

Conference Paper

Legal Protection of Lenders in the Implementation of Financial Technology Based on Peer to Peer Lending

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Abstract

Financial technology based on Peer to Peer Lending (P2PL-based Fintech) is one of the new breakthroughs in financial services institutions in Indonesia. The presence of P2PL-based Fintech is a solution for people who have not been touched by banking but have technology literacy. Therefore, the majority of users are millennial young generation as business people. The parties in P2PL-based Fintech consist of Lenders, Organizers, and Loan Recipients. But in practice, the legal relationship that is formed between the lender and the organizer is only limited to the authorizer, then the lender with the recipient of the legal relationship loan formed is the debt payable. Therefore, the loan agreement is only between the lender and the loan recipient while the organizer as the facilitator who recommends, selects and analyzes the loan provision is not included in the agreement, so the party vulnerable to loss is the lender. Therefore the lender must be protected so that the funds are not lost due to misuse of the organizer or due to the default of the recipient of the loan. This Normative Research uses two approaches namely the law and conceptual approach. The research results are that there are two preventive legal protections for lenders regulated in OJK Regulation No.77/PJOK.01/2016 concerning Information Technology-Based Lending and Borrowing Services and repressive protection in article 37 PJOK. The implications of this research are to provide guidelines for parties in implementing P2PL-based Fintech, especially legal protection for lenders and the prudential principle of the organizers in distributing funds.

Keywords: Legal Protection, Financial Technology, Peer to peer Lending

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1. Introduction

According to Gazali& Usman (2016) the bank is one of the financial institutions whose main function is to collect funds and channel public funds. The Bank serves as a means of empowering the community, focusing on the national economy, especially for entrepreneurs, micro, small and medium enterprises and cooperatives to get funds and

banks to function as development agents aimed at supporting the implementation of national development in the context of equitable development.

But in reality, not all Indonesians are touched by banking services. This is because the geographical location of the country of Indonesia which consists of islands which causes some areas that are difficult and somewhat left behind to get banking services (unbanked people). Banking services are only centered in the city and are less touching to the regions, which causes a welfare gap due to inequality in national economic development.

The lack of touching the rural community towards banking services is a reality in developing countries such as Indonesia that there are still many people who don't know and have access to banking services. The reality was conveyed by the Minister of National Development Planning or Head of Bappenas Bambang PS Brodjonegoro said, a survey from the World Bank against Indonesia proved that in 2014, only 37% of the adult population had a bank account. This data is compounded by the percentage of only 27% of people who have formal deposits and 13% have formal loans (Gliemourinsie, 2016).

Whereas the Survey conducted by the Financial Services Authority stated that in 2016 the Financial Services Authority (OJK) noted that according to the survey, only 28.9% of the adult population understood Indonesian banking products (Gliemourinsie, 2016). This figure is much lower than other countries in Asia. This is the result of low financial access followed by low financial literacy. Not only that, this level of understanding is lower for other financial services products.

Along with the rapid flow of globalization is certainly not free from the development of information technology. Especially the internet and gadgets that really help facilitate human life in the current era. The development of technology is what drives the birth of business and electronic commerce known as online business and electronic commerce (e-commerce).

Today's younger generation prefers to surf and move using the Internet media both just to socialize (through social media) and in terms of transactions such as buying and selling transactions and online payments. This has encouraged the emergence of online payment system applications that are considered easier and more practical compared to payment systems using money, checks, credit cards etc. From the convenience that can be accessed through the internet, the birth of an online money lending system known as Financial Technology is based on Peer to Peer Lending (Fintech based on P2PL).

According to A.S. Cui and F. Wu, changes in behavior from customers will encourage the development of new products. Older customers tend to behave passively in decision making. However, changing the paradigm of thinking will change the behavior of new customers, expect to receive solutions, that can be adapted to their needs and investment goals (Cui and Wu, 2016).

Fintech is the delivery of financial products and services through the collaboration of technology platforms and innovative business models. The origin of Fintech came from Silicon Valley, then extended to New York, London, Singapore, Hong Kong and several other global cities. The Fintech 100 list which mentions 50 leading Fintech companies and 50 of the most promising Start Ups has been formed to celebrate this success. According to Fintech 100, Examples of Fintech's success stories include: ZhongAn (a joint venture between Alibaba, Group Holding, Tencent Holdings and Ping An Insurance that utilizes large data to provide online property insurance), Wealthfront (Companies that provide affordable yet sophisticated investment management services), and Kreditech (Companies that provide financial services with a focus on access to credit) (Buckley, 2016).

This technology-based loan and borrowing service (Peer to Peer or P2PL) is one solution to answer the lack of Indonesian people who due to geographical factors cannot be touched by banking services (Unbanked People) or other financial institutions but can use and access technology properly. Fintech based P2PL acts like a banking institution but operates through the internet and sophisticated technology. Borrowing and borrowing money or accounts payable is commonly done in the community based on an agreement that the party that has excess funds lends to parties who lack funds based on "the principle of freedom of contract" regulated in the Civil Code (KUH Perdata). But the difference with Fintech based on P2PL is that usually the parties, especially borrowers of money, are those of the millennial young generation who are classified as micro-entrepreneurs.

Some of the organizing companies that have been operating in Indonesia include PT. Digital Alpha Indonesia (Uangteman), PT. Indonesian Community Mediator (Crowdo), PT. CiciSolusiTeknologi Technology (Cicil), PT. The Acceleration of Indonesian Inclusive Finance (Akseleran), PT, Mitrausaha Indonesia Grup (Modalku), PT. FintegraHomido Indonesia (Fintag) and there are still many other Organizing Companies with various facilities offered through website content to attract investors and loan recipients.

Based on several terms and conditions as well as the work methods described by each company or agency above, it can be seen that the Company or Provider is only a provider of a meeting place for the Lender to meet with the Borrower. So it is clear that

the legal relationship is formed only between the Lender and the Borrower, while the company as the organizer is tasked with recommending, selecting and analyzing not including the parties to the agreement. If described the legal relationship of the parties as follows:

The absence of an organizer's legal relationship will cause the irresponsible responsible if the recipient fails to pay the loan to the lender, this will cause legal consequences. The lender cannot make demands against the Operator in the event of default so that the loss is fully borne by the lender. Therefore the Lender must obtain Legal Protection if the funds invested by the lender are lost or misused by the organizer or the funds are lost due to default from the recipient of the loan, the protection is intended to provide legal certainty for the parties especially lenders so that the business and investment worlds sustainability in Indonesia is still guaranteed.

Based on the above explanation, this paper intends to discuss legal protection for lenders in the implementation of financial technology based on Peer to peer lending.

2. Literatur Review

2.1. Financial technology

Fintech Found from the term Financial Technology or Financial Technology. According to the National Digital Research Center (NDRC), Fintech will innovate the financial sector. Of course, this financial innovation gets a touch of modern technology. The existence of Fintech can invite more practical and safe financial transaction processes (Hadi, 2016). Fintech is an implementation and utilization of technology to improve banking and financial services that are generally carried out by startups using the latest software, internet, communication and computing technologies (Nofie, 2016).

The presence of technological innovations in the financial sector, especially technological financial technology innovations derived from the development of technical knowledge (Kauffman et al., 2014). Financial technology is innovation and the application of new technologies that make financial services and processes more efficient. It can be seen from the data that around two billion people 'do not have bank accounts' worldwide, and FinTech aims to promote financial inclusion with the aim of payments and savings made without the need for cash or bank accounts (GSMA, 2017).

Digital finance is a system in which financial services are delivered through digital infrastructure. This diverts from using cash and branches of traditional banks, individuals

and businesses connected to digital payment infrastructure through cellphones, computers, and point-of-sales devices. In recent years, investment in financial technology (fintech) has grown worldwide. In addition, it can help develop digital solutions that can change financial services, capital intermediation, and the availability of entrepreneurial finance. (Casanova et al., 2018).

Progress in digital finance also affects other fields such as entrepreneurs can more easily access capital from friends and family in a greater distance, even abroad, because of technological advances in money transfer services. In addition, at the same time, new forms of financial intermediation have emerged thanks to increased investment in financial technology (fintech). While consumer loans dominate the crowdfunding market, business loans are the second largest category measured by the number of transactions (Casanova et al., 2018).

Fintech at least 277 mobile money platforms or services have been launched worldwide, with a cumulative 556 million registered mobile money accounts (GSMA, 2017). Cash can be used for airtime purchases, bill payments, wage payments, and sending money to relatives - and their use increases (Garrity, 2015; Shrier et al., 2016). Mobile money has also helped disaster management efforts by allowing marginal populations to receive financial assistance (Garrity, 2015). In addition, this can also increase financial resilience to personal shocks (such as health problems and job losses) by facilitating access to microcredit and microinsurance - for example, Prospera program welfare in Mexico, and Kilimo micro insurance plans in Rwanda (Thompson, BS, 2017)

Platform from fintech will reduce costs for senders and recipients of payments, increase access to the banking system, and increase the privacy, transparency, traceability and security of financial transactions (GSMA, 2017; Shrier et al., 2016). Model Peer-to-peer (P2P) loans have grown rapidly in recent years, both in developed and developing countries. This shows that with the increasing number of Internet platforms that serve solely as intermediaries between borrowers and lenders. In this business model, this platform filters and analyzes the loan appropriateness of loan applications based on "big data", sets the credit rating for loans, and allocates investment loans to individual and institutional investor portfolios (Casanova et al., 2018).

3. Methodology

This type of research is based on the normative Yuridical law approach (legal research) that is by analyzing data that refers to legal norms set forth in the legislation, of course

relating to legal protection of lenders in the implementation of Financial Technology based on Peer to peer Lending in Indonesia.

According to Marzuki (2017) legal research is a process to find legal rules, legal principles, and legal doctrines in order to answer the legal issues faced. In addition, this paper uses primary and secondary information materials such as books, previous research results, opinions of legal experts, and other supporting data. On the other hand, this paper uses two approaches, namely the statute approach and the conceptual approach.

Statute Approach, this study uses a legal approach that is carried out by examining the laws and regulations by identifying legislation specifically relating to legal protection of lenders in the implementation Fintech based on P2P lending. While the Conceptual Approach In this study the conceptual approach moved from the views and doctrines that developed in law. by studying the Doctrine that develops in the field of law, it can find ideas by giving birth to new legal notions. The conceptual approach in this study was carried out by analyzing the legal protection of lenders in the implementation Fintech based on P2P lending.

in addition, the sources of primary legal materials used are as follows:

TABLE 1: Primary Legal Material.

No	Rules
1	The 1945 Constitution of the Republic of Indonesia
2	Code of Civil law
3	Law No. 10 of 1998 Amendment to Law No. 7 of 1992 concerning Banking
4	Law No. 21 of 2011 concerning the Financial Services Authority
5	The Financial Services Authority Regulation No.77/POJK.01/2016 concerning Information Technology-based Lending and Borrowing Services
6	Law No. 8 of 1999 concerning Consumer Protection
7	Law No. 11 of 2008 concerning Information and Electronic Transactions

4. Result and Discussion

4.1. Fintech regulation in several countries

Fintech based on peer to peer (p2p) lending has grown rapidly in several countries in the world. This is supported by regulations from the government that contribute to

the development of fintech. Like several countries in the world, namely Singapore and China.

The country's government has paid high attention to the development of Fintech. The regulators of these countries made various efforts towards the development of Fintech products and services, including in the formulation of regulations, establishing Fintech stakeholders communication forums, and implementing education (Consumer Protection Department-OJK, 2017).

4.1.1. Singapore

Singapore The Singapore Monetary Authority of Singapore (MAS) and the National Research Foundation (the National Research Foundation) form The Fintech Office which functions to review, harmonize and improve the Fintech funding scheme in all government agencies; identify gaps and propose industrial infrastructure strategies, policies and schemes; development of talent and labor requirements and business competitiveness; and managing and developing Singapore branding as a central Fintech.

In April 2016, MAS showed a desire to adopt a risk-based approach to Fintech innovations in unregulated sectors because MAS wanted to ensure that regulation would not hamper innovation and disrupt the use of useful technology. So that MAS applies a test of materiality and proportionality, where when the potential risk posed by a Fintech can be large, the arrangement will be proportional or pay attention to the level of potential risk.

Then Singapore issued the Fintech Regulatory Sandbox in November 2016, where MAS encouraged Fintech companies to experiment with innovations, can be tested on the market, and have the opportunity to be adopted more widely both in Singapore and abroad. The Sandbox provides adequate security to bear the consequences of failure and maintain overall security aspects. In addition, there are several licenses for Fintech companies in Singapore. First, the Capital Markets Services (CMS) license under the Securities and Futures Act for Fintech which is engaged in securities business, manages funds > \$ 1 B from global funds, and provides financial advisory services. Second, Moneylenders licenses under the Moneylenders Act for Fintech are engaged in the money lending business. Third, the Banking license is under the Banking Act (BA) for entities that receive funds deposits either in the form of checking accounts or deposits and payment systems. Companies must also understand and meet the criteria of the Personal Data Protection Act (PDPA) to protect customers' personal data obtained from within Singapore, such as the provision that companies must have personal data

privacy policies that can be accessed by the public, approve data usage, and build physical security and systems to avoid misuse of data. Finally, Fintech in Singapore must also understand and fulfill the provisions of Anti-Money Laundering & Counter Financial Terrorism Controls. The Fintech company is required to know and verify its customer profile (Know Your Customer / KYC principal), review accounts, monitor, and report any suspicious transactions.

4.1.2. China

In July 2015, The People's Bank of China (PBOC), the China Banking Regulatory Commission (CBRC), China Insurance Regulatory Commission (CIRC), China Securities Regulatory Commission, Ministry of Industry and Information Technology (MIIT) along with 5 (five) Government regulators issued the Guiding Opinions on Promotion of Healthy Development of Internet Finance ("the Guiding Opinions"). This is the first comprehensive regulation issued by the PRC government regarding Fintech. The Guiding Opinions establishes certain basic rules that must be met such as payment via the internet, insurance through the internet, online loans, crowd funding and online sales of funds. In December 2015, CBRC continued the Guiding Options by issuing a draft regulation on the P2P platform.

The regulation places P2P lending platforms as things that will be regulated under the CBRC registration system and must undergo record-filing at MIIT. With P2P lending, borrowers assume risk of default and information brokers do not bear credit risk. Therefore, the CBRC decided to impose minimum capital requirements (minimum capital requirements) or minimum licensing requirements on the P2P platform. The P2P platform will be regulated in the payment system and is prohibited from performing problematic actions, such as loans to shareholders or providing services to borrowers who intend to invest in equity securities. To prevent risk, P2P service providers are asked to separate their own funds from lenders and borrower funds. Lenders and borrower funds must be deposited with the custodian bank. In addition to regulation, cooperation between Fintech and the Bank is also one of the trends in China. Through this, customers will benefit because the Bank has very clear and firm regulations. Conversely, the Fintech company will also benefit from increasing the trust of its customers. For example, the Postal Savings Bank of China (PSBC) is the largest lender network in China with 40,000 business branches.

4.2. Legal protection of lenders in the implementation of Fintech based on P2P lending

The parties in the implementation of Financial Technology based on Peer to peer Lending in Indonesia consist of lenders, providers and loan recipients. Since the implementation of technology-based money lending is a major issue is a form of legal protection especially for lenders, lenders as investors must be protected so that the funds are not lost or misused by the organizers and the funds are not lost due to default by the recipient of the loan (debitor).

Regulations governing the implementation of Financial Technology based on Peer to peer Lending in Indonesia are based on Law No. 08 of 1999 concerning Consumer Protection, Law No. 40 of 2007 concerning Limited Liability Companies, Law No. 11 of 2008 concerning Information and Electronic Transactions, Law No. 21 of 2011 concerning the Financial Services Authority and OJK Regulation No.77/PJOK.01/ 2016 concerning Information Technology Loan-Based Services.

Forms of legal protection for lenders can be done preventively or repressively. Preventive legal protection is used to prevent the occurrence of technology-based money lending and borrowing disputes. The preventive protection of the task lies in the Fintech organizer where, the organizer must fulfill the requirements of applying for a license to be an organizer to OJK as mentioned in Article 3 of the OJK Regulation which regulates the organizer, namely in the form of a limited liability legal entity can be established and owned by Indonesian citizens and or Indonesian legal entities and/or foreign citizens and/or foreign legal entities. The owner's share ownership by a foreign national and/or foreign legal entity as referred to directly or indirectly is a maximum of 85% (eighty five percent) (Article 3, POJK, 2016).

Operators in the form of legal entities of limited liability companies must have paid up capital of at least Rp1,000,000,000.00 (one billion rupiah) at the time of registration. Likewise with the Organizer in the form of a legal entity the cooperative must have its own capital of at least Rp1,000,000,000.00 (one billion rupiah) at the time of registration. When applying for licensing the organizer must have a fund of Rp.2,500,000,000.00 (two billion five hundred million rupiahs) (Article 4, POJK, 2016).

Organizers as facilitators act to provide, manage and operate information technology-based lending and borrowing services from lenders to loan recipients. Where the source of funds comes from lenders so that the organizers are prohibited from becoming lenders or loan recipients. In addition, the operator must meet the maximum lending limit for loan recipients of 2,000,000,000 (two billion) (Article 6, POJK, 2016).

In addition, the organizer must pay attention to the basic principles of user protection, namely lenders and loan recipients as described in OJK regulation article 29 No.77/PJOK.01/2016 which consists of transparency, fair treatment, reliability, confidentiality and data security; and simple, fast and affordable user dispute resolution (Article 29, POJK, 2016).

TABLE 2: Prohibition of Organizers in Running Their Business Activities.

No	Point
1	Conduct business activities other than organizer business activities regulated in this OJK regulation;
2	Acting as a lender or loan recipient
3	Provide guarantees in all forms for the fulfillment of the obligations of other parties
4	Issue bonds
5	Provide recommendations to users
6	Publish fictitious and / or misleading information
7	Offer services to users and / or the community through private communication facilities without user consent; and
8	Charge any user for filing a complaint

For organizers who violate the prohibition as Article 43 No.77/PJOK.01/2016 is subject to administrative sanctions as follows:

1. Written warning
2. Fines, namely the obligation to pay a certain amount of money;
3. Limitation of business activities; and
4. Revocation of permission

So, the OJK regulations have guaranteed good preventive protection, especially the protection addressed to lenders by providing strict regulations for the organizers ranging from registration and business permits to bans and strict sanctions in the form of revocation of Business licenses in implementing P2PL-based Financial Technology.

Repressive protection is carried out after a dispute in the P2PL-based Fintech business. If there is a dispute, the party who is harmed in this case the lender must make a complaint to the Operator. If there is a default by the loan recipient, and this happens because of negligence and rebuttal from the organizer, then the organizer is obliged to make compensation as stated in article 37 PJOK No.77/PJOK.01/2016 which reads:”The Organizer must be responsible for the loss of Users arising from errors andor negligence, the Directors, and or employees of the Operator”

5. Conclusion

The parties in implementing P2PL-based Fintech consist of lenders (investors), organizers and loan recipients. The legal relationship that is formed between the lender and the organizer is a special power, whereby the lender gives power to the organizer to distribute the funds. In addition, the second legal relationship is between the lender and the recipient of the legal relationship loan that is formed, namely the debt payable where the lender acts as a creditor and the recipient of the loan as a debtor. Based on the legal relationship, there is only agreement between the lender and the recipient of the loan, while the organizer does not include the parties to the agreement. In this case if it happens then the most vulnerable are lenders if. Therefore, it is necessary to provide clear legal protection for lenders.

Legal protection for lenders is twofold (2) namely preventive legal protection and repressive legal protection. Preventive protection lies with the organizers by providing strict regulations for the organizers starting from registering and operating permits to the prohibition and strict sanctions in the form of revocation of business licenses in implementing P2PL-based Financial Technology. In addition, the organizer is obliged to apply the basic principles of user protection, namely lenders and loan recipients as described in OJK regulation article 29 No.77/PJOK.01/ 2016 which consists of transparency, fair treatment, reliability, confidentiality and data security; and user dispute resolution is simple, fast, and affordable.

Repressive protection is that if there has been a dispute due to negligence and rebuttal from the organizer, then the organizer is obliged to make compensation as stated in article 37 PJOK No.77/PJOK.01/2016.

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