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Legal Protection for Users of Illegal Online Loan Services Putri Rohmatul Hidayah

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ABSTRAK

Online loan services or Peer to Peer Lending are one of the fintechs that are growing rapidly at this time. This growth is due to the ease and effectiveness of using fintech lending in providing loans to people who experience an increase in their living needs, especially since the COVID-19 pandemic. However, not all online loans have official permission from the Financial Services Authority, online loans that do not have official permission from the OJK or are called illegal online loans are very troubling to the public, recorded from 2019-2021 there were 19,711 complaints cases. Therefore, the authors conducted this study to provide public knowledge about the existence of legal protection for users of online loan services, especially users of illegal online loan services. This study uses a normative method by approaching the legislation. Legal protection for illegal online loan users is regulated in POJK No.77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services, where online loan service providers are required to apply the basic principles of user protection and OJK will provide administrative sanctions in the event of a violation.

1. Introduction

The development of information technology today has an impact on various fields, one of which is the economic field. Activities that were previously carried out conventionally are now turning digital, and financial transactions are no exception. This causes the financial technology (fintech) industry to develop rapidly. Online loan service or Peer to Peer Lending (P2PL) is one of the fintechs that is growing rapidly at this time. This growth is due to the ease and effectiveness of using fintech lending in providing loans to people who experience an increase in their living needs, especially since the COVID-19 pandemic. However, not all online loans have official permission from the Financial Services Authority (OJK), it is recorded that as of November 17, 2021, there are 101 fintech lending

companies that are licensed at OJK1.

Online loans that do not have

official permission from the OJK or so-called illegal online loans is very disturbing to the public, it is known that there have been 19,711 cases of public complaints from 2019-2021 regarding illegal online loans, of which 9,270 cases are cases of serious violations. Cases of serious violations that were found included disbursement without the applicant's consent, threats to spread personal data, terror to all cellphone contacts, and billing using harsh words. received a remittance of some money in his account and was asked to return the money within one week. After that, the borrower is called by a debt collector who threatens to sell the borrower's personal data, if he does not pay³. The threat

This can occur due to online lenders being able to access user data illegally or without the user's consent.

In a study conducted by Alfica Rezita Sari in 2018 with the title Legal Protection for Lenders in the Implementation of Peer to Peer Lending-based Financial Technology in Indonesia, it was explained that legal protection for lenders in the event of default can be carried out preventively by applying the basic principles of the provider. in accordance with Article 29 of POJK No.1/POJK.01/2016 namely transparency, fair treatment, reliability, confidentiality and data security, and user dispute resolution in a simple, fast and affordable cost. Protection can also be carried out repressively in accordance with Article 37 of POJK No.1/POJK.01/2016 and Article 38 of POJK No.1/POJK.07/2013, namely providing compensation to parties who are harmed due to the organizer's error.⁴ Similarities with this research are: talk about protection

law on Peer to Peer Lending (Online Loans) services.

The second research was conducted by Kornelius Benuf, Siti Maheasy, Ery Agus Priyono in 2019 with the title Legal Protection of Financial Technology Consumer Data Security in Indonesia. In the study, it was explained that the legal protection of the personal data of fintech consumers is regulated in the Minister of Communication and Information Regulation No. 20 of 2016, POJK No. 77 years old 2016, POJK No. 13 of 2018 and OJK Circular Letter. The data that must be protected are personal data of individuals, corporations, material non-public data and information, data and information related to financial transactions as well as data and information related to contracts/agreements. ⁵The similarity with this research is discussing the legal protection of consumer data in Financial Technology.

The third research was conducted by Adi Setiadi Saputra in 2019 with the title Protection of Lenders as Consumers and Responsibilities of Peer to Peer Lending Operators in Peer to Peer Lending Activities in Indonesia. The research explained that the legal protection for peer to peer lending activities is POJK No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. The protection states that if there is a risk of default, the risk will be borne by the lender, while the provider of peer to peer lending is not responsible for it.⁶ The similarity with this research is that it discusses legal protection in peer to peer lending activities (Online Loans).

The fourth research was conducted by Rayyan Sugangga, Erwin Hari Sentoso in 2020 with the title Legal Protection against Illegal Online Loan Users (Pinjol). In that research

it is explained that the borrower still has to carry out the obligation to pay the debt even though the loan agreement is made with an online loan.⁷ The similarity with this research is that it discusses legal protection for online loan users.

The fifth research was conducted by Rachma Fadila Anggiafani in 2021 with the title Legal Protection of Personal Data of Online Loan Borrowers Perspective Pojk No. 1/Pojk.07/2013 concerning Consumer Protection in the Financial Sector and Aspects of Benefit. In this study, it is explained that the legal protection for online loan users is POJK No.1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. In this regulation there is preventive protection that requires business actors to seek approval

consumers when using their personal data. There is also repressive protection, namely if there is a material loss in the dispute, there will be administrative sanctions. 8 The similarity with this research is discussing legal protection for online loan users.

Based on the problems described above, the authors conducted research on "Legal Protection for Users of Illegal Online Loan Services". The purpose of this research is to provide public knowledge about the existence of legal protection for users of online loan services, especially users of illegal online loan services.

1. Results and Discussion

Legality of Illegal Online Loan Agreements

Online loan services in Indonesia are regulated in the Financial Services Authority Regulation or POJK

No.77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. In the regulation, it is stated that, Information Technology-Based Borrowing and Borrowing Services is a lending and borrowing agreement in rupiah currency which aims to bring together lenders and loan recipients directly through an electronic system using the internet network. 9

In the implementation of online loan services, there are several parties involved in the implementation of this service, including:

1. Lenders

The lender is a person, legal entity or business entity that has receivables due to an Information Technology-Based Lending and Borrowing Service agreement.

Lenders can come from within or outside the country, both Indonesian/foreign citizens, Indonesian/foreign legal entities, Indonesian/foreign business entities and international institutions.¹¹

1. Loan Recipient

The borrower is a person or legal entity that has debt due to an Information Technology-Based

Borrowing and Borrowing Service agreement.¹² The borrower must originate from and domiciled in the territory of the Republic of Indonesia, both individual Indonesian citizens and Indonesian legal entities.

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2. Online Loan Service Providers

Online Loan Service Providers are Indonesian legal entities that provide, manage and operate

Online Loan Services¹⁴. Online Loan Service Providers are declared as Other Financial Services Institutions with legal entities in the form of limited liability companies or cooperatives.¹⁵ Online Loan Service Providers provide a platform that can be used as an intermediary where lenders and loan recipients meet

Online loan services are carried out with an agreement that includes an agreement between the provider and the lender and an agreement between the lender and the loan recipient.¹⁷ The agreement must be in accordance with the legal terms of an agreement in which there is a

There is an agreement between the two parties, there is the ability to carry out legal actions, there are certain issues and there is a cause that is not prohibited (Article 1320 of the Civil Code).

Online Loan Service Providers are required to apply for registration and licensing with the Financial services Authority, if this is not implemented then the provider can be referred to as "Illegal Online Loan Service Providers". The Online Loan Operator acts as a proxy for the lender in making an agreement with the loan recipient, provided that the recipient of the power of attorney must meet the subjective legal requirements contained in Article 1320 of the Civil Code. Meanwhile, for illegal online loan service providers, one of the legal requirements is not fulfilled, which is prohibited by law from providing online loan services due to the absence of official permission from the relevant parties, in this case

the OJK. When the Illegal Online Loan Service Provider is not registered and licensed, then the agreement between the lender and the loan recipient can be cancelled. However, the borrower must still return all the money that has been borrowed from the lender.

Legal Protection for Illegal Online Loan Users

The law aims to provide protection to the community. The law also provides solutions for the use and utilization of science and technology for human survival. In the fintech industry, the law aims to protect users who are harmed by others and make them enjoy the rights granted by law.

In Indonesia, there is a Financial Services Authority (OJK) which is authorized to oversee business activities in the financial services sector and is expected to be able to protect users from harmful things. This is in accordance with OJK's objectives, namely protecting the interests of users and the public in the service sector keuangan.

In dealing with online loan service users, OJK has POJK No.77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services. In the regulation, online loan service providers are required to apply the basic principles of user protection, namely transparency, fair treatment, reliability, confidentiality and data security as well as user dispute resolution in a simple, fast and affordable cost.¹⁹ If online loan service users get a violation of these obligations, then it can make a complaint to OJK as a facilitator for complaints of users who are harmed by illegal online loan service providers.²⁰ OJK will provide administrative sanctions in the form of written warnings, fines, restrictions on business activities and revocation of licenses to illegal online loan service providers.²¹ In

service delivery For online loans, OJK is required to have an internal control system and implementation reporting and monitoring system for user complaints.²² OJK is also required to supervise the performance of business actors in protecting users.²³

3. Conclusion

Online loan services in Indonesia are regulated in the Financial Services Authority Regulation or POJK No.77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services. In this regulation, online loan services are carried out in an agreement between the provider and the lender and an agreement between the lender and the loan recipient. Online loan service providers are required to apply for registration and licensing with the Financial Services Authority, if this is not implemented then the provider can be referred to as "Service Providers".

Illegal Online Loans”.

Protection of online loan service users is contained in POJK No.77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services, where online loan service providers are required to apply the basic principles of user protection. If a violation occurs, the user can make a complaint to the OJK and OJK will provide administrative sanctions in the form of written warnings, fines, restrictions on business activities and revocation of permits to illegal online loan service providers.

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