

LEGAL ACCOUNTABILITY OF ONLINE LOAN ENTREPRENEURS TOWARD DEBTORS WHO ARE HARMED WHEN BILLING AND DATA DISTRIBUTION IS PERFORMED IN LAW NO. 19 OF 2016 CONCERNING ELECTRONIC INFORMATION AND TRANSACTIONS

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Abstrak:

The responsibility of online loan entrepreneurs and legal protection for debtors of online loan services is still lacking due to limited information technology literacy for debtors, this limitation causes debtors not to think about the dangers of borrowing easily offered from various financial services. Because of this, it is necessary to conduct a study regarding information literacy between the borrower and the lender (online-based financial service entrepreneurs), literacy in the form of Information Technology knowledge which is explained according to article 26 is that loan service entrepreneurs have an obligation to maintain integrity, confidentiality, and availability than the debtor's data from the time the data was obtained until the data was destroyed. Reaffirmed in Law no. 19 of 2016 concerning ITE which contains articles regarding the provision of accountability and protection for consumers of loan services. In addition, there is a need for cooperation between the Ministry of Communication and Informatics of the Republic of Indonesia, the Financial Services Authority and the authorities in carrying out supervision, increasing the digital literacy of the community.

Keywords: Fintech, Online Loans, Online Loan Services

Introduction

The current development of technology has led to the emergence of financial services with information technology which is usually referred to as Financial Technology or Fintech (Alt et al., 2018). Through fintech transactions are faster in making payments without having to meet face to face (Aini et al., 2022). This fintech development has various sectors ranging from startup payments, loans (lending), financial planning (personal finance), financing retail investment (crowdfunding), remittances, financial research and others (Chemmanur et al., 2020).

From a legal perspective, there are no written regulations governing the services or operational activities of this fintech (Atikah, 2020). However, this does not mean that fintech operates illegally. The government through the Financial Services Authority (OJK) is very supportive of this financial-based technology (Lu, n.d.). Because with the existence of fintech,

people can meet their needs in the financial sector very easily and practically (Nasfi et al., 2022). OJK also oversees the running of the business so that no consumers feel disadvantaged and fintech continues to provide services in accordance with existing regulations (Disemadi et al., 2020).

Advances in communication technology, especially in the field of communication in the online world, have been used for transactions, buying and selling online, and even up to the emergence of online loans (hereinafter referred to as "loans") (Koto, 2021). Current technological sophistication has provided many conveniences, especially in assisting human work in various fields, resulting in the emergence of new crimes, namely by using the computer as a mode of operation. One example of a related case is loan, this case is widely discussed because the case took many lives and many complained about criminal fraud.

As the name implies, online loans (hereinafter referred to as pinjol) are loan credit services that use information technology, these loans have started to develop since mid-2014 (Rolobessy et al., 2023). Many people have started using loans because in this era, needs are no longer limited to meeting but only using the internet. everything can be faster and easier (Jayawardhena & Foley, 2000). In fact, people no longer need to go to the bank and apply directly to get the loan. With this convenience, many people choose loans rather than having to borrow at a bank (Werner, 2016).

The implementation of online lending and borrowing in the agreement between the debtor and the creditor uses an electronic contract as the legal basis (Amri et al., 2020). The electronic contract is one of the strict legal relations regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law) (Budiono & Rahmawati, 2023).

Online loans generally make it easy for any party who wants to borrow funds or business capital. However, in practice, loans are not always profitable for those who wish to borrow funds or capital. In an electronic agreement that should benefit both parties, it is even more inclined to the party that has more full power in making the contract. Because in implementing the loan agreement it is formed by default by the loan service provider, so that the desired expectations in the loan service cannot be realized properly.

Therefore, due to the rampant loan cases that are currently happening, many victims have reported complaints to the OJK and the Police. Many related reports are because many people feel cheated by loans. While it has not been confirmed in the case of loan creditors who are victims, this has happened because currently many of the debtors (customers) are negligent in making payments in accordance with the agreement at the beginning. If the debtor does this, then the debtor has defaulted, because he has reneged on the agreement that was agreed upon. The debtor's actions are actions that do not occupy promises, because they do not pay debts to creditors that make creditors suffer losses.

It is known that the process of granting this loan actually had no legal problems. Due to the suffocating interest with very short maturities, apart from being unable to pay they have to face terror from collectors, in the end most debtors owe more than two loan applicators whose aim is to dig holes to close holes.

However, intimidating billing is actually a prohibited act by loan service providers. This is stated in the code of ethics of the Indonesian Fintech Association (AFI). The code of ethics requires all loan providers to prioritize good faith in collecting loans from debtors. Loan

companies are required to submit billing settlement procedures to debtors, namely when the debtor is late and fails to repay the loan. The procedures used in the billing process include giving warning letters, scheduling requirements, correspondence with loan recipients remotely, including via telephone, email, or other forms of conversation.

Theoretical review

Legal Liability

A concept related to the concept of legal obligation is the concept of legal responsibility (responsibility). That a person is legally responsible for certain actions or that he is responsible for a sanction if his actions are contrary.

The difficulty of holding legal responsibility for corporations in lending activities by making electronic transactions the object of online money lending, using electronic networks and online networks, ultimately causes a lot of material losses from victims as debtors. However, liability in the form of strict liability can provide a solution to this problem, where in full corporate legal responsibility (strict liability) states that legal liability can be requested against corporations. According to article 1365 of the Civil Code, what is meant by an unlawful act is an unlawful act committed by a person who because of his fault has caused harm to another person. The term unlawful act by the Hoge Raad is defined narrowly, namely any act that is contrary to the rights of other people arising from a law or any act that is contrary to its own legal obligations arising from a law.

Civil Law Protection

Civil law is known as a provision that regulates the rights and obligations of individuals with legal entities. For the first time, the term civil law was known to Indonesia in Dutch, namely *Burgerlijk Recht*, which was later translated into the Basic Law Code (KUHPERDATA).

According to Sudikno Mertokusumo, he gives the understanding that civil law is the entire regulation that studies the relationship between one person and another, both including family relations and community relations.

According to Phillipus M. Hadjon, legal protection for the people includes two things, namely:

1. Preventive legal protection, namely a form of legal protection in which the people are given the opportunity to submit objections or opinions before a government decision gets a definitive form;
2. Repressive Legal Protection, which is a form of legal protection which is more aimed at resolving disputes.

In addition, legal protection for the parties to the loan agreement is regulated in Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (PP PSTE) and Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE).

METODE

This study uses the Normative Juridical Research method, which is an approach based on studying and discussing legal rules, doctrines or principles in the science of law by researching literature or library research. This legal writing is based on literature, legal theories and laws and regulations that develop in society from the highest to the lowest. The problems related to and regulate them are then analyzed to make legal discoveries related to legal issues in these rules.

This normative legal research method uses a descriptive analysis approach in which the descriptive analysis approach is a descriptive research intended to provide detailed data to confirm hypotheses, in order to help strengthen old theories, or in the framework of developing new theories. In addition, the author also uses a positive statutory approach as a media analysis and uses a conceptual approach, namely an approach that uses legal concepts as a starting point for analyzing the legal problems that occur. Normative legal research is a type of research used in the development of legal knowledge which is called dogmatic law. The legal issues in legal dogmatics are the practical legal aspects of legal science, namely:

- a. There are different or even conflicting interpretations of the text of the regulation due to the ambiguity of the regulation itself;
- b. There is a legal vacuum;
- c. There is an interpretation of the facts.

The legal issues at the level of legal theory must contain legal concepts. The concept of law can be formulated as an idea that can be realized within the framework of carrying out social life activities in an orderly manner.

RESULTS AND DISCUSSION

Discussion

Liability of Credit Entrepreneurs to Their Debtors

He explained, in Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by the ITE Law and Ministry of Communication and Informatics Regulation No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems (PM 20/2016) contains sanctions for those who violate it.

It is stated in the ITE Law in Article 26 Paragraph 1 that unless otherwise stipulated by laws and regulations, the use of any information through electronic media that concerns a person's personal data must be carried out with the consent of the person concerned.

In addition to administrative sanctions, in accordance with the 2008 ITE Law jo. The 2016 ITE Law, if it is proven that there has been a violation of misuse of personal data by a third party and fulfills the criminal elements of misuse of personal data information and causes loss, then it can be punished with imprisonment for a maximum of 12 years and/or a fine of up to IDR 12 billion. Several types of actions that harm customers are carried out by the Rupiah Plus application.

These actions include collecting customer debt by threatening, intimidating, and billing to third parties that have nothing to do with the customer. The Indonesian Consumers Foundation (YLKI) has received many complaints regarding the Rupiah Plus billing method, which is considered problematic and detrimental to consumers. These complaints have been received from January to June 2018.

OJK will reportedly impose sanctions on Rupiah Plus. OJK urges anyone who feels disadvantaged by Rupiah Plus to submit a lawsuit to the authorities. Misuse of electronic data, defamation and slander as acts that violate the law. From a regulatory standpoint, the OJK is planning to amend a number of its rules so that regulations related to the fintech industry can be aligned with field conditions.

POJK No. 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector has not included Peer to Peer (P2P) lending/pinjol-based financial technology as financial

service business actors. Many people don't understand that fintech is included in it. Thus, fintech must follow the consumer protection provisions that have been issued by the OJK.

Based on POJK No. 1/2013, fintech can be subject to sanctions if they commit stipulated violations ranging from written warnings, monetary fines, restrictions on business activities, freezing of businesses to revocation of business licenses. Meanwhile, the Indonesian Fintech Association (Aftech) plans to build a joint digital data center mechanism, which, among other things, contains a list of problem borrowers. Later, this data can be used jointly by the financial industry in order to evaluate the credit quality of each customer. Aftech will also create several certification programs for employees and association members, including a certification program in the field of loan collection.

The Legal Position of Online Loans on the Liability of Loan Entrepreneurs Against Their Debtors

The author sees that the actions of business actors are rational choices which are only to choose the most profitable option for them from several available options. The options available to business actors or loan entrepreneurs are the opportunity to take advantage of financial technology provided by fintech or financial technology providers taking into account that there is still a lack of banks as financial institutions to reach people's needs in terms of receiving financial assistance.

The legal issues in this study are regarding clear rules regarding the regulation of the establishment of fintech-based P2P Lending or fintech-based online money lending in Indonesia, and knowing whether there is protection for debtors in online money lending.

The issues above will be examined in more depth with descriptive-analytic literature studies with a normative juridical approach that aims to minimize the risks that can result from misappropriation of fintech-based online lending and borrowing activities and find out how to resolve in the event of a dispute and/or default/PMH (Act against the law).

Therefore a solution is needed on how POJK Number 77/POJK.01/2016 concerning Information Technology-based Money Lending Services can provide legal certainty, justice and benefits for society in general and actors/parties in fintech activities in Indonesia. The function of management is to supervise, apart from planning, organizing and executing. Supervision is an activity carried out to supervise and control all company activities, among others:

- a. Preparation of the budget;
- b. The process of company activities;
- c. Notes; And
- d. Report on the results of its activities.

OJK works independently in making and implementing its duties and authorities as referred to in laws and regulations in the field of financial services so that OJK's vision can be realized, namely to become a trusted supervisory agency for the financial services industry, protecting the interests of consumers and the public, being able to realize the financial services industry as a pillar a national economy that is globally competitive and can promote general welfare.

Regarding fines charged to loan recipients by online money lending providers, this is not regulated in the financial services authority regulation number 77/POJK.01/2016 concerning

information technology-based money lending services which result in losses and new problems in the life of the loan recipient.

There are many cases where loan recipients are intimidated, terrorized in the billing process by organizers and there is no time tolerance for loan recipients who have not been able to pay on time when due. The problem can be formulated in what form of legal protection for online loan recipients who are disadvantaged by online loan providers.

In addition to Law Number 8 of 1999 concerning Consumer Protection, this form of legal protection for recipients of online money loans is also regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions, Article 9 states that business actors offering products through the Electronic System must provide complete information and properly with regard to contract terms, manufacturers, and products offered.

Legal Relations of the Parties in Online-Based Borrowing and Borrowing

a. The legal relationship between the lender and the operator

Organizers in online-based money lending services that they manage can offer the wider community to invest by taking a position as lenders in online-based money lending services. In this case, if a potential lender is interested in providing a loan through an online-based money lending service system, the lender and organizer will agree to a certain agreement. The legal relationship between the lender and the administrator is born from an agreement contained in an electronic document between the two parties.

The granting of power of attorney (lastgeving) is regulated in Book III Chapter XVI starting from Article 1792 to Article 1819 of the Civil Code. Article 1792 of the Civil Code states that: "Granting of power of attorney is an agreement whereby a person gives power (authority) to another person, who receives it, to carry out an affair on his behalf."

b. Legal Relations Between Lenders and Borrowers

Even though the lender and the recipient of the loan in the online-based lending and borrowing service system do not meet each other directly, this is because the recipient of the loan to get the loan in question simply opens an online loan application and fills out an online loan form, the loan relationship that occurs is between the lender and borrower.

Article 1754 of the Civil Code stipulates that lending and borrowing is an agreement whereby one party gives to another party a certain amount of goods that are used up due to usage, on condition that the latter party will return the same amount of the same type and quality.

c. Legal Relations Between Organizers and Banks

The legal relationship between the operator and the bank was born out of an agreement on the use of virtual accounts and escrow accounts as mandated in Article 24 POJK No. 77/POJK.01/2016 concerning Information Technology-Based Lending Services. It is hoped that with this online scheme, namely sending billing information (collection) online, providing information on loan status to parties also online, and providing escrow accounts and virtual accounts in banks to parties so that all payment of funds takes place within the banking system.

d. Legal Relations between the Organizer and OJK

The legal relationship between organizers and OJK was born on the basis of statutory provisions, in this case POJK No. 77/POJK.01/2016 concerning Information Technology-Based Lending Services. Based on the provisions of this POJK, operators intending to operate a peer to

peer system must obtain a permit from the OJK. After running the online-based money lending and borrowing service system, you must provide periodic reports to the OJK.

OJK as an independent institution established by law has the capacity to oversee business activities carried out by Financial Services Institutions (LJK). This is intended to create legal certainty and legal protection for the parties.

Protection of Debtors for Credit Entrepreneurs who take Debtor Personal Data Related to Billing With regard to the use of information technology and innovation in the financial services sector in Indonesia, there are currently quite significant developments. Various financial services that utilize information technology or what is often referred to as Financial Technology (Fintech)/pinjol have become commonplace in society, both those offered by financial institutions supervised by the OJK (such as services at banks, insurance, insurance, or other financial institutions). other registered companies) or those offered by start-up companies (companies that have not been registered and supervised by OJK). Fintech has been increasingly accepted by the public because it can provide a variety of services that are relatively attractive, easy to use, and comfortable for consumers to use.

Apart from that, the regulation on Consumer Protection in the Financial Services Sector stipulated in POJK Number 1/POJK.07/2013 has not been able to reach the peer to peer lending/pinjol market because there are no rules stating that peer to peer lending/pinjol is included in the sector consumer protection regulations. financial services.

Second, the legal protection of personal data has been regulated in Article 26 of the ITE Law, as stated: "Unless otherwise stipulated by laws and regulations, the use of any information via electronic media concerning a person's personal data must be carried out with the consent of the person concerned."

In particular, the protection of borrowers' personal data in online loan services is regulated in POJK No. 77/POJK.01/2016 concerning Information Technology-Based Borrowing and Borrowing Services, which is emphasized in Article 26 that the operator is obligated and responsible for maintaining the confidentiality, integrity and availability of users' personal data and in its utilization must obtain approval from the owner of personal data unless otherwise specified by statutory provisions.

Sanctions for violations of personal data which include defamation, are regulated in Article 45 of the ITE Law in the form of criminal sanctions. In addition to criminal sanctions, this is specifically regulated in Article 47 paragraph (1) POJK No. 77/POJK.01/2016 namely administrative sanctions, in the form of written warnings, fines, restrictions on business activities, and revocation of permits.

Meanwhile, from 2018 to 2021, OJK together with the ministries and agencies that are members of the Investment Alert Task Force Unit reached 3,516 entities. To be precise, in 2018 it reached 404 platforms, in 2019 it reached 1,493 platforms, in 2020 it reached 1,026 platforms, and in the current period it has reached 593 platforms. From the actor's point of view, it relates to the ease of uploading platforms in the form of applications or websites to the public, as well as the difficulty of eradicating them because many perpetrators use servers from abroad.

Meanwhile, from the victim's side, the level of community literacy is the biggest homework, for example neglect of checking legality and limited understanding of the dangers of borrowing money, in addition to that there is an urgent need.

The problem of online lending or financial technology peer to peer lending (fintech P2P) is increasingly in the public spotlight. Finally, this fintech problem even claimed the lives of customers who chose to commit suicide due to depression due to the collection of these loans. Unfortunately, the legal settlement of this problem is still minimal, so similar cases continue to emerge.

There are also various types of violations by fintech companies. Starting from intimidating billing, distributing personal data to sexual harassment, it is suspected that this has occurred. One of the various alleged violations stems from the results of reports of public complaints received by the Jakarta Legal Aid Institute (LBH) since last year, where they were very afraid as a result of the collection of loan debts that went to their homes.

Any form of legal or illegal fintech violations should be the responsibility of the OJK. Another rule for fintech companies that are proven to have violated the law. For example, he explained that fintech companies that commit violations in the form of distributing personal data can be subject to Article 32 juncto (jo) Article 48 of Law no. 11 of 2008 Juncto Law no. 19 of 2016 concerning Information and Electronic Transactions (ITE).

Then, fintech company threats against customers can be charged with Article 368 of the Criminal Code (KUHPidana) and Article 29 in conjunction with Article 45B of the ITE Law. What forms of violations can be adjusted according to the law. Almost all of the initial reports of victims admitted to being depressed which was caused by intimidation.

CONCLUSION

The responsibility of online loan entrepreneurs for online loan customer data does not have rigid legal rules against violations or even threats of intimidation received by debtors resulting in a legal vacuum that causes a lot of losses to the personal data of online loan customers/online loan debtors spread by online loan providers/online loan lenders in technology-based online money lending companies. The actions of business actors are rational choices which are only to choose the most profitable option for them from several available options.

Legal protection of personal data has been regulated in Article 26 of the ITE Law and Minister of Communication and Informatics Regulation No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems (PM 20/2016) which has been in force since December 2016, personal data protection includes protection against the acquisition, collection, processing, analysis, storage, appearance, announcement, delivery, distribution and destruction of personal data. Article 26 POJK No. 77/POJK.01/2016 concerning Information Technology-Based Borrowing and Borrowing Services states that the organizer is obliged and responsible for maintaining the confidentiality, integrity and availability of users' personal data and in utilizing it must obtain approval from the owner of personal data unless otherwise stipulated by provisions of laws and regulations. Sanctions for violations of personal data which include defamation, are regulated in Article 45 of the ITE Law in the form of criminal sanctions. In addition to criminal sanctions, this is specifically regulated in Article 47 paragraph (1) POJK No. 77/POJK.01/2016

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