

The Role of Financial Services Authority and Legal Protection of Debtor in Financial Technology (*Fintech*) Based Lending Agreements



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ABSTRACT: The main issue discussed in this study are regarding the implementation of financial technology (*Fintech*) -based lending agreements which regulated in Indonesian positive law and also barrier on legal protection in implementing technology(*Fintech*) based lending agreements. This study applied a normative research method which collected primary legal sources of legislation and secondary legal sources of books, journals, and other articles related to this study. The implementation of financial technology (*Fintech*) based lending agreements is regulated in positive Indonesian law which is Financial Services Authority Regulation Number 77 / POJK.01/2016 concerning Information Technology-Based Lending Services. Meanwhile, legal protection in the implementation of technology(*Fintech*) based lending agreements occurs when the debtor defaults and the creditor commits an unlawful act, both of which occur due to a lack of legal protection arrangements in the Financial Services Authority Regulation.

KEYWORDS: Fintech, Financial Services Authority, Legal Protection

INTRODUCTION

Financial Technology (*Fintech*) as a service that provides online-based lending by offering benefits in flexibility for community lending and borrowing. The simple requisitions in applying for a loan triggers many people tempted to apply. The requisition only need a photo of an ID card (KTP) and filling in personal data, therefore everyone can easily and fast to obtain funds.

The application of Fintech has seen remarkable growth, therefore it requires the Government to establish a regulation that controlled online lending and borrowing activities. In this case, the arrangement is regulated on Law Number 21 of 2011 concerning the Financial Services Authority. The background or reason for the establishment of Law Number 21 of 2011 concerning the Financial Services Authority is to restructure the organizational structure of institutions carrying out regulatory and supervisory tasks in the financial services setor, includes the banking sector, capital market, insurance, pension funds, financial institutions, and other financial service institutions. This arrangement is carried out in order to achieve an effective coordination mechanism in dealing with problems that arise in the financial system, to ensure the achievement of financial system stability. The regulation and supervision of all financial service activities must be carried out in an integrated system.¹

To avoid losses on both parties who carry out online lending agreements based on Financial Technology (*Fintech*), a concept of legal protection is needed for both parties. The concept of protection in legal field divided in 2 (two), namely: “preventive legal protection” which is preventative and “repressive legal protection” which has a deterrent effect.

Preventive legal protection is carried out through an agreement that includes the rules and consequences for violating the agreement. In the agreement there is an electronic document which was designed by a debtor or party providing a loan , contains a rule and a condition that should always obeyed by a creditor. However, in the case of agreement, it is not allowed to incriminate the creditor. Legal protection for a debtor mainly emphasizes the payment of a credit installment. The debtor requires the creditor to make installment payments, where if there is a delay in payment there will be consequences.

¹ General Explanation, 5th Paragraph, Law Number 21 of 2011 concerning the Financial Services Authority

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In general, consequences of delay is the imposition of interest with the amount of which is regulated in the agreement. Legal protection for creditors lies in a person's personal data in electronic media which should be given legal protection. Therefore, to maintain the commitment of those who fulfill their agreement so as not to break their promises, a guarantee is needed.

Collateral from a loan agreement generally has a value that similar with the loan provided by the creditor. The purpose of agreement between debtor and creditor is to obtain a legal certainty. However, it is frequently for debtors to violate the contents of agreement, such as credit payment jammed according to the agreement, which will harm creditors as lenders.

If there is a default in the implementation of agreement, the organizer will strive to collect through collaboration with the collection unit service and try mediation, therefore there is no default by debtor. Losses that arise due to errors from administrator in analyzing, selecting and approving loans

In accordance with the provisions of Article 37 of the OJK rule Nornor 77 / POJK .01/2016 concerning the lending services in the form of money based on information technology, explains that if the decision from the organizer is detrimental to the creditor, the organizer can be subject to sanctions as stipulated in the provisions of Article 47 of the OJK rule No. 77/POJK.01/2016 concerning Information Technology-Based Lending Services. The sanctions that might be given is in the form of administrative sanctions.

In accordance with the above regulations, legal protection for creditors in Financial Technology (*Fintech*) Based Online Lending agreement is regulated in rule Number 77/POJK.01/2016. Legal protection for creditor in this case is regarding losses due to the negligence of loan provider or a default by debtor. The two disputes can be resolved through two channels, namely in the court (in general) and outside of the court facilitated by alternative dispute resolution institutions.

OJK Rule Number 77/POJK.01/2016 concerning nformation Technology-Based Lending Services is an implementation of Law Number 21 of 2011 concerning the Financial Services Authority which aims to ensure that all financial service activities in the financial services sector are carried out as in order, equitable, transparent, and accountable, as well as being able to actualize a financial system that grows sustainably and stably, and is able to protect the interests of consumers and society.

With this objective, OJK is expected to be able to support the interests of the national financial services sector to increase national competitiveness. In addition, OJK must be able to safeguard national interests, including human resources, management, control, and ownership in the financial services sector, while taking into account the positive aspects of globalization. ²

PROBLEM FORMULATION

1. How is the implementation of financial technology(*Fintech*) -based lending agreements regulated in Indonesian positive law?
2. What are the barriers on legal protection in the implementation of financial technology(*Fintech*)-based lending agreements ?

RESEARCH METHOD

This study applied Legislative Approach (Statute Approach), Case Approach. Statue Approach in this study is an approach that examines the laws and regulations related to the research problem. While the Case Approach is an approach that carried out by evaluating court decisions in which there are reasons from judges in deciding a case until the decision is issued.

THEORITICAL FRAMEWORK

The existence of law in society is to integrate and coordinate various interests that may difference each other. The coordination of these interests is carried out by limiting and protecting these interests. The law protects a person's interests by giving the power to act in fulfilling his interests. The granting of power, or what is often referred to right, is carried out in a measurable, broad and deep manner. ³

In understanding consumer protection, it must be known that consumer protection law always interacts and relates to various other fields and branches of law, because in each field and branch of law there are always parties with the predicate of consumers.

⁴ Currently, the laws governing consumers are contained in various laws and regulations. This is due to the position of consumers

² General Explanation, 8th Paragraph, Law Number 21 of 2011 concerning the Financial Services Authority

³ Satjipto Rahardjo, *Legal Studies*, (Bandung, Citra Aditya Bakti, 2000) page. 53.

⁴ Shidarta, *Indonesian Consumer Protection Law*, (Grasindo, Jakarta, 2006), page 1

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in a business activity is very weak, therefore it must be protected by law. One of the characteristics, as well as the purpose of the law, is to provide protection to the community. ⁵

This legal protection theory can provide benefits in terms of the application of *Fintech* services. This theory explain how far the law provides protection and the form of legal protection which is provided in the application of *Fintech* services. In addition, this theory also provide benefits regarding legal protection in the application of *Fintech*, such as *Fintech* providers are prohibit to terrorize debtors as a form of legal protection.

RESEARCH RESULTS AND DISCUSSION

Although regulations on *Fintech* services have been enforced strictly, both regulations issued by Bank Indonesia and OJK as financial supervisory institutions, in fact there are still issues s that occur in the implementation of *Fintech* services.

One of the problems in implementing *Fintech* services that has occurred is when the debtor is late in paying his debt, the desk collector will terrorize the debtor at any time. If the debtor still does not make the payment even though the desk collector has warned him, then the desk collector will then contact the number of the debtor's colleagues and relatives and do not even hesitate to contact the debtor's supervisor at the office and tell them that their employees have debts that are due. Even in terms of billing through terror, the desk collector has created a WhatsApp group whose members are the debtor's friends and relatives to terrorize the debtor, or at least to defam the debtor.⁶

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Based on this case, there are 2 (two) issues that can be identified, namely:

a. Debtor is in default

A Debt Default happens when a debtor not fulfill the obligations which is fail to pay his loan at the time it is due and the interest to creditor. Whereas in the agreement, debtors and creditors have bind themselves to each other with good intention when generate financial technology(*Fintech*)-based lending agreements. However, in practice, it turns out that the debtor broke his promise and neglected his debt, even the debtor had no intention to repay his debt. This will harm the creditor as the party providing the loan.

The absence of good faith from the debtor can be seen during the process of generating lending agreement through the *Fintech* service there is no guarantee or collateral for the money borrowed by the debtor. As a result, the debtor default because he feels that he has nothing to redeem. Therefore, the debtors try to avoid creditor by disappear from the view of creditor which cause the creditor no longer collects the debtor.

b. Creditors commit acts against the law

If the debtor defaults in payment, the creditor collects a debt by all means to get back his rights, money and fines from the debtor. The debt collection by creditors due to the absence of guarantee or collateral as stated in the loan agreement. Then, there is no benefit obtained by creditor when filing a civil default suit to the District Court due to the absence of guarantees in the agreement. Therefore, a creditor may take all necessary efforts to prevent losing his rights , which is to collect the debtor continuously until the debtor fulfills his obligations in the form of paying the debt along with the interest.

Both problems that mentioned above require legal protection to protect their respective interests. In the position of debtor, legal protection is needed in the form of protection of debtor's rights which is free from any kind of terror and to obtain security and safety in daily life.

While in the position of creditor, legal protection is needed in the form of protection for *Fintech* service business which run by the creditor from default acts committed by debtor. This is still an obstacle in providing legal protection for both parties.

⁵ *Ibid.*, Page 11

⁶ Wening Novridasat, et al, "*Criminal Accountability of Illegal Fintech Desk Collectors and Protection of Victims*", Journal of Litigation, Vol. 21, No.2, October 2020, page 243

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Meanwhile, the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending Services does not regulate the two problems as mentioned above. The POJK only regulates several prohibitions as contained in Article 43 of the Financial Services Authority Regulation Number 77 / POJK.01/2016 concerning Technology-Based Lending Services.

Reviewing from the problem points related to legal protection in Fintech services, this is due to the regulations issued by Bank Indonesia and the Financial Services Authority do not enclose the obligations of debtor to provide guarantees or collateral in lending through Fintech.

Supposedly, in a lending process, both conventional and Fintech, the debtor is obliged to provide a collateral or guarantee to debtor and it is stated in agreement. This obligation as an effort to overcome the actions of debtor who is in default. If the collateral or guarantee is included in the agreement, then there will be no terror from creditor against the debtor because there is a device to pay off the debt and the interest, namely the guarantee or collateral contained in the agreement.

VI. CONLUSSIONS

The implementation of financial technology-based (*Fintech*) lending agreements is regulated in positive Indonesian law, which is Financial Services Authority Regulation Number 77 /POJK.01/2016 concerning Information Technology-Based Lending Services, Bank Indonesia Regulation Number 19/12/PBI/ 2017 concerning the Implementation of Financial Technology, and OJK Circular Letter Number 18/SEOJK.02/2017 concerning Governance and Risk Management of Information Technology in Information Technology-Based Lending Services.

Barriers to legal protection in the implementation of Financial Technology (*Fintech*)-based lending agreements occur when the debtor defaults and the creditor commits an unlawful act, both of which occur due to the lack of legal protection arrangements in the Financial Services Authority Regulation.

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