

Conference Paper

Preventive Legal Protection Against Leaks Consumer Data by Company Negligence Financial Technology

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Abstract.

Various financial technology companies are currently using standard agreements. With the rise of standard agreements, business actors began to include exoneration clauses to release all forms of responsibility for losses suffered by consumers. One of the companies that has included the exoneration clause is Koinworks in Article 5 of the Koinworks Terms & Conditions. Based on this statement, the authors conducted this research using two problem formulations, namely what are the legal consequences of applying the exoneration clause in standard agreements made by financial technology business actors when viewed from Article 1320 of the Civil Code? And how about preventive legal protection against leakage of consumer data by the negligence of financial technology companies? To be able to answer the formulation of the problem, the authors use normative juridical research methods with a statutory approach. The results of the study show that the legal consequences of applying the exoneration clause in standard agreements made by Financial Technology business actors when viewed from Article 1320 of the Civil Code, it can be concluded that the exoneration clause can be null and void by law. Then, preventive legal protection needs to be carried out by optimizing supervision by the Financial Services Authority, such as taking action against companies that have violated statutory provisions before the occurrence of disputes or problems.

Keywords: Legal Protection; Data Leakage; Financial Technology Companies.

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1. INTRODUCTION

Along with the development of globalization, during the period or period of the fourth industrial revolution (the fourth industrial revolution era) has created a new era that is all digital and brings various complex implications in the life of the nation and state. The industrial revolution 4.0 is a self-upgrading phenomenon of globalization, which can be seen from the rapid development of the digital world and the emergence of interdependence and the blurring of national borders (borderless). Through the

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development of technology, it can influence and have a big role in people's lives and has an influence on social, scientific, cultural, economic, political and legal developments.[1] Part of the result of a process of becoming a unified international community due to the process of exchanging world views, culture (culture), and ideas can also mean a development of information technology. The results of this international integration also have an impact on aspects in the lines of people's lives, especially in the economic field, namely: buying and selling activities.[2]

The changes that are felt in people's lives today originate from these trading or buying and selling activities and the development of existing electronic equipment. Electronic devices such as smartphones, laptops and computers connected to the internet make it easier for humans to do everything. For example, smartphones, where almost all applications in them use the internet, so the mobile application industry on smartphones is increasingly showing its development along with the increasing use of smartphones. Now, due to the development of the internet and the use of smartphones, many financial technologies have emerged in the form of financial funding that can be easily accessed by the public. Various financial technologies in the form of financial funding are now starting to develop in Indonesian society, including financial applications Koinworks, Akulaku, Kredivo, Easycash, Ajaib, Modalku, and *platform financial technology* others.

Various financial technology (Fintech) companies in Indonesia are currently using standard agreements in every agreement with their consumers regarding the use of their applications. With regard to agreements, Fintech becomes unclear. This ambiguity is because the lender does not enter into an agreement with the recipient of the loan, but the agreement has been provided by the organizer. After registering, the lender and loan recipient can make transactions based on the agreement that has been provided. The agreement provided by the organizer is an agreement made unilaterally by the organizer, not from the lender or recipient of the loan.[3] The standard agreement is contained in various agreements entered into by Fintech companies with their consumers as contained in the User Terms and Conditions. The application contains an agreement that allows access to personal data from consumers. One of the agreements that contains access to personal data from consumers has been carried out by the Fintech company Koinworks. This information is described in Article 2 of the Koinworks General Terms & Conditions which reads:

“In connection with the activities carried out on the Platform, the User hereby acknowledges and agrees that the User's Personal Data will be stored by the Company.”

Access to personal data creates a dilemma for loan recipients because personal data is private data from loan recipients. But on the other hand, the loan recipient

needs money, and on the other hand the loan recipient does not want his personal data to be accessed by other parties. In this case the fear of the recipient of the loan about the misuse of his personal data stored on the smartphone.[4] These fears can be experienced by various parties, such as cases of data leakage which are very vulnerable to various business actors. Chairperson of the Indonesian Fintech Association (AFTECH), Pandu Sjahrir said that lately there have been more and more issues regarding data leaks from Indonesian people, where the Fintech industry has also become one that is vulnerable to attacks by cybercriminals. From the association itself, it is seen that nothing is perfect, but the most important thing is that Fintech companies will maintain the trust that has been given by the community.[5]

In fact, there are standard agreements made by Fintech business actors that contain an exoneration clause which can release the responsibility of the business actor if there is negligence regarding consumer personal data. An exoneration clause is a clause in an agreement, which stipulates that there is an exemption or limitation of certain responsibilities, which normally according to law should be his responsibility. The exoneration clause is possible because of the principle of freedom of contract. In fact, the existence of an exoneration clause can result in the rights and obligations of the parties being far from balanced.[6] One of the Fintech companies that uses the exoneration clause is the Koinworks Fintech company which includes this clause in Article 5 of the Koinworks Terms & Conditions which reads:

“The company always gives full attention and effort to provide the best security and service to Users through the Platform. This platform has ISO 27001:2013 Certificate – Information Security Management as a Financial Aggregator. However, in the event of a problem occurring on the Platform beyond the Company’s control, including but not limited to cybercrimes, problematic servers, malware, etc., you as a User agree to release and release the Company to be responsible for these matters.”

The application of the exoneration clause certainly violates statutory regulations such as Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as the Consumer Protection Law) which explains that business actors in offering goods and/or services aimed at traded are prohibited from making or including standard clauses in every document and/or agreement if it states the transfer of responsibility of the business actor. Even though the Government has stated in the regulations of the Consumer Protection Law that the application of the exoneration clause is not permitted, various Fintech companies still have operating licenses issued by the Financial Services Authority with License Number S.87/MS.72/2020 – FEB 10th,

2020 and are incorporated in Indonesian Joint Funding Fintech Association (AFPI) and Indonesian Fintech organizations.[7]

From the existence of a license issued by the Financial Services Authority by looking at the reality that the Koinworks Fintech company is still violating consumer protection laws, it is necessary to question the supervision and issuance of the permit regarding the legal consequences of enforcing this clause and how the Indonesian government guarantees legal protection. preventive for consumers against data leakage by negligence of financial technology companies.

There are 2 (two) problem formulations that have been determined by the authors in this study is what are the legal consequences of applying the exoneration clause in standard agreements made by financial technology business actors when viewed from Article 1320 of the Civil Code? and what is the preventive legal protection against leakage of consumer data by the negligence of financial technology companies?

2. METHODOLOGY/ MATERIALS

This journal article uses research with a normative juridical method with a statutory regulation approach. The data in the preparation of this journal were obtained from primary legal materials and secondary legal materials. Primary legal materials are materials that are authoritative, such as laws and regulations. Then, secondary legal materials provide information about primary legal materials in the form of books and the results of a study like previous journals.[8] The method of collecting legal material in this study was carried out by means of a literature study, namely by searching documents related to the problem with the aim of finding primary legal material and secondary legal material. The analysis technique used in this research is description technique and argumentation technique.

3. RESULTS AND DISCUSSIONS

To find out about the legal consequences of applying the exoneration clause in standard agreements made by financial technology business actors, the authors conducted an analysis of one of the standard agreements currently being enforced by a Fintech company, namely Article 5 of the Koinworks Terms & Conditions, it is necessary to do an analysis to the legal terms of the agreement contained in Article 1320 of the Civil Code which explains that there are 4 (four) conditions that must be met for the agreement to become legally valid, namely:

1. Their agreement binds him

When viewed from the side of the agreement, the consumer is a party that has a lower position (more in need of the object of the agreement) than the business actor, so that the consumer, with his ignorance or compulsion, will agree to the standard agreement that has been made by the Koinworks Fintech Company to get compensation in the form of a loan. Then the first element of the legal terms of the agreement can be fulfilled by both parties which causes the entry into force of this agreement which must be obeyed by both parties as a law as explained in Article 1338 of the Civil Code.

2. Ability to make an engagement

Legal competence in civil terms means a person's ability to carry out legal actions and therefore be able to account for the legal consequences. Everyone is in a state of competence (authority) to act, so that they can carry out legal actions, including making or signing an agreement, except for those who are regulated by law. Those who are excluded are called people who are incapable (not authorized) to carry out a legal action, namely children who are not yet adults, people who are under guardianship, and people who are prohibited by law from carrying out certain actions.[9] According to Article 330 of the Civil Code, it is stated that minors are those who have not reached the age of twenty-one years and have not been married before. So that the determination of the second element of the legal terms of the agreement in using the Terms and Conditions for Using Fintech Koinworks cannot be ascertained by the researchers who can use it or not. However, if there are consumers of the Koinworks Fintech Company who enter into agreements with people who are not competent at law, then this agreement can be legally canceled because it does not fulfill the legal terms of the agreement.

3. A certain subject matter

Looking at the agreement in the Terms and Conditions for Using Fintech Koinworks, it can be seen that the agreement has regulated the agreement between the consumer and the Koinworks Fintech Company regarding the conditions for consumers to use borrowed funds by consumers at the Koinworks Fintech Company. The provisions of the agreement govern the definitions in the agreement, storage of user personal data, company services to users, privacy policies, services and platform security, to rules regarding changes to general terms and conditions.[10]

4. A cause that is not forbidden

The meaning of a cause that is not prohibited or lawful in the context of an agreement relates to the contents of the agreement or the goals to be achieved by the parties involved. The contents of an agreement may not contradict the law, decency or public order. This is in accordance with the provisions of Article 1337 of the Civil Code which explains that a cause is prohibited, if the cause is prohibited by law or if the cause is contrary to decency or public order.[11] If you look at the agreement contained in Article 5 of the Koinworks Terms & Conditions, then this is contrary to several provisions of the Consumer Protection Act. Some of these provisions include:

5. Article 4 point 5 and 8 Consumer Protection Law

“Consumer rights are:

4. the right to have their opinions and complaints heard about the goods and/or services used;
5. the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;
8. the right to obtain compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as they should.”

6. Article 7 point f Consumer Protection Law

“The obligations of business actors are:

- f. provide compensation, compensation and/or reimbursement for losses resulting from the use, use and utilization of traded goods and/or services.”

7. Article 8 point (1) Consumer Protection Law

“(1) Business actors are prohibited from producing and/or trading goods and/or services that:

- a. do not meet or do not comply with the required standards and provisions of laws and regulations;”

8. Article 18 point (1) and (4) Consumer Protection Law

“(1) Business actors in offering goods and/or services intended for trading are prohibited from making or including standard clauses in every document and/or agreement if:

- a. declare the transfer of responsibility of the business actor;

(4) Business actors are obliged to adjust standard clauses that are contrary to this Law.”

With regard to the four legal terms of this agreement, according to Niru A. Sinaga explained that the first and second terms are called subjective conditions because they involve the parties entering into the agreement. Meanwhile, the third and fourth conditions are objective requirements because they involve the object of the agreement. If the subjective conditions (the legal terms of the first and second points of the agreement) are not met, the agreement may be cancelled. However, if the objective conditions (the legal terms of the third and fourth points of the agreement) are not met, the agreement made is said to be null and void or means that the agreement is deemed to have never happened.[12] So it can be seen that the exoneration clause contained in Article 5 of the Koinworks Terms & Conditions can be null and void and consumers still have their rights to get compensation and compensation for the losses they experience.

Indonesia protects its citizens with a guarantee for the protection of personal data in the constitution Article 28G Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Where in this provision it is stipulated that everyone has the right to protection for themselves, their families, honor, dignity and property under his control and entitled to a sense of security and protection from threats of fear to do or not do something which is a human right. An analysis of this article regarding privacy which can be linked to the right to privacy was given by the Constitutional Court (hereinafter referred to as the MK) in its Decision Number 20/PUU-XIV/2016. However, these two things differ in the concepts of privacy and data protection. The Constitutional Court stated directly that the right to personal data protection is a human right (derogable rights) and is part of the “right to privacy including the right to information privacy, also called data privacy (data protection)”, in Decision No.5/PUU-VIII/ 2011.[13]

Even though the government has provided various protections for the protection of consumer personal data, there are still various issues up to research which explains that there are many leaks of Fintech consumer data. In previous research by Tina Andriyana and Susisanti found the fact that consumer data leaks caused by Fintech businesses and online financial services were due to individuals who sold and provided consumer data such as names, photos, identification numbers, photo ID cards, to cellphone numbers. to third parties.[14] In addition, according to research conducted by Adawiyah, it explains that financial services parties will leak consumer data to third parties if consumers cannot pay their bills or loans.[15]

Mega Lois Aprilia[16] in scientific research on Consumer Protection Financial Technology Peer To Peer Lending in Indonesia Against Losses Due to Doxing Actions found data

leaks due to misuse by financial services by disseminating information about borrowing and consumer personal data by creating a WhatsApp Group containing the borrower's telephone contact list accompanied by the sentence that the person has borrowed a certain amount of money and even the financial services also use intimidation and in the form of physical violence in a public place if they do not pay off the debt then their personal data will be disseminated, Olifiansyah[17] found that consumer data from financial services parties provide data to third parties as debt collectors to make bills that are not in accordance with the rules.

Of the various cases that exist, it is necessary to pay attention to academics and the government to be able to carry out an evaluation of existing financial technology prosecutions and the need for appropriate consumer protection efforts. Consumer protection can be carried out by way of supervision by the Financial Services Authority which is more stringent in issuing business licenses for financial technology companies. There is a need for preventive legal measures for financial technology consumers to avoid excessive losses to consumers. The current confusion is the issuance of licenses by the Financial Services Authority to financial technology companies that violate the law. One example of a mistake that occurred was when the Financial Services Authority gave a permit for a Fintech Koinworks company that had legal issues regarding a standard agreement that included an exoneration clause for its users in Article 5 of the Koinworks Terms & Conditions. So that the Government, especially the Financial Services Authority, needs to carry out legal protection in preventive efforts to prevent problems or disputes from occurring. This protection should have been implemented if you look at the provisions regarding human rights contained in the 1945 Constitution. Preventive legal protection will be able to provide legal subjects with the opportunity not to accept any form of loss.

Financial Technology is currently regulated in the Financial Services Authority Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector (hereinafter referred to as the POJK) has not provided confirmation for Fintech organizers in making credit agreements with debtors. Especially related to the validity of agreements made by fintech companies with debtors. Article 20 POJK stipulates that the Financial Services Authority will monitor the organizers. The organizers meant by OJK are every party that organizes digital financial innovations. Fintech companies are the perpetrators of digital financial innovation. So it should be if the Financial Services Authority is obliged to control and supervise every activity carried out by Fintech companies.

4. CONCLUSION AND RECOMMENDATION

If viewed from Article 1320 of the Civil Code, it can be concluded that the exoneration clause can be null and void by law. This is because the exoneration clause does not meet the objective legal requirements of the agreement because the exoneration clause has violated several provisions contained in the Consumer Protection Law.

Preventive legal protection against leakage of consumer data due to negligence by financial technology companies is currently still implementing a regulatory system, but actions are still not optimal. This is known by the issuance of permits for financial technology activities by Koinworks which clearly have agreements that can harm consumers. The government needs to take action against companies that have violated statutory provisions before disputes or problems arise.

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