



LEGAL PROTECTION FOR VICTIMS IN AGREEMENT ON ONLINE LOAN SHARKS PRACTICE IN INDONESIA

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Abstract

Indonesia's economic growth is currently experiencing tidal economic growth. During this pandemic, Indonesia's economic conditions have become very unstable. One means to improve the social economy in a country is by providing loans from official financial institutions in the form of money or capital to people in need. However, in practice, this situation used by unscrupulous persons (loan sharks) to obtain a large profit, by providing funds/capital for people who need it with a simple and easy condition, but requiring high interest and high risk and adversely affect society when unable to fulfill a required agreement. Nowadays the practice of loan sharks in the community has evolved considerably along with the development or advancement of technology. The former borrower must meet directly with the lender (loan sharks). Now the practice of the moneylenders already "online" the emergence of financial services based on digital technology or financial technology (fintech). The problem arising from the practice of Loan Sharks has been very much in the midst of Indonesian society, such as acts of harassment / unlawful acts in billing to borrowers. Of course, the presence of the country needed to provide legal certainty to achieve order and justice in society. Therefore, this research focuses highlights on the validity of the agreement that is the basis of the legal relationship between borrowers and the lender; The legal consequences of such agreement; and legal protection for victims in agreement on the practice of online loan sharks in Indonesia. The research used is normative juridical research, with a statutory approach and a conceptual approach. This research can be known criteria of a valid agreement so that can be determined legal protection efforts that can be given to victims due to the agreement on the practice of online loan sharks.

Keywords : Financial Technology (Fintech), Agreement, Legal Protection, Loan Sharks Practices

1. INTRODUCTION

Technology cannot be separated into social life. Technological advances in the economy are used to improve the welfare of society to create a society that has a better life. Current technological advancement is financial technology. According to The National Digital Research Center (NDRC), fintech is an innovation in the financial sector. This is the advancement of modern technology. With the existence of fintech, it can make financial transactions faster, more practical and safer.

One of the fintech products is Peer to Peer Lending (P2P), as regulated in Article 1 number (3) of the Financial Services Authority (OJK) Regulation Number 77 / POJK.01 / 2016, concerning Information Technology-Based Borrowing and Lending Services, states that:

Information Technology-Based Lending and Borrowing Services is the provision of financial services to bring together lenders and loan recipients in the context of entering into a loan and borrowing agreement in the rupiah currency directly through an electronic system using the internet network.

Peer to Peer Lending simplifies the borrowing process compared to money lending by banks so that people are more likely to choose peer to peer lending offered by fintech companies with an easier process to get a loan.

Fintech companies are in demand in Indonesia and are sought after by the public, for the following reasons:

1. A large number of internet and smartphone uses, this causes the need for faster and more practical online financial transactions;
2. Fintech is more practical than conventional financial institutions that still use traditional systems;



3. The mushrooming of businesses that use internet technology;
4. The online financial industry that is simpler in the start-up business; and
5. The use of social media that can allow fintech to develop rapidly, the existence of data that users upload to social media enables customer risk analysis.

The use of online loan services with peer to peer lending has been widely used by the community. The convenience provided in borrowing credit funds makes it one of the advantages over banking. Borrowers do not need to bother visiting the bank, within days the loan funds can be disbursed. The legal problem that often occurs in the online lending and borrowing process is the misuse of data belonging to borrowing consumers without permission.

The violations that often occur by consumers are:

1. High-interest rates and no restrictions;
2. Collections made not only through the borrower but also all borrower contacts;
3. Billing utilizing threats, slander, and sexual harassment;
4. Distribution of personal data;
5. Unclear admin fees;
6. Has made a payment, but it is not recorded in the system;
7. Billing is done by different people;
8. KTP data is used by application administrators to apply for loans in other applications;
9. The virtual account provided is incorrect, causing interest to continue to grow and billing to

continue.

The public must understand the various risks that can arise from this online loan business. In addition to the convenience and benefits obtained by online loans without the use of collateral, fintech companies' billing can be in the form of threats, the practice of loan sharks or loan sharks is an act against the law and action that indicates a criminal act.

2. LITERATURE REVIEW

Financial Technology is regulated in Article 1 number 3 of the Financial Services Authority (OJK) Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Borrowing and Lending Services, states that:

Information Technology-Based Lending and Borrowing Services is the provision of financial services to bring together lenders and loan recipients in the context of entering into a loan and borrowing agreement in the rupiah currency directly through an electronic system using the internet network.

Article 1 number 1 of Bank Indonesia Regulation No. 19/12/PBI/2017 on The Implementation of Financial Technology states that:

Financial technology is defined as the use of technology in the financial system that produces new products, services, technology, and/or business capital and can have an impact on monetary stability, financial system stability and/or efficiency, smoothness, security, and reliability of the payment system.

According to Elsie F Hakim, financial technology or fintech is everything related to financial technology. The scope of fintech does not just peer to peer lending (P2P) or commonly known by the public with online lending, but the scope is broader than that. The point is that all financial services that use online platforms can be classified as fintech.

According to Elsie F. Hakim said the role of fintech during the Covid-19 pandemic was classified into 3 (three), namely:

1. User Side
He explained, because of the pandemic, many people realized the importance of investing. Besides, people will be interested in enrolling in health insurance.
2. The platform provider side
As a result of this pandemic, peer to peer lenders will be more careful in extending their credit to debtors so as not to delay payments by debtors.
3. Regulatory side



Social distancing causes a change to inhabit.

Coronavirus disease 2019 (Covid-19) pandemic has caused the financial services industry, including financial technology, peer to peer lending, or online loans to be suppressed. The increasing risk of non-performing loans is one of the problems today. There needs to be a restructuring effort for borrowers or borrowers affected by the Covid-19 pandemic to reduce or even lose the ability to pay this debt.

Director of Fintech Regulation, Licensing and Supervision of the Financial Services Authority (OJK), Hendrikus Passagi, stated that his party could not instruct fintech companies to restructure borrowers, because the fintech company does not own the capital of the loan. He explained that restructuring is a common business activity in the fintech industry. According to him, in the loan agreement between investors and borrowers, there is a restructuring scheme.

The OJK has issued a letter numbered S-360 / NB.21 / 2020 regarding Loan Restructuring in the Information Technology-Based Borrowing and Lending Service Industry (LPMUBTI) related to Covid-19. The contents of the letter stated that Peer to Peer Lending fintech is a civil engagement that involves the lender as a creditor and the borrower as a debtor. The function of the fintech company Peer to Peer Lending is only as a platform that brings together lenders and borrowers. Because it functions only as a platform, it does not have the authority to restructure loans unless there is power from the lender. The party authorized to restructure is the lender.

With the presence of fintech, it helps people meet the increasing needs for digital transactions during a pandemic. There are 2 (two) things that are the driving factors in facing The New Normal period, namely:

1. Digital transformation phase from possibility to faster industry 4.0.

This pandemic has accelerated people's ability to make better use of technology, thus becoming a catalyst for industry 4.0. Ease of transactions is a key that is more relevant for today's consumers. The financial industry is required to increase its digital transformation, prepare a mature strategy towards industry 4.0. However, education and digital literacy in terms of finance must also consider balancing industrial conditions with people's readiness to face the era of the industrial revolution 4.0.

2. People are upgrade to become smart consumers

Economic conditions that are difficult for people to resolve to become smart consumers, including financial management. This can also be a positive signal for increasing financial literacy in Indonesia. However, this positive signal needs to be accompanied by the readiness of financial industry players to provide financial products or services that have added value and are able to support people's productivity.

3. RESEARCH METHODS

In this research, the author uses the normative juridical legal method, namely examining the normative law by taking a fact approach and a statute approach. To discuss the problem, use the existing rule of law and library materials as sources in this study. Legal resources obtained through secondary legal materials that have been studied previously and related in this research.

In conducting this research using a qualitative approach. A qualitative approach is a way of analyzing research results that produce analytical descriptive data, which is data that is expressed in writing or orally, real behavior, learned as a whole.

4. RESULTS AND DISCUSSION

a. The validity of Financial Technology Agreements

The legal basis for online lending and borrowing activities at Fintech Peer to Peer Lending is Article 1 number 3 of the OJK Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services. This shows evidence of the validity of lending and borrowing through online media.



Peer to Peer Lending is a platform that uses digital technology that brings together loan recipients who need business capital and lenders. Between the giver and the recipient are brought together in the application provided by the Peer to Peer Lending Operator in the form of an online loan application. In its implementation, it requires electronic media and internet networks. Peer to Peer Lending A new step in changing the money lending and borrowing service that has been done conventionally. Peer to Peer Lending in its lending focuses on small and microloans with a short loan period.

Fintech activities conducted through Peer to Peer Lending are legal or not based on the validity of a credit agreement. The validity of an agreement must fulfill the elements in Article 1320 of the Civil Code. it requires 4 (four) conditions, as follows:

1. Agree to commit himself
The agreement is an adjustment to the statement of the will of the parties, as regulated in Article 1320 paragraph (1) of the Civil Code.
2. Proficient in acting
R. Subekti stated that every person who has grown up and is physically and mentally healthy, according to the law is capable of acting.
3. A certain thing
Goods that are made the object of a transaction or agreement are goods with clear status and specifications.
4. A lawful cause
Transactions or agreements may not conflict with the law, decency, and public order.

b. Legal Consequences of Credit Agreements through Financial Technology

In its implementation, the credit agreement through fintech involves 3 (three) parties including the fintech organizer, which is each party that organizes fintech and fintech users who utilize digital or electronic technology. The legal relationship between the parties in fintech is a legal relationship that places the rights and obligations between the parties and vice versa.

The legal relationship between the parties in fintech is due to an agreement, in the form of an electronic agreement. Agreements made by the parties are contained in electronic documents. The electronic document must contain the agreement number, the date of the agreement, the identity of the parties, the provisions regarding the rights and obligations of the parties, the loan amount, the loan interest rate, the amount of the commission, the period, details of related costs, provisions regarding fines (if any), dispute resolution mechanisms and a settlement mechanism in the event the organizer is unable to continue its operational activities.

In the credit agreement through online fintech, all agreements are made in electronic contracts. This is following Article 1 number 17 of Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, which states that an Electronic Contract is an agreement of the parties made through an Electronic System. The law forces of electronic contracts are regulated in Article 18 paragraph (1) of Law Number 11 of 2008 on Electronic Information and Transactions, which states that Electronic Transactions that are contained in Electronic Contracts bind the parties.

Electronic contracts are deeds underhand but can be used as evidence. The power of proof is not as perfect as an authentic deed. In the deed underhand, there are 2 (two) shortcomings or weaknesses. First, there are no witnesses in the preparation of the deed underhand, making it difficult to prove it. Second, if one of the parties denies the signature, then the truth must be proven before the court.

c. Legal Protection for Victims in Online Loan Sharks Practices

Legal arrangements regarding the fintech business are still based on the Civil Code, only a few types of fintech have regulations. Among them is the Peer to Peer Lending fintech which is regulated in the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 on Information Technology-Based Lending and Borrowing Services. This regulation still has weaknesses, including



regarding the supervision carried out by the OJK only limited to registered Peer to Peer Lending fintech. Therefore, the OJK is experiencing obstacles in carrying out legal protection.

There is a need for a separate law regarding fintech so that there are administrative and criminal sanctions for Fintech Peer to Peer Lending companies that carry out threats, high-interest rates, and dissemination of personal data. So far, the OJK Regulation has only applied administrative sanctions, for example, fines and revocation of company operational permits.

Protection of personal data disseminated by fintech companies Peer to Peer Lending that carries out billing by threatening and disseminating consumer personal data, it has not been regulated in Law Number 8 of 1999 on Consumer Protection and OJK Regulations. Therefore, it is necessary to form a law to accommodate consumer protection in the future. This dissemination violates the privacy rights of consumers, as regulated in Article 28 G paragraph (1) of the 1945 Constitution, which states that:

Everyone has the right to protection of himself, family, honor, dignity, and property under his control, as well as to the feeling of security and protection from the threat of fear to do or not do something which is a human right.

This is the government's obligation to provide security guarantees in the framework of protecting human rights related to privacy rights. Peer to Peer Lending fintech companies must guarantee not to disseminate such data without permission.

Peer to Peer Lending fintech companies in setting interest rates do not have standardization and do not follow bank lending rates, as seen in Article 17 paragraph (1) of the OJK Regulation Number 77 / POJK.01 / 2016, states that:

The Operator provides input on the interest rates offered by Lenders and Borrowers by taking into account the fairness and development of the national economy.

Based on this article, there is no certainty regarding the standardization of interest rate determination from fintech companies Peer to Peer Lending, giving interest takes into account reasonableness. Elucidation of Article 17 of the OJK Regulation Number 77 / POJK.01 / 2016, states that:

Article 17 Paragraph (1) The fairness value can be measured through, among others, the inflation rate or the national interest.

Even this explanation does not provide clarity regarding the fairness value in setting interest rates for Peer to Peer Lending companies.

The OJK has the authority to be able to make regulations and decisions of the Financial Services Authority. It is regulated in Article 6 letter c of Law Number 21 of 2011 on the Financial Services Authority, which states that:

The OJK carries out regulatory and supervisory duties on:

- a. financial service activities in the banking sector;
- b. financial service activities in the capital market sector; and
- c. financial service activities in the insurance sector, pension funds, financing institutions, and other financial service institutions.

Setting this loan interest rate in a Peer to Peer Lending fintech company is needed to minimize interest rate issues and online loan sharks practices that are often used by certain groups. This is a form of protecting the interests of consumers and society.

According to A. Hamid S. Attamimi stated that statutory rules are all legal rules made and stipulated by an authorized institution in certain forms and procedures containing sanctions and binding for the society.

5. CONCLUSION

1. The legal basis for online lending and borrowing activities at Fintech Peer to Peer Lending is Article 1 number 3 of the OJK Regulation Number 77 / POJK.01 / 2016 on Information Technology-Based Lending and Borrowing Services. This shows evidence of the validity of lending and borrowing through online media. In the credit agreement through online fintech, all agreements are made in electronic contracts. This is following Article 1 number 17 of Law



- Number 19 of 2016 on Amendments to Law Number 11 of 2008 on Electronic Information and Transactions, which states that an Electronic Contract is an agreement of the parties made through an Electronic System.
2. Electronic contracts are underhand deeds but can be used as evidence. The power of proof is not as perfect as an authentic deed. In the deed underhand, there are 2 (two) shortcomings or weaknesses. First, there are no witnesses in the preparation of the deed underhand, making it difficult to prove it. Second, if one of the parties denies the signature, then the truth must be proven before the court.
 3. The OJK has the authority to be able to make regulations and decisions of the OJK. It is regulated in Article 6 letter c of Law Number 21 of 2011 on the OJK. Setting this loan interest rate in a Peer to Peer Lending fintech company is needed to minimize interest rate issues and online loan sharks practices that are often used by certain groups.

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