

Legal Certainty of Personal Data Protection of Debtors Information Technology-Based Joint Funding Service (LPBBTI)



Suci Romadhani¹, Galensia Maya Madisa², Theresia Anita Christiani³, ST, Mahendra Soni Indriyo⁴

^{1,2}Students Of Magister Of Law, Faculty Of Law, Universitas Atma Jaya Yogyakarta, Indonesia

^{3,4}Lecturer Of Faculty Of Law, Universitas Atma Jaya Yogyakarta, Indonesia

ABSTRACT: The increasing interest and community needs in Information Technology-Based Joint Funding Services (LPBBTI) have led to the development of LPBBTI application services. LPBBTI companies collect by accessing and contacting debtor contacts and disseminating personal data such as the debtor's Identity Card (KTP) used when registering at the LPBBTI. Such inappropriate collection can occur due to debtors making payment arrears or defaulting. This study discusses the regulation on the protection of personal data of LPBBTI debtors in realizing legal objectives to obtain legal certainty. This research is normative research using a statutory approach. The results showed that Law Number 27 of 2022, in practice, has not realized its legal objectives because many LPBBTI commits violations by disseminating debtors' data for the collection process. The billing process that is different from the regulations that have been regulated will have an impact on the agreement that has been agreed between the user and the operator (LPBBTI). The implementation of agreements that are violated or not by laws and regulations, then the agreement is null and void so that it impacts the debtor's legal certainty. Default collection by LPBBTI must be based on the principles in Law Number 27 of 2022, one of which is the principle of expediency and legal certainty. The principles contained in the Personal Data Protection Law are indeed based on legal objectives, but in practice, the Law does not realize legal purposes.

KEYWORDS: Legal Certainty, Personal Data Protection, Debtor, LPBBTI.

I. INTRODUCTION

Every human being is endowed with human rights, even from the womb. States are obliged to maintain and provide protection of the human rights of each of their citizens. As a state of Law that has been expressly stated in Article 1, paragraph 3 of the Constitution of the Republic of Indonesia 1945 (1945 Constitution), Indonesia is obliged to fully protect and implement the rights of each of its citizens. Personal data protection is one of the human rights to personal data security as stated in Article 28 G paragraph 1 that everyone has the right to protection of themselves, their family, honor, dignity, and property under their control and has the right to a sense of security and protection from threats of fear to do or not do something that is a human right.

An era proliferating and undergoing continuous renewal provides impacts, opportunities, and challenges. One of the proofs of the development of the times is the existence of information technology. Information technology provides convenience for every human being as a user without time limits and distance for various sectors such as communication, work, education, health, and other fields. Information technology is one of the factors of globalization. Any utilization of information technology services leads to the collection of the personal data of a person as a user so that the personal data of that person can be easily transferred without the knowledge or consent of the owner of the personal data. The collection of such personal data threatens the constitutional rights of the personal data subject.

One example of information technology development in the financial industry is Information Technology-Based Joint Funding Services. Information Technology-Based Money Lending and Borrowing Services, in the future, referred to as LPBBTI, is an online fintech lending category platform or peer-to-peer (P2P) lending. According to The National Digital Research (NDRC), they explained that fintech (financial technology) or financial technology is an innovation in the financial field (Wahyuni & Turismo, 2019). Fintech lending services are straightforward to find and download by everyone, especially prospective debtors or prospective recipients of LPBBTI funds. Indonesia has an institution responsible for overseeing the financial services industry called the Financial Services Authority, from now on referred to as OJK. OJK said on its official website that there are 101 fintech peer-to-peer lending or fintech lending companies that are official and have OJK licenses as of October 9, 2023 (Financial et al., 2023). The potential of LPBBTI is getting bigger, so many business actors are running the

Legal Certainty of Personal Data Protection of Debtors Information Technology-Based Joint Funding Service (LPBBTI)

business. OJK issued Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services (POJK 10/POJK.05/2022) to regulate the implementation of technology-based funding services.

LPBBTI is in great demand by the public because the process is easy, fast, and without collateral or guarantees. Along with the increasing interest and community needs in LPBBTI, it has led to the development of legal LPBBTI application services and illegal LPBBTI. Illegal LPBBTI is LPBBTI that is not officially registered with OJK. The public must be careful if they want to decide as prospective debtors to make loans through the LPBBTI application, which is not registered with the OJK because it has a high risk, one of which is the dissemination of debtors' data. LPBBTI companies often collect by accessing and contacting debtor contacts and disseminating personal data such as the debtor's Identity Card (KTP) used when registering at the LPBBTI. Such inappropriate collection can occur due to debtors making payment arrears or defaulting.

Article 100, paragraph 1 of POJK 10/POJK.05/2022 states that to realize debtor protection, LPBBTI companies as creditors must apply principles, including the confidentiality and security of debtor data or information. The regulation was insufficient to prevent the dissemination of personal data from creditors to debtors during the collection process. Given the increasing prevalence and urgency of personal data protection cases in Indonesia, the government issued Law Number 27 of 2022 concerning Personal Data Protection. The existence of this regulation is to be applied in cases of dissemination of personal data of LPBBTI, but the regulation also does not provide legal certainty to debtors; this is evidenced by cases of personal data violations in LPBBTI, which still exist.

The novelty in this research is original and has never been done before, so previous studies were presented, namely the first research by Sandra Natalia with the title Protection of Customer Personal Data Related to Peer to Peer Lending. The research discusses legal consequences and protection for customers for personal data breaches committed by platform providers (Natalia, 2023). The second research by Asa Pramudya Kristanto, entitled Protection of Personal Data in Digital Applications as a Form of Human Rights Protection. The research discusses the role and application of the Personal Data Protection Law (Kristanto, 2023). The third research by Kadek Rima Anggen Suari and I Made Sarjana is entitled Maintaining Privacy in the Digital Era: Personal Data Protection in Indonesia. The research discusses the principle of privacy rights and state responsibility for personal data through laws and regulations (Suari & Sarjana, 2023). The fourth research by Priskila Angeline is entitled Personal Data Protection for Fintech Lending Fund Recipients in Indonesia's Positive Law Perspective. The research discusses personal data protection arrangements and legal remedies that can be taken in case of a personal data breach (Angeline, 2023). The fifth study by Shinta Dhea Salma is entitled Legal Protection for Victims Trapped in Online Loans. The research discusses regulations, mechanisms, and legal protection guarantees for customers in Online Loans (Salma, 2023).

Based on these studies, there are differences with this study. This research focuses on legal certainty in protecting debtors' data in Information Technology-Based Joint Funding Services (LPBBTI). This study uses the theory of legal certainty to analyze this research problem.

II. RESEARCH PROBLEM

Have the arrangements for protecting the personal data of debtors Information Technology-Based Joint Funding Service (LPBBTI) realized the legal objectives of obtaining legal certainty?

III. RESEARCH METHODS

This research is normative juridical research. Normative juridical research is called doctrinal or conceptualized research written in laws and regulations. Normative legal research discusses doctrines related to principles, rules, and legal norms (Efendi & Ibrahim, 2016). This research uses a statutory approach. The type of data used in this study is secondary data with primary legal material and secondary legal material. The primary legal materials in this study are Law Number 27 of 2022 concerning Personal Data Protection and Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services. Secondary legal materials in this study are journals on personal data protection in Information Technology-Based Joint Funding Services (LPBBTI).

IV. LITERATUR REVIEW

1. Theory of Legal Certainty

The Law aims to provide legal justice, certainty, and expediency. Legal certainty, as one of the objectives of the Law, shows that certainty cannot be separated from Law, especially for written legal regulations. The Law will lose its meaning and cannot be used as a code of conduct for each individual if it is without certainty value.

According to Gustav Radbruch, there are 3 (three) fundamental values in Law, namely Justice (*Gerechtigkeit*), Expediency (*Zweckmassigkeit*), and Legal Certainty (*Rechtssicherheit*) (Julyano & Sulistyawan, 2019). According to Gustav, legal certainty states that the Law functions to be obeyed (Halilah & Arif, 2021). In the theory of legal certainty, according to Gustav, there are 4 (four) basic things that are closely related to the meaning of legal certainty: namely, Law is a positive law is

Legal Certainty of Personal Data Protection of Debtors Information Technology-Based Joint Funding Service (LPBBTI)

legislation, Law is created based on reality so that Law is based on facts, Law based on facts must be formulated clearly so that there are no errors in meaning or interpretation that will cause ineffective implementation of the Law, and positive Law is not easily changed (Ananda, n.d.).

According to Jan Michael Otto, legal certainty can be achieved if the substance of the Law meets and is in accordance with the needs of the community. According to Jan M. Otto, there are 5 (five) conditions for legal certainty. Namely, legal certainty must be reflected in clear, consistent, and quickly obtained legal regulations so that everyone can access these legal regulations. Second, the rule of Law must be applied consistently with obedience by the government or ruling agency. Third, the community must approve the content of the rule of Law because the community will adjust the regulation. Fourth, judges must be consistent and impartial in applying the rule of Law. Fifth, all judges' decisions from the judiciary are applied concretely (Ananda, n.d.).

According to Sudikno Mertokusumo, legal certainty is a guarantee that the Law can run and be adequately implemented, so legal certainty is a condition that must be fulfilled in law enforcement. (Halilah & Arif, 2021, p. 12) Legal certainty is a right that individuals must accept as a decision from their own legal decisions. Legal certainty is judicial against arbitrary actions, meaning someone obtains something expected under certain circumstances (Prayogo, 2016). According to Sudikno, legal certainty is related to justice, but justice and legal certainty are different.

Based on this explanation, there are 3 (three) legal objectives: justice, certainty, and legal expediency. The Law aims to achieve order and justice, so effort is needed. Legal certainty for the community will be achieved if legal objectives are achieved. The existence of legal objectives does not necessarily have legal certainty; if legal objectives are achieved, then there must be legal certainty. Based on this, legal objectives must be achieved to achieve legal certainty. Legal certainty must represent clarity and consistency of the rule of Law by the conditions and needs of the community. The rule of Law must be clear and provide certainty for individuals from all aspects, including the rule of Law itself, law enforcement, rulers, or government.

2. Personal Data Protection

The right to Privacy is part of the protection of personal data that has been recognized as citizens' constitutional right. This recognition has existed since the amendment of the Constitution of the State Law of the Republic of Indonesia in 1945 (UUD 1945). The right to Privacy includes the right to control personal data and determine each individual's use of such personal data. Indonesia is a state of Law that has been expressly stated in Article 1, paragraph 3 of the 1945 Constitution, and the Indonesian state is obliged to protect and implement the rights of each of its citizens, one of which is the protection of personal data. Article 28 G paragraph 1 states that everyone has the right to protect his person, family, honor, dignity, and property under his control and the right to security and protection from threats of fear to do or not do something that is a human right. Based on this article, personal data protection is one of the human rights of personal data security.

Along with the times, personal data protection has become very urgent in the digital era. Personal data of information technology users must be packaged and protected so that adverse parties do not misuse the personal data collected. A common thread is that a person's data collected as a user is transferred without the knowledge or consent of the personal data owner. The collection of such personal data threatens the constitutional rights of the personal data subject.

Personal data protection in Indonesia is regulated in Law Number 27 of 2022 concerning Personal Data Protection. According to Article 1, paragraph 1 of Law Number 27 of 2023, personal data is about individuals who are identified or can be identified separately or combined with other information either directly or indirectly through electronic or non-electronic systems. The definition of personal data protection in Article 1, paragraph 2 states that personal data protection is the entire effort to protect personal data in the course of personal data processing in order to guarantee the constitutional rights of personal data subjects. Based on these definitions, the importance of personal data protection is well-known.

Law Number 27 of 2022 is a response to the development of personal data and its problems in Indonesia. The Law aims to protect the privacy rights of individuals in society, both non-electronically and electronically. The Law expected the public to manage and use their data for specific interests without the risk of misuse to create a balance between individual rights and the interests of the community represented by the state. The state must be present to mediate and prevent the misuse of people's data.

Law Number 27 of 2022 regulates 4 (four) prohibitions on the use of personal data (Tektona et al., 2023), namely:

- a. prohibition of obtaining and collecting personal data that does not belong to him to benefit himself or others, resulting in the loss of the personal data subject (Article 65, paragraph 1);
- b. prohibition of disclosing personal data that does not belong to him (Article 65, paragraph 2);
- c. prohibition of using personal data that does not belong to him (Article 65, paragraph 3); and
- d. Prohibition of creating false personal data or falsifying personal data to benefit oneself or others, which may harm others.

A person who commits such an offense may be subject to a criminal offense as stated in Law Number 27 of 2023; if the person who commits the violation is a body/institution or corporation, it can only be subject to a fine (Article 70, paragraph 2).

3. Information Technology-Based Joint Funding Service (LPBBTI)

Information Technology-Based Joint Funding Services, from now on referred to as LPBBTI in Article 1 paragraph 1 of the Financial Services Authority Regulation Number 10/POJK.05/2022, states that the definition of LPBBTI is the implementation of

Legal Certainty of Personal Data Protection of Debtors Information Technology-Based Joint Funding Service (LPBBTI)

financial services to bring together funders and recipients of funds in conducting conventional funding or based on sharia principles directly through an electronic system using the internet. LPBBTI is a technology-based loan service whose entire transaction process, including submission and verification processes and the disbursement stage, is online. LPBBTI is a form of innovation in the financial industry that provides services or loan services online or online. LPBBTI users, as prospective debtors or recipients of funds, can easily apply for loans and make transactions directly without having to meet with funders. LPBBTI is one media that connects loan transactions between recipients of funds (debtors) and funders (creditors).

LPBBTI is one of the services developed and evidence of the transformation of information technology in the financial industry. LPBBTI is one of the fintech lending online or peer-to-peer (P2P) lending category platforms. LPBBTI in Indonesia, as a fintech platform, is a legal entity classified as a corporation because in the Personal Data Protection Law, it is categorized as a personal data controller (Munawaroh, 2022). Fintech lending services are straightforward to find and download by everyone, especially prospective debtors or prospective LPBBTI borrowers. Fintech first appeared on the European continent in P2P lending in the UK 2005. Zopa is the first P2P lending company in the UK and continental Europe (Asma, 2022). In 2015, the Indonesian Joint Funding Fintech Association (AFPI) was appointed as a business partner in the fintech sector in Indonesia (AFPI, n.d.). Fintech in Indonesia since 2015 has been growing and popping up more and more like today.

The Financial Services Authority (OJK) supervises financial institutions in Indonesia's financial services industry. The official OJK website (ojk.go.id) said that as of October 9, 2023, 101 fintech lending companies are official and have OJK licenses. OJK issued Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services (LPBBTI) to regulate the implementation of technology-based funding services. The POJK requires in Article 8, paragraph 1 that operators who carry out LPBBTI business must first obtain a business license from the Financial Services Authority. Many LPBBTI are still not officially registered with OJK or are called illegal LPBBTI. Illegal LPBBTI traps many potential consumers by displaying attractive advertisements that can hurt debtors as consumers. Illegal LPBBTI cannot be trusted as a fintech service because it is not officially registered with OJK and has not been tested for feasibility by OJK. Illegal LPBBTI has a higher risk of adverse effects than official LPBBTI registered with the OJK. LPBBTI offers an easy and fast registration and disbursement process with simple conditions, including identity as an Identity Card (KTP) and a selfie photo for the LPBBTI registration and application process. LPBBTI companies often impose high service fees and interest rates that burden prospective debtors. Some LPBBTI are also at risk of disseminating debtors' data in the event of loan payment arrears or default. The public, as prospective debtors who want to apply for loans through LPBBTI services, should be careful and more selective in choosing LPBBTI that is safe and not risky.

V. RESULT AND DISCUSSION

People with low-income levels tend to choose Information Technology-Based Joint Funding Services or LPBBTI because it provides quick access with simple requirements. This convenience can lead to predatory lending practices, especially in LPBBTI, which is not registered and, without OJK permission, has a significant risk. After being involved in the LPBBTI environment, debtors will continue to receive offers through short messages containing links to download the LPBBTI application (Arvante, 2022). The practice of LPBBTI that is not registered and without OJK permission among the public is a serious discussion because it often harms consumers, namely debtors. Problems often faced by debtors are relatively high and unreasonable interest rates (Silaswara & Kusnawan, 2022) and aggressive collection and dissemination of personal data that LPBBTI does not guarantee security. Unfortunately, aggressive billing and even risky personal data breaches are carried out by unofficial LPBBTI and often carried out by official LPBBTI. LPBBTI takes advantage of urgent financial needs and lack of access to the formal financial system to attract consumers. The main problem is that only some LPBBTI parties collect unethically and contrary to the provisions of the Financial Services Authority Regulation (POJK). Debtors often get intimidation, coercion, threats, and even verbal harassment so that debtors pay their loans to LPBBTI. Some LPBBTI collectors even use methods by disseminating personal data in the form of debtors' personal information, such as names, addresses, telephone numbers, identity cards (KTP), and photos of debtors. The dissemination of personal data becomes a serious problem if it continues to be allowed and causes negative impacts on the personal and financial lives of debtors. Billing moves with disseminating personal data can lead to identity abuse and fraud.

LPBBTI often collects through debt collectors to carry out LPBBTI's debt collection duties and functions (Novridasati et al., 2020). Not a few LPBBTI use Debt collectors as third parties because Article 103 paragraph 1 of the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services (POJK Number 10/POJK.05/2022) allows LPBBTI to use third parties in billing debtors or recipients of funds. The debt collector usually collects parties other than the debtor who have a relationship with the debtor, such as family, friends, workplaces, and others. LPBBTI and debt collectors freely collect aggressively and unethically and access debtor contacts because the debtor defaults. LPBBTI accesses the debtor's contacts to contact and collect debtors' loans to the related contacts recorded on the debtor's cellphone. This action can cause tarnishing the debtor's reputation, mainly if it includes disseminating the debtor's data.

Legal Certainty of Personal Data Protection of Debtors Information Technology-Based Joint Funding Service (LPBBTI)

Aggressive billing with the dissemination of personal data is contrary to the 1945 Constitution (1945 Constitution) constitution and violates Law Number 27 of 2022 concerning Personal Data Protection.

The collection carried out by fintech operators in POJK Number 10/POJK.05/2022 is contained in article 102, paragraph 1. If the debtor defaults, the operator must collect the debtor by providing a warning letter by the period agreed in the agreement. Article 104, paragraph 1 also requires the operator to ensure that collection to debtors does not violate applicable community norms, laws, and regulations. In the process of collecting debtors, LPBBTI can cooperate with other parties who meet the provisions stated in Article 103, paragraph 3 of POJK Number 10 / POJK.05 / 2022, one of which already has certification in the field of billing from a certification body registered with the OJK. This other party is commonly called a debt collector. Complete billing provisions concerning implementing Information Technology-Based Joint Funding Services are also regulated in Number XI of OJK Circular Letter Number 19/SEOJK.06/2023.

LPBBTI, which collects personal data with the dissemination of personal data, is undoubtedly contrary to POJK Number 10/POJK.05/2022. The dissemination of the debtor's data is not by the principles of confidentiality and security of consumer data/information as stated in Article 100, paragraph 1 of POJK Number 10/POJK.05/2022. Non-compliance with the laws and regulations that have been regulated will have an impact on the agreement that has been agreed between the user (recipient of funds and funder) and the organizer (LPBBTI). By Article 30 of POJK Number 10/POJK.05/2022, the LPBBTI implementation agreement must at least consist of an agreement between the operator (LPBBTI) and the funder and the recipient of funds. Based on the agreement, a legal relationship will arise based on regulations and agreements between parties. LPBBTI acts as the beneficiary of the lender's power of attorney to distribute the money loan to the recipient of funds. The legal relationship between the funder and the recipient of funds is a loan and loan agreement (Alvandiano & Rizka, 2022). Each party has obligations and rights by the agreed loan agreement. If it involves a third party, it must be by applicable Law to prevent unethical lending practices or harm to either party. The existence of this legal relationship shows that it has the potential to cause personal data breaches committed by LPBBTI as the organizer, mainly if billing is carried out by third parties so that it will have an impact on users.

In the context of the legal theory of agreements, the agreement executed by the parties must meet the basic requirements of binding force (*pacta sunt servanda*) and the conditions of validity of the agreement. The principle of *pacta sunt servanda* is also called the principle of legal certainty because it relates to the consequences of an agreement (Yunanto, 2019). The principle of binding force is a legal principle that requires all parties involved in the agreement to abide by the agreement made after all the legal conditions of the agreement are met. Billing with the dissemination of personal data is contrary to laws and regulations. LPBBTI agreement electronically, and there is an agreement; the agreement is binding on the parties. If laws and regulations violate the implementation of an agreement, then the agreement is null and void. This impact will affect the debtor's legal certainty. Debtors, as consumers, should get security for their data as Privacy and a form of commitment from LPBBTI.

Steps that can be taken by the debtor if there is a breach of personal data in the collection process: The first step that must be taken is to document evidence of violations. Such evidence can be recorded conversations, text messages, or screenshots from social media. Such evidence is used as a basis in law enforcement proceedings. The second step that debtors can take is to contact LPBBTI. LPBBTI must be responsible for the occurrence of violations of the debtor's data. LPBBTI should identify and overcome the problems that occur. The third step is for the debtor to report to the authorities, namely the Indonesian National Police, and can report to AFPI through the www.afpi.or.id website or telephone 150505 (toll-free) or to OJK through OJK Contact 157 if the LPBBTI organizer has been registered/licensed at OJK (FAQ et al.). Steps that can be taken if the previous steps do not provide results, the debtor can file a lawsuit to the court. A lawsuit can be filed civilly or criminally. Civil lawsuits can be filed to claim damages for losses suffered. Criminal charges can be filed to sue LPBBTI for personal data violations that have been committed.

Billing carried out by disseminating the debtor's data to the contacts recorded in the debtor's data can occur, one of which is because the sanctions regulated in POJK Number 10/POJK.05/2022 are only administrative sanctions likewise in Law Number 27 of 2022. The Law regulates personal data protection in Indonesia. The sanctions regulated in Law Number 27 of 2022 are administrative sanctions and criminal sanctions. These criminal sanctions can only be imposed on a person or individual. Crimes committed by corporations are regulated in Article 70, and the penalties imposed on corporations that violate personal data are only fines. In this regard, the organizer of LPBBTI as a corporation can only be subject to fines and additional crimes.

Arrangements for sanctioning corporations in Indonesia are regulated in the Criminal Code (KUHP) and other relevant special laws and regulations about corporations. Law Number 27 of 2022 does not make imprisonment a principal crime or the primary option for imposing sanctions on corporations. Indonesian criminal law regulation does recognize the principle of *ultimum remedium*. *Ultimum remedium* is the application of criminal Law as the last path in a case after it has been carried out and taken with other paths, such as civil Law or Administrative Law (January 2017). The principle of ultimate remedium in the context of personal data breaches should not be applicable because it involves ethical violations and violates human rights, especially debtors. Criminal sanctions given to corporations are only criminal sanctions fines, so they will not deter LPBBTI.

Legal Certainty of Personal Data Protection of Debtors Information Technology-Based Joint Funding Service (LPBBTI)

Sanctions play a role and trigger personal data protection violations in Indonesia, even though this case about personal data is a constitutional case of personal data subjects, which, if left unchecked and not strictly sanctioned, will continue to occur. This is proven by the endless emergence of illegal LPBBTI and causing victims again.

Law Number 27 of 2022, in practice, has yet to realize its purpose. Default collection by LPBBTI must be based on the principles in Law Number 27 of 2022, one of which is the principle of expediency and legal certainty. The principles contained in the Personal Data Protection Law are indeed based on legal objectives, but in practice, the Law does not realize legal purposes. The resolution of the debtor's personal data protection case cannot only depend on criminal fines and additions. There must be a comprehensive special criminal sanction arrangement, namely imprisonment. The government must add elements of imprisonment sanctions as the primary crime or main sanction in Law Number 27 of 2022.

VI. CONCLUSIONS

Information Technology-Based Joint Funding Services (LPBBTI) that collect unethically and aggressively by disseminating debtors' data is contrary to the constitution of the 1945 Constitution (1945 Constitution). It violates the Financial Services Authority Regulation (POJK) and Law Number 27 of 2022 concerning Personal Data Protection. Law Number 27 of 2022, in practice, has not realized its legal objectives because many LPBBTI commit violations by disseminating debtors' data for the collection process. The billing process is different from the regulations that have been regulated, so that it will impact the agreement between the user and the operator (LPBBTI). The implementation of an agreement that is violated or not by laws and regulations, then the agreement is null and void; it will impact the debtor's legal certainty. Default collection by LPBBTI must be based on the principles in Law Number 27 of 2022, one of which is the principle of expediency and legal certainty. The principles contained in the Personal Data Protection Law are indeed based on legal objectives, but in practice, the Law does not realize legal purposes. The government must add imprisonment as the primary crime or sanction in Law Number 27 of 2022.

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Legal Certainty of Personal Data Protection of Debtors Information Technology-Based Joint Funding Service (LPBBTI)

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