

LEGAL ASPECTS OF FAILURE TO PAY ONLINE LOANS IN INDONESIA IN THE USE OF FINANCIAL TECHNOLOGY

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ABSTRACT

Financial Technology (Fintech) is a financial service that uses a technology base that makes it easier for transactions to be carried out anywhere and at any time. Currently, one of the services in Indonesia is Financial Technology or Fintech which is developing rapidly, especially online loans because it has been proven that many people are interested. The existence of online loans or peer to peer lending as a form of financial technology (Fintech) is the impact of technological advances which offer many loans with easier and more flexible terms and conditions compared to conventional financial institutions such as banks. This development must be accompanied by good legal instruments to avoid existing risks. The research method used is normative research with a statutory approach. The results of this research refer to several articles. Namely. Article 1320 of the Civil Code, so that an agreement arises from an agreement. Then, Financial Services Authority Regulation Number POJK No. 10/POJK.05/2022 as well as other regulations to improve consumer protection. Regarding Information Technology-Based Money Lending and Borrowing, Law Number 8 of 1999 concerning Consumer Protection.

KEYWORDS Financial Technology, Online Loans, Positive Law



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INTRODUCTION

In today's digital era, the development of *financial technology (Fintech)* has had a significant impact on the way individuals and companies conduct financial transactions. What is meant by *financial technology* is a company that combines financial services with technology. The existence of *Fintech* has changed the business model from conventional to more modern (Murinde, Rizopoulos, & Zachariadis, 2022) . Currently, one of the services in Indonesia is *Fintech* which is growing rapidly, especially *online loans* (Mentari, 2021) . Currently in the country of Indonesia, there are many *Fintech* companies that are legal and illegal. Legal which is meant here is a *Fintech* company that already has a license and is registered with the Financial Services Authority (OJK) while illegal is a *Fintech* company that does not have a license and is not registered with the Financial Services Authority (Bunnell, Osei-Bryson, & Yoon, 2020) . the implementation of financial services to bring together lenders with loan recipients in order to carry out lending and

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borrowing agreements in rupiah directly through an electronic system using the internet network.

Before the birth of online lending technology, people got loans through banks or other institutions through a series of fairly long procedures until the funds could be disbursed. However, with the *Fintech* application, people who will make loans can download various applications or can also open websites that provide loan services (De Kerviler, Demoulin, & Zidda, 2016) . This convenience provides its own appeal so that many prefer *online* loans or *Fintech*. The comparison of the two loans is quite significant where in general banks usually take a maximum of fourteen working days to disburse their funds, while *Fintech* services can be from 4 hours to 3 days. When viewed from the two comparisons above, loans through *Fintech* are certainly a public choice from access to speed, but on the other hand it has its own risks (Bajunaied, Hussin, & Kamarudin, 2023; Choi, Han, & Lee, 2024; De Kerviler et al., 2016) . Risks that need to be considered as a borrower or lender such as the risk of high interest for borrowers, having to pay a service fee of 3% to 5%, short repayment period of maximum 12 months, low credit limit of online loans, risk of leaking mobile data applying for online loans (Gao, Fan, Fang, & Lim, 2018; Ma, Zhao, Zhou, & Liu, 2018; Mitra, Goswami, & Tiwari, 2022) .

The author's research discusses the legal basis of agreements in the context of information technology-based money lending and borrowing, including Article 1320 of the Civil Code, which states that an agreement is considered valid if it fulfills four conditions, namely the agreement between the parties, the ability to perform legal acts, a certain thing, and a halal cause (*causa*). In the context of *Fintech*, these agreements are often formed through digital platforms, where interactions between borrowers and lenders occur electronically. Furthermore, OJK has updated POJK No 77/POJK.01/2016 on Technology-Based Money Lending and Borrowing Services (LPMUBTI) with POJK No 10/POJK.05/2022 on Information Technology-Based Joint Funding Services (LPBBTI). The journal can analyze how the provisions in these POJKs serve as a legal foundation governing the obligations of service providers, including the obligation to provide clear and adequate information to consumers, as well as the obligation to maintain personal data security. The research can show the impact of this regulation on consumer trust in *Fintech* platforms as well as how industry players comply or may violate the existing provisions.

Law No. 8/1999 on Consumer Protection is a crucial legal foundation in the context of money lending agreements. This journal can examine how this law protects consumer rights, such as the right to honest information, the right to choose, and the right to protection from unfair business practices. In the *Fintech* industry, consumer protection is becoming increasingly important given the vulnerability faced by borrowers, especially in the digital age (Tikkinen-Piri, Rohunen, & Markkula, 2018; Weber, 2015) .

There has been no specific previous research that discusses the legal aspects of online loan defaults in Indonesia according to the Financial Services Authority Regulation Number POJK No. 10/POJK.05/2022 concerning information technology-based joint funding services, Article 1320 of the Civil Code and consumer protection regarding information technology-based money lending, Law Number 8 of 1999. However, there is previous research that is relevant to the topic of writing, namely research by Yunita Triastuti (2020). although POJK LPBBTI 2022 has been issued, legal protection for pinjol consumers in Indonesia still needs

to be improved. Research by Siti (2024) found that OJK needs to clarify regulations and limit the role of the association only to supervision and as a forum for complaints between companies, customers, and OJK. Further research by Sheila Wijayanti and Hartiningrum (2022) reveals that the influence of online loans makes a consumptive lifestyle in a financially unsustainable way and has many negative impacts, one of which is high interest (Wijayanti, 2022) .

The journal can discuss the implementation of this law in practice, including dispute resolution mechanisms that can be used by consumers when experiencing problems in lending and borrowing transactions. Based on the above background, there are two problem formulations that will be discussed, namely: first, How is legal protection for financial technology users who fail to pay online loans according to legal regulations in Indonesia? second, How is legal protection from a civil perspective against user personal data that does not fulfill the obligation to pay online loan bills? Second, What are the legal sanctions imposed on financial technology users who do not pay online loans?

RESEARCH METHOD

Research is a basic tool that aims to develop science and technology (Soekanto, 2007) . Legal research is carried out with the aim of searching for results related to legal issues that arise. Therefore, legal research is a study in the framework of knowing how an issue can occur if it is related to the law.

Type of Research

In this research, the author uses normative legal research. Normative legal research is legal research conducted by examining library materials or secondary data. Normative legal research or literature study consists of:

- a) Research into legal principles
- b) Research into legal systematics
- c) Research on the degree of vertical and horizontal synchronization
- d) Comparative law
- e) Legal history

The normative legal research used by the author focuses on legal principles where the research is conducted on legal rules (Potvin, Mouiha, Dieumegarde, Duchesne, & Initiative, 2016) . The research can be conducted on primary and secondary legal materials.

Nature of Research

The nature of the research is prescriptive research that aims to make descriptions systematically, factually and accurately about the facts, and the properties of certain regional populations. If several samples are taken, it is called a descriptive survey (Suryana, 2010) . This research provides analysis related to the legal aspects of online loan defaults in Indonesia in the use of financial technology.

Types of Data and Sources of Legal Materials

The data used in this research is secondary data. Secondary data is data obtained from library materials. According to Soejono Soekanto, in legal research secondary data consists of: (Soekanto, 2007)

a. Primary Legal Materials

Primary legal materials, namely legal materials that are binding, and consist of: basic norms / basic principles, basic regulations, laws and regulations, uncodified legal materials such as customary law, jurisprudence, treaties, and legal materials from the colonial era which are still valid today such as the Criminal Code. Primary legal materials used by the author are the Criminal Code (KUHP), Law Number 8 of 1999 concerning Consumer Protection, Financial Services Authority Regulation Number POJK No. 10/POJK.05/2022 concerning information technology-based joint funding services and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

b. Secondary Legal Materials

Provides an explanation of primary legal materials, such as draft laws, research results, works from legal circles, and so on. Secondary legal materials that the author uses are books and journals related to consumer protection, unlawful collection actions, *peer to peer lending*.

c. Tertiary Legal Materials

Tertiary legal materials, namely materials that provide instructions and explanations for primary and secondary legal materials, such as dictionaries, encyclopedias, cumulative indexes, and so on.

Data Collection and Processing Techniques

Data collection is something that is very closely related to data sources, through this data collection the necessary data will be obtained in accordance with the problem formulation above. There are generally 2 (two) kinds of data collection methods, namely the *library research* method and the *field research* method. The data collection used is a literature study.

Data Analysis Technique

The data analysis technique used in this research uses deductive analysis techniques. The use of the deduction method stems from the submission of major premises. Then a minor premise is proposed, from the two premises a *conclusion* is drawn. However, in legal argumentation, legal syllogism is not as simple as traditional syllogism (Sunggono, 2015) .

RESULT AND DISCUSSION

Research Results

1. How is legal protection for financial technology users who fail to pay online loans according to Indonesian legal regulations?
2. What are the legal sanctions for financial technology users who do not repay online loans?

Discussion

1. How is legal protection for financial technology users who fail to pay online loans according to Indonesian legal regulations?

Legal protection is also an action or effort to protect the public from arbitrary actions by the authorities that are not in accordance with the rule of law, to realize order and tranquility so as to enable humans to enjoy their dignity as humans (Setiono, 2004). Article 104 paragraph 1 POJK No. 10/POJK.05/2022 states that "In collecting from the Fund Recipient, the Organizer must ensure that the collection is carried out in accordance with the norms prevailing in the community and the provisions of laws and regulations." The Organizer can cooperate with other parties to carry out the collection function to the Fund Recipient and is carried out in accordance with the provisions contained in Article 103 POJK No. 10/POJK.05/2022 which states that the Organizer must be fully responsible for all impacts arising from cooperation with other parties in collecting. In addition, the Organizer must periodically evaluate the cooperation with other parties.

Users of online loan services as consumers have rights as stipulated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection (hereinafter abbreviated as the Consumer Protection Law) stipulates that: "Consumer rights are:

1. the right to comfort, security, and safety in consuming goods and/or services;
2. the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the conditions and guarantees promised;
3. the right to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services;
4. the right to have their opinions and complaints about the goods and/or services used heard;
5. the right to obtain advocacy, protection, and efforts to resolve consumer protection disputes properly;
6. the right to receive guidance and consumer education;
7. the right to be treated or served correctly and honestly and non-discriminatory;
8. the right to compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as they should be;

The validity of the Fintech agreement first refers to article 1320 of the Civil Code as a fundamental basis in analyzing the validity of online loan agreements. Online loan agreements must meet the subjective and objective conditions of the agreement. Legally, the Fintech agreement remains valid if it meets the subjective and objective requirements. On the other hand, the Fintech agreement is made by the organizer, not made by the parties as users. The user of financial services only receives a ready-made Fintech agreement or has been compiled by the organizer. Thus, the user, namely the creditor and the debtor, only accepts the standard agreement that has been predetermined by the organizer. The user, both the creditor and the debtor, does not need to make any other agreements other than those determined by the organizer. So that the agreement is a standard agreement that has been predetermined by the organizer.

As is usually the case in society, where the creditor makes a unilateral agreement or standard agreement, while the debtor is obliged to agree to the agreement and does not need to add or reduce the substance of the agreement. Regarding its validity, it can be seen from the agreement made by the creditor, debtor, and organizer. If the creditor agrees with the debtor, the agreement is deemed to have been approved. Then, the organizer makes an agreement and follows up on the agreement to the next stage. In the agreement made, it is considered valid according to the organizer. Thus, the Fintech agreement is ratified by the organizer. If the agreement has been agreed, then the transaction can be continued, if there is no agreement then the agreement may not be implemented by the user of financial services.

1) Conditions for the validity of the agreement

The validity of an agreement is regulated in Article 1320 of the Civil Code which contains four conditions, namely:

- a. Agreement of those who bind themselves. In an agreement must contain an agreement between the parties, namely the conformity of the statement of will between the two parties and others without coercion, with the enactment of the agreement to enter into an agreement, both parties must have free will, the parties are not under pressure, which causes defects in the manifestation of the will.
- b. Capacity to act is the ability or capability of both parties to perform legal acts. A capable or qualified person is an adult (21 years old or married).
- c. A specific thing. An agreement must have a specific object, at least it can be determined that the specific object can be in form of current and future objects, such as the number, type and shape. In this context, the object of the agreement must fulfill several conditions, namely:
 1. The goods are goods that can be traded
 2. Goods used for public purposes such as public roads, public buildings, and others cannot be used as the object of the agreement.
 3. The type can be determined.
 4. Upcoming items.
- d. A lawful cause. In an agreement, a lawful cause is required, meaning that there are legal causes that form the basis of the agreement that are not prohibited by laws and regulations, security and public order and so on.

Legal protection is defined as providing protection to individual interests protected by law. The protection proposed to consumers in the business world which is seen both materially and formally is increasingly important, given the rapid movement of technology as a driving force for the productivity of producers of goods or services produced in achieving the goals of a business. Fintech organizers who have registered with the Financial Services Authority (OJK) in carrying out their business activities have several restrictions, one of which is not allowed to carry out business activities outside those regulated in this OJK regulation, not allowed to act either as a lender or as a recipient of the loan, then prohibited from providing information that is not in accordance with applicable regulations, and many other restrictions.

The existence of these prohibitions itself is intended to create a legal protection for Fintech service users, organizers who are found to violate the established prohibitions will be subject to administrative sanctions in the form of:

- a. Written warning
- b. Fines
- c. Restriction of activities of a business
- d. Revocation of business license.

In the use of Peer to Peer Lending-based Fintech services, legal protection can be divided into two, namely:

1. Preventive legal protection

Legal protection is a mechanism that provides security and protection to individuals and legal entities through existing legal regulations, and its implementation is carried out by imposing sanctions (Kusnardi, 2003) . One of the goals of preventive legal protection is to avoid disputes, so it must be enforced before disputes occur. Penyeenggara's effort before a dispute occurs is to apply the basic principles of legal protection to users of Fintech services. This preventive legal protection is protection provided by the government to prevent violations. This is regulated in laws and regulations, for the purpose of preventing violations and to provide guidance or limits in the implementation of obligations. In this preventive legal protection, the legal subject has the opportunity to submit objections or opinions before the government's decision takes its final form in order to avoid conflict. In Indonesia, there is no specific provision for preventive legal protection (Nandang Sunandar, 2021) . Preventive legal protection has been made by the Government, namely that the PK Law can create a healthy business and encourage the birth of quality goods / services companies and can elevate the dignity of consumers who will raise awareness, knowledge, concern, ability, and foster the behavior of responsible actors to not commit acts that can harm consumers (Yadi, Sood, & Martini, 2022) .

Based on the explanation of legal protection and preventive legal protection. Researchers argue that the government provides a tool in the form of rules to provide protection to its citizens both in any case will be protected by the government. The existence of this regulatory policy, legal protection of consumers will be realized properly, especially the protection of *Fintech-based* consumers. One of the conveniences with the existence of technology in *Fintech* is the emergence of *online-based* fund *lending* applications with *P2P Lending* schemes that can be downloaded and accessed by various parties (Kurniawati & Yunanto, 2022) . Through this *platform*, people who need a certain amount of funds can quickly and easily get a loan without the need to apply for credit to the bank. The use of technology allows lenders and borrowers to complete loan transactions without having to meet in person with a system that implements an *online* lending transaction mechanism.

2. legal protection

Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment and additional penalties given if a dispute has occurred or a violation has been committed. This legal protection aims to resolve disputes. Repressive legal protection is to resolve a dispute. This legal protection can only be

done after a dispute has arisen first. Disputes that occur in the use of Fintech can occur between users and other users or users and organizers. If the dispute is true, then there are certain mechanisms to resolve it. Those who feel they have suffered a loss can submit the problems that occur so that they can be resolved immediately. With the act of complaints from Peer to Peer Lending-based Fintech users to the Fintech platform provider, it must make the organizer must immediately follow up.

3. What are the legal sanctions for financial technology users who do not repay online loans?

In the provisions of civil law, the most important type of obligation is the obligation born of an agreement (Asyhadie, 2006). The conditions contained in Article 32 of OJK Regulation No.10/POJK.05/2022 are a form of fulfillment of the valid requirements of the agreement as stipulated in Article 1320 of the Civil Code related to the competence of the parties; the existence of an agreement object; and the agreement is carried out based on a halal cause (Bryan, Karlan, & Osman, 2024; De Araujo, Barroso, & Gonzalez, 2020). Achievement and default are terms found in the agreement. The achievement of an agreement is to carry out what is agreed in the agreement or the parties who agree to carry out the things stated in the agreement (Suryana, 2010). One of the defaults made by fund loan recipients in information technology-based joint funding services is default. Because the problem of default from loan recipients in the implementation of information technology-based joint funding services or *online* loans (pinjol) will cause losses to lenders (Fuady, 2014). The company as the organizer can only try and help with collection. This fact is certainly the fundamental reason for the risk of loss for the lender and will lead to legal consequences and also legal responsibility that must be accepted by the debtor or customer or recipient of loan funds in information technology-based joint funding services.

The following legal consequences arise when the recipient of information technology-based joint funding services defaults or fails to pay:

1. Warning from the information technology-based joint funding service funder to the recipient of the information technology-based joint funding service fund in default or default Article 102 of OJK Regulation No.10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services explains that in the event that the recipient of the fund is in default, the organizer must collect the recipient of the fund, at least by giving a warning letter in accordance with the period in the funding agreement between the funder and the recipient of the fund. Furthermore, paragraph (2) explains that the warning letter as referred to in paragraph (1) must contain information at least: a) the number of days of delay in payment of obligations; b) the final position of the total Funding that has not been repaid or the principal owed; c) the economic benefits of Funding; and d) fines owed. In general, if someone applies for an *online* loan, the prospective debtor or customer will be informed regarding the installment payment schedule according to the initial agreement. The lender of the loan will warn in the period before the due date of payment. Moreover, when it happens that the recipient of funds defaults or defaults. Because this agreement is *online*, initially the loan provider will remind *online*, such as via SMS notification, email, social media or via cellular telephone, so that the customer as the recipient of the information technology-based joint funding service funds who make default or default to fulfill their obligations.

2. If the customer receiving the information technology complex loan fails to make payments or is in arrears, fines and interest will be calculated and continue to accrue. The regulation of Article 32 paragraph (1) states that the funding agreement between the funder and the recipient of the funds is set forth in an electronic document. electronic documents as referred to in paragraph (1) must at least contain provisions, one of which is provisions regarding penalties, and almost all organizers and funders of information technology-based joint funding services apply late payment penalties as an effective application of risk management. As a legal consequence, if you do not pay off the online loan installments on time, then the recipient of the money must pay a late penalty If the loan is not repaid, this fine continues and accumulates according to the agreement, increasing the debt of the recipient debtor. This is supported by relatively high interest rates, so the number of online loans will increase and the difficulty of repaying them will not be long in coming.

3. Collection from other parties (*Debt Collector*) in collaboration with information technology-based joint funding service providers Article 103 of OJK Regulation No.10/POJK.05/2022, paragraph (1) explains that the organizer can cooperate with other parties to carry out the collection function to the recipient of funds as referred to in Article 102 paragraph (1). This means that collection from the party providing loan funds through other parties, or often known as *debt collectors* or debt collectors who cooperate with information technology-based joint funding service providers (*online* loans). At the beginning of the collection process, customers are only reminded through short messages, such as SMS, *email*, or telephone. However, if still unpaid, the collection team will make a collection to the borrower's home or contact the contact number of the closest person provided by the recipient of the information technology-based joint funding service when agreeing to the electronic agreement between the funder and the recipient of the funds. Furthermore, related to the lender using *debt collector* services when demanding payment or fulfillment of achievements by the recipient of funds, it must comply with and comply with the Financial Services Authority Regulation Number 35 / POJK.05 / 2018 concerning Business Implementation of Financing Companies, which in essence finance companies are allowed to cooperate with third parties in collecting debts. In the event that the lender uses the services of a *debt collector*, there must be a letter of assignment in advance and the execution must be in accordance with established procedures. If it continues for a long time, this collection will certainly risk disrupting activities.

4. Entered in the SLIK *blacklist* of the Financial Services Authority if applying for a loan based on information technology or *online*, the customer is required to provide personal data documents as a condition, related to information technology-based joint funding services data will be provided to *Fintech* fund lenders. The existence of this requirement aims so that *Fintech* can find out the customer's identity, such as full name, home address, contact number of the closest person and so on (Akartuna, Johnson, & Thornton, 2022; Holder, Khurana, Harrison, & Jacobs, 2016) . Since the supervision of the banking industry from Bank Indonesia to the Financial Services Authority (OJK), the Debtor Information System data collection process has also been delegated to OJK. However, since January 2018, the entire BI *Checking* process to obtain Historical Individual Debtor Information (IDI) can no longer be accessed through Bank Indonesia but can be obtained through the Financial Services Authority (OJK) at the Financial

Information Service System (SLIK). *Blacklist* is explained as a list of names of individuals, legal entities, or companies that are sanctioned by the bank because they have committed certain actions that can harm the bank and the public. Those blacklisted have a bad credit history. Examples are customers who leave installments that should be paid but instead just leave them (Lestari, 2012) . This cannot be underestimated, if it is included in the Financial Information Service System (SLIK) list, it means that it will get difficulties, even no longer possible to get financial assistance from financial institutions in Indonesia. If this happens, when experiencing complicated financial problems in the future, customers will no longer have the opportunity.

CONCLUSION

Legal protection for users of Financial Technology services, especially those related to online lending facilities in Indonesia, is based on a number of regulations developed to protect consumers and to ensure that Fintech service providers operate in accordance with the highest laws of the country. Online loan borrowers as consumers have the rights set out in Law Number 8 Year 1999 on Consumer Protection as follows: the right to security, the right to satisfaction, the right to be provided with information, the right to fair payment for goods provided as well as the right to resolve disputes. Any Fintech service operating in Indonesia must be registered with the Financial Services Authority (OJK) and must comply with several regulations including those stipulated in OJK Regulation No. 10/POJK.05/2022 on Information Technology-Based Funding Services.

Fintech providers are required to conduct debt collection processes in a manner that is not offensive to civilized society and is not abusive or unlawful. In any case, they are required to ensure responsibility for any collaboration with third parties, including debt collectors, who play a role in the debt recovery process. In this regard, Fintech providers are required to ensure that collection activities adhere to the guidelines outlining acceptable ethical procedures for debt recovery set by OJK to avoid abusive or loss-generating collection methods.

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