



## Cartel Indications on Determination of Interest in Information Technology from FinTech Associations

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### Abstract

*One of the rapidly growing technology companies is an online loan service. The ease of borrowing funds through these services supports business growth. In contrast to the banking sector, which is regulated by a series of strict government regulations and the determination of interest rates that have been determined by looking at economic conditions. The absence of regulation in the legislation makes AFPI set the limit for determining the maximum interest rate, but the determination of interest rates by AFPI is suspected to lead to cartel actions. There is a close relationship between fair business competition and consumer protection. This research is a normative juridical research with a statutory approach and a comparative approach. In this case, the setting of interest rate limits will reduce consumers' rights to get competitive prices. The existence of conscious parallelism by the AFPI on the LPMUBTI services can be categorized as a price fixing agreement. It is because the determination of the maximum interest rate limit is not regulated through direct government regulations.*

### I. Introduction

The application of information technology platforms that appear in business transactions in Indonesia is a pattern of business models that cannot be avoided. Talking about the real condition that occurs is the increasing business growth based on technology. Almost all aspects of business activities from financial services to health are integrated with financial platforms. Gojek and Grab are pioneers for technology-based companies which are then followed by trading service providers such as shopee, tokopedia, Bukalapak, Lazada, etc. In addition, in the field of financial services, which are referred to as technology-based financial services, such as Koinworks, Kredivo and Kredit Pintra.

Online loan service is a rapidly growing technology, according to the Financial Services Authority (OJK –*Otoritas Jasa Keuangan*). As of February 2020, there are 161 registered online loan service providers with operating permits from the OJK. There are nine Islamic online loans service and the remaining 127 are conventional online loan services (OJK, 2019). The number of companies has the potential to increase because 16 other companies are in the process of licensing registration. The OJK also has returned application from 112 companies, in addition to 22 others companies that are interested to gain permits (OJK, 2019).

The ease of borrowing funds in the service supports business growth. It is different with the banking sector, which is regulated by a series of strict government regulations. In addition, banking determines interest rates based on economic conditions. The Information Technology-Based Lending and Borrowing Service company (LPMUBTI –*Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi*) focuses more on market mechanisms. Various cases then overshadow the business. The consumer dispute settlement agency (BPSK –*Badan Penyelesaian Sengketa Konsumen*) notes that, in 2020, consumer complaints related to technology-based financial services were ranked in the top three. Consumers often complain about risk mitigation, protection of personal data, to determination of interest rates are problems. Some parties then considered that the emergence of the problems was the OJK's failure to regulate the service.

One technology company that is growing rapidly is online loan services, based on data compiled by the Financial Services Authority (hereinafter referred to as OJK), as of February 2020 there are 161 registered online loan service providers with operating permits from the OJK, 9 of which are Islamic online loans service and the remaining 127 are online loan services in conventional forms (OJK, 2019). The number of companies has the potential to increase because 16 companies are in the process of licensing registration, 112 companies whose application for registration was returned by OJK and 22 companies interested in registering for permits.(OJK, 2019)

The ease of borrowing funds through these services supports business growth. In contrast to the banking sector, which is regulated by a series of strict government regulations and the determination of interest rates that have been determined by looking at economic conditions. This information technology- based lending and borrowing service company (hereinafter referred to as LPMUBTI) focuses more on market mechanisms. Various cases then overshadow this business. The consumer dispute settlement agency (BPSK) noted that in 2020, consumer complaints related to technology-based financial services were ranked in the top three. Risk mitigation, protection of personal data to determining interest rates are problems that consumers often complain about. Some parties then considered that the emergence of these problems was a form of OJK's failure to regulate regulations related to these services.

On the one hand, the LPMUBTI makes it easy for people who need small amounts of funds for the growth of micro, small, and medium enterprises (MSMEs). The MSMEs do

not need to apply for a loan to a bank ([Hartanto et al., 2018: 321](#)). In practice, the LPMUBTI activities are lending and borrowing that have been agreed upon by individuals or business actors in which the individual or business actor will return money with an amount of interest as a reward within a certain time to the lender through an online intermediary ([Candrika Radita Putri, 2018: 463](#)).

The law has given authority to the OJK to regulate and to supervise financial service institutions ([Law Number 21 of 2011 on the Financial Services Authority](#)). The authority enables the OJK to issue Regulations on the LPMUBTI ([Regulation of the Financial Services Authority Number 77/POJK.01/2016 on the Information Technology-Based Borrowing-Lending Services](#)). The OJK's supervision on the LPMUBTI's activities is a form of market conduct supervision. One them is the appointment of an official association in Indonesia. The association is also a mandate from the Regulation of the Financial Services Authority Number 77/POJK.01/2016 on the Information Technology-Based Borrowing and Lending Services. It requires the LPMUBTI Operators to be registered as members of the association appointed by OJK ([Regulation of the Financial Services Authority Number 77/POJK.01/2016 on the Information Technology-Based Borrowing-Lending Services: Article 48](#)). Currently, there is only one association that has officially become the OJK's partner in regulating LMPUBTI activities. It is the Indonesian Joint Funding Fintech Association (AFPI –*Asosiasi Fintech Pendanaan Bersama Indonesia*).

The appointment of the association has its own purpose. Any arrangements that have not been regulated by the OJK can be regulated by the AFPI. One of them is the regulation on the maximum interest rate limit. Thus, the AFPI sets a maximum interest rate limit for the LPMUBTI at 0.8% per day through the AFPI code of conduct ([Roy Franedy, 2019](#)). In addition, the purpose of the AFPI determination of interest rates is to prevent predatory lending ([Trinugroho et al., 2017: 474](#)) based on interest rate. However, the delegation of interest rate authority is not clear whether it is in the form of attribution, delegation, or mandate. In fact, the Bank Indonesia can regulate the authority to determine the LPMUBTI's interest rate. the Bank Indonesia establishes and implements monetary policy ([Law of the Republic of Indonesia Number 3 of 2004 on the Amendments to the Law of the Republic of Indonesia Number 23 of 1999 on the Bank Indonesia: Article 7](#)). The monetary policy controls the amount of money in circulation or interest rates ([Law of the Republic of Indonesia Number 3 of 2004 on the Bank Indonesia: Article 1](#)). The Bank Indonesia has issued the Regulation of Bank Indonesia Number 19/12/PBI/2017 on the Implementation of Financial Technology to encourage innovation in the financial sector by applying consumer principles as well as risk and prudent management to maintain monetary stability, financial, and payment systems ([Regulation of the Bank Indonesia Number 19/12/PBI/2017 on the Implementation of Financial Technology: Article 2](#)). The line *maintaining monetary stability* means that the Bank Indonesia should be able to regulate the determination of the LPMUBTI's interest rate. Currently, Bank Indonesia only regulates the reference of interest rate, such as the BI 7-day *Repo Rate* and the interbank money market in the Jakarta Interbank Offered

Rate (JIBOR). Unfortunately, up to the present, the Bank Indonesia has not regulated the determination of the LPMUBTI's interest rate.

Due to the absence of such regulation, the AFPI set the limit of the maximum interest rate. However, the maximum limit set by AFPI has turned out to be an indication as a price cartel that was prohibited by Article 5 Paragraph (1) of the Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition ([Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition: Article 1 Paragraph 1](#)). One of the reasons of the price cartel allegation is that the mechanism for regulating interest rates is not based on laws and regulations or authorized institutions. The AFPI arrange it through a code of conduct. The arrangement through a code of conduct can be considered as an agreement made jointly (conscious parallelism). In the law on business competition, business actors are prohibited from determining a price for goods or services ([Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition: Article 1 Paragraph 1](#)).

The cartel is one of the prohibited agreements and has a huge impact. Unfortunately, consumers often do not realize that they are being victims. The impact of the price cartel is the shift of surplus or profit that should be enjoyed by consumers to business actors. The interest rate determined by the AFPI does not consider the aspect of fairness related to the development of the national economy. The average distribution of the LPMUBTI interest rates is much larger than that of other financial institutions. The definition of interest rate in the banking concept is the price to be paid by a customer to the bank after the customer gets a loan facility. Market price is the cost that must be paid in a transaction of goods and services according to the agreement between the parties in the relevant market. The interest charged on loans on financial technology platforms is included in the price component because it must also be paid at the time of loan repayment (Muclis Ridwan, 2018). Therefore, there is an indication of price fixing in the determination of the interest rate.

Currently there are 149 LPMUBTIs registered in the OJK (*Fintech Lending Statistics*, 2021). Almost 90% of the LPMUBTI charge almost the same interest rate. It is an indication of a cartel. In line with the investigation conducted by the Business Competition Supervisory Commission (KPPU -*Komisi Pengawas Persaingan Usaha*). There is a suspicion that LPMUBTI practice cartel. The KPPU considers that the regulator, namely the OJK, should determine the interest rate, not the Association (Hukumonline.com, 2021).

This study is a normative juridical study. It conducted an exploration on the laws and regulations ([Marzuki, 2010: 76](#)) related to indications of price fixing in the determination of the maximum limit for the LPMUBTI interest rates by AFPI. It also analyzed the AFPI's authority in the determination of the maximum limit for LPMUBTI interest rates. the study used the statute approach. In addition, an analytical approach was employed to conduct an analysis of the determination of the maximum interest rate limit on the LPMUBTI by AFPI in terms of the legal aspects of business competition in Indonesia and

the basic authority possessed by AFPI in the determination of the maximum interest rate limit.

This study used legal materials sourced from literature studies, including primary and secondary legal materials. The primary legal materials consists of the Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, the Law Number 21 of 2011 on the Financial Services Authority, the Regulation of the Financial Services Authority Number 77/POJK.01 /2016 on the Information Technology-Based Lending and Borrowing of Money, and the Regulation of the Bank Indonesia Number 19/12/PBI/2017 on the Implementation of Financial Technology. The secondary legal materials consisted of books in the field of laws, legal journals, and interviews with related institutions.

This study also practiced literature study as a technique to obtain legal materials. Subsequently, it used systematic interpretation. It is an interpretation of a statutory regulation through the connection of articles contained in a law with articles in other laws. In addition, it also used the interpretation of *argumentum per analogiam*. The interpretation is used for similar events and legal interest in the community demanding the same interests.

## **II. Determination of Interest Rates in Information Technology-Based Lending and Borrowing Services**

Up to the present, the interest rates for the LPMUBTI has not been regulated comprehensively in laws and regulations. The absence of this arrangement raises problems. One of them is the amount of interest does not have an upper limit. Many debtors find it difficult to make payments and cause bad loans. On the other hand, the problem of determining interest causes debtors to have difficulty paying due to high interest rates.

At a practical level, the determination of the interest and its mechanism is determined by the service provider to the borrower ([Regulation of the Financial Services Authority Number 77/POJK.01/2016: Article 17 Paragraph \[1\]](#)). The LPMUBTI is different from the concept in banking, in LPMBUTI the market mechanism is the most decisive in its performance. Article 17 Paragraph (1) POJK Number 77 of 2016 only provides a stipulation that service providers can determine the amount of interest rates. However, the detailed arrangement of the percentage of interest rates has not been regulated in detail. Based on the concept of information technology-based lending and borrowing services, essentially the implementation of monetary policy and information technology-based lending and borrowing services influencing each other, Article 17 of POJK Number 77 of 2016 regulates the determination of the amount of interest rates in reasonable information technology-based lending and borrowing services must be founded under the implementation of existing monetary policies (Refer to the discussion in Chapter II 2.4.).

Previous research conducted by (1) Mohd. Yahya Mohd. Hussin, et al (Mohd. Yahya Mohd. Hussin, 2012); (2) Drama Bedi Guy Herve, et al (Drama Bedi Guy Herve, et al, 2011); (3) Ranjan Dasgupta (Ranjan Dasgupta, 2012); and (4) Ike Nofiatin (Ike Nofatin, 2013) show that the determination of interest rates is carried out to control the rate of inflation and investment behavior, especially monetary policy in Indonesia with the paradigm of targeting inflation (Inflation Targeting Framework/ ITF) as referred to in Article 7 of Law Number 6 of 2009. It means that the determination of interest rates is a very strategic matter in monetary policy in Indonesia, including in terms of determining interest rates on information technology-based lending and borrowing services. The problem is that, up to the present, it is still not the object of the Bank Indonesia's monetary policy. The following are some of the factors causing interest arrangements at LPMUBTI to be unable to be regulated.

#### **A. Information technology-based lending and borrowing services are not banking financial institutions**

On March 7 2019, the AFPI issued a Code of Conduct for Responsible Information Technology-Based Lending and Borrowing Services to set a maximum interest rate threshold of flat 0.8% per day for members of the information technology-based lending and borrowing services that are incorporated in it (AFPI, 2019: 8). It is a follow-up to the Letter No. S-5/D.05/2019 issued by the OJK to appoint the AFPI as the Fintech Lending Association in Indonesia, as mandated by Article 48 of the POJK Number 77 of 2016 ([OJK, 2020](#)). However, does the publication of the 'Guidelines of Conduct for Providing Responsible Information Technology-Based Lending and Borrowing Services' from AFPI affect the determination of interest rates in information technology-based lending and borrowing services? The 'Guidelines of Conduct for Responsible Information Technology-Based Lending and Borrowing' effectively influence the determination of interest rates offered by information technology-based money-lending service providers who are registered with the OJK and who have a business license for information technology-based lending and borrowing services.

### **III. Analysis of Interest Rate Determination for Information Technology- Based Borrowing-Lending Services by the Indonesian Joint Funding Fintech Association in terms of Business Competition Law**

A cartel is an act that is prohibited in business competition law. The action of a cartel is carried out by a group of companies, which should compete, but instead the companies cooperate. it creates monopolistic practices and unfair business competition. Cartels are generally carried out by trade associations with their members, such as the preparation of technical standards or standards for goods or services ([Rachmadi Usman, 2013: 176](#))

The Law Number 5 of 1999 are divided cartels into several types. There are cartels that divide the territory in article 9, cartels for regional division regulated in article 10, the cartel regarding tender conspiracy in article 22, and the provisions of the price cartel or price fixing agreement in article 5 (Antoni, 2019: 96).

The maximum limit for the application of interest issued by the AFPI is 0.8% per day (maximum limit for consumer loans). However, the determination was not made by the competent authority and was not included in the Regulation of the Financial Services Authority Number 77 of 2016 on the LPMUBTI. The application of the 0.8% interest rate is only part of the code of ethics compiled by the AFPI. Following the establishment of the AFPI, they establish a code of conduct consisting of product transparency and product service offering methods, prevention of over-indebtedness, application of the principle of good faith, and sanctions. However, based on the Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, the determination of the maximum limit for the LPMUBTI loan interest rate of 0.8% per day can be indicated as a price fixing agreement. It is because there is no regulation provided by the OJK related to the determination of the interest rate. It was also explained that the conditions for the occurrence of a cartel must be a collusive agreement between the business actors. The following is a cartel analysis of various laws and regulations.

#### **A. Analysis of Price Fixing Agreements in the Law on Business Competition Law**

The price fixing agreement directly or indirectly aims to avoid price competition. In general, a group carries on a price fixing agreement, which directly or indirectly aims to control the market. Although the price fixing agreement does not have an impact on prices in a market, it does not rule out the possibility that the price agreement has no use for members. Susanti Adi Nugroho states that a prohibited agreement is an agreement in which there is a price fixing for an item or service to be traded in the relevant market. The purpose of price fixing is actually shown so later consumers will pay the price that has been set by business actors. Afterward, directly or indirectly, the business actors will get prices that are far from the price of fair business competition. In addition, through competition regulations, the business competition commission explains that there are several elements in price fixing as follows ([the Regulation of the Business Competition Supervisory Commission Number 4 of 2011 on the Guidelines: Article 5](#)).

- a. Elements of Business Actors
- b. Elements of Agreement
- c. Elements of Competitor Business Actors
- d. Elements of Market Price
- e. Elements of Item

## **B. Analysis of the LPMUBTI Interest Rate Arrangements in the Regulation of the Financial Services Authority Number 77/POJK.01/2016 on the Information Technology-Based Borrowing-Lending Services**

Information technology-based lending and borrowing services is a financial service that is used to bring together lenders and loan recipients to enter lending and borrowing agreements directly through the internet ([the Regulation of the Financial Services Authority Number 77/POJK.01/2016 on the Information Technology-Based Borrowing-Lending Services: Article 18](#)). Article 18 means that in the practice of LPMUBTI, there are two agreements, namely the first agreement between the provider and the lender and the agreement between the lender and the loan recipient ([the Regulation of the Financial Services Authority Number 77/POJK.01/2016 on the Information Technology-Based Borrowing-Lending Services: Article 20](#)).

In the loan agreement, there must be a price that the debtor must pay to the creditor for the loan, namely the interest rate. The interest paid in the loan is in addition to the principal loan amount. However, the interest is considered as a price because interest is an additional cost that is not separate from the price to be paid ([Desak et al., 2019](#)). According to Article 17 of the Regulation of the Financial Services Authority ([Putra dan Budiana, 2019: 87](#)), the operator only provides input to lenders and borrowers related to the amount of interest rates. It means that the amount of interest rates depends on the agreement between the lender and the borrower. The organizer will later provide input related to the amount of the interest rate provided that the input of the amount of the interest rate must be taken into consideration of reasonableness related to inflation and national economic developments.

## **C. Analysis on the Determination of the Maximum Limit of LPMUBTI Interest Rates by the Indonesian Joint Funding Fintech Association**

The Regulation of the Business Competition Supervisory Commission Number 4 of 2011 on Guidelines, Article 5, explains that there is a price fixing that has relevance among cartels. Price cartel is regulated in Article 5 of the Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. Price fixing is a form of violation because the behavior of the price fixing agreement will directly eliminate competition. The loss of competition because of the price fixing clearly violates competition law because it harms consumers and the economy as a whole ([the Regulation of the Business Competition Supervisory Commission Number 4 of 2011 on the Guidelines: Article 5](#)).

As previously explained, the AFPI has set a maximum limit for determining loan interest rates of 0.8%. The interest rate is not determined by the competent authority. It was made by the AFPI. Therefore, there is an indication of a price fixing agreement on Information Technology-Based Lending and Borrowing Services.



#### **D. Analysis on Provider in the Determination of the Maximum LPMUBTI Interest Rate By the AFPI**

Price cartels are generally carried out by members of the association to achieve the highest profit. As of January 2020, the AFPI has 161 members consisting of information technology-based money lending and borrowing service providers (AFPI, 2020). Related to a prohibited agreement, the price fixing, the subject who is prohibited from entering into a price fixing agreement is a business actor and other business actors established or conducting activities in Indonesia. the activities are in the form of business activities in the economic field either jointly through agreements or alone. The LPMUBTI operators can be categorized as business actors. First, it is explained that according to business competition law in Indonesia, business actors can be categorized as individuals and business entities, both business entities in the form of legal entities or business entities in the form of non-legal entities (the Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition: Article 1 Number [5]). Article 1 number 6 of the Regulation of the Financial Services Authority Number 77/ POJK.01/2016 explains that the organizer of LPMUBTI is an Indonesian legal entity ([the Regulation of the Financial Services Authority Number 77/POJK.01/2016: Article 1 Number 6](#)). Article 2 of the Regulation of the Financial Services Authority Number 77/POJK.01/2016 states that the legal entity can be in the form of a limited liability company or in the form of a cooperative ([the Regulation of the Financial Services Authority Number 77/ POJK.01/2016: Article 2 Number 2](#)).

Second, according to the business competition law in Indonesia, business actor carries out business activities in the economic field in the Indonesian Territory. Article 5 of the Law on Limited Liability Company explains that ([Law Number 40 of 2007 on the Limited Liability Companies: Article 5](#)) a company has a name and domicile within the territory of the Republic of Indonesia, which is determined in the articles of association (Arum Sutrisni Putri, 2020). Article 5 of the Regulation of the Financial Services Authority Number 77/POJK.01/2016 on Information Technology-Based Borrowing-Lending Services explains economics activities of LPMUBTI that cover the provision source of funds from lender being given to loan recipients through the platform ([the Regulation of the Financial Services Authority Number 77/POJK.01/2016: Article 5](#)).

#### **E. Analysis of the Code of Conduct as an Agreement in the Determination of the Maximum Limit of LPMUBTI Interest Rates By AFPI**

Explicit Collusion is collusion that can be carried out by cartel in an agreement. It can be seen in terms of behavioral factors in the form of price regulations and contracts. Some of these regulatory behaviors could strengthen the existence of an alleged cartel carried out by associations in an industry ([Rachmadi Usman, 2013:](#)

[301](#)). The AFPI's code of conduct can be categorized as an agreement based on the law on the business competition due to an agreement between LPMUBTI organizers and other LPMUBTI providers. One of them is the determination of the maximum interest rate limit of 0.8% per day (AFPI, 2019: 5-11).

The position of the AFPI code of conduct can be categorized as an agreement based on the Law on Indonesian Business Competition ([the Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition: Article 1 Number \[7\]](#)). The code of conduct can be categorized as price fixing. In the point regarding the Prohibition of Predatory Lending letter d, the LPMUBTI interest rate must not exceed 0.8% per day (AFPI, 2019: 8). There are three indicators that makes the agreement a price fixing agreement.

First, that the price fixing can be categorized as a written agreement due to an agreement among the LPMUBTI organizers through a code of conduct. Article 1 number 7 of the Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition explains that the agreement in law on competition is the existence of self-binding between a business actor and other business actors, either it is written or unwritten ([Susanti Adi Nugroho, 2012: 703](#)). The general provisions section of the AFPI code of conduct mentions that all members have agreed collectively and voluntarily, and are binding on the provisions contained in the AFPI code of conduct. The provisions agreed upon by AFPI members include transparency of products and methods of product service offerings, prevention of excessive borrowing, application of the principle of good faith, and sanctions.

According to Susanti Adi Nugroho, the explanation of Article 5 Paragraph (1) of Law Number 5 Year 1999 does not explain what is prohibited in the determination of price, whether it is in the form of fixing the maximum price or fixing the minimum price. However, the horizontal pricing that is prohibited is the setting of a maximum or minimum price or setting the amount of production of goods and/or services that may be produced ([Nugroho, 2012, 703](#)). The determination is a horizontal form of price fixing because Article 5 Paragraph (1) prohibits price fixing by fellow competitors of business actors. In practice, the price fixing is below the drink. Regarding the determination of the maximum price, it is usually set by the government to ensure consumer protection ([Nugroho, 2012: 39](#)). It is determined by the AFPI Application. The determination of the maximum limit or upper limit is carried out on the price of air tickets, namely through the Decree of the Minister of Transportation Number KM 72 of 2019 on the Upper Limit Tariff for Economy Class Passengers for Domestic Scheduled Commercial Air Transport. the KPPU Commissioner, Guntur Syahputra, states that price fixing cannot be regulated by AFPI due to no regulation made by the Financial Service Authority (Vadhia Lidyana, 2020).

Second, according to the Regulation of the Business Competition Commission, there is a consensus or agreement among business actors. There is an assumption that the association is used as a medium to facilitate joint agreements (conscious

parallelism) and joint action to comply with written agreements (concerted action). To analyze the relationship between associations and competition law, Articles of Association can be categorized as agreements made between the organization and its members. Therefore, there is an assumption that the existence of association rules actually hinders the business competition (Prananingtyas, 2014: 613). The agreement regarding the maximum interest rate provisions is formulated through the articles of association and by-laws of the Indonesian Fintech Association through a series of meetings attended by members to discuss the draft of the code of conduct starting in September 2017 to October 2018, which was then formulated in writing (AFPI, 2019: 1). Thirdly, it is explained in the Business Competition Supervisory Commission Regulation Number 4 of 2011 that one form of agreement is a compliance agreement. to the announced price. The organizer who is a member of the AFPI will automatically be bound by the code of conduct. members who do not comply with the provisions of maximum interest rate of 0.8% per day will be subject to sanctions. With the determination of interest rates, the AFPI code of conduct can be categorized as a prohibited agreement in the form of price fixing, which violates Article 5 Paragraph (1) of the Law Number 5 of 1999 on the Prohibition of Practice Monopoly and Unfair Business Competition.

#### **F. Analysis on Relevant Market on the Determination of Maximum LPMUBTI Interest Rate By AFPI**

The relevant market is a part or a process regarding the enforcement of competition law related to the abuse of market control by business actors. The Law ([Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition : Article 1 Number 10](#)) explains that relevant market is a market related to a certain marketing range or area by business actors for the same or similar goods and or services or substitution of the said goods and or services. The relevant market is very closely related to proving whether the agreement can be categorized as price fixing. According to the Regulation of the Business Competition Commission Number 3 of 2009 on the Guidelines for the implementation of Article 1 Number 10 on the Relevant Market, there are two perspectives on relevant market, namely the one that based on geography; and the other that based on the product. Based on geography, it can be seen from the wide range of product marketing areas. Based on the product, it is related to the similarity or type or level of substitution of the product ([Regulation of the Business Competition Supervisory Commission Number 3 of 1999: Article 6](#)).

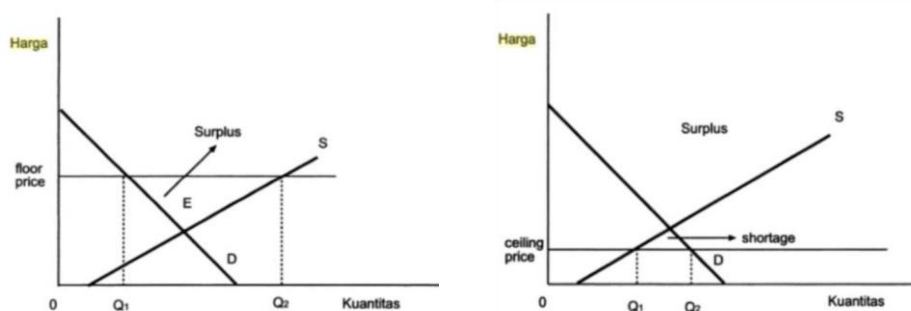
In addition, the Decision on Case Number 11/KPPU-L/2013 on the violation of Paragraph 5 Article (1) of the Law Number 5 of 1999 of electrical installation services in the Nunukan Regency area, the aspect was seen for determining the relevant market refers to the product and (the Decision on Case Number 11 /KPPU-L/2013). It is explained that the relevant market in terms of its products can be categorized as

the same relevant market if there are similarities in terms of use, type, and price level at the product with other goods. Based on the type of product, the determination of the maximum interest rate limit for LPMUBTI, the product is the same because, first, the LPMUBTI services have the use and designation to bring together lenders and loan recipients to enter into lending and borrowing agreements via the internet as for the type in the form of Peer-to-Peer Lending ([the Regulation of the Financial Services Authority Number 77/POJK.01/2016 on the Information Technology-Based Borrowing-Lending Services: Article 1 Number \[3\]](#)).

Second, all products offered by LPMUBTI organizers have standards through the AFPI code of conduct in providing products in the form of lending and borrowing services.

### G. Analysis of Market Prices Related to the Determination of the Maximum Limit of LPMUBTI Interest Rates By AFPI

The Regulation of the Business Competition Commission Number 4 of 2011 on the guidelines, Article 5, explains that a price fixing agreement is determined from the existence of a predetermined price for an item or service in a market through an agreement between parties in the same relevant market. ([the Regulation of the Business Competition Supervisory Commission Number 4 of 2011: Article 5](#)). In general, the market price of an item or service is formed due to the demand and supply of the goods or services. According to Andi Fahmi Lubis, Demand is the amount of goods and services that consumers want to demand at a certain price level ([Lubis, 2009: 42](#)); and supply is the amount of goods and services that producers want to offer at a certain price level ([Lubis, 2009: 43](#)). According to Mustafa Kamal Rokan, the existence of a price fixing agreement will result in the inability of the market law regarding prices formed from the supply made by producers and the demand made by consumers. the non-applicability of the market law occurs because of the intervention that is usually carried out by the government to set the lowest price and the highest price (Sugiarto dan Tedy Herlambang, 2007: 73). The following is a picture of the consequences of an intervention in the market.



**Figure 3.1** Floor Price and Ceiling Price

Source: Microeconomics book a comprehensive study

These interventions are usually used to protect consumers by setting the highest and lowest prices. Surely, the determination of the highest price and the lowest price is in accordance with the reasonableness of the Indonesian economy. The agreement regarding the determination of the maximum limit of interest rates can have an impact on the market balance to be disturbed due to the intervention carried out by the Association of LPMUBTI services. The intervention is in the form of floor price. Thus, the determination of prices may result in market imbalances due to market prices that can change at any time unnaturally. However, there is an agreement to determine the maximum interest rate limit of 0.8% per day by the organizers in the same relevant market.

#### H. *Per Se Illegal* Analysis in the Determination of the Maximum Limit of LPMUBTI Interest Rates

The *Per se Illegal* approach looks at an act; whether the act violates the provisions of the formulation without any justification or considering consequences. The Law on Competition in Indonesia classifies acts such as boycott agreements, price fixing agreements, and zoning agreements as the examples of actions that can be classified using *Per Se Illegal*. In addition to Indonesia, the United States considers that the act of fixing prices is horizontal as well as fixing vertical prices (Sugiarto dan Tedy Herlambang, 2007: 704) categorized as *Per Se Illegal* on the grounds that it is to protect consumers or protect the business actors themselves (Decision on Initiative Case Number: 05/KPPU-I/2003: 8-12). In contrast to the concept of the Rule of Reason, in addition to complying with the provisions of the elements contained in the Act, the impact of the agreement must also be considered.

The court has also decided cases related to price fixing using a *per se illegal* approach. The case of Initiative Number 05/ KPPU-I/1 explains that the AC city bus fare is set at Rp3000 by the highway transport association (Organda –*Organisasi Angkutan Darat*). The action is carried out by sending an application to the Governor of Jakarta Special Region. Subsequently, on September 4, 2001, the application was approved through the Letter Number 2640/-1.811.33 on Adjustment of transportation fares. Following the approval from the Governor, on September 5, 2001, the Organda issued the Decree Number SKEP-115/DPD/IX/2001 on the Adjustment of Tariffs for Public Transportation of AC City Buses in the Jakarta Area (the Decision on Initiative Case Number 05/ KPPU-I/2003: 13). In the Case, KPPU only proves that it is related to the existence of an agreement made by Organda, which is made in writing and decides that the Organda has determined the price. Thus, based on the illegal perspective, the determination of the maximum interest rate limit by the AFPI is a prohibited act because the maximum determination has fulfilled the elements contained in Article 5 of the Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and also the *per se illegal* approach do not see the consequences of the existence of the agreement.

Therefore, if the agreement has fulfilled the prohibited elements of the agreement, the agreement is considered to have violated business competition.

## I. Analysis on the AFPI Code of Conduct Position

Code of ethics is a norm in the form of regulation of a person's behavior in a certain environment. The arrangement is made in writing in which there are moral principles that function as a tool to regulate all good and right actions as well as wrong and bad actions in an environment (Imron, 2012: 163). The AFPI members in carrying out their activities must act in accordance with the code of ethics. The birth of the AFPI's code of ethics is actually based on three reasons. First, there is an obligation that the operator must join an association that has been appointed by the Financial Services Authority. Second, the formation is related to the OJK supervision in the form of market conduct, namely associations can regulate what has not been regulated by the Financial Services Authority. Third, it was intended to maintain the reputation of the LPMUBTI industry from practices that harm consumers. The maximum limit for the application of interest issued by the AFPI is 0.8% per day (maximum limit for consumer loans). However, the determination was not made by the competent authority and was not included in the Regulation of the Financial Service Authority Number 77 of 2016 on the LPMUBTI. The interest rate 0.8% is only part of the code of ethics compiled by the AFPI.

Essentially, the code of conduct is a written rule. However, it should be noted that the implementation of this code of ethics only comes from the moral awareness of the members. Likewise, it happens to the acceptance of sanctions, if the members of the association violate the sanctions or fines from the association organization. Therefore, the application of the AFPI code of conduct basically only applies internally to the organization. However, due to the absence of an official association appointed by the OJK, other than AFPI, the application of the association organization applies externally as statutory regulations. According to Prof. JHA Logemaan, laws and regulations are regulations that bind in general and are valid outside (Khairul Fahmi, 2020). Empowering Out has the meaning that a regulation must aim to the public, not to the party who formed it.

It is different, for instance, from the implementation of the code of ethics for the advocate profession. The code of ethics for advocates must clearly be followed because Article 29 Paragraph (1) of Law Number 18 of 2003 on Advocates states that (the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates: Article 29) advocacy organizations shall establish and implement a code of ethics for the Advocate profession for its members. In the article, the expression *to determine* means to make a decision; or to decide (Indonesian Dictionary Editor: 1515) (Indonesian Dictionary Editor: 1515); and to run (Big Indonesian Dictionary, 799). In addition, the code of conduct made by the AFPI cannot be categorized as a

statutory regulation because it is not a legal product ([the Law Number 12 of 2011 on the Establishment of Legislation](#)).

#### IV. Conclusion

The existence of conscious parallelism by the AFPI and the determination of the maximum loan interest rate of 0.8% per day on the LPMUBTI services can be categorized as a price fixing agreement. It is because the determination of the maximum interest rate limit is not regulated through direct government regulations. Rather, the association standardizes the maximum amount of the LPMUBTI loan interest rates through behavioral guidelines where the maximum limit is not in accordance with considerations of fairness and the national economy. Thus, due to the proof of the price fixing agreement using the Per Se Illegal approach, if the elements of the article have been fulfilled, then the agreement will be automatically prohibited without seeing the consequences of the agreement.

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