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Reconstruction of the legal protection policy for debtors who failed to pay in an online money loan contract based on justice value

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Abstract
The purpose of this research is to analyze the implementation of legal protection for debtors who have failed to pay or defaulted on online money loan contracts in Indonesia currently and in order to do that the author analyzed the factors that result in the implementation of legal protection for debtors who have defaulted on online-based money loan contract which currently isnt able to reflect the value of justice to then reconstruct legal protection for borrowers who experience default in online money loan contract based on the value of justice. The study was conducted in the perspective of the Constructivism paradigm with the type of socio-legal research and qualitative approach methods. Data used in this research are from interviews and questionnaires supported by literature, legislation and various public documents, while the data analysis was carried out by the method of qualitative critical analysis.
The results showed that the factors that influence the implementation of debtor protection when unable to pay their debts to financial technology institutions are experiencing an overlapping rules, the lack of reach of law enforcement in cases of fraud under the guise of financial technology institutions, and the influence of globalization that has resulted in the growth of financial institutions. This fact show that the technology management in Indonesia is getting out of hand. This problem according to the author can be overcome by reconstructing Article 3 of the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013 and Financial Services Authority Regulation (POJK) Number 77 / POJK.01 / 2016, in which the financial service business actors are not only entitled to information. Related to consumers or debtors but also obliged to maintain the confidentiality of consumer or debtor data. It is also necessary to clearly regulate the position of financial technology institutions in the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013 and the Financial Services Authority Regulation (POJK) Number 77 / POJK.01 / 2016 clearly and to regulate information on the process of public complaints against Indonesian Financial Fervices Authority (OJK), especially in cases of financial technology institutions, then it is necessary to regulate sanctions related to financial technology that violates the law.

Keywords: reconstruction, debtor, online loan, justice value

Introduction

The government policy in Indonesia that allows financing institutions to reduce the Down Payment rate to the lowest number has become their own interest for the community to take credit facilities, both mortgage housing loans, vehicle loans and daily necessities credit. Financial institutions also do not want to miss the improvement of consumptive credit absorption by making it easier to get credit and bringing credit facilities closer to prospective debtors through promotional programs and giving bonuses to potential borrowers.

The Loan Company which has set a goal of growth rate every year is certainly not without risk, by providing facilities and attractive credit facilities, this makes people consumptive and tends to go beyond their means, in taking long-term credit, for example, debtors and creditors often experience problems. In this case, debtors usually do not keep their promises to pay their obligations to creditors due to various reasons, including decreased economic capacity due to the uncertain global economic impact, this has contributed to the number of bad credit in lending in Indonesia.

Based on the LBH Jakarta report, violations of this law were not only committed by illegal Financial Technology companies but also by licensed companies. For the collection mechanism, the Financial Technology Company uses an internal division or desk collection or a third party [1].

Intimidative collection of debt is a prohibited practice in Financial Technology companies. These provisions are stated in the code of conduct and conduct or Code of Conduct of the Indonesian Financial Technology Association (Aftech). The code of conduct requires all Financial Technology companies to prioritize good faith in collecting loans from customers [2].

The code of conduct also requires Financial Technology companies to have and submit settlement and collection procedures to customers, namely borrowers and lenders in the event of loan defaults. Then, each organizer is obliged to inform the customer about the steps to be taken in the event of a loan delay or loan payment failure.

[1] Sulistyandari,. (2018). Fintech Indonesia User Legal Protection in Balance Borrowing Money Based on Information Technology. SHS Web of Conferences. 54. 06003. 10.1051/shsconf/20185406003.
[2] Agustia, Dian & Anridho, Nadia. (2020). Financial Inclusion: Does Fintech Help in Indonesia?. 10.4018/978-1-5225-9183-2.ch008.

The collection steps include issuing warning letters, requirements for loan scheduling or restructuring, correspondence with Borrowers remotely (desk collection), including via telephone, email, or other forms of conversation. Then, the Financial Technology Company must also notify customers of scheduled visits or communication with the collection team, loan write-offs.

When using a third party in billing, the Financial Technology company must use a party that is not included in the black list of authorities (must be certified) or from the Association. Then, Financial Technology companies are also prohibited from using intimidating methods, physical and mental violence or other means that offend racial or otherwise degrading Loan Recipients "dignity", in the physical world or in cyberspace (cyber bullying) both against the Loan Recipient, its property, or their relatives and family [3].

Based on this background, the researcher then conduct a research with the following issues:

1. Why is the implementation of legal protection for debtors who experience default in the online money loan agreement in Indonesia currently is not yet based on justice value?
2. How is the reconstruction of legal protection for debtors who experience defaults in online money loan agreements in Indonesia based on the justice value?

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge [4]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (*approach*) the research is to use the approach *of Empirical-Juridical* [5], which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

As for the source of research used in this study are

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author use data collection techniques, namely literature study, interviews and documentation where the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data [6]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion

1. Reason Why the Implementation of Legal Protection for Debtors who Experience Default in the Online Money Loan Agreement In Indonesia Currently Is Not Yet Based on Justice Value

Along with globalization, which presents the technology that is the internet that offers various facilities and its advantage. This Advance has resulted in online or Information Technology-based agreement agreements in the financial services sector. An online agreement in a glance is an agreement that is wholly or partly born with assistance and facilitation on an interconnected computer network. Where the agreement is contained in electronic documents and other electronic media.

Legal relations in fintech in Indonesia is based on POJK No. 77 / POJK.01 / 201 concerning Information Technology-Based Lending and Borrowing Services (LPMUBT) arises because of the money lending and borrowing agreement. Lending and borrowing according to Article 1754 of the Civil Code is an agreement whereby one party gives the other party a certain amount of goods that have been used up due to use, on the condition that the latter party will return the same amount of the same type and quality. The subjects of the loan and loan agreement are the lender (creditor) and the borrower (debtor). While the objects in the loan and borrow money agreement are all goods that are used depend the condition that the goods must not in conflict with law, decency and public order. Ths means that basically the rule are the same as a conventional lending and borrowing agreement and the only difference is that the parties do not meet directly.

The parties do not need to know each other because there are organizers who will bring the parties together and the implementation of the agreement is done online. The birth of the online money lending and borrowing agreement began with an offer made by the Information Technology-based lending and borrowing service provider and continued with the acceptance made by the customer. The offer and acceptance in this agreement, of course, have a different mechanism from conventional lending and borrowing agreements, this is seen from the way the online agreement was born.

Theoretically, Peer-to-peer lending or P2P Lending is a lending and borrowing activity between individuals. These practitioners have long served in different forms, often in the form of informal agreements. With the development of technology and e-commerce, lending activities have also developed in the online form in the form of a platform similar to e-commerce. With it, a borrower can get funding from many individuals. In peer lending, activities are carried out online through the website platforms of various peer lending companies. There are various types of platforms, products, and technologies for credit analysis. Borrowers and lenders do not meet physically and often do not know

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[4] Faisal, (2010), *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta.

[5] Johnny Ibrahim, (2005), *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Surabaya.

[6] L. Moleong, (2002), *Metode Penelitian Kualitatif*, PT Remaja Rosdakarya, Bandung.

each other. Peer lending is not the same and cannot be categorized into the form of traditional financial institutions: deposits, investments, or insurance. Therefore, peer lending is categorized as an alternative financial product.

The peer lending loan application process usually follows the following process. The borrower enters the website, registers, and fills in the application form. The platform then verifies and analyzes the qualifications of the loan. Loans that have successfully passed are posted on the website where lenders can commit funds for the loan. There are several ways that peer lending platforms have adopted to match borrowers with lenders.

Furthermore, the role of law in online lending arrangements cannot be separated from the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector and Financial Services Authority Regulation Number 77 / Pojk.01/2016 concerning Money Borrowing and Lending Services Based on Information Technology, it is hoped that the Financial Services Authority can increase supervision of the financial services sector and optimize consumer protection in the financial services sector. However, with the existence of various weaknesses in the two OJK regulations, the implementation of fintech only results in a lot of injustice for debtors.

The Financial Services Authority Regulation Number 1 / Pojk.07 / 2013 since first implemented has received a lot of criticism as there are several types of weaknesses in the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013 namely:

a. Regarding the meaning, position, and working mechanism of the Financial Technology institution, the Financial Services Authority Regulation No. 1 / Pojk.07 / 2013 does not contain provisions related to the meaning of the Financial Technology institution. This can be seen in Article 1 of the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013. This weakness resulted in not clearly regulating the position and supervision of the Financial Technology institution. This is because the financial institutions referred to in the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013 do not include Financial Technology institutions. So that the position of the Financial Technology institution in the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013 is increasingly unclear.
b. There is no guarantee of protection for the personal data of consumers using Financial Technology services, this problem can be seen from Article 3 of the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013 which is not balanced with the obligation of financial service businesses to maintain the confidentiality of their consumers' personal data. Apart from that it is also not supported by the OJK's obligation to participate in supervising the assurance of the confidentiality of the biodata of consumers using financial institution services, this situation is getting more complicated by not regulating the position of the Financial Technology institution, so that the provisions referred to in Article 3 are unable to apply to legal violations related to confidentiality. consumer biodata by Financial Technology institutions.
c. The approach used in the implementation of the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013 has minimal outreach. Without the regulation of the Financial Technology institution, the paradigm of supervision of financial institutions is only done manually without going through supervision in cyberspace, so that coverage supervision of financial institutions by OJK only reaches financial institutions that do not belong to Financial Technology institutions as included in Article 1 of the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013.
d. There is no clear information regarding the limitations of the process for receiving complaints by the public to the OJK related to problems with Financial Technology institutions, where basically the rules regarding the time frame for responding to complaints from consumers themselves are unclear, this is because there are no rules that apply publicly, especially in the Authority Regulations Financial Services Number 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector regarding the period of time from the Financial Services Authority to submit its response to complaints that have been received from consumers.
e. The unclear sanctions arrangements in the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013, where basically the sanctions for violations of the law in the provision of financial services are regulated in Article 53 of the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 which can be seen It is clear that with regard to sanctions against the dissemination of consumer data by the Financial Technology institution which can harm consumers, it is not regulated, this clearly makes the actions of the Financial Technology institution increase in the community. Then the various existing sanctions are also unable to be imposed on Financial Technology institutions considering that the position of Financial Technology institutions is not regulated in the Financial Services Authority Regulation Number 1 / POJK.07 / 2013. Then regarding fines, the amount is not clearly regulated in the Financial Services Authority Regulation Number 1 / POJK.07 / 2013.

The various kinds of problems above will clearly result in the problem of the lack of consumer information regarding the correct position and performance system of the Financial Technology institution.

Furthermore, this issue also contradicts Article 15 of Law Number 8 Year 1999 concerning Consumer Protection which states that "*business actors in offering goods and/or services are prohibited from doing so by coercion or other means that can cause both physical and psychological disturbances to consumers*".

The minimal role of the OJK in monitoring online loans and not clearly regulating the technical matters of online loans both in the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 and the Financial Services Authority Regulation Number 77 / Pojk.01/2016 Regarding Money-Based Lending and Borrowing Services Information technology has resulted in law enforcement coverage of online lending institutions that harm consumers from being unable to effectively do this, this has become increasingly complicated in the absence of regulations regarding evidence related to online loan fraud, given that evidence of illegal actions related to online loans is closely related to world of communication and information technology.

2. The Reconstruction Of Legal Protection For Debtors Who Experience Defaults In Online Money Loan Agreements In Indonesia Based On The Justice Value

In its development, interpreting law as a set of regulations that govern society means that in fact it is supported by a system of clear and firm sanctions so that justice can be upheld. The Justice in question is indicative justice, not absolute justice, which imposes a sentence based on legal procedures and clear and basic reasons, in the sense that it is not based on feelings of solidarity, compromise or other reasons that are far from a sense of justice. This is in accordance with the spirit that animates article 28D of the 1945 Constitution of the Republic of Indonesia.

The process to achieve a sense of justice is a link that must not be separated from at least the formulation of laws and regulations, the occurrence of legal cases or events, to verbal processing at the police and prosecution, or lawsuits in civil cases, and then ends with a judge's verdict. Obtaining permanent legal force (*inkracht vangeweisde*) so that the quality of the process is actually a guarantee of the quality of the culmination point of the results or benefits of a set of laws and regulations made. Thus, it is very important for the upholding of the rule of law in our country. Harold J. Laksi quoted by Sabian [7] said "that citizens are obliged to obey certain laws only if those laws satisfy their sense of justice."

In order to realize the various kinds of ideas above, it is necessary to carry out legal reform in several legal provisions related to e-contracts and fintech. The provisions that need to be reconstructed are regarding the provisions on e-contract, Edmon Makarim [8] uses the term online contract for electronic contracts (e-contracts) and defines online contracts as: "An engagement or legal relationship that is carried out electronically by integrating networks (networking) from a computer based information system to the system (e-contract) between two or more parties that is carried out using computer media, especially the internet network".

Based on the way it occurs, there are several forms of electronic contracts (e-contracts) that have been done so far namely:

a. Electronic contract (e-contract) which is carried out through electronic mail communication (e-mail). In this electronic contract offers and receipts are exchanged by electronic mail (e-mail) or in combination with other electronic communication media.
b. Electronic contracts (e-contracts) made through websites and other online services. In this form of contract, the offer is made through the website and the consumer accepts the offer by filling in the form on the website.

According to Michael Chissick [9] and Alistair Kelman, there are three types of proof made by computers, namely:

a. Real Evidence, for example, is a bank computer that automatically calculates the value of banking transactions that occur. The results of these calculations can be used as concrete evidence.
b. Hearsay Evidence, for example, are documents produced by computers as copies of information entered by someone into the computer.
c. Derived Evidence, Derived evidence is a combination of real evidence and hearsay evidence.

The concept of classifying evidence into written and electronic evidence is currently unknown in Indonesia seeing that this concept is commonly developed in common law countries. The arrangement does not give birth to new evidence but widens the scope of documentary evidence. According to Article 164 HIR, Article 284 RBg, and Article 1866 of the Civil Code, the evidence in the civil evidentiary law that applies in Indonesia are as follow:

a. Letter/written evidence. The division of various letters/writings which include: Regular letters, is writing that is not signed. The judge is free to evaluate this evidence. Authentic deed, is a deed made by or before an authorized official according to the procedures and forms determined by law. Authentic deeds have the power of birth, formal and material proof and are perfect evidence, meaning that the contents of the deed must be considered true. Underhand deed, is a deed made by the parties without the help of a public official.
b. Evidence of a witnesses Testimony, is a statement given to a judge in a trial regarding an incident that is disputed by a party who is not a party in the case.
c. The evidence of suspicion that is a conclusions that by law or the judge draws a known incident leading to an incident that are yet to happen. The prejudice is circumstantial evidence that is drawn from other evidence.
d. Evidence of confession, Acknowledgment is an oral or written statement from one of the parties in litigation, which partially or completely confirms the opposing argument.
e. Proof of an oath, an oath is a statement by a person on behalf of God Almighty as a confirmation of the truth of his statement given in front of a judge in a trial.

In contrast to the law above, the provisions for e-contract grace in Law Number 11 Year 2008 have not been regulated, even though technological advances have created a new contract law culture with an online approach. So it is clear that it is necessary to regulate electronic contracts.

The second provision that also requires reconstruction is the effectiveness of OJK supervision on fintech developments in Indonesia. Along with the development of fintech that continues to stretch until now, of course, it must also be balanced with the presence of clear regulations and supervision of the running of the business. Based on Article 5 of Law Number 21 of 2011 concerning the Financial Services Authority (OJK), which states that the OJK has the function of implementing an integrated regulatory and supervisory system for all activities in the financial services sector. Article 6 more clearly states that OJK carries out regulatory and supervisory duties towards:

a. Financial service activities in the banking sector;
b. Financial service activities in the capital market sector; and

[7] Sabian Utsman,(2007), Anatomi Konflik dan Solidaritas Masyarakat Nelayan, Yogyakarta: Pustaka Pelajar, p.262.
[8] Makarim, Edmon & Mahardika, Zahrashafa. (2020). Regulatory Sandbox: A Regulatory Model to Guarantee the Accountability of Electronics Financial Technology Implementation. 10.2991/aebmr.k.200321.021.
[9] Michael Chissick, Alistair Kelman,(2000), Electronic Commerce: Law and Practice 2nd Edition, Thomson Professional Pub, Canada, p.201.

c. Financial service activities in the insurance sector, pension funds, financing institutions and other financial service institutions.

When referring to the two articles, OJK is an agency that regulates and supervises the development of fintech. Fintech startups are part of the financial services sector, both the Bank Financial Industry (IKB) and the Non-Bank Financial Industry (IKNB) which are overseen by the OJK. Regulation and supervision are very important for the sustainability of Fintech in Indonesia. This is related to the legality of the business being carried out because, in its implementation, fintech development has potential risks no matter if it is sharia or not [10], namely those related to consumer protection, financial system stability, payment system, and economic stability. The objective of OJK regulation and supervision is to minimize these risks and support sustainable and stable economic growth.

As stated in the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013. The reform in question is to amend the provisions of Article 3 of the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013, in which financial service business actors are not only entitled to information related to consumers or debtors but are also obliged to maintain the confidentiality of consumer or debtor data. It is necessary to clearly regulate the position of financial technology institutions in the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013. It is necessary to regulate information on the process of public complaints against the OJK, especially in the case of financial technology institutions, then it is necessary to regulate sanctions related to financial technology that violates the law, and it is necessary to emphasize the number of fines in the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013. Then it is necessary to carry out supervision in a partnership, both internally and externally through communication and information technology based on the supervision of financial technology institutions both at the national and regional levels.

Furthermore, the last legal provision that needs to be improved is the Financial Services Authority Regulation (POJK) Number 77 / POJK.01 / 2016. As explained above, the Financial Services Authority Regulation (POJK) Number 77 / POJK.01 / 2016 has a weakness in the form of:

a. The Loan interest is not clearly regulated;
b. The absence of insurance on fintech loans;
c. Has not regulated technical matters related to supervision of fintech accounts;
d. There is no guarantee regarding the obligation of fintech accounts to maintain the confidentiality of customer or debtor data;
e. Fintech accounts have not regulated regarding the limits related to the know your customer principle;
f. The guarantee of the rights of debtors or consumers to receive sufficient information regarding fintech institutions and systems has not been regulated;
g. The OJK regulation does not contain the principles and objectives of supervision related to information technology-based lending and borrowing services.

The weaknesses as above, according to the author, are the most vital problems related to online loans in Indonesia that must be addressed immediately. Therefore the authors propose a reconstruction in the Financial Services Authority Regulation (POJK) Number 77 / POJK.01 / 2016 in the form of:

a. Provisions regarding the amount of interest;
b. Insurance-related provisions in loans through fintech institutions;
c. There need to be special regulations regarding technical matters for fintech accounts;
d. It is necessary to regulate the existence of guarantees related to the obligations of fintech accounts to maintain the confidentiality of consumer or debtor data;
e. It is necessary to regulate the existence of restrictions related to the principle of knowing your customer by fintech accounts;
f. It is necessary to regulate the guarantee of the rights of debtors or consumers in receiving sufficient information related to fintech institutions and systems
g. It is necessary to state the principles and objectives of Information Technology-Based Borrowing and Lending Services.

In addition to the aforementioned reconstruction, another thing that needs to be regulated in relation to the position of financial technology institutions in the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013 and Financial Services Authority Regulation (POJK) Number 77 / POJK.01 / 2016 is information on the complaint process. the public towards OJK, especially in the case of financial technology institutions, then it is necessary to regulate sanctions related to financial technology that violates the law, and it is necessary to emphasize the amount of the fine sanctions in the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013. Then it is necessary to conduct supervision in a partnership both from an internal and external perspective through communication and information technology based on the supervision of financial technology institutions both at the national and regional levels.

Conclusion

1. Factors that affect the implementation of debtor law protection who is unable to pay their debts to financial technology institutions are the overlapping rules regarding loan, the lack of reach of law enforcement in cases of fraud under the guise of financial technology institutions, and the influence of globalization which results in the growth of financial technology institutions increasingly uncontrollable.
2. Legal reconstruction as referred to by the author are in several provisions as contained in the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013 and Financial Services Authority Regulation (POJK) Number 77 / POJK.01 / 2016. The reconstruction in question is amending the provisions of Article 3 of the Financial Services Authority Regulation Number 1 / Pojk.07 / 2013 and the Financial Services Authority Regulation (POJK) Number 77 / POJK.01 / 2016, in which the financial service business actors are not only entitled to information related to consumers. Or debtors but are also obliged to maintain the confidentiality of consumer or debtor data.

[10] Aziz, Fathul. (2020). Menakar Kesyariahan Fintech Syariah di Indonesia. Al-Manahij: Jurnal Kajian Hukum Islam. 14. 1-18. 10.24090/mnh.v14i1.3567.

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