



## Settlement of Online Loan Agreement Disputes in the Event of the Debtor Dies

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**Abstract** - The current development of information and communication technology has an impact on people's economic activities, one of which is the activity of borrowing money. Borrowing and borrowing money that was originally carried out conventionally, now many have switched to online lending and borrowing activities. However, in its activities, there are problems experienced by creditors (lenders) related to settlement of obligations if the debtor (lender) dies before the repayment period. This happens because in the observed online lending and borrowing money agreements, many do not include the form of settlement of obligations if the debtor (loan recipient) dies. The issues raised in this study are how legal protection is for creditors in online money lending agreements in the event that the debtor dies and what forms of dispute resolution efforts are made in online money lending and borrowing agreements in the event that the debtor dies. This research method uses a normative legal research type with a statutory approach and a conceptual approach. The results of this study indicate that the form of legal protection for creditors in online money-lending agreements in the event that the debtor dies is through preventive protection (applying the 5C principle and every transaction using an escrow account and virtual account), while repressive protection (organizers help through billing units, assist in mediation, make complaints). And efforts to resolve disputes can be done through non-litigation (outside court) and litigation (in court).

Keywords: Dispute Resolution, Lending Agreements, Debtors

### V. INTRODUCTION

Advances in information and communication technology (ICT) have also brought about significant and fundamental changes in many areas of the country's economy. Utilization of computer technology, telecommunications and banking information, realized through mobile banking, is a form of banking strategy to attract public interest in becoming bank customers. Mantara Putra, (2020). The form of lending and borrowing money that is carried out conventionally (through face to face) which is based on an agreement in written form or an oral (unwritten) agreement, is an activity that has been going on for a long time in the economic life of the community. Borrowing that is carried out conventionally (directly through face to face) is indeed in great demand by people who need funds or fast capital or parties who for some reason cannot be provided with funding by other conventional financial service industries such as banking, capital markets, or financing companies Hendro Nugroho, (2020).

Many new companies in today's digital era take advantage of technological developments called start-ups which can be divided into 2 (two) types, 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 focused on conventional finance

companies that innovate in the field of financial services with a touch of modern technology. And now there are many institutions such as fintech which are the implementation and utilization of technology to improve services emerging by utilizing technology in the form of the latest software, internet, communications, and computing [Nofie Imam, \(2016\)](#).

The presence of fintech is the background for the emergence of various credit and online loan applications. For some people who are in need of financial assistance, making electronic or online-based lending and borrowing (fintech) is part of an effort to help make ends meet. One of the financial service platforms offered by businesses in the fintech sector is online lending and borrowing. And superior services from fintech offer alternative sources of financing for the public in the form of fintech peer to peer lending (P2P) or fintech lending (Information Technology-Based Money Borrowing Services) regulated in the Financial Services Authority Regulation No.77/POJK.01/2016 concerning Services Information Technology-Based Lending.

The parties who carry out online lending and borrowing activities consist of organizers, lenders as creditors and loan recipients as debtors. The definition of operator, lender and borrower is regulated in POJK No.77/POJK.01/2016. Article 1 point (6) that "The Organizer is an Indonesian legal entity that provides, manages and operates Information Technology-Based Borrowing-Lending Services." Then in article 1 number (7) states that "Loan recipients are people and/or legal entities that have debts due to an Information Technology-Based Borrowing-Lending Service agreement." And article 1 point (8) states that "Lenders are people, legal entities, and/or business entities that have receivables due to an Information Technology-Based Borrowing-Lending Service agreement".

In organizing online loans, the parties will usually agree on a loan agreement or contract. Of course this agreement or contract is very important to bind the parties themselves, both in the form of rights and obligations of the parties in the agreement. In online loans, loan agreements or contracts can be called electronic contracts or e-contracts. Some of the lending and borrowing agreements that were traced, especially the clauses in the electronic contract, only regulate matters in the event of force majeure or force majeure. Precisely in the loan agreement there is no clause governing the settlement of the debtor's obligations when the debtor dies. In the opinion of the researcher, in the absence of provisions governing the settlement of obligations when the debtor dies in the electronic (information technology) or online-based loan agreement, it will cause juridical problems that give a sense of legal uncertainty to debtors and creditors. There are several studies that have examined a similar matter, the first being [Ayu Pratiwi, \(2021\)](#), entitled "the legal consequences of money-borrowing agreements that are declared null and void" where the results of the research show that an agreement can be null and void in money-lending agreements. Agreements null and void can occur because the objective conditions stipulated in the law are not fulfilled and the legal consequences for the parties are not clearly written in the Civil Code, where the regulations only contain the lending and borrowing agreement and the legal terms of an agreement do not discuss regarding sanctions for the parties in the event of an agreement null and void. The second is [Christania Siagian, \(2022\)](#) entitled "legal aspects of dispute resolution on online credit agreements for debtors who have died" where the results of his research show that in disputes creditors die cannot be carried out through non-litigation channels because when someone dies, in principle, the rights and obligations of the heirs are transferred to the heirs.

Based on the background explanation as described above, several problem formulations can be drawn, including:

1. What is the legal protection for creditors in online money lending agreements in the event that the debtor dies?
2. What are the forms of efforts to resolve disputes in online money lending agreements in the event that the debtor dies?

## **II. METHOD**

This study uses a type of normative legal research. Sudikno Mertokusomo stated that normative legal research is legal research that examines norms or norms [Mertokusumo,](#)

(2014). This type of legal research here uses the object of contemplative legal theory. The object of contemplative legal theory is a general phenomenon of positive law whose goal is theoretical, its perspective is internal and the theory of truth that is adhered to is pragmatic, namely the consensus of expertise (peers) and its use leads to the improvement of legal practice [Atmadja, \(2018\)](#). This study uses a statutory approach (the statute approach), and a legal concept approach (the analytical and conceptual approach). The statutory approach is an approach taken by examining all laws and regulations that are related to the legal issues being handled. By collecting data using document study techniques and the data is analyzed in a comprehensive manner which is then presented in a descriptive analysis and legal interpretation.

### **III. DISCUSSION**

#### ***Legal Protection for Creditors in the Event of the Debtor Dies***

Legal protection is one of the most important elements in a rule of law state. Legal protection is considered something important because in the process of forming a state concurrently norms or rules that apply and can regulate the life of the state and its citizens will also be formed. So it will automatically create a reciprocal relationship that will occur between the state and its citizens. In this reciprocal relationship will create a right and obligation to each other. Which is where the obligation of the state towards its citizens is to be able to provide legal protection. Vice versa, the right of citizens is to receive legal protection.

Satjipto Rahardjo gave the view that "legal protection is to provide protection for human rights (HAM) that are harmed by other people and that protection is given to the community so that they can enjoy all the rights granted by law" [Rahardjo, \(2014\)](#). Legal protection can be divided into 2 (two), namely preventive legal protection, namely the protection provided by the government aims to prevent or anticipate the occurrence of conflicts or disputes), while repressive legal protection aims to resolve or overcome if a conflict or dispute has occurred. , including handling it in the realm of litigation (court) and non-litigation (outside court).

In this electronic (information technology) or online-based money-lending activity, the organizers have a very important role in supporting the activities of the fintech platform. As a party that facilitates or provides a forum for lenders (creditors) with loan recipients (debtors) in electronic (information technology) or online-based money lending activities, the organizers are also given the power to channel money (funds) from lenders (creditors). to the recipient of the loan (debtor). The agreement made between the organizer and the lender (creditor) is a power of attorney agreement, namely in the form of a special power of attorney. The power of attorney agreement as stated in Article 1792 of the Civil Code states that "an agreement by which a person gives power to another person, who receives it, to carry out an affair on his behalf". The meaning of carrying out the intended affairs is to carry out a legal act that has a legal consequence [Subekti, \(2014\)](#).

The legal basis for the loan agreement between the lender and the recipient of the loan is a loan agreement (borrowing) in accordance with Article 1754 of the Civil Code. In the loan agreement, the creditor is the lender and the debtor is the recipient of the loan. Whereas in this electronic (information technology) or online-based lending and borrowing agreement, the organizer has neither rights nor obligations nor responsibilities. From this it can be understood that legal consequences will arise due to the absence of a legal relationship between the administrator and the recipient of the loan (debtor). Moreover, in the event that the lender (creditor) suffers a loss as a result of the organizer's actions. The cause of these losses arose due to the occurrence of conditions in which the recipient of the loan (debtor) was unable to continue payments (default). This could have happened due to the actions of the organizers who were less selective in analyzing and selecting and giving approval for the ability of prospective loan recipients (prospective debtors) who were considered to have good eligibility and quality.

For this reason, legal protection is needed for lenders (creditors), both preventive and repressive in nature. As for the form of legal protection that is preventive;

1. To prevent or minimize default, in providing loans, providers must conduct selection and analysis based on the 5C principle, namely character or personality, capacity, capital, collateral, economic conditions or business prospects of the debtor. (Condition of Economy).
2. Every transaction and lending and borrowing activity or implementation of an agreement regarding lending and borrowing between or involving Providers, Lenders, and/or Borrowers must be carried out through an escrow account and virtual account as required in Article 24 POJK Number 77/POJK.01/ 2016 concerning Information Technology-Based Borrowing and Borrowing Services.
3. Based on Article 29 POJK No.77/POJK.01/2016, the organizers apply several principles as a basis as a form of legal protection for users of financial technology services, including the principles of transparency, fair treatment, reliability, confidentiality and data security, as well as settlement conflict or dispute for users in a simple, fast and affordable cost.

While forms of legal protection that are repressive are:

1. If there is a condition of failure to pay by the recipient of the loan (debtor), the administrator can only try to help through the collection unit.
2. The organizers help facilitate the mediation process, but success cannot be guaranteed.
3. Service users can make complaints against the organizers.

### ***Forms of Dispute Resolution Efforts in Online Borrowing and Borrowing Money Agreements in the Event of the Debtor Dies***

In this electronic (information technology) or online-based money-lending activity, there are problems that can cause losses to the parties. In this case, especially the losses experienced by the creditor as a lender, where usually these problems will cause debt payments to not go smoothly. Problems that arise can cause conflicts that lead to disputes between the lender (creditor) and the recipient of the loan (debtor).

Andri Wahyudi provides a view of the definition of conflict as the impact of a situation that brings together different or opposing desires or wills between one party and another, which causes one of the parties or even both of them to interfere with each other. (Andri Wahyudi, 2015). In the viewpoint of contract law, the notion of a dispute is a dispute that occurs between the parties due to a violation of an obligation or something that has been agreed upon in the contract, either in part or as a whole.

In this case, the debtor (loan recipient) does not carry out his obligations or does not fulfill his achievements because he has passed away before the end of the debt repayment period. This situation will certainly bring problems, how to settle the obligations of the debtor in the future. Moreover, from several online lending and borrowing agreements that have been observed, there is no clause governing the debtor (loan recipient) who dies. This issue can trigger a conflict that will lead to a dispute because in this case it is not clear which party will be responsible for settling the obligations of the deceased debtor. Therefore, this matter must be resolved immediately so as not to cause losses to creditors as lenders.

From several observed online lending and borrowing agreements, if there is a default in payment by the borrower (debtor), which in this case is due to the debtor's death before the payment ends, there are also agreements that do not include how to settle their obligations. In addition, there is also a list of forms of settlement of obligations that can be carried out, including:

1. Remaining debt obligations that have not been paid off or paid, can be claimed to the insurer according to the agreement stipulated in the electronic (information technology) or online money lending and borrowing agreement.
2. The remaining unpaid debts can be transferred to the heirs based on Article 830 of the Civil Code which states that "inheritance only occurs due to death". On the other

hand, some say that heirs can also accept or reject inheritance (both debts and receivables).

1. However, when examined, basically, the provisions of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services do not clearly stipulate how to settle outstanding obligations if a debtor (loan recipient) dies before the repayment period ends and the condition is that there is no insurance to cover it and the debtor has no heirs. From the conditions experienced by the debtor, it will be able to trigger conflicts that lead to disputes between the parties. Especially the creditor as the lender and the debtor as the recipient of the loan.

Regarding the above issues, basically, there are several forms of dispute resolution that can be done, including:

1. Through non-litigation channels (outside court)

Dispute resolution can also be resolved through non-litigation channels (outside court), which is usually called Alternative Dispute Resolution (ADR) in America, and in Indonesia it is usually called Alternative Dispute Resolution which is regulated in Law Number 30 of 1999 concerning Alternatives. Dispute resolution. (Rachmadi Usmani, 2012). There are several ways that can be taken in resolving disputes outside the Court, including consultation, negotiation, mediation, conciliation, expert judgment, and arbitration.

2. Through Litigation (Court)

If the path outside the Court cannot resolve the dispute being faced by the parties, usually the parties will resolve it through the Court. Where litigation dispute resolution is the final means (*ultimum remedium*) after alternative efforts to resolve disputes have not produced results. (Frans Hendra Winarta, 2012). In the process of resolving disputes through the courts (litigation) it sometimes results in a decision that has not been able to embrace common interests because it produces a win-lose solution (*adversarial*) decision. So that it will usually bring up new conflicts between the parties because one party wins and on the other hand there is a party that loses.

Considering that there is no specific regulation regarding online money lending agreements regarding the settlement of obligations if the debtor dies before the payment period ends, which can lead to disputes, we can refer to the legal umbrella for electronic transactions, namely Law Number 19 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. In Article 38 of the ITE Law it is stated that "everyone can file a lawsuit against the party operating the Electronic System and/or using Information Technology which causes losses". The lawsuit referred to is not only for individuals, but can also be filed on a representative basis against parties operating Electronic Systems and/or using Information Technology which results in harm to society in accordance with the provisions of the applicable laws and regulations.

So according to the researcher's opinion, there are several forms of dispute resolution in electronic (information technology) or online based lending and borrowing agreements if the loan recipient (debtor) dies, namely by making insurance claims as stipulated in the lending and borrowing agreement and can also be transferred to heirs based on Article 830 of the Civil Code which states that "{inheritance only occurs due to death". However, there is an opinion that in this case the heir can refuse all debts that are charged by the heir.

## **CONCLUSION AND SUGGESTIONS**

### **Conclusions**

Based on the discussion that has been described above, in accordance with the formulation of the problem, it can be concluded as follows:

1. The form of legal protection for creditors in online money lending and borrowing agreements in the event that the debtor dies is through preventive and repressive protection. Preventive legal protection (prevention) by way of; a) the organizer conducts an analysis based on the 5C principles, namely Character, Capacity, Capital, Collateral, and Condition of Economy, b) every transaction and lending and borrowing activities must be carried out through an escrow account and virtual

account (Article 24 POJK No.77/POJK.01/ 2016), c) The Operator applies the principles of transparency, fair treatment, reliability, confidentiality and data security, and simple, fast and affordable resolution of User disputes (Article 29 POJK Number 77/POJK.01/2016). And through repressive legal protection (dispute resolution) through; a) the organizers can only help with the collection through the collection unit, b) the organizers help facilitate the mediation process but its success is not guaranteed, c) Service users can make complaints to the Fintech platform organizers (Article 38 POJK Number 1/POJK.07/2013 concerning Protection Consumers of the Financial Services Sector).

2. The form of efforts to resolve disputes in online money lending agreements in the event that the debtor dies can be carried out in 2 ways, namely through non-litigation channels (outside the Court) and litigation routes (court). The path that is often taken when a dispute occurs is the path outside the Court such as consultation, negotiation and mediation between the parties. When the path outside the Court does not meet an agreement, then the settlement will be taken to the Court.

### **Suggestions**

1. Given that online lending and borrowing activities are growing, the government that makes laws should be able to revise or make regulations that specifically regulate the rights and obligations of the parties, especially regarding the settlement of obligations if the debtor dies before payment ends, as a form of protection law in order to create legal certainty for all parties.
2. In an agreement, the parties should always apply the principle of good faith in carrying out the contents of the agreement that has been approved and agreed upon to maintain a balance between the rights and obligations of all parties. Especially the good faith of the heirs/debtor's family who died before the payment ended or was paid off.

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