



Reconstruction of Criminal Law Regarding Consumer Protection in Peer-to-Peer (P2P) Lending Services in Indonesia, Concerning Balancing Rights and Responsibilities in the Digital Era based on Pancasila Justice

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ABSTRACT

The development of Peer-to-Peer (P2P) Lending services in Indonesia has increased financial accessibility but also created consumer protection issues, including personal data misuse, lack of transparency, and abusive debt collection practices. These problems indicate weaknesses in the existing criminal law framework, which remains unable to adequately address digital-based crimes and regulatory fragmentation. This study aims to analyze the current construction of criminal law in P2P Lending services, examine the integration of Pancasila justice values, and formulate a reconstruction model that balances consumer rights and provider responsibilities. Using a normative juridical method with statutory, conceptual, and philosophical approaches, the study finds that existing criminal law remains conventional and insufficiently responsive to digital exploitation. Therefore, criminal law reconstruction should integrate legal substance, enforcement mechanisms, institutional structures, and legal culture based on the values of Pancasila. Such reconstruction is expected to create an adaptive, just, and accountable consumer protection system within Indonesia's fintech ecosystem.

INTRODUCTION

Digital transformation develops fast and brings innovation to the financial sector such as emerging financial technology (fintech), which one of its services is Peer to Peer (P2P) Lending services (Atmasasmita, 2017). Through this kind of service, lenders and borrowers are able to do transaction directly by digital platform. They do not need conventional financial institutions as intermediaries (Saebani et al., 2021). However, this service has systemic vulnerability, especially in term of legal protection for consumer (Fitriyono, 2023).

In practice, there are so many frauds are found, such as misuse of personal data, non-transparent interest rates, intimidating debt collection, and an imbalance in bargaining power between users and service providers (Hartanti, 2023). They show the weakness of criminal law instruments in responding to new forms of digital crime emerging in P2P Lending practices. It represents a structural disruption to the conventional system, as it shortens the chain of intermediaries between investors and borrowers through digital platforms (Saebani et al., 2021).

One of the main problems of consumer protection in the P2P Lending sector is the mismatch between existing regulations and the characteristics of financial technology that is developing continuously (Atmasasmita, 2017). Legal frameworks that applies currently, such as the Consumer Protection Law, the Electronic Information and Transaction Law, and Indonesia Financial Service Authority (OJK) regulations commonly concern with conventional transaction types only and have not completely reached the *modus operandi* of fintech which is cross-sectoral and digital-native (Saebani et al., 2021).

Within the national positive legal framework in Indonesia, Legal protection for consumer protection in P2P Lending fintech services currently still relies on sectoral legal instruments such as Law Number 8 of 1999 concerning Consumer Protection. It is the main legal framework in Indonesia that regulates the rights and obligations of consumers and business actors in goods and/or service transactions. Its goal is providing fair and balanced legal protection for both business actors and consumers, to create a healthy and transparent trading system.

Indonesia has Law Number 11 of 2008 regarding Information Technology and Electronic Transactions (ITE law) as amended by Law Number 19 of 2016, is a regulation controlling electronic information, electronic documents, and electronic transactions, including their legal aspects, electronic system providers, and criminal sanctions related to the misappropriation of information and communication technology. However, these three instruments do not adequately regulate special crimes that occur in digital interactions between providers and consumers. For example, Articles 4 and 8 of the Consumer Protection Law only regulate consumers' rights and restrictions for business actors in general, without an explicit criminal enforcement mechanism in digital context.

The ITE Law tends to emphasize on the distribution of negative content. It does not regulate the misuse of personal data through automated systems, algorithms, or unilateral digital contract agreements. This inadequacy creates a legal vacuum that makes law enforcement find difficulties to prosecute P2P

lenders who engage in intimidation, data exploitation, or massive credit system manipulation. Consequently, criminal law fails to achieve the principles of *lex certa* and *lex scripta*. Meaning that it fails to guarantee effective protection of consumer rights in the digital age, as well.

This research is based on the argument that the national criminal law system in Indonesia needs to be reconstructed to face the complexity of digital technology-based crimes and ensure protection of consumer rights, fairly. This reconstruction needs more than just updating legal norms, but also instilling the values of Pancasila justice as an ethical and ideological foundation to build an equality between businesses and consumers. Criminal law reconstruction cannot be merely oriented toward the effectiveness or efficiency of enforcement. It must be grounded in the ethical values inherent in Indonesian society (Atmasasmita, 2017).

LITERATURE REVIEW

The rapid development of financial technology has fundamentally transformed financial service delivery systems, particularly through the emergence of Peer-to-Peer (P2P) Lending platforms. These digital platforms facilitate direct financial transactions between lenders and borrowers without the involvement of conventional banking intermediaries, thereby increasing accessibility to financing and promoting financial inclusion. However, alongside these benefits, P2P Lending services have generated significant legal challenges, including the misuse of personal data, lack of transparency in lending agreements, algorithmic manipulation, digital intimidation during debt collection, and unequal bargaining positions between consumers and platform providers. These developments indicate that existing legal frameworks have not adequately adapted to the characteristics of digital financial transactions, thereby creating substantial challenges for consumer protection and legal certainty in the fintech sector.

The inability of law to regulate newly emerging social and technological realities is commonly associated with the concept of legal vacuum (*rechtvacuum*). A legal vacuum occurs when existing legal norms are unable to address contemporary developments effectively, resulting in uncertainty, inconsistent law enforcement, and inadequate protection of legal interests. Within the context of financial technology, legal certainty is essential because digital financial transactions rely heavily on trust, transparency, accountability, and effective dispute resolution mechanisms. When criminal law fails to regulate new forms of digital misconduct adequately, consumers become increasingly vulnerable to exploitation while law enforcement agencies encounter difficulties in prosecuting emerging offenses. Consequently, legal reform becomes necessary to ensure that criminal law remains responsive to technological innovation while simultaneously safeguarding justice and consumer protection.

Previous studies have extensively discussed consumer protection in financial technology from the perspective of legal certainty and regulatory adequacy. Romli Atmasasmita (2017) argues that criminal law must continuously adapt to social transformation and technological developments to maintain its effectiveness as an instrument of social control and justice. Similarly,

Saebani et al. (2021) emphasize that legal protection in digital financial services requires a comprehensive regulatory framework capable of addressing the unique characteristics of cyber-based transactions. These studies highlight the necessity of legal adaptation in response to technological change. Nevertheless, their analyses remain largely theoretical and provide limited discussion regarding the specific reconstruction of criminal law within the P2P Lending ecosystem.

Scholarly attention has also focused on the legal protection of consumers against unfair practices in digital financial services. Hartanti (2023) explains that corporate criminal liability has become increasingly relevant in addressing violations committed by business entities operating in technologically advanced environments. Likewise, Manik (2021) emphasizes that consumer protection must be viewed not only as a legal issue but also as a sociological and philosophical concern involving power imbalances between consumers and business actors. Mohd et al. (2024) further argue that consumer rights require stronger legal safeguards to ensure fairness and accountability in modern economic transactions. These studies demonstrate growing awareness regarding consumer vulnerability in digital markets. However, they primarily focus on consumer rights generally and do not specifically examine criminal law deficiencies in regulating P2P Lending services.

The issue of digital crimes and cyber-based legal protection has also attracted considerable scholarly interest. Mawardi (2021) notes that cyber law must evolve beyond conventional legal paradigms because digital misconduct frequently occurs through mechanisms that are difficult to identify using traditional criminal law concepts. Similarly, Fitriyono (2023) argues that criminal law formulation policies should incorporate technological realities and emerging digital risks, particularly regarding electronic commerce and online transactions. At the international level, Luther (2020) highlights that fintech innovation presents new regulatory challenges requiring specialized legal frameworks capable of balancing innovation and consumer protection. Meanwhile, Najaf, Subramaniam, and Atayah (2022) demonstrate that P2P Lending platforms generate unique legal and financial risks that became increasingly evident during the COVID-19 pandemic. Although these studies recognize the challenges posed by digital financial services, they generally focus on regulatory adaptation rather than comprehensive criminal law reconstruction.

Research has also examined institutional supervision and dispute resolution mechanisms within the fintech industry. Arifin et al. (2023) emphasize the critical role of the Financial Services Authority (OJK) in supervising financial technology providers and ensuring compliance with regulatory requirements. Similarly, Rahma, Fauzanto, and Pranata (2019) propose the development of a responsive legal system capable of resolving disputes arising from P2P Lending transactions more effectively. Kristian (2022) further highlights the importance of legal protection against economic crimes committed through illegal fintech platforms. These studies demonstrate that effective supervision and dispute resolution are indispensable components of consumer protection. However, they largely concentrate on administrative and regulatory approaches rather than

examining criminal law as the primary instrument for addressing systemic digital exploitation.

In recent years, scholars have increasingly recognized the importance of integrating philosophical and constitutional values into legal reform. Nasihuddin (2024) argues that Pancasila constitutes the fundamental philosophical foundation of Indonesian law and must guide the development of legal policies in all sectors. Likewise, Faisal et al. (2024) contend that criminal law reform should move beyond a purely punitive orientation toward a justice-based paradigm emphasizing social welfare and substantive justice. These perspectives suggest that legal reform in the digital era should not merely address technical regulatory deficiencies but must also incorporate broader ethical and constitutional principles. Nevertheless, existing scholarship has provided limited analysis regarding the operationalization of Pancasila justice values within the specific context of criminal law governing P2P Lending services.

Although previous studies have examined consumer protection, cyber law, corporate criminal liability, fintech supervision, dispute resolution, and Pancasila-based legal development, these discussions remain fragmented and largely sectoral. Existing scholarship generally focuses on consumer rights, administrative regulation, or technological adaptation without comprehensively analyzing the structural weaknesses of criminal law governing P2P Lending services. Furthermore, limited attention has been devoted to examining the existence of a legal vacuum in criminal law regulation, the inadequacy of current criminal provisions in addressing digital exploitation, and the necessity of integrating Pancasila justice values into a reconstructed criminal law framework.

Accordingly, a significant research gap exists regarding the reconstruction of criminal law for consumer protection in Peer-to-Peer Lending services in Indonesia. This study seeks to fill that gap by analyzing the weaknesses of the current criminal law framework, examining the implications of legal vacuum and regulatory fragmentation for consumer protection, and formulating a comprehensive reconstruction model grounded in Pancasila justice values. The novelty of this research lies in its effort to conceptualize consumer protection in P2P Lending not merely as a matter of regulatory compliance or dispute resolution, but as a broader issue of digital criminal justice requiring the integration of legal substance, legal structure, legal culture, and constitutional values to achieve balanced protection, accountability, and substantive justice in Indonesia's digital financial ecosystem.

METHODOLOGY

This research uses a normative juridical approach (Atmasasmita, 2017). A normative legal approach is used to examine applicable positive legal norms, including the Consumer Protection Law, the Electronic Information and Transactions Law, the Criminal Code, the Financial Services Authority (OJK) regulations, and criminal provisions related to the practice of the P2P lending. A conceptual approach is not only used to understand the theory and doctrine regarding legal norm reform but also instilling the Pancasila values of justice as

an ethical and ideological foundation, as well to build an equality between businesses and consumers.

RESEARCH RESULT

Criminal Law in Consumer Protection in P2P Lending Services in Indonesia

In Indonesia, the current construction of criminal law does not adequately regulate specific offenses in fintech P2P lending practices. Various provisions in Law No. 8 of 1999 concerning Consumer Protection (Law No. 8 of 1999 concerning Consumer Protection is a regulation that regulate the obligations, rights, and protections for both consumers and business actors in Indonesia. It aims to provide legal certainty and create a fair association between consumers and businesses, in order to protect consumers from negative business practices).

Today, Law No. 19 of 2016 concerning Electronic Information and Transactions (ITE Law), and Indonesian Penal Code (KUHP) can be used as references, but have not answered specifically to the character of digital crimes. Law No. 19 of 2016 concerning Electronic Information and Transactions (ITE Law) is an amendment and improvement of Law No. 11 of 2008 which regulates the use of information technology and electronic transactions in Indonesia. The growth of the fintech industry, especially Peer to Peer (P2P) lending, has exceeded the ability of criminal law to provide adequate protection. Legal framework such as the Consumer Protection Law, the ITE Law, and the Criminal Code still apply a framework of crimes that is too general (Atmasasmita, 2017).

However, Reconstruction of criminal law has to enlarge the scope of crimes to invisible digital exploitation (Saebani et al., 2021). It is necessary to formulate new crimes, for instance, "criminal acts of data exploitation through electronic systems" or "misappropriation of algorithms that cause losses." These forms of technological excesses give rise to relations of domination that systematically harm consumers (Fitriyono, 2023). Law that is stagnant in formal texts will not be able to protect society in the middle of such rapid digital transformation (Hartanti, 2023).

Therefore, the reconstruction of criminal law should produce living law, which is based on real and evolving social conditions. This requires openness to changes in the definition of crimes, the expansion of legal subjects, and innovations in sanctions. In the context of fintech, these living norms allow the law to respond adaptively to the dynamics of digital exploitation while maintaining social justice as a core value.

Integration of Pancasila Justice Values in Criminal Law to Balance Consumer Rights and Provider Responsibilities.

The values of social justice in Pancasila imperatively demand the construction of a criminal law system that is active and not neutral, particularly in protecting vulnerable groups from structural inequalities in the financial sector (Saebani et al., 2021). The principles of Pancasila social justice must be materialized through the reconstruction of criminal law that integrates constitutional values into the criminal framework. Consumer protection is not enough to rely on procedural guarantees in the Consumer Protection Law, but requires active criminalization of exploitative practices in the digital realm. It is

supported by the philosophy of Article 27 paragraph (2) of the 1945 Constitution concerning the state's obligation to guarantee social justice (Article 27 paragraph (2) of the 1945 Constitution regulates the right of every citizen to obtain work and a decent living for humanity) ['The 1945 Constitution of the Republic of Indonesia, Article 27 Paragraph (2), Guarantees the Right of Every Citizen to Work and a Decent Living as a Form of Protection and Social Justice by the State']. Criminal law in the Pancasila paradigm must shift from a retributive approach to a restorative-progressive model as decreed by the Preamble to the 1945 Constitution (Hartanti, 2023).

The reformulation of criminal law in the P2P lending sector must place Pancasila as a *grundnorm* that binds the entire regulatory hierarchy, with parameters of maximum protection for consumers as a manifestation of the principle of Social Justice, algorithmic accountability as a derivation of the principle of Humanity, and the balance of rights and obligations as an actualization of the principle of Democracy [Fitriyono, R. A. *Criminal Law Formulation Policy in Protecting e-Commerce Transactions in Indonesia*. NEM Publisher. (2023).]. The integration of Pancasila values into the legal system is a constitutional imperative to build a criminal law architecture that is responsive to digital injustice, ensuring that every economic relationship is based on the principle of substantive justice (Fitriyono, 2023).

The integration of humanistic values is realized through the destigmatization of business actors with a corporate diversion mechanism through OJK mediation (Article 5 of Law No. 11/2012) and self-correction space before criminal proceedings, as well as the dignity of victims with priority access in consumer courts (Article 50 of the PK Law) and identity protection in legal proceedings (Article 26 of the PDP Law) (Saebani et al., 2021). This proportional-educational criminal policy actualizes the decreed of Article 28J of the 1945 Constitution concerning respect for human dignity, placing Pancasila as the guiding principle for transforming criminal sanctions from an instrument of retribution to a means of digital ethical transformation that restores substantive justice, builds a fintech ecosystem with integrity, and restores public trust in the law as a guardian of civilization (Fitriyono, 2023).

The Pancasila-based digital criminal framework prioritizes corporate accountability, strengthens class action laws, and notarial ethical standards in digital contracts, translating the principles of Pancasila into criminal norm structures. This ethical, sociological, and philosophical paradigm underlies the alteration of the criminal legal system in the digital economy era.

The Concept of Criminal Law Reconstruction to Create a Balance of Rights and Responsibilities in Fintech P2P Lending

Reconstruction of criminal law in the context of peer-to-peer (P2P) lending financial technology services cannot be implemented partially, but must be comprehensive, addressing the three main legal system pillars, as stated by Lawrence M. Friedman: legal substance, legal culture, and institutional structure. First, in the legal substance dimension, reconstruction must begin with the establishment of criminal norms that align with the characteristics of digital crimes in the fintech ecosystem (Saebani et al., 2021). In this context, new criminal

norms need to be formulated specifically through the establishment of cyber-financial crimes, regulating elements of fault that include malicious intent in designing digital systems that structurally harm consumers.

Second, procedural aspects of criminal law enforcement also require fundamental reform. Reporting and complaint mechanisms for fintech crimes must be designed with principles of accountability and ease of access, including through the digitization of an integrated complaint and reporting system between the Indonesia Financial Services Authority (OJK) and the Ministry of Communication and Information Technology, and law enforcements, as well.

Third, in terms of institutional structure, the establishment of a special unit for handling fintech crimes is an urgent need in the context of criminal law reconstruction. This unit could take the form of a cross-agency task force involving elements from the Financial Services Authority, the Criminal Investigation Agency (Bareskrim) of the Indonesian National Police, the Attorney General's Office (AGO), and the Ministry of Communication and Information Technology. Its task is not only to prosecute cases but also to monitor potential irregularities through an early warning system.

Fourth, the final, equally important pillar is legal culture, namely the public's perceptions, attitudes, and level of legal awareness regarding their rights in the digital space. A legal culture that is permissive of consumer rights violations, misuse of personal data, or inhumane collection practices is a challenge that must be addressed through systematic digital legal education and consumer literacy (Saebani et al., 2021). Effective criminal law reconstruction must be accompanied by cultural transformation, namely creating a legally literate society, ethically aware business actors, and law enforcement officials who uphold the values of justice in every law enforcement process.

The formulation of a comprehensive model for the reconstruction of fintech criminal law encompasses legal substance, enforcement procedures, institutional structures, and legal culture transformation, all framed within the values of substantive justice based on Pancasila. The concepts of cyber-financial crimes, criminal responsibility for exploitative algorithmic system design, and criminalization of coercive data governance practices demonstrate the expansion of criminal law's horizons into areas previously untouched by the Indonesia Penal Code or existing sectoral regulations.

Methodological novelty arises from the use of Friedman's legal system approach as an interdependent analytical framework across legal pillars, combined with progressive legal principles and the values of Pancasila as the highest normative source.

This formulation yields practical recommendations in the form of the establishment of a dedicated fintech crime unit, a mandatory algorithmic audit mechanism, integrated digital forensics, and the design of a harmonized national digital criminal system through the integration of sectoral regulations.

Thus, the primary contribution of this research does not only in the proposed substance of new crimes, but also in the systemic framework for reconstructing Indonesia's digital criminal law that is just, sovereign, and based on Pancasila values.

CONCLUSIONS AND RECOMMENDATIONS

The criminal law framework for customer protection in fintech peer-to-peer (P2P) lending services in Indonesia is not yet sufficiently responsive to digital challenges. Existing regulations, such as the Electronic Information and Transactions Law (ITE Law), the Consumer Protection Law, and the Indonesia Penal Code, are still general in nature and do not specifically regulate new forms of digital crime such as misuse of personal data, digital bullying in debt collection, and also algorithmic manipulation. According to Satjipto Rahardjo's progressive legal perspective, these gaps and weaknesses demonstrate that the law must not be neutral but must side with the vulnerable, namely digital consumers.

The social justice values of Pancasila must be substantially integrated into the digital criminal law system. Criminal law is not merely a repressive tool, but rather an instrument of social justice that ensures a balance between consumer rights and the responsibilities of administrators. The principles of mutual cooperation, just and civilized humanity, and partiality to vulnerable groups must form the moral basis for the formation and enforcement of criminal law in the digital era.

A just and adaptive reconstruction of criminal law must encompass substantive, procedural, and institutional aspects. Based on Lawrence Friedman's legal system theory, legal reform must be carried out systematically. The legal substance needs to address new digital-based offenses; legal procedures must accommodate digital forensics and victim access; and institutions need to be strengthened with specialized units, technology training, and inter-agency synergy. Furthermore, the criminal responsibility scheme must emphasize social ethics through corporate criminalization, dual sanctions, and conditional sentences. This reconstruction has strategic prospects as long as it is supported by collective awareness, political support, and civil society participation.

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