

LEGAL PROTECTION REGULATIONS FOR LENDERS IN THE IMPLEMENTATION OF FINTECH BASED ON PEER TO PEER (P2P) LOANS

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Abstract

Financial Technology (Fin tech) as a financial product and service through a combination of technology platforms and innovative business models. The development of fin tech encouraged OJK to issue a Financial Services Authority Regulation regarding Lending and Borrowing Based on Information Technology. This regulation is expected to encourage alternative financing for the community; support the growth of technology-based financial services institutions to contribute to the national economy. OJK Regulation Number: 77/POJK.01/2016 concerning Information Technology-Based Loan Services only regulates peer to peer (P2P) lending activities, so that other fin tech models such as: non-financial crowd funding; direct balance sheet or e-commerce loan; traditional credit rating and crowd funding security are not included in the scope of this regulatory arrangement. Based on legal relations, there is only an agreement between the lender and the borrower, while the provider does not include the parties in the agreement. In this case, when that happens, the most vulnerable party is the lender. Therefore, it is necessary to provide clear legal protection for lenders.

Keywords--- Fin tech, Financial Services Authority, legal protection

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INTRODUCTION

Financial Technology (Fin tech) is a financial product and service through a combination of technology platforms and innovative business models. Fin tech as a financial sector innovation that involves a business model that enables technology that can facilitate the way existing companies create and deliver products and services, address privacy, regulatory and law enforcement issues, provide new avenues for entrepreneurship, and initial opportunities for inclusive growth [1]. Fin tech is only a technology-based business that competes, enables and/or collaborates with financial institutions [2]. In another definition, Chuen and Teo state that fintech refers to innovative financial services or products delivered through new technology [3].

The Indonesian Financial Services Authority (*Otoritas Jasa Keuangan (OJK)*) divides Fin tech startups into five categories. First, Fin tech is involved in payments, transfers and money transfers. Second, Fin tech financing is divided into two, namely equity-based funding and loan-based funding. Third, Fin tech's financial management makes it easy for people to invest or manage finances. Fourth, Fin tech engaging in insurance. Fifth, engaging in lending and market support.

The third, fourth and fifth models are only services that emphasize information and support systems. But the first and second models already involved quite complex legal relations. Therefore, *OJK* and *BI* immediately issued a regulation to anticipate the development of these services.

The development of fin tech encouraged *OJK* to issue a Financial Services Authority Regulation regarding Lending and Borrowing Based on Information Technology. This regulation is expected to encourage alternative financing for the community; support the growth of technology-based financial services institutions to contribute to the national economy. *OJK* Regulation Number: 77/POJK.01/2016 concerning Information Technology-Based Loan Services only regulates peer to peer (P2P) lending activities, so that other fin tech models such as: non-financial crowd funding; direct balance sheet or e-commerce loan; traditional credit rating and crowd funding security are not

included in the scope of this regulatory arrangement. Based on the regulation, *OJK* has not been able to conduct a comprehensive monitoring on fin tech startup companies. Other strategic legal issues from these activities in Indonesia are the absence of comprehensive regulations, especially regarding consumer protection, protection against the use of personal data, settlement of problem loans, and the use of investor funds. Regulation readiness for comprehensive Fin tech startup companies becomes urgent, bearing in mind that fin tech's activities know no boundaries, are open to owners and users of funds from anywhere, which requires legal certainty and protection for the parties, especially for fund owners.

METHODOLOGY

The research method used is normative juridical research and supported by empirical juridical, so an approach is needed to the existing problems. According to Ibrahim, the approach used in normative research does not rule out the possibility for a legal researcher who uses a type of normative legal research, to utilize the findings of empirical legal science, for the benefit and analysis of law in accordance with the character of legal science as a normative science. This normative legal research then examines a variety of legal materials, many of which have empirical characteristics, but within norms such as the history of law, and cases of law that has been decided [4]. The approach used in this type of research is the statutory approach, as well as the case approach also comparative method analysis used on Malaysia approach to P2P.

RESULTS AND DISCUSSION

Fin tech Startups

Fin tech as an innovation in the financial sector involving business models that enable technology that can facilitate disintermediation, revolutionize the existing ways of companies in creating and delivering products and services, addressing privacy, regulatory and law enforcement issues, providing new avenues for entrepreneurship, and initial opportunities for inclusive growth [1]. Fin tech is the implementation and utilization of technology to improve banking and financial services that are generally carried out by startups using the latest

softwares, internet, communication and computing technology [5]. Fin tech Startups rely largely on sophisticated new technology to implement faster payment services, to offer easy operations to their customers, to increase information sharing, and generally to cut banking transaction costs.

Fin tech in Indonesia is growing and developing as an alternative solution to meet the public's need for financial services as a result of the decline in public confidence in the formal financial system. This cannot be separated from the global financial crisis, followed by authorization responses which tightened the regulatory regime of financial institutions, thus creating a broad financing gap. The rapid development of fin tech is not followed by adequate regulations so it is feared that it will endanger users. One of the fin tech services that gaining attention is peer to peer (P2P) loan services. P2P loan is a technology platform that digitally meets borrowers who need venture capital with lenders who expect competitive returns. P2P loan has the distinct advantage of being able to perform interface functions through off-balance sheet funding. P2P loan services are also more flexible and can allocate capital or funds to almost anyone, in any amount of value, effectively and transparently, with low interest rate.

P2P Loan Regulation in Indonesia

P2P loan is the practice of lending money to an individual or a business through an online platform that functions as a partner maker for the lender directly to the borrower [6]. P2P loan opportunities lie in practical solutions that may not be provided by conventional banks. In addition, its main strength lies in its ability to perform basic credit screening functions with an efficient process.

The process taken in the system varies between platform providers, for example borrowers who are considered to be reliable are highly correlated with more careful portfolios and lower interest rates in meeting their loan obligations [7]. In addition, from visual display such as borrower's photo consisting of several parameters such as gender, ethnicity, etc. which are considered as demographic or financial indicators. Other researchers also suggest network of friends that look so that the identity and number of friends and consequently the borrower's interaction with friends in larger social groups greatly influences the borrower's loan portfolio [8].

Before 2016, there were no laws governing Fin tech's activities in Indonesia, especially P2P loans, so it was feared that it could endanger users because of the potential risks. Some risks that need to be worried in fin tech activities are credit risk, compliance risk, operational risk and data security. After 2016, P2P loans are regulated in OJK Regulation Number: 77/POJK.01/2016 concerning Information Technology-Based Loan Services (P2P loans) [9]. Since 2016, the Financial Services Authority has issued a regulation as the legal basis for the existence of Fin tech, especially for P2P loans, this is because the Fin tech Model developed in Indonesia is the P2P loan.

The purpose of this regulation is to ensure the qualifications of providers in P2P loans and provide a strong legal basis for the provision of cash quickly, easily and efficiently. In addition, P2P loans are expected to be a solution to help micro, small and medium enterprises in getting access to funding. OJK's regulation regarding Fin tech stipulates very important matters for information technology activities, namely monitoring and protection of users, as well as organizing P2P Lending activities. Article 7 of 11 of OJK Regulation stipulates that Fin tech requires providers to submit applications for registration and license from OJK. This article provides a basis for OJK to ensure that providers meet the qualifications in accordance with the regulation and facilitate OJK to perform monitoring.

This provision is a measurement of the seriousness of a Fin tech-based startup company in conducting its business because a company in good faith will comply with the requirements required by law. In addition, monitoring is also carried out through the obligation to reconcile quarterly periodic reports on the number of lenders and borrowers; The quality of loans received follows the basis of the loan quality assessment; As well as activities carried out after registration.

However, this OJK regulation is still needed to ensure the security of information technology used and the protection of users' personal data. At present Indonesia has not yet established any regulation regarding personal data protection. Prohibition of the use of personal data is only regulated in OJK Regulation Number: 1/POJK.07/2013 concerning Consumer Protection and OJK Circular Letter Number: 18/SEOJK.02/2017. Based on the matter, this provision cannot yet be a strong legal basis, bearing in mind the Indonesian legal system which prioritizes law as the main source of law. Comprehensive reform of the law is needed to provide a legal basis for future Fin tech activities.

Specifically, for P2P loans, it sufficiently provides legal protection for providers and users. Regarding the user's legal protection, Article 40 requires that providers report electronically every month in the event of a user's complaint accompanied by a follow-up to the resolution of the complaint to the OJK. To ensure that P2P providers who meet the technical requirements are professionally conducted, OJK issues OJK Circular Letter Number: 18/OJKSE.02/2017 concerning Information Technology Governance and Risk Management in Information Technology Lending and Borrowing Services, which regulates governance and provides guidelines for P2P lenders on managing risks arising from P2P loans [10]. In addition, the OJK Circular Letter also regulates the obligations and responsibilities of the Directors and Commissioners of P2P lenders. In general, fin tech regulation in Indonesia provides identity for P2P loan providers but do not regulate legal relationship that occurs when the provider has not yet been registered and obtained an OJK license. Therefore, those who are disadvantaged by the provider find it difficult to claim their rights.

That is because all jurisdictions face a similar set of problems in dealing with platform-based loans. These risks include: borrowers may be induced to take inappropriate loan products (including excessive interest rates), incur excessive debt levels (from various platforms), face inappropriate debt collection practices if payments are not met, and face privacy risks from misuse of personal/business information by providers. Investors face credit and liquidity risks from their fund investments, and may not realize the extent of those risks.

Legal Protection for Lenders in Implementing Fin tech-Based P2P Loans

In the previous description, it was explained that the parties in implementing Fin tech based on P2P Loans in Indonesia consisted of lenders, providers and borrowers. Because the main problem of applying technology-based money lending is a form of legal protection especially for lenders, the lender as an investor must be protected so that the funds are not lost or misused by the provider and the funds are not lost due to default by the borrowers (debtors). Regulations governing the application of Fin tech based on P2P Loans in Indonesia are based on Law Number: 08 of 1999 concerning Consumer Protection, Law Number: 40 of 2007 concerning Limited Liability Companies, Law Number: 11 of 2008 concerning Information and Electronic Transactions, Law Number: 21 of 2011 concerning the Financial Services Authority and OJK Regulation Number: 77/POJK.01/2016 concerning Information Technology-Based Loan Services.

The forms of legal protection for creditors can be done in a preventive or repressive manner. Preventive legal protection is used to prevent technological disputes in money lending and borrowing. Preventive protection for this task lies with the provider of Fin tech where, the provider must fulfill the requirements for applying for a license to the OJK to become a provider as referred to in Article 3 of the OJK Regulation governing the provider, namely in the form of a limited liability company that can be established and owned by Indonesian citizens and/or Indonesian legal entities and/or foreign citizens and/or foreign legal entities. Ownership of shares by foreign citizens and/or foreign legal entities as referred directly or indirectly is a maximum of 85% (eighty-five percent) [9].

Providers in the form of limited liability companies must have paid up capital of at least Rp. 1,000,000,000.00 (one billion Rupiahs) at the time of registration. Likewise, the Provider in the form of a cooperative legal entity must have own capital of at least Rp. 1,000,000,000.00 (one billion Rupiahs) at the time of registration. When applying for a license, the provider must own a fund of Rp. 2,500,000,000.00 (two billion five hundred million Rupiahs) [9].

For providers who violate the prohibition in Article 43 of OJK Regulation Number: 77/POJK.01/2016 will be subjected to administrative sanctions as follows: (1) Written warning; (2) Fines, namely the obligation to pay a certain amount of money; (3) Limitation of business activities; and (4) Revocation of license. Thus, OJK Regulation has guaranteed good preventive protection, especially protection aimed at lenders by providing strict regulations for providers ranging from registration and business licenses to strict prohibitions and sanctions in the form of revocation of business license in implementing Fin tech-based P2P Loans.

Repressive protection is carried out after a dispute in the Fin tech-based P2P Loan business. If there is a dispute, the injured party in this case the lender must submit a complaint to the Provider. If there is a default by the borrower, and this occurs because of negligence and denial from the provider, then the provider is obliged to make compensation as stated in Article 37 of OJK Regulation Number: 77/POJK.01/2016 which reads: "The Provider shall be responsible for losses of the Users that arise from the mistake and/or negligence of the Directors and/or employees of the Provider".

CONCLUSION

The parties in the application of Fin tech-based P2P loan consist of lender (investor), provider and borrower. The legal relationship formed between the lender and the provider is a special power, in which the lender gives the provider power to distribute funds. In addition, the second legal relationship is between the lender and the borrower, the legal relationship formed namely a debt to be paid in which the lender acts as a creditor and the borrower as a debtor.

Based on legal relationships, there is only an agreement between the lender and the borrower, while the provider does not include the parties in the agreement. In this case, when that happens, the most vulnerable party is the lender. Therefore, it is necessary to provide clear legal protection for lenders.

There are two legal protections for lenders namely preventive legal protection and repressive legal protection. Preventive protection lies with the providers by providing strict regulations for providers ranging from registering and obtaining license to strict prohibitions and sanctions in the form of revoking business license for conducting Fin tech-based P2P Loan. In addition, the provider is required to apply the basic principles of user protection, namely lenders and borrowers as described in Article

29 of OJK Regulation Number: 77/POJK.01/2016 consisting of transparency, fair treatment, reliability, confidentiality and data security; and simple, fast and affordable user dispute resolution. Repressive legal protection is that if a dispute has occurred due to negligence and rebuttal from the provider, the provider is obliged to make compensation as stipulated in Article 37 of OJK Regulation Number: 77/POJK.01/2016.

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