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Research Article

Fintech Based Investment Analysis (Peer to Peer Lending) in Sharia Economic Law and Positive Law

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Abstract.
The development of digital technology today creates updates in all aspects of life, including investment. Investment is not something that is prohibited in Islam, but in practice, it must pay attention to Sharia principles. With the emergence of financial technology (Fintech)-based investment systems in various platforms, one of which is peer to peer (P2P) lending balanced with high levels of investment among millennials. In this case, Indonesian society, which is predominantly Muslim, must be careful in analyzing and making choices in investing, whether it is following the Shari'a and how the law regulates it. This research includes juridical-normative law research, to find out the review of Islamic law and positive law on fintech P2P lending and a conceptual approach to find out the concept of fintech P2P lending. The results of the study found that investment through the P2P lending platform is permissible in Islam with terms and conditions that are in accordance with Shari'ah principles. The contracts that can be used in P2P lending are al-bai', ijarah, mudharabah, musyarakah, wakalah bi al ujrah, and qardh contracts. Every P2P Lending provider must obtain a permit from the Financial Services Authority (OJK) to run the entire lending system (POJK No. 77/POJK.01/2016) as well as follow the provisions of the DSN MUI Fatwa Number 117 of 2018. In positive law, it is regulated in the Civil Code, POJK Number 10 of 2022 and Bank Indonesia Regulation Number 19/12/PBI/2017.

Keywords: investment, peer to peer lending, law

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1. Introduction

Investment is an activity of developing assets through a number of funds or other resources which are carried out to obtain a number of future profits and to increase the ability to produce goods and services needed in the economy by a number of business actors. It is said that investment is an "engine of growth" (engine of growth). Therefore, high and sustainable levels of economic growth are generally supported by increased investment. In line with government programs, namely investment provides economic, social and (or) other benefits and aims to increase economic growth in the context of promoting general welfare.[1] In the neo-classical investment theory emphasizes the importance of savings as a source of investment. Therefore investment is seen as one of the main drivers of economic growth and development.

In every year, the amount of investment in Indonesia has recorded a fairly good growth. The ease of investing is one of the triggers. Big capital that is often seen as a barrier is now no longer an excuse. In fact, now there are more and more investment instruments that can be purchased at a relatively low price or an affordable minimum deposit amount.[2]

The Investment Coordinating Board (BKPM) notes that from 2017 to 2018, the amount of investment in Indonesia tends to increase. In 2017, investment realization was recorded at IDR 678.8 trillion. Whereas in 2018, this figure experienced a slight increase to IDR 721.3 trillion, an increase of around 4.1%. An increase in the amount of investment has also been seen at the beginning of 2019. In the first quarter, BKPM recorded investment realization at IDR 195.1 trillion. This figure increased by 5.3% compared to investment realization in the previous year in the same quarter, which amounted to IDR 185.3 trillion.[3]

The ease of investment is increasingly felt in the digital era, especially by today's millennials, various types and investment features in the form of Financial Technology (Fintech) that are easily accessible and offer affordable investments, such as one type of investment known as Crowd-based financing. or Crowdfunding which is a type of investment where funds are collected from the public, where the collection of funds is via the internet online so that it is easy to do. Forms of Crowdfunding include Peer to peer lending or known as P2P Lending which has recently become popular in Indonesia. P2P Lending is basically a loan of a number of funds from investors to parties in need, be it individuals or business entities.

However, in practice this type of investment is still being debated regarding its halalness and legality in law and the various risks involved. Indonesia as a country with the largest Muslim majority in the world is also a market for business and technological developments, in this case it requires us to be more careful and careful in conducting economic transactions in order to demand halal economic activities, whether the product is the object, how to obtain it. as well as how to use it. For this reason, the author wants to analyze the form of peer to peer lending investment in a review of Islamic economic law and its comparison with positive law.

2. Methods

The type of research used in this research is juridical-normative descriptive type with data collection through literature study and then analyzed using qualitative analysis methods, namely the data that has been obtained will be described in the form of statements and explanations, then studied based on the opinions of experts and legal theories which is relevant.

3. Results and Discussion

3.1. Investmen Development

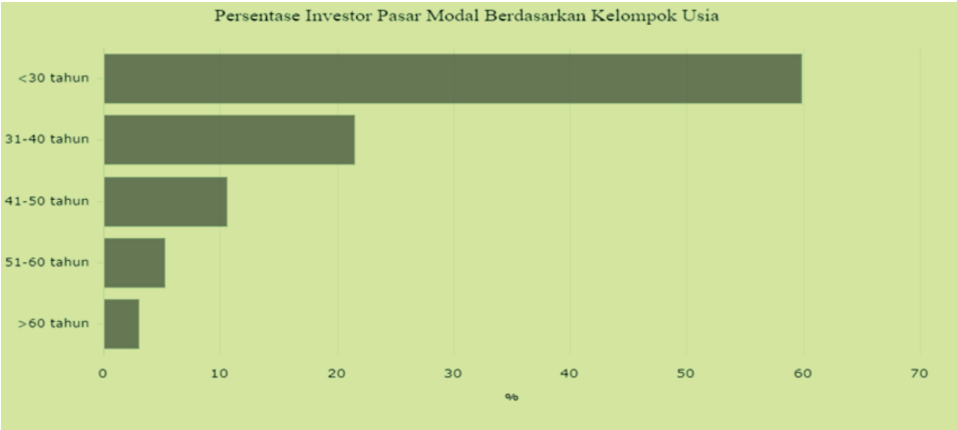
The word investment in the dictionary of capital market terms is defined as a commitment to place funds in one or several investment objects with the aim of obtaining a certain level of return in the future.[4] It can also be interpreted as investing money or capital in a particular company or project for the purpose of obtaining profit.

The black law dictionary defines investment as “an expenditure to acquire property or assets to produce revenue: a capital outlay” ie expenditure to acquire property or assets to generate income: capital expenditure.[5]

The definition of investment according to the Financial Services Authority (OJK) is long-term ordinary investment for the procurement of complete assets or the purchase of shares and securities to gain profit. In general, investment is divided into two, namely investment in financial assets and investment in real assets. Asset financial investments are carried out in the money market, which can be in the form of certificates of deposit, money market securities (SPBU) and also in the capital market. Meanwhile, real asset investment is carried out by buying productive assets, setting up factories, opening mines, and so on.[6]

Technological developments present online-based investment facilities or can also be referred to as Financial technology (Fintech), this system develops from e-commerce technology or technology-based business/financial systems. The purpose and benefits of establishing a fintech company are to make it easier for the public to access financial products and conduct financial transactions.

The increasing development of technology which is directly proportional to the level of investment interest is increasingly being felt, especially among millennials, a data sourced from the Indonesian Central Securities Depository (KSEI) shows that the number of capital market investors reached 7.15 million investors as of November 2021. It was recorded, the majority or 59.81% of them are millennials or aged 30 and under



Source: :https://www.ksei.co.id/files/Statistik_Publik

Figure 1:

The data shows the high interest in investment among millennials, who are the most internet users. This is in line with the results of research conducted by Aditya Pangestu and Batara Daniel Bagana in their research entitled Factors Affecting Millennial Generation's Investment Interest in Semarang City in 2022, where the results of the research show that online trading facilities have a positive and significant effect on investment interest. Millennials.

3.2. Investing in Peer to Peer Lending (P2P Lending) Platforms

P2P lending is an investment in the form of funding that is generally given to MSME actors who apply for venture capital loans for business development, there are also funds for Education, Health and various other needs with certain standards both from loan credit worthiness, loan nominal and tenor, interest rates to security level. Then, as an investor, you will get profit from the profit-sharing system for paying the loan or the interest on the loan.

Fintech P2P lending is an online platform that provides facilities for investors to provide loans directly to debtors with higher returns, while loan borrowers can apply for credit directly to investors/fund owners with easier conditions and a faster process compared to institutions. conventional finance.

The following is the mechanism in P2P Lending:

1. Perform membership registration; Users, both investors/lenders and borrowers, register online via a computer or smartphone

2. The borrower submits a loan application

3. The P2P lending platform will analyze and select borrowers who are eligible to apply for loans, including determining the borrower's risk level

4. Selected borrowers will be placed by the P2P lending platform in the online P2P lending marketplace along with comprehensive information about the borrower's profile and risks

5. P2P lending investors analyze and select borrowers listed in the P2P lending marketplace provided by the platform

6. P2P lending investors fund the selected borrowers through the P2P lending platform

7. The borrower returns the loan according to the loan repayment schedule to the P2P lending platform

8. P2P lending investors receive loan repayments from borrowers through the platform.[7]

The process of applying for funds in P2P Lending for borrowers is fast and easy to do and does not use collateral. However, there are risks, namely high loan interest rates and fines that must be paid when late payments are made.

For investors or lenders investing through P2P Lending, it makes it easier for investors to diversify funding so that the opportunity to earn greater profits. Funds that have been allocated through P2P Lending cannot be withdrawn or can only be withdrawn within a certain time.[8]

3.3. Investment According to Sharia Economic Law

Investment is a muamalah activity and has existed since the time of Rasulullah SAW, there are several verses in the Qur'an and hadith which are used as arguments regarding investment, including;

Al-Qur'an Surah Al-Baqarah verse 261;

مَّثَلُ ٱلَّذِينَ يُنفِقُونَ أَمْوَٰلَهُمْ فِي سَبِيلِ ٱللَّهِ كَمَثَلِ حَبَّةٍ أَنۢبَتَتْ سَبْعَ سَنَابِلَ فِي كُلِّ سُنۢبُلَةٍ مِّاْئَةُ حَبَّةٍۗ وَٱللَّهُ يُضَٰعِفُ
لِمَن يَشَآءُۚ وَٱللَّهُ وَٰسِعٌ عَلِيمٌ

“The example of those who spend their wealth in the cause of Allah is that of a grain that sprouts into seven ears, each bearing one hundred grains. And Allah multiplies the reward even more to whoever He wills. For Allah is All-Bountiful, All-Knowing”

Al-Qur’an Surah An-Nisa verse 9;

وَلْيَخْشَ ٱلَّذِينَ لَوْ تَرَكُوا۟ مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَٰفًا خَافُوا۟ عَلَيْهِمْ فَلْيَتَّقُوا۟ ٱللَّهَ وَلْيَقُولُوا۟ قَوْلًا سَدِيدًا

“And let those (executors and guardians) fear (injustice) as if they (themselves) had left weak offspring behind and feared for them. So let them fear Allāh and speak words of appropriate justice”.

Al-Qur’an Surah Al Hasyr verse 18; يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوا۟ ٱتَّقُوا۟ ٱللَّهَ وَلْتَنظُرْ نَفْسٌ مَّا قَدَّمَتْ لِغَدٍ ۖ وَٱتَّقُوا۟ ٱللَّهَ ۚ إِنَّ ٱللَّهَ خَبِيرٌۢ بِمَا تَعْمَلُونَ *“O believers! Be mindful of Allah and let every soul look to what deeds it has sent forth for tomorrow. And fear Allah, for certainly Allah is All-Aware of what you do”*

Hadis Riwayat Muslim No. 3084

حَدَّثَنَا يَحْيَى بْنُ أَيُّوبَ وَقُتَيْبَةُ يَعْنِي ابْنَ سَعِيدٍ وَابْنُ حُجْرٍ قَالُوا حَدَّثَنَا إِسْمَعِيلُ هُوَ ابْنُ جَعْفَرٍعَنْ الْعَلَاءِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا مَاتَ الْإِنْسَانُانْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ إِلَّا مِنْ صَدَقَةٍ جَارِيَةٍ أَوْ عِلْمٍ يُنْتَفَعُ بِهِ أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ

“Having told us (Yahya bin Ayyub) and (Qutaibah), namely Ibn Sa’id-and (Ibn Hujr) they said; told us (Isma’il), namely Ibn Ja’far from (Al ’Ala’) from (His father) from (Abu Hurairah), that the Prophet sallallaahu ’alaihi wasallam said: “When a human being dies, then everything is cut off his deeds except for three things: charity, knowledge that benefits him and a pious child who always prays for him.”[9]

In this hadith, it is mentioned about sadaqah jariyah which is an investment in the hereafter that brings benefit, as well as useful knowledge which is indirectly an investment for the future.

Then as was done by the prophet Muhammad SAW with Khadijah, where Khadijah as an investor and prophet Muhammad SAW as a partner as well as a business actor.

In essence, investment is not prohibited in Islam, it is even encouraged, because in Islam we are commanded to develop wealth, not accumulate wealth. Developing wealth means taking advantage of fadzilah or the virtue of Allah, while accumulating wealth is an act that is not justified in Islam.

3.4. Investment in Peer to peer Lending Platform

Along with the development of the times and the emergence of digital technology, investment in this case adjusts to these developments. The increasing number of types of investment available in the digital era, including forms of investment based on Financial Technology (fintech), one of which is Crowdfunding or Peer to peer lending (P2P) type investment. Basically, this type of investment is a form of lending funds or capital in an online system, where there are investors as lenders and borrowers who have been selected by the platform.[10] Borrowers can be individuals or business entities such as MSMEs.

P2P Lending first appeared in Buchkinghamsire, England in 2004 under the name Zopa which is managed by a team of internet banking companies, Egg Banking and then released in March 2005. Until 2019 Zopa has provided loans of more than US$ 3.22 billion in loans to borrowers in the UK. P2P Lending then developed in America, China to Indonesia. There is no definite data showing when P2P Lending first entered the Indonesian market, it was started by the Indonesian Fintech Association (AFI) in 2016 and then P2P Lending emerged with a platform called "Investree" as the first pioneer of P2P Lending in Indonesia. To date, Investree has recorded a total loan facility of IDR 21.23 trillion and a disbursed loan value of IDR 13.35 trillion.[11]

In practice, P2P Lending has drawbacks and is not in accordance with sharia principles, this can be seen from the lending mechanism that uses an interest system and there is no provision for a maximum loan interest rate. In general, both investors and borrowers are not charged when registering, but with interest when paying, interest on service fees and interest on late payments/penalties which are calculated per day if late in paying installments,[12] This of course can be burdensome for borrowers, not a few borrowers who use P2P services who have to borrow again on a different platform, to cover the previous loan.[12]

Transactions of this kind in Islamic law are included in the type of Qard transaction or accounts payable, in KBBI debt is defined as cash and non-cash or goods borrowed by someone from another person, in contrast to lending and borrowing or ariyah, there is a fundamental difference between the two, namely in Qard or accounts payable is a transaction indebted to an item for a certain time whose status must be returned in the same value by the debtor. For example, money owed that must be returned in the same value, while ariyah is a transaction of borrowing and borrowing goods in the form of giving benefits, for example in the case of borrowing a motorbike, which in the future the motorbike must be returned by the borrower, without being replaced with other items of the same value.[13]

Basically debts are allowed in Islam, this is a form of taawun and is recommended in Islam, as the word of Allah SWT: وَتَعَاوَنُوا۟ عَلَى ٱلْبِرِّ وَٱلتَّقْوَىٰ ۖ وَلَا تَعَاوَنُوا۟ عَلَى ٱلْإِثْمِ وَٱلْعُدْوَٰنِ ۚ وَٱتَّقُوا۟ ٱللَّهَ ۖ إِنَّ ٱللَّهَ شَدِيدُ ٱلْعِقَابِ... ...*And help you in (doing) virtue and piety, and don't help each other in committing sins and transgressions. And fear Allah, indeed Allah is very severe in punishment*" (Q.S Al-Maidah: 2)

The legal basis for debts and credit is found in the Qur'an surah Al-Baqarah verse 245

مَنْ ذَا الَّذِيْ يُقْرِضُ اللّٰهَ قَرْضًا حَسَنًا فَيُضٰعِفَهٗ لَهٗٓ اَضْعَافًا كَثِيْرَةً ۗوَاللّٰهُ يَقْبِضُ وَيَبْصُۣطُ ۖ وَاِلَيْهِ تُرْجَعُوْنَ

"*Meaning: Whoever lent Allah with a good loan, Allah multiplied him with a lot. Allah withholds and expands (sustenance) and to Him you will be returned*".

As for the stipulations in accounts payable, if giving debt in return or taking legal benefits, of course it is unlawful if this is stipulated in the contract because there is usury in it.[14]

P2P lending with this format is forbidden in Islam, then along with the development of the fintech business with the P2P Lending platform, supported by the high interest in investment among millennials and the enthusiasm for growing the shari'ah economy, P2P Lending with the shari'ah system appears

3.5. Fatwa of the National Sharia Council of the Indonesian Ulema Council

Based on DSN MUI Fatwa NO: 117/DSN-MUI/II/2018 Concerning Information Technology-Based Financing Services Based on Sharia Principles, the requirements for establishing a sharia fintech in outline are:

1. Provisions related to General Guidelines for Information Technology-Based Financing Services;

   (a) The implementation of information technology-based Financing Services must not conflict with Sharia principles, namely, among others, avoiding usury, gharar, maysir, tadlis, dharar, zhulm, and haram;

   (b) The contract made by the administrator must comply with the principles of balance, fairness and fairness in accordance with sharia and applicable laws and regulations;

(c) The contracts used by the parties in providing Information Technology-based Financing Services can be in the form of contracts that are aligned with the characteristics of the financing services, including contracts of al-bai', ijarah, mudharabah, musyarakah, wakalah bi al ujrah, and qardh;

(d) The use of electronic signatures in electronic certificates carried out by the Operator must be carried out with guaranteed validity and authentication in accordance with the applicable laws and regulations;

(e) The Operator may charge a fee (ujrah/flat) based on the principle of ijarah for the provision of systems and infrastructure for Information Technology-Based Financing Services;

(f) If the financing information or services offered through electronic media or disclosed in electronic documents are different from the reality, then the aggrieved party has the right not to continue the transaction.[15]

3.5.1. The contracts offered

As explained in DSN-MUI Fatwa No: 117/DSNMUI/II/2018 Concerning Information Technology-Based Financing Services Based on Sharia Principles in General Provisions, there are 6 contracts, namely: a). A ba'i contract or sale and purchase contract is an agreement between the seller and the buyer which results in the transfer of ownership of the object being exchanged (goods and price). b). An Ijarah contract is a contract for the transfer of usufructuary rights (benefits) for an item or service within a certain time with the payment of ujrah or wages. c). Mudharabah contract is a business cooperation agreement between the capital owner (shahibu al-maal) who provides all the capital and the manager ('amil/mudharib) and the business profit is shared between them according to the agreed ratio in the contract, while the loss is borne by the capital owner. d). A Musyarakah contract is a cooperation contract between two or more parties for a particular business in which each party contributes business capital funds (ra's al-mal) with the condition that profits are shared according to an agreed ratio or proportionately, while losses are borne by the parties proportionally. e). A wakalah contract is a power delegation contract from the principal (muwakkil) to the attorney (representative) to carry out certain legal actions that may be represented. A wakalah bi al-ujrah contract is a wakalah contract accompanied by a reward in the form of ujrah. f). A qardh contract is a loan contract from a lender with the condition that the borrower is required to return the money he receives in accordance with the agreed time and method.

3.6. P2P Lending In a Positive Legal Review

The P2P Lending service is a lending and borrowing service system through a peer to peer platform where the lenders and loan recipients do not meet directly even the parties do not know each other. To understand the contract, you must refer to Article 1320 of the Civil Code. For the validity of an agreement, four conditions are needed, namely: 1. Agree to be bound; 2. Capable of making agreements; 3. A certain thing; 4. Legal reasons or not prohibited. The first two conditions are called subjective conditions because they concern the people, while the last two conditions are called objective conditions because they concern the object of the legal action being carried out. If the objective conditions are not met, the agreement is null and void, whereas if the subjective conditions are not met, the agreement can be canceled. The agreement of both parties which constitutes an agreement is limited as long as there is no coercion, oversight and fraud.[16]

Article 24 POJK No. 77/POJK.01/2016 concerning Information Technology-Based Borrowing Services explains that between the organizer and the bank has an agreement for the use of virtual accounts and escrow accounts in running the entire lending system. Every activity carried out by the organizers online, such as the availability of information on loan status to parties, the delivery of billing information, and the availability of escrow accounts and virtual accounts in banks to all parties so that all forms of payment take place in the banking system.

Based on these provisions between the organizers of P2P Lending and the bank has legal certainty and convenience for the parties. The involvement of the bank in the entire P2P Lending implementation system, namely as a party that provides virtual accounts and escrow accounts indicates that bookkeeping activities by the organizer must continue to run efficiently and can be accounted for.

Based on the provisions of the laws and regulations contained in POJK No. 77/POJK. 01/2016 concerning Information Technology-Based Lending Services states that every P2P Lending provider must obtain a permit from the Financial Services Authority (OJK) to run the entire lending system and is required to provide regular reports to the OJK relating to all activities of P2P Lending.[17]

OJK is proactive in issuing regulations so that operating fintech businesses can run transparently and comply with regulations. Regulations that have been issued include OJK Regulation (POJK) Number 10/POJK.5/2022 concerning Information Technology-Based Lending Services. Likewise, Bank Indonesia also issued a policy through Bank

Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology. As well as the National Sharia Council of the Indonesian Ulema Council (DSN MUI). Also issued a fatwa related to this fintech phenomenon. Namely the Fatwa of the MUI National Sharia Council Number 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles

4. Conclusion

Investment through the Peer to peer Lending (P2P Lending) platform is permitted in Islam with terms and conditions in accordance with Shari'a principles, namely in its implementation it does not contain elements of usury, gharar, maysir, tadlis, dharar, zhulm, and haram. Contracts that can be used in Peer to peer Lending (P2P Lending) are al-bai', ijarah, mudharabah, musyarakah, wakalah bi al ujrah, and qardh contracts.

The large number of P2P Lending applications requires us to be more thorough and careful in choosing those that are in accordance with sharia principles, among the basic provisions that must be understood, namely that every P2P Lending provider must obtain a permit from the Financial Services Authority (OJK) in running the entire lending system (POJK No. 77/POJK.01/2016). As well as DSN MUI Fatwa Number 117 of 2018. In positive law it is regulated in the Civil Code, POJK Number 10 of 2022 and Bank Indonesia Regulation Number 19/12/PBI/2017.

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