

LEGAL PROTECTION OF PERSONAL DATA FINANCIAL TECHNOLOGY BASED ONLINE LOANS FROM THE CONSUMER PROTECTION ACT

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Abstract

This study aims to determine the legal protection of personal data financial technology (Fintech) based on online loans in terms of the Consumer Protection Act and what are the legal consequences of personal data violations by fintech companies based on online loans in terms of the Consumer Protection Act. The type of research used is normative legal research. The conclusion of this study is that the legal protection of consumer personal data has been regulated by the Financial Services Authority (OJK) Circular and the Regulation of the Minister of Communication and Information concerning Confidentiality, Integrity and Security of Consumer Personal Data or Information and the Legal Consequences of Personal Data Violation, which is regulated in Article 47 of the Authority Regulation. Financial Services Number 77/POJK.01/2016 is an administrative sanction, then there is the Personal Data Protection Bill which regulates criminal sanctions.

Penelitian ini bertujuan untuk mengetahui perlindungan hukum data pribadi financial technology berbasis pinjaman online ditinjau dari Undang-Undang Perlindungan Konsumen dan bagaimana akibat hukum

pelanggaran data pribadi yang dilakukan perusahaan fintech berbasis pinjaman online ditinjau dari Undang-Undang Perlindungan Konsumen. Jenis penelitian yang digunakan adalah penelitian hukum normatif. Kesimpulan penelitian ini adalah perlindungan hukum data pribadi konsumen telah diatur oleh Surat Edaran Otoritas Jasa Keuangan (OJK) dan Peraturan Menteri Komunikasi dan Informatika tentang Kerahasiaan, Keutuhan dan Keamanan Data atau Informasi Pribadi Konsumen dan Akibat Hukum Pelanggaran Data Pribadi yaitu diatur dalam Pasal 47 Peraturan Otoritas Jasa Keuangan Nomor 77/POJK.01/2016 adalah sanksi administratif, lalu terdapat Rancangan Undang-Undang Perlindungan Data Pribadi yang mengatur sanksi pidana.

Keywords: Legal Protection, Personal Data, Fintech, OJK

INTRODUCTION

The development of information technology today has spread to almost all sectors of human life today. Utilization of information technology, media and communication has changed both in terms of people's behavior and human civilization worldwide. The development of information and communication technology causes relationships in the world to see borderless and causes changes in social, economic, and cultural terms to significantly change and develop so quickly. [Priliasari, 2019: 2] This can be seen from the data of fintech lending license and registered with the Financial Services Authority (OJK) as of 27 July 2021, the total number of fintech lending is 121 companies. Providers OJK at the economy to become more effective and efficient, especially in the financial sector. However, in practice, it turns out that fintech has potential risks, there are at least two potential risks, namely the risk of consumer data security and the risk of

transaction errors. These two risks will then bring losses to each party in fintech. [OJK.go.id, 2021] One of the technological advances that are in great demand by the public at this time is in the financial loans online. An online loan is a money loan facility provided by a financial service provider that operates online. [Hardy, 2019: 5]

This can be seen in Hootsuite which shows that the number of Internet users in Indonesia in 2021 will reach 202.6 people. This number increased by 15.5 percent or 27 million people when compared to last January 2020. The total population of Indonesia itself is currently 274.9 million people. This means that internet penetration in Indonesia in early 2021 will reach 73.7 percent. [Kompascom, 2021] Based on the data above, it is not surprising that the growth of online is growing rapidly, especially in Indonesia illegal online is increasing in number from year to year. Judging from the detik finance it was found that there were 86 newest illegal online loan companies since April 2021 according to the Financial Services Authority (OJK).[Kontan, 2021] The number of online both legal and illegal, makes people more tempted by the programs offered even though the interest online is relatively higher than borrowing directly from the bank.

Loan collection online This is certainly something that needs to get the attention of many parties considering that users of these online often get unpleasant treatment, even worse, it leads to human rights violations. One of the problems that occurred was the personal data breach that occurred in the case of Rupiah Plus. Rupiah Plus loan provider online an application-based In this case, several customers have complained that their personal data has been disseminated by Rupiah Plus without notification and without the

permission of the owner of the personal data. Dissemination of personal data is carried out by sending messages to all telephone contacts owned by the borrower, where the message contains the borrower's personal data, the amount of debt borrowed and notifies the person concerned to make debt payments from the borrower. [Putera, 2018]

In this case, the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 8 of 1999 concerning Consumer Protection. In reality, the consumer protection law has not been able to protect consumers in e-commerce transactions because of the limited understanding of business actors who are only specific to the territory of the Republic of Indonesia, and the limitations of consumer rights regulated in the Consumer Protection Law. Legal protection for consumers should be regulated including legal protection from the side of business actors, consumers, products, and transactions. [Pratama, 2020: 10]

METHODOLOGY

Methods The research method used by the author in this research is normative legal research, normative research is research aimed at assessing the quality of the legal norms themselves, using secondary data in the form of library research by reviewing statutory provisions, implementing regulations that have a direct relationship with this problem [Muhaimin,

2020: 45-46]. The legislation in question is the Consumer Protection Act and other implementing regulations.

DISCUSSION

Legal Protection of Personal Data Fintech Based on Online Loans Judging

The regulation regarding the protection of personal data in the electronic system is regulated in the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning the Protection of Personal Data in the Electronic System. as regulated in Article 1 paragraph 1.

Then Article 2 stipulates that the protection of personal data in the electronic system includes protection against the acquisition, collection, processing, analysis, storage, appearance, announcement, transmission, dissemination, and destruction of personal data. The implementation of personal data protection in electronic systems must be based on the principle of respect for personal data as privacy, where the development of human civilization, especially in the field of technology that continues to develop, affects the meaning of privacy itself [Dewi, 2009: 40-41]. Personal data is confidential in nature and must be approved and/or based on the provisions of laws and regulations, based on approval, relevance to the purpose of obtaining, collecting, processing, analyzing, storing, displaying, publishing, transmitting, and disseminating, the feasibility of the electronic system used, good faith to immediately notify the owner of personal data for any failure of personal data protection, availability of internal rules for managing

personal data protection, responsibility for personal data that is in the control of users, ease of access and correction of personal data by the owner of personal data; and, the integrity, accuracy, and validity and up-to-date of personal data, as regulated in Article 2 paragraph 2.

The regulation of personal data protection in the Financial Services system is regulated in Article 31 letter d, Financial Services Authority Regulation Number 13 /POJK.02/ 2018 Regarding Digital Financial Innovation in the Financial Services Sector, which regulates so; Operators are required to apply the basic principles of consumer protection, namely; confidentiality and security of consumer data/information. Protection of consumer personal data according to the Regulation of the Financial Services Authority of the Republic of Indonesia Number 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector Article 30 regulates Financial Services Providers, namely Fintech is obliged to maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data that it manages since the data is obtained so that the data is destroyed[Rosadi, 2018: 88-110].

Protection of Consumer Personal Data according to the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services Article 26 regulates the obligations for information technology-based lending and borrowing services providers which are one type of Fintech business. growing in Indonesia. And Article 29 stipulates that information technology-based savings and loan service providers must apply the basic principles of user protection, namely: transparency, fair treatment, reliability, confidentiality

and data security, and user dispute resolution in a simple, fast and affordable cost.

Personal Data Protection according to Financial Services Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector Article 2 regulates the principle of consumer protection in the financial services sector, where Fintech is one of the providers of financial services, so it must also applying the principles of Transparency, Fair treatment, reliability, confidentiality and security of Consumer data/information, and handling complaints and resolving Consumer disputes in a simple, fast, and affordable cost. The form of protection regulated in POJK 1/2013 is in the form of preventive and repressive protection. [Mukahmmad and Asrori, 2017: 35]

Financial Services Authority Circular Letter Number: 14/SEOJK.07/2014 concerning Confidentiality and Security of Consumer Personal Data and/or Information Provisions regarding implementation instructions for the application of the principles of Confidentiality and Security of Consumer Data and/or Personal Information as regulated in Article 2 letter d, Article 31 and Article 49 in the circular letter of the Financial Services Authority as follows:

- a. Individual: Name, address, date of birth and/or age, telephone number, and/or name of biological mother;
- b. Corporation: Name, address, telephone number, composition of the board of directors and commissioners including identity documents in the form of Identity Card/passport/residence permit; and/or composition of shareholders. [Amalia, 2016: 32]

Protection of Consumer Personal Data and/or Information, POJK is prohibited in any way from providing personal data and/or information about consumers to third parties. Except in the event that the consumer gives written consent and/or is required by laws and regulations.

Circular Letter of the Financial Services Authority Number: 18/SEOJK.02/2017 concerning Governance and Risk Management of Information Technology in Information Technology-Based Lending and Borrowing Services, namely regulations regarding data or information management, that organizers are prohibited from disseminating users' personal data and information to third parties other.

Consumer Personal Data that Must be Protected in the Fintech Business, namely Circular Letter of the Financial Services Authority of the Republic of Indonesia Number: 14/SEOJK.07/2014 concerning Confidentiality and Security of Consumer Personal Data and/or Information, has regulated the types of personal data that must be protected by the Financial Services provider. As seen above, the personal data of individuals that must be protected are name, address, date of birth and/or age, telephone number, and/or name of biological mother. Corporate data, which must be protected, namely, name, address, telephone number, composition of the company's directors and commissioners, including identity documents in the form of Identity Card/Passport/Residential Permit, and/or composition of shareholders. Fintech Business is one of the Financial Service Providers that uses information technology or digital financial service providers, so it must also comply with the Circular Letter of the Financial Services Authority Number 14/SEOJK.07/2014 concerning

Confidentiality and Security of Data and/or Consumer Personal Information this.

Consumer personal data that must be protected is regulated in the Financial Services Authority Circular Letter Number: 14/SEOJK.07/2014 Concerning the Confidentiality and Security of this Consumer Data and/or Personal Information, when compared to the residents' personal data that must be protected, which is regulated in the Law The Population Administration Law is relatively the same, while the resident's personal data that must be protected are as follows, the Resident's Personal Data that must be protected contains:

- a. KK Number (Family Card);
- b. NIK (Population Identification Number);
- c. Date/month/year of birth;
- d. Information about physical and/or mental disability;
- e. NIK of biological mother, NIK of father;
- f. Some of the contents of the note of important events.

The personal data of these residents must be stored and protected by the state, their truth must be maintained and their confidentiality protected by the Operators and Implementing Agencies. Article 85 paragraph 1 stipulates that the Personal Data of Residents as referred to in Article 84 must be stored and protected by the state. This means that Resident Personal Data such as KK (Family Card) number, NIK (Population Identification Number), date/month/year of birth, information on physical and/or mental disability, NIK of biological mother, NIK of father, several contents of important event records, must be guarded and protected by the state through

its implementing agencies and by the organizers.[Maskun, 2013: 34] Another rule that regulates the protection of personal data is Law No.16 of 2016 concerning Amendments to Law No.11 of 2008 concerning Electronic Transaction Information (ITE), Article 26 paragraph (1).

Legal Consequences of Personal Data Violations Committed

The consumer based on the principle of Consumer Protection in the financial services sector as regulated in Article 2 of the Financial Services Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector may file a complaint to the organizer. Then the truth of the complaint will be investigated and if the complaint is true, the organizer will mediate and express an apology and provide compensation or compensation for losses arising from the violation. However, if the results of the complaint do not get a good response from the organizers, then the complainant can report or complain to the supervisory institution, namely the Financial Services Authority (OJK), in seeking consumer rights, the Financial Services Authority (OJK) has created an Alternative Dispute Resolution Institution (LAPS).

Consumer protection related to the financial services sector has been regulated in Articles 28, 29, and 30 of Law Number 21 concerning Financial Services and Financial Services Authority Regulations (POJK) regarding consumer services of the Financial Services Authority, there is Financial Services Authority Regulation Number 18/POJK.7/2018 concerning Consumer Complaint Services in the Financial Services Sector. The goal is to resolve complaints in providing consumer protection. This is important

so that in carrying out financial transactions that have a risk of causing problems, they can be resolved properly. And can potentially cause harm to consumers and reduce consumer confidence in the Financial Services Authority.

Settlement of disputes between consumers and Financial Services Providers in the financial services sector can be resolved through litigation or in court. However, after the Law on the Financial Services Authority or the OJK which later gave birth to the Alternative Dispute Resolution Institution (LAPS), consumers and Financial Services Businesses were able to resolve disputes through Alternative Dispute Resolution. Because there are demands for fast, effective and efficient dispute resolution. The mechanism that can be chosen by consumers in resolving disputes outside the court is Alternative Dispute Resolution (ADR) where the mechanisms that can be taken are negotiation, mediation, and arbitration such as the Consumer Dispute Settlement Agency (BPSK) and the Alternative Dispute Resolution Agency (LAPS).

Dispute resolution services at the Alternative Dispute Institution (LAPS), namely: Mediation, Adjudication and Arbitration (Kalsum, 2021: 80-81). If the three dispute resolution efforts above have not found a way out, then the parties to the dispute will be resolved through the courts. Then the sanctions listed in the Personal Data Protection Bill are only administrative and criminal sanctions for those who violate, namely in the form of Administrative Sanctions as referred to in paragraph (1) Article 48 in the form of: Temporary suspension of activities, Deletion or destruction of personal data, Compensation and /or administrative fines.

As for the fine, in the draft of the Personal Data Protection Bill, it is regulated in article 68 which imposes a maximum fine of Rp. 5,000,000,000.00 for Personal Data Controllers, Personal Data Processors, and/or Third Parties who intentionally and against the law disclose specific personal data to other parties.

CONCLUSION

Legal Protection of Personal Data Fintech Based on Online Loans Judging from the Consumer Protection Act, it must be realized based on the established regulations, namely the Circular Letter of the Financial Services Authority and the Regulation of the Minister of Communication and Information Technology. The organizers are obliged to maintain the confidentiality, integrity, and guarantee that the acquisition, use, utilization, and disclosure of personal data, transaction data, and financial data obtained by the operator is based on the approval of the owner of the personal data, unless stipulated by the laws and regulations. If there is a failure in the protection of personal data, the organizer must notify in writing.

Legal Consequences of Personal Data Violations committed by Fintech companies in terms of the consumer protection law given to providers who violate the provisions of Article 47 of the Financial Services Authority Regulation Number: 77/POJK.01/2016 are administrative sanctions namely temporary cessation of activities, deletion or destruction of personal data, compensation, and administrative fines. However, there is a Personal Data Protection Bill which stipulates criminal sanctions for those who misuse personal data. [W]

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