

Customers' Legal Protection Related to Online Financial Lending Services with Financial Technology Basis Based on Financial Services Authority Regulation Number 77/PJOK.01/2016 Concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis

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Abstract

Original Research Article

This study aims to determine the legal protection of customers related to financial technology-based online lending services based on the Financial Services Authority Regulation Number 77/POJK.01/ 2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis. This research is a normative juridical research. In this study, the source of legal materials utilized consists of 3 (three) legal materials, namely primary, secondary and tertiary legal materials. The technique of collecting legal materials using a literature study model is in the form of a qualitative descriptive content analysis. The results shows that legal protection for customers related to financial technology-based online fund lending services based on the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis consists of preventive legal protection, which is reviewed from the Financial Service Authority Regulation Number 77/POJK.01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis. The regulation covers (1) risk mitigation, (2) management of information technology systems, (3) information technology loans, (4) loan services, (5) technology-information-based loans, (6) borrower education and protection, (7) customer principles, (8) technical specifications, and (8) prohibitions on service delivery. Technology-based loans, credit, and periodic reports must be submitted to the Financial Services Authority. Furthermore, there is repressive legal protection by imposing administrative sanctions on the providers in the form of written warnings, fines, restrictions on business activities, and license revocation.

Keywords: Legal Protection, Financial Technology, Financial Services Authority.

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INTRODUCTION

Indonesia is a developing country having the fourth biggest total of populations that is developing its facilities and infrastructures in vigilant supporting process to welcome 4.0 Industry Revolution in today's activities related to economy done through digital or global networking. The existence of digital economy will create new ambience in industrial process experienced by each individual because of the rapid technology development.

The advancement of technology in national economy increases to reach the welfare of society in order to invent better economic lives. Along with the development of current globalization era, each activity of the society cannot be separated with technology help.

It also happens in economic sector which is currently integrated with electronic system platform (Amelina, 2020).

The part that is influenced the economic sector advancement currently is the adjustment of Fintech. The word of Fintech originated from English which stands for Financial Technology. Based on the argument of National Digital Research Center (NDRC), Fintech is an introduction of something new or innovate something in financial sector. Certainly, the financial innovation touches modern technology. The existence of Fintech could generate safer and more practical process of transactions (Jafar, 2019).

One of the examples of financial service platforms offered by fintech businessmen is online

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financial lending. The practice of online lending business (P2P Lending) connects the lender toward borrower online. During 2018, the credit distribution done by technological financial business enterprise reaches Rp22 billion (Pane, 2020).

The emerged effect of the fintech development is not only appropriate, but also has other effects and problems emerging, especially in the financial borrowing and lending services using Fintech or Fintech Peer to Peer Lending (P2PL) (Sari, 2018). The easiest way to obtain the lending makes the society is influenced to lend. It only needs to fill their personal identities and picture of personal ID; the society will receive their money easily and fast. However, because of the simplicity that is offered, the customer is trapped by high interest rate. It is because there is no existence of the rules related to lending interest rate for the services offered. Moreover, the billing process discharged is intimidated, so that it causes anxiety of the current society.

Approximately 51.24% (Fifty One Point Twenty Four Percent) from all complaints received by LBH Jakarta noted that the customer averagely requests in small amount of nominal through fintech program from Rp1.000.000 (One Million Rupiahs) to Rp2.000.000 (Two Million Rupiahs) and the total of 33.33% (Thirty Three Point Thirty Three Percent) gains loans in the amount of Rp1.000.000 (One Million Rupiahs) procedurally.

From the complaints reported to LBH Jakarta, it is known that there is no differentiation from rules violated platform, both registered and unregistered. From 1.330 (One Thousand Three Hundred Thirty) complaints, there are 14 (fourteen) rules violation implemented by 89 (Eighty Nine) fintech companies.

The more fintech company existences in the sector of peer-to-peer or P2P lending, the more attentions from public and regulator government that is Financial Service Authority (OJK) and Indonesian Bank gives. It is stated in Financial Service Authority Regulation Number 77/PJOK.01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis. The regulation is considered not to be able to protect the society, thus, it has potential to harm society. If it is likened to honey and poison, legal fintech is categorized as honey while illegal fintech is categorized as poison. The two companies run cooperatively to offer online loan to the society (Dewi, 2018).

With the existence of the problems described, thus, one of the important duties from the government to give responses in term of legal protection for both business providers and the society as the costumers.

According to the description above, the researcher is interested in studying more deeply related

to legal protection toward cutomers related to online financial lending services with financial technology basis based on Financial Service Authority Regulation Number 77/PJOK/01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis.

RESEARCH PROBLEM

According to the description above, the researcher raises the legal issue which is how is the legal protection toward customer related to online financial lending services with financial technology basis based on Financial Service Authority Regulation Number 77/POJK.01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis?

METHODOLOGY

This research is normative juridical research using legislation and conceptual approach. This research is normative juridical with literature approach that is investigating journals, books, legislations, and other documents related to this research. The normative jurisprudence is related to directly the legal practice concerning about two main aspects which are law establishment and law implementation (Diantha, 2017). This approach perceives law as the identic to written norms established and announced by an official agency.

In this research, there will be 3 (three) legal entity: primer, seconder, and tarsier. The legal entity that is term related to legal protection toward customers concerning online financial lending services with financial technology basis based on Financial Service Authority Regulation Number 77/POJK.01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis (Abubakar dan Handayani, 2017). The secondary legal entity is all publications that are not considered as legal documents (books, dictionaries, journals, and court decision) while the tertiary legal entity are Indonesia dictionaries, law dictionaries, encyclopedias, etc. The legal material collection techniques is using literature review model.

The legal material analysis technique used is content analysis. Content analysis is a technique that contemplates every systematical procedure that is encouraged to study the content of information obtained. This analysis centers the attention of all secondary data obtained. After obtaining the data needed, the research analyzes the data logically, systematically, and juridically (Fathammubina, 2018). Logical means the data to be collected will be analyzed based on deductive logic principle which is concluding idea from common issue toward concrete issue that is faced. In addition to that, systematic means that the data is analyzed by interlinking one to another data that is connected and relying each other. Then, the data

analyzed juridical means that the analysis is starting from existing regulations and associated with the positive law that is currently in force.

RESULTS

The development of information technology brings to the new era of human civilization known as 4.0 industries in which this era takes part of changing the life style of the society which is carried out online or internet based usage. One form of the business as the result of the development is financial technology (abbreviated as fintech), which means the use of technology to provide financial solutions (Arner, 2015). The financial services with fintech basis, widely used by the public, are online loan funds that provide an easy and fast access to loan and public application, and various applicants that offer the loan to the public. Therefore, it is tempting for public and causes many people are interested in utilizing the cash lending services with fintech basis (Arner, 2016).

The financial sector development and fintech based credit, certainly, requires the regulators and Indonesian government in determining to face, especially in institution sectors, business operations, and risk mitigations (Napitupulu, 2017). According to the implementation of the fintech industry in Indonesia, there are several regulations regulated, which are:

1. Financial Service Authority Regulations (PJOK)

As a first step, OJK has issued Financial Service Authority Regulation Number 77/POJK.01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis (PJOK Fintech P2PL) which then has a derivative regulation in the form of Financial Service Authority Circular Letter (SEOJK) Number 18/SEOJK.02/2017.

This PJOK regulates one type Fintech that is currently developing in Indonesia, called Peer to Peer Lending (P2PL Fintech). It is because the Financial Service Authority sees the urgency of the existence of lending and borrowing Fintech regulations, noticing the strong culture of lending and borrowing (debt) in Indonesian society. Besides, the Fintech provider companies with the Peer to Peer Lending scheme are considered to be in the scope of the OJK's authority as the companies provide financial services. However, the company does not yet have an institutional legal basis in running their business activities.

According to PJOK, the P2PL Fintech Company, or called providers, is declared as another Financial Services Institution with the form of a limited liability company and cooperative (Article 2 Paragraph (2)). Business activities that can be carried out by the provider are in the form of providing, managing, and operating financial borrowing and lending services with

information technology basis from the lender to the borrower whose source of funds comes from the lender and/or the provider, and may cooperate with the provider of financial service providers with information technology basis in accordance with the provisions of the legislation (Article 5). The limit for granting loans to loan recipients is set at Rp2.000.000.000,00 (two billion rupiahs) (Article 6) (OJK, 2021).

Specifically related to the aspects of consumers in financial service sectors, OJK has several regulations described as follows.

- a. PJOK Number 1/PJOK.07/2013 concerning Consumer Protection in the Financial Services Sector. This provision is specially applied to Financial Service Businessmen (PJUK) which have been supervised by OJK and implement Fintech services. PJUK must perceive all aspects of consumer protections by applying the principles as stipulated in Article 2 concerning the principles of transparency, fair treatment, reliability, confidentiality, and security of consumers' data/information, and handling complaints and resolving consumers' disputes in a simple, fast, and cost-effective manner affordable.
- b. PJOK Number 77/PJOK.01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis.
- c. SEOJK Number 18/SEOJK.02/2017 concerning Governance and Information Technology Risk Management in Lending and Borrowing Services Utilizing Information Technology Basis.

2. Financial Services Authority Circular (SEOJK)

After the enactment of PJOK Number 77/PJOK.01/2016 concerning Lending and Borrowing Services Utilizing Information Technology Basis, OJK has issued regulations regarding the implementation of information technology governance and risk management in lending and borrowing services information technology basis in SEOJK Number 18/SEOJK.02/2017 which prevails on April 18, 2017. The scope of the regulation includes:

- a. Data center deployment and disaster recovery and disaster recovery plans;
- b. Electronic System and Information Technology Governance which includes Electronic System Strategic Plan, Human Resources, and Information Technology Change Management;
- c. Technology Transfer;
- d. Data Information Management;
- e. Information Technology Risk Management;
- f. Electronic System Security;
- g. Incident Handling and Resistance to Disruption;
- h. Electronic Signature Utilization;
- i. Service Availability and Transaction Failure;
- j. Product and Service Information Disclosure.

3. Law Number 19 Year 2016 as amendments to Law Number 11 Year 2008 concerning Information and Electronic Transactions.

The Electronic Transaction Information Regulation requires companies that are operating electronic systems to operate the system reliably and responsible for the appropriate operation of the electronic system. One of the users regulated by the TEC regulation is the protection of personal information. ITE law requires the consent of the individual toward utilization of electronic media containing any personal information.

4. Regulation of the Minister of Communication and Information of Republic of Indonesia Number 4 Year 2016 concerning Information Security Management System.

This ministerial regulation regulates the information security management system by limiting the requirements used in the regulation. The basic constituents contain (1) categories, (2) electronic systems, (3) standards of information security management systems, (4) electronic system provisions, (5) Information security system certificates, (6) certification bodies, (7) report certification results, (8) certificate revocations, (9) independent trainer evaluations, (10) controls, and (11) financial supplies.

5. Regulation of the Minister of Communication and Information of Republic of Indonesia Number 20

Year 2016 concerning Personal Data Protection. In the electronic system, this ministerial regulation regulates the protection of personal information in the electronic system by limiting the provisions used in the regulations. The personal information protection in electronic system protects (1) the acquiring, (2) collecting, (3) processing, (4) analyzing, (5) storing, (6) displaying, (7) disclosing, (8) transmitting, (9) distributing, and (10) destructing of personal information. The taking and collecting process of personal information, processing and analyzing, storing, displaying, disclosing, transmitting, disseminating process of personal information, and/or the acquitting, disclosing, and destructing process of personal information will be governed in Chapter II. Furthermore, this ministerial regulation regulates the rights of (1) personal data holders, (2) customer responsibilities, (3) roles of electronic system service providers, (4) dispute resolutions, (5) state and social responsibilities, (6) controls, and (7) administrative sanctions (Napitulu, 2017).

The customers who utilize the services of P2P Lending have rights to get legal protection in implementing these services, in which the government needs to guarantee the legal certainty in the implementation of P2P Lending. The basic principles in protecting the customers who utilize online financial lending services with financial technology basis are

executant are required undertaking the basic principles consisting (1) transparency, (2) fair treatment, (3) reliability, (4) privacy and security data, (5) and customer dispute resolution fast, simply, and at affordable costs. The executants are required giving current information accurately, honestly, and not misleading. If there are acceptances, postponements, or rejections of online financial lending services with financial technology basis requests, the executants are required to convey the information to the costumers.

A legal protection, according to Philipus M. Hadjon, is divided into two categories which are preventive and repressive. Based on that, the legal protections for customers of online financial lending services with financial technology basis are explained as follows.

a. Preventive Legal Protection

A preventive legal protection is an opportunity for the society to claim an objection (*inspraak*) on their own or group's opinion before the existence of the government decision taking a definitive form. Thus, this legal protection aims to prevent a considerable dispute. With the preventive legal protection action, it is hoped that this protection can encourage the government to be more careful in making decisions related to the *Freies Esmessen Principles*, and the society can claim their objections or to be asked for opinions regarding the planned decision.

This preventive legal protection is described as the protection that has the characteristics of prevention, in which before a person and/or a group carries out a negative activity or action or commits a crime that is intended, thus, it will be able to avoid or eliminate the occurrence of concrete actions (Susiani, 2019). In the preventive legal protection on online financial lending services with financial technology basis, the government issued several regulations related to P2P Lending called POJK LPMUBTI and LPMUBTI Governance SEOJK. Beside these two rules, the researcher will also review related to consumer protection in the financial service sector as stated in the Financial Services Authority Regulation Number 1/PJOK.07/2013 concerning Consumer Protection in the Financial Service Sectors (which is called PJOK PKSJK). The further explanation about protection prevention of the regulations above is in the following.

Reviewed from the Financial Service Regulation Number 77/PJOK.01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis, this regulation covers (1) risk mitigations, (2) information technology system managements, (3) information technology loans, (4) lending services, (4) information-technology-based loans, (5) borrower educations and protections, (6) customer principles, (7) technical specifications, and (8) prohibitions on the provision of services. Technology-

based loans, credits, and periodic reports must be submitted to the Financial Services Authority (Albanjari & Catur (2020).

The institutions that unite lenders and borrowers, or called P2P Lenders, can be called electronic system service providers. Understanding the Electronic Systems as Service Providers, it means that the society, government, business entities, or communities who create, manage, and operate electronic systems individually, collectively, and for their own use or for the needs of other sides (Yusminta dan Hufon, 2019). In this regulation, the matters discussed in it include:

- a. directors' roles and responsibilities,
- b. data center and data recovery,
- c. governance of electronic systems and information technology,
- d. technology transfer,
- e. data and information management,
- f. information technology risk management,
- g. electronic system security,
- h. incident handling and nuisance resistance,
- i. electronic signature utilization,
- j. service availability and transaction failure, and
- k. disclosure of product and service information.

Many steps have been taken to facilitate service providers of P2P loan financial products. Most importantly, it is the responsibility of the board and providers to provide various facilities to minimize the risk of information technology utilized for electronic transactions. Several boards of directors have the ability to monitor IT risks and support the business strategies and objectives of the IT function in electronic transactions (Damanhuri, 2019). The boards of directors have responsibilities to protect data and information and also to ensure IT risk management is safe, secure, stable and sustainable. The credit service principle P2P at least includes:

- a. honesty,
- b. accuracy,
- c. objective,
- d. trusted,
- e. availability,
- f. easy to understand,
- g. integrity,
- h. comprehensiveness.

The service providers place the Data Centers and Disaster Recovery Centers in the territory of Indonesia in accordance with applicable laws and regulations. It is explained in the LPMUBTI Governance SEOJK that "Data Center is one of facilities utilized to place electronic systems and the related components for the purpose of placing data storage and management" (Mukhtar & Rahayu, 2018), while a Disaster Recovery Center is a facility utilized to recover data or information as well as the important

functions in electronic systems that are disturbed or damaged due to disasters caused by nature or humans.

The Management of Information Technology Risk in LPMUBTI Governance SEOJK on Technology-Information-Based Lending and Borrowing Service, the providers need to carry out the identification, assessment, and risk mitigation which at least considers:

- a. assets owned,
- b. implemented business processes,
- c. data and information classification,
- d. person in charge of risk,
- e. acceptable risk limits, and
- f. determination of impact assessments and the possibility of the emergences of risks.

Furthermore, the providers must identify deficiencies in the design, development, and operation of the electronic system. The operators must establish an Information Risk Management System to properly measure and monitor electronic system risks (Tata, 2016). Besides, the providers must periodically monitor risk analysis to be able to identify any changes in Electronic System Technology Infrastructure and Information Technology Operations.

The basic principles in consumer protection in the financial service sectors, according to this PJOK, are to "apply the principles of:

- a. transparency,
- b. fair treatment,
- c. reliability,
- d. confidentiality and security of consumers' data or information,
- e. complaint handling and dispute resolution for consumers simply, then quickly, and at affordable costs" (Indonesia Bank, 2019).

The principles that have been described in the POJK PKSJK are the same as the principles that must be utilized by the providers in technology-information-based lending and borrowing agreements, in which the providers are required to apply the basic principles of customer protection, which are:

- a. transparency,
- b. fair treatment,
- c. reliability,
- d. data confidentiality and security, and
- e. Consumer dispute resolution simply, fast, and affordably.

1. Repressive Legal Protection

The repressive legal protection has a function to resolve disputes in the future. In order to be able to carry out repressive legal protection for the importance of the Indonesians, there are various legal entities that partially take care of the problems arising (Adi, 2012). The mentioned boards are further grouped into two (two) parts, namely:

- a. Courts within the scope of General Courts;
- b. Government agencies which are administrative appeal agencies.

According to the Financial Services Authority Regulation Number 77/PJOK.01/2016 concerning Lending and Borrowing Services Utilizing Information Technology Basis, the sanctions set in the LPMUBTI POJK are in Article 47 (1) mentioning for violation of obligations and prohibitions in OJK regulations, OJK has the authority to impose administrative sanctions toward the providers in the form of (Samsul, 2016):

- a. written warning,
- b. fines, namely the obligation to pay a certain amount of money/funds,
- c. limitation of business activities, and
- d. license revocation.

CONCLUSION

The legal protection for customers related to online financial lending services with financial technology basis, according to Financial Services Authority Regulation Number 77/PJOK.01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis, consists of preventive legal protection, which is reviewed from Financial Services Authority Number 77/PJOK.01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis. The regulation covers (1) risk mitigation, (2) information technology system management, (3) technology-information-based loans, (4) borrower education and protection, (5) customer principles, (6) technical specifications, and (7) prohibitions on the provision of services. Technology-based loans, credit, and periodic reports must be submitted to the Financial Services Authority.

Furthermore, there is repressive legal protection by imposing sanctions in accordance with the Financial Service Authority Regulation Number 77/PJOK.01/2016 concerning Information of Borrowing and Lending Services Utilizing Information Technology Basis, the sanctions that have been stipulated in the LPMUBTI PJOK are in Article 47 (1) mentioning for violation of obligations and prohibitions in OJK regulations, OJK has the authority to impose administrative sanctions toward the providers in the form of (1) written warning, (2) fines, (3) limitation of business activities, and (4) license revocation.

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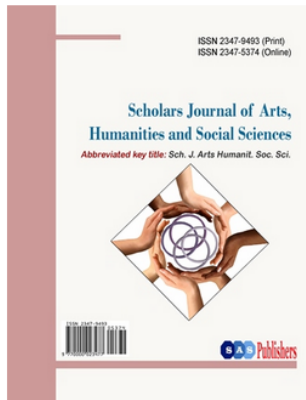
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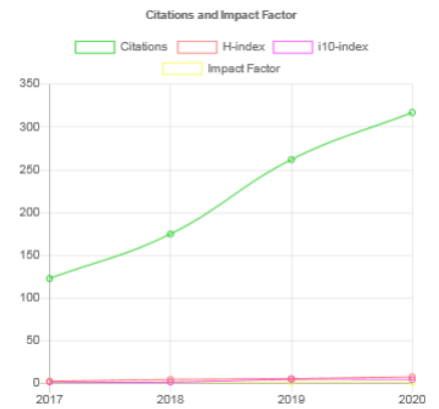
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👤 Kobita Kumari Jugnauth

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👤 Jared Matoke Magara, Moses Kapkial, Justina Ndaita

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👤 José Manuel Salum Tomé

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👤 Christensaint E. Culang, Esmen M. Cabal, Marie Fe D. de Guzman

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