
The Problems of Consumer Protection in Fintech Peer To Peer Lending Business Activities in Indonesia

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Published: 15/08/2020

How to cite:

Disemadi, H. S., Yusro, M. A., Balqis, W. G. 2020. The Problems of Consumer Protection in Fintech Peer To Peer Lending Business Activities in Indonesia. *Sociological Jurisprudence Journal*. Volume 3 Issue 2. Page 91 - 97. <https://doi.org/10.22225/scj.3.2.1798.91-97>

Abstract

Industrial Revolution 4.0 has influenced the development of technology and information. The presence of financial technology (fintech) especially fintech peer to peer lending in Indonesia is proof that the Industrial Revolution 4.0 has had an influence on economic aspects as a fundamental aspect of the country. The implementation of fintech peer to peer lending in providing alternative financing to consumers is currently faced with several problems, especially issues related to consumer protection. This study uses a normative legal research method with a statutory approach. This research shows that the state has tried to provide preventive protection to consumers through several regulations, namely Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology that regulates the procedures for implementing fintech in Indonesia and also the OJK Regulation Number 77/POJK.01/2016 on Information Technology-Based Lending and Borrowing Services that regulates OJK's supervisory function in implementing fintech peer to peer lending in Indonesia. This protects consumers through the regulation of digital-based savings and loan providers which must be officially registered to guarantee the legality of the organizer, electronic documents by statutory provisions, and dispute resolution mechanisms in the event of a dispute related to fintech peer to peer lending business activities.

Keywords: Consumer protection, fintech, indonesia, peer to peer lending

I. INTRODUCTION

The readiness and readiness of the Government in dealing with the Industrial Revolution 4.0 is very necessary because the Industrial Revolution 4.0 will and even has an impact on the development of information technology (Rohida, 2018). The Industrial Revolution 4.0 emphasizes more on the rapid development of technology, supported by the existence of Artificial Intelligence (AI) or artificial intelligence. This has been the focus of discussion by almost all countries. There are so many types of technological developments that will or have even begun to occur in the Industrial Revolution 4.0, including in the financial or banking industry.

In the current digital era, an innovation that has successfully transformed a system or market that is running has influenced human behavior and expectations, in this case consumers in accessing a variety of information and electronic service features (Hiyanti, Nugroho, Sukmadilaga, & Fitrijanti, 2020; Sulistiani, 2019; Usanti, Thalib, & Setiawati, 2020). Fintech is one of the methods of financial services that is gaining in popularity in today's digital era (Muzdalifa, Rahma, & Novalia, 2018). Fintech is a financial service innovation using technology so that people can easily access financial products and services and weaken the barrier to entry. The development of fintech is changing the pattern of the financial business model, where the weakening of the barrier to entry provides a role for fintech in generating unregulated behavior that runs the business model like a regulated company or institution (Rusyadiana, 2019).

One form of fintech that is developing in Indonesia is information technology-based lending and borrowing services (fintech peer to peer lending) (Biancone, Secinaro, & Kamal, 2019; Muzdalifa et al., 2018). The development of this form of fintech has an important role in changing the behavior and expectations of consumers including being able to access data and information anytime and anywhere, as well as generalizing large and small businesses so that they tend to have high expectations even against newly built small businesses (Muzdalifa et al., 2018; Wahyuni & Turisno, 2019).

The function of peer to peer lending is indeed not much different from the banking industry which is equally easier for the public to conduct financial transactions. Moreover, specifically for fintech peer to peer lending, it can threaten the existence of banks in Indonesia, because both have the same goal of achieving financial inclusion. Fintech peer to peer lending is true quite a lot of interest of potential users both for those who make loans and those who want to develop funds. So it can be said peer to peer plumbing provides alternative financial services for consumers who want to develop their business making fintech peer to peer lending a new alternative to banking.

The development of registered and/or licensed fintech peer to peer lending in Indonesia as of January 22, 2020 there are 164 fintech peer to peer lending. (Otoritas Jasa Keuangan, 2020b) In addition to the 164 fintech peer to peer lending that has been registered and/or licensed by the Financial Services Authority (OJK), there is also fintech peer to peer lending that is not registered and licensed by the OJK. This is expressly not by Article 7 POJK No.77 of 2016 which has stated “the implementation is obliged to advance registration and licensing to the OJK”. Therefore, every fintech organization must registered and/or licensed from the OJK before operating it. On January 30, 2020, OJK submitted a list of 120 fintech peer to peer lending that was not registered or licensed from OJK (Otoritas Jasa Keuangan, 2020a).

The rapid growth of fintech peer to peer lending companies is also due to fintech offering a variety of financial services that greatly help the community in running the economy more effectively and efficiently, especially the financial sector (Benuf, Mahmudah, & Priyono, 2019). This condition on the one hand provides benefits to consumers, because consumers get wider opportunities to access the desired services. However, on the other hand this condition also provides a negative possibility for law enforcement of consumer protection (Rahmayani, 2018). In carrying out fintech peer to peer lending business activities peer to peer lending has potential risks, there are at least two potential risks namely the risk of consumer data security and the risk of transaction errors. The two risks will then bring losses to each party in the fintech peer to peer lending business (Benuf et al., 2019).

Consumer protection is an effort that guarantees legal certainty to protect consumers. Law Number 8 of 1999 concerning Consumer Protection (the Consumer Protection Law) was formulated concerning the philosophy of national development to develop a complete Indonesian person based on the philosophy of Indonesian statehood which is the basis of the Pancasila state and the state constitution (Attamimi, Disemadi, & Santoso, 2019). The Consumer Protection Law is an umbrella that integrates and strengthens law enforcement in the field of consumer protection and does not deny the possibility of the formation of new laws that contain provisions that protect consumers (Rahmayani, 2018).

The creation of a healthy fintech peer to peer lending industry and consumer protection is a public concern (Nafiah & Faih, 2019; Wahyuni & Turisno, 2019). Of course, this socialization of fintech peer to peer lending will make it easier for the public to get to know the fintech peer to peer lending industry more closely in terms of regulations, ease of business, code of conduct of fintech peer to peer lending business actors, and others. Then, do not forget to inspire people to realize the risks of using fintech peer to peer lending services (Wahyuni, 2020). With the birth of Law Number 21 of 2011 concerning the Financial Services Authority (OJK Law), the protection of consumers, particularly in the financial services sector, is also the responsibility of the OJK. This can be seen in Article 4 of the OJK Law which reads: “OJK is formed with the aim that all activities in the financial services sector: a). Are carried out regularly, fairly, transparently, and accountably; b). Able to realize a financial system that is growing sustainably and stably; and c). Able to protect the interests of consumers and the public”. Therefore, based on the statement, the focus of this research is related to the problems of fintech peer to peer lending consumer protection that occurs in Indonesia.

II. METHOD

The specifications of this research are descriptive-analytical with normative doctrinal or juridical research types. Descriptive-analytical research is intended to describe, examine, and explain the problem to be studied, which is related to the problem of consumer protection fintech peer to peer lending business activities in Indonesia. The research approach used is the statutory approach. This research relies on secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials obtained through library studies as data collection techniques, which are then analyzed using qualitative analysis techniques to obtain actual conclusions.

III. RESULT AND DISCUSSION

Regulations of Financial Technology (Fintech) Implementation in Indonesia

The provisions of fintech regulations in Indonesia are regulated in Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology. Based on this regulation, fintech is the use of technology in a financial system that produces new products, services, technology and/or business models and can have an impact on monetary stability, financial system stability, and/or the efficiency, smoothness, security, and reliability of payment systems. Based on this Bank Indonesia Regulation, the organizer of fintech registered at Bank Indonesia must:

Apply the principle of consumer protection following products, services, technology, and/or business models that are carried out;

Maintaining the confidentiality of data and/or consumer information including data and/or transaction information;

Apply the principles of risk management and prudence;

Using rupiah in every transaction made in the territory of the Unitary Republic of Indonesia by the provisions of the legislation governing currency;

Applying the principle of anti-money laundering and preventing terrorism financing following the provisions of the legislation governing anti-money laundering and preventing terrorism financing; and

Following other statutory provisions.

The technology developments in the payment system in Indonesia has encouraged Bank Indonesia to ensure payment traffic that has been penetrated by technology continues in an orderly and safe manner and supports the pillars in achieving the vision and mission of Bank Indonesia. Bank Indonesia guarantees security and order in terms of payment traffic by becoming (Marginingsih, 2019):

Facilitator. Bank Indonesia has a role as a facilitator in terms of providing land for paid traffic;

Smart business analyst. Through collaboration with international authorities and agents, Bank Indonesia has become an analyst for business actors related to fintech to provide views and directions on how to create an orderly and secure payment system;

Rating. Bank Indonesia conducts monitoring and evaluation (assessment) of every business activity involving fintech and its payment system using technology; and

Coordination and Communication. Bank Indonesia always maintains relations with the authorities related to continue to support the existence of payment systems fintech in Indonesia. Bank Indonesia is also always committed to supporting business people in Indonesia by providing regular guidance on fintech.

Based on Bank Indonesia Regulation No. 19/12/PBI/2017, the scope of the regulation regarding the implementation of financial technology includes registration, licensing and approval, regulatory sandbox, monitoring, and supervision. The term regulatory sandbox is a safe limited trial space for testing fintech providers and their technology, services, products, and business models. This scope is one of the ways offered by Bank Indonesia to provide legal protection for consumers indirectly. Registration is one of the initial filters to show the seriousness of the provider of financial technology providers. Illegal companies will not register because they feel it will be troublesome. The regulatory sandbox will also be the next filter that will eliminate fintech companies that do not have the seriousness in carrying

out financial technology. The trials conducted are more complicated than just registering. Certainly through this regulation, the number of illegal fintech can be reduced. After obtaining permits, the next thing the government does is monitor and supervise.

In addition to being regulated in Bank Indonesia Regulations, the implementation of fintech especially fintech peer to peer lending is also regulated in OJK Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. This OJK regulation stipulates that entrepreneurs conducting business in the form of fintech, especially those focusing on the field of lending and borrowing entrepreneurs who conduct business in the form of fintech, especially those focusing on the field of lending and borrowing on an online basis (fintech peer to peer lending) (Istiqamah, 2019). So in its implementation must pay attention to aspects of the rules set by the Financial Services Authority (OJK). This regulation is a regulation that must be obeyed by fintech peer to peer lending businesses. Establishing an online financial business, especially in information technology-based lending and borrowing services requires several special requirements that are quite heavy for some circles. If a fintech peer to peer lending business is found with requirements that are too easy, it must be confirmed in advance about the company's registration in the OJK (Wulandari, 2018).

This is a form of preventive protection provided by the state to the public for fintech peer to peer lending efforts through the OJK Regulations above. OJK Regulation Number 77/POJK.01/2016 also regulates electronic documents. The electronic document referred to is an agreement on the operation of information technology-based lending and borrowing services between the organizer and the lender and between the lender and the recipient of the loan (Wibowo, 2019). The contents of the electronic documents are the same as the contents of the agreement in general. Where the contents of the document include the number, date, identity of the parties, the rights and obligations of the parties, the loan amount, interest rates, installment value, period, collateral object, details of related costs, provisions regarding fines if any and regarding the mechanism dispute resolution. These provisions are regulated in Article 19 and Article 20 OJK Regulations Number 77/POJK.01/2016 as an effort to protect consumers of fintech peer to peer lending users.

The Problems of Consumer Protection in Fintech Peer to Peer Lending Business Activities

Fintech peer to peer lending is the practice of lending and borrowing money agreements, where the fintech peer to peer lending provider has a role as a liaison between online lenders and borrowers. fintech peer to peer lending allows anyone to lend or apply for one loan to another for various purposes without using the services of a legitimate financial institution as an intermediary (Benuf, Njatrijani, & Priyono, 2020; Kartika, 2020). The Government through the OJK issued the OJK Regulation Number 77/POJK.01/2016 to regulate and oversee the development of fintech peer to peer lending. However, in practice, there are many cases of default due to the Loan Recipient being unable to repay the loan following the period agreed in the agreement. This eventually led to new problems related to improper billing practices by the fintech peer to peer lending provider (Novita & Imanullah, 2020).

The regulation of fintech peer to peer lending in this regulation does not regulate how responsibility in the event of default in peer to peer lending, risk mitigation from default is left to the organizers in the standard agreement between the lender and the fintech peer to peer lending platform. At this time in every website or application fintech peer to peer lending, listed disclaimer for users, here are some of the disclaimer (Nafiah & Faih, 2019; Wahyuni, 2020):

Information Technology Based Borrowing and Lending Services is civil agreement between the Lender and the Loan Recipient, so that all risks arising from the agreement are borne fully by each party; and

Credit or default risk is fully borne by the giver loans, no state institutions or authorities are responsible for the risk of default.

The current fintech peer to peer lending arrangement does not give large responsibility to the providers in protecting consumers, because they do not want to be responsible for the risk of default in fintech peer to peer lending. While the organizer takes advantage of every successful peer to peer lending transaction. This has led to an imbalance of positions between fintech peer to peer lending providers and lenders as consumers because lenders are in a very weak position. With clearer regulation of the limitation of the responsibilities of the fintech peer to peer lending provider, a more balanced

situation will be obtained and minimize the risk of default (Nugraheni & Aziza, 2020; Usanti, Setiawati, & Nugraheni, 2020).

The issue of consumer protection will always be directly proportional with the development of science and technology, and the development of consumers themselves as humans who are constantly changing (Dwipayana, 2020). In conducting fintech peer to peer lending in Indonesia, users in the sense of lenders have a very high level of risk this is because lenders provide loans without collateral and do not know the borrower directly, the lender only knows information about the borrower based on information available on the fintech peer to peer lending platform, but this is ignored considering that fintech peer to peer lending provides benefits from high interest rates, higher than ordinary investment instruments (Atikah, 2020).

Legally there are efforts that can be made to create legal protection for consumers. The legal protection is divided into 2 types, namely:

Preventive legal protection. Preventive legal protection is a legal protection that aims to prevent disputes. Thus this legal protection is carried out before the dispute. Legal protection for users of fintech peer to peer lending services prior to a dispute can be done with the efforts of the fintech peer to peer lending provider. The effort of the operator before a dispute occurs is to apply the basic principles of legal protection for users of the fintech peer to peer lending service. These principles are regulated in Article 29 OJK Regulation Number 77/POJK.01/2016, which includes the principles of transparency, fair treatment, reliability, confidentiality, and security of data, and the settlement of user disputes simply, quickly and affordable cost; and

Repressive legal protection. Repressive legal protection is a legal protection that aims to resolve disputes. This legal protection can only be done after the dispute first arises. Disputes in the implementation of fintech peer to peer lending may occur between the User and other Users as well as between the user and the operator. If the dispute really occurs then there is a certain mechanism to be able to resolve the problem. Those who feel aggrieved can file complaints so that disputes that occur can be resolved immediately. With the existence of complaints from users of the fintech peer to peer lending service to the fintech peer to peer lending provider, this makes the operator must immediately follow up. After receiving a complaint from a disadvantaged party in this case fintech users, as Article 38 of the OJK Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, that the perpetrators of financial services, in this case, are fintech peer to peer lending providers must: a). Internal examination of complaints competently, truthfully and objectively; b). Conduct analysis to ensure the truth of complaints; and c). Delivering an apology and offering compensation (redress/remedy) or improvement of the product and / or service, if the consumer's complaint is correct.

Complaints resolution mechanism can be taken through 2 (two) stages, namely the resolution of complaints made by the Financial Services Institution (internal dispute resolution) and dispute resolution through the judiciary or outside the judiciary (external dispute resolution). Article 25 paragraph (1) of OJK Regulation No. 18 / POJK.07 / 2018 states that in the event that consumers reject complaints from Financial Service Business Actors, Financial Service Business Actors must provide information regarding dispute resolution efforts that can be carried out through the court or outside the court. Elucidation of Article 25 paragraph (1) of OJK Regulation Number 18/POJK.07/2018 states that disputes are complaints that do not get a settlement agreement between the consumer and the Financial Services Business Actor. Out-of-court dispute settlement is carried out through the Alternative Dispute Settlement Institution contained in the List of Alternative Dispute Resolution Institutions determined by the OJK and included in the agreement and/or financial transaction documents between financial service business actors and consumers (Novita & Imanullah, 2020; Usanti, Thalib, et al., 2020).

Article 4 letter a OJK Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector states that Alternative Dispute Resolution Institutions contained in the List of Alternative Dispute Settlement Institutions established by OJK include Alternative Dispute Settlement Institutions that have settlement services disputes at least in the form of mediation, adjudication, and arbitration. However, in the List of Alternative Dispute Resolution Institutions determined by the OJK as Announcement Number-1/D.07/2017 concerning the List of Alternative Dispute Resolution Institutions in the Financial Services Sector has not accommodated alternative agencies authorized to settle disputes in other financial services Institutions sectors (Novita &

Imanullah, 2020).

The many problems that occur in the implementation of fintech peer to peer lending, it is necessary to strengthen regulations and facilitate the resolution of fintech peer to peer lending disputes so that the state can provide protection facilities to the public. So that later, the problem of consumer protection in the use of fintech peer to peer lending in the current era of technological advancements can be optimally accommodated.

IV.CONCLUSION

The development of financial technology (fintech) aims to facilitate the community to facilitate the fulfillment of all needs in life. However, there are still problems in the implementation of fintech, especially fintech peer to peer lending. Among them are many found cases of default due to Loan Recipients unable to repay their loans following the agreed period in the agreement, which in turn has created new problems related to improper billing practices by the provider. Also, the misuse of personal data by the fintech peer to peer lending provider which is used as a billing medium due to the difficulty of billing when due by the organizer creates immaterial losses by the borrower.

However, the state has sought to protect consumers through several regulations, namely the issuance of Bank Indonesia Regulation Number 19/12/PBI /2017 concerning the Implementation of Financial Technology that regulates the procedures for implementing fintech in Indonesia and also the issuance of OJK Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services that regulates OJK's supervisory function in implementing fintech peer to peer lending in Indonesia. This protects consumers through the regulation of digital-based savings and loan providers which must be officially registered to guarantee the legality of the organizer, electronic documents by statutory provisions, and dispute resolution mechanisms in the event of a dispute related to fintech peer to peer lending business activities.

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