

A Justice Reform In Consumer Protection In Development Of Financial Technology

Danang Dwi Cahyo*) and Bambang Tri Bawono**)

*) Police of Grobogan, E-mail: dedanang8@gmail.com

**) Faculty of Law Universitas Islam Sultan Agung

Abstract

This research aims to analyze consumer protection in the development of fintech. The approach used is sociological juridical. Based on the research conducted, it was found that the implementation of fintech is often used as a cover for fraud supported by cyber bullying. The factors that affect the implementation of debtor protection when they are unable to pay their debts to financial technology institutions are the overlapping rules, the lack of reach of law enforcement in cases of fraud under the guise of financial technology institutions, and the influence of globalization which has resulted in the growth of financial technology institutions becoming increasingly unstable under control. This results in the implementation of financial technology not being in accordance with good ethical principles in making an agreement.

Keywords: Financial Technology; Consumers; Legal Protection; Justice.

1. Introduction

Consumers are one of the actors in economic activities in a country.¹ Consumers are individuals/groups of people who consume goods or services provided by producers. The following is the consumer's understanding of the experts:² Philip Kotler "consumers are all individuals and households who buy or obtain goods or services for personal consumption". Hornby "consumer is every person who uses goods and/or services available in the community, both for the benefit of oneself, family, other people, and other living creatures and not for trade".

Consumers as users of goods or services need a clear legal protection in obtaining satisfaction and feasibility in consuming goods or services. Consumer Protection according to Act No. 8 of 1999, article 1 point 1 is "all efforts to ensure legal certainty to provide protection to consumers".

In this case, in all the use of products or services by consumers, consumers are entitled to legal certainty. The intimidating billing of Financial Technology companies is one of the most publicized violations of the law today. The company often collects using harsh words to threats of violence to its customers who are in arrears in repaying their debts.³

¹Catur Budi Dianawati dan Amin Purnawan, Kajian Hukum Jaminan Hak Tanggungan Yang Dilelang Tanpa Proses Permohonan Lelang Eksekusi Ke Ketua Pengadilan Negeri, *Jurnal Akta*, Vol. 4 No. 2 June, 2017, p. 126.

²Dhika Augustyas "Perlindungan Hukum Bagi Konsumen" accessed at <https://dhasitsme.wordpress.com/2012/04/18/perlindungan-hukum-bagi-konsumen/> on 10 May 2019.

³Siti Anisah, Studi Komperatif Terhadap Perlindungan Kepentingan Kreditor dan Debitor dan Debitor dalam Hukum kepailitan, *Jurnal Hukum*, No. 3 Special Edition Vol. October 16, 2009, p. 50.

Based on the LBH Jakarta report, this law violation is not only done by illegal Financial Technology companies but also licensed companies. The billing mechanism, the Financial Technology company uses an internal division or desk collection or a third party.⁴

Intimidating billing is a prohibited practice in Financial Technology companies. These provisions are stated in the code of ethics and behavior or the Code of Conduct of the Indonesian Financial Technology Association (Aftech). The code of conduct requires all Financial Technology companies to prioritize good faith in collecting loans to customers.

The code of conduct also requires Financial Technology companies to have and submit settlement and collection procedures to customers, namely borrowers and lenders when there is a loan default. Then, each provider is required to inform the customer about the steps to be taken in the event of a loan delay or loan payment failure.

The collection steps include the provision of warning letters, requirements for scheduling or restructuring loans, correspondence with the Borrower remotely (desk collection), including via telephone, email, or other forms of conversation. Then, Financial Technology companies must also notify customers about scheduled visits or communication with the collection team, loan cancellations.

When using a third party in billing, the Financial Technology company must use a party that is not included in the blacklisted authority (must be certified) or from the Association. Then, Financial Technology companies are also prohibited from using intimidating methods, physical and mental violence or other ways that offend SARA or demean the dignity, dignity, and self-esteem of the Borrower, in the physical world and in cyberspace (cyber bullying) both against the Borrower, , property, or relatives and family. Based on the various explanations that exist, it is necessary to analyze more deeply related to legal protection for victims in the current problematic Financial Technology case.

2. Research Methods

The type of research used in this study is a non-doctrinal legal research type. The approach used is sociological juridical, with descriptive analytical research specifications. The method of data collection is carried out by field studies and studies of laws and regulations.

3. Result and Discussion

3.1. Implementation of Consumer Protection in the Development of Financial Technology in Indonesia

Advances in technology have given birth to a new approach in the development of forms and methods of financial services. This is indicated by a change in the model, from which previously most financial companies offered their services door to door or manually with their marketing agents."Financial

⁴ <https://www.Hukumonline.com/berita/baca/lt5c59131b7a515/i-duh-i--penyelesaian- Hukum-ribuan-pengaduan-fintech-masih-tak-dalam/>

Technology" company,⁵this clearly increases the absorption of consumers in the capital and financial services trading sector, however, legal politics in the financial services institution sector has not been able to keep up with the development of the financial services model which has developed far with the advancement of information and communication technology media. This situation results in various kinds of problems in the use of financial service institutions. Various kinds of losses caused by the lack of consumer protection in cyber-based capital lending often occur.

This can be seen in the case of online loans that occurred in the city of Solo, at first YI borrowed one million rupiah to send their children to one of the financial technology-based money lending service institutions that YI obtained on the Playstore and biodata. In the course of one week's development, interest and fees that cannot be explained are very large and must be paid by YI, this situation makes YI make new loans totaling four million rupiah, this makes loan interest increasingly out of control, so YI's total debt of four million rupiahs must be paid in the amount of thirty million rupiahs. This is clearly not true considering the amount of the principal loan with the burden that must be returned is not appropriate. This situation is getting more complicated with various threats and photos of YI are spread with the issue that YI is a Commercial Sex Worker. This is clearly the spread of false information that can harm a consumer of financial technology.⁶

A similar situation was also experienced by Sekar as an online loan victim in Sleman. Sekar stated that at first he borrowed funds from online loan institutions due to the need to support his family's life after his husband had to be laid off due to the impact of COVID-19. At the beginning of the loan, he did not see anything detrimental, but after a month when Sekar paid the first installment, he had to pay three times the installments with high interest and administrative costs, while the amount of Sekar's loan was three million eight hundred thousand rupiah but the debt that must be repaid is twenty million five hundred thousand rupiah.⁷

This also happened to Boma Haryanto who lives in Kudus City, the easy online loan requirements, namely in the form of a photo ID and biodata only, made Boma tempted to borrow some funds to finance his business which was experiencing a decline in income. After one week it turned out that the loan installment payments were very large due to administrative funds. This resulted in Boma being unable to pay his debts in the second month, then at the end of the second month of installments, Boma borrowed back some funds from the same institution, in his development his debt continued to grow, and in the end Boma had to experience threats and intimidation in the form of spreading his name as a fraud which in this case is because he is unable to pay his debt installments.⁸

⁵Acika Permatasari dan Kami Hartono, Tinjauan Yuridis Kontrak Perdagangan Melalui Internet (Studi Pada Toko Online Shopee di Semarang), Prosiding SEMINAR NASIONAL MAHASISWA Universitas Islam Sultan Agung Semarang, April 2019, April 2019, p. 3-4.

⁶<https://www.tribunnews.com/regional/2019/07/25/kronologi-nasabah-pinjaman-online-rp-1-juta-denda-rp-30-juta-sebulan-to-fitnahrela-digilir>, Accessed June 12, 2020.

⁷ Sekar Sukmawati, Personal interview with online loan victims on May 12, 2020 in Yogyakarta City.

⁸ Boma Haryanto, Personal Interview with online loan victims in Kudus City on June 16, 2020.

Based on the various cases above, it is clear that the role of the Financial Services Authority in Indonesia is still not effective. This is also supported by a statement from the Investment Alert Task Force which stated that throughout 2019 to early 2020 there were 105 financial technology problems in Indonesia.⁹ So it is clear that from the various explanations above there are various kinds of problems in the implementation of consumer protection against fraud committed by problematic financial technology institutions, the problems intended are:

- The problem of consumer protection in violations committed by financial technology institutions is still weak

Kornelius Gae as the advocacy coordinator of the Central Java Legal Aid Institute stated that the problem of fraud cases that claimed many victims through Financial Technology institutions in Central Java was increasing, this was shown by the 1200 cases of intimidation in the collection of debtors' debt repayments to Financial Technology institutions. Even in Kendal there were victims who had to die as a result of the intimidation. According to him, this is a form of failure to protect the public from the debt bondage of very intimidating Financial Technology institutions.¹⁰

- Ineffective Law Enforcement Issues Related to Legal Violations by Troubled Financial Technology Institutions

According to Kornelius, the lack of clarity in the implementation of supervision by the competent authorities, has resulted in the problem of fraud under the guise of Financial Technology Institutions increasingly uncontrollable. The police as the front line in law enforcement in Indonesia¹¹It is often difficult to prove that Financial Technology Institutions have malicious intentions that can harm the public without the active role of OJK. According to him, this is because the police are unable to carry out investigations and investigations with an administrative approach from the problematic Financial Technology Institute.¹²In addition, the lack of public knowledge regarding genuine and problematic Financial Technology Institutions as well as information on legal channels to obtain protection against criminal acts from problematic Financial Technology Institutions makes it difficult to enforce laws against Financial Technology Institutions that harm the public.¹³

Based on the various explanations above, it is clear that in its development the implementation of financial technology is not in accordance with good ethical principles in making an agreement. Although the contract law recognizes the principle of freedom of contract, an agreement must also be subject to good ethical

⁹<https://www.liputan6.com/citizen6/read/4295961/jangan-tertipu-pinjaman-online-cek-dulu-105-fintech-dan-99-investasi-illegal>, Accessed June 12, 2020.

¹⁰ Kornelius Gae, Personal interview with the advocacy coordinator of a Central Java legal aid agency on June 1, 2020.

¹¹Ibnu Suka, Gunarto, dan Umar Ma'ruf, Peran Dan Tanggung Jawab Polri Sebagai Penegak Hukum Dalam Melaksanakan Restorative Justice Untuk Keadilan Dan Kemanfaatan Masyarakat, *Jurnal Hukum Khaira Ummah* Vol. 13. No. 1 March 2018, p. 115-116.

¹²Ragil Tri Wibowo dan Akhmad Khisni, Restorative Justice in Application for Crime Investigation on Property, *Jurnal Daulat Hukum* Volume 1 No. 2 June 2018, p. 555-556.

¹³ Kornelius Gae, Personal interview with the advocacy coordinator of a Central Java legal aid agency on June 1, 2020.

principles so that in one of the conditions for a valid agreement it is known that there is a condition of agreement with a lawful purpose or in other words an agreement must be clear and cannot conflict with current law.

3.2. Justice Reform in Consumer Protection in the Development of Financial Technology in Indonesia

In its development, the Financial Services Authority Regulation Number 77 /Pojk.01/2016 concerning Information Technology-Based Lending and Borrowing Services also has various weaknesses. These weaknesses are clearly related to technical lending to consumers. The problems are divided into:¹⁴

- it has not been clearly regulated related to loan interest;
- the absence of insurance on fintech loans;
- has not yet regulated the technical supervision of fintech accounts;
- there is no guarantee regarding the obligations of fintech accounts to maintain the confidentiality of consumer or debtor data;
- not yet regulated regarding Limitations related to the principle of know your customer by fintech accounts;
- the guarantee of the rights of debtors or consumers has not been regulated to receive sufficient information related to fintech institutions and systems
- Then this OJK rule does not contain the principles and objectives of supervision related to information technology-based lending and borrowing services.

These seven weaknesses in the end also resulted in the violation of points a and b preamble to the Financial Services Authority Regulation Number 77 /Pojk.01/2016 concerning Information Technology-Based Borrowing-Lending Services which states that: that information technology has been used to develop the financial industry that can encourage the growth of alternative financing for the public; and that in order to support the growth of information technology-based financial service institutions so that they can contribute more to the national economy.

4. Closing

In its development, the implementation of financial technology is not in accordance with good ethical principles in making an agreement. Although the contract law recognizes the principle of freedom of contract, an agreement must also be subject to good ethical principles so that in one of the conditions for a valid agreement it is known that there is a condition of agreement with a lawful purpose or in other words an agreement must be clear and cannot conflict with current law. It is necessary to formulate rules related to debtor protection for the implementation of online lending through financial technology institutions, both at the level of laws, government regulations, ministerial regulations, OJK regulations, as well as provincial, district and/or city regulations.

5. References

¹⁴Sutan Remy Syahdeini, *“Sejarah Hukum Hukum eksekusi hak tanggungan di Indonesia*, dalam Jurnal Hukum Bisnis, Yayasan Pengembangan Hukum Bisnis, Vol. 12, Jakarta, 2002, p. 42-48.

Journals

- [1] Acika Permatasari dan Kami Hartono, “Tinjauan Yuridis Kontrak Perdagangan Melalui Internet (Studi Pada Toko Online Shopee di Semarang)”, Prosiding SEMINAR NASIONAL MAHASISWA Universitas Islam Sultan Agung Semarang, April 2019
- [2] Catur Budi Dianawati dan Amin Purnawan, “Kajian Hukum Jaminan Hak Tanggungan Yang Dilelang Tanpa Proses Permohonan Lelang Eksekusi Ke Ketua Pengadilan Negeri”, *Jurnal Akta*, Vol. 4 No. 2 June 2017
- [3] Ibnu Suka, Gunarto, dan Umar Ma’ruf, “Peran Dan Tanggung Jawab Polri Sebagai Penegak Hukum Dalam Melaksanakan Restorative Justice Untuk Keadilan Dan Kemanfaatan Masyarakat”, *Jurnal Hukum Khaira Ummah* Vol. 13. No. 1 March 2018
- [4] Ragil Tri Wibowo dan Akhmad Khisni, “Restorative Justice in Application for Crime Investigation on Property”, *Jurnal Daulat Hukum* Volume 1 No. 2 June 2018
- [5] Siti Anisah, Studi Komperatif Terhadap Perlindungan Kepentingan Kreditor dan Debitor dan Debitor dalam Hukum kepailitan, *Jurnal Hukum*, No. 3 Special Edition Vol. 16 October 2009
- [6] Sutan Remy Syahdeini, “Sejarah Hukum Hukum eksekusi hak tanggungan di Indonesia, dalam *Jurnal Hukum Bisnis*, Yayasan Pengembangan Hukum Bisnis, Vol. 12, Jakarta, 2002

Internet

- [1] Dhika Augustyas “Legal Protection for Consumers” accessed at <https://dhasitsme.wordpress.com/2012/04/18/perlindungan-Hukum-bagi-konsumen/> on 10 May 2019
- [2] <http://e-journal.uajy.ac.id/12195/1/JURNAL%20HK11302.pdf>, downloaded on May 12, 2020.
- [3] <https://www.ojk.go.id/id/kanal/perbankan/regulation/peraturan-ojk/default.aspx>, Accessed June 12, 2020
- [4] <https://www.Hukumonline.com/berita/baca/lt5c59131b7a515/i-duh-i-penyelesaian-Hukum-ribuan-pengaduan-fintech-masih-tak-dalam/> Accessed June 12, 2020
- [5] <https://www.tribunnews.com/regional/2019/07/25/kronologi-nasabah-pinjaman-online-rp-1-juta-denda-rp-30-juta-sebulan-to-fitnahrela-digilir>, Accessed June 12, 2020
- [6] <https://www.liputan6.com/citizen6/read/4295961/jangan-tertipu-pinjaman-online-cek-dulu-105-fintech-dan-99-investasi-illegal>, Accessed June 12, 2020

Interview

- [1] Boma Haryanto, Personal Interview with online loan victims in Kudus City on June 16, 2020
- [2] Kornelius, Personal interview with the advocacy coordinator of the Semarang City legal aid institution on June 1, 2020
- [3] Sekar Sukmawati, Personal interview with online loan victims on May 12, 2020 in Yogyakarta City