

## Debtor protection system reform in the implementation of financial technology in Indonesia

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### Abstract

The advancement of credit technology in its development has not been matched by a law that regulates financial technology (Fintech). This case has resulted in many consumers being disadvantaged in the Fintech agreement. It can be seen in various cases of cyber billing caused by default on a consumer's debt using Fintech services. In this regard, this article aims to analyse consumer protection in the development of Fintech. This article uses a non-doctrinal method. Based on the discussions conducted, it was found that the implementation of Fintech is often used as a guise fraud, supported by cyberbullying. The factors, that influence the implementation of debtor protection when unable to pay their debts to financial technology institutions, are overlapping rules, the lack of reach of law enforcement in fraud under the guise of financial technology institutions, and the influence of globalization, which results in the growth of financial technology institutions increasingly less under control.

**Keywords:** debtor, financial technology, protection, reform

### Introduction

Credit business actors are a source of growing debt because life necessities keep increasing and are not matched by income so that credit is progressing rapidly in this country. Consumers are one of the actors of economic activity in a country. Consumers are individuals/groups of people who consume goods or services provided by producers. The following is the understanding of consumers from experts <sup>[1]</sup>

- a. Philip Kotler "consumers are all individuals and households who buy or obtain goods or services for personal consumption."
- b. Hornby "consumers are every person using goods and / or services available in society, either for the benefit of themselves, their families, other people, or other living things and not for sale".

As users of goods or services, consumers need clear legal protection in obtaining satisfaction and eligibility in consuming goods or services. Consumer Protection, according to Law No.8 of 1999, article 1 point 1, is "all efforts that ensure legal certainty to protect consumers". In this case, in all use of products or services by consumers, consumers are entitled to legal certainty. Intimidating billing by Financial Technology companies is one of the most highlighted offenses by the public today. These companies often collect bills using harsh words to threaten their customers' violence in arrears for debt repayments.

Based on the LBH Jakarta report, illegal Financial Technology companies and licensed companies violated this law. For the collection mechanism, the Financial Technology Company uses an internal division or desk collection or a third party <sup>[2]</sup>. The intimidating collection is a

prohibited practice in Financial Technology companies. These provisions are stated in the 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.

The code of conduct also requires Financial Technology companies to submit settlement and collection procedures to customers, namely borrowers and lenders, in loan defaults. Then, each organizer is obliged to convey to the customer the steps to be taken in the event of a loan delay or loan payment failure. The collection steps include issuing warning letters, requirements for loan scheduling or restructuring, and correspondence with Borrowers remotely (desk collection), including telephone, email, or other conversation forms. The Financial Technology company must also notify customers of scheduled visits or communication with the collection team, loan write-offs <sup>[3]</sup>. When using a third party in billing, the Financial Technology company must use a party not included in the blacklist 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 methods which can't offend racial violence or undermine the Loan Recipient's dignity, both in the real world and in cyberspace (cyberbullying) both against the Loan Recipient, property, or relatives and family.

Based on the above background, the authors are interested in researching the title "Debtor Protection System Reform in the Implementation of Financial Technology in Indonesia."

<sup>1</sup> Dhika Augustyas "Perlindungan Hukum Bagi Konsumen" retrieved from <https://dhiiasitsme.wordpress.com/2012/04/18/perlindungan-hukum-bagi-konsumen/> on 10 May 2019.

<sup>2</sup> Mochamad Januar Rizki. (2019). Duh, Penyelesaian Hukum Ribuan Pengaduan Fintech Masih Tak Jelas Masih ada silang pendapat antara LBH Jakarta, OJK dan pelaku usaha., Taken From

<https://www.hukumonline.com/berita/baca/lt5c59131b7a515/i-duh-i--penyelesaian-hukum-ribuan-pengaduan-fintech-masih-tak-jelas/> on 20 May 2020.

<sup>3</sup> J. B. Suseno, Meneropong Kerusakan Sistem Perlindungan Hukum Bagi Debitur Dalam Penyelenggaraan Financial Technology, Sebuah Narasi Kritis, presented in The Discussion of Axiology Institute on 12 May 2020.

### Problem Formulation

The problem that will be discussed is the injustice towards debtors in implementing lending and borrowing funds through Financial Technology so far.

### Research Method

The method used in this article is a non-doctrinal method, where the analysis of the law is seen in the context of the legal text and context.

### Discussion

#### Implementation of Consumer Protection in the Development of Financial Technology in Indonesia

Advances in technology have given birth to a new approach to developing forms and methods of financial services. A change in the model indicates this. Previously, most financial companies offer their services door to door or manually with their marketing agents. There is currently a company known as "Financial Technology", which increases consumer absorption in the capital and financial services trade sector. However, the politics of law in the financial services sector have not been able to keep up with developing the financial services model that has been far developed with advances in information and communication technology media. This situation causes various problems in the use of financial service institutions. Various kinds of losses caused by the lack of consumer protection in cyber-based lending often occur<sup>[4]</sup>.

This can be seen in the case of online loans that occurred in the city of Solo. At first, YI borrowed one million rupiahs to send her child to school to one of the financial technology-based lending services that YI obtained at Playstore. The administrative requirements were only sending a photo ID and biodata. In its development, the interest and fees that cannot be explained are very large and must be paid by YI. This situation makes YI make a new loan totaling four million rupiahs. This makes the loan interest even more out of control so that YI's debt amount in the amount of four million rupiahs must be paid in full for thirty million rupiahs. This is not true considering that the principal's amount with the expenses to be repaid does not match. This situation is getting more complicated by the existence of various threats, and YI's photographs were spread with the issue that YI is a commercial sex worker. This is the spread of false information that can harm a consumer of financial technology<sup>[5]</sup>.

Sekar experiences a similar situation as a victim of an online loan in Sleman. Sekar stated that initially, he borrowed funds from an online loan institution because of the need to finance his family's life after his husband had to be laid off due to the impact of Covid-19. At the beginning of the loan, there did not appear to be anything detrimental to her. Still, after one month, when Sekar paid the first installment, he had to pay three times the installments with large interest and administrative costs. In contrast, the amount of Sekar's loan was three million eight hundred thousand rupiahs. However, the debt that must be repaid is twenty million five

hundred thousand rupiahs. Because Sekar was unable to pay the debt burden, in the end, the creditors' collection of receivables was carried out by distributing Sekar's personal data, which was informed that Sekar was a fraud, as well as the threat of damaging the Sekar's family.<sup>6</sup> Based on the various cases above, it is clear that the Financial Services Authority's role in Indonesia is still ineffective. This was also supported by a statement from the Investment Alert Task Force, which stated that from 2019 to early 2020, there were 105 problematic financial technologies in Indonesia<sup>[7]</sup>.

#### Debtor Protection System Reform in the Implementation of Financial Technology in Indonesia

In its development, the Financial Services Authority Regulation No. 77 / Pojk.01/2016 concerning Information Technology-Based Lending and Borrowing Services also has various weaknesses. These weaknesses are related to the clear technicality of providing credit to consumers. The problem is divided into:

- a. it has not been regulated regarding loan interest;
- b. the absence of insurance on Fintech loans;
- c. have 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 yet regulated 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. Then, the OJK regulation does not contain the principles and objectives of supervision related to information technology-based lending and borrowing services.

These seven weaknesses in the end also resulted in violating points a and b of the preamble to the Financial Services Authority Regulation No. 77 / Pojk.01/2016 concerning Information Technology-Based Lending and Borrowing Services, which states that:

- a. information technology has been used to develop the financial industry, which can encourage the growth of alternative financing for the public; and
- b. To support the growth of information technology-based financial services institutions so that they can contribute more to the national economy.

The weaknesses of the two OJK regulations above then in its development have violated Article 3 of Law No. 8 of 1999 concerning Consumer Protection, which states that Consumer protection aims to:

- a. increasing awareness, ability, and independence of consumers to protect themselves;
- b. enhancing the dignity of consumers by avoiding negative excess use of goods and / or services;
- c. increasing consumer empowerment in choosing, determining, and demanding their rights as consumers;
- d. creating a consumer protection system that contains

<sup>4</sup> Caesar Darma, Dio & Kadafi, M & Lestari, Dirga. (2020). FinTech and MSMEs Continuity: Applied in Indonesia. 29. 4676-4685.

<sup>5</sup> Tribunnews. (2019). Kronologi Nasabah Pinjaman Online Rp 1 Juta, Denda Rp 30 Juta Sebulan hingga Fitnah "Rela Digilir", taken from <https://www.tribunnews.com/regional/2019/07/25/kronologi-nasabah-pinjaman-online-rp-1-juta-denda-rp-30-juta-sebulan-hingga-fitnahrela-digilir> on 20 May 2020.

<sup>6</sup> Sekar Sukmawati. (2020). An Interview with The Online Funding Victim on 12 May 2020 in Yogyakarta.

<sup>7</sup> Liputan 6. (2020). Jangan Tertipu Pinjaman Online, Cek Dulu 105 Fintech dan 99 Investasi Ilegal, taken from <https://www.liputan6.com/citizen6/read/4295961/jangan-tertipu-pinjaman-online-cek-dulu-105-fintech-dan-99-investasi-ilegal> on 20 May 2020.

- elements of legal certainty and information disclosure and access to information;
- e. raising awareness of business actors regarding the importance of consumer protection so that an honest and responsible attitude can grow in doing business;
  - f. Improving the quality of goods and / or services that ensure the business's continuity of producing goods and / or services, health, comfort, security, and safety of consumers.

**Then, it violates Article 8 of Law No. 8 of 1999 concerning Consumer Protection, which states that**

1. Entrepreneurs are prohibited from producing and / or trading goods and / or services which:
  - a. does not meet or does not comply with the required standards and the provisions of laws and regulations;
  - b. not in accordance with net weight, net content, and the amount in the calculation as stated in the product label;
  - c. does not correspond to the size, measure, scale and amount calculated according to the actual size;
  - d. not in accordance with the conditions, guarantees, features or efficacy as stated in the label or description of the goods and / or services;
  - e. not in accordance with the quality, level, composition, processing, style, mode, or certain use as stated in the label or description of the said goods and / or services;
  - f. does not comply with the promise stated in the label, etiquette, description, advertisement or sale promotion of goods and / or services;
  - g. does not include the best expiration date or period of use / utilization of certain goods;
  - h. does not comply with the provisions for halal production, as stated in the statement "halal" which is included in the label;
  - i. does not put a label or make a description of the goods containing the name of the goods, size, net weight / content, composition, rules of use, date of manufacture, side effects, name and address of the business actor as well as other information for the use which according to the provisions must be installed / made;
  - j. Does not include information and / or instructions for the use of goods in Indonesian in accordance with the prevailing laws and regulations.
  - k. Entrepreneurs are prohibited from trading goods which are damaged, defective or used, and tainted without providing complete and correct information on the goods.
2. Entrepreneurs are prohibited from trading damaged, defective or used and tainted pharmaceutical and food preparations, with or without providing complete and correct information.
3. Entrepreneurs who commit violations in paragraph (1) and paragraph (2) are prohibited from trading goods and / or services and are required to withdraw them from circulation.

**Then it also violates Article 9 of Law Number 8 of 1999 concerning Consumer Protection which states that**

1. Entrepreneurs are prohibited from offering, promoting, advertising certain goods and / or services incorrectly, and / or as if:
  - a. the goods have met and / or have discounted prices, special prices, certain quality standards, certain styles or modes, certain characteristics, history or certain uses;

- b. the goods are in good condition and / or new;
  - b. the goods and / or services have obtained and / or have had sponsorship, approval, certain equipment, certain benefits, work characteristics or certain accessories;
  - c. the goods and / or services made by a company that has a sponsor, approval or affiliation;
  - d. the goods and / or services are available;
  - e. the goods do not contain hidden defects;
  - f. the goods are completeness of certain goods;
  - g. the goods come from certain areas;
  - h. directly or indirectly degrading other goods and / or services;
  - i. use excessive words, such as safe, harmless, does not contain risks or side effects without complete description;
  - j. Offers something that carries uncertain promise.
2. The goods and / or services as referred to in paragraph (1) are prohibited from being traded.
  3. Entrepreneurs who violate paragraph (1) are prohibited from continuing the offer, promotion and advertising of the goods and / or services.

Then, it also violates Article 11 of Law Number 8 of 1999 concerning Consumer Protection which states that Entrepreneurs, in the event that sales are made through a sale or auction, are prohibited from deceiving / misleading consumers by:

- a. state that the goods and / or services have met certain quality standards;
- b. declare that the goods and / or services do not contain hidden defects;
- c. do not intend to sell the goods offered but with the intention of selling other goods;
- d. do not provide goods in a certain amount and / or sufficient amount with the intention of selling other goods;
- e. do not provide services in a certain capacity or in sufficient quantities for the purpose of selling other services;
- f. Increase the price of goods and / or services before carrying out a sale.

Furthermore, it also violates Article 12 of Law Number 8 of 1999 concerning Consumer Protection which states that: Entrepreneurs are prohibited from offering, promoting or advertising certain goods and / or services at a special price or rate within a certain time and amount, if the business actor does not intend to do so according to the time and amount offered, promoted, or advertised.

Then, it also violates Article 13 of Law Number 8 of 1999 concerning Consumer Protection which states that:

1. Entrepreneurs are prohibited from offering, promoting, or advertising certain goods and / or services by promising to give gifts in the form of goods and / or other services free of charge with the intention of not giving them or giving not as promised.
2. Entrepreneurs are prohibited from offering, promoting or advertising medicines, traditional medicines, food supplements, medical devices and health services by promising to give gifts in the form of other goods and / or services.

This is also contrary to Article 14 of Law Number 8 of 1999 concerning Consumer Protection which states that Entrepreneurs in offering goods and / or services intended for trade by giving prizes through a lottery are prohibited from:

- a. do not withdraw the prize after the valid time limit;
- b. announce the results not through the mass media;
- c. give prizes not as promised;
- d. Replace gifts that are not equivalent to the value of the promised prize.

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

Then this is also contrary to Article 16 of Law Number 8 of 1999 concerning Consumer Protection which states that Business actors in offering goods and / or services through orders are prohibited from:

- a. do not keep the order and / or the settlement time agreement as promised;
- b. do not keep promises for a service and / or achievements.

Then it also contradicts Article 17 of Law Number 8 Year 1999 concerning Consumer Protection which states that:

1. Entrepreneurs in the advertising business are prohibited from producing advertisements which:
  - a. deceive consumers regarding the quality, quantity, materials, use and price of goods and / or service rates as well as the timeliness of receiving goods and / or services;
  - b. misrepresent the guarantee / guarantee of the goods and/ or services;
  - c. Contains false, wrong, or inaccurate information regarding goods and / or services;
  - d. does not contain information regarding the risks of using goods and / or services;
  - e. exploits events and / or someone without the permission of the person concerned;
  - f. Violates the ethics and / or the provisions of laws and regulations regarding advertising.
2. Entrepreneurs in the advertising business are prohibited from continuing the distribution of advertisements which have violated the provisions in paragraph (1).

This clearly contradicts the mandate of the Second and Fifth Precepts of Pancasila and the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, and Article 28D paragraph (1) of the 1945 NRI Constitution. So it is clear that the implementation of consumer protection in financial technology is not yet fair.

This is different from fintech disposition and management in Singapore. The Monetary Authority of Singapore (MAS) and the National Research Foundation established The Fintech Office which functions are to review, harmonize and improve fintech funding schemes across government agencies; to identify gaps and propose industrial infrastructure strategy, policy and scheme; to develop talent and manpower for improved business competitiveness; as well as to manage and develop brand strategy of Singapore as the top of fintech center worldwide.<sup>7</sup> In April 2016, MAS

proposed to adopt a risk-based approach to fintech innovation in the unregulated sectors. MAS strives to ensure that no regulation would hinder innovation nor derail the adoption of useful technologies<sup>[8]</sup>. Therefore, MAS applies materiality and proportionality test, as risk management in which proportional and measurable adjustments are prepared when certain fintech company is at risk. Besides, in November 2016 the authority issued Fintech Regulatory Sandbox. MAS encourages fintech to accelerate experiment and innovation, to assist product testing, and to provide opportunity for resilient fintech product to be adopted more widely in Singapore and abroad. Sandbox ensures safe-space for businesses to bear with failure and consequences, since it maintains overall security aspects<sup>[9]</sup>.

In addition, there are varied licenses for fintech startups to acquire correspond to their business model. First, the Capital Markets Services (CMS) License based on the Securities and Futures Act is required for fintech startups engaged in securities which manage >\$1B global funds or provide the financial advisory services. Second, based on the Money Lenders Act, for a fintech startup to be engaged in money lending business, it must have the Money Lenders License. Third, the Banking Act (BA) requires Banking License for entities to accept deposit of funds in the form of current account, deposit or similar payment systems. Companies must also meet the criteria of the Personal Data Protection Act (PDPA) to protect customers' personal data obtained within Singapore territory. The act contains provisions which includes company to ensure personal data privacy policy which is accessible to the public, the consent to use of data, as well as physical and systemic safeguards to avoid data breach. Finally, fintech in Singapore must also comply with the provisions of Anti-Money Laundering & Counter Financial Terrorism Controls. Fintech companies are required to verify their customer profiles (Know Your Customer/ KYC Principal), conduct account reviews, monitor, and report any suspicious transactions<sup>[9]</sup>.

In order to protect the debtors of fintech services, it is necessary to amend Article 20 of the Financial Services Authority Regulation (POJK) Number 77/ POJK.01/ 2016, by adding an obligation for financial technology business operators to ensure personal data confidentiality<sup>[10]</sup>. It also needs additional clause on administrative sanction in the form of operational permit revocation to legal treat as the ultimate measurement for fintech operators who abuse debtor data as cyber bullying material. Regarding the provisions, Article 20 of the Financial Services Authority Regulation (POJK) Number 77/ POJK.01/ 2016 is changed into:

1. Loan agreement between the Lender and the Borrower is set forth in an Electronic Document.
2. Electronic Document as intended in paragraph (1) must contains at least:
  - a. number of agreement;
  - b. date of agreement;
  - c. identity of parties;

<sup>8</sup> Rizal, Muhamad & Maulina, Erna & Kostini, Nenden. (2019). Fintech Sebagai Salah Satu Solusi Pembiayaan Bagi Umkm. AdBispreneur. 3. 1. 10.24198/adbispreneur.v3i2.17836.

<sup>9</sup> Gabriel. (2020). "Fintech & Regulations In Singapore — What You Need To Know, Simplified Asia Law Network", Learn.asialawnetwork.com. N.p., Accessed on May 12th 2020.

<sup>10</sup> 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.

- d. provisions on the rights and obligations of the parties;
  - e. amount of loan;
  - f. loan interest rate;
  - g. installment value;
  - h. period of time;
  - i. collateral object (if any);
  - j. details of related costs;
  - k. provisions regarding fines (if any); and
  - l. Dispute resolution mechanism.
1. Lender is required to provide the Borrower access to information regarding position of the loan.
  2. Access to information as referred to in paragraph (3) does not include information related to the identity of Lender.
  3. Lender is obliged to maintain the confidentiality of Borrower.
  4. If Lender violates provision as mentioned in paragraph (5), Lender will immediately subjected to administrative sanctions in the form of operational permit revocation.
  5. If Lender continues to disseminate data of Borrower, in addition to subject to administrative sanctions as mentioned in paragraph (6), Lender may also be subject to 10 years imprisonment and a fine of 100.000.000,- rupiahs.

Both imprisonment sanction and fines are necessary for fraudulent fintech practice which causes poverty and damage to public moral, social order as well as public welfare.

### Conclusion

1. General contract agreements in financial technology have yet comply with good ethical codes. Even though the law recognizes freedom of contract, an agreement must first comply with ethical principles. To be a legal contract, an agreement must have the characteristic of lawful purpose (permissible) as well as not conflict with law.
2. Various issues that exist following fintech development have injured the mandate of the Second and Fifth Precepts of Pancasila, the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, Article 28D paragraph (1) of the 1945 Constitution, and Law Number 8/ 1999 on Consumer Protection. Thus, the implementation of consumer protection in financial technology is unfair.

### Suggestion

1. It is necessary to formulate a more comprehensive regulation at the level of law, governmental, ministerial, Financial Services Authority, as well as provincial and regency/municipal regulations in terms of debtor protection related to online lending through financial technology institutions;
2. It is necessary to formulate thorough and independent supervision on financial technology institutions;
3. There is also a need for institutional partnership which functions are to supervise, foster and take action against any violations, as well as develop feasibility study on financial technology institutions.

### References

1. Caesar Darma, Dio Kadafi M, Lestari Dirga. FinTech and MSMEs Continuity: Applied in Indonesia. 2020; 29:4676-4685.
2. Dhika Augustyas. Perlindungan Hukum Bagi Konsumen, 2019. Retrieved from <https://dhasitsme.wordpress.com/2012/04/18/perlindungan-hukum-bagi-konsumen/> on 10 May 2019.
3. Gabriel. "Fintech & Regulations In Singapore — What You Need To Know, Simplified Asia Law Network", Learn.asialawnetwork.com. N.p., Accessed on May 12th 2020, 2020.
4. Suseno JB. Meneropong Kerusakan Sistem Perlindungan Hukum Bagi Debitur Dalam Penyelenggaraan Financial Technology, Sebuah Narasi Kritis, presented in The Discussion of Axiology Institute on 12 May 2020, 2020.
5. Liputan6. Jangan Tertipu Pinjaman Online, Cek Dulu 105 Fintech dan 99 Investasi Ilegal, 2020. Taken from <https://www.liputan6.com/citizen6/read/4295961/jangan-tertipu-pinjaman-online-cek-dulu-105-fintech-dan-99-investasi-ilegal> on 20 May 2020.
6. Mochamad Januar Rizki. Duh, Penyelesaian Hukum Ribuan Pengaduan Fintech Masih Tak Jelas Masih ada silang pendapat antara LBH Jakarta, OJK dan pelaku usaha, Taken From, 2019. <https://www.hukumonline.com/berita/baca/lt5c59131b7a515/i-duh-i-penyelesaian-hukum-ribuan-pengaduan-fintech-masih-tak-jelas/> on 20 May 2020.
7. Rizal Muhamad, Maulina Erna, Kostini Nenden. Fintech Sebagai Salah Satu Solusi Pembiayaan Bagi Umkm. AdBispreneur, 2019, 3:1. 10.24198/adbispreneur.v3i2.17836.
8. Sekar Sukmawati. An Interview with The Online Funding Victim, on 12 May 2020 in Yogyakarta, 2020.
9. Sulistyandari. Fintech Indonesia User Legal Protection in Balance Borrowing Money Based on Information Technology. SHS Web of Conferences, 2018, 54:06003. 10.1051/shsconf/20185406003.
10. Tribunnews. Kronologi Nasabah Pinjaman Online Rp 1 Juta, Denda Rp 30 Juta Sebulan hingga Fitnah "Rela Digilir", taken from, 2019. <https://www.tribunnews.com/regional/2019/07/25/kronologi-nasabah-pinjaman-online-rp-1-juta-denda-rp-30-juta-sebulan-hingga-fitnahrela-digilir> on 20 May 2020.