

Jurisdictional review of the perpetrators of the dissemination of customer data committed by online loans

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Abstract

Online loan providers are commonly known as fintech. However, in terms of implementation, there are financial service providers that operate online act in violation of regulations in the form of intimidating billing and data distribution. Therefore, this study aims to review the legal rules regarding companies that facilitate online loans. Each individual has the right to protect their personal, family, honor, dignity, property under their control, and the right to a sense of security and protection from the threat of fear to do or not do something that is a human right. Individuals who feel that their rights to protect their data have been violated can file a lawsuit for the losses caused. The protection of personal data is more directed to the realm of civil law. The final settlement is the acquisition of a form of compensation that can be material or immaterial. Misuse of personal data has an impact on public distrust of Fintech services. Digital data security is relatively easy to steal and must be taken into account by service providers and regulators.

Keywords: Fintech, Personal Data, Protection, Regulation.

1. Introduction

Indonesia is a developing country with the largest population globally, which is still developing technology to support readiness to face the digital revolution or the fourth industrialization. In this era, many economic and business activities are digital or internet-based. The presence of the digital economy will bring new directions in industrial activities where people are already experiencing these benefits at this time. The rapid development of technology certainly supports it.

The rapid development of technology has also brought changes to the lifestyle of the now diverse society. Things that are quickly and easily implemented with online-based services or using existing applications on the internet. Such as shopping, ordering transportation, or making financial transactions, including online loans, which are currently popular among the public.

Online loans show that financial service providers that operate online provide money loan facilities. Online loan service providers are more popularly known as fintech. Financial service provider institutions that operate online with the support of information technology.

According to the Financial Services Authority Regulation Number 77 / POJK.01 / 2016, concerning Information Technology-Based Borrowing and Lending Services (POJK 77/2016). Online loans provide financial services to bring together lenders and loan recipients in the context of making a loan and borrowing agreement in rupiah currency directly through an electronic system using the internet network. Submitting an online loan has requirements, including being an Indonesian citizen, minimum 21 years of maximum 60 years, income equivalent to UMR, having a Taxpayer Identification Number, and having a bank account that matches the Identity Card.

Financial technology peer-to-peer lending (fintech P2P) and the benefits of the development of fintech for the national economy can provide loan funds easily and quickly. The type of fintech that many people use is P2P lending because the processes and procedures for online loans offered in the P2P Lending system can be faster and easier. On the other hand, some illegal online loans have also emerged, and people can easily access them. Many illegal online loans violate the law, which will undoubtedly have a detrimental impact on the community.

According to Article 3 paragraph (1) letter e, Bank Indonesia Regulation Number 19/12 / PBI / 2017 of 2017 concerning the Implementation of Financial Technology ("POJK 19/2017") that application-based or information technology-based lending services are one of the types of technology operations Financial (Fintech) in the category of Financial Services / Other Financial.

Online loan providers are commonly known as fintech, which supports information technology they will operate. Various types of violations by fintech companies, including intimidation billing, distribution of personal data for sexual harassment, are suspected of having occurred in this matter. There are mechanisms for collecting, retrieving, and disseminating personal data by online loan applications, and these actions are not allowed.

Such action will violate Article 27 of the ITE Law, Article 29 of the ITE Law, besides that the sanctions have also been regulated in Article 45 of the ITE Law. When an Online Loan-based Fintech Company spreads other people's data, these actions are a form of cybercrime. Sanctions for fintech companies that distribute personal data will be subject to Article 32 juncto (jo) Article 48 of Law No. 11 of 2008 in conjunction with Law No. 19 of 2016, concerning Electronic Information and Transactions (ITE). Besides, acts of threatening to customers by fintech companies may be subject to Article 368 of the Criminal Code (KUHP) and Article 29 JO Article 45B of the ITE Law.

In this case, the researcher designed the problem formulation on two main points.

1. How are the government efforts to protect the rights to personal data in information technology-based money transactions?
2. What is the punishment for individuals who violate the criminal act of disseminating customer data by online loan companies?

This research will generate benefits for in-depth knowledge about problem solving and regulation related to data dissemination by online loan-based companies. Academically, this research will provide benefits for the development of legal knowledge.

2. Literature Reviews

Humans who inhabit the earth have a responsibility, either willingly or without will. Responsibility is as attached to a person's name throughout his life. Human responsibility is focused on three things: God, himself, and other beings besides himself (Erwin, M, 2011). Responsibility, in general, contains three things, namely 1) Liability, which is the responsibility for all the potentials or abilities that they have in themselves in the form of knowledge, reason, physical and emotional abilities. 2) Responsibility relates to the ability to do or not act in human life, including being silent or neutral and having responsibility. Accountability relates to authority's ability to weigh, measure, and deciding cases imposed on humans as individuals and as part of society.

In other languages, criminal liability is referred to as "toerekenbaarheid," "criminal responsibility," "criminal liability." It has been stated that criminal liability is intended to determine whether a suspect/defendant is responsible for a crime that has occurred or not. In other words, whether the defendant will be convicted or released. Criminal liability is defined as the continuation of an objective reproach in a criminal act and subjectively. There is a qualification to be convicted for that act. The basis for a criminal act is the principle of legality, while the basis for being convicted is the principle of guilt. (Kanter & Sianturi, 2002)

Criminal liability is an assessment after fulfilling all elements of a criminal act or proof of a criminal act. Conducting an accountability assessment must be objective and subjective. The assessment objectively relates to the actor who made it and the legal norms that have been violated related to the actions of moral values that have been violated. In the end, objectively, the actor who makes it is judged as the person who can be criticized or not. These mistakes occur more oriented to moral values, actors who make violating moral values reprehensible. Subjective judgments are made of actors who make (the maker) believe that specific psychological states that violate morality are reprehensible or not.

Criminal liability includes objective and subjective reproach/responsibility. Objectively, the maker has committed a criminal act according to the applicable law (legality principle). Subjectively, the maker should be reproached or blamed / responsible for the crime committed (culpability/guilt principle) because they deserve to be convicted. Criminal responsibility is the responsibility of a person for the criminal act committed.

2.1 Online Loans

Online loans are money loan facilities by financial service providers that operate online. These online loan providers are known as fintech. According to the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Borrowing and Lending Services (POJK 77/2016). Online loans, known as information technology-based lending and borrowing services, are financial services to bring lenders together with the recipient of the loan to enter into a borrowing and lending agreement in screw currency directly through an electronic system using an internet network. According to Article 3 paragraph (1) letter e of Bank Indonesia Regulation Number 19/12 / PBI / 2017 concerning the Implementation of Financial Technology (POJK 19/2017) that application-based or information technology-based lending services are one type of financial technology (Fintech) implementation category other financial/financial services.

2.2 Regulations concerning the protection of personal data

Until now, Indonesia has not had a single law on personal data protection, but this aspect of protection of personal data has been reflected in several laws and regulations, such as Law No.7 of 1971 concerning Basic Provisions for Archives. Law No. .8 of 1997 concerning Company Documents, Law No.10 of 1998 concerning Banking, Law No.23 of 1992 concerning Health and Law No.36 of 1999 concerning Telecommunications, Law No.36 of 1999 concerning Telecommunications, which only came into force on September 8, 2000, regulates several matters relating to the confidentiality of information. Among other things, Article 22 states that every person is prohibited from committing acts without rights, illegally, or manipulating (a) access to telecommunications networks; and or (b) access to telecommunication services; and or (c) access to special telecommunications networks. Violators of these provisions are subject to a maximum imprisonment of 6 years and/or a maximum fine of Rp. 600 million.

Furthermore, Article 40 states that every person is prohibited from tapping into the information transmitted through telecommunications networks in any form. Those who violate these provisions face imprisonment for a maximum of 15 years.

The emergence of financial companies in information technology-based lending and borrowing services (peer-to-peer or P2P lending) is getting the attention of the public and regulators, namely the Financial Services Authority (OJK) and Bank Indonesia. This central point is stated in the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Borrowing and Lending Services. This service is a breakthrough in which many Indonesians have not been touched by banking services (unbanked people) but are technology literate. This P2P Lending-based Fintech service is one solution for the limited access to financial services in the country and realizes financial inclusion through synergies with other financial institutions and technology companies. The right to personal data is the right to data relating to a living individual that can be identified from the data or from data or information that is owned or will be owned by the data controller.

When comprehensive data protection laws are available, organizations, both public and private, collect and use personal information to handle this data according to data protection laws. This law is based on some basic principles. In brief, these principles require the following.

- 1) There are limits to what information is collected: limits on the collection of personal information, and that information must be obtained lawfully and fairly, with the knowledge or consent of the individual;
- 2) Information must be accurate: personal information must be relevant to the purpose for which it is used, must be accurate, complete, and up to date;
- 3) There must be no personal purpose: the purposes for which the information is used must be determined or not at the time of collecting the information. The information may only be used for the purposes agreed.
- 4) There must be no hidden purpose: personal information can only be disclosed, used, or stored only for its original purpose, except with the consent of the individual or by law, and by that reason, it must be deleted when it is no longer necessary for that purpose;
- 5) Information must be secure: appropriate security measures are used to protect personal information from loss, unauthorized access, destruction, use, modification, or disclosure.

Ministerial Regulation Number 20 of 2016 concerning Personal Data Protection in Electronic Systems regulates that every electronic system operator is obliged to properly manage the personal data of customers and users, starting from acquisition, processing, storage, and even deletion. Therefore, Article 26 of the Financial Services

Authority Regulation Number 77 / POJK.01 / 2016 stipulates that Online Lending and Borrowing Services providers are mandatory.

- 1) Maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data that they manage from the time the data is obtained until the data is destroyed;
- 2) Ensuring the availability of authentication, verification, and validation process that supports non-discretion in accessing, processing, and executing personal data, transaction data, and financial data that they manage;
- 3) Ensure that the acquisition, use, utilization, and disclosure of personal data, transaction data, and financial data obtained by the Operator is based on the consent of the owner of the personal data, transaction data, and financial data, unless otherwise stipulated by the provisions of laws and regulations;
- 4) Providing other communication media besides the electronic system of Information Technology-Based Lending and Borrowing Services to ensure continuity of customer service, which can be in the form of electronic mail, call centers, or other communication media; and
- 5) Notify the owner of the personal data, transaction data, and financial data in writing if there is a failure in protecting the confidentiality of personal data, transaction data, and financial data that they manage.

3. Conclusion

The right to privacy is implicitly regulated and protected by the 1945 Constitution, namely Article 28 G paragraph (1), everyone has the right to protection of themselves, family, honor, dignity, property under their control, as well as the right to a sense of security and protection from the threat of fear to do or not do something that is a fundamental right. Basic freedoms and basic human rights are known as human rights. Human rights are inherently attached to humans as a gift from God Almighty.

In Article 26, paragraph (2) of the Law on Information and Electronic Transactions, it is explained that people who feel that their rights to protecting their data are being violated can file a lawsuit for the losses incurred. Protection of personal data is more directed to the realm of civil law where the final settlement is the acquisition of a form of compensation that can be material (in the form of monetary compensation) or immaterial (can be in the form of an apology in the newspaper).

Protecting personal data is one of the critical things that service providers and regulators must pay attention to, it is because the misuse of personal data (consumers) can have an impact on identity theft, abuse of consumer profiles, product offers to consumers whose data is stolen, so that it has an impact on other more significant risks and losses such as public distrust of Fintech services. Security and maintenance of personal consumer data must be carried out properly because it is digital, so it is relatively easy to steal data and lose it.

Through the Ministry of Communication and Information, the government has issued the Minister of Communication and Information Regulation Number 20 of 2016 concerning Personal Data Protection in Electronic Systems. Based on the research that the authors discussed above, PT. Digital Synergy Technology has violated the provisions of the Minister of Communication and Information Regulation Number 20 of 2016 concerning Personal Data Protection in Electronic Systems, namely in Article 28 letter b which explains that every implementation of an electronic system is obliged to maintain truth, validity, confidentiality, accuracy, and relevance and conformity with the objectives of acquisition. Collecting, processing, analyzing, storing, displaying, announcing, sending, disseminating, and destroying personal data. Suppose there is a failure to protect the confidentiality of personal data. In that case, the organizer is obliged to notify the personal data owner in the electronic system they manage in writing.

In article 27, paragraph 4 of Law Number 19 of 2016, contains every person intentionally and without the right to submit electronic information and/or electronic documents containing the content of actors and threats. It is evident in this article that fintech companies are not allowed to disseminate Customer data to anyone who must first obtain permission.

Paragraph 3 refers to Article 27 paragraph 3, which contains a criminal threat of imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp. 750,000,000, - (seven hundred and fifty million rupiah) apart from that in paragraph 4, contains the threat of punishment with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000, - (one billion rupiah)

In the case of the leakage of personal data, it is related to an unlawful act as stated in article 1365 of the Civil Code, which reads every illegal act that harms another person who, due to their wrongdoing publishes the loss, replaces the loss.

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