

The Legal Protection against Emergency Contacts Made Unilaterally in Online Loans

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Abstract. *The financial development is a pattern of creating new financial instruments in new financial technologies and markets. Financial technology is an innovation in the field of financial services through a touch of modern technology. One example of this innovation is the existence of an online loan company. The purpose of this study is to find out how legal protection is for emergency contacts whose data is listed unilaterally which is misused by online lenders and find out how third party responsibility manifests as an emergency contact in online loans. The type of research used is the type of juridical-normative research. The type of legal material used is secondary legal material.*

Keyword: *Emergency; Loan; Online; Protection; Responsibility.*

1. Introduction

Humans are social creatures who always have desires that demand to be fulfilled. Human awareness in fulfilling this desire is then followed by a situation where he has certain rights. Basically every human being wants a change in himself in a more advanced direction. Human desire is the desire to obtain goods or services that will satisfy his needs or improve his life. However, their wants or needs are not in accordance with the means and funds they have, causing some of them to carry out lending or credit transactions, one of which is money. Agreements are distinguished in a broad and narrow sense. An agreement in a broad sense is an agreement in which each agreement gives rise to legal consequences as desired by the parties, including the marriage therein or the marriage agreement. An agreement in a narrow sense is an agreement that is

only shown in legal relations in the field of property relations as regulated in Book III of the Civil Code.¹

One form of agreement is a loan. In Article 1754 of the Civil Code, lending and borrowing is an agreement involving more than one party, whereby one party lends a certain amount of money or goods to another party, which then on condition that the borrowing party will return the same amount of money or goods as same type and quality. The agreement in this case is a loan in the form of money and along with the times, every activity cannot be separated from technical support. Today's financial institutions have developed, which are now technology-based financial institutions. One form of industrial progress in finance today is adaptation to technology. Technology is considered to be able to provide solutions in simplifying, speeding up time, providing convenience, and some of its parts for use in Fintech in Indonesia. The existence of current technological advances can be utilized by many people in doing business, one of which is business in the field of financial services. This is evidenced by the existence of various types of applications on the internet that provide services in lending money.

Online loans are money loan offers from financial service providers that operate online. In accordance with Article 1 point 3 of the Financial Services Authority Regulation Number 77/POJK.01/2016 of 2016 concerning Information Technology-Based Money Borrowing Services, these are providers of financial services to connect lenders with loan recipients in the context of entering into loan agreements related to the rupiah currency directly through an electronic system using the internet network.² Providing online loan services is a legal entity that provides, manages, and operates information technology-based money borrowing services. The organizer in this case is in the form of a limited liability company or cooperative, which is required to fulfill several conditions, one of which is required to apply for registration and licensing with the Financial Services Authority (OJK). The loan agreement is stipulated in Article 20 POJK Number 77/POJK.01/2016 that the loan agreement for both lending to online loan companies registered in electronic documents contains at least: 1. Agreement number; 2. Agreement Date; 3. Identity of Severe Parties; 4.

¹J.Satrio, 2005, *Hukum Perikatan, Perikatan Yang Lahir Dari Perjanjian Buku I*, Citra Aditya Bakti, Bandung, p.27.

²Financial Services Authority Regulation Number 77/POJK.01/2016 of 2016 concerning Information Technology-Based Money Borrowing Services.

Provisions regarding the rights and obligations of the parties; 5. Loan Amount; 6. Loan interest rates; 7. Installment Value; and 8. Term.³

The process of applying for an online loan is one of the terms of the agreement between the borrower or customer and the online lender, it is not uncommon for web or online loan applications to provide conditions or require prospective customers to include several emergency contact numbers. An emergency contact is a number that can be contacted if something happens, for example a creditor or customer does not or fails to pay on time and is difficult to contact.

The legal requirements of a contract are regulated in Article 1320 of the Civil Code, the Civil Code does not require contracts to be made in written form, but to be said to be valid a contract must fulfill 4 (four) conditions as follows:

- a. The parties agree to be bound;
- b. competent to act;
- c. There is a certain object (there is a specific purpose); And
- d. A lawful reason.⁴

An agreement is void or has no force if it is made due to an oversight or is obtained by force or fraud.

Online loans make it easy for borrowers and lenders, but behind this convenience it also creates a number of problems, one of which is the disruption of 3rd (three) party personal numbers as emergency contact numbers. It is often found that consumers include emergency contact numbers without approval and are not even known by the owner of the emergency contact number, besides that it also raises other problems which online application can contact 3rd party emergency contact numbers (three) taken from personal data or customer contacts that are entered without the consent and without the knowledge of the consumer concerned. Online loans held by most companies, we often encounter companies neglecting or ignoring questions related to the identification of emergency contacts and only emphasizing on identifying data regarding these prospects. When the borrower fails to pay off the payment, this is very disturbing to the 3rd (third) party as an emergency contact. We often encounter, in which

³Ibid.

⁴Sudikno Mertokusumo, 2009, *Pengantar Hukum Perdata Tertulis*, Sinar Grafika, Jakarta, p.161-166.

the borrower or customer lists an emergency contact unilaterally, which means that the borrower does not notify and does not ask for permission from a 3rd (third) party who is used as an emergency contact in the lending and borrowing agreement on the online loan application. So in this case it will have an impact on the personal disturbance of the 3rd (three) party as an emergency contact and also have an impact on the implementation of emergency contact in carrying out online loans. The inclusion of an emergency contact which is carried out unilaterally without the knowledge and without permission of the emergency contact will create new problems where a 3rd (third) party as an emergency contact will feel annoyed if the borrower is negligent in paying off his debt.

Based on this description, the writer makes the research objectives for this writing namely: What is the legal protection for a 3rd (three) party as an emergency contact that is carried out unilaterally in online loans and how is the responsibility of a 3rd (three) party as an emergency contact in online loans?

2. Research Methods

Research methods have an important role in the preparation of scientific research. The research method is normative research. The juridical-normative research method is an approach based on the main legal material by examining only secondary material which examines the theories, concepts, legal principles and laws and regulations related to this research.

The type of legal material used in this study is a type of secondary data, namely data obtained from the results of a literature review or review of various literature or library materials related to problems or research materials which are often called legal materials.

3. Results and Discussion

3.1 Legal Protection Against Emergency Contacts Made Unilaterally in Online Loans

The Financial Services Authority Regulation Number 77/POJK.01/2016 of 2016 concerning Information Technology-Based Money Borrowing Services, there is not a single article that regulates emergency contact as a party that is bound by information technology-based money-lending transactions.

Emergency contact is indeed not included in the parties to an agreement, but its existence cannot be underestimated because it is not uncommon for them to

often get problems where the party is listed unilaterally by the borrower in the terms of applying for an online loan. When a borrower makes a loan transaction and borrows an amount of money using an online application in an online loan service provider, the borrower must comply with all the provisions contained in the application for an online money lending service provider. One of the requirements that is quite important in applying for an online loan is personal data that must be filled in which includes: name, address, identification/identity, telephone number and active e-mail address, biometric information, emergency contacts.

By including an emergency contact in the online loan application, it provides benefits in terms of providing certainty and protection for the lender, if the borrower passes the due date for repayment of his debt and then cannot pay off his debt and cannot be contacted, then emergency contact) will be contacted and billed by the online lender. Cases of online loans that often occur, where a third party as an emergency contact (emergency contact) gets phone calls from online loan providers who mostly use threatening words so that emergency contacts can contact and persuade borrowers to pay off their debts immediately. In this case the 3rd party as the emergency contact feels disadvantaged, because it disturbs and even threatens his privacy.⁵

POJK Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services in Article 18 reads "The agreement for the implementation of Information Technology-Based Borrowing-Lending Services includes: a. agreement between the Administrator and the Lender; and b. agreement between the Lender and the Borrower."⁶, it can be concluded that the 3rd (three) party is a party that is outside the agreement, in other words, an emergency contact does not have the obligations and rights at all. Emergency contacts often experience losses because their telephone numbers and personal data are misused by the organizers, so that in this case it is contrary to Act No. 19 of 2016 concerning Amendments to Act No. 11 of 2008 concerning Information and Electronic Transactions Article 26 paragraph (1) which states that the use of any information via electronic media concerning a person's personal data must

⁵Moch. Isnaeni, 2018, *Seberkas Diorama Hukum Kontrak*, Revka Petra Media, Surabaya, p.68.

⁶Article 18 Regulation of the Financial Services Authority Number 77/POJK.01/2016 of 2016 concerning Information Technology-Based Money Borrowing Services

be carried out with the permission or approval of the owner of the personal data concerned. Therefore, from these provisions.⁷

Consumer protection arrangements in Indonesia are specifically regulated in Law no. 8 of 1999 concerning Consumer Protection, is an umbrella in consumer protection in Indonesia. Act No. 8 of 1999 concerning Consumer Protection Article 4 regulates consumer rights. It can be seen that online loan customers as consumers have rights that must be considered by online loan companies. Then further protection of personal data in general is also contained in Law no. 39/1999 concerning Human Rights. Referring to the current regulations, actions that can be taken by victims or consumers whose personal data is misused by online loan services can demand the implementation of administrative sanctions against the service provider. However, legal action that is limited to filing lawsuits or demanding the implementation of administrative sanctions is still lacking in protecting personal data misuse. The Criminal Code in Indonesia has not regulated legal jurisdiction over crimes in the cyber world, which will then have an impact on the protection of personal rights.⁸

If in fact there is a conflict in the form of including the personal data and telephone number of a 3rd (third) party as an emergency contact carried out unilaterally which will then cause harm and a threat to his personal rights, then in this case the rights of the 3rd (third) party as the emergency contact has been violated, and this can be resolved with a lawsuit against the losses suffered based on the ITE Law as a legal basis that protects his rights. In addition, a 3rd party (three) as an emergency contact (emergency contact) feels disturbed and disadvantaged, so he has the right to sue the organizer of the online loan in a civil manner. Online loan providers who have violated POJK provisions No. 77/POJK.

- a. written warning;
- b. Fines (obligation to pay a certain amount of money);
- c. Restrictions on business activities; And
- d. License revocation

⁷<http://download.garuda.kemdikbud.go.id/article.php?article=2948487&val=26130&title=PERLINDUNGAN%20HUKUM%20BAGI%20EMERGENCY%20CONTACT%20YANG%20DICANTUMKAN%20SECARA%20SEPIHAK%20UNTUK%20PINJAMAN%20ONLINE>

⁸ <http://publishing-widyagama.ac.id/ejournal-v2/index.php/ciastech/article/view/3302/1928>

3.2 The Form of Third Party Responsibility as an Emergency Contact in Online Loans

The form of responsibility for loans carried out by the borrower in this matter is based on the theory of individual guarantees, for the Subject of Individual Collateral is an agreement entered into between a person who owes a debt and another person as a guarantor in which the guarantor can fulfill the obligations of the debtor.⁹

Articles 1820 and Article 1822 of the Civil Code state that if a third party (as guarantor) for the loan binds himself, then in this case it is only limited to part of the responsibility that belongs to the guarantor. The absence of a guarantee agreement for the debtor's debt with a third party as a guarantor will raise a case where the third party in this case is considered illegal, because it does not comply with the applicable provisions. In this case a third party as a guarantor cannot be included as a guarantor as described in Article 1821 of the Civil Code, because it does not fulfill several provisions therein, namely:

- a. There is no special agreement formed and made between the guarantor and the loan recipient;
- b. There is no voluntarily guarantor for all guarantor debts at the Online Loan Provider;
- c. It tends to be that the guarantor is not notified that his personal number is used and is used as an emergency contact.

It can be concluded that Third Parties do not have the burden of responsibility for debts owned by Borrowers, therefore Borrowers cannot automatically and/or without approval enter emergency contact with Third Parties in the terms of carrying out online loans.

3rd (third) parties as emergency contacts in online loans are core relatives to close friends of the borrower. The emergency contact feels that he is about to be harmed if the borrower does not ask for permission or approval from him, because it will result in him being contacted and terrorized by the Online Loan Provider. There is no judicial responsibility imposed on emergency contacts for the Civil Code. Inclusion of an emergency contact as a form of legal certainty for the borrower, if the borrower misses the deadline and is unable to pay off his

⁹Subekti, 1989, *Jaminan-Jaminan Untuk Pemberian Kredit Menurut Hukum Indonesia*, Citra Aditya Bakti, Bandung, p.15.

debt to the lender. In including the number and proof of identity of the emergency contact party, there should be prior approval and notification of the party concerned.

Including emergency contact numbers and proof of identity is one of the requirements in online loans, both online loans registered with the Financial Services Authority (OJK) or online loans that are not registered with the OJK. The inclusion of data information and emergency contact information in online loans is not monitored internally or externally, this can be seen in the absence of data verification from the online loan provider for the emergency contact submitted by the borrower. The application of an online loan requires that you include an emergency contact number, must be responsible and must be stated in a written agreement,¹⁰

The 3rd (third) party as an emergency contact in this matter cannot be burdened with responsibility for the totality of debts belonging to Borrowers who make loans online, because this matter is based on the provisions of Article 1821 of the Civil Code which contains, that there is no guarantee agreement that sticking out and arising between the parties, if there is no agreement that takes into account both parties, an exception that provides a related statement when a 3rd (third) party is willing to bear the debt of the borrower, then in this case the borrower's debt will be borne in full by the third party 3 (three).

If the borrower does not make a written agreement with the 3rd (three) party as an emergency contact and does not get approval from the 3rd (third) party, then the online loan provider cannot collect the debt and especially has no right to criticize the 3rd party (three), because even if the 3rd (third) party is used as an emergency contact, the 3rd (three) party is not the party that has the obligation to make debt payments from the Borrower. Therefore, online loan providers are always obliged to collect debts from borrowers, because the bond between the emergency contact party and the borrower is not based on a guarantee agreement relationship and tends not to be notified. The 3rd (three) party as an emergency contact has no jurisdictional responsibility towards the online loan provider and the borrower.

4. Conclusion

Linking other people's personal data without the consent of the person concerned can be said to have violated laws and regulations. The lender has the

¹⁰ <https://ejournal.atmajaya.ac.id/index.php/gloriajustitia/article/view/3434/1594>

right to carry out collateral related to the information obtained in terms of emergency contact must be based on the agreement of the data owner. Lenders may be subject to criminal threats and/or administrative sanctions, if the 3rd (third) party acting as an emergency contact feels insecure or their rights are disturbed. The 3rd (third) party as an emergency contact gets legal protection, which is stated in the ITE Law Article 26 paragraph (2) which states that a party whose rights have been violated can submit legal remedies in the form of a lawsuit for exaggerated losses sourced from this Law as a basis laws that protect it. Based on Article 1365 of the Civil Code, Such unlawful acts can be filed for compensation on condition that the elements of unlawful behavior, mistakes, losses and a causal link between the unlawful behavior, negligence and losses are met. Therefore, if a third party feels aggrieved due to acts of abuse committed by the recipient of the loan and the organizer of the online loan agreement online money can file a claim for compensation, either material or immaterial. If the 3rd (third) party as an emergency contact does not bind himself to the borrower which is based on Article 1821 of the Civil Code, then he has no legal responsibility and cannot be held responsible for the entire debt of the borrower in online loans, because there is no binding agreement. The online loan party has no right to threaten or contact a 3rd (third) party as an emergency contact, if in an online loan the emergency contact does not give approval and/or does not know he is being used as an emergency contact by the borrower. Therefore, the online loan provider is obliged to collect debts from the borrower, no longer to the emergency contact.

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