WORLD CLASS ISLAMIC CYBER UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY
DOCTORAL PROGRAM OF LAW
FACULTY OF LAW
PROCEEDING OF INTERNATIONAL CONFERENCE ON
THE LAW DEVELOPMENT FOR PUBLIC WELFARE
ISSN: 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Juridical Aspects of Financial Technology in Information Technology Based Money Loans

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Abstract. *Legal writing about the juridical aspects of information technology-based money lending aims to examine the practice in society regarding fintech peer to peer lending which uses online information technology as a basis and also the protection of consumers affected by cases of abuse from illegal fintech peer to peer lending. The research method used is normative juridical by combining existing legal norms. The research results show that the juridical aspect of law enforcement against illegal online loan companies is very important because it has caused unrest among citizens and has violated the rights of citizens who use online loan financial services. This law enforcement process does not only involve the OJK but also involves the Ministry of Communications and Information and the Republic of Indonesia Police. The rights that should be obtained by users of online loan services are regulated in POJK Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. These rights are regulated in the articles which contain the obligations and prohibitions of online loan providers.*

Keywords: *Fintech; Information; Lending.*

1. Introduction

Every activity in society must always be based on applicable laws, both in the economic, political and social fields. The current rapid development of computer and internet-based information technology has given rise to various new models of digital economic transactions that are developing in Indonesia. Examples are digital payments via Go-pay, Dana wallet (digital), peer to peer payments, peer to peer lending investments, as well as other economic activities based on information technology. This economic activity is more often known as financial technology (fintech).

Financial technology (fintech) takes the concept of adapting developments in information technology combined with economic activities (especially financial services) so that it can produce more practical and easier financial transactions. Financial technology (fintech) activities are growing rapidly in Indonesia because of the convenience and practicality offered through digital economic activities. People can access financial activities and services easily, quickly and practically through applications on each person's smartphone.

It is hoped that the development of financial technology will have a positive impact on economic growth so that it can improve people's welfare. However, apart from the positive impacts, the emergence of financial technology also has negative impacts. The negative impacts that arise include the existence of new modes of criminal acts that occur using technology. This new crime uses technology as its modus operandi. Currently, in Indonesia many people are carrying out online lending activities (pinjol) with the recent development of financial technology.

This activity provides online money credit services or what is usually called peer to peer lending. The ease of the conditions for applying for an online loan makes many people tempted to take out an online loan. The only requirements required are a photo of your KTP and filling in personal data, without any feasibility surveys or guarantees so that everyone can get funds quickly. However, behind this convenience, online loans carry very high interest rates and refunds in a short time.

Another problem that arises as a result of online loans is a lot of intimidation carried out by online loan companies in collecting fraud, theft of personal data and criminal acts of defamation due to online loans. Many people have complained and reported various problems related to online loan companies which are increasingly disturbing and have led to criminal acts. Criminal acts that are often reported are related to debt collection carried out with violence, theft of personal data of loan users, high and unreasonable loan interest rates that lead to extortion and criminal acts of defamation of personal and family reputation.

Juridically, the regulations regarding online loans made by financial technology companies are not yet clearly regulated in law. However, the regulations related to online loans are contained in the Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. Due to this

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arrangement, the terms legal online loan companies and illegal online loan companies emerged. However, law enforcement for illegal online loan perpetrators, based on PJOK Number 77/POJK.01/2016, is only limited to enforcing administrative law, namely in the form of written warnings, fines, activity restrictions and revocation of business permits. Meanwhile, enforcement of criminal law by the Indonesian National Police is only related to criminal acts committed by perpetrators of illegal online loans.

Based on the description above, the author is interested in conducting a study with the title "Judicial Aspects of Financial Technology in Information Technology-Based Money Loans". A problem that can be identified in this legal research is, first, what are the juridical aspects of financial technology in information technology-based money loans in Indonesia? The second problem is, how are the rights of users of information technology-based money lending services protected in Indonesia?

2. Research Method

This legal writing uses a type of normative research or juridical research, using a statutory approach, namely Law Number 21 of 2011 concerning the Financial Services Authority and Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Technology-Based Money Lending and Borrowing Services Information. The nature of this research is descriptive juridical, with data collection techniques using library research from books, journals and the internet. The legal material analysis technique used is using syllogisms with detective logic.

3. Results and Discussion

3.1. Juridical Aspects of Financial Technology in Information Technology Based Money Loans in Indonesia

The rapid development of internet-based information technology has also given rise to the practice of economic activities that utilize technology known as financial technology (fintech). Financial technology activities are activities that use technology to provide access to finance in an easy and practical way. This activity can fulfill someone's financial needs quickly and without being complicated. Financial technology activities bring solutions and bring big changes to society in meeting financial needs in the current technological era.[1]

[1] Program Studi Akuntansi Universitas Ma Chung, *Financial Technology: Teori, Perkembangan, Studi Komparasi dan Studi Kegagalan*, CV Seriu Bintang, Malang 2020, p. 12

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According to the opinion expressed by Ni Luh Wiwik Sri Rahayu Ginantra et al, who quoted from the division of financial technology categories from Bank Indonesia, where Bank Indonesia divides financial technology activities into:[2]

1) Peer to Peer Lending or Crowd funding is a marketplace that is used to bring together people who want to lend money with people who want to borrow money. The process of borrowing and borrowing money is simpler, less complicated and can be completed in less than one week.

2) Market Aggregator, which is a portal that provides various financial-related information to service users or consumers. For example, insurance information, bank credit, credit cards and investments.

3) Risk and Investment Management, which is an activity to be able to manage financial management for both the short and long term.

4) Payment, Settlement and Clearing, which are activities used in transactions that do not use cash. For example Go Pay, Dana, Shopee Pay

Based on this classification, online loans are included in the Peer to Peer Lending or Crowd Funding classification. Related to this, with the increasing number of problems caused by online lending practices by illegal peer to peer lending companies, there is a need for a formula for law enforcement against illegal online lending companies. In fact, the state institution that is given the authority to supervise and regulate online loan companies is the Financial Services Authority (OJK). This is based on Law Number 21 of 2011 concerning the Financial Services Authority. Referring to article 6 of Law Number 21 of 2011, it regulates the duties of the financial services authority which regulates and supervises:[3]

1) Financial service activities in the banking sector

2) Financial services activities in the capital markets sector

[2] Ni Luh Wiwik Sri Rahayu Ginantra dkk, *Teknologi Finansial: Sistem Finansial Berbasis Teknologi di Era Digital*, Yayasan Kita Menulis, Medan 2020, p. 14

[3] Lihat pasal 6 Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan

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3) Financial service activities in the insurance sector, pension funds, financing institutions and other financial service institutions.

The task of regulating and supervising online loan companies falls under the authority of the Financial Services Authority, so that to be able to regulate online financial transactions the Financial Services Authority issues regulations, namely Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 concerning Money Lending and Borrowing Services Information Technology Based. According to POJK Number 77/POJK.01/2016, every peer to peer lending company is required to register and have permission from the OJK. This is contained in Article 7 to Article 11 POJK Number 77/POJK.01/2016. Thus, peer to peer lending companies that are not registered and have OJK permission are illegal online lending companies.

Various legal problems that occur related to online loans are the impact of the large number of illegal online loans that are developing. The problem of illegal online loan companies became a widespread concern for the Indonesian public after news circulated of a teacher in Malang whose debt had ballooned to 40 million due to illegal online loans.

Law enforcement against illegal online loan companies is very important because they have caused unrest among citizens and have violated the rights of citizens who use online loan financial services. This law enforcement process does not only involve the OJK but also involves the Ministry of Communications and Information as well as the Indonesian Republic Police if a criminal act has occurred. Law enforcement that can be carried out by the OJK and the Ministry of Communication and Information is administrative law enforcement, while law enforcement carried out by the Police is repressive law enforcement for criminal acts.

Law enforcement by the OJK regarding the existence of illegal online loan companies is based on legal regulations made by the OJK, including POJK Number 77/POJK.01/2016 concerning Information Technology-based Money Lending and Borrowing Services, POJK Number 1/POJK. 07/2013 concerning Consumer Protection in the Financial Services Sector and OJK Circular Letter Number 18/SEOJK.02/2017 concerning Governance and Risk Management in Information Technology-Based Money Lending and Borrowing Services.

Law enforcement carried out by Kominfo is based on the protection of consumers using online loans, regulations of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Minister of Communication and Information Regulation Number 4 of 2016 concerning Information Security Management

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Systems and Minister of Communication and Information Regulation Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

Law enforcement carried out by the OJK and Kominfo is administrative law enforcement where, in the author's opinion, the power of law enforcement is still very weak. This is because the administrative sanctions given to this illegal online loan company have encountered many difficulties, including because the address and form of this company are unclear, it does not have an office, or the person who runs it is unclear. In the author's opinion, imposing administrative sanctions is not effective in eliminating illegal online loan companies.

Enforcement of criminal law in cases of illegal online loans is only given to the Police of the Republic of Indonesia. However, basically the police cannot directly enforce the law against online lending practices, even though they are illegal. Law enforcement carried out by the police can only be carried out when there is an act that constitutes a criminal act.

That the implementation of criminal law enforcement by the police regarding the actions of illegal online loan companies has been widely carried out and has had an effect on perpetrators of illegal online loans. Articles that can be imposed on people or perpetrators of illegal online loans include Article 32 and Article 48 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions which are acts of disseminating personal data without with the permission of the person concerned, Article 368 of the Criminal Code concerning Threats and Article 378 of the Criminal Code concerning fraud.

The implementation of criminal law enforcement is more effective and can provide a deterrent effect compared to administrative law enforcement in cases of illegal online loan companies.

3.2. Protection of the Rights of Users of Information Technology-Based Money Lending Services in Indonesia

Laws are made in order to protect people's rights from violations committed by other people or other parties. Law enforcement is needed in order to protect the law of society. Regarding the case of illegal online loan companies, law enforcement is used to protect the rights of users of online loan services. The rights of online loan service users are one aspect that needs attention from the Government. The large number of people who use illegal online loan services have become victims, so it is time for the government to make strict regulations regarding rules relating to online loans or regulations relating to financial technology.

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In relation to the rights that should be obtained by users of online loan services, this has been regulated in POJK Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. These rights are regulated in the articles which contain the obligations and prohibitions of online loan providers. The rights of online loan service users are:

1) The right to the latest information regarding information technology-based money lending and borrowing services as regulated in Article 30 paragraph (1)

2) The right to information on acceptance, postponement or rejection of applications regarding information technology-based money lending and borrowing services along with the reasons, as regulated in Article 31 Paragraph (1) and Paragraph (2)

3) The right to obtain information from electronic documents in Indonesian that is easy to read and understand, as stated in Article 32 Paragraph (1)

4) The right to protection and all efforts to transfer responsibility or obligations of the organizer to the user, as regulated in Article 36 Paragraph (1)

5) The right to protection from the need for users to comply with new, additional, continuation and/or changes made unilaterally by the organizer, as stated in Article 36 Paragraph (2).

6) The right to receive compensation for user losses arising from errors or negligence of the organizer's directors and/or employees, as regulated in Article 38.

7) The right to protect the provision of data and/or information regarding users to third parties without the user's permission as regulated in Article 39.

These rights are rights that should be obtained by users of online loan services. Users of online loan services as consumers should have rights that must be fulfilled by online loan companies. However, in reality, illegal online loan companies actually take advantage of the urgent needs of online loan service users to violate the rights of service users to take action to gain large profits.

Protection of the rights of online loan service users is an urgent need. The role of the government, especially law enforcement officials, is needed in order to protect these rights. Violations committed by illegal online loan companies have even led to criminal acts that violate the Criminal Code and the ITE Law.

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The government, through the police, can apply sanctions to illegal online loan companies that have been proven to have committed violations. Among them are the application of the articles in the ITE Law regarding illegal distribution of personal data, the application of the Consumer Protection Law and the application of the Criminal Code if it meets the elements of a criminal act. Efforts to protect the rights of online loan service users, apart from enforcing various laws and implementing sanctions for illegal online loan companies that violate user rights, other efforts that can be taken are to take preventive measures.

This preventive action can be taken by providing education and outreach by the OJK, Kominfo and the Police to the public so that they are not easily tempted by illegal online loans. The education and outreach carried out includes providing knowledge related to legality, interest rates, offering methods and payment terms. It is hoped that the education and outreach carried out can prevent people from getting caught in illegal online loans.

4. Conclusion

Based on the description of the results of the previous discussion, the author draws a conclusion that: The juridical aspect of law enforcement against illegal online loan companies is very important because it has caused unrest among citizens and has violated the rights of citizens who use online loan financial services. This law enforcement process does not only involve the OJK but also involves the Ministry of Communications and Information as well as the Indonesian Republic Police if a criminal act has occurred. Law enforcement that can be carried out by the OJK and the Ministry of Communication and Information is administrative law enforcement and law enforcement carried out by the Police is repressive law enforcement for criminal acts. The implementation of criminal law enforcement is more effective and can provide a deterrent effect compared to administrative law enforcement in cases of illegal online loan companies. The rights of users of online loan services are one aspect that needs attention from the Government. The large number of people who use illegal online loan services have become victims, so it is time for the government to make strict regulations regarding rules relating to online loans or regulations relating to financial technology. In relation to the rights that should be obtained by users of online loan services, this has been regulated in POJK Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. These rights are regulated in the articles which contain the obligations and prohibitions of online loan providers. Recomendation: From the discussion and conclusions obtained, the author provides suggestions, For the Government and the DPR, it is necessary to create a law that regulates financial technology, especially online loans, considering that this practice is currently widely used by Indonesian people. The public is expected to check and validate online loan companies at the OJK, so that they do not easily become victims of illegal online loan companies.

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