

TERAJU

Jurnal Syariah dan Hukum

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Teraju: Jurnal Syariah dan Hukum, hadir dengan edisi perdana pada Maret 2019. Dalam Kamus Besar Bahasa Indonesia (KBBI), kata "**Teraju**" memiliki beberapa makna yang satu diantaranya berarti "timbangan" atau "neraca". Kehadiran **Teraju** tak lain ingin membawa pesan sebagaimana nilai yang termuat dalam namanya, yakni timbangan yang menggunakan dua buah piringan yang digantungkan dengan rantai (tali) pada kedua ujung lengannya yang merupakan identitas syariah dan hukum di berbagai belahan dunia.

Keberadaan **Teraju:** Jurnal Syariah dan Hukum, sebagai jurnal ilmiah dan media komunikasi ilmiah dengan fokus kajian pada ilmu syariah dan ilmu hukum. Jurnal ini diterbitkan dua kali dalam setahun, yakni pada Maret dan September oleh **P3M dan Jurusan Syariah dan Ekonomi Bisnis Islam STAIN Sultan Abdurrahman Kepulauan Riau** dengan **ISSN Online 2715-386X** dan **ISSN Print 2715-3878**. Berdasarkan Surat Keputusan Direktur Jenderal Pendidikan Tinggi, Riset, dan Teknologi Nomor 204/E/KPT/2022, tanggal 03 Oktober 2022 tentang Tingkat Akreditasi Jurnal Ilmiah Periode II Tahun 2022, **Teraju:** Jurnal Syariah dan Hukum **terakreditasi SINTA 5**. **Teraju** mengundang para peminat, pengkaji, peneliti, dan akademisi untuk mempublikasikan hasil penelitian dan karyanya yang berhubungan dengan ilmu syariah dan hukum di jurnal ini.

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TERAJU: Jurnal Syariah dan Hukum merupakan Jurnal Ilmiah yang memiliki **focus** pada kajian **Syariah dan Hukum**. Sedangkan **scope** dalam Jurnal ini meliputi:

- **Syariah:** Usul Fikih, Fikih, Hukum Ekonomi Syariah, Hukum Keluarga Islam, Perbandingan Mazhab, dan Ilmu Falaq.
- **Hukum:** Filsafat Hukum, Hukum Bisnis, Hukum Pidana, Hukum Perdata, Hukum Tata Negara, Hukum Adat, Hukum Internasional dan Studi Perbandingan Hukum.

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Realising Consumer Data Protection in Peer-to-Peer Lending through Market Conduct

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Abstrak

Penelitian ini bertujuan untuk mengkaji bagaimana teori sistem hukum Lawrence M. Friedman memandang market conduct sebagai upaya hukum yang ideal dalam mewujudkan perlindungan data konsumen dalam p2p lending. Penelitian ini merupakan penelitian yuridis normatif, dengan menggunakan analisis yuridis kualitatif melalui dua pendekatan yakni pendekatan perundang-undangan dan pendekatan konseptual. Hasil penelitian menunjukkan bahwa pengejawantahan market conduct sebagai upaya hukum yang ideal dalam mewujudkan perlindungan data konsumen di p2p lending dapat dicapai dengan memenuhi tiga aspek hukum, yaitu substansi hukum, struktur hukum, dan budaya hukum. Pada intinya, aspek yang paling penting yakni memastikan adanya harmonisasi, baik dari sisi asas maupun norma, dalam seluruh regulasi yang berkaitan dengan perlindungan data konsumen, baik secara vertikal maupun horizontal. Dalam struktur hukum, penting untuk menggambarkan batas-batas kewenangan yang jelas bagi lembaga yang bertanggung jawab atas perlindungan data konsumen dalam p2p lending. Dalam konteks budaya hukum, penting untuk mengedepankan Pancasila sebagai paradigma pengembangan budaya hukum yang selaras dengan nilai dan cita-cita bangsa dan masyarakat. Hal ini akan memudahkan pengembangan budaya hukum yang optimal.

Kata Kunci : Data, Perlindungan, Conduct, Market, Konsumen

Abstract

The present study aims to examine how Lawrence M. Friedman's legal system theory views market conduct as an ideal legal effort in realising consumer data protection in p2p lending. This research employs a doctrinal approach, utilising qualitative legal analysis through two distinct methodologies: the statute approach and the conceptual approach. The findings suggest that the pursuit of market conduct as an ideal legal

effort in realising consumer data protection in peer-to-peer lending can be achieved by fulfilling three legal aspects: legal substance, legal structure, and legal culture. In essence, the most critical prerequisite is to ensure harmonisation, both in terms of principles and norms, in all regulations pertaining to consumer data protection, both vertically and horizontally. In legal structure, it is essential to delineate clear boundaries of authority for the institutions responsible for consumer data protection in p2p lending. In the context of legal culture, it is imperative to prioritise the five principles of Pancasila as a paradigm for the development of a legal culture that is congruent with the values and ideals that delineate the nation and society. This will facilitate the development of an optimal legal culture.

Keywords: Data, Protection, Conduct, Market, Consumer



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Introduction

The enactment of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law) is an effort by the Indonesian government to address the challenges and obstacles that the Indonesian financial sector will face in the future. The momentum of financial sector reform in Indonesia through the P2SK Law is essentially a positive alternative amid the rapid development of technology on a global scale, one of which is *financial technology (fintech)*.¹ *Peer-to-peer lending (P2P lending)*, also known as online lending, is a tangible manifestation of *fintech* development in the form of a lending and borrowing service managed by a service provider with the aim of connecting *lenders* and *borrowers* using online technology. According to data released by the Financial Services Authority (OJK), the *fintech p2p lending* industry recorded a net profit of Rp. 206.48 billion in March 2023, an increase of 110.2%. Compared to

March 2022, *fintech p2p lending* experienced an increase of up to 568.3%.²

Online loans, namely *peer-to-peer lending*, as a form of *fintech*, in reality have not only positive but also negative impacts. One of them is the proliferation of illegal online loans that have spread throughout society. Data released by the OJK shows that there have been 3,903 public complaints related to illegal online lending from 1 January to 29 May 2023, with the complaints taking the form of threats to disseminate personal data, which violates consumer protection regulations in *fintech*. This is evidenced by the discovery of 129 illegal online lending entities suspected of violating regulations related to the dissemination of personal data.³ In response to this, the Indonesian

² Data Indonesia, "P2P Lending Profits Surge 110.2% in March 2023," [Dataindonesia.id](https://dataindonesia.id/digital/detail/laba-pinjol-p2p-lending-melonjak-1102-pada-maret-2023), accessed 15 September 2023, <https://dataindonesia.id/digital/detail/laba-pinjol-p2p-lending-melonjak-1102-pada-maret-2023>.

³ radartegal.com, "Task Force PASTI Blocks 173 Illegal Lending Platforms, Discovers Hundreds of Contents Violating Personal Data Policies," radartegal.com, accessed 18 November 2023, <https://radartegal.com/read/674300/satgas-pasti-blokir-173-pinjol-llegal-nakal-temukan->

¹ *Financial technology (fintech)* is a change in the digital-based financial sector that is essential for the financial services industry today.

government, through the P2SK Law, has established a concept related to consumer protection in the financial services sector through market conduct.⁴

Market conduct is a concept that aims to ensure compliance by Financial Services Business Actors (PUJK) in implementing consumer and public protection provisions through direct and indirect market behaviour supervision in accordance with the functions, duties, and authorities of the OJK.⁵ However, references to consumer data protection articles in chapter seven of the P2SK Law are still related to Law Number 27 of 2022 concerning Personal Data Protection (P2P Law). This is certainly very interesting to explore further.

The state of the art in this research departs from previous research aimed at enriching the discussion and explaining the differences between this research and previous research. The research conducted by Ilka Sandela et al. aims to examine the regulations on dispute resolution in lending and borrowing practices in the *fintech* sector based on Indonesian laws and regulations and the mechanisms for resolving such disputes.⁶ This research states that regulations related to the settlement of *fintech-based* lending and borrowing disputes are still not regulated in detail, referring to Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 concerning Financial Technology-Based Money Lending

Services, as well as Bank Indonesia Regulation (PBI) Number 19/12/PBI/2017 concerning the Implementation of Financial Technology. Thus, the determination of dispute resolution mechanisms can refer to Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE Law).

A study conducted by Elizabeth Diani Samantha et al, which examined market conduct supervision in *peer-to-peer lending* services, reviewed POJK Number 01/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector.⁷ The results of this study state that market supervision carried out by the OJK is still not optimal. This is based on the fact that POJK No.01/POJK.07/2013 does not regulate in detail the definition, form, and mechanism of market conduct applied by the OJK. Furthermore, research conducted by Gotman Tambunan et al examined the legal regulations for perpetrators of money laundering in the *fintech* industry.⁸ The results of this study state that the criminal provisions on money laundering are appropriate with the existence of Law No. 11 of 2016 concerning Electronic Information and Transactions and more specific regulations related to *fintech* will apply the principle of *lex specialis derogat legi generalis*. Furthermore, in handling criminal offences in *fintech*, repressive and preventive measures can be taken by issuing Circular Letter Number 6/SE OJK. 05/2021.

raturan-konten-yang-melanggar-kebijakan-data-pribadi.

⁴ “Law Number 04 of 2023 on the Development and Strengthening of the Financial Sector,” Article 233. Paragraph (2) c.

⁵ “Law Number 04 of 2023 on the Development and Strengthening of the Financial Sector,” Article 234.

⁶ Ilka Sandela, Nila Trisna, and Adam Sani, “Dispute Resolution Mechanisms for Technology-Based Money Lending (Fintech Lending) According to Indonesian Laws and Regulations,” *Ius Civile: Reflections on Law Enforcement and Justice* 5, no. 2 (30 October 2021), <https://doi.org/10.35308/jic.v5i2.4532>.

⁷ Elizabeth Diani Samantha, Gindo L. Tobing, and Wiwik Sri Widiarty, “Market Conduct Supervision of Peer-to-Peer Lending (P2P Lending) Services as Reviewed by Financial Services Authority Regulation No. 01/POJK.07/2013,” *NOVUM ARGUMENTUM* 1, no. 1 (12 December 2022): pp. 13–21.

⁸ Gotman Tambunan et al., “A Legal Review of Money Laundering Crimes in the Fintech Industry,” *Ius Civile: Reflections on Law Enforcement and Justice* 6, no. 2 (22 November 2022): pp. 313–23, <https://doi.org/10.35308/jic.v6i2.3792>.

Based on the legal gap described above and *the state of the art* in previous studies, this study will focus on Market Conduct in protecting consumer data in *p2p lending* as the object of study, supported by the latest data, namely regulations related to consumer protection in *fintech* related to market conduct and relevant laws and regulations and their derivatives. This study uses several approaches and theories that differ from previous studies, which are expected to create *novelty* and contribute to scientific knowledge, especially in the study of law. This study aims to examine the legal system's view of market conduct as an ideal legal effort to protect consumer data in *peer-to-peer lending*.

This research is a normative juridical study that attempts to analyse legal issues in *law books*, namely by examining principles, norms, rules or legislation.⁹ This study uses secondary data consisting of primary and secondary legal materials. The primary legal material in this study is the P2SK Law and other regulations that are relevant to this study. The secondary legal materials are in the form of journals, books, research reports, and other writings that are relevant to the study. The data collection technique in this study uses a literature *review*.

This study uses qualitative juridical data analysis techniques through *a statute approach* and *a conceptual approach*. This study also applies Lawrence M Friedman's *legal system theory*, which provides an explanation of building legal constructs through three important components, namely legal substance, legal structure, and legal culture, in answering research problems.

Discussion

⁹ Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "Normative and Empirical Methodology in the Perspective of Legal Science," *Indonesian Law Enforcement Journal* 2, no. 1 (17 January 2021): p. 10, <https://doi.org/10.51749/jphi.v2i1.14>.

A. Legal System Perspectives on Market Conduct in Realising Consumer Data Protection in Peer-to-Peer Lending

Online lending or *peer-to-peer (P2P) lending* is a tangible manifestation of *fintech* advancement in the form of an information technology system that connects *borrowers* and *lenders* in lending and borrowing practices. The cooperation pattern in the *P2P lending* system begins with *lenders*, as investors, providing loans directly to *borrowers*, mediated by an intermediary, namely a *P2P lending fintech* company.¹⁰ This practice is considered effective and efficient because the system has eliminated the intermediary function that has traditionally been performed by traditional parties or banks in general. However, *peer-to-peer lending* has had a negative impact on consumer data protection, as explained in the introductory sub-chapter. In response to this phenomenon, Indonesia is attempting to supervise the behaviour of financial sector businesses through the concept of market conduct. Lawrence M. Friedman believes that in developing legal constructs and implementing legal regulations, it is necessary to consider three important components, namely legal substance, legal structure, and legal culture.¹¹

Legal substance is essentially a legal instrument in the form of legislation, legal principles, and court decisions that serve as guidelines for the government and society in implementing the legal system.

¹⁰ Sri Wahyuningsih Se, "Implementation of Peer-to-Peer Lending in Indonesia, Financial Technology-Based Financing Services," *FEB Student Scientific Journal* 8, no. 1 (30 September 2019): p. 7, <https://jimfeb.ub.ac.id/index.php/jimfeb/article/view/6115>.

¹¹ Lutfil Ansori, "Reform of Law *Yuridis Journal* 4, no. 2 (11 January 2018): p. 150, <https://doi.org/10.35586/v4i2.244>.

Consumer data protection in *P2P lending* is not only based on the P2SK Law. Referring to Article 239 paragraph (2) of the P2SK Law, financial service providers are obliged to apply the basic principles of personal data protection processing in accordance with the provisions of Law Number 27 of 2022 concerning Personal Data Protection (PDP Law). Looking back at the concept of legal substance, are the principles of consumer data protection in the P2SK Law in line with the PDP Law? This study found that there is relevance between the principles of consumer data protection in both laws.

Article 228 of the P2SK Law states that one of the applications of consumer protection principles in the financial sector is the protection of consumer assets, privacy, and data, while Article 16 paragraph (2) of the PDP Law explains that the collection of personal data must be carried out transparently and legally in accordance with its purpose. Based on the legal principles in both laws, the legal construction built upon these two regulations is consistent in its objectives, especially in terms of legal certainty. This can be seen in the commitment to consumer data protection in the P2SK Law and the form of transparency that is legally valid. It is hoped that these two laws and regulations can create an ideal concept for protecting consumer data and can supervise the behaviour of financial service providers so that they are responsible and act fairly in the implementation of *fintech p2p lending*.

However, questions arise regarding which law should be used as a reference in protecting consumer data in *P2P lending*. Based on general legal principles, provisions related to consumer data protection in *P2P lending* should follow the P2SK Law. This is

based on the principle of *Lex Specialis Derogat Legi Generalis*, which states that specific regulations override general regulations.¹² This is also confirmed in Article 248 of the P2SK Law, which states that consumer protection in the financial sector is specific to regulations outside the financial sector. This study found that there are eight articles in the P2SK Law regarding consumer data protection.¹³

First, it permits cooperation between Financial Services Business Entities (PUJK) and other parties in exchanging consumer data. *Second*, PUJK are permitted to transfer consumer data outside the jurisdiction of Indonesia. *Third*, PUJK are obliged to ensure information system and cyber security. *Fourth*, consumer protection efforts in the financial sector can be carried out through coordination between the government, Bank Indonesia, and OJK. *Fifth*, the OJK, as the supervisory authority for *peer-to-peer lending*, has the authority to issue orders or take certain actions against FSBs. *Sixth*, PUJKs are required to have a consumer complaint handling mechanism and to implement it. *Eighth*, establish an Alternative Dispute Resolution Institution for the Financial Sector (LAPS-SK). *Ninth*, establish a task force to handle unlicensed business activities in the financial sector in order to prevent illegal *fintech p2p lending* practices.

So far, the OJK has formulated implementing regulations related to consumer protection in the financial services sector after the enactment of

¹² Rokilah Rokilah and Sulasno Sulasno, "The Application of Legal Principles in the Formation of Legislation," *Adjudication: Journal of Legal Science* 5, no. 2 (29 December 2021): p. 188, <https://doi.org/10.30656/ajudikasi.v5i2.3942>.

¹³ See Section Seven on Consumer Data Protection, Articles 239-247 of Law No. 04 of 2023 on the Development and Strengthening of the Financial Sector.

the P2SK Law, namely Financial Services Authority Regulation (POJK) Number 22 of 2023 concerning Consumer and Community Protection in the Financial Services Sector (POJK PKM SJK). Thus, POJK PKM SJK has revoked several POJKs that had been issued by the OJK in order to provide legal protection to consumers, such as POJK Number 1/POJK.07/2013, which was later amended by POJK Number 6/POJK.07/2022.¹⁴

Market conduct is not actually a new concept in Indonesia. Previous POJKs related to consumer protection in the financial services sector, particularly in 2022, have sought to introduce the concept of market conduct to ensure PUJK compliance in implementing consumer protection, particularly in relation to consumer data. POJK as an implementing regulation (*Delegatie van wetgevingbevoegdheid*) is a form of delegation of regulatory authority that is guided by vertical legislation, i.e., from top to bottom.¹⁵ Thus, harmonisation of existing regulations related to consumer data protection through market conduct must always be pursued.

The legal structure in this case is the legal office that supports the running of a legal system. This component relates to law enforcement agencies, legal institutions, legal instruments, and their order and authority. The legal structure is an essential component because a suboptimal legal structure will result in

non-compliance with the law.¹⁶ The OJK is the institution responsible for regulating and supervising financial service providers and implementing consumer education and protection.¹⁷ However, consumer data protection in the financial sector is carried out through collaboration between the government, Bank Indonesia, and the OJK.¹⁸ This joint coordination is an effort to protect consumers, namely through the formation of a task force to handle unauthorised business activities in the financial sector.¹⁹ This study found that the OJK has several methods related to the supervision and regulation of PUJK in realising consumer data protection in *p2p lending* through the legal *fintech* aspect, namely the Indonesian Joint Funding Fintech Association (AFPI), and the illegal aspect, namely the Task Force for the Eradication of Illegal Financial Activities (Satgas PASTI).

AFPI is an association appointed by the OJK with the aim of supervising and regulating the implementation of Information Technology-Based Joint Funding Services (LPBBTI) and accommodating public aspirations and complaints. AFPI was formed through S-5/D.05/2019, which officially made AFPI a strategic partner of the OJK in carrying out its supervisory and regulatory functions in the implementation of *p2p lending*.²⁰ AFPI

¹⁴ See the initial chapter of Financial Services Authority Regulation No. 22 of 2023 on Consumer and Public Protection in the Financial Services Sector.

¹⁵ Siska Windu Natalia and Qurrata Ayuni, "The Formation of Implementing Regulations for Laws in Various Constitutions Around the World," *JISIP (Journal of Social Sciences and Education)* 7, no. 2 (7 June 2023): p. 157, <https://doi.org/10.58258/jisip.v7i2.4956>.

¹⁶ Ansori, "Legal Enforcement Reform from a Progressive Legal Perspective," p. 150.

¹⁷ "Law No. 04 of 2023 on the Development and Strengthening of the Financial Sector," Article 6. Paragraph (1).

¹⁸ "Law No. 04 of 2023 on the Development and Strengthening of the Financial Sector," Article 243.

¹⁹ "Law Number 04 of 2023 concerning Development and Strengthening of the Financial Sector," Article 247. Paragraph (3).

²⁰ Veronica Novinna, "Consumer Protection from the Dissemination of Personal Data by Third Parties: The Case of Fintech Peer-to-Peer Lending," *Udayana Master Law Journal* 9, no.

members are companies operating in the *Fintech peer-to-peer lending* sector that are registered with the OJK. Regarding AFPI's duties and authorities in consumer data protection, it provides a facility called *the Fintech Data Centre (FDC)*²¹. Every organiser is required to report all detailed data related to consumers, including data related to lending and borrowing transactions. *P2P lending* organisers are required to have a system for processing and verifying legal documents to ensure the accuracy of data and information on loan recipients in accordance with the principle of good faith.²² AFPI also imposes sanctions on *P2P lending* operators who violate *fintech P2P lending* regulations in the form of written sanctions, publication of the names of members and the types of regulations violated to the public and OJK, temporary suspension or even permanent termination of AFPI membership, and other sanctions relevant to violations related to consumer data, namely personal data.²³

The PASTI Task Force is a coordination forum consisting of several institutions and ministries tasked with preventing and handling unlicensed business activities in the financial sector, including *fintech p2p lending*, in order to protect the public as

consumers. The PASTI Task Force has several authorities relevant to consumer data protection, such as strengthening coordination in the supervision and prevention of licensing of illegal entities and strategies in the form of massive and effective education and socialisation to the public. Looking at the reasons for the establishment of the PASTI Task Force, it can be concluded that the main concern is to achieve optimal national economic coordination, both in terms of supervisory agencies, law enforcement officials, regulators, and matters that are certainly relevant to the PASTI Task Force. The PASTI Task Force was formed based on the Decree of the Chairman of Bapepam-LK Number Kep-208/BL/2007 on 20 June 2007 and was renewed through the Decree of the OJK Board of Commissioners Number 2/KDK.02/2020 on 3 March 2020.²⁴

An explanation of the legal structure in relation to the concept of market conduct as a solution for PUJK compliance in protecting consumer data leads to the conclusion that AFPI is an association that dominates and is at the forefront of monitoring PUJK compliance in protecting consumer data. This study found that the essence of market conduct, specifically in the scope of consumer data protection, actually covers fundamental matters such as the application of consumer

1 (31 May 2020): p. 97, <https://doi.org/10.24843/JMHU.2020.v09.i01.p07>.

²¹ *Fintech Data Centre* is a data centre specifically designed to support *fintech* technology infrastructure formed based on independent legal studies with the aim of detecting bad *borrowers*, preventing excessive funding, preventing fraud, and other matters related to consumer data protection. See "AFPI | Indonesian

²² "Decree of the Management of the Indonesian Fintech Funding Association ('AFPI'). No. 002/SK/COC/INT/IV/2020," accessed on 12 November 2023.

²³ "Decision Letter of the Management of the Indonesian Fintech Funding Association ('AFPI'). No. 002/SK/COC/INT/IV/2020."

²⁴ The formation of the PASTI Task Force has a fairly long history, having been established before the transfer of duties and functions from Bapepam-LK to OJK. The regulations governing it have undergone many revisions, with the latest regulation in 2020 through OJK Board of Commissioners Decree No. 2/KDK.02/2020 regarding the Establishment of a Task Force for Handling Alleged Illegal Actions in the Field of Public Fundraising and Investment Management (Investment Alert Task Force). This task force currently comprises 12 (twelve) relevant ministries and institutions.

data protection principles and the processing of personal data protection to technical matters such as information system security and cyber security. Thus, AFPI has a significant positive impact as an ideal effort in protecting consumer data in *p2p lending* and is a tangible legal product derived from existing regulations when compared to Satgas Pasti. However, this does not mean that Satgas Pasti has no role in maintaining the *fintech* ecosystem. It is just that Satgas Pasti's authority lies in aspects of illegal entities, while the concept of market conduct itself is more supportive of policies that originate from legal entities which are then supervised and provided *with a framework* in the form of *a code of conduct*, an ethics committee, and consumer complaint channels.

This study also found that it is important to clearly define *the authority areas* between institutions or associations under the ministry and the OJK in maintaining the stability of the digital economy. If this is not anticipated in the form of relevant rules and regulations, there will be indications of sectoral egoism, which will certainly have a negative impact on the digital economy ecosystem in Indonesia. Thus, it can be concluded that the components of the legal structure must be in line with the substance of the law, like a blueprint or *grand design* in implementing a legal policy that is in harmony with the objectives of the law, in this case justice, benefit, and legal certainty.

Legal culture is a way of thinking, values, ideas, views, and behaviour of officials and the wider community in implementing the law. This is relevant to the level of understanding, awareness, and acceptance of the community and law enforcement officials towards the legal products that

are implemented.²⁵ Before further examining what kind of legal culture should exist in the *fintech p2p lending* sector in relation to consumer data protection through market conduct, we must first examine and assess the aspects of legal culture. In terms of law enforcement officials, integrity and professionalism are highly demanded of law enforcement officials in carrying out their duties.

So, to what extent do law enforcement officials demonstrate integrity and professionalism in the area of consumer data protection in *peer-to-peer lending*? From a normative perspective, this has certainly been explained in every regulation that has been outlined in the substance of the law. However, the implementation of consumer data protection found in this study states that the tangible form of law enforcement in protecting consumer data is the establishment of an association, in this case the OJK, which mandates the AFPI to maintain the digital economy ecosystem, *specifically peer-to-peer lending*, and the formation of the Satgas Pasti task force to prevent and deal with illegal *peer-to-peer lending*. The next thing to note is the extent of the efficiency of law enforcement agencies, namely the AFPI and the Satgas Pasti, in realising consumer protection, especially in the scope of consumer data. However, the efficiency of law enforcement by the AFPI and Satgas Pasti is limited in this study.

The attitude of the public towards the law is one aspect that is assessed and viewed from the perspective of legal culture. Attitude can also be interpreted as public legal

²⁵ Suyatno Suyatno Suyatno, "The Weaknesses of Lawrence M. Friedman's Theory of Legal Systems in Indonesian Law," *IUS FACTI: Periodical Journal of the Faculty of Law*, p. 199, <https://doi.org/10.61802/if.v2i1>.

awareness, which in this case is related to the implementation and protection of consumer data in *peer-to-peer lending* and market conduct. This study divides the aspect of public legal awareness into two categories, namely PUJK, which runs the *peer-to-peer lending* business, and the public as consumers who use *peer-to-peer lending fintech* products. This study found that there were 101 *fintech p2p lending* operators licensed by the OJK as of 9 October 2023. Compared to the number of companies in 2022, there has been a decline in the number of *fintech p2p lending* companies. On 3 January 2022, there were 103 companies, with an increase of 2 companies and 1 company whose licence was revoked by the OJK for not complying with the provisions of POJK Number 77/POJK.01/2016.²⁶

On 2 March 2022, there was 1 company whose licence was revoked by the OJK. In terms of numbers, it can be considered that the revocation of licences imposed on one or two companies does not have an impact on the operation of *fintech p2p lending*. However, in reality, each PUJK, namely the company, certainly has a significant number of customers or consumers. This is in line with a survey conducted in January 2024, which stated that the number of *p2p lending* users had reached 8.86 million, or around 5.4 per cent of the total number of internet users in Indonesia.²⁷ Therefore, it should be

emphasised that it is not only the number of companies whose licences have been revoked that is important, but also the number of consumers that each company has, especially if the company is not aware of the importance of consumer data, which will certainly have a negative impact if this is not an aspect that must be safeguarded by PUJK, particularly in *p2p lending*.²⁸

The above data provides a brief overview of *law enforcement* in *fintech p2p lending* and the level of public interest in using *p2p lending*. What needs to be examined is not whether the implementation of *fintech p2p lending* is right or wrong. However, this study aims to emphasise that there is a significant relevance between legal culture, legal substance, and legal structure. Legal issues in Indonesia, especially in *p2p lending*, as explained in the introduction, are actually a form of imbalance between ideal conditions and actual conditions, better known as *das sollen* and *das sein*. With such an imbalance, the ideal law (*ius constituendum*) will be difficult to achieve. However, the imbalance that occurs in Indonesia does not lie in legal substance or legal structure, but rather in legal culture. Why is this so? If we examine the policies formulated by the government as the state administrator, Indonesia has almost no obstacles to forming a *grand design* or legal products in terms of public policy and law enforcement agencies such as the police, prosecutors, and others.

A good legal culture cannot be formed solely on the basis of dogma or

²⁶ Financial Services Authority, "Licensed Fintech Lending Operators at OJK as of 3 January 2022," Website, IKNB/Financial Technology, 7 January 2022, <https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/Penyelenggara-Fintech-Lending-Berizin-di-OJK-per-3-Januari-2022.aspx>.

²⁷ Editorial, "Indonesian Citizens Increasingly Taking on Online Debt through P2P Lending, Here's the Proof," CNBC Indonesia, accessed 21 February 2024,

<https://www.cnbcindonesia.com/tech/20240205095015-37-511865/warga-ri-makin-banyak-utang-online-di-p2p-lending-ini-buktinya>.

²⁸ Then there is other data that could have a negative impact on the running of *P2P lending*, such as the increase in bad debt in November 2023 by 2.81 per cent with a 90-day default rate (TWP90).

norms. Basically, legal culture can be interpreted as the response of society, both in the form of individual and collective behaviour patterns, which will later be recognised as empirical legal phenomena. Legal culture is a reflection of a country's legal system. This is because the culture that exists in society basically contains potential sources of information that will ultimately underlie the formation of public policy for the government as the state administrator, one of which is the concept of market conduct as an effort to protect consumer data in *fintech p2p lending*. This raises a fundamental question regarding what kind of legal culture model can be used *as a framework* for constructing a law, specifically on consumer data protection in *P2P lending* through the concept of market conduct.

Pancasila, as a basic norm, is the source of all sources of law, which will certainly have a positive impact on the formation of an ideal legal culture.²⁹ A legal culture model based on Pancasila will become values, ideas, and philosophies that are in line with the ideology of the Indonesian nation and can be interpreted as the spirit of the nation. Pancasila has at least two types of values, namely basic values and instrumental values. The basic values of Pancasila are abstract and normative in nature, meaning that the core of Pancasila cannot yet be operationalised. Meanwhile, these values are instrumental when they are operational and explicit, in other words, in the form of regulations such as the 1945 Constitution and its derivatives, as well

as patterns of behaviour in society based on Pancasila.³⁰

Pancasila is essentially *a way of life* and national character whose values are based on nationalistic traits that reflect the nation's culture. The development of a legal culture through the characteristics of Pancasila is indeed very appropriate, considering that the Indonesian nation has characteristics and legal concepts based on the spirit and soul of the Indonesian people. Therefore, it is not surprising that a legal culture based on Pancasila will lead to the construction of a legal culture that is meaningful in terms of divinity, humanity, nationalism, democracy, and social justice.³¹

This study found that there are several tips that must be implemented to realise an ideal legal culture related to consumer data protection in *P2P lending* based on Pancasila values. It is important to shape the mentality of law enforcement officials and the community based on Pancasila values. Mentality here refers to activities and ways of thinking (*mindset*) when dealing with matters related to *fintech*, especially *P2P lending*. There are several negative trends, such as the use of *peer-to-peer lending* that is not in line with the appropriate cost of living.

Excessive lifestyles and a lack of knowledge about good financial management can have a negative impact on consumers. In addition, *p2p lending* providers, as part of the community, should also provide

²⁹ Maria Yeti Andrias and Zonita Zirhani Rumalean, "The Crystallisation of Pancasila Principles as the Foundation of Cultural Law in the Republic of Indonesia," *UNES Law Review* 6, no. 2 (2023): pp.. 6878.

³⁰ Junaedi and Diki Dikrurahman, "Building a Pancasila Legal Culture in the Reform Era," *Jurnal Cahaya Mandalika (JCM)* 4, no. 1 (7 August 2023): p. 712., <https://doi.org/10.36312/jcm.v4i1.2021>.

³¹ Anajeng Esri Edhi Mahanani, "Reconstructing a Pancasila-based Legal Culture in Efforts to Enforce the Law in Indonesia," *Journal Yustika: Media Hukum Dan Keadilan* 22, no. 01 (29 July 2019): p. 7, <https://doi.org/10.24123/yustika.v22i01.1954>.

thresholds and warnings to consumers not to borrow excessively. Meanwhile, state officials can play a role in providing information to the public through various methods, such as social media, *content creators*, the use of relevant technology, or through academic studies in line with Pancasila values. Another important consideration is to make Pancasila the basic norm for all issues, patterns of behaviour, and problems that arise in the practice of state, national, and community life.

According to Lawrence Friedman, the cultural aspect of law can sometimes precede the other two aspects, namely legal substance and legal structure. This is because the cultural aspect of law contains values that ultimately form the basis for the formulation of *public policy*, accompanied by the creation of a *code of law* as a legal guideline in state and community life.³² Such aspects can build or construct an ideal legal culture related to consumer data protection in *peer-to-peer lending* through market conduct.

Conclusion

Referring to legal system theory, it can be concluded that market conduct as an ideal legal effort to realise consumer data protection in *P2P lending* can be achieved by fulfilling three aspects of legal construction, namely legal substance, legal structure, and legal culture. In terms of legal substance, the most important thing to implement is to maintain harmony in terms of principles and norms in all laws and regulations, especially the P2SK Law and regulations that are relevant to consumer data protection, both vertically and horizontally. In terms of legal structure, there are two methods related to the supervision and regulation of PUJK in

realising consumer data protection in *P2P lending* through the legal *fintech* aspect, namely the Indonesian Joint Funding Fintech Association (AFPI) and illegal *fintech*, namely the Task Force for the Eradication of Illegal Financial Activities (Satgas PASTI). However, it should be emphasised that it is necessary to provide clear boundaries of authority (*authority area*) to the institutions that oversee consumer data protection in *p2p lending*. In terms of legal culture, it is necessary to emphasise Pancasila as a model for shaping legal culture, particularly in forming the mentality of law enforcement officials and the community based on Pancasila values in order to create an ideal legal culture, especially in the context of consumer data protection in *peer-to-peer lending* through market conduct.

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³² Dikrurahman, “Building a Pancasila Legal Culture in the Reform Era,” p. 720.

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