

**JURIDICAL ANALYSIS OF PEER TO PEER LENDING
ACCORDING TO CONTRACT LAW**

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ABSTRACT : Logic business law understood that the business world confront businesses in business activity, and the contract is an important legal instrument which establish legal relationship and secures business transactions. The rapid growth of information and technology the internet bring up transactions financing startup in financial technology of crowdlending and here contract into very important to be set .This research first, aimed at outlines crowdlending benefits for financing sector startup, second, to explain the functions of/the role of contract financings crowdlending services. Research methodology used is the method research law that is normative, with the methods approach of the concept and principle in a contract. The result of this research suggests that rule of POJK 77/2016 not explained in detail on the regulations peer to peer lending contract so the marketplace in line KUHPperdata and having its own innovations, there is the possibility of risk and risk failed to pay, the risk of failure it infrastructure, the risk of fraud by borrowers and risk reputation.

Keywords: Peer to peer lending; Electronic Contract

INTRODUCTION

The constitution of Indonesia states that economic development must in fact be carried accordingly by including the role of society in the frame of economic democracy. Article 33 paragraph (4) of the 1945 Constitution states that economic democracy is implemented with the principles of togetherness, fair efficiency, sustainable, environmentally friendly, independent and maintains a harmonious relationship between economic progress and national economic unity. This economic democracy is certainly the manifestation of equality before law principle in a democratic nation, while the ultimate goal of economic democracy is to create the welfare of the people of its nation.¹ The government, institutions in the financial sector and business actors plays an important role in economic development of Indonesia. The government as policy maker and regulator is expected to provide a favorable climate for the business world, which in turn can encourage increased economic development.

¹ Kurniawan, *Hukum Perusahaan Karakteristik Badan Usaha Berbadan Hukum dan Tidak Berbadan Hukum Di Indonesia*, Yogyakarta: Genta Publishing, 2014, p. 1

Indonesia is a country that has quite a large amount of MSMEs, especially for small-scale MSMEs, can easily be found conducting business or service in everyday life. Small business is defined as an independent productive economic activity. This business is conducted by individuals or business entities that are not a subsidiary or branch of a company that is owned, controlled or is a part, either directly or indirectly, of a medium or large business and meets other criteria.² Small-scale MSMEs in Indonesia currently face two main problems in the financial aspect, namely the mobilization of initial capital (startup capital) and access to long-term working and financial capital for investments that are indispensable for long-term output growth. Although in general initial capital comes from personal capital or informal sources, these sources of capital are often insufficient for production activities, especially the investment.³

4.0 industrial revolution era has disrupted almost every aspect of life, almost all people now are facilitated by the internet, internet service is now readily available in almost every region of the country. The development of information technology and the internet has also penetrated into the collection of venture capital funds called Peer to Peer Lending, hereinafter abbreviated as P2PL. P2PL is an electronic media in the form of a website that brings together lenders (investors/creditors) and borrowers, they are then met in a online platform in the form of website or application owned by the provider or called the Marketplace.

The main aspect that affects the increase of credit effectiveness through the internet is interactive, flexible, and responsive media which provide the ease of credit activity for new business actors. Information technology that collaborates with communication technology makes internet access (interconnection networking) easy and inexpensive. Easy access to credit by only using the internet network can be done anywhere, but it is necessary to analyze how the contract and the risks involved in this P2PL service.

Indonesia had issued regulations regarding information technology-based lending and borrowing which are regulated in the Financial Services Authority Regulation Number 77 /POJK.01/2016 concerning Information Technology-Based Borrowing and Lending Services. Article 1 paragraph 3 of a quo regulations provides an explanation of Information Technology-Based Lending and Borrowing Services as the provision of financial services to bring together lenders and loan recipients in the context of entering into a loan and borrowing contract in rupiah currency directly through an electronic system using the internet network.⁴

² <https://kompaspedia.kompas.id/baca/paparan-opik/potret-dan-tantangan-umkm-di-indonesia>, accessed 11th January 2021

³ Ibid, p. 74

⁴ See Financial Services Authority Regulation Number 77 /POJK.01/2016 concerning Information Technology-Based Borrowing and Lending Services

The financial sector does have an important role to play in strengthening the country's economy. The difference between the conventional financial system (banking) and the P2PL system can be seen from the application process which is much shorter when compared to the process of applying for a loan at a bank in conventional ways. In addition, another advantage of being a loan recipient is getting better yields even in a shorter period of time. It is undeniable that P2PL services attract consumers' attention to make loans through the digital media, but besides the conveniences, loan recipients and lenders should understand the risks that may occur during and after the transaction.

According to the regulations of the Financial Services Authority on Information Technology-Based Lending and Borrowing Services, it is explained that there are contracts between loan recipients, providers and lenders. Contracts on P2PL services are clearly expressed online which means the parties do not meet face to face to express the contract. Although the implementation of lending and borrowing is facilitated by the presence of technology, the risk that will occur will definitely be greater so that risk transfer is required. Regarding the frequent occurrence of problematic contracts, it is important to understand that almost all business activities are legal actions in the realm of business law, especially contract law. The logic of business law understands that in the business world that brings together people in business activities, contracts are an important instruments in designing a legal relationship and securing business transactions.⁵ In regard to this P2PL service, the contract is very important to observe because the contract is an instrument of exchange of rights and obligations between the parties so that with the existence of a contract, business activity is expected to be able to take place fairly, certainly and efficiently in accordance with the agreement of the parties expressed the contract. It can be understood that the function of the contract serves as a basis of legal relationship between the two parties which bind each other to achieve certain goals, minimize conflict and risk management, as valid evidence and legal certainty.

PROBLEM

Based on the background described above, the problem formulation of this article is how Peer to Peer Lending Services is analysed based on contract law and what risks may arise in Peer to Peer Lending Service contracts.

⁵ Syaifuddin Muhammad, *Memahami Kontrak dalam Perspektif Filsafat, Teori, Dogmatik, dan Praktik Hukum*, (Bandung: CV Mandar Maju, 2012) p. 3

METHOD

This research is a normative juridical research, with the type of doctrinal research.⁶ This research is using conceptual approach.⁷ Data collection is done by rounding up primary, secondary and tertiary legal materials.⁸ The search for legal materials is carried out through literature studies. Data analysis was carried out in a qualitative juridical or in-depth, comprehensive or holistic manner to obtain conclusions on the problems being studied.⁹

DISCUSSION

Peer to Peer Lending

Peer to peer lending is used to describe online marketplaces where lenders (also referred interchangeably as investors) can lend to individuals or small businesses.¹⁰ The above short historical reference, leads to the perception that peer to peer lending is (a new twist on a centuries old idea . Actually, peer to peer lending or P2P lending is an abbreviation for person to person lending and the actual difference between it and the traditional interpersonal lending is the use of contemporary technology as the internet and electronic media. Peer-to-peer lending, also known as person-to-person lending, peer-to-peer investing, crowd lending and social lending, abbreviated frequently as P2P lending, is the practice of lending money to unrelated individuals, or "peers", without going through a traditional financial intermediary such as a bank or other traditional financial institution. This lending takes place online on peer-to-peer lending companies' website using various different lending platforms and credit checking tools. Thus, these sites generally are thought to have the greatest potential to revolutionize the existing financial market.¹¹

Agreement or Contract

According to Article 1313 of the Civil Code, an agreement is an act pursuant to which one or more individuals commit themselves to one another. From that definition therefore arises a legal relationship between two or more people called an agreement in which there are rights and obligations of each party. The contract is the source of the obligation. Some provisions contained in the Civil Code that can at least put forward some guidelines to

⁶ Soetandyo Wignyosoebroto, "*Hukum, Paradigma, Metode dan Dinamika Masalahnya*", Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2002

⁷ Johnny Ibrahim, "*Teori dan Metodologi Penelitian Hukum Normatif*", Malang: Bayumedia Publishing, 2007, page 300

⁸ Soerjono Soekanto dan Sri Mamudji, "*Penelitian Hukum Normatif: Suatu Tinjauan Singkat*", Ed.1, Cet.3, Jakarta: Rajawali, 1990, pp.14-15

⁹ See D. H. M Meuwissen, Legal Studies (Translator B. Arief Sidharta), Pro Justitia, Jurnal Unika Parahyangan, Tahun XII No. 4, October 1994, page 26-28 in Muhammad Akib, Dissertation, Doctorate Program, Undip, 2012

¹⁰ Alexandra Mateescu, "*Peer-to-Peer Lending*", Data & Society Research Institute, 2015, p. 2

¹¹ Simitas s. Fotios, "*Peer To Peer Lending*", Greece: Attorney At Law, Kavala, 2013, p. 4

provide interpretation in the implementation of the agreement as follows¹²:

1. All legally executed agreements shall bind the individuals who have concluded them by law. They cannot be revoked otherwise than by mutual agreement, or pursuant to reasons which are legally declared to be sufficient. They shall be executed in good faith. (Article 1338 paragraph 1)
2. If the wording of an agreement is clear, one shall not deviate from it by way of interpretation. (Article 1342)
3. Wording which is open to two kinds of interpretation shall be interpreted in the sense which corresponds most with the nature of the agreement. (Article 1345)
4. All stipulations, contained in an agreement, shall be interpreted having regard to their relationship to one another; each shall be interpreted having regard to its relationship to the whole agreement. (Article 1348)
5. If a party has specified something in an agreement for the purpose of clarifying the contract, then he shall not be considered to have restricted and limited the binding validity by law, which is contained in the unexpressed cases. (Article 1351)
6. If the wording of an agreement is open to several interpretations, one shall ascertain the intent of the parties involved rather than be bound by the literal sense of the words. (Article 1343)
7. If the wording is ambiguous, it shall be interpreted in a manner which is customary in the country or in the location where the agreement was entered into. (Article 1346)
8. Customary stipulations shall be deemed to be implied in the agreement, notwithstanding that these have not been expressed. (Article 1347)
9. In the event of ambiguity, the agreement shall be interpreted against the party who stipulated something, and in favor of the party who has bound himself thereto. (Article 1349)
10. All agreements must be executed in good faith. (Article 1338 paragraph 3)

Theory of Legal Justice, Certainty, and Expediency

Gustav Radbruch called legal justice, certainty and expediency as "the three basic ideas of law" or "three basic values of law"¹³, which means they can be equated with legal principles. Out the three principles, the frequent main focus is the issue of justice. In this context, Radbruch teaches¹⁴: "That we must use the principle of priority where the first priority always falls on justice, then expediency, and finally certainty."

¹² Ibid, p. 98

¹³ Gustav Radbruch, 1950, "Legal Philosophy, in *The legal Philosophies of Lask*", Radbruch, and Dabin, Translated by Kurt Wilk, Harvard University Press, Massachusetts, hal. 107. See also Achmad Ali, 1996, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Ghalia Indonesia, Bogor, p. 67.

¹⁴ Achmad Ali, "*Menguak Tabir Hukum)Suatu Kajian Filosofis dan Sosiologis*", Bogor: Ghalia Indonesia, 1996, p. 96.

Juridical Analysis of Peer to Peer Lending According to Contract Law

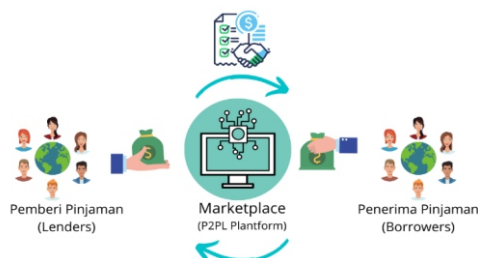
Micro, Small and Medium Enterprises (MSMEs) are important part of the national economic system, this is due to the large number of small businesses compared to large-scale industrial enterprises, and it excelled in employing more labor. According to Law Number 20 of 2008 on Micro, Small and Medium Enterprises, Small Businesses defined as productive economic enterprises that are independent, carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or become part of either directly or indirectly from a medium or large business that meets the criteria for Small Business.¹⁵

The aspect of capital becomes one of main weakness in small-scale MSMEs in regard of business development. It is because capital is the main factor needed to develop a business unit. Generally, small businesses are private businesses or companies which rely on capital from the owner in a limited amount. The rapid growth of small businesses in Indonesia is accompanied by the rapid development of information technology, which is being taken advantage by several institutions to provide various kinds of facilities, one of which is the P2PL service. Not a few small business actors find it easier to make loans through digital-based services compared to making loans through banks.

Business in the financial services sector has innovated in such a way that it reached the stage of digitization which delivered a new innovation called Fintech (Financial Technology). This business innovation has shifted conventional financial industry services, due to the high public need for financial services with ease of transactions and speed of access. As discussed earlier specifically, this innovation is peer to peer lending (P2PL).

Peer to peer lending (P2PL) is a form of crowd-funding used to increase loans which are then repaid with interest. Or P2PL is a technology platform that digitally brings together borrowers who need capital and lenders. P2PL is attractive to small business actors because it provides loans with or without collateral, besides that P2PL has a fairly low overhead offer with credit scoring and innovative algorithms so that this service can fill financing needs.

The implementation of loans through P2PL can be illustrated like this:



¹⁵ Law Number 20 of 2008 on Micro, Small and Medium Enterprises.

¹⁶ Tampubolon Heryucha Romanna, *Seluk-Beluk Peer To Peer Lending Sebagai Wujud Baru Keuangan Di Indonesia*, Jurnal Bina Mulia Hukum, Bandung, 2019, p. 191.

The illustrated picture above explains the simple process of lending through P2PL, in the P2PL loan system there are 3 legal subjects, namely the Lender, Marketplace (P2PL Platform) and Borrowers. The lenders (can be called investors) can come from within and/or abroad, whether individuals, legal entities, or international institutions. This means that anyone can become a lender on an online loan platform. Investors have access to track the loan application data on the dashboard provided in the peer to peer lending platform. Investors can see all data for each loan application, especially on relevant data related to borrowers such as income, financial history, loan purposes (business, health, or education) and their reasons, and so on. If the investor decides to invest in the loan, the investor can immediately invest a certain amount of funds after making a deposit according to investment objectives. The borrower will pay a number of loan funds and investors will get benefits in the form of the principal and interest on the loan that has been agreed from the beginning. The amount of interest will depend on the interest rate on the loan invested. The investment value starts from one hundred thousand rupiah to two billion rupiah.¹⁷

The borrower must come from and be domiciled in the jurisdiction of the Republic of Indonesia, either an individual or an Indonesian legal entity. In this case the borrower's data and information have been described in Data and Information Management in the Financial Services Authority Circular Letter Number 18/SEOJK.02/2017 on Information Technology Risk Management and Management in Information Technology-based Lending and Borrowing Services. When loan recipients are about to transact on the peer to peer lending platform, the loan recipients need to upload all the documents required to apply for a loan online, including documents containing financial reports for a certain period of time and also the purpose of the loan. Loan applications from loan recipient data can be accepted or rejected.¹⁸

Information technology-based lending and borrowing service providers are Indonesian legal entities that provide, manage and operate information technology-based lending and borrowing services from the lender to the recipient of the loan whose source of funds comes from the lender. The Operator may cooperate with information technology-based financial service providers in accordance with the provisions of laws and regulations.¹⁹

When the lender is about to provide a loan and the loan recipient wants to get a loan through the P2PL transaction, the pre-contractual stage occurs. In the pre-contractual stage, offer and

¹⁷ Falahiyati Nurhimmi, *Tinjauan Hukum Kontrak elektronik Dalam Pinjam Meminjam Uang Berbasis Teknologi Informasi* (Transaksi Peer To Peer Lending), Justitia, Medan, 2020, p. 5

¹⁸ Ibid, p. 6

¹⁹ Ibid

acceptance which are preliminary actions before the agreement occurs, formed. Before carrying out loan activities, the borrower registers himself through an account provided by the provider. Then apply for the desired financing facility. The initial stage of the financing application process is that the loan recipient must already have a business that is actively running and provide digital platform such as Instagram, Tokopedia or other e-commerce media as a form of separate assessment for the provider to channel funds to loan recipients. In addition, loan recipients must meet the conditions that must be satisfied in order to apply for consumer financing facilities, namely:

- a. Copy of borrower's ID card;
- b. Copy of family card;
- c. Copy of savings account/current account;
- d. Copy of practice license/professional license/trade business license;
- e. Copy of Taxpayer Registration Number;
- f. Copy of spousal agreement (for married borrower);

After applying for a financing facility, and it has been approved by the provider, the provider will then display the profile of the prospective loan recipient with the amount of funds needed by the prospective loan recipient, then the organizer will provide a predetermined time for each prospective loan recipient to get all the funding, because in the P2PL loan system, 1 (one) loan recipient can get loans from several lenders.

When the funding is approved by the provider, the loan recipient and the provider enter a contractual stage that bind both parties. The contract will protect the business processes of the parties, if the contract is legally made then it becomes the determinant in the next legal relationship process. The legal relationship between the lender and provider is expressed upon a contract set out in an electronic document between the two parties.²⁰ In this contract, at least the number of the contract, the date of the contract, 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, time period, details of related costs, provisions regarding fines (if any), dispute resolution mechanisms, and settlement mechanisms in the event the organizer is unable to continue its operational activities must be clearly stated.²¹ The most important aspect in a P2PL loan is the loan contract. Therefore, the peer to peer lending loan contract will be analyzed first as the basis for implementing the lending and borrowing contract. However, before discussing further, it is necessary to first understand the meaning of the contract itself.

²⁰ Article 19 paragraph (1) POJK No. 77/POJK.01/2016 on Information Technology Based Lending and Borrowing Services

²¹ Article 19 paragraph (2) POJK No. 77 POJK.01/2016 on Information Technology Based Lending and Borrowing Services

An agreement/contract according to Article 1313 of the Civil Code is defined as an act pursuant to which one or more individuals commit themselves to one another. Meanwhile, according to Achmad Busro contract is an agreement in which two or more people commit themselves to perform something in the context of wealth.²² Article 1233 of the Civil Code states that all contracts arise from an agreement, or by law. This provision implies that an agreement is a relationship between two or more parties in which one party is entitled to a performance, and one party is obliged to satisfy the performance. Agreements are words that are spoken or concretely manifested in a written form. The legal relationship that arises from an agreement is then manifested into a contract, thus the agreement also serves as a legal proof to both parties.²³

The Financial Services Authority (OJK) has issued a regulation regarding financial technology on December 28, 2016. Financial Service Authority Regulation (POJK) Number 77/2016 regulates specifically regarding information technology-based lending and borrowing services. This regulation contains 52 articles summarized in 15 chapters, including provisions about legal entities, capital, maximum loan limits, and the form of contract used. Financial Service Authority Regulation Number 77/2016 precisely regulates fintech whose business is channeling loans from investors to debtors or called by P2PL service. Unlike banking institutions, fintech company is prohibited from raising funds from third parties, or channeling their own money. The money lent to loan recipients is not money collected from the public which then goes to the cash of the fintech company.

The Financial Services Authority in Article 18 POJK 77/2016, states that there are 2 types of contracts, namely:

- a) Contract between the provider and the lender; and
- b) Contract between the lender and the borrower.

The philosophy behind expressing a contract is carrying out legal relations in a social interactions. Legal subjects, both persons and legal entities, have the legal ability to express a contract which would then form a legal relationship which aims to obtain rights and obligations in accordance with their respective interests.²⁴ That legal relationship is manifested in the form of a contract. Whether or not the contract is binding depends on the validity or invalidity of the contract made by the parties. The validities of a contract are regulated in Book III of the Civil Code in Article 1320, Article 1335, Article 1339 and Article 1347.

Article 1320 of the Civil Code can specifically be affirmed as the main legal instrument to test the validity of a contract made by the parties, it contains four conditions that must be satisfied

²² Achmad Busro, *Kapita Selektta Hukum Perjanjian*, Yogyakarta: Pohon Cahaya, 2013, page 72

²³ Iga Bagus Prasadha Sidhi Nugraha dan I Gede Yusa, *Jurnal Kertha Semaya*, Vol. 8 No. 5 Tahun 2020, page 692

²⁴ Dr. RH. Wiwoho, *Keadilan Berkontrak* (Jakarta: Penaku, 2017) page 77

for the validity of a contract, namely²⁵:

1. There must be consent of the individuals who are bound thereby;
2. There must be capacity to conclude an agreement;
3. There must be a specific subject;
4. There must be an admissible cause.

Most of the P2PL marketplaces in Indonesia provide a standard contract in which the terms and conditions are readily available so that loan recipients only have the option to take or reject the contract. The Financial Services Authority gives the marketplace the freedom to create and innovate in the implementation of P2PL, such as the application model, what is offered, up to the agreement model. In Indonesia, more and more companies are venturing into the world of fintech to become Peer to Peer Lending service providers, thus P2PL services in Indonesia are increasingly varied. Article 19 paragraph (1) POJK 77/2016 states that the contract of information technology-based borrowing and lending services between the provider and the lender must be set forth in an electronic document. However, these provisions do not explain in detail how the agreement should be made, which means that the principle of freedom of contract applies here. Thus, a standard clause that has satisfied the requirements in Article 1320 of the Civil Code and Article 1338 of the Civil Code, is valid as long as the material and formal elements are fulfilled.

Most of the marketplaces do provide contract in standard electronic form. On one hand, a standard contract is said to be said to be beneficial because it shorten process, effort and save costs because a standard contract can be signed immediately by the parties. However, for the party that does not directly take part in making of the clauses in the contract can become the injured party, in principle, both parties have equal bargaining position to formulate the clauses of the contract, but the other party must accept all the terms and conditions of the contract offered to him without any participation in contract formulation.

Standard contracts inflict unequal bargaining position for the parties in the contract. One party may benefit more than the other. The standard contract has the principle of "take it or leave it" which means there are only two options, namely agreeing to make a contract or not agreeing to make a contract.²⁶ It is true that over time, standard contracts do not always have a negative connotation because they aim to provide convenience to the parties involved. Therefore, Mariam Darus Badruzaman defines a standard contract or standard agreement as a contract or agreement whose contents are standardized and set forth in a form.²⁷

²⁵ DR. Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori, Dogmatik dan Praktik Hukum* (Bandung: CV. Mandar Maju, 2012), p.110

²⁶ DR. Muhammad Syaifuddin, *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori, Dogmatik dan Praktik Hukum* (Bandung: CV. Mandar Maju, 2012), page 110

²⁷ Op.Cit., p. 217

One of many disadvantages of a standard contract is injustice to one party. It may very well happen if the substance of the contract is more favorable to one party whose bargaining position is stronger.²⁸ Taking into account Daeng Naja's explanation, it can be understood that the factors that cause the imbalance bargaining position of the parties in the standard contract are:

1. The lack of or even absence of a chance for either party to bargain, so there is not much time to know the substance of the contract;
2. The contract provider usually has enough time to unilaterally think about the clauses in the contract;
3. The party that is presented with a standard contract has lower bargaining position so they can only take or reject the contract.

The rapid increase of technological advancement brought the development of internet-based services, it certainly had impacted the social interaction in communities, including in legal relations. In this era of disruption legal relations, in this context contract law, can easily be established through digital intermediaries facilitated by internet-based service providers. Based on Gustav Radburch's theory of Legal Justice, Expediency and Certainty, the goal of law itself is to achieve justice. Seeing the increased trend of standard contracts which contents are determined unilaterally by the party with higher bargaining power, it is clear that a balance and fairness has not been achieved, even though it is true that in the credit contract the party who has a higher economic level entailed to determine the contents of the contract. To satisfy the principle of freedom of contract for each individual without reducing the type of contract in Indonesia, the marketplace should provide space for loan recipients to choose and negotiate the type of contract the loan recipient will use, whether it is a standard contract or a non-standard contract. A non-standard contract means that the borrower entitled to negotiate the contents of the contract. This is supported by the Information and Electronic Transaction Law which regulates electronic documents that can be carried out in the form of email.

Communication and negotiation of offer and acceptance can be electronically done via email and website. The involved parties need to communicate to establish a contract, in this case email seems more practical than a website. There will be no problem whether the answers to requests for information via email come from humans or machines (databases).²⁹ Then it came to the legal expediency certainty, these two are also should be established to form justice. The benefit of this P2PL service opens great opportunities for startups to get capital easily and efficiently, by utilizing development of technology. Article 1266 of the Civil Code regarding

²⁸ Op.Cit., 220

²⁹ Assafa Endeshaw, *Hukum E-commerce dan Internet Dengan Fokus Asia Pasifik*, (Yogyakarta: Pustaka Pelajar, 2007) p. 247

the conditions for cancellation of a contract is a positive law that must be obeyed when the value to be achieved is legal certainty and justice. The legal consequence of this article on borrowers who are not active in the contract is a part that must be experienced by the parties in order to obtain justice and legal certainty because the existence of Article 1266 of the Civil Code is based on the truth of the article. This is to protect the parties involved in a reciprocal contract.

The risk that most likely occur in P2PL services are default, and fraudulent act of borrowers by falsifying business identity. The risk of default and fraud can occur because this method of service is done only through electronic transactions, without face to face meeting. As many know, the biggest risk in P2PL services is default, which means that the borrower cannot pay back the loan. This is clearly detrimental issue to P2PL provider and lenders. P2PL provider can mitigate the risk in a preventive actions such as analyzing the identity of the loan recipient clearly certainly, and whether the loan is secured by fixed assets or a reverse current account to avoid the risk of default.

CONCLUSION

The law explains that valid contract acts as a law and applies to those who express it. The term "valid" which refers to Article 1320 of the Civil Code shows that in the formation of a contract must be in accordance to the law so that it is binding to both parties. A contract is a legal relationship between an act of offering and an act of acceptance. In summary, an agreement means a legal relationship between the two parties who have taken legal actions, namely offering and receiving.

The P2PL provider is entitled to determine the type of lending and borrowing contract in the form of a standard contract or not, although most operators find it far effective when it is provided in a standard contract. Important thing needs to be considered in a standard contract is the unequal bargaining power of the parties, especially for the loan recipient who have relatively lower bargaining power than the lender. The unequal bargaining power of the two parties may lead to a duress, especially there are several aspects that have not been regulated by Financial Authority Service, one of which is the matter of interest rates set by fintech.

Financial Service Authority does not set forth interest rates in any of their regulation, like Bank Indonesia sets bank reference rates. The consequence is fintech provider is free to compete in fixing interest rates. In addition, Financial Service Authority has not yet regulated tax issues. In accordance with matters that have not been regulated, the author suggest that the Financial Service Authority regulates interest rates so there will be standard for provider to set the interest rate.

The risk that most likely occur from P2PL services are default and fraud. In accordance to that, the author provide suggestions, firstly, the P2PL service provider should provide 2 options, that are providing a standard contract to borrowers and providing space for loan recipients to negotiate the substance of the contract even though not in its entirety. The goal is for the loan recipient to understand the substance of the contract and undertake the substance of the contract according to the capacity of the loan recipient itself. However, this does not rule out certain options by the operator so that efficiency or ease of contracting can still be achieved. Second, the marketplace should continue to carry out the 5C analysis (Character, Capacity, Capital, Collateral, Condition) as is done by the conventional banks.

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