

## The Urgence of Establishing Online Dispute Resolution (Odr) as A Dispute Resolution of Information Technology-Based Lending And Lending Services<sup>1</sup>

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### Abstract

*The urgency of establishing an online dispute resolution (ODR) as an effort to resolve disputes over information technology-based lending and borrowing services is based on the background that borrowers often fail to pay which causes losses to lenders. However, in practice, lenders cannot take legal action and accept losses which are known as the risk of default. Therefore, it is necessary to establish an Online Dispute Resolution (ODR) as a solution to solve these problems.*

*The writing of this paper uses a normative juridical method with a statutory approach. This study uses primary, secondary, and tertiary legal materials which are analyzed qualitatively according to their relevance to research problems which are then presented in the form of exploratory and argumentative descriptive narratives.*

*From the results of the research using the above method, the authors obtain answers to the existing problems that technology-based dispute resolution for lending and borrowing money services can be resolved through alternative dispute resolution using the Online Dispute Resolution (ODR) model.*

## I. Introduction

Financial institutions, as well as an institution or institution, are in essence and exist in the midst of society. An institution that is a community organ is a

<sup>1</sup> Neni Sri Imaniyati, *Pengantar Hukum Perbankan di Indonesia*, Bandung: Reika Aditama, 2010, hlm. 2.

<sup>2</sup> Delfa Violina, Renny Supriyanti, Djanuardi, *Perlindungan Hukum Terhadap Konsumen Pengguna Teknologi Finansial Berbasis Fintech Peer to Peer Lending*, *Ajudikasi Jurnal Ilmu Hukum*, Vol 5 No 1, 2021, hlm. 18

"thing" whose existence is to fulfill social tasks and special needs for the community. Various types of institutions exist and are known to the public, each of which has the aims and objectives of each institution concerned. The development of the Indonesian economy, one of which is based on the banking sector in Indonesia. The existence of a bank that aims to support the implementation of national development in order to increase equity, economic growth, and national stability towards improving the standard of living of the people at large.

Along with the times, technological progress is something that we cannot avoid, existing technological innovations are able to provide various conveniences in various sectors, one of which is in the economic sector, technological developments that are packaged very easily and quickly make people do not have to always borrow funds to a bank but may submit a request for a loan of funds to a non-bank financial institution. However, with the development of innovation in the field of financial services that utilizes the use of information technology or Financial Technology, it provides Technology-Based Borrowing-Lending Services (LPMUBTI) or also called Fintech Peer to Peer Lending which provides convenience in providing loans and does not require many requirements such as when borrowing money. at banking institutions or official non-bank financial institutions in general. Borrowing funds in Technology-Based Borrowing and Lending Services is a good alternative for fund borrowers who cannot borrow funds from banks or other non-bank financial institutions with conditions due to several more complex requirements in bank and cooperative rules so that people who do not meet the requirements do not can get the financial assistance.

Information Technology-Based Lending and Borrowing Services, Fintech Peer to Peer Lending brings together borrowers (borrowers) and lenders (lenders) directly through an organizer platform. Peer to Peer Lending Fintech is most in demand by the public because it is influenced by the ease and short time of disbursement of funds, Fintech Peer to Peer Lending provides the community with a very good alternative choice in getting access to financing. This is certainly in line with the country's goal of achieving financial inclusion. In its development, efforts to increase financial inclusion are not only limited to the development of financial products and services but also include four other elements of financial inclusion, namely the expansion of financial access, the availability of financial products and services, the use of financial products and services, as well as improving the quality of use. financial products and services as well as the quality of financial products and services themselves.

Fintech Peer to Peer Lending can indeed provide benefits and convenience but at the same time it must also have risks and can cause very detrimental losses for the parties involved, especially now that some circles of society and even platforms that provide Technology-Based Lending and Borrowing Services have categorized Fintech Peer to Peer Lending as an alternative investment that can

provide a large enough return and when it fails to pay it is equated with the risk of Capital loss received by every investor in stock investment, meaning that when there is a failure to pay it is considered a failed or unsuccessful investment and losses and accountability is minimal. The risk of default or repayment that passes the grace period or tenor in Fintech Peer to Peer Lending is indeed one of the biggest and most detrimental risks. as a failed or unsuccessful investment.

Peer to Peer Lending Fintech Platform, as LPMUBTI provider in Indonesia, it was found that peer to peer lending providers that brought together lenders and loan recipients through websites and applications always added a disclaimer provision that the business entity or operator is not responsible for the risk of default of the loan recipient. Although some Fintech providers have provided collateral or provided insurance, not all losses in Fintech Peer to Peer Lending can really be replaced, therefore a regulation is needed that can solve problems if the borrower as a borrower of money in Fintech Peer to Peer Lending in Indonesia fails to pay or it can be said to be a default which can harm all parties involved. Therefore, it is necessary to establish an online dispute resolution (ODR) as an effort to resolve disputes over information technology-based lending and borrowing services.

## **2. Research Method**

In this study, using the normative juridical method as a method for researching this research. As a supporter of this research by processing data from books and literature studies and using some literature to make this research a normative based research. And in this study, the author also reviews books related to Financial Technology and the rule of law.

Referring to the legal issues of this research, this research uses two types of approaches, including the statutory approach and the analytical approach. The use of this approach aims to find out and analyze the definition or understanding of law, principles, rules, legal systems and various juridical concepts. This analytical approach is used to understand more deeply about definitions and matters related to law and to be able to analyze from a legal point of view more accurately.

The focus of the research is the urgency of establishing an online dispute resolution (ODR) as an effort to resolve disputes over information technology-based lending and borrowing services. The legal materials analyzed consist of primary legal materials, secondary legal materials, and tertiary legal materials. All legal materials are analyzed qualitatively according to their relevance to research problems which are then presented in the form of exploratory and argumentative descriptive narratives.

### 3. Results and Discussion

The Urgency of Online Dispute Resolution (ODR) Arrangements as an Effort to Settle Information Technology-Based Money Lending and Borrowing Service Disputes in Indonesia

#### Philosophical Urgency

The philosophical basis is a consideration or reason that illustrates that the regulations formed take into account the views of life, awareness, and legal ideals which include the spiritual atmosphere and the philosophy of the Indonesian nation originating from Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. The philosophical urgency in this research is based on the preamble of the 1945 Constitution, paragraph 4, part (2) to promote general welfare, meaning that the state is obliged to realize general welfare for all Indonesian people.

The regulation regarding the establishment of online dispute resolution (ODR) as an effort to resolve LPMUBTI disputes is expected to provide legal certainty regarding the settlement of defaulted borrower disputes in the implementation of LPMUBTI. This legal certainty can be expected to provide public welfare because this arrangement can be a repressive effort. With the existence of dispute resolution arrangements that are clearly and clearly regulated, it provides legal certainty which previously only required dispute resolution based on an agreement. However, in practice, if the borrower fails to pay, the lender as the lender will be disadvantaged because there is no legal remedy that can be taken to fight for the return of the money that has been lent.

Therefore, the organizer as an intermediary has clear responsibilities and the lender as the party who has the funds can get legal certainty in the event of a risk of default by the borrower, so that later the borrower can actually carry out his obligations to repay, so that LPMUBTI Operators who are categorized as a non-bank financial institution (LJKNB) whose purpose is to establish financial inclusion and provide welfare in the community so that it can be mutually beneficial and maintain mutual prosperity.

#### Juridical Urgency

Juridical urgency is formed to overcome legal problems or fill legal voids by reviewing existing rules that are amended or revoked to ensure legal certainty and public justice. The juridical urgency is related to legal issues related to the substance or material that is regulated, so it is necessary to form a new statutory regulation. Some of these legal problems include expired regulations, discordant or overlapping regulations, types of regulations that are inferior to the law because of their weaknesses, existing regulations but inadequate, or no regulations.

The regulation regarding LPMUBTI is regulated in Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, in this regulation the regulation regarding dispute resolution mechanisms is regulated in the Agreement as regulated in Article 19 and Article 20. In practice dispute resolution using Alternative Dispute Resolution as regulated in POJK No. 1/ POJK.07-2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. However, in practice the implementation of Alternative Dispute Resolution does not run properly. The internet-based LPMUBTI is different from the conventional financial services sector in general, therefore it needs an online-based dispute resolution mechanism by utilizing the internet network as an alternative dispute resolution based on Article 29 letter e, namely "settlement of user disputes in a simple, fast, and affordable cost.

#### Sociological Urgency

Sociological urgency is a consideration or reason that illustrates that regulations are formed to meet the needs of the community in various aspects. The sociological basis actually concerns empirical facts regarding the development of problems and needs of society and the state.

Often the risk of default experienced by lenders cannot be resolved properly, thus harming the lenders in material and immaterial terms. The losses experienced by lenders in the risk of default are still not guaranteed legal protection from the regulations governing LPMUBTI. If referring to the loan agreement, the borrower should carry out his achievements by paying off the loan debt given to the lender. However, in the LPMUBTI case it was found that the borrower did not carry out his achievements, while the lender as the lender suffered losses and could not take clear legal remedies because there was no clear and clear dispute resolution arrangement to protect the interests of the lender if the borrower failed to pay.

Juridical Analysis of the Establishment of Online Dispute Resolution (ODR) as an Effort to Settle Information Technology-Based Money Lending and Borrowing Service Disputes in Indonesia

Information Technology-Based Borrowing-Lending Services in Indonesia have a legal umbrella as stipulated in Financial Services Regulation Number 77/POJK.01/2016 concerning Technology-Based Borrowing-Lending Services. This arrangement is the legality of company formation in LPMUBTI organizers in Indonesia. In practice, the LPMUBTI provider company or called peer to peer lending brings together borrowers of money or what is called borrowers and lenders or lenders. In the implementation, it was found that there was a risk of default which could mean that the borrower could not carry out his

achievements, namely being late in returning the loan based on the specified time tenor and unable to pay the loan that had been given.

Civil disputes can occur in the business of lending and borrowing money with P2P Lending between the party who gives the loan and the party who receives the loan. Disputes usually arise due to non-compliance with contracts that have been agreed upon by the parties. Settlement of borrowing and borrowing business disputes with the P2P lending system can be resolved through litigation or non-litigation. Business actors use non-litigation dispute resolution more than litigation. Civil litigation by court takes more time, this is because the decision of the District Court can be appealed to the High Court or cassation to the Supreme Court. That is the reason why business people often use non-litigation channels by way of Alternative Dispute Resolution.

The Financial Services Authority Regulation provides legal protection through POJK Number 77/POJK.01/2016 regarding dispute resolution. Specifically, the dispute settlement arrangement is contained in Article 19 paragraph (2) letter k which states:

The agreement for the operation of Information Technology-Based Borrowing-Lending Services between the Provider and the Lender is set forth in an Electronic Document.

Electronic Documents as referred to in paragraph (1) must at least contain:

agreement number;

agreement date;

identity of the parties;

provisions regarding the rights and obligations of the parties;

loan amount;

loan interest rates;

the amount of the commission;

time period;

details of related costs;

provisions regarding fines (if any);

dispute resolution mechanism; and

settlement mechanism in the event that the Operator is unable to continue its operational activities.

In addition to Article 19 paragraph (2) letter k, the regulation of dispute resolution mechanisms is regulated in Article 20 paragraph (2) letter l which



regulates the lender agreement between the lender and the loan recipient as outlined in an electronic document.

In line with the previous arrangement, the dispute resolution mechanism must apply the basic principle of user protection, namely by resolving user disputes, in this case, it can be done to protect lenders from borrowers who fail to pay, which must be carried out in a simple, fast, and affordable cost.

Basically the Financial Services Authority has issued POJK No. 1/ POJK.07-2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. The POJK was accompanied by the issuance of OJK Decree number Kep-01/D.07/2016 which contained the ratification of the establishment of six Alternative Dispute Resolution Institutions (APS), namely LAPSPI, BAPMI, BMAI, BAMPPI, BMPPI, and BMDP. The implementation of the regulations mentioned above has not been carried out properly so it is deemed important to have proper provisions because the provisions that have been issued have not been adequate. The conditions that must be met in order for a dispute to be resolved through the APS Institution are that it must be a civil dispute that arises between parties related to activities in the financial services industry sector; there is an agreement between the parties having a dispute if the dispute will be resolved through the intermediary of the relevant APS Institution; there is a written request from the party having a dispute with the APS Institution; the dispute is not a criminal case; the dispute is not related to administrative violations.

The settlement of information technology-based lending and borrowing business disputes that are resolved through the Conventional APS Institution is an inappropriate matter. This is because, lending and borrowing money with information technology intermediaries is included in the online business category whose activities are carried out via the internet, thus requiring a faster, easier, and affordable problem solving flow. For this reason, it is necessary to form an online APS Institution by the OJK, which specifically provides handling of business problems of borrowing and borrowing money through information technology intermediaries. Article 29 letter e of POJK number 77/POJK.01/2016 also provides a mandate that user dispute resolution must be carried out in a simple, fast, and affordable cost.

Borrowing and borrowing money through technological intermediaries or known as P2P Lending if the dispute resolution is carried out through APS can actually be carried out using the Online Dispute Resolution (PSD) model, another term for which is Online Dispute Resolution (ODR). In this case, OJK is obliged to first issue an OJK Regulation as the basis for the establishment of the PSD Institution. So that the entire series of dispute resolution is carried out with internet intermediaries and the parties do not have to meet in person. The

formation of the PSD Institution can be based on the ITE Law. This is because all information and electronic data in this era can be used as legal evidence.

The juridical basis for the formation of the PSD is stated in the ITE Law, namely in the provisions of Article 41 complete with explanations. The public can have a role in utilizing information technology by using and administering electronic systems and electronic transactions based on the ITE Law. The role of the community can be carried out by intermediary institutions formed by the community in terms of ITE which can have a consultation or mediation function. Indirectly, the PSD is also regulated in Article 28 paragraphs (4) and (5) of the ITE Law. Each party has the authority to determine court forums, arbitration or other alternative dispute resolution institutions that have the authority to handle disputes that may arise from international electronic transactions made. If the parties do not carry out the choice of forum, automatically the determination of the authority of the court, arbitration or other alternative dispute resolution institutions is based on the principles of International Private Law. ODR are alternative dispute resolutions that are in harmony with International Civil Law which have been recognized by the United Nations

#### **4. Conclusion (bold, 14 pt)**

Dispute resolution in the Information Technology-Based Lending and Borrowing Service system can be carried out through the courts or through alternative dispute resolution. However, the online-based LPMUBTI system requires a dispute resolution process that is faster, easier, and affordable, so it is necessary to create an online APS Institution, namely the Online Dispute Resolution (ODR) which specifically carries out handling of business disputes and borrowing money with information technology intermediaries.

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