



Legal Protection For Third Parties Who Are Provided As Individual Guarantees By Fintech Peer-To-Peer Lending

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ABSTRAK

The emergence of fintech companies is increasingly receiving attention from the public and regulators, namely the financial services authority (OJK) and Bank Indonesia (BI). This is stated in Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. This regulation regulates information technology-based money lending and borrowing services or what is called peer to peer money lending. As of May 24 2021, the total number of fintech peer to peer lending or fintech lending providers registered and licensed with the OJK was 131 companies. In the case of a loan recipient applying for a loan on an online loan platform, the borrower will usually be asked to include an emergency contact as a condition for applying for a loan, but this is done without the permission of the third party who is used as an emergency contact. This resulted in losses for the emergency contact party due to terror from the lender as a result of the loan recipient experiencing late payments. LBH Jakarta received 1330 reports of loan victims from 25 provinces in Indonesia. One of them is Dian Siregar, who was a victim who was terrorized by an online loan where he received a short message from one of the KSP Rupiah Petir Pro loan applications after being made a guarantor by his friend without prior approval or confirmation.

1. Introduction

The development of information technology is the result of globalization. The development of information technology has an important role in developed countries and in developing countries. Therefore, until now many rulers spur the development of information technology in their countries.

Information technology has changed the way people live a lot. Starting from opening new business opportunities to giving new types of jobs. The development of information technology is what gave birth to the internet. Starting from its home country of the United States, the internet has grown rapidly throughout the world. At first the internet was created only for academic and research purposes, but now the internet is more widely used as a business tool and various forms of paid services by companies and government agencies.

The rapid use of computer machines and rapid exchange of information makes companies engaged in conventional economics and financial institutions use internet facilities as a new medium for transactions. The rise of startups in Indonesia has also given rise to innovations in the world of finance, namely financial technology or called fintech. Fintech is an innovation in financial or financial services. The public response to the existence of financial technology is quite good, as can be seen from the growing number of fintech companies in Indonesia.¹

Financial technology or commonly called fintech is a financial innovation at this time that is widely used in the world

of trade, business and to meet the needs of the community. At the beginning of the presence of fintech until 2016, there were no regulations governing fintech activities in Indonesia. So there is no legal protection for credit risk, compliance risk, operational risk and data security for users of this service.²

The emergence of *fintech companies* is increasingly receiving public and regulatory attention, namely the financial services authority (OJK) and Bank Indonesia (BI). This is stated in the Financial Services Authority Regulation 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. The regulation regulates information technology-based money lending services or called peer to peer lending and borrowing.

The definition of *peer to peer lending or in POJK referred to* as information technology-based money-based lending and borrowing services is listed in Article 1 number 3 of POJK number 77 of 2016 which reads:

"Information Technology-based lending and borrowing services are the provision of financial services to bring together lenders and loan recipients in the context of making loan and borrowing agreements in rupiah directly through an electronic system using the internet network"

Article 1 point 1 of Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Financial Technology Providers (hereinafter referred to as PBI 19/2017) means: "Financial Technology is the use of technology in the financial system that produces new products, services, technology, and/or business models and may have an impact on

¹ Harahap, B.A., Idham, P.B., Kusuma, A.C.M., & Rakhman, R.N. Financial Technology Development Related to Central Bank Digital Currency (CBDC) on Monetary and Macroeconomic Policy Transmission, Bank Indonesia, 2017, p. 80

² Siti Yuniarti dan Abdul Rasyid "consumer protection in lending fintech transaction in Indonesia: opportunities and challenges", journal of physics: conference series, 2020, hal.18

monetary stability, financial system stability, and/or payment system efficiency, smoothness, security, and reliability".

Changes in the digital era in Indonesia are marked by the emergence of technology-based financial services such as *peer to peer* (P2P) *lending*. The development of financial technology today is still in its early stages, but along with the increasing public knowledge of online-based applications, *fintech lending* is also on the rise. According to data from the Financial Services Authority (OJK), in February 2020, as many as 161 companies had registered their companies to operate in Indonesia. Until now, *fintech payments* and *fintech lending* are the most prominent in demand by the people of Indonesia, because funding needs continue to increase, but not all of these needs are met by conventional financial institutions.³ Fintech activities themselves already have several regulations, but these regulations are still considered less accommodating to various risks and possibilities that will occur.

Regarding the use of information technology and innovation in the financial services sector in Indonesia, significant developments can be seen today. Various financial services that utilize information technology or often called Financial Technology (fintech) have become common in the community, both offered by financial institutions supervised by the OJK (such as services at banks, insurance, or other registered financial institutions) and offered by start-up companies

(companies that have not been registered and supervised by the OJK). Fintech has been increasingly accepted by the public because it can present a variety of services that are relatively attractive, easy to use and convenient for consumers to use. Taking into account data from the Indonesian Fintech Association (AFI), as of May 24, 2021, the total number of fintech peer to peer lending or fintech lending providers registered and licensed at the OJK is 131 companies.⁴ Fintech has various types of services that can be used by the public. However, according to Bank Indonesia, fintech is divided into 4 types, namely; 1. Peer-to-peer (P2P) Lending and Crowdfunding; 2. Investment Risk Management; 3. Market Aggregators; 4. Payment, Clearing, Settlement.

According to the Financial Services Authority Regulation Number 77 / Pojk.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Services Article 1 states that there are 3 (three) parties in fintech Peer-to-peer (P2P) Lending, namely; 1. Loan Operator; 2. Borrower; 3. Lenders.

Legal actions arising between debtors and creditors which are based on the existence of an agreement. The credit agreement between the parties must refer to or be based on Article 1320 of the Civil Code, hereinafter referred to as the Civil Code, so that an agreement arises from an agreement (consensualism) preceded by equality of will.

In this case, the borrower (borrower) often experiences problems such as late payment of installments. Before that, when the loan recipient applies for a loan on an online loan platform, the borrower will usually be asked to include an

³ Financial Services Authority. *Fintech Lending Company Licensed and Registered with OJK As of February 19, 2020*. <https://www.ojk.go.id/id/berita-dan-kegiatan/publikasi/Pages/Penyelenggara-Fintech-Terdaftar-dan-Berizin-di-OJK-per-19-Februari-2020.aspx>. Retrieved 23 September 2021 at 18:53

⁴ Financial Services Authority <https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/Penyelenggara-Fintech-Lending-Terdaftar-dan-Berizin-di-OJK-per-24-Mei-2021.aspx> Retrieved 23 September 2021 at 19.04 WIB

emergency contact as a guarantor if the borrower is late in paying installments. From the emergency contact phone number listed by the borrower, some have not received approval from the relevant party. Therefore, this study will discuss Legal Protection for Third Parties that are used as Emergency Contact by Fintech Peer-to-Peer (P2P) Lending.

Thousands of citizens in Indonesia feel they are victims of online lending businesses and they are trying to sue the Financial Services Authority (OJK) because they feel that personal data is spread by financial companies that provide loans. One of the legal aid institutions of the Jakarta Legal Aid Institute (LBH) accompanied the victims of online loans (pinjol) to sue the Financial Services Authority (OJK) as a regulator for not strictly regulating financial lending companies operating online (fintech). LBH Jakarta received 1330 reports of loan victims from 25 provinces in Indonesia.⁵ One of them is Dian Siregar who is a victim who was terrorized by online loans where he received a short message from one of the KSP Rupiah Petir Pro loan applications after being used as a guarantor by his friend without prior approval or confirmation. The message contains that Dian is responsible for the loan if the borrower does not pay dependents who are one day late.⁶

The research methodology used in writing this scientific paper is normative juridical, namely finding the truth of coherence, whether there are legal rules

in accordance with legal norms and whether the norms change orders or prohibitions are in accordance with legal principles, and whether a person's actions (acts) are in accordance with legal norms (not just according to legal rules) or legal principles.⁷

The approach used in writing this scientific paper is a legal approach and a conceptual approach. The legal approach is carried out by reviewing all laws and regulations related to the legal issues presented.⁸ Related to legal issues that are the topic of discussion, a legislative approach is used that is expected to be able to answer these legal issues. After a review of the regulations related to the legal issue, the results will be used as an argument to solve the legal issue at hand.

While the conceptual approach (conceptual approach), this approach is carried out to examine various existing concepts regarding the subjective reasons for detention so that there is a common view in interpreting these concepts. Concepts related to legal protection for third parties that are used as emergency contact by fintech peer-to-peer lending based on the Civil Code regarding the terms of validity of agreements and forms of agreements and personal data protection in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions associated with online loan guarantee conditions as regulated in Law Number 21 of 2011 concerning the Financial Services Authority.

Legal materials are the most important part of legal research. Without legal material, it would not be possible to find answers to the legal issues raised. The legal material used by the author in writing this scientific paper is primary legal material and secondary legal material

⁵ <https://www.tempo.co/abc/3282/korban-pinjaman-online-di-indonesia-gugat-ojk-karena-data-pribadi-disebarkan> Retrieved 13 May 2022 at 07.25 WIB

⁶ <https://megapolitan.kompas.com/read/2021/06/18/16410601/diteror-hingga-diancam-pinjol-gara-gara-nomor-kontak-dijadikan-penjamin?page=all> Retrieved 23 May 2022 at 20:32 WIB

⁷ Peter Mahmud Marzuki, *Legal Research*, Jakarta : Prenada Media Group, 2016, p.47

⁸ Dyah Ochterina Susanti and A'an Efendi, 2013, *Legal Research*, Jakarta : Sinar Grafika, p. 110

2. Results and Discussion

Legal consequences for third parties who become emergency contacts by fintech peer-to-peer lending if the borrower's customer defaults

With globalization in the present that is so rapidly developing it provides many changes, including how the role of technology and digital has replaced the role of many humans. Along with information technology that is also supported by increasingly sophisticated computer technology, communication technology is currently a supporting instrument for the dissemination of information almost throughout the world. This global communication network with computer facilities is known as the internet. The Internet has an understanding as a global communication network that is formed and connected to computer devices, both in the form of personal computers and supercomputers.⁹

Initially, the internet was used for the benefit of private channels that were useful for research and academic activities, but today the fact is that the internet tends to be used in the business sector in various types of commercial services.¹⁰

This technological advancement then makes many startup companies in Indonesia can be said to continue to experience rapid development. The types of startups are divided into two, namely e-commerce and financial technology (*fintech*). *E-commerce* is a company that provides an online buying and selling platform, while the term *fintech* is more centered on companies that innovate in the field of financial services with a touch of modern technology. One form of *fintech* breakthrough is the existence of receivables payable that are carried out online (*peer to*

peer lending).¹¹

Basically, *peer to peer lending fintech* services have differences from lending and borrowing services as in Article 1754 of the Civil Code. Based on the loan and borrowing agreement as written in the rules of Article 1754 of the Civil Code which explains that lending and borrowing is an agreement by which one party gives to the other party a certain amount of goods that are exhausted due to use, provided that the latter party will return the same amount of the same kind and condition. The provisions of Article 1754 of the Civil Code indicate that a person who lends a certain amount of money or goods to another party, he will pay back the same amount of money in accordance with the agreed agreement, meaning that the parties bound by the transaction include only the lender and the borrower. Thus, it can be explained if these parties have a direct legal bond through a loan and loan agreement. In the event of default as stipulated in Article 1238 of the Civil Code which explains if the Debtor is declared *Ialai* by a warrant, or by a deed of that kind, or based on the strength of the engagement itself, that is, if this engagement results in the debtor must be considered *Ialai* by the lapse of the specified time. This means that the debtor is fully responsible if there are problems that are not in accordance with what has been agreed including late loan repayment.

Based on Article 18 POJK Number 77 / POJK.01 / 2016 of 2016 concerning Information Technology-Based Money Lending and Borrowing Services. The agreement for the implementation of Information Technology-Based Money Lending and Borrowing Services only includes an agreement between the Operator and the Lender; and an agreement between the Lender and the Borrower.

Thus, based on the explanation above, it can be concluded that if the parties involved in this technology-based lending and borrowing transaction there is not a

⁹ Gemala Dewi, et.al., *Islamic Alliance Law in Indonesia*, (Jakarta: Prenada Media, 2010), p. 200.

¹⁰ Hendro Nugroho, "Legal Protection for Parties in Online Loan Transactions", *JUSTITIA: Journal of Law and Humanities*, Volume 7, Number 2, 2020, p. 329

¹¹<https://www.duniafintech.com/pengertian-dan-jenis-startup-fintech-di-indonesia/>, retrieved November 6, 2022, at 20.00 WIB

single article that explains emergency contact as a party related to information technology-based money lending and borrowing transactions.

The requirements for online loan recipients are regulated in Article 15 of the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 of 2016 concerning Information Technology-Based Money Lending and Borrowing Services

- (1) The Borrower must be from and domiciled in the jurisdiction of the Unitary State of the Republic of Indonesia.
- (2) The Borrower as referred to in paragraph (1) consists of:
 - a. natural persons Indonesian citizens; or
 - b. Indonesian legal entity.

Then according to Article 19 of the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 of 2016 concerning Information Technology-Based Money Lending and Borrowing Services

- (1) The agreement for the implementation of Information Technology-Based Money Lending and Borrowing Services between the Operator and the Lender is stated in the Electronic Document.
- (2) Electronic Documents as referred to in paragraph (1) must at least contain:
 - a. agreement number;
 - b. date of agreement;
 - c. identity of the parties;
 - d. provisions regarding the rights and obligations of the parties;
 - e. loan amount;
 - f. interest rates on loans;
 - g. the amount of the commission;
 - h. Period;
 - i. details of related costs;
 - j. provisions regarding fines (if any);
 - k. dispute resolution mechanisms; and
 - l. settlement mechanism in the event that the Organizer is unable to continue its operational activities.

Based on the explanation of the article above regarding the terms of online loans with the inclusion of third parties who are used as emergency contacts or emergency *contacts* are not subjective conditions in the online loan and borrowing agreement. But even though emergency contact is not regulated as an absolute condition in an agreement, *emergency contact often suffers losses both materially and immaterially, ranging from short messages containing threats to warn online loan recipients to immediately pay their loans, there are even some individuals who terrorize through short messages periodically to emergency contact*, even if you look at their position *Emergency contact is not the person responsible for borrowing and borrowing money because there is no legal bond, even its inclusion does not meet the requirements for the validity of an agreement which is done unilaterally without the permission or knowledge of the owner of the third party Phone Number.*

In analyzing the form of responsibility for loans made by borrowers in this case is based on the theory of individual guarantees. Personal security according to Subekti is defined as an agreement between a debtor or creditor and a third person who guarantees the fulfillment of the obligations of the debtor or debtor.¹² This individual guarantee does not give the right of precedence to certain objects, because the property of third parties is only a guarantee for the implementation of an engagement such as *borgtocht*.¹³ In the case of providing individual guarantees, a guarantee agreement is required in advance between the debtor, in this case the borrower and the insurer. This is based on the provisions of Article 1820 and Article 1822 of the Civil Code. This means that when a third party to the loan binds himself, it is only limited to binding some responsibilities

¹² Subject, *Guarantees for Lending According to Indonesian Law*, Bandung: Citra Aditya Bhakti, 1989, p. 15

¹³ Frieda Husni Hasbullah, *Civil Property Law, Rights That Provide Guarantees (vol. 2)*, Jakarta: Indo Hill-Co, 2005, p. 12.

owned by the Borrower or Debtor. But the problem is that there is no guarantee agreement for a debtor debt to a third party, so when an online lender contacts a third party. The underwriting agreement is considered invalid, because it does not meet the applicable conditions

Article 1763 of the Civil Code, states that whoever receives a loan of something, is obliged to return it in the same amount and circumstances, and at the specified time. Article 1756 of the Civil Code, regarding the return of the amount of money borrowed must take into account price setbacks or changes regarding currency entry into force. The lending and borrowing agreement as stipulated in the Civil Code the obligations of creditors are not widely regulated, in essence the creditor is obliged to hand over the money lent to the debtor after the occurrence of the agreement.

The treatment of lenders shows that it is wrong to treat *emergency contacts* as guarantors in online lending and borrowing agreements. This is contrary to Article 1820 of the Civil Code which explains that the guarantor must be expressly stated to bind himself in fulfilling the debtor's engagement. Therefore, actions from online loan organizers who treat emergency contacts unbound as guarantors are invalid and contrary to laws and regulations.

Dispute resolution that can be carried out by third parties that become individual guarantees by fintech when losses arise on fintech peer-to-peer (P2P) lending.

In the loan and loan agreement, in essence, the debtor's obligations are not much because the debtor is sufficient to pay off his debt at the agreed interest rate, at a mutually agreed time within a predetermined period of time equal to the amount borrowed as in the loan contract regulated in Article 1763 of the Civil Code. Debt payments depend on the agreement, there is an agreement that the payment is enough once to be paid off immediately, usually if the debt is not so large as bank credit, in general debt payments are made by debtors in installments every month during the agreed time accompanied by interest. But in the practice of implementing lending and borrowing agreements, there are many events where debtors neglect to fulfill their obligations

to pay debts to creditors. This situation can be considered a default or a situation where the debtor does not carry out its obligations on time / is done not in accordance with the agreement. Similarly, what happens to online lending and borrowing which becomes a lot of problems is due to the lack of prudential principles in lending, such as one of the inclusion of third parties who do not have binding agreements but are then withdrawn as parties who are partly responsible if there is a default or bad debt.

In the online agreement rules regulated in POJK No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services, it is not clearly or clearly stated about *emergency contact* which is withdrawn as a third party, but in its implementation this third party is present in every online lending transaction because it is one of the conditions in applying for a loan, but what happens is that the third party does not agree and is not asked for approval. This is what then becomes a problem regarding personal data that is spread without the permission of the party concerned.

Investigate more deeply about emergency contacts, on loan and loan agreements Online has several conditions for applying for a loan, including: Before there is an emergency contact attachment, first fill in the attachment regarding personal data. Borrowers are required to fill in personal data in accordance with KTP (Identity Card), face verification directly, ID card photos and selfies while holding ID cards, these photos cannot be taken through the gallery, must be in person. That what can be used as emergency contact is from the nuclear family to the closest friends.¹⁴

Definition of personal data according to Ministerial Regulation Communication and Informatics Article 1 Number 1 Number 20 of 2016 concerning Protection Personal Data in Electronic Systems that "Personal Data is certain personal data that is stored, maintained, and maintained truthfully and protected confidentially"¹⁵

¹⁴ Elvina and Samuel M.P. Hutabarat, *The Role of Third Parties on Online Loans in Indonesia*, Atma Jaya Catholic University of Indonesia, 2021. p.95

¹⁵ <https://www.hukumonline.com/klinik/a/langkah-hukum-terhadap-pencurian-data-pribadi-iidentity->

Meanwhile, according to Article 1 of Law Number 27 of 2022, it explains if Personal Data is data about an individual who is identified or identifiable separately or combined with other information either directly or indirectly through electronic or non-electronic systems.

Thus, it can be concluded that personal data is identified or identifiable personal data that is stored, maintained, and maintained and protected confidentially.

As a third party whose personal data is used in *fintech peer to peer lending* whose existence is outside the bounds of technology-based lending and borrowing agreements, *acapakali* gets terror because their phone numbers and personal data are misused by service providers, it should be *emergency contact* must also obtain legal protection that can protect their personal interests as stipulated in Article 26 paragraph (1) of the ITE Law which explains that the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned, unless otherwise stipulated by laws and regulations and This personal data itself has been specifically regulated in Law Number 27 of 2022 concerning Personal Data Protection.

Similarly, the protection of personal data itself is already in the constitution where Article 28 G paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 explains that, "Everyone has the right to protection of himself, family, honor, dignity, and property under his control, and has the right to a sense of security and protection from threats of fear to do or not do something that is a human right. And based on Article 12 paragraph (1) of Law Number 27 of 2022 concerning Personal Data Protection, it states that Personal Data Subjects have the right to sue and receive compensation for violations of processing Personal Data about themselves in accordance with the provisions of laws and regulations.¹⁶ Thus, third parties who

theft-i-lt5d904597bfa6e, Retrieved December 17, 2022 at 23:06 WIB

¹⁶ N. Ike Kusmiati, *Undue Influence as a Factor Causing Willpower Defects in Civil Code in an Effort to Fill Legal Vacancies*, Journal of Litigation Law, Vol.17, 2016, No.1

misuse their personal data can request legal protection.

Based on the description above, it can be concluded that the law was formed, one of which is to provide protection for the community, one of which is to protect the interests of third parties who are used as emergency contact without the consent of the owner of personal data, efforts that can be made by third parties are non-litigation by reporting to the financial services authority (OJK) to be followed up by the organizers of technology-based lending and borrowing services because it is appropriate pay attention to aspects of consumer protection and data protection as there is POJK Number 13 of 2018 and litigation by conducting a civil lawsuit in the form of an Act lawsuit

Against the Law (PMH) for losses suffered

3. Conclusion

Legal consequences that will arise for Third parties who become Emergency Contact by Fintech Peer-To-Peer Lending if the Customer defaults is not legally valid for third parties to be responsible for debts made by online loan recipients. Because basically emergency contact is not a party that participates in information technology-based money lending and borrowing transactions based on the provisions of POJK Number 77 / POJK.01 / 2016. This is also contrary to Article 1820 of the Civil Code which explains that the guarantor must be expressly stated to bind himself in fulfilling the debtor's engagement. Therefore, the action of online loan providers that include personal data that is used as emergency contact is not bound as a guarantor is invalid and contrary to laws and regulations, especially if there is a delay in payments made by the loan recipient has a detrimental impact on emergency contact with terror through short messages sent to third party personal data.

Dispute resolution efforts that can be carried out by third parties who become *emergency contact* when losses arise on *Fintech Peer-To-Peer (p2p) Lending* are by non-litigation through reports to the Financial Services Authority (OJK) if there is no consent to the processing of personal data or *fintech* providers not complying with

the principles as stipulated in Article 44 paragraph (1) POJK 10/2022 or by settlement by litigation by filing an Unlawful Action (PMH) lawsuit as stipulated in Article 1365 of the Civil Code conducted at the District Court.

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