

Juridical Review of Dissemination of Personal Data by Online Loan Companies

Sutarja

Faculty of Law, Universitas Islam Sultan Agung, Indonesia, E-mail: sutarja_36jeh@yahoo.com

Abstract. *The purpose of this research is to study and analyze Legal Protection Against Dissemination of Personal Data Carried Out by Online Loan Companies and To review and analyze Legal Responsibility for Dissemination of Personal Data Carried Out by Online Loan Companies. This study uses a sociological juridical approach. The results of this study indicate that Legal protection of personal data has been regulated in Article 26 of the ITE Law. In particular, the protection of borrowers' personal data in online loan services is regulated in POJK No. 77/POJK.01/2016 concerning Information Technology-Based Borrowing and Borrowing Services, which is emphasized in Article 26 that the operator is obligated and responsible for maintaining the confidentiality, integrity and availability of users' personal data and in its utilization must obtain approval from the owner of personal data unless otherwise specified by statutory provisions. And Sanctions for violations of personal data which include defamation, are regulated in Article 45 of the ITE Law in the form of criminal sanctions. In addition to criminal sanctions, this is specifically regulated in Article 47 paragraph (1) POJK No. 77/POJK.01/2016 namely administrative sanctions, in the form of written warnings, fines, restrictions on business activities, and revocation of permits.*

Keywords: *Data; Dissemination; Loans; Online; Personal.*

1. Introduction

Regulations governing the protection of personal data in Indonesia have been explicitly regulated in several laws, such as Law Number 10 of 1998 concerning Banking, Law Number 36 of 2009 concerning Health, Law Number 24 of 2013 concerning Administration Population, and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic

Transactions. Article 26 Paragraph (1) of the ITE Law regarding information through electronic media containing personal data does not explain in detail and comprehensively the principles of personal data protection, rights and obligations for data owners and stakeholders or the government in processing and using personal data. . The elucidation of the law in this article only provides a general definition of personal rights. In Paragraph (2) it can be seen the consequences if there is a violation related to personal data which is only compensation in nature.

Two methods are known to provide protection for personal data, namely, firstly securing physical personal data, secondly, protecting personal data through regulations with the aim of providing guarantees for users of personal data, as well as managers (providers) for potential violations committed in the world. cyberspace whose basis uses personal data as a profitable commodity asset.¹

In general, personal data can be classified into two, namely those related to personal identity and those related to user information. The personal identity itself describes the subject/person in a comprehensive manner that contains information that is absolutely the right of the subject, while the correlation of user information in cyberspace can be in the form of data that can provide support in the form of social, economic and political benefits.²

One of the developments in information technology in the financial sector can be found in peer to peer lending finance technology (fintech).³Currently, in terms of the use of a financial service that can be connected to the loan, it is very widely used by loan users because looking at the situation that occurred at that time, namely during the Covid 19 pandemic, which caused people to experience difficulties in the economic sector, so it was not uncommon for some door users to must use the loan to meet their needs.⁴ The current crisis conditions are being exploited by illegal loan sharks by offering various digital media platforms as a form of offering to the public to be able to use them, where the target of these actors themselves are people who have low financial literacy and also knowledge related to legal protection for themselves. an action or act related to the use of

¹Wahyudi Djafar, Bernhard Ruben, and Blandina, 2016, Protection of personal data: Proposals for Policy Institutionalization from a Human Rights Perspective, first published, (Jakarta: Institute for Community Studies and Advocacy (ELSAM) Journal, p. 4. url:https://learning.hukumonline.com/wp-content/uploads/2022/09/Bin_Perlindungan-Data-Pribadi_compressed.pdf

²Wahyudi Djafar, 2014, Protection of Rights to Privacy on the Internet, Some Key Explanations, first publication, (Jakarta: Institute for Community Studies and Advocacy (ELSAM), page 3.

³ Priliasari, E. 2019. The Importance of Personal Data Protection in Online Loan Transactions. National Law Magazine, 49(2), 1-27., p. 3

⁴ Pardosi, ROAG, & Primawardani, Y. Protection of the Rights of Online Loan Customers from a Human Rights Perspective., p. 354

electronic media in the financial sector.⁵They do not know whether they have been registered with the Financial Services Authority (OJK) or not. This is an important thing to pay attention to in order to see that the seller is a loan that can have responsibility in carrying out an activity in the field he is doing or is an illegal loan.⁶

The implementation of this illegal loan is very troubling to the public because several operators of the loan application have access to personal data owned by victims as members of the public. In this case, it is not uncommon for Pinjol debt collectors to be known to intimidate victims so that they can immediately make payments on debts made by these loan users, so that this is a form of threat and also a company that is accepted by individual loan users.⁷

In Indonesia, many cases have occurred which resulted in losses by the community related to the illegal loan cases themselves. where many loan applications are not registered or have permission granted by the OJK.⁸Even so, there are many cases that cannot be processed by law. There are many ways that illegal borrowers do to carry out activities that are detrimental to the community. One of them is that all transactions carried out are not transactions carried out directly or face to face but are carried out electronically. In addition, illegal loan users do not know the contents of the agreement made between the loan user and the illegal loan party. So that if something happens that might be in the contents of the agreement detrimental to the user of the illegal loan, then in terms of law enforcement it will be difficult to resolve and seek defense for the user of the loan who is deemed detrimental.

For this reason, efforts from the government are needed in the context of eradicating this loan problem. Regarding this matter, Regulation of the Financial Services Authority (POJK) Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services (LPMUBTI), Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) and Law Number 8 of 1999 concerning Consumer Protection (UUPK), apparently not fully able to provide guarantees in the form of legal protection for users of loan services.

⁵ Abdullah, A. 2021. Analysis of Online Loan Knowledge in the Surakarta Community. *JESI (Indonesian Sharia Economic Journal)*, 11(2)., p. 109

⁶ Wahyuni, RAE, & Turisno, BE (2019). Illegal Financial Technology Practices in the Form of Online Loans From a Business Ethics Review. *Journal of Indonesian Legal Development*, 1(3), 379-391., 389

⁷ Sastradinata, DN (2020). Legal Aspects of Illegal Online Loan Institutions in Indonesia. *Independent Journal*, 8(1), 293-301., 295

⁸ Sidiq, VARA, & Setiawan, H. (2022). Framing Analysis of Coverage of Chinese Citizens' Online Loan Cases on CNNIndonesia's Online Media. com and National Tempo. com. *EDUCATIVE: JOURNAL OF EDUCATIONAL SCIENCES*, 4(1), 851-861., page 853

Based on the description above, the objectives to be achieved in this study are study and analyze legal protection for users of online loan services in Indonesia and obstacles to law enforcement.

2. Research Methods

This study uses a sociological juridical approach. The specifications in this study are analytical descriptive in nature, the data used are primary data and secondary data, using data collection by interviews and literature studies, qualitative data analysis, problems are analyzed by theory, law enforcement and legal certainty.

3. Results and Discussion

The development of information technology at this time has been able to carry out the collection, storage, distribution and analysis of data. The concept of personal data protection explains that each individual has the right to determine whether he will join the community and share/exchange personal data or not. Data protection law includes measures to protect the security of personal data, as well as conditions regarding the use of personal data of individuals.⁹

Law No. 39 of 1999 concerning Human Rights, in Article 29 paragraph (1) states that "Everyone has the right to personal protection...." So in this statement, it can be concluded that the protection of personal data is a right (privacy rights) that everyone has that must be protected by the state, where in privacy rights everyone has the right to cover or keep things private.¹⁰

Protection of personal data has been regulated in Law no. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, which are listed in Article 26 paragraphs (1) and (2) which state that: Unless otherwise stipulated by laws and regulations, the use of any information through the media electronic data relating to a person's personal data must be carried out with the consent of the person concerned; Every person whose rights are violated as referred to in paragraph (1) can file a claim for losses incurred under this Law.

The provisions regulated have given the right to the owner of the personal data to maintain the confidentiality of his personal data. If his personal data has been

⁹ Sinta Dewi, 2016, "The Concept of Legal Protection of Privacy and Personal Data Associated with the use of Cloud Computing in Indonesia", Yustisia, Volume 5, Number 1, January-April 2016, p. 25.

¹⁰ I Dewa Gede Adi Wiranjaya and I Gede Putra Ariana, 2016, Legal Protection Against Violations of Consumer Privacy in Online Transactions, Kerta Semaya, Vol. 4, No. 4, June 2016, p. 3.

spread and misused by other parties, the owner of the personal data can file a lawsuit in court. The lawsuit in question is in the form of a civil lawsuit filed based on statutory regulations. The provisions of this article constitute protection given to a person's personal data in general, meaning that in every activity related to electronic transactions that use a person's personal data it is mandatory to maintain and protect the personal data, with these arrangements, everyone has the right to store, maintain and maintain the confidentiality of the data so that the data held is private.

Regarding the protection of personal data in online loan services, the Financial Services Authority has issued Financial Services Authority Regulation No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services. The regulation regulates the protection of borrowers' personal data in order to use technology-based lending services. Article 26 letter a of this POJK states that administrators are required to "maintain the confidentiality, integrity and availability of personal data, transaction data and financial data that they manage from the time the data is obtained until the data is destroyed." This means that the lender has an obligation to keep the borrower's personal data confidential, starting from the process of the loan agreement being made until the completion of the agreement.

Furthermore, Article 26 letter c of this POJK states that organizers are required to "guarantee that the acquisition, use, utilization and disclosure of personal data... obtained by the Operator is based on the approval of the owner of personal data, transaction data and financial data, unless otherwise stipulated by provisions legislation." Based on this article it is clear that, without the consent of the owner of the personal data (borrower), the lender cannot use the personal data for any activity, except with the consent of the owner or otherwise provided for in statutory provisions.

Based on the provisions stipulated in these laws and regulations, it has guaranteed legal certainty regarding the protection of personal data. This protection is in the form of granting rights to borrowers to have their personal data protected in the implementation of online loans. If the rights owned are violated, the borrower can resolve the problem through legal remedies, namely non-judicial legal remedies (outside the court) and judicial (judicial) legal remedies. Non-judicial legal remedies can be carried out by submitting a complaint to supervisors in the field of financial services, namely the Financial Services Authority (OJK), then OJK will issue a warning or warning to the organizers. Meanwhile, judicial legal remedies are repressive in nature, meaning they have entered the law enforcement process. These legal remedies are filed after the violation has occurred with the intention of reversing or recovering from the situation. This legal effort can be done by filing a lawsuit in court.

Submitting a lawsuit to court is not only to sue online loan providers who have disseminated the borrower's personal data, but also to third parties and parties who have no legal relationship with the owner of personal data who have misused the personal data. By granting this right, there is legal certainty in the form of legal protection of the borrower's personal data when using online loan application services. The legal protection in question is the protection of the confidentiality of the borrower's personal data so that his personal data is not disseminated or so that the online loan provider keeps it confidential, and has the right to file legal remedies if his personal data is disseminated without approval.

Violation of personal data can lead to legal consequences for violators. Legal consequences are the consequences arising from legal actions carried out by legal subjects. Thus, the legal consequences of a breach of personal data by the online loan provider are in the form of imposition of sanctions.

In the provisions of civil law, the most important type of engagement is an agreement born from an agreement. In the opinion of Ch. Gatot Wardoyo credit agreement/money borrowing agreement has a function as; main agreement, evidence regarding the limits of the rights and obligations of the parties and as a tool for monitoring.¹¹

In making an agreement, it must fulfill the legal requirements of an agreement, as stipulated in Article 1320 of the Civil Code. In the agreement clause, the rights and obligations of the parties are regulated. With the rights and obligations of each party, in this case, the lender must carry out the obligations that have been determined in order to achieve legal protection for the borrower, but in practice in certain circumstances, the lender does not carry out its obligations,¹²This of course can be detrimental to the borrower. From a formal juridical point of view, anyone who feels aggrieved can file a claim for compensation and the person who, due to the mistake of issuing the loss, is obliged to compensate for the loss as stipulated in Article 1365 of the Civil Code.¹³

Legal protection needs to be given to borrowers from unilateral actions taken by business actors (in this case, namely lenders) and borrowers have the right to obtain legal settlement.¹⁴In order to achieve legal protection, sanctions are needed in its implementation. The imposition of sanctions is motivated by the need of the community for crimes or violations that occur in their environment.

¹¹ Zaeni Asyhadie, 2006, *Business Law and its Implementation in Indonesia*, PT Raja Grafindo Persada, Jakarta, p. 24.

¹² Hermansyah, 2011, *Indonesian National Banking Law*, Cet. VI, Kencana, Jakarta, page 72.

¹³ I Ketut Oka Setiawan, 2018, *Engagement Law*, Cet. III, Sinar Graphics, Jakarta, p. 19.

¹⁴ Celina Tri Siwi Kristiyanti, 2011, *Consumer Protection Law*, Cet. III, Sinar Graphics, Jakarta, p. 38.

Sanctions will create order and security in society.¹⁵

If it is related to the dissemination of personal data by online loan providers, it can be categorized as defamation as stipulated in Article 27 paragraph (3) of Law no. 11 of 2008 concerning Information and Electronic Transactions which states that, "Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation", then the sanctions imposed are regulated in the criminal provisions of the ITE Law, namely in Article 45 which states that, "Anyone who fulfills the elements referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 1,000,000,000, 00 (one billion rupiah)". In addition to criminal sanctions, specifically violations of personal data in the field of online loans can also be subject to administrative sanctions, as stipulated in Article 47 POJK No. 77/POJK.01/2016, which states that: For violations of the obligations and prohibitions in this OJK regulation, OJK has the authority to impose administrative sanctions on Providers in the form of: a. written warning; b. a fine, namely the obligation to pay a certain amount of money;c. restrictions on business activities; and D. license revocation.

Furthermore, Article 47 paragraphs (2) and (3) of the POJK stated that administrative sanctions in the form of fines, restrictions on business activities and revocation of licenses, may be imposed with or without prior imposition of administrative sanctions in the form of written warnings, then administrative sanctions in the form of fines may be imposed automatically. separately or together with the imposition of administrative sanctions in the form of limiting business activities and revocation of permits.

A written warning is a written warning given by the OJK to online loan providers so that the organizers do not repeat the violations committed and harm other parties. Fines are an obligation given by the OJK to online loan providers to pay a certain amount of money, thereby giving a deterrent effect to organizers because they have violated and harmed other parties. Restrictions on business activities are restrictions on the acceptance capacity of money borrowers made by online loan providers within a certain time. This is done so that prospective customers are not harmed by personal data violations committed by the organizers.

Revocation of business licenses is the toughest sanction imposed on online loan providers. This sanction causes the administrator to no longer be able to carry

¹⁵ Suharnoko, 2012, Agreement Law: Theory and Case Analysis, Cet. VII, Prenada Media Group, Jakarta, p. 64.

out his business activities legally. The administrative sanction was given by the OJK as the supervisor of activities in the financial services sector, including online loans. Sanctions are given to online loan providers after OJK receives reports from several parties who have been harmed, then an examination is carried out, if the organizer is proven to have violated laws and regulations and harmed several parties, sanctions will be imposed.

In information technology-based money lending service activities, legal actions that arise between debtors and creditors must be based on an agreement. The benchmark for the validity of an agreement is seen in the legal system in Indonesia, so the agreement must refer to the legal terms of an agreement, as stipulated in Article 1320 of the Civil Code. In the agreement clause, the rights and obligations of the parties are regulated. With the rights and obligations of each party, the agreement can create legal consequences and bind the parties.

Because, the form of the money lending agreement in this online loan service has its own specifics in that the object is in cyberspace or cyberspace. This means that the agreements that arise in this online-based money loan service are different, because they use information and technology (IT) so as to give birth to a new and special agreement, namely an electronic agreement or electronic contract.

The existence of electronic contracts (e-contracts) is clearly a new development in the modern type of contract that requires proper regulation and is based on clear law. Because the trade transaction system that was originally paper-based has shifted to a non-paper-based (digital) transaction system.

Basically, agreements in electronic form are the same as agreements in general, because the creditor fills in information and personal data and reads the terms provided by the lender via the provider's website or application. And when the creditor agrees to the terms and conditions that have been given by the organizer of the loan, then there has been a legal consequence between the parties. The only difference is the medium.

Based on Article 1320 of the Civil Code paragraph (1) the parties have agreed to bind themselves to an agreement that has been made between the parties. So that an agreement arises from the existence of an agreement (consensualism) which is preceded by the existence of equality of will. The article provides a general standard of how an agreement is born and what actions must be taken by the parties in order to legally give birth to the rights and obligations of the parties.

An agreement or contract that occurs in an electronic commercial transaction can be said to be valid as long as it fulfills the requirements in the Civil Code. That

is, if viewed from article 1313 no.1320 of the Civil Code, it can be seen from the definition and terms of the validity of the agreement in implementing technology-based money lending agreements carried out electronically. In this case, the agreement that occurs in an electronic transaction can be said to be valid.

Actions committed by a person and related to civil wrongdoing because this has an impact on harming other people are unlawful acts, this is contained in article 1365 of the Civil Code. For his actions, there must be responsibility for losses caused to others. One of the unlawful acts committed by a third party as a debt collector,

In this case the third party as the debt collector also accesses without permission the contact in the telephone list of the consumer borrowing funds and contacts and disseminates personal information to parties that have nothing to do with the borrower's debt, this is of course detrimental to the good name of the consumer and violates the privacy of the party. others due to the spread of telephone contact without clear approval.

As a recipient of a loan from an online fintech P2P lending loan that is a victim of defamation by the fintech P2P lending operator, it is entitled to receive fair legal protection against threats and intimidation and the dissemination of personal data because the actions taken have harmed the recipient of the loan.

It is clear that organizers must keep the confidentiality of consumer data receiving money loans from anyone and are obliged to prevent their loyal employees from using their authority to harm consumers, the organizers of the loan have allowed third parties as debt collectors to carry out activities that have violated the law and harmed consumers, and it means no doubt a business must be responsible if errors and omissions occur in the use of personal data. Judging from Law Number 19 of 2016 concerning Information and Electronic Transactions, cases of billing money by accessing consumers' personal data and passing it on to other people and defaming consumers' names to other people is an unlawful act, while one of the elements against the law is intentional debt collectors and losses for consumers as online loan recipients and debt owners.

If someone feels aggrieved because their identity is used in the misuse of personal data, then they can file a lawsuit for the losses obtained. In Law Number 19 of 2016 concerning Information and Electronic Transactions, every person whose rights are violated based on the provisions in paragraph (1) (the use of electronic media information in matters relating to personal data) can file a lawsuit for losses incurred, if it is proven that there has been a violation misuse of personal data by third parties and fulfilling the elements of criminal misuse of personal data information and causing losses, can be punished with

imprisonment for a maximum of 12 (twelve) years and/or a fine of up to IDR 12,000,000,000.00 (twelve billion rupiahs)).

4. Conclusion

Based on the results of the study it was concluded that plegal protection of personal data has been regulated in Article 26 of the ITE Law. In particular, the protection of borrowers' personal data in online loan services is regulated in POJK No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services. Sanctions for violations of personal data which include defamation, are regulated in Article 45 of the ITE Law in the form of criminal sanctions. In addition to criminal sanctions, this is specifically regulated in Article 47 paragraph (1) POJK No. 77/POJK.01/2016 namely administrative sanctions, in the form of written warnings, fines, restrictions on business activities, and revocation of permits.

5. References

- Abdullah, A. 2021. Analysis of Online Loan Knowledge in the Surakarta Community. *JESI (Indonesian Sharia Economic Journal)*, 11(2)., p. 109
- Celina Tri Siwi Kristiyanti, 2011, *Consumer Protection Law*, Cet. III, Sinar Graphics, Jakarta.
- Hermansyah, 2011, *Indonesian National Banking Law*, Cet. VI, Kencana, Jakarta
- I Dewa Gede Adi Wiranjaya and I Gede Putra Ariana, 2016, *Legal Protection Against Violations of Consumer Privacy in Online Transactions*, Kerta Semaya, Vol. 4, No. 4, June 2016.
- I Ketut Oka Setiawan, 2018, *Engagement Law*, Cet. III, Sinar Graphics, Jakarta.
- Pardosi, ROAG, & Primawardani, Y. *Protection of the Rights of Online Loan Customers from a Human Rights Perspective*.
- Priliasari, E. 2019. The Importance of Personal Data Protection in Online Loan Transactions. *National Law Magazine*, 49(2), 1-27.
- Sastradinata, DN (2020). *Legal Aspects of Illegal Online Loan Institutions in Indonesia*. *Independent Journal*, 8(1), 293-301.
- Sidiq, VARA, & Setiawan, H. (2022). *Framing Analysis of Coverage of Chinese Citizens' Online Loan Cases on CNNIndonesia's Online Media*. com and

National Tempo. com. EDUCATIVE: JOURNAL OF EDUCATIONAL SCIENCES, 4(1), 851-861.

Sinta Dewi, 2016, "The Concept of Legal Protection of Privacy and Personal Data Associated with the use of Cloud Computing in Indonesia", Yustisia, Volume 5, Number 1, January-April 2016.

Suharnoko, 2012, Agreement Law: Theory and Case Analysis, Cet. VII, Prenada Media Group, Jakarta.

Wahyudi Djafar, 2014, Protection of Rights to Privacy on the Internet, Some Key Explanations, first publication, (Jakarta: Institute for Community Studies and Advocacy (ELSAM)).

Wahyudi Djafar, Bernhard Ruben, and Blandina, 2016, Protection of personal data: Proposals for Policy Institutionalization from a Human Rights Perspective, first published, (Jakarta: Institute for Community Studies and Advocacy (ELSAM) Journal, url:https://learning.hukumonline.com/wp-content/uploads/2022/09/Bin_Perindungan-Data-Pribadi_compressed.pdf

Wahyuni, RAE, & Turisno, BE (2019). Illegal Financial Technology Practices in the Form of Online Loans From a Business Ethics Review. Journal of Indonesian Legal Development, 1(3), 379-391.

Zaeni Asyhadie, 2006, Business Law and its Implementation in Indonesia, PT Raja Grafindo Persada, Jakarta.