



Enforcement of the Crime of Money Laundering in Digital Financial Transactions

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Abstract

These financial crimes can range from theft, fraud to taking advantage of other parties in the financial industry, for example: account theft, ATM browsing, credit card fraud, fake draws. Several cases of terrorist financing use digital payments as a means of online funding. There is also evidence that corrupt actors use digital payments to hide the proceeds of their crimes. This situation can certainly threaten economic stability and the integrity of the financial system. Therefore, a comprehensive regulatory framework through the establishment of fintech legislation needs to be developed to maintain the integrity of digital payments and strengthen the government's regulatory function. Terrorist financing is even included in financial crimes: apart from hiding and protecting the origins of the proceeds of crime, it is also included in financial crimes in the money laundering group.

Keywords: Crime of Money Laundering, Digital Finance, Financial Technology

Introduction

The widespread growth of (Peer to Peer Lending) P2P Lending itself can be seen from OJK data which shows that P2P Lending is showing a very positive trend, it was recorded that until September 2017 the growth in distribution of funds through Peer to Peer Lending in Indonesia reached 1.6 trillion rupiah. Meanwhile, funding outside Java increased by 1,074% (one thousand and seventy four percent) since the end of last year to IDR 276 billion (two hundred and seventy six billion rupiah). This is supported by an increase in the number of lenders outside Java by 784% (seventy eight percent) as well as an increase in the number of borrowers by 745% (seven hundred and forty five percent).¹ Not only in Indonesia, in other countries the

¹Adi Setiadi Saputra, "Protection of Lenders as Consumers and Responsibilities of Peer to Peer Lending Organizers in Peer to Peer Lending Activities in Indonesia," VeJ Journal Volume 5 N (nd).



development of the P2P lending industry itself is very rapid, for example in China where the increase in P2P in China itself is caused by several factors such as:²

1. The internet penetration rate in China has reached 56 percent in 2018.
2. There is a large supply of funds available from investors.
3. Financial demands from small to medium-sized companies that cannot be met by the existing banking system.

In China itself, as is also the case in all countries, P2P lending is more friendly to small businesses because large banks in China generally prefer state-owned companies or large companies, where around 70 percent of loans from these banks are commercial loans, with only 30 percent for individuals.³The legal basis for online loans is regulated in Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. Article 1 Number 3 POJK 77/POJK.01/2016 states that Information Technology-Based Money Lending and Borrowing Services are the provision of financial services to bring together lenders and loan recipients in order to carry out lending and borrowing agreements in rupiah currency directly. How this law is enforced is clearly a quite complicated problem. The type of legal research carried out is normative juridical (normative law). In this research, we use the statutory approach and the conceptual approach. The statute approach is an approach by using legislation and regulations.⁴

However, in practice, problems related to online loans still often occur in society and tend to be detrimental to society. In reality, the biggest factor why this case

²"Peer to Peer Lending (P2P) Lessons from China," LPPI Journal No A.13 Ap (2019).

³Ibid.,

⁴Peter Mahmud Marzuki. Legal Research. Prenladamedia Group (Kenlcanla Division). East Jakarta. 14th cet. 2009 p 137



can occur is because many Indonesian people still don't understand about this business but have started to get involved directly in this business. So there are still many people who are trapped in illegal platform businesses and complain about large interest rates. In fact, this actually will not happen if the public first checks whether the platform is registered with the OJK or not.⁵ Furthermore, the problem is also further complicated by cases of default where the loan recipient is unable to repay the loan according to the time period agreed upon in the agreement. Ultimately, this gives rise to new problems related to inappropriate collection methods carried out by P2P Lending Operators, such as disseminating data, bullying and improper collection of loan recipients.⁶

A. DIGITAL FINANCE

In today's sophisticated era, digital payment transactions are certainly nothing new. Digital payments or often also called digital payments or electronic payments are payments made electronically, where in electronic payments the money is stored, processed and received in the form of digital information and the transfer process is initialized via an electronic payment instrument.⁷

Digital payments is a payment transaction innovation that is currently widely used. The development of digital payments began in 1887. At that time, digital payments were just the idea of transactions using credit cards. This was explained in a novel by Looking Backward in 1887.

⁵Dona Budi Kharismai, "Problematics of the Mechanism for Settlement of Defaulted Loans on Online Loans in Indonesia," *Rechtsvinding Journal* April 7 (2020).

⁶ Ayu Dian Ningtias, et al., "Legal Aspects of Illegal Online Loan Companies According to the Legal System in Indonesia", *Independent Journal of the Faculty of Law, University of Indonesia*.

⁷Dinata Houston, "Adoption of Digital Payment Acceptance Among Millennials," *Medium Journal*, vol 7 No. 2 (2019) Faculty of Communication Sciences LSPR College of Communication Sciences, p. 58



Then the emergence of the internet in 1969, which was created by Tim Berners-Lee in the form of internet pages or sites for sharing information, became the opening gate for the increasingly rapid development of digital payments.⁸

In 1983 the idea of electronic money reappeared, initiated by David Lee Chaum, who then developed his ideas in a research paper on digital cash. Over time, the idea of digital payments continues to develop and become more diverse. To be precise, in 1994 Stanford Federal Credit Union launched online banking services and became the only institution that did so. Then followed in 1998, a mobile payment system with wireless transactions emerged, namely Paypal, which was then followed by several other mobile payments in the form of Apple Pay and Alipay. The success of PayPal, Apple Pay and Alipay has apparently had an impact on the idea of electronic money and digital transaction payment tools which are more varied in various parts of the world.

Security is a feature that must be available on every website, e-commerce application or digital payment application. According to Hua, quoting from Muhammad Irham Farohi's thesis, he stated that security is something that refers to the ability to protect from potential dangers or threats. When related to online services, whether websites or applications, security is a mandatory feature that both must have⁹ However, unfortunately, regarding payment failure which is often a problem between consumers and online lenders, until now there has been no comprehensive

⁸Irfan Prapmayoga Saputra, "Analysis of the Effectiveness of Using Digital Payments for Students at the Darmajaya Institute of Informatics and Business," Thesis, (Faculty of Economics and Business, Darmajaya Institute of Informatics and Business, Bandar Lampung, 2019), p. 13

⁹Soraya Novika, "Online Loans to Fintech Skyrocket During the Pandemic" Reported on the page: <https://finance.datik.com/fintech/D-5158115/Loan-Online-Ke-Fintech-Skyrocketing-During-Pandemic>,



regulation regulated by the OJK. This is because according to the OJK it is not something that is an urgency to make a regulation. This is also supported because there is no law that specifically regulates Financial Technology.

Lawrence M Friedman in the Legal Subsystem theory which states that the success or failure of law enforcement depends on these three components because they are interrelated with each other. Friedman believes that legal substance is referred to as a substantial system that determines whether or not the law can be implemented, legal structure plays an essential role in determining whether or not the law can be implemented properly and legal culture also has an influence because it focuses on human attitudes towards the law and the legal system. beliefs, values, thoughts and hopes. Legal culture is the atmosphere of social thought and social forces that determine how the law is used, avoided or misused and greatly influences the operation of the law, namely legal culture. This legal culture functions as a bridge that connects legal regulations with the legal behavior of all members of society.

B. THE CRIME OF MONEY LAUNDERING IN DIGITAL FINANCIAL TRANSACTIONS

If we relate it to the current economic conditions of society, of course the presence and convenience offered by P2P lending is very helpful. Based on data reported by Finance detik, online loans have skyrocketed and their use is almost uncontrolled during the pandemic, reaching more than 100% increase in online loan customers.¹⁰The implementation of fintech until 2020 will be very attractive because the convenience offered by fintech not only includes payment systems, but also

¹⁰Ningtias, Ayu Dian, et al., "Legal Aspects of Illegal Online Loan Companies According to the Legal System in Indonesia", Independent Journal of the Faculty of Law, University of Indonesia, p. 340-350



financing, capital provision, risk management as well as investment management and other financial services. Behind this convenience, fintech has become a practice area for unlawful acts, including the crime of money laundering. The presence of fintech is much more dynamic, causing concerns among law enforcement officials. Therefore, its presence needs to be monitored with strict regulations. There is no statutory instrument yet that regulates financial technology so that in terms of monitoring the use of Fintech and the practice of illegal practices and its misuse in money laundering crimes. The crime of money laundering is a very complex and organized one. It is not easy to carry out several stages in money laundering, one of which is the layering stage which will make the assets obtained become layered and not known as assets from previous criminal acts. So of course the modus operandi of this crime will continue to develop and look for new platforms so that it cannot be caught by the law.

Money lending and borrowing services based on information technology are positioned as a liaison between loan recipients and transfer providers so that in this case an agreement will be made directly in rupiah currency. The existence of fintech is directly monitored by the OJK, but with the rapid development of the times, the growth of illegal fintech is also increasing.¹¹ Online-based lending to unlicensed/illegal Fintech makes monitoring efforts difficult because of the wide reach of these social networks. One of the issues related to the existence of illegal online loans, which is increasing day by day, is the potential for a new modus operandi, namely focusing on the crime of money laundering. Money laundering is a crime as stated in Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering (hereinafter

¹¹ Rahmawati, Nur Ainiyah, "Indonesian Criminal Law: Ultimum Remidium Or Primum Remidium", *Sebelas Maret University Law Journal*, 39-45



referred to as the TPPU Law) whose regulations are contained in Chapter II in Ps. 3 to Ps. 7.

Regarding illegal online lending fintech, the potential for money laundering occurs because the circulation of money is far from being supervised by law enforcement officials so that in this case, if there are no strict legal regulations controlling illegal P2P Lending fintech, it will be very easy for perpetrators to use digital economic media as a means of means of hiding assets and turning these assets into assets which also eliminates the unlawful nature of assets resulting from criminal acts. Criminal law recognizes the principle of *ultimum rimidium* which requires that a punishment in the form of criminal punishment is the last resort to be imposed, if the function of the law is others are lacking or unable to accommodate protection for the community or the injured party.¹²

Law as a form of social control over the behavior and development of human activities is very much sought to continue to fortify criminal acts that are developing with various new *modus operandi*. However, in reality it is very difficult, this is because the law often staggers in adapting to the dynamic development of society, so that in forming a law it is not uncommon for there to be a criminal case that cannot be caught or law enforcers do not find the right law to catch them. This is due to weak regulations. As will be explained below, the number of illegal online loans has increased sharply after the outbreak of the pandemic, even though if we examine it in 2019, there have also been various modes of crime that emerged from illegal P2P lending which cannot be accommodated by law. Illegal P2P Lending which provides online loan services

¹²Ibid., p. 66.



outside of OJK supervision can freely rotate or create transaction flows away from supervision, including supervision from PPATK as an institution that plays a role in preventing money laundering. Meanwhile, with high interest rates, P2P Lending which provides lending services will be free to commit other criminal acts such as extortion and threats which have occurred a lot in recent years. This writing is new because there are no similarities in previous writings. This discussion relating to legal fintech P2P Lending is the first discussion that the author has outlined because the author sees that there is a legal vacuum and the law is not strict in accommodating people's welfare and enforcing the law in every illegal digital transaction.

Responsibility or criminal liability is a term for criminal responsibility in English, and in Dutch it is called toerekenbaarheid. In the concept of strafbaarfeit, basically it is not only related to legal issues but is also related to morality or decency which is generally recognized and inspired as a community entity that exists in society. This is desired with the aim that the goal of just law enforcement can be achieved. It has been stated in Roeslan Saleh that criminal liability occurs because the perpetrator carries out this action and it is ensured that the perpetrator is able to take criminal responsibility and fulfill the elements of criminal responsibility.

The emergence of illegal loan services can cause losses not only to individuals but can also have an impact on the country, because the source of funds in illegal fintech is not known where it comes from. Some of the weaknesses of illegal fintech provide opportunities for irresponsible people to commit crimes. Money laundering through P2P Fintech can be held responsible if the actions carried out fulfill the elements of error above.

Conclusion



The act of money laundering using Fintech is classified as an act that uses information technology to commit crimes by transferring money from criminal acts to other people by providing loans. So, in the case of criminal acts of money laundering, the credibility of the service provider must first be considered as explained in the Annual Coordination Meeting of the Financial Transaction Analysis Reporting Center by Agus Rahardjo who revealed that it is worth studying further regarding the rise of illegal P2P lending which has the potential to become a layering place for money laundering. , Agus Rahardjo then explained that there were fundamental questions regarding the origin of funds from P2P Lending service providers to provide loans. As regulated in article 2 of the Money Laundering Law, it relates to the predicate crime of money laundering which can be charged under the Money Laundering Law. And in Chapter II of the Money Laundering Law it is regulated in Article 3 with a description of actions, one of which is placing and transferring as actions that can be carried out by online loan service providers to disguise the origin of assets. The individual online loan service providers as stipulated in Article 5 paragraph (2) cannot apply to reporting parties who have carried out their reporting obligations in line with those stated in the law. It is also regulated in criminal liability that the legal subjects that can be charged are individuals or corporations or legal entities, so that Article 6 paragraph (1) of the Money Laundering Law provides a limitation that for crimes committed by corporations, those who can be held responsible are the personnel or controllers of the corporation. Apart from the Money Laundering Law from a digital transaction perspective, Indonesia has special regulations, namely Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE Law). It is regulated in Article 32 paragraph (1) of the ITE Law that



by providing unconditional loans to other people, including the elements of criminal acts in Article 32 paragraph (1) of the ITE Law, it has fulfilled the elements of money transfer or transmission with punishment as regulated in Article 48 paragraph (1) in the form of a maximum imprisonment of 8 (eight) years and/or a fine of a maximum amount of IDR 2,000,000,000.00 (two billion rupiah).

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