

Legal Protection For Users of Illegal Online Loan Services Regarding Personal Data Confidentiality

Ayu Dian Ningtias¹, Fajar Seto Nugroho², M. Reza Satya Bagaskara³
ayudianningtias99@gmail.com, dawnsetonugroho88@gmail.com

Law Faculty University Of Islam Lamongan
Law Faculty University Of Islam Lamongan
Law Faculty University Of Islam Lamongan

ABSTRACT

This research is based on the fact that globalization has driven the development of information and communication technology, which in turn has changed people's lifestyles and various aspects of life, including the economy. The transition from a traditional manufacturing-based economy to a digital economy based on information technology and creativity is known as the creative economy. However, information technology also brings challenges, such as data security issues in online loans. Fintech (financial technology) has become a significant innovation in the financial sector, facilitating financial transactions through services such as e-commerce and online loans. The method in this research is to use the Normative legal research method using a legislative approach and a conceptual approach. The legal materials in this study are primary legal materials and secondary legal materials. From the results of the study, it can be concluded that: The government has made efforts to provide legal protection against possible crimes that occur to consumers of illegal online loans through preventive and repressive actions. Preventive actions are carried out through the Electronic Information and Transactions Law (ITE), Law Number 27 of 2022, concerning Personal Data Protection (PDP Law), and the role of the Financial Services Authority (OJK) in supervising the circulation of online loan services. Repressive legal protection is implemented through Article 2 Paragraph 1 and Article 15 Paragraph 2 of the PDP Law, Law Number 11 of 2008 Article 26 Paragraph 1 concerning the ITE Law, and other laws that stipulate sanctions such as fines, imprisonment, and other additional penalties. Law enforcement against perpetrators of personal data abuse in the context of illegal online loans includes two main approaches, judicial and non-judicial legal efforts. Judicial legal efforts involve the court process to resolve disputes after violations and unlawful acts occur based on the PDP Law, the ITE Law, and Article 368 of the Criminal Code. Meanwhile, non-judicial legal efforts involve complaints to relevant institutions, such as the OJK, Kominfo, and the Police, which have a role in supervising, imposing administrative sanctions, and conducting investigations into these violations. This approach emphasizes the importance of cooperation between various institutions to ensure effective law enforcement against illegal practices in the online lending sector.

Keywords: *legal protection, illegal online loans.*

Introduction

Globalization has a very high influence on the development of information and communication technology, this change certainly also changes people's lifestyles and develops in a new order of life and encourages changes in culture, social, defense, security, law enforcement and of course has a great influence on economic activities. The development of information technology has led to the creation of a new market that has encouraged the development of the community's economic system, from the traditional community economic system based on the manufacturing industry towards a digital economy based on information technology, intellectual creativity and science known as the creative economy. However, information technology is actually said to be a "double-edged sword" because on the one hand it offers convenience, but on the other hand there are also various problems that follow it.¹

Nowadays, financial systems can be done online, very different from the past when it could only be done conventionally. This is due to the emergence of a new technology called Fintech (financial technology). Fintech is a financial system supported by AI (artificial intelligence) and the internet such as digital payments and online financing. Consumers can experience digital financial system services just by opening their smartphones.²

National Digital Research Entre (NDRC) defines Fintech as an innovation in the field of financial services and finance with a touch of modern technology. Fintech is a technology that can provide financial services through software applications such as online banking, digital payment applications. By utilizing the advancement of financial technology, it is able to change the order of financial transactions to be more practical and modern. The presence of Fintech in Indonesia is the impact of high market demand and the consumptive nature of Indonesian society towards the use of gadgets. In addition, the lifestyle needs of Indonesian society are very high, especially young people, thus triggering public demand for services in the financing sector that provide offers.

¹ A. Syaifudin, *Perlindungan Hukum Terhadap Para Pihak Di Dalam Layanan Financial Technology Berbasis Peer To Peer (P2P) Lending (Studi Kasus Di PT. Pasar Dana Pinjaman Jakarta)*, Fakultas Hukum Universitas Islam Malang, 2020, h. 408–421.

² Asosiasi Fintech Indonesia, *Handbook Fintech untuk Usaha Mikro Kecil Menengah*, Jakarta, 2019, h. 4

Borrowing with a guarantee and terms that are easier and more flexible compared to online lending and is also an alternative source of financing for micro and medium-sized businesses. Online lending is a type of Fintech that provides debt with a return in the form of interest on the loan. The rapid growth of informal technology-based online lending providers has not been balanced with education that is directed at the general public about legal and illegal online lending providers, regulations related to online lending, potential leaks in the personal data of online lending users, and thus causing various risks for online lending users.³

. The online lending industry is also known as illegal online lending. The legal lending industry is usually regulated and initiated by the Financial Services Authority (OJK). The online loan application is usually used to provide loans to loan users who are not interested in advertising real estate, but the specific loan application is used to provide loans that are in accordance with the needs of the loan itself. Illegal loans are usually used to provide loans with high interest rates that are not related to the loan itself. For example, a loan of 10 million rupiah can be paid off by phone in 7 days and the interest can reach 12 million rupiah.⁴

Protection of personal data has also been regulated in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions, which is stated in Article 26 paragraphs (1) and (2) which state that: (1) Unless otherwise determined by statutory regulations, the use of any information via electronic media concerning a person's personal data must be carried out with the consent of the person concerned. (2) Any person whose rights are violated as referred to in paragraph (1) may file a lawsuit for losses incurred based on this Law. The meaning of the Article can be conveyed that, if a person uses other people's information through electronic media without first asking for or obtaining consent from the owner concerned, then the person can be sued for the losses he/she has caused, unless otherwise specified in the legislation. The consent referred to in the Article implies that not only must the person agree and consent that his/her personal data is used, but there must also be awareness to provide consent for the use or utilization of

³ Triasih & Nuswanto, *Perlindungan Hukum Bagi Konsumen dalam Perjanjian Pinjaman Online*, Seminar Nasional Hukum Universitas Negeri Semarang, 2021, h. 593.

⁴ Sinaga, E. P., & Alhakim, A, *Tinjauan Yuridis Terhadap Perlindungan Hukum Bagi Pengguna Jasa Pinjaman Online Ilegal Di Indonesia*, Fakultas Hukum Universitas Internasional Batam, 2022, h. 162-173.

personal data in accordance with the purpose or interests stated at the time of the acquisition.⁵

Based on this background, this study examines how legal protection for consumers of illegal online loan services relates to sanctions against business actors for the spread of personal data of illegal online loan consumers.

Research methods

The research method used in this study is to conduct a normative legal approach, an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as a literature approach, namely by studying books, laws and other documents related to this study.

Research Results and Discussion

Legal Protection can be interpreted from a combination of two definitions, namely "protection" and "law". KBBI defines protection as something or an act that protects. Then, law can be interpreted as a regulation or custom that is officially considered binding, which is confirmed by the ruler or government. In implementing legal protection, there are two means of implementing legal efforts. Means of preventive legal protection and repressive legal protection

1. Preventive legal protection is a legal protection given to legal subjects if they receive a burdensome action resulting from a definitive government decision. Preventive legal protection aims to avoid disputes. This means of protection provides an opportunity for the people to express their opinions or objections (*inspraak*) before a definitive decision is made.⁶
2. Repressive legal protection is protection in the form of sanctions carried out after problems such as imprisonment, fines and other sanctions. Repressive legal protection aims to resolve disputes..⁷

It can be interpreted as preventive legal protection and repressive legal protection, namely: Preventive Legal Protection which is basically preventive is

⁵ Kornelius Benuf, *Perlindungan Hukum Terhadap Keamanan Data Konsumen Dalam Bisnis Financial Technology (Fintech) Di Indonesia*, Universitas Diponegoro, 2019, h.156.

⁶Philippus M.Hudjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, (Surabaya: Bina Ilmu, 1987); 2

⁷ *Ibid*

interpreted as prevention. Preventive legal protection is very important for government actions that are based on freedom of action because of the existence of legal protection.

According to Law Number 40 of 1999 concerning the Press, legal protection is a guarantee of protection by the government and/or society to citizens in carrying out their functions, rights, obligations, and roles in accordance with the provisions of applicable laws and regulations. In Law Number 23 of 2004 concerning the Elimination of Domestic Violence, legal protection is any effort aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties, either temporarily or based on a court ruling..

Data comes from the flow of information in the form of a signal, which means that the signal is given. According to the Great Code of Indonesian Language, data is a true and actual information which means data is an information that is processed through a device that functions automatically following the instructions given for its intended purpose and is stored for processing. Data is translated as a true and actual information that is not realized in the flow of information. Several experts have also defined the meaning of data, such as according to Nuzullal Algustinal, data is an informal way of recognizing something that often occurs in the form of small things, figures, figures, graphic labels, letters, symbols, letters, and others that express thoughts, conditions, objects, and situations.⁸

Protection of personal data has been regulated in Law No. 19 of 2016 concerning Electronic Transactions and Law No. 11 of 2008 concerning Information in Electronic Communications, which is stated in Article 26 paragraphs (1) and (2) which state that:

- 1) Unless otherwise specified by the legislation, the use of any informal electronic media that concerns a person's personal data must be carried out with the consent of the person concerned."
- 2) "Any person who violates the provisions of this Act shall be liable for (1) any loss caused by the Act." Every person who violates the law is entitled to be held liable for the losses incurred based on the law."

In conclusion, personal data is a true and absolute protection owned by humans as individuals. The meaning of personal data protection is based on the explanation in Article 1 of Law Number 27 of 2022 concerning Personal Data Protection, that personal data is a matter of an individual who is identified or can be identified

⁸ JNS – Indonesian Journal on Networking and Security - Volume 4 No 3 – Juli 2015 – ijns.org.

separately or combined with informal information directly or indirectly through electronic or non-electronic systems. Privilege involves the inability of a group of individuals to cover and protect their personal affairs from the public, and also to control the flow of informality and recognize themselves to the extent that they are socially communicated to the public.

Understanding of Applications Applications are often also called software devices, are computer programs whose instruction content can be easily changed. Software applications are generally used to control hardware devices (often called device drivers), perform calculation processes, and interact with other more fundamental applications (such as operating systems, in programming languages).⁹ The development of digital technology has also changed the lifestyle of the community, including in the field of transactions, now the community can enjoy various financial services at home and abroad, even in mobile phones, at home the community can do various things such as payments, investments, insurance, and even loans. In fact, financial services products based on this technology are now starting to become popular in the community with the term Financial Technology which is then abbreviated as Fintech.

Financial Technology (Fintech) in Indonesia is commonly referred to as financial technology or financial technology. In simple terms, Fintech is a form of increasing interest in the financial industry. Another definition of Fintech is the development of business models and technological developments that have the potential to increase interest in the financial industry.¹⁰

In conclusion, Fintech is a new technology that has transformed the business model from conventional to modern, which previously only carried out transactions in cash, now can carry out transactions in a non-cash manner in a short time.

Punishment is a punishment given to someone after an offense, misdeed, or wrongdoing. According to the Great Code of Indonesian Law. Punishment is a legal action to force someone to punish someone for an offense or to punish them for an offense. Punishment is the giving of an undesirable (hurtful) thing to minimize undesirable behavior. The granting of punishment is the punishment given to the sufferer who is caused by someone after a violation has occurred, the punishment and the offense committed by someone as a form of punishment for disciplinary action.¹¹

⁹ Edukasi Financial Technology, diterima dari <https://www.bi.go.id/id/edukasi-perlindungan-konsumen/edukasi/produk-dan-jasa-sp/fintech/Pages/default.aspx>

¹⁰ Arner, Professor Douglas, International Organization Of Securities Commissions, IOSCO Research Report On Financial Technologies (Fintech), 2017. h. 4.

¹¹ Kamus Besar Bahasa Indonesia

The legal relationship is contained in the provisions of criminal law as well as civil law. In addition to administrative law. The legal relationship is regulated in Article 10 of the Criminal Code (KUHP), namely:

- 1) Basic Law, which consists of:
 - a. Multi law,
 - b. Penalty law,
 - c. Imprisonment law,
 - d. Fine law.
- 2) Imprisonment law, which consists of:
 - a. Nullification of certain things,
 - b. Forgery of certain things,
 - c. Announcement of the decision of the matter.

As for administrative sanctions in the regulation of legislation, there are several types of sanctions, namely:

- 1) Oral warning or reprimand,
- 2) Written warning or reprimand,
- 3) Legal action (bestuursdwaling / policy dwaling),
- 4) Recall of profitable decisions,
- 5) Administrative denial, and
- 6) Legal reintroduction (dwalngsom).¹²

Criminal sanctions are a legal act, because in general in the criminal law, the person who is known to be the perpetrator of the crime is also known as the traffic law from the authorities. Criminal sanctions are a type of criminal sanctions that are of a negative nature that are considered to be legal in the criminal act of the perpetrator of the criminal act that is actually disturbing or counterfeiting the interests of the law. Provisions of the Criminal Code 64 of Law No. 1 of 2023 concerning the Criminal Code (hereinafter referred to as the 2023 Criminal Code) regulates criminal sanctions

¹² Wicipto Setiadi, Sanksi Administratif Sebagai Salah Satu Instrumen Penegakan Hukum Dalam Peraturan Perundang-Undangan, Jurnal Legislasi Indonesia, 2009, h. 608.

consisting of basic criminal sanctions, secondary criminal sanctions, and special sanctions for certain criminal acts as determined in the law.

In addition to the principal offense, the provisions of Article 65 paragraph (2) of the 2023 Criminal Code provide that the order of the offense determines the lightness of the offense. Then, in relation to the explanation, Article 65 paragraph (2) of the 2023 Criminal Code provides that the party has the option to carry out one of the offenses that is alternative in nature with the orientation of the purpose of the capital sale. Thus, the legal basis for personal violations by online lending organizers is in the form of a penalty, a penalty is a penalty that is given to the sufferer who is always caused by someone after a violation occurs, a penalty and a penalty. Punishment is the provision of unwanted (hurtful) things to minimize unwanted behavior. Salnksi is one of the indicators that reverses the path of the educational process in explaining a person's behavior, so that the existing problems can be overcome.

Article 45 (1) regulates the provisions of the fines that will ensnare the perpetrator if he/she commits a crime in the personal use of the person who violates Article 27 (1) in the Electronic Technology Information Law, namely with a maximum fine of 6 (six) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Article 27 paragraph (3) of Law No. 11 of 2008 concerning Information in Electronic Transactions which states:

“Any person who unlawfully distributes or transmits or makes accessible Electronic Information or Electronic Documents that have defamatory or counterfeit content,”

The penalty imposed is regulated in the criminal provisions of the ITE Law, namely Article 45 which states:

"Any person who fulfills the elements of a crime as meant in Article 27 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) shall be punished with a maximum fine of 6 (six) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiahs).¹³

In the Personal Data Protection Act, the criminal offense of someone stealing personal data belonging to a traffic person is regulated for the following crimes:

a. Article 67 paragraph (1)

"Any person who unlawfully obtains or collects personal data that is not his/hers with

¹³ Priliasari, Pentingnya Perlindungan Data Pribadi Dalam Transaksi Pinjaman *Online* (The Urgency of Personal Protection in Peer-to-Peer Lending), Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Hak Asasi Manusia, Jakarta, 2019, h. 12

the intention of benefiting himself/herself or any other person who unlawfully causes loss to the subject of personal data shall be subject to a maximum criminal penalty of 5 years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah)”.

b. Article 67 paragraph (2):

“Anyone who intentionally violates the law by revealing personal data that is not theirs will be subject to a maximum penalty of 4 years and a maximum fine of Rp. 4,000,000,000.00 (four billion rupiah).

c. Article 67 paragraph (3)

“Anyone who intentionally uses personal data that is not theirs in violation of the law will be subject to a maximum penalty of 5 years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).”

d. Article 68:

"Any person who intentionally makes personal property illegally or intentionally causes personal property damage with the intention of benefiting himself or herself or a person who intentionally causes harm to the traffic will be subject to a maximum penalty of 6 years and a maximum fine of Rp. 6,000,000,000.00 (six billion rupiah)."

In other words, the exoneration is not maximal in exonerating someone's personal life. The Exoneration Clause is also a clause for the perpetrator of the online transportation of goods to become an exit door for the way out of the responsibility that should be the responsibility of the perpetrator of the crime.¹⁴

Conclusion

Legal protection against possible criminal acts that may occur in the hands of illegal online lending consumers has been carried out by the government, including Preventive Legal Protection by the government in the form of the Electronic Transaction Information Law (ITE), Law Number 27 of 2022 concerning Personal Protection (PDP Law), and also through the Financial Services Authority Number 77/POJK.01/2016 (OJK) which has the authority to monitor the circulation of online lending services. the focus of the matter is the repeated criminal acts with the abuse/distribution of personal data through the law.

Bibliography

- A. Syaifudin, *Perlindungan Hukum Terhadap Para Pihak Di Dalam Layanan Financial Technology Berbasis Peer To Peer (P2P) Lending (Studi Kasus Di PT. Pasar Dana Pinjaman Jakarta)*, Fakultas Hukum Universitas Islam Malang, 2020, h. 408–421.

¹⁴ Ali M, *Dasar-Dasar Hukum Pidana*, Sinar Grafika, Jakarta, 2011, h. 156

- Adami Chazawi, *Pelajaran Hukum Pidana*, Jakarta, Raja Grafindo Persada, 2011, h.81
- Ali M, *Dasar-Dasar Hukum Pidana*, Sinar Grafika, Jakarta, 2011, h. 15.
- Arner, Professor Douglas, International Organization Of Securities Commissions, IOSCO Research Report On Financial Technologies (Fintech), 2017. h. 4.
- Asosiasi Fintech Indonesia, *Handbook Fintech untuk Usaha Mikro Kecil Menengah*, Jakarta, 2019, h. 4
- Edukasi Financial Technology, diterima dari <https://www.bi.go.id/id/edukasi-perlindungan-konsumen/edukasi/produk-dan-jasa-sp/fintech/Pages/default.aspx>
<https://www.hukumonline.com/berita/a/sanksi-pidana-kuhp-baru> akses 8 maret 2024
- JNS – Indonesian Journal on Networking and Security - Volume 4 No 3 – Juli 2015 – ijns.org.
- Kamus Besar Bahasa Indonesia
Kamus Besar Bahasa Indonesia (KBBI)
- Kornelius Benuf, *Perlindungan Hukum Terhadap Keamanan Data Konsumen Dalam Bisnis Financial Technology (Fintech) Di Indonesia*, Universitas Diponegoro, 2019, h.156.
- Ningtias, Ayu Dian, Munif Rochmawanto, and Enik Isnaini. "Limitation of State Control Rights over Natural Resources in Renewable Energy Management." *Jurnal Independent* 12.1 (2024): 117-124.
- Philippus M.Hudjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, (Surabaya: Bina Ilmu, 1987); 2
- Prihasari, *Pentingnya Perlindungan Data Pribadi Dalam Transaksi Pinjaman Online (The Urgency of Personal Protection in Peer-to-Peer Lending)*, Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Hak Asasi Manusia, Jakarta, 2019, h. 12
- Sinaga, E. P., & Alhakim, A, *Tinjauan Yuridis Terhadap Perlindungan Hukum Bagi Pengguna Jasa Pinjaman Online Ilegal Di Indonesia*, Fakultas Hukum Universitas Internasional Batam, 2022, h. 162-173.
- Takdir Yakindo, *Perlindungan Hukum Pengguna Jasa Pinjaman Online Terhadap Ancaman Debt Collector Dan Penjualan Data Konsumen*, Fakultas Hukum Pasundan, 2023, h. 10
- Triasih & Nuswanto, *Perlindungan Hukum Bagi Konsumen dalam Perjanjian Pinjaman Online*, Seminar Nasional Hukum Universitas Negeri Semarang, 2021, h. 593.
- Wicipto Setiadi, *Sanksi Administratif Sebagai Salah Satu Instrumen Penegakan Hukum Dalam Peraturan Perundang-Undangan*, *Jurnal Legislasi Indonesia*, 2009, h. 608.
- Widaya Justitia, *Perlindungan Hukum Terhadap Bank sebagai kreditur baru dalam pengalihan piutang atas kredit pemilikan rumah secara Top Up*, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 2017, Vol.4, h. 119-120
- Yanto, M., Ahmad Royani, and Hadziqotun Nahdliyah. "Challenges and Dynamics of Governance Law Implementation: A Critical Perspective In The Contemporary Context." *Jurnal Independent* 12.1 (2024): 71-87.