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## Legal Analysis of Interest Rate Determination by *Fintech* Association

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### Abstract

The development of *financial technology (fintech)* in Indonesia, particularly information technology-based lending services (*peer-to-peer lending*), has increased public access to financing. However, the determination of loan interest rates by the Indonesian Joint Funding *Fintech Association (AFPI)* raises the potential for joint *price fixing practices*, which are prohibited by competition law. This study aims to analyze the compliance of AFPI's determination of online loan interest rates with Article 5 paragraph (1) of Law Number 5 of 1999 and examine its legal implications for regulating the financial services sector. This study uses a normative legal research method with a statutory and conceptual approach. The results show that AFPI's determination of maximum interest rates has the potential to meet the elements of *price fixing* because it is a horizontal agreement between business actors that influences price determination in the online lending industry. Therefore, regulatory harmonization and strengthened supervision are needed to ensure healthy business competition and legal protection for consumers.

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### 1. Introduction

The development of digital technology has brought about significant changes in the financial industry. This transformation has given rise to new ways of accessing, managing, and distributing financial services. *Financial technology*, as a form of integration between technology and the financial sector, enables various financial activities to be conducted digitally. Initially, this service was developed with the primary goal of providing access to funding for Micro, Small, and Medium Enterprises (MSMEs). However, over time, the use of online loans has expanded to the general public to meet various needs.<sup>[1]</sup>

According to the Financial Services Authority of the Republic of Indonesia Regulation Number 40 of 2024, Information Technology-Based Joint Funding Services (LPBBTI) are defined as financial services aimed at bringing together lenders and borrowers for financing activities, both conventional and based on Sharia principles, conducted directly through an internet-based electronic system. This demonstrates that online lending services have become a vital part of Indonesia's digital financial system.

The legal issue became more concrete when the Indonesian Joint Funding *Fintech Association (AFPI)* issued a decree requiring its 94 members to apply a maximum *flat interest rate* of 0.4% per day on the principal loan plus a late fee of up to 0.8% per day. This decree became effective on November 5, 2021, with a penalty of 90-day membership termination for violators.

It's undeniable that online lending services have made it easier for people to meet various financial needs. However, despite the accessibility and convenience offered by licensed online lenders, various cases demonstrate that not all businesses in this sector

<sup>1</sup> Suzette Hattingh Akobiarek, "Sanctions for Legal Online Loan Providers Who Do Not Comply with Financial Services Authority Regulations," Journal of Legal and Political Science Studies, Vol. 3, No. 2, (April 2025): p. 5.

operate in accordance with the regulations set by the Financial Services Authority.

This phenomenon became even more prominent when indications emerged that the interest rates charged by a number of online lenders were not entirely set independently by each company. Allegations of coordination or agreement in setting interest rates later developed into a significant legal issue, with a conflict of norms between Law No. 5 of 1999 and POJK No. 10/2022 and SEOJK No. 19/2023. In this context, questions arose as to whether interest rate setting by fintech associations could be categorized as a form of cartel or business coordination that violates the principles of unfair business competition.

This conflict is one of the main reasons why this research is crucial, particularly to clarify the legal position for online lending associations and providers. Furthermore, the results are expected to contribute to the formulation of clearer supervisory policies for regulators, while also providing more optimal protection for the public as users of online lending services.

## 2. Research Method

This research is a normative legal study using secondary legal materials in the form of laws and regulations, scientific journals, books, and official documents related to the determination of online loan interest rates and competition law. This research was conducted to analyze alleged cartel practices in interest rate setting by the Indonesian Joint Funding Fintech Association (AFPI) based on applicable Indonesian law.

The approaches used include a conceptual approach *and* a statutory approach. The conceptual approach is used to examine the concepts of cartels, *concerted practices*, and *price fixing* in competition law, while the statutory approach is used by examining various regulations related to business competition and the provision of *fintech services*.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 5 of 1999, Law Number 21 of 2011, and OJK and Bank Indonesia regulations regarding fintech lending. Secondary legal materials include books, journals, scientific articles, and official publications from the OJK, KPPU, BI, and AFPI. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias.

The legal materials were collected through a literature review, exploring various written sources relevant to the research object. Furthermore, the legal materials were analyzed using legal interpretation and deductive reasoning methods, employing grammatical, systematic, and teleological interpretations, to understand the suitability of AFPI's interest rate setting policy with Indonesian competition law.

## 3. Discussion

### 3.1. Legal Analysis of Interest Rate Determination by AFPI Based on Article 5 Paragraph (1) of Law Number 5 of 1999

The legal analysis of AFPI's interest rate setting focuses on examining AFPI Decree Number 001/TAP/AFPI/X/2021

based on Article 5 paragraph (1) of Law Number 5 of 1999 concerning the prohibition of price fixing. This study positions the policy of setting a maximum interest rate of 0.4% per day as a form of collective regulation that has the potential to eliminate the price competition mechanism among online loan providers. This regulation is also examined from the perspective of the hierarchy of legal norms, because AFPI's Decree as an internal regulation of the association must not conflict with the provisions of higher laws based on the principle of *lex superior derogat legi inferiori*.

Article 33 of the 1945 Constitution serves as the constitutional basis for the establishment of a national economic system that rejects monopolistic practices and unfair business competition. As its implementation, Law Number 5 of 1999 was established to maintain a healthy business competition climate and prevent the concentration of economic power by certain business groups.<sup>[2]</sup> The financial services sector, including information technology-based online lending services, is also subject to this principle despite having sectoral regulations through the Financial Services Authority (OJK). The AFPI Decree standardizing interest rates raises legal issues because it has the potential to limit the freedom of business actors to set prices independently.

Competition law theory views cartels as agreements between competing businesses to regulate prices, production, and marketing for mutual benefit. *Price-fixing practices* are categorized as horizontal agreements that are *per se illegal* because they directly eliminate price competition in the market. Cartels are generally characterized by agreements between competitors, the use of associations for coordination, joint price-setting, market sharing, oversight mechanisms, and the threat of sanctions for members who violate the agreement.<sup>[3]</sup>

The provisions of Article 5 paragraph (1) of Law Number 5 of 1999 prohibit business actors from making agreements with their competitors to determine the prices of goods and/or services that must be paid by consumers.<sup>[4]</sup> The elements tested include business actors, agreements, competing business actors, prices, goods or services, consumers, and the relevant market. KPPU Guidelines Number 4 of 2011 also emphasize that association decisions that standardize tariffs, price formulas, and credit conditions are forms of prohibited price fixing.

The analysis shows that AFPI members fulfill the requirements of business actors because they are business entities providing online lending services that profit from interest and service fees. The AFPI Decree is categorized as an agreement because it is binding and carries administrative sanctions for members who fail to comply with the maximum interest rate provisions. All AFPI members also engage in horizontal competition because they offer online lending services to consumers in the same market.

The price element is met because the 0.4% daily interest rate is the fee charged to consumers for the loan service. Uniformity in the interest formula and service fees limits each *platform's ability* to set competitive prices. The service element is also met because the traded object is an

<sup>2</sup> Elli Ruslina, "The Meaning of Article 33 of the 1945 Constitution in the Development of Indonesian Economic Law," *Constitutional Journal*, Vol. 9, No. 1, (March 2012): p. 50.

<sup>3</sup> Devi Melyana Safitri Kumalasari, *Business Competition Law*, Setara Press: Intrans Publishing Group, Malang, 2013, p. 19.

<sup>4</sup> Rachmadi Usman, *Business Competition Law in Indonesia*, Sinar Grafika, Jakarta, 2013, p. 104.

information technology-based loan service with homogeneous characteristics and is easily compared by consumers based on interest rates.

The consumers in this practice are those using online lending services who need funds for personal purposes. Uniform interest rates prevent consumers from obtaining loans at lower interest rates through market competition.<sup>[5]</sup> The relevant market in this case is the short-term online lending market in Indonesia, which has a high level of substitution between *platforms*.

Based on all these elements, the determination of interest rates through the AFPI Decree has the potential to meet the criteria for *price fixing*, which is prohibited by Article 5 paragraph (1) of Law Number 5 of 1999. This practice is considered to reduce price competition, harm consumers, and contradict the principles of economic democracy and fair business competition. Therefore, the KPPU has the authority to enforce the law through inspections, policy cancellations, or the imposition of sanctions on business actors involved.

### 3.2. Legal Consequences of Determining Online Loan Interest Rates from the Perspective of Business Competition Law and Financial Services Sector Regulation

The determination of the maximum limit on online loan interest rates through AFPI Decree No. 001/TAP/AFPI/X/2021 raises legal issues because it has the potential to conflict with Article 5 paragraph (1) of Law Number 5 of 1999 concerning the prohibition of price fixing between competing business actors. The decree binds all AFPI members to apply a maximum interest of 0.4% per day, thereby creating price uniformity in the *fintech lending industry*. Legal issues arise because the position of the AFPI Decree can be viewed from two perspectives at once, namely as an internal association rule and as a form of agreement between business actors.

The AFPI Decree can be positioned as an internal association regulation if its substance only regulates ethical issues, organizational governance, consumer protection, operational standards, and member oversight mechanisms. In this position, AFPI carries out the *self-regulatory organization* (SRO) function granted by the Financial Services Authority (OJK) to assist in developing the *fintech lending industry*. The binding power of the Decree arises from membership relationships within the association, so its validity is limited only to AFPI members and is not intended to regulate market mechanisms. As long as the Decree serves only as an internal organizational guideline, its existence is still legally justifiable because it does not directly affect business competition.

Problems arise when the substance of the Decree no longer merely regulates internal governance but also contains a collective agreement regarding the business behavior of members, particularly regarding the determination of loan interest rates. Under these circumstances, the Decree shifts to an agreement between business actors because it contains a

mutual agreement that binds AFPI members as business actors operating in the same relevant market. This shift results in its legal assessment no longer being solely based on organizational law, but also on contract law and competition law.

Article 1313 of the Civil Code states that an agreement is an act in which one or more people bind themselves to one or more other people. Meanwhile, Article 1338 paragraph (1) of the Civil Code emphasizes that every agreement made legally applies as law for the parties who made it.<sup>[6]</sup> Based on this provision, the AFPI Decree can be qualified as an agreement if it contains a joint agreement that regulates the business behavior of members, including standardizing loan interest rate limits. Thus, even though it is formally in the form of an organizational decree, in substance the Decree has the character of a collective agreement between competing business actors.

Hans Kelsen's legal positivism perspective asserts that lower norms must not contradict higher norms. Based on the principle of *lex superior derogat legi inferiori*, the AFPI Decree cannot be justified if its substance contradicts Law Number 5 of 1999.<sup>[7]</sup> Therefore, AFPI's authority as an association cannot be used to formulate policies aimed at controlling market prices because such authority exceeds the organization's administrative functions.

According to Article 1320 of the Civil Code, one of the requirements for a valid agreement is a lawful cause. A lawful cause relates not only to the form of the agreement, but also to the purpose and substance of the agreement.<sup>[8]</sup> The collective determination of maximum interest through the AFPI Decree has the potential to be classified as a *price fixing practice* because it eliminates the freedom of each *fintech lending platform* to determine prices independently. As a result, *the cause* of the agreement can be considered contrary to law, specifically Article 5 paragraph (1) of Law No. 5 of 1999. Consequently, the objective requirements for a valid agreement are not met, so the AFPI Decree can be declared null and void based on Article 1335 and Article 1337 of the Civil Code.

From a competition law perspective, AFPI's determination of maximum interest rates fulfills the elements of a horizontal agreement because it is carried out between business actors within the same relevant market. This agreement results in the loss of independence for business actors in determining prices and has the potential to hinder healthy competition mechanisms. Therefore, AFPI's decree can be categorized as a *price fixing practice* that is *per se illegal* based on Article 5 paragraph (1) of Law No. 5 of 1999.

The legal consequences of these violations include administrative sanctions, principal criminal penalties, and additional criminal penalties. Under Article 47 of Law No. 5 of 1999, the KPPU has the authority to impose administrative sanctions in the form of agreement cancellation and fines.<sup>[9]</sup> Furthermore, Article 48 stipulates the threat of criminal fines for business actors involved in price-fixing practices, while Article 49 allows for the revocation of business licenses and

<sup>5</sup> Yuniarti, "Challenges of fintech lending regulation and consumer protection in Indonesia" Jurnal Rechts Vinding, Vol. 11, No. 1, (2022): p. 101.

<sup>6</sup> Gumanti, Retna. "Conditions for the Validity of an Agreement (Viewed from the Civil Code)." Pelangi Ilmu Journal, Vol. 5, No. 01 (2012) p. 7.

<sup>7</sup> Nur Sholikin, "Hans Kelsen's Theory of Legal Norm Hierarchy and Its Relevance to the Legal Regulation System in Indonesia," Ius Quia Iustum Law Journal, Vol. 24, No. 1 (2017): p. 98.

<sup>8</sup> Gitayana and Nurhayati, "Analysis of the Cause of Violation of Halal (Causa Illicita) Based on Indonesian Contract Law," Surya Kencana Satu Journal: Dynamics of Legal and Justice Issues, Vol. 16, No. 1 (2025): p. 158.

<sup>9</sup> Ghany Aziz, "Prohibited Agreements Based on the Perspective of Indonesian Competition Law," Journal of Social Sciences and Education, Vol. 5 No. 2, (2021): p. 23

a ban on holding director or commissioner positions for those found guilty of violations.

Efforts to prevent *price-fixing practices in the fintech lending industry* require limiting AFPI's authority to focus solely on ethics, consumer protection, and operational oversight. Following the enactment of POJK No. 40 of 2024, pricing authority should rest entirely with the regulator, while AFPI will only perform internal organizational oversight.<sup>[10]</sup> This step is crucial to maintain legal certainty, foster healthy business competition, and strengthen consumer protection in the *fintech lending sector*.

#### 4. Conclusion

*online* loan interest rates through AFPI Decree No. 001/TAP/AFPI/X/2021 has the potential to meet the elements of *price fixing practices* as stipulated in Article 5 paragraph (1) of Law No. 5 of 1999 because it is carried out collectively by fintech lending business actors within the same relevant market. This determination eliminates the independence of business actors in determining prices and results in uniformity of interest rates in the *fintech lending market*.

The AFPI Decree's legal status can be understood as an internal regulation of the association, as long as it only regulates the code of ethics, governance, and consumer protection. However, when its substance regulates collective interest rate setting, the decree shifts to an agreement between business actors subject to contract law and competition law.

Based on Hans Kelsen's theory of legal positivism and the provisions of Article 1320 of the Civil Code, the substance of the AFPI Decree has the potential to not meet the requirements of a lawful cause because it is contrary to Law No. 5 of 1999. As a result, the Decree can be declared null and void and give rise to consequences in the form of administrative sanctions, principal criminal penalties, and additional criminal penalties as regulated in Article 47, Article 48, and Article 49 of Law No. 5 of 1999.

*price-fixing practices in the fintech lending industry* require limiting AFPI's authority to focus solely on ethics and internal oversight functions, while the authority to determine pricing falls entirely under the regulator through strengthened coordination between the OJK, KPPU, and AFPI.

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<sup>10</sup> Financial Services Authority, *Press Release: OJK Respects Supreme Court Decision and Continues to Strengthen Regulation and Supervision of Fintech P2P Lending* (Jakarta: OJK, July 25, 2024),