

Debtor Legal Protection Default Under the Agreement Online Loan

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Abstract. The choice of transactions or digital trading patterns, especially e-commerce, will trigger behavioral changes due to changes in systems and lifestyles. Changes in the behavior of sellers and buyers are largely determined by the business ethics and morals of each party. Information technology-based lending and borrowing services or fintech lending is one of the products from Fintech that brings together creditors and debtors through electronic systems or information technology. The research method used is a The law is regarded as a norm, rule, principle, or dogma in the normative juridical approach. The doctrinal approach/research or normative legal research is another name for the normative juridical approach. A literature study (review of the literature) is used in the normative juridical research phase, but interviews can be conducted to complete the literature study if necessary. The results of the research model of legal protection that can be applied include a. financial guard in the form of insurance for creditors; b. Guarantee Protection in intangible assets, namely the resident registration number; c. Protection at the time of the agreement; and D. criminal sanctions adopted from UU-ITE for its implementation in POJK.

Keywords: Legal Protection; Online Loans; Creditor

1 Introduction

Technological development is a necessity in human civilization, from the invention of the wheel to space exploration, from Morse code to smartphones making technology a necessity that is constantly undergoing renewal. Technology exists because of the process of innovation and invention of various tools that function to support all human activities, both those that use simple technology to high technology that has extraordinary complexity.

Currently, the growth of online-based credit investment or better known today as "Online Loans (Pinjol)" (peer to peer lending / P2P) in Indonesia, is experiencing very dynamic and significant growth. Based on data held by the Financial Services Authority (OJK) according to a report in April 2021, the amount of credit disbursed by Pinjol investors, both through conventional and sharia providers, is a total of 2.3 trillion rupiahs each month.

The choice of transactions or digital trading patterns, especially e-commerce, will trigger behavioral changes due to changes in systems and lifestyles. Changes in the behavior of sellers and buyers are largely determined by the business ethics and morals of each party. Ethics will be closely related to the good faith of the parties. Therefore, the presence of e-commerce that does not allow physical meetings between sellers and buyers requires good intentions from both parties [1].

The convenience of transacting using a smart mobile phone (smartphone) has also opened breakthroughs in the financial sector, especially in terms of online (online)-based lending and borrowing services. People who were previously accustomed to conventional lending and borrowing services through banks, cooperatives, or other financial service institutions, were offered to switch to online lending and borrowing services (online/online) or better known today as Finance Technology (Fintech), which offers an attractiveness of administrative ease in a variety of services, and faster service than conventional lending and borrowing services.

One of the negative activities of the development of social media/technology is conventional criminal practices targeting the existence of a new online-based style of financing, namely Finance Technology (Fintech), for example, the fraudulent mode of online loans by falsifying borrower data to default, even according to Wijaya Hadi Susanto in the Journal of Social Science and Humanities, there is an organized group of debtors who deliberately defaulted. The mode used by these irresponsible parties in seeking profit, by using weaknesses in digital transactions, especially Fintech Lending, is very detrimental to investors or creditors in the world of Finance Technology, especially online-based creditors (peer-to-peer lending / P2P). [2].

Information technology-based lending and borrowing services or fintech lending is one of the products from Fintech that brings together creditors and debtors through electronic systems or information technology. This method has eliminated the intermediation function that has been carried out by banks and non-banks so far. Both debtors and creditors can apply for credit directly to the provider online with relatively easier terms and a faster process [3].

Another advantage of this service is that there is no collateral. It makes it easier for people to make loans. In banking, collateral is needed to protect the rights of creditors and provide a position to creditors when the debtor defaults. Based on this, the legal aspects in Indonesia have not fully met the security standards for fintech service users. This legal uncertainty has prompted the government to make regulations governing information technology-based lending and borrowing services to minimize risk and to become a legal umbrella for users of information technology-based money-borrowing services.

Based on the description above, it appears that the Regulation Number 77/POJK.01/2016 of the Financial Services Authority for Information Technology-Based Lending and Borrowing Services does not give complete legal protection, especially for creditors. The importance of legal protection, especially for unsecured creditors based on information technology in the sustainability of the business and investment world, is a form of legal certainty for its users.

"However, of course, the simplicity of the online-based lending and borrowing service system is accompanied by a fairly high level of risk of default, mainly because there is no direct face-to-face pattern and/or real field verification of the existence of the debtor, all of which are based on population information data provided at the time of writing registration through the financial services application. It requires the online-based lending and borrowing service providers to further improve security and minimize risk, especially in disbursing and verifying submitted credit applications."

In addition, as a form of capital investment in digital finance (digital currency), Finance Technology investment players also really need the government's role in getting the comfort of investing, as explained by Martin Roestamy that what should be the government's attention is to realize and feel the need to review deeper into the fundamental barriers of investment development involving the needs or expectations of investors that are not appropriate and are not provided in Indonesia so that it becomes a constraint in the investment climate, meaning that this nation must be sensitive to what investors need after being in Indonesia. Like it or not, Indonesia will be compared with other countries to determine the direction of its investment [4].

Credit Agreements on online-based lending and borrowing services have many weaknesses, specifically in technology or information data for criminal purposes such as fraud and or embezzlement. The rise of fraud and embezzlement crimes in credit agreements on online-based lending and borrowing services occurs because the characteristics of Finance Technology are that there is no direct face-to-face pattern to verify and check the veracity of information from the parties.

The crime of fraud/embezzlement in online-based lending and borrowing services that the authors find currently reflects the rise of fictitious loans using population data belonging to other people, namely in the form of Identity Cards (KTP) and Family Cards (KK). Actions like this harm other people, especially creditors in online-based lending and borrowing services, and disrupt the investment climate in the world of Finance Technology (Fintech) in Indonesia, which has begun to develop.

In addition, many debtors do not pay their debt repayment obligations to creditors, in other words, breaking promises (default) to the Online-Based Lending Service Agreement. The potential for this breach of promise (default) occurs because there is no property or something equivalent to it which is used as collateral in the agreement so loan and borrowing done online is only bound in good faith by each party without any items being held as collateral for debtor debt repayment.

2 Research Methods

The law is conceived as a norm, rule, principle, or dogma, and the research method is a normative juridical approach. The doctrinal approach/research or normative legal research is another name for the normative juridical approach. A literature study (review of the literature) is used in the normative juridical research phase, but interviews might be conducted to complete the literature study if necessary. Included in normative juridical studies/approaches include legal history and legal comparisons, as well as legal philosophy.

In research, library materials are basic research data that are classified as secondary data [5]. For the juridical-normative approach, data collection techniques are carried out through analyzing data that can be obtained in the laws and regulations, textbooks, journals, research results, encyclopedias, bibliographies, cumulative indexes, and others [6]. This study aims to find the link between facts and behavior which can then be continued with research to find problems (problem finding) which are then followed up on problem identification and culminate in research to solve problems (problem-solution) [7].

3 Results and Discussion

3.1 The Position of Creditors in Borrowing and Borrowing Money Without Collateral Based on Information Technology

Borrowing and borrowing mean trust between creditors and debtors. In building trust between parties, information is needed. The information required from the debtor will be requested by the service provider which is then submitted to the creditor as a requirement for borrowing and borrowing. On the other hand, in this case, the organizer and creditor must also provide complete data information regarding the facility. According to An agreement, according to Article 1313 BW [8, is a legal act in which one or more people tie themselves to one or more other people. According to R. Setiawan, this definition is incomplete and excessively broad. It's

said to be unfinished because the definition only refers to a one-sided agreement. In this regard, it is necessary to make improvements regarding the definition, namely:

- a. The act must be interpreted as a legal act, namely an act that aims to cause legal consequences;
- b. Adding words or binding themselves to each other in Article 1313 BW [8]

In addition, the understanding of the agreement was put forward by Subekti who said that An agreement is a commitment made by one person to another or a promise made by two persons to each other to carry out a task [9].

It should be noted in a contract or An agreement, according to Article 1313 BW, is an act by which one or more people tie themselves to one or more other people. So that the benchmark for the legality of electronic contracts in the legal system of Indonesian agreements is determined by Article 1320 BW. In Article 1320 BW is the condition of the validity of an agreement in general, 4 conditions must be met for the validity of the agreement. These conditions include:

- a. Agree;
- b. Ability to agree;
- c. A certain thing;
- d. A permissible cause

If the legal conditions of the agreement as set out in Article 1320 BW have been met, then based on Article 1338 BW, the agreement has the same legal force as the force of a Law. The provisions of Article 1338 of the BW stipulate that all lawfully made agreements shall apply as law to those who make them.

In general guarantees, the provisions of Article 1131 BW that all creditors have the same position as other creditors (principle of parity creditor), that no creditor is prioritized, is privileged, and takes precedence over the settlement of his debts [10]. In Article 1134 paragraph (2) BW that liens Mortgages take precedence over privileges, unless the law specifies otherwise. It can be said that creditors holding material security rights have a stronger position than creditors holding privileged rights who are also called separatist creditors [9]. An easy procedure without going through the beslag procedure through the bailiff, the provisions of the beslag provisions regulated in the civil procedure book do not apply.

The reason why separatist creditors are easier or less affected by bankruptcy is that the position of separatist creditors is creditors who hold liens and mortgage rights which are higher than privileges because in principle the will of the parties is prioritized over the provisions of Article 1134 paragraph 2 BW which is pawn and mortgage. is higher than privilege [11]. It can be concluded that the position of the separatist creditor is higher than the preferred position based on Article 1134 paragraph 2 BW.

Thus, the creditor's position in lending and As a contemporaneous creditor, borrowing money without collateral is a bad idea who competes in the fulfillment of his receivables, unless there is a reason that gives creditors a preferred position. A more favorable position for one creditor against another can occur because of laws and regulations or because of an agreement. Concurrent creditors have the same rights to demand fulfillment of receivables against all of the debtor's tangible assets, both moveable and immovable.

3.2 Legal Protection Model for Online Loan Creditors

The presence of this Fintech industry is attached to the negative stigma from the community, especially in the collections made to debtors. It will not happen if the debtor fulfills his performance, then the same stigma must be discussed against borrowers who commit violations. Therefore, here the author will provide a model of legal protection for creditors as lenders. There are at least 3 (three) models of legal protection which are classified into two types legal protection according to Muchsin, 3 models including the Financial Protection Model, the Guarantee Protection Model, and the Agreement Protection Model (Agreement), then there is also a Repressive Legal Protection using 1 model, namely the Sanction Protection Model.

Preventive Protection

Preventive legal protection is a legal protection that aims to prevent a dispute from occurring, legal subjects are allowed to object and give their opinions before there is a government decision that gets a definitive form [12]. This preventive legal protection is applied by the existence of laws or regulations that are intended to provide limitations in carrying out an obligation and prevent violations [12]. With preventive legal protection, the government is expected to act more carefully in making a decision [12].

Legal protection for Fintech Lending-based Service Users before the occurrence of an agreement can be carried out Fintech service providers' efforts are helping. The organizer's efforts prior to a violation are to implement the fundamental principles of legal protection for Fintech service users. These principles, which include transparency, fair treatment, reliability, and secrecy, are controlled under Article 29 of POJK Number 77/POJK.01/2016 concerning Information Technology-Based Lending Services, data security, and simple, fast, and easy resolution of User disputes at affordable cost.

In its development, Article 29 of the POJK above has not fulfilled the element of preventive protection that can be implemented in the laws and regulations (can be regulated in the Law or POJK) that provide clear creditor protection, namely:

- a. Financial protection
requires insurance involvement in online loan capital disbursement
- b. Guarantee protection
opens up opportunities for guarantees in the form of intangibles, such as a National Identity Number (NIK) or Debtor Personal Data
- c. Protection Agreements
strengthen the side of the agreement by closing the gaps in the creditor's weakness in the content of the agreement. The standard electronic agreement clauses in the ITE Law have outlined the position of the lender and the recipient must be balanced, meaning that the making of the clause should not be one-sided, whether it favors the strong (organizers/creditors) or favors the weak (debtors as consumers).
- d. There is education for investors
regarding the risks of implementing online-based lending and borrowing money. This section is the responsibility of the authorities to improve financial literacy (educational loans) so that creditors can sort and choose to channel their funds in a safe place.

Repressive Legal Protection

Repressive legal protection is legal protection with the goal of resolving conflicts. Only after the first infraction may this legal protection be implemented. Disputes between users and other users, as well as between users and operators, can emerge in Fintech Operators based on Fintech Peer-to-Peer Lending. If a disagreement does arise, there is a process in place to settle it. A party who feels offended might file a complaint to have the disagreement handled as soon as possible.

The Operator must quickly follow up on the complaint action taken by the User of the Fintech Peer to Peer Lending service to the Fintech platform Operator. Financial service actors, in this case Fintech service providers based on Fintech P2P Lending, are obligated to comply with

Article 38 of POJK Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, which states that:

- a. Internal examination of complaints in a competent, correct, and objective manner;
- b. Analyze to ensure the veracity of the complaint;
- c. Submit an apology and offer compensation or repair of products and or services, if consumer complaints are true.

Based on the provisions of the POJK, if in the future there is an action of default by the debtor and the failure to pay is proven by the creditor as the injured party, then the creditor and the organizer are entitled to receive compensation. If the complaint does not result in an agreement, the Lender has the option of resolving the matter outside or inside the courtroom. Legal protection in the form of affirmation of sanctions in the POJK / ITE law can be applied. The sanctions are of course in the form of criminal sanctions even though in the rules, lending and borrowing are the realms of civil law agreements. However, if you have falsified your identity or did not target the borrowing correctly because it was for personal and group gain, or planned from the start to default, the author thinks that this has entered the realm of criminal law.

If the rules for the protection of criminal sanctions can be included in the POJK, of course, debtors or other parties will think again about manipulating data or deliberately failing to pay. Especially during this Pandemic, people are struggling economically, with online loans that make it easier to get funds by not meeting in person, but with people taking advantage of these conditions, ordinary people are tempted to borrow without looking at the aspect of being able to pay at a later date, which in the end took the wrong path. Either by refusing to pay or by manipulating identity.

4 Conclusion

In Article 1131 and 1132 BW of individual rights, the creditor in lending and borrowing money without collateral has the same right to seek fulfillment of receivables on all debtor's property, whether moveable and immovable property, as a concurrent creditor. In other words, all concurrent creditors' receivables are guaranteed by the debtor's property as a whole, and no concurrent creditors' receivables take precedence.

To provide legal protection for creditors, efforts can be made to reduce the occurrence of problems with borrowing and borrowing money through information technology. The most important thing is to check that the Fintech Lending Provider has been registered/licensed at the OJK, and to apply for loans only from providers who have been registered/licensed at the OJK. The creditor can file a complaint with the organization if you have done this and the debtor is in default.

Models of legal protection that can be applied include a. financial guard in the form of insurance for creditors; b. Guarantee Protection in intangible assets, namely the resident registration number; c. Protection at the time of the agreement; and D. criminal sanctions adopted from UU-ITE for its implementation in POJK.

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