2).

- Jagtiani, J., & John, K. (2018). Fintech: the impact on consumers and regulatory responses. *Journal of Economics and Business*, 100, 1-6. <https://doi.org/10.1016/j.jeconbus.2018.11.002>
- Jaya, P. E. J., Utama, M. S., Yasa, I. G. M., & Yuliarmi, N. N. (2020). Influence of the quality of human resources, communication information technology, and product mounting requirements on product performance. *International Research Journal of Management, IT and Social Sciences*, 7(3), 29-37. <https://doi.org/10.21744/irjmis.v7n3.883>
- Jünger, M., & Mietzner, M. (2020). Banking goes digital: The adoption of FinTech services by German households. *Finance Research Letters*, 34, 101260. <https://doi.org/10.1016/j.frl.2019.08.008>
- Kokorina, Y. G., Vagabov, M. M., & Lelina, H. I. (2021). Historiography of Scythian migration in the mirror of information technologies. *Linguistics and Culture Review*, 5(S4), 573-582. <https://doi.org/10.21744/lingcure.v5nS4.1679>
- Lathif, N. (2017). Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat. *Pakuan Law Review*, 3(1).
- Lee, I., & Shin, Y. J. (2018). Fintech: Ecosystem, business models, investment decisions, and challenges. *Business horizons*, 61(1), 35-46. <https://doi.org/10.1016/j.bushor.2017.09.003>
- Lykourentzou, I., Papadaki, K., Vergados, D. J., Polemi, D., & Loumos, V. (2010). CorpWiki: A self-regulating wiki to promote corporate collective intelligence through expert peer matching. *Information Sciences*, 180(1), 18-38. <https://doi.org/10.1016/j.ins.2009.08.003>
- Melati, A. (2016). Pengaruh Suku Bunga Terhadap Pertumbuhan Ekonomi [WWW Document].
- Mertokusumo, S. (2007). Mengenal Hukum; Suatu Pengantar.
- Putra, K. S. W. (2019). Perjanjian Kredit Melalui Financial Technology dalam Lalu Lintas Hukum Bisnis. *Jurnal Analisis Hukum*, 2(1), 73-92.
- Rahadian, A., & Hadiprajitno, P. B. (2014). Pengaruh good corporate governance terhadap struktur modal perusahaan (Studi empiris pada perusahaan manufaktur yang terdaftar di Bursa Efek Indonesia pada tahun 2010-2012). *Diponegoro Journal of Accounting*, 3(2), 87-98.
- Rahardjo, S. (2000). *Ilmu hukum*. Citra Aditya Bakti.
- Ramadoni, S. R., & Sukarmi, H. N. W. (2020). Konvergensi Hukum Penentuan Suku Bunga dalam Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 9(4), 821-837.
- Rinartha, K., Suryasa, W., & Kartika, L. G. S. (2018). Comparative Analysis of String Similarity on Dynamic Query Suggestions. In *2018 Electrical Power, Electronics, Communications, Controls and Informatics Seminar (EECCIS)* (pp. 399-404). IEEE.
- Roeroe, S. P., Kumaat, R. J., & Mandei, D. (2020). Efektivitas Penerapan Inflation Targeting Framework Terhadap Tingkat Inflasi Di Indonesia. *Jurnal Berkala Ilmiah Efisiensi*, 20(03).
- Rothschild, R. (1999). Cartel stability when costs are heterogeneous. *International Journal of Industrial Organization*, 17(5), 717-734. [https://doi.org/10.1016/S0167-7187\(97\)00052-0](https://doi.org/10.1016/S0167-7187(97)00052-0)
- Rudebusch, G. D. (1995). Federal Reserve interest rate targeting, rational expectations, and the term structure. *Journal of monetary Economics*, 35(2), 245-274. [https://doi.org/10.1016/0304-3932\(95\)01190-Y](https://doi.org/10.1016/0304-3932(95)01190-Y)

- Ruslina, E. (2016). Makna Pasal 33 Undang-Undang Dasar 1945 dalam Pembangunan Hukum Ekonomi Indonesia. *Jurnal Konstitusi*, 9(1), 49-82.
- Saunders, A., & Schumacher, L. (2000). The determinants of bank interest rate margins: an international study. *Journal of international Money and Finance*, 19(6), 813-832. [https://doi.org/10.1016/S0261-5606\(00\)00033-4](https://doi.org/10.1016/S0261-5606(00)00033-4)
- Sjahdeini, S. R. (2009). *Kejahatan & tindak pidana komputer*. Grafiti.
- Suyikno, S. (2015). Hukum ekonomi: buku perkuliahan Program S-1 Program Studi Hukum Ekonomi Syariah (Muamalah) Fakultas Syari'ah dan Hukum UIN Sunan Ampel Surabaya.
- Ulya, F.N. (2021). KPPU Endus Kartel Penetapan Suku Bunga Pinjaman Fintech dalam Asosiasi [WWW Document].
- Wignjosoebroto, S. (2012). Hukum yang tak kunjung tegak: Apa yang salah dengan kerja penegakan hukum di negeri ini. *Dalam Dialektika Pembaharuan Sistem Hukum Indonesia*. Jakarta: Komisi Yudisial RI.