Consumer Protection On Peer To Peer Lending
Financial Technology In Indonesia

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Abstract: The development of information technology in Indonesia is more sophisticated increasingly so that the access to information is easier and even affects the country's economy continues to grow. The increasing of online loan applications is one of the impacts of these technological development. However, the problem is that there are many of these applications that do not have a license to provide financial services yet. Whereas the Financial Services Authority (OJK) in this case has required every financial technology to register a license to operate. Noted, 1,330 people reported to the Legal Aid Institute (LBH), there are 89 financial technology applications with the Peer to Peer Lending platform that are suspected of violating laws and human rights against debtors. The report indicates, the ease of lending in online applications makes customers increasingly entangled. The focus of the writer in this paper is how to protect the debtors customers against the debtors information data, as well as how to sanction applications that are arbitrary and do not yet have a granting permit from the Financial Services Authority (OJK). This paper uses normative research method using statute approach and case approach. The findings of this paper are expected to provide an explanation of consumer protection and the legality of financial technology in Indonesia.

Keywords: Consumer Protection, Financial Technology, and Peer to Peer Lending.

1. INTRODUCTION

Along with changes in people's lifestyles which are currently dominated by users of information technology demands fast-paced life, of course many people are using digital financial services to accelerate their mobility. One model for digital financial services is through Financial Technology (Fintech). Fintech is the implementation and utilization of technology to improve banking and financial services carried out by startup companies using the latest software, internet, communication and utilization technology. In Fintech, problems such as buying and selling transactions and payments such as not having to look for goods to the place of expenditure, to the bank / ATM to transfer funds, the unwillingness of places of service that are less pleasant can be minimized. In other words, Fintech helps purchase transactions and payment systems become more efficient and efficient while remaining effective. Of course, digital innovation needs to be directed in order to create digital finance that is responsible, safe prioritize consumer protection and has well-managed risks. Within Fintech itself there are several basic forms of fintech including Payments (digital wallet, P2P payments), Investments (equity crowdfunding, Peer to Peer Lending), Financing (crowdfunding, micro-loans, credit facilities), Insurance (risk management), Cross-processing (analysis big data, predictive modeling), Infrastructure (security). Of the several types of businesses, P2P loan services and payment systems are the most widely used by the public. [1] The presence of peer-to-peer lending as a form of untouched people against financial loans institution which according to him has a high return risk. The Peer to Peer Lending system is very similar to the marketplace concept for online money lending and lending activities which provides a place to meet buyers and sellers. In the case of Peer to Peer Lending, the existing system will bring the Borrower together with the party providing the loan. As an alternative to loans through official institutions such as banks, cooperatives, credit services, government and so on, the process is much more complex, the community can apply for loans to the public through the Peer to Peer Lending system. Peer to Peer lending or Financial Services Technology Lending and Borrowing Services to bring together lenders and loan recipients in the context of entering into loan agreements in rupiah directly through the electronic system using the internet network. [2] P2p is overseen by the Financial Services Authority and is asked to register the platform with OJK. On August 7, 2019, there were 127 P2p registered and 7 of them already had a business license from the OJK, like Two sides of the coin, legal existence, also found illegal, as of July 2019 as many as 140 p2p which had been closed or blocked by “Satgas Waspada Investasi” [3], which previously in April 2019 had been blocked 144 p2p. [4] The growth of Fintech is rampant, then issued a loan product online without collateral, but apparently only a moneylender trap that strangles the neck. Many are interested because they are in need of fast money, and are attracted by their ads which offer low interest of 14% per year and a loan term of at least 61 days. [5] Illegal investment offers are increasingly worrying and very dangerous for the community, because actor take advantage of people's lack of understanding of investment by offering unreasonable returns or benefits. Activities and products offered are not licensed because to get the maximum profit from the community. [6]

2 RESEARCH METHODS

This paper uses a normative research method using a statute approach and a case approach. The legislation approach is used to find out all the legal regulations in Indonesia. The case approach aims to study the application of legal norms or rules that are carried out in legal practice. Especially regarding cases that are in the Financial of Technology in terms of peer to peer lending, as can be seen from cases that are the focus of research, namely of p2p implementation which violates legal norms. The findings of this paper are expected to provide an explanation of consumer protection and the legality of financial technology in Indonesia.

5 RESULT AND DISCUSSION

5.1 Fintech Peer to Peer Lending in Indonesia

Peer to Peer Lending (p2p) or commonly referred to as information technology based lending and borrowing services which is the organization of financial services to bring together lenders with loan recipients in the context into an agreement. Borrow money in rupiah through an electronic system using the internet network. Peer to Peer Lending Arrangement in Indonesia with Financial Services Authority Regulation Number 77 Year 2016 Regarding Information Technology...
Based Loan Money Loan Services. P2p is a nuisance from inefficient business loans, such as non-individual interest rates, high loan guarantee costs, loan options that take several months and small businesses that are made untouched. [7] Clayton M. Chistensen, which explains the phenomenon where a product or service that innovates based on technology or application which in this case is something that makes it easy to access and is cheaper, and develops without responsibility of incumbent or in this case longtime players which has a well-established market. [8] P2p has the advantage of lower operating costs from banks and better capital from banks. [9] le based on Article 4 POJK 77/2016 only at least Rp. 1,000,000,000.00 (one billion rupiah) at the time of registration and Rp. 2,500,000,000.00 (two billion five hundred million rupiah) at the time of application for a permit. As the only p2p regulation which is motivated by the pressure of the situation on the rise of p2p organizers as a form to protect users of both borrowers and lenders. P2p is based on which online application platform which is provided, managed and operated which is borrowing and borrowing money based on information technology from the Lender to the Lending Party whose source of funds is from the Lender or the so-called intermediary. [10] POJK 77/2016 is basically a reflection of good rules as a safety net for the borrowing process based on information technology, but subjectivity to urgency that results inuneven rules for every aspect of p2p, like the interest on loans to borrowers in article 17 POJK 77/2016, that is:

“The organizer provides input on the interest rates offered by Lenders and Loan Recipients by considering the reasonableness and development of the national economy”

The loan interest in the agreement is stated in the electronic agreement, although it has been determined by the p2p association namely the Indonesian Joint Funding Fintech Association (AFPI), the interest is not more than 0.8% per day and this is only for legal p2p that has been supported by the members of the association and has been provided or licensed at OJK. Article 48 POJK 77/2016 is a mandatory institution appointed by the OJK, a double oversight step, because the Fintech Association of Indonesian Joint Funding (AFPI) provides guidelines for protection. But this needs to be approved by p2p that has been approved or licensed in the OJK, not the illegal one. [11] See the empirical fact that with POJK 77/2016 which only looks or regulates the registration and licensing processes and guidelines that are too general. This cannot be challenged with the permits regulated in Law Number 8 of 1999 Concerning Consumer Protection in the form of true, clear and honest information about the services used and the security in the service products. In this matter the business actor or organizer must meet or comply with the required standards and the provisions of the legislation (Article 8 of the UUPK). If this provision does not apply, then a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000 (two billion rupiah). POJK 77/2016 only a few are contained in POJK Number 1 of 2013 concerning Protection of the Financial Services Sector, that is:
1. The Organizer provides and / or submits the latest information that is accurate, honest, clear and not misleading.
2. The organizer is also required to use simple terms, phrases and / or sentences in Indonesian that are easily read and understood by Users in each Electronic Document.
3. The Operator is required to have standard operational procedures in serving Users that are provided in Electronic Documents.
4. The Organizer releases in any way, provides data and / or information about Users to third parties. [12]

For the settlement of the prohibitions and prohibitions in POJK 77/2016, the organizer only asks for administrative payment which clearly does not cause a deterrent effect.

5.2 Borrower Customer Protection Aspects

AFPI, which is an association that has been appointed by the OJK to accommodate p2p loan entrepreneurs based on letter No. S-5 / D.05 / 2019 which compiles what is the basis for p2p lending service users, both borrowers and lenders. [13] Afpi already has a training guide for its members. [13] Preventive that the organizer is obliged to inform the borrower in detail about the risks that the borrowers will face if they do not complete their loans. If billing occurs, it must be done in good faith. The steps late repayment or payment failure are regulated in AFPI arrangements, that is:
1. Give the warning letters
2. Loan scheduling or restructuring requirements.
3. Correspondence with Loan Recipients remotely (desk collection), including via telephone, email, or other forms of conversation.
4. Regarding visits or communication with the billing team.
5. Write off loan.

All internal billing employees of the Providing company are required to obtain Billing Agent certification issued by AFPI through strict written and oral test and selection mechanisms. In this case, each organizer is not allowed to make a direct collection to the recipient of the defaulted loan after exceeding the limit of more than 90 (ninety) days from the due date of the loan. AFPI issues guidelines for legal p2p, while for non-legical entities that are not under OJK’s supervision because they are not included in the POJK 77/2016 regulations, they are also not allowed to become AFPI members. By not being a member of AFPI, illegal p2p billing only consists of communication using a mobile phone because it does not have the legality to bill directly to the borrower. Illegal billing by p2p is done in ways that are rude, tend to be threatening, inhumane and against of law. [14] In addition to the billing aspect there are also aspects of protection of personal data. Basically every consumer, in this case the borrower, has the right to security in using the services of his choice. As a p2p that has legality even if only in the registered form, it is not permitted to access the borrower’s personal data in accordance with Article 26 POJK 77/2016 related to data confidentiality that the organizer must maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data that are it has been managed since the data was obtained until the data has been destroyed with a time span of at least 5 (five) years. Article 21 Paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE. Illegal P2p must also safeguard the personal data of users both lenders or borrowers. But again as a causality the illegal p2p is not touched by the OJK which is supported by the statement of the Director of OJK Financial Regulations, Licensing and Supervision, Hendrikus Passagi, said "his party cannot oversee illegal financial technology (fintech) companies
in the service sector of lending and borrowing money (peer to peer lending) illegal". [15] Protection of personal data in the technology sector does not yet have comprehensive and adequate laws and regulations for the protection of personal data. In Law 19/2016 regarding every person whose rights are violated in terms of requesting personal data, a person can file a lawsuit for losses incurred. Further rules relating to personal data in Permenkominfo Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems are only subject to administrative sanctions in Article 36. In view of Article 15 of Law Number 12 of 2011 concerning Formation of Legislation Regulations which contains laws and regulations, only local regulations, provincial and district / city regulations. Therefore based on this matter, there is an urgency to immediately pass the Personal Data Protection Bill, because the right to protect personal data is the development of the right to respect private life or called the right to private life. [16] Personal rights contain the following meanings (Elucidation of Article 26 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE): 1. Personal rights are the rights to enjoy private life and are free from all kinds of distractions. 2. Personal rights are the right to be able to communicate with others without spying. 3. Personal rights are the rights to access information about one's personal life and data.

Illegal p2p hegemony in the application market in this case that is Google Play or more familiarly called the Play Store of the giant Google company is a natural thing. Given that it is not difficult for application developers to register their applications to be published on PlayStore. Just visit the site Google Play Console by creating an existing google account or creating a new account, agreeing to the Google Play [17] developer distribution terms, paying registration fees and completing account data. Then just follow the steps that are relatively easy to enter the application to PlayStore. [18] With reality making easy of making application on PlayStore, it cannot prevent preventive actions for the Ministry of Communication and Information or the Indonesian government asking Google not to publish illegal P2P on PlayStore. Google's developer policy center classifies Financial Services by not allowing applications that offer financial products and services that deceive or dangerous them for users and must observe country regulations that target the application. [19] Logically, in order to become a p2p registered with OJK, one must first make an application as a prerequisite, namely Proof of Operational Readiness of Business Activities which is an attachment to POJK 77/2016. As well as the principle of legality applies due to the absence of clear rules about illegal p2p enforcement. The repressive efforts of the government against illegal p2p are by establishing an Investment Alert Task Force with elements of the Ministry of Trade, the Ministry of Communication and Information, the Ministry of Cooperatives and Small and Medium Enterprises, the Attorney General's Office, the Indonesian Police, and the Investment Coordinating Board (BKPM) formed based on the Decision of the Board of Commissioners Financial Services Authority Number 01 / KDK.01 / 2016 dated January 1, 2016. The Task Force agreed to be allocated illegal p2p that was not registered with the OJK.

6 CONCLUSION
Peer to Peer Lending is a lending and borrowing activity between individuals. By developing technology and solid mobility, there is a new discovery in the field of financial technology, namely P2P. Lending and borrowing activities are now developing in an online form similar to e-commerce. In short, through Peer to Peer Lending, a borrower can get loan from many individuals. The way from Peer to Peer Lending is through a platform, a Borrower that has been audited and screened by a Peer to Peer Lending service provider can get help from many registered Lenders. Through Peer to Peer Lending, Lenders can obtain benefits such as obtaining interest on loans provided and an easy and fast process because they only rely on cellphones and / or computers but also have a high level of risk that may be experienced such as the risk of default, time risk wait for the investment to begin, the risk of money being lent cannot be withdrawn whenever the Lender wants, and the risk of late payment. On the other hand, the Borrower can also benefit by lending a submission process that is more flexible, faster, and easier than when requesting a loan from a financial institution. It should be underlined that this industry is a new product, the financial technology industry like Fintech does not yet have qualified requirements related to the protection of Lenders' funds.

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