

Legal Protection of Personal Data against Customers in Technology-Based Money Lending Services



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ABSTRACT: Information technology-based money lending service is the implementation of financial services to bring lenders together with borrowers in order to make loan agreements to borrow money. Many people have complained about the dissemination of personal data by online loan providers without notice and without the owner's permission. The purpose of this paper is to review the legal protection of customers' personal data in technology-based money lending services. The motto used in this writing is a normative legal method with a statutory approach and a fact approach. The results of the study show that legal protections and sanctions for personal data breaches have been stipulated in Law No. 11 of 2008 and changes in information and electronic transactions, but specifically regarding legal protection and sanctions for personal data breaches in online loan services have been listed in the financial services authority regulation No. 77/POJK.01/2016. Information technology-based money lending services. The organizer is responsible for maintaining the confidentiality, integrity, and availability of personal data use and in the utilization must obtain approval from the data owner, the organizer may be subject to administrative sanctions in the form of written warnings, fines, obligation to pay a certain amount of money, restrictions on business activities, and revocation of business license

KEYWORDS: Legal Protection, Personal Data. Online Loans

INTRODUCTION

Borrowing activities in this particular case is money, has developed a lot along with the advancement of information technology and poses a variety of opportunities, challenges and gave birth to many innovations one of them in financial technology. One of the financial technologies that is currently mushrooming in the community is lending based on PeerTo-Peer (P2P) lending technology or so-called online borrowing

Borrowing according to Article 1754 of the Civil Code is an agreement with which one party gives to the other party a certain amount of goods that are exhausted due to use, provided that the latter party will return the same amount of money of the same type and quality. In practice, currently the legal protection of personal data/personal information in online transactions on the internet can be obtained based on existing laws such as the Data Protection Act or other laws governing the protection of personal data privacy¹

But in reality that happens, along with the development of online-based application services there are also many problems in this case, especially at the time of loan billing that occurred to Ali Alsanjani. Ali was very surprised when he got a message on WhatsApp application addressed to him, the content of the message sent to him asked Ali to deliver a message to a friend during junior high school named Satria Adady in order to pay off debts borrowed from the online loan application platform. The message is written in harsh words and implies a threat. Ali becomes the party contacted by the borrower application because his name is listed as an emergency contact or emergency contact that can be contacted for this online loan transaction. However, when Ali confirmed directly to Satria, his name was never listed as an emergency contact.²

The data and or consumer information that must be kept confidential as stipulated in the Financial Services Authority Circular Letter No. 14/SEOJK.07/2014 concerning Data Confidentiality and Security and/or Consumer Personal Information are as follows: a. Individuals are name, address, date of birth and/or age, phone number and/or birth mother's name. The above data/information may not

¹ Subekti. Civil Code. (Jakarta : PT. Pradnya Paramita, 34th Printing, 2004) p. 451

² <https://tirto.id/kasus-Rupiah-Plus-current-affairs-debt-terror-personal-data-cNVI> accessed on February 8, 2019 at 1:29 PM

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be provided to third parties or used for purposes other than agreed upon and may be used if the customer gives written consent or is required by legislation.³

Based on these reasons that led to this case is interesting to be researched and then become the background of the author to conduct legal research with the title "Legal protection of personal data against customers in technology-based money lending services"

PROBLEM FORMULATION

1. Bagaimana hubungan hukum dalam bisnis fintech di Indonesia
2. Bagaimana perlindungan hukum terhadap keamanan data pribadi konsumen dalam bisnis Fintech di Indonesia?

RESEARCH METHOD

In this study the data was collected used library research by examining various secondary data sources in form of books, journals, legislation and other legal writings related to the research discussion. The data that had been collected were analyzed by deductively, which is drawing conclusions from a general problem to the concrete problems, in order to answer the legal issues in this research.

THEORITICAL FRAMEWORK

Legal Protection Theory

Legal Protection is a protection given to one or more legal subjects in the form of legal devices both preventive and repressive, whether written or unwritten. Legal protection in other words is one of the functions of the law and can provide justice, order, certainty, benefit, and peace. The law is expected to be present in any form, must have binding power of the parties who participate in it with strict sanctions in order to give effect in the application of the law itself⁴

Misuse of personal data carried out by irresponsible persons can harm customers / consumers. The importance of clear rule of law to be able to provide protection to customers by providing protection to human rights harmed by others and such protection is given to the community in order to enjoy all the rights granted by the law. Thus protecting customers means participating in protecting the community itself.⁵

Communication Privacy Management Theory

Discussions about the protection of personal data cannot be separated from the concept of privacy. The law has recognized the concept of privacy in relation to physical interference in the form of trespass (entering the yard of another person without permission) known in criminal law. In its development, the law also provides protection for human emotional and intellectual. Samuel D. Warren and Louis D. Brandeis (1890) found that privacy is the development of legal protection against human emotions.

This theory was developed by Sandra Pteronio he explained that the theory of communication privacy management is a practical theory designed to explain everyday issues. Privacy is important to everyone this is what allows a sense of being separated from others. This gives us the feeling that we are the rightful owners of information about ourselves. There are risks that can arise from opening up to the wrong person, opening up at the wrong time, saying too much about ourselves, or compromising with others.⁶

The Communication Privacy Management Theory states that five decision criteria are used to develop privacy rules in the form of criteria based on culture, criteria based on gender, motivational criteria, contextual criteria, and risk-advantage ratio criteria. Criteria based on culture depend on norms for privacy and openness within a culture. Individuals are guided in their expectations of privacy by the values they learn in their culture

Law No. 11 of 2008 jo. Law No. 19 of 2016 on Information and Electronic Transactions in one of its purposes provides a sense of security, fairness, and legal certainty for users and organizers of information technology. In organizing the electoral system (fintech) must be able to meet the minimum requirements, one of which can protect the availability, integrity of authenticity, confidentiality, and access to electronic information in the implementation of the teletronic system.

RESEARCH RUSULTS AND DISCUSSION

A legal relationship is a relationship with which the law rights to one party and place obligations on the other.⁸⁷ parties in the Fintech business in general are fintech business providers and fintech users. Fintech business operators are any party that fintech activities. This is in line with the provisions of Article 1 Bank Indonesia Regulation Number 19/12/PBI/ 2017 concerning The Implementation of

³ <http://business-law.binus.ac.id/2017/07/31/perindungan-data-nasabah-perbankan/> accessed on February 8, 2019 at 12:45 PM

⁴ Maskun, Cyber Crime, , 2013, Jakarta, p. 11

⁵ Satjipto Raharjo, Law (PT Citra Aditya Bakti 2006) Page 20.

⁶ <http://yasir.staff.unri.ac.id/2012/03/06/teori-manajemen-privasikomunikasi/> accessed April 25, 2018

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Financial Technology, which states that "Financial Technology Operators means any party that conducts Financial Technology activities". Fintech activities are the implementation of financial services electronically. So fintech business organizers are every party that organizes financial services electronically.⁷

Fintech users are any party that uses the services information technology or electronic technology. When associated with more specific provisions regarding fintech users of Lending services Borrowing Money Based on Information Technology, it is in line with article 1 number 9, POJK No. 77 of 2016 concerning Lending services Borrowing Money Based on Information Technology, which states that "Users of Information Technology-Based Money Lending Services hereinafter referred to as Users are Lenders and Borrowers who use Technology-Based Money Lending Services Information." Lenders and Borrowers are users of Information Technology-Based Money Lending Service.

The legal relationship of the parties in the Fintech business arises due to the agreement, such agreement is an electronic agreement. It can known because fintech business implementation using electronic media, so that the agreement made by the parties is an electronic agreement. Electronic agreements are stipulated in the Information and Electronic Transactions i.e. Law of the Republic of Indonesia Number 19 Years 2016 On Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions.

Fintech business in Indonesia, can not only be supervised by one of the institutions or by one of the rule of law only. Organizing technology in Indonesia, cannot be separated from the transaction system online transactions, so Fintech must also be subject to the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law No. 11/2008 on Information and Transactions electronic. This law regulates Fintech business because fintech business in its implementation there must be electronic transaction activities and the parties in conducting legal relations based on the existence of a contract electronic.

Legal protection for consumers in Fintech business in Indonesia is important to realize. Legal protection means providing respect for the human rights of others and the protection of given to the community so that they can enjoy all the rights of the provided by law. Departs from an understanding that all society is a consumer, then protecting consumers means also protecting the the whole community. Therefore Legal protection of consumer's fintech business in Indonesia is an important thing to realize. Legal protection of consumers means legal protections given to consumers. Fintech business consumers are consumer's financial services sector. This is because Fintech is a service provider that utilize information technology.

The protection of personal data of Fintech consumers, as financial services providers, has been specifically regulated in the Regulation of the Financial Services Number: 1/POJK.07/2013 on Consumer Protection Sector Financial Services, and further regulated through the Circular Letter of the Financial Services Authority Number 14/SEOJK.07/2014 on Data Confidentiality and Security and/or Consumer Personal Information. Other regulations governing the protection of personal data is the Population Administration Law and Minister of Communication and Informatics of the Republic of Indonesia Number 20 of 2016 personal data protection in electronic systems, and regulatory authorities Financial services governing Fintech in Indonesia.

CONCLUSION

Legal relationship of the parties in the Fintech business, namely the fintech businesses or Fintech producers and users or consumers occur when agreement. Agreements in fintech businesses are called agreements Electronics because it is made with electronic media. Electronic agreements on the principle is the same as the agreement is generally stipulated in the Civil Code Article 1320 regarding the terms of validity, but electronic agreements are specifically governed by Government Regulation of the Republic of Indonesia Number 82 of 2012, Article 47 paragraph 2, regarding the terms of the validity of electronic contracts

Legal protection of fintech consumer personal data is regulated POJK Number: 1/Pojk.07/2013 on Consumer Protection of The Service Sector financial and data that must be protected are also regulated in the SOJK Number 14/Seojk.07/2014 on Data Confidentiality and Security and/or Consumer Personal Information. So Protection against data security consumers in fintech business in Indonesia must be realized based on these regulations. Data that must be protected from Fintech consumers that is, for Individuals, the data that must be protected in the form of, Name, Address, Date of birth and/or age, Phone number, Birth mother's name. When a the data that must be protected is, Corporate name, Address corporate phone numbers, Board of directors and commissioners including identity documents in the form of Identity Card / passport / residence permit, Arrangement shareholders.

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⁷ Quarterly Point Tutik, Civil Law in the National Legal System, Kencana, Jakarta, 2008, p. 201.

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