

**Implementation Of Shopee Risk Management Regarding The Imposition Of Interest In Spaylater
As A Peer-To-Peer Lending And Its Legality**Citra Layali Nur Rahmah¹, Tarsisius Murwaji², Sudaryat³¹Fakultas Hukum, Universitas Padjadjaran citralrahmah@gmail.com²Fakultas Hukum, Universitas Padjadjaran³Fakultas Hukum, Universitas Padjadjaran**ABSTRACT**

In this day and age, marketplaces provide financial services in the form of financing with a peer to peer lending mechanism, for instance, Shopee. The interest applied to the financing have a fairly high percentage and can be mounting, which makes it difficult for debtors to repay their debts. This study aims to determine the legality of Shopee as a peer-to-peer lending platform and to analyze the risk management in the imposition of SPayLater interest. This study was conducted using a normative juridical method, namely an approach that focuses on legal norms and legal rules that apply in society by being linked to the reality. Based on the research results obtained, there are provisions in Regulation of the Financial Services Authority on Technology-Based Fund-Lending Services that Shopee have not been fulfilled, for instance the obligation to submit registration and license to OJK, to register as a member of an association appointed by the Financial Services Authority, and an effective implementation of risk management.

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PRELIMINARY

The development of technology gave rise to a concept called the digital economy. According to Don Tapscott, the digital economy is a social phenomenon characterized as an intelligence space, which includes and is related to information, information capacity, information processing, and access to information instruments (Puslitbang Aptika, 2019:8). One of the developments in the digital economy is the rise of marketplaces or organizer of Trade through Electronic Systems (Perdagangan Melalui Sistem Elektronik, hereinafter referred to as Providers PMSE). There are many PMSE organizers in Indonesia, for instance Shopee, Blibli, Tokopedia, Bukalapak, and others.

The PMSE organizer acts as an establishment that connects the party who wants to sell the goods and/or services (the seller) with the party who wants to buy the goods or service (the buyer) (Wertz and Kingyens, 2015: 6). PMSE organizer provides a system where sellers can sell their products on the system and buyers can search for the products they want, so that a trade transaction occurs. However, it does not stop there, the PMSE organizer is also developing itself and expanding its services to the financial sector. It is common nowadays when PMSE organizer provides financial services such as loans, both to sellers who are their tenants, as well as to buyers. For example, at Shopee, Shopee provides financing facilities, namely SPayLater for buyers on its platform to shop.

This development must be facilitated and accompanied by law. Law is needed as a means of realizing change in achieving the goals of national development in the economic field (Murwaji, 2016: 230). There are legal concerns that arise as a result of this development. First, the legality and position of Shopee as a PMSE organizer as well as an organizer of information technology-based funding services (Layanan Pendanaan Bersama Berbasis Teknologi Informasi, hereinafter referred to as LPBBTI) according to positive Indonesian law. Shopee is an institution in the field of trading, however Shopee as the provider of SPayLater acts as a peer to peer lending provider which according to Regulation of Otoritas Jasa Keuangan Number 10/POJK.05/2022 on Information Technology-Based Funding Services (hereinafter referred to as POJK LPBBTI) requires its own license.

Second, the interest imposed in SPayLater also has the potential to become predatory lending because of its amount which is quite high and has no maximum limit. This study will discuss the risk management that should be applied in determining the amount and imposition of interest in SPayLater.

Previous research regarding LPBBTI and risk management are as follows:

1. Analisis Prosedur Pembiayaan dan Manajemen Risiko pada Perusahaan *Peer to Peer* (P2P) *Lending* Syariah di Indonesia (Studi Kasus pada PT Ammana Fintek Syariah), by Evy Iskandar, Ayumiati, and Novita Katrin, published on Jurnal J-Iskan Vol. 1 of 2019, which discusses the risk management in sharia LPBBTI provider, namely PT Ammana Fintek Syariah that is done with two mechanisms: partner mitigation and internal mitigation. It also discusses the lending method in PT Ammana Fintek Syariah: direct funding and indirect funding.
2. Implementasi Besaran Bunga Peer to Peer Lending Berdasarkan Asas Itikad Baik dalam Pemanfaatan Teknologi Informasi serta Pengawasannya, by Anita Khoirunisa, Agus Suwandono, and Helitha Novianty Muchtar, published on Jurnal Widya Yuridika Vol. 3 of 2020, which discusses the absence of strong legal basis regarding imposition of interest in LPBBTI sector in Indonesia, other than AFPI's Code of Conduct.
3. Keabsahan Shopee PayLater sebagai Financial Technology dalam Hukum Positif Indonesia, by Made Ayu Gita Lestari and Dewa Gde Rudy, Published on Kertha Semaya: Journal Ilmu Hukum Vol. 10 of 2022, which discusses the legality of ShopeePay registered with Bank Indonesia with Bank Indonesia Letter No. 20/293/DKSP/Srt/B owned by PT Airpay International Indonesia as ShopeePay organizer, and SPayLater registered with OJK with S-1116/NB.213/2018 owned by PT Lentera Dana Nusantara as Shopee's partner in organizing SPayLater.

In contrast to several previous studies, this study focuses on the standing and legality of SPayLater as an LPBBTI according to the POJK LPBBTI, provisions of risk management in the imposition of interest in LPBBTI, and there are result and conclusion that differ from previous studies.

The problems that will be discussed in this study are formulated as follows:

1. What is Shopee's legal standing as a provider of financing facilities according to Indonesian positive laws?

How is the risk management being applied in Shopee to determine the imposition of interest in SPayLater?

METHOD

This study is conducted using a normative juridical approach, namely an approach that focuses on legal norms and also examines the legal rules that apply in society (Soekanto, 2015:13). This study is a research with a conceptual approach that describes the applicable laws and regulations in Indonesia related to real theory and practice in society.

Data and materials used in this study are analyzed with qualitative normative methods. Normative method is used to analyze library materials or secondary data as sources. Quantitative method is used to conduct a research that does not require nor result in numbers, but require concepts and produces analytical descriptive data as a result.

The materials used in this study are divided into primary legal materials and secondary legal materials. Primary legal materials are laws and regulations that are related to the object of this study, which include POJK LPBBTI, Law of the Republic of Indonesia Number 7 of 2014 on Trade (hereinafter referred to as the UU Perdagangan), Law of the Republic of Indonesia Number 8 of 1999 on Consumer Protection (hereinafter referred to as the UU Perlindungan Konsumen), Government Regulation Number 80 of 2019 on Trade through Electronic Systems (hereinafter referred to as PP PMSE). The secondary legal materials used are books, scientific works, and research results such as agreements..

RESULT AND DISCUSSION

1. Shopee's Legal Standing as Provider of SPayLater Financing Facility According to Indonesian Positive Laws

With the development of technology, trade can be done electronically, as known as PMSE or marketplace. PMSE according to Article 1 number 24 of UU Perdagangan is a trade whose transactions use a series of electronic devices and procedures. Based on Article 1 number 10 of PP PMSE, PMSE organizer is an institution that provides electronic communication facilities used for trade transactions. Shopee is one of the PMSE organizers in Indonesia.

Shopee acts as PMSE organizer with business-to-customer type (hereinafter referred to as B2C). In the B2C mechanism, transactions in PMSE are carried out between a business entity and a buyer, so the nature of the said PMSE is open and can be used by the general public. In this B2C marketplace, business actors might be in the form of formal businesses, or it can also be private individuals, which then register themselves with the relevant marketplace (Wertz and Kingyens, 2015:7).

As reported on the Shopee website, SPayLater is a facility established by Shopee in collaboration with PT Commerce Finance and PT Bank Seabank Indonesia. PT Commerce Finance is a financing company that provides multipurpose financing and investment and is registered in Asosiasi Perusahaan Pembiayaan Indonesia under membership number of 1162/JKT.03. PT Commerce Finance is owned by Tubo Cash Hongkong Ltd. with a share ownership of 85% and Andy Indigo with a share ownership of 15%, as stated in the PT Commerce Finance Sustainability Report.

PT Bank Seabank Indonesia is a bank established under the name of PT Bank Kesejahteraan Ekonomi based on the Decree of the Minister of Finance of the Republic of Indonesia No. 256/KMK.013/1992. Then on February 10th, 2021, PT Bank Kesejahteraan Ekonomi officially changed its name to PT Bank Seabank Indonesia based on the Decree of the Deputy Commissioner for Banking Supervision of Otoritas Jasa Keuangan Number KEP-12/PB.1/2021. Prior to collaborating with PT Bank Seabank Indonesia in providing this SPayLater facility, Shopee collaborated with PT Lentera Dana Nusantara, the LPBBTI provider company that is registered in OJK with Registration Certificate No. S-1116/NB.213/2018. However, this collaboration ends on September 16th, 2021.

To use the SPayLater facility, the requirements and conditions are quite easy. Consumers only need to upload a photo of their identity card, enter the data contained in the identity card, take a photo of their face (selfie), and enter a verification code (one time password/OTP) and after the activation request is processed, the consumer's SPayLater will automatically be activated. Shopee will assess the consumers and provide them with

SPayLater limits in accordance with the ability and financial track record of the consumers. If during using SPayLater, the consumer has good record in paying the loans, the limit given to them will be increased and they can use their SPayLater for a larger amount.

In SPayLater, Shopee acts as an intermediary that bridges SPayLater debtor which is buyer on the Shopee platform who want to shop and SPayLater creditors which are PT Commerce Finance and PT Bank Seabank Indonesia. This mechanism is very similar to the LPBBTI mechanism. LPBBTI is a service that digitally brings together lenders/creditors with borrowers/debtors who need business capital (Tampubolon, 2019: 191). LPBBTI is a platform that matches debtors with creditors through an online network with operators who manage the obligation to repay the debt (Davis and Murphy, 2016: 37).

As stipulated in Article 1 point 1 of POJK LPBBTI, LPBBTI is a financial service that bridge lender and borrower for the purpose of entering a conventional or sharia-based loan agreement directly through an electronic system with internet. LPBBTI provider has several limitations in carrying out its business activities. Article 111 letter b of POJK LPBBTI stipulates that LPBBTI provider itself, in carrying out their business activities, is prohibited from acting as a lender or borrower. In this SPayLater facility, Shopee does not act as a debtor, nor a creditor. This is evident from the agreement made between the debtor and SPayLater's creditors (i.e. PT Commerce Finance and PT Bank Seabank Indonesia) under the name "Investment Financing Agreement by Means of Purchase with Installment" (hereinafter referred to as the SPayLater Financing Agreement) in which Shopee does not part-take. The parties in SPayLater Financing Agreement are only the respective debtor and SPayLater creditors which are PT Commerce Finance and PT Bank Seabank Indonesia. In the SPayLater Financing Agreement, Shopee is not an involving party and does not bear any obligations from it.

Referring to Article 8 of POJK LPBBTI, before carrying out its business activities, LPBBTI provider must obtain a business license Otoritas Jasa Keuangan (hereinafter referred to as OJK) first. After the organizer submits registration to OJK, the LPBBTI provider must register themselves with the Ministry of Communication and Information as an electronic system operator. If the LPBBTI provider fails to do so, they are prohibited from providing funding as per Article 8 paragraph (4) of POJK LPBBTI, and the said organizer is subject to administrative sanctions in the form of written reprimand, restrictions of business activities, and/or revocation of license.

Previously, when Shopee was still working with PT Lentera Dana Nusantara, SPayLater was registered as LPBBTI at OJK under the name of PT Lentera Dana Nusantara with Registration Certificate No. S-1116/NB.213/2018 belonging to PT Lentera Dana Nusantara. However, as the collaboration between Shopee and PT Lentera Dana Nusantara ended on 16 September 2021, the status of SPayLater's registration at OJK also came to a halt, as the registration certificate that SPayLater was under originally belongs to PT Lentera Dana Nusantara. In the List of Licensed and Registered Fintech Lending Companies with OJK as of 25 October 2021, SPayLater is no longer registered with OJK under the name PT Lentera Dana Nusantara. Based on latest data released by OJK, namely a Licensed Fintech Lending Company as of 22 April 2022, Shopee is not included in it and is not registered with the OJK as an LPBBTI. Therefore, Shopee has not complied with Article 8 of POJK LPBBTI.

Furthermore, as regulated in Article 108 paragraph (1) of POJK LPBBTI, LPBBTI provider is required to register themselves and become member of an association that has been appointed by OJK through an association appointment letter. The associations appointed by OJK in the financial technology sector are as follows:

1. Asosiasi Fintech Pendanaan Bersama Indonesia (hereinafter referred to AFPI), AFPI appointed with Letter No. S-5/D.05/2019 dated 17 Januari 2019. AFPI is an association that oversees financial technology institutions in the field of LPBBTI and profit sharing, as well as institutions that support financial ecosystems such as Amazon and Digiscore.

2. Asosiasi Fintech Indonesia (hereinafter referred to AFTECH), AFTECH was appointed by OJK as an association for digital financial innovation organizers with Circular of OJK No. 22/SEOJK.02/2019 on Appointment of Association for Digital Financial Innovations Operator.
3. Asosiasi Fintech Syariah Indonesia (hereinafter referred to AFSI). AFSI was appointed by OJK in 2020 as an association for sharia-based digital financial innovation organizers, as stipulated in OJK Press Release No. SP 60/DHMS/VIII/2020 on the Role of Fintech Industry in Recovery of National Economy. Its members include tax and accounting companies, credit scoring, sharia P2P Lending, etc. For non-financial technology, AFSI oversees Islamic religious institutes.

Based on data of members from AFPI, AFTECH, and AFSI, the registered operator of SPayLater is PT Lentera Dana Nusantara, while in fact SPayLater is currently being organized by Shopee in collaboration with PT Bank Seabank Indonesia and PT Commerce Finance and none of Shopee, PT Commerce Finance, and PT Bank Seabank Indonesia are registered as member at any of the three associations. This violates Article 108 paragraph (1) of POJK LPBBTI. The consequence of this violation makes the respective LPBBTI provider a subject to administrative sanctions in the form of written reprimand, restrictions of business activities, and/or revocation of license.

In addition, Shopee is originally a PMSE organizer, but also carries out business activities as an LPBBTI provider. Based on Article 111 of POJK LPBBTI, one of the prohibitions for LPBBTI provider is that they are prohibited from conducting business activities other than business activities as an LPBBTI provider allowed by POJK LPBBTI. The business activities of LPBBTI provider are regulated in Article 24 of POJK LPBBTI, namely:

1. Provision of LPBBTI, including the provision of conventional financing or sharia-based financing;
2. Management of LPBBTI; and
3. Operation of LPBBTI.

The three aforementioned things are done through productive funding (i.e. funding that produces goods and/or services) and/or multipurpose funding (i.e. funding used for consumption). Shopee is primarily engaged in trading and conducting PMSE. Trade itself according to Article 1 point 1 of UU Perdagangan is a system that deals with domestic and cross-border transaction in goods and/or services with the aim to transfer of right in goods and/or services for a fee or compensation. The practice of trade or PMSE is not included in the list of activities allowed by POJK LPBBTI, and therefore should not be carried out by LPBBTI provider. Hence, Shopee does not comply with Article 24 and Article 108 of POJK LPBBTI.

2. Application of Risk Management in the matter of SPayLater's Imposition of Interest

In SPayLater, the SPayLater debtor enters into a financing agreement with the SPayLater creditors (i.e. PT Commerce Finance and PT Bank Seabank Indonesia) namely the SPayLater Financing Agreement. In Appendix B regarding the Loan Facility Provisions in the SPayLater Financing Agreement, it is stipulated that the interest rate is 2.95% flat per month. The interest will continue to be charged until the debtor pays off the debt, regardless the total nominal interest becomes greater than the nominal amount of the principal debt, which is commonly be complained by the debtors. The provision that interest can mount into a very high amount can potentially be a predatory lending practice.

Predatory lending itself is an umbrella term to describe practices that include various kinds of abuse or fraud that occur in a financing. Imposition of excessive interest rates, aggressive collections, and misuse of debtor's personal data are the common example of predatory lending (Suleiman, 2021: 1). One of the things that is often highlighted about

predatory lending is loan that becomes too high because of the large amount of interest that the debtors cannot pay it off.

Some of the example of predatory lending practices are as follows (O'Connell, 2019):

1. Loans with has high rate of costs and fines.
2. Loans that start with lower and easier-to-pay terms, but then eventually increase into much bigger payments. If the debtors can't pay off the lager payments, they can default on the loan.
3. Loans that does not provide clear and complete information, or conceal information from the debtors (Kirkham, 2020).

In Chapter III Part B point 1 concerning the Prevention of Over-Borrowing from the Code of Conduct for Providing Information Technology-Based Money Lending and Borrowing Services Responsibly stipulated by the Decree of the Management of AFPI No. 002/SK/COC/INT/IV/2020 on the Establishment of Special Regulations for the AFPI Code of Conduct in 2020 (hereinafter referred to as the AFPI Code of Conduct), predatory lending is a lending practice that applies provisions, terms, fees, and/or interest that are not reasonable to the borrower or inconsiderate to the debtor's ability to repay the debt.

In Indonesian laws and regulations, there is no law that explicitly regulates the maximum limit of interest imposition in LPBBTI industry. Provisions in POJK LPBBTI that regulate interest are contained only in Article 29 which paragraph (1) states that LPBBTI provider must meet the maximum limit of funding economic benefits in facilitating the loans. The maximum limit should be set by OJK but currently, POJK regarding this matter has not been issued yet.

The provision that explicitly regulates the maximum limit of interest control is the AFPI Code of Conduct. The AFPI Code of Conduct has provided protection and prevention of predatory lending where the amount of interest, late payment penalty, and other fees cannot exceed 100% of the principal value of the loan. This is regulated in Chapter III Part B point 1 of the AFPI Code of Conduct which states that:

1. The total amount of interest, loan fees, and other fees (other than late payment penalty) does not exceed a flat interest rate of 0.8% per day which is calculated from the actual amount of loan received by the debtor.
2. The amount of late payment penalty does not exceed 0.8% which is calculated from the actual amount of the loan received.
3. For loans with a tenor of up to 24 months, the total amount of interest, loan fees, late payment penalty, and other fees is a maximum of 100% of the principal value of the loan.
4. For loans with tenor of more than 24 months, the total amount of interest, loan fees, late payment penalty, and other fees is a maximum of 100% of the principal value of the loan.

Associations appointed by OJK such as AFPI have the function of harmonizing financial technology institutions, creating separate regulations regarding financial technology sector, protecting rights and interests of the parties involved, and directing developments into a healthy and orderly developments, as stipulated in the AFPI's Articles of Association.

The AFPI Code of Conduct applies to P2P Lending providers who are members of the AFPI as well as other institutions that provide support services for P2P Lending providers who bind themselves voluntarily to the AFPI Code of Conduct. Institutions that provide these support services include electronic trading platforms, credit insurance or credit security providers, electronic signature providers, data center providers and data recovery, credit bureau, payment gateways, insurance providers, and other supporting service providers. Shopee is not an AFPI member, therefore, the provisions in the AFPI Code of Conduct are not binding on Shopee. Thus, there are no rules or legal grounds that can bind Shopee in terms of imposing interest on its LPBBTI, which is SPayLater.

In that case, risk management plays a very important role. Risk management can be applied in determining the amount of interest that must be imposed to the financing in

question. The implementation of good risk management, so that interest and fines become appropriate and considerate to the interests of the parties involved, is also a form of embodiment of good faith in the business practice, as stipulated to business operators in Article 7 of UU Perlindungan Konsumen. Good faith defines as honesty, propriety, and fairness (Subekti, 2002: 51). Good faith in the sense of propriety defines the existence of a balance between the various interests that exist within society, and that one's interests should not be fully fulfilled by compromising or ignoring the interests of others (Prodjodikoro, 2011: 87). Thus, risk management prevents predatory lending, so that the interests of debtors and creditors are fulfilled without harming each other, and business implementation can be carried out in good faith.

In International Organization for Standardization 31000:2018 (ISO 31000) on Risk Management – Guidelines, which is identically adopted into the Standar Nasional Indonesia ISO 31000:2018 (hereinafter referred to as SNI ISO 31000:2018), risk management is defined as as coordinated activities aimed at directing and controlling organizations with regard to risk. Article 1 point 3 of the Regulation of OJK Number 44/POJK.05/2020 on Risk Management for Non-Bank Financial Services Institutions stipulates that risk management is a series of methodologies and stages used to measure, monitor, control, and identify risks arising from all non-bank financial services' activities. Risk itself is something that leads to uncertainty regarding the occurrence of an event within a certain time which results in loss, either a small loss or a large loss, which affects the continuity of the company (Lokobal, dkk., 2014: 110).

Provisions regarding risk management obligations that must be carried out by LPBBTI provider are contained in POJK LPBBTI. In Article 35 of POJK LPBBTI, LPBBTI provider is obliged to implement risk management effectively, which includes at least:

1. Active supervision from board of commissioners, directors, and sharia supervisory board;
2. Adequacy of risk management policies and procedures as well as limit of risk;
3. Adequacy of risk identification, measurement, control and monitoring processes, as well as risk management information systems; and
4. Comprehensive internal control system.

Risk management activities that must be carried out by LPBBTI provider include carrying out analysis of loan risks submitted by potential debtors, verifying the identity of the debtor/creditor and the authenticity of documents, collecting the loans, facilitating the transfer of loan risks and risk transfer of collateral objects (if any). In analyzing the risks contained in the financing, the LPBBTI provider may do so in collaboration with other parties, or independently.

To promote an effective risk management, SNI ISO 31000:2018 provides guidelines and principles that can be applied in risk management, some of which are as follows:

1. Risk management is customized and proportionate to the organization's external and internal context, related to its objectives.
2. Risk management is significantly influenced by human behavior and culture at each level and stage. This defines that risk management takes internal or external party's capability and objective that might potentially deters the accomplishment of the organization's goals.

Based on the SPayLater Financing Agreement, the interest imposed by Shopee in SPayLater is 2.95% flat per month. The interest will be charged continuously until the SPayLater debtor pays the debt off. This results in interest accumulating and being equal to or exceeding 100% of the debt itself. It is not uncommon that debtors complain about this as reported on the Media Konsumen website, debtor Rina Juliani complained that the interest and late payment penalty charged to her exceeded 100% of the principal loan, Rina Juliani borrowed Rp1.400.000,00 and was in arrears for 1 year. As a result of this, the debt became Rp4.344.774,00, in which a total of Rp2.944.774,00 is the amount of interest and late payment penalty alone. The amount of interest and late fees has a percentage of about 210%

greater than the principal debt, thus Rina Juliani objected to the amount and found it difficult to pay it back (Juliani, 2021).

In a financing, credit risk is strongly influenced by the terms of the financing agreement, such as the terms of interest and the debtor's ability to repay the debt (Rustam, 2017: 165). As represented in the explanation and case above, the interest applied by Shopee in its SPayLater facility is so high that it is inconsiderate to the debtor's ability to pay off the debt. This should be avoided because as mandated in Article 35 paragraph (1) of POJK LPBBTI, LPBBTI provider is obliged to implement risk management effectively. One of the manifestations of effective risk management is to minimize these risks, so there won't be a big potential loss. Meanwhile, in cases like the above, if the debtor finds it difficult to return the loan along with the interest and late payment penalty, the credit risk will increase. If the credit risk increases, the loss that LPBBTI provider may suffer, which in this case is Shopee, will also increase. As there is lack of adequate efforts to lower their own credit risk, this can be a benchmark that Shopee's risk management has not been carried out optimally and effectively, as obliged by Article 35 of POJK LPBBTI.

In accordance with the obligations of LPBBTI provider in carrying out effective risk management and considering risk management principles, Shopee must consider the conditions and capabilities of its SPayLater debtors to repay their debts when determining and imposing interest on SPayLater. This is in order to realize the implementation of Article 35 of POJK LPBBTI and protect financial service users and avoid predatory lending which is an unhealthy practice in the financial industry in Indonesia.

Faced with this, Article 3 number 5 of UU Perlindungan Konsumen gives consumers the right to obtain appropriate efforts from the business actor to settle disputes. There is also a mechanism that can be taken by consumers as LPBBTI debtors who object to the charge of interest by LPBBTI providers, namely by submitting complaints to institutions such as Badan Penyelesaian Sengketa Konsumen and Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan that can facilitate mediation, arbitration, and/or conciliation between debtors, LPBBTI provider, and creditors, where disputes can be discussed and settled in.

CLOSING

1. SPayLater financing facility provided by Shopee is an LPPBTI as referred to in Article 1 point 1 of POJK LPBBTI where Shopee acts as the organizer of LPBBTI which brings together debtors (i.e. buyers in Shopee) and creditors (i.e. PT Commerce Finance and PT Bank Seabank Indonesia). Shopee as an LPBBTI provider is required under Article 8 paragraph (1) of POJK LPBBTI to register themselves with OJK, however, based on the latest list of Licensed Fintech Lending Companies from OJK per 22 April 2022, Shopee is not a registered as an LPBBTI provider at OJK. Shopee as the organizer of the LPBBTI is also required by Article 108 paragraph (1) of POJK LPBBTI to become a member of the association appointed by OJK. However, AFPI and AFTECH membership data shows otherwise: Shopee is not registered as a member. Therefore, Shopee has yet to comply with Article 8 paragraph (1) and Article 108 paragraph (1) of POJK LPBBTI.
2. The imposition of interest in SPayLater has not shown the implementation of an effective risk management as obliged by Article 35 of POJK LPBBTI and is inconsiderate to the principles of risk management. This is reflected in the SPayLater interest provision that has no maximum limit that it can amount to 100% larger than the principal loan which is detrimental to the debtor. This provision contradicts the AFPI Code of Conduct which stipulates that for loans with a tenor of up to 24 months, the total amount of interest, loan fees, late payment penalty, and other fees is a maximum of 100% of the principal value of the loan. In addition, this also goes against the principle of risk management as regulated in SNI ISO 31000:2018 that risk management must take into account the capabilities of external parties that can hinder the achievement of the company's goals, including the capability of debtors to repay their debts. Due to the high interest rates, it

is difficult for debtors to repay their debts, so the credit risk becomes bigger for Shopee. This shows that the implementation of risk management by Shopee is not optimal and does not comply with Article 35 of POJK LPBBTI.

Recommendation

1. If PMSE organizer, which in this case is Shopee, wishes to provide financial facilities especially in the form of LPBBTI, it is recommended to establish a separate entity such as a subsidiary company that specifically engages in the LPBBTI sector that also complies with licensing and other requirements that is required to LPBBTI provider, including but not limited to registering themselves with OJK as an organizer of LPBBTI and becoming a member of association appointed by OJK as mandated in Article 8 and Article 108 paragraph (1) of POJK LPBBTI, and complying with the limits on the business activities of LPBBTI providers as stipulated in Article 24 POJK LPBBTI.
2. The Indonesian government tightens its supervision of the financial technology industry in the LPBBTI sector and encourages uniformity of LPBBTI providers in Indonesia regarding imposition of interest, as well as guarantees legal protection for LPBBTI users. The Government of Indonesia is closely monitoring the implementation of risk management carried out by LPBBTI providers.

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Perjanjian Pembiayaan Investasi dengan Cara Pembelian dengan Pembayaran Secara Angsuran antara Debitur SPayLater dan Kreditur SPayLater.