

Legal Protection For Victims Of Misuse Of Personal Data When Making Online Loans

Arabin Sandika

Master of Law pps Universitas Muhammadiyah Palembang

E-mail: arabinsandika29@gmail.com

Cholidi Zainuddin

Universitas Muhammadiyah Palembang

Arief Wisnu Wardhana

Universitas Muhammadiyah Palembang

ABSTRACT

Current developments are investments that take advantage of the digital era and globalization using application products, namely financial technology (Omarova, 2020). Financial technology is a combination of financial services and technology that makes changes to businesses that were previously conventional to become modern. Then, with modern technology, things are illegal and use other people's data. This research method uses normative juridical or doctrinal juridical research. The formulation of the problem is legal protection for victims of misuse of personal data when making online loans. The result is that legal protection can take the form of civil legal protection, criminal legal protection. Including those contained in the Financial Services Authority (OJK) regulations, however, this legal instrument does not yet comprehensively regulate the misuse of personal data for online loans..

Keywords: *personal data; victim; legal protection; abuse; online loans.*

I. INTRODUCTION

National development is sustainable development to create a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution. Policies in the financial sector, including banking, are always becoming more complex, faster, and must be coordinated by taking into account competitiveness and integration, the development of the national economy, the challenges of the financial system. which is increasingly complex. The country's economic development is now moving in a different direction, with the national and international economy becoming increasingly integrated.

The development of the national economy is always rapid. As the national economy is predicted to improve and strengthen, various policy adjustments are needed in the economic sector, including the banking sector. The relationship between the regulatory system and the implementation of economic activities in Indonesia, especially efforts to encourage national development related to economic development, also correlates with the overall economic system and economic law in Indonesia. Indonesian Development Economic Law refers to legal ideas and principles in Indonesia's directed economic system (administrative economics).

Indonesian socio-economic law reflects how to improve the welfare of Indonesian citizens as individuals, while maintaining dignity and the right to equality of life for vulnerable groups in a focused economic system and legal principles. These are laws and regulations (Simamora, 2014).

The basic idea of the Indonesian Economic Development Law is that the Indonesian economy will help build and increase the resilience of the national economy at the macro level, and the basic idea of the Socio-Economic Law is equal distribution of human resources and community income. And all Indonesian citizens have the right to work and a decent living. The current era of globalization has had a major impact on the world economy, and in this era of globalization, the Association of Southeast Asian Nations (ASEAN) is also committed to full integration of the Southeast Asian region. (Jufrida et al., 2017).

The current development of globalization has the potential to make Indonesia a destination country, facilitate the opening of domestic employment opportunities, increase people's income, and have an impact on Indonesia's welfare in terms of gross domestic product (GDP). (Wiratama Buana, 2022). Current developments are investments that take advantage of the digital era and globalization using application products, namely financial technology (Omarova, 2020). Financial technology is a

combination of financial services and technology that transforms traditional businesses into modern businesses.

Digital financial services, called financial technology, are services that enable payments without the need for physical forms, and these services can change society's cash and traditional payment systems (Muchlis, 2018). The main concern of the Indonesian people is the entry of private companies, especially China, which has invested large amounts.

These businesses are dominated by electronic systems, starting from electronic/digital payments (electronic payments) to online/digital loans which are also called "fintech lending". This means that apart from the two main areas of fintech, the main players in fintech are online markets (financial markets), intelligence and artificial intelligence, big data used as financial services (such as credit scoring), and asset management. Then he was also active in the field of robots) (Omarova, 2020).

This financial technology enables fast financing. Apart from that, you can also get loans without collateral. This is different from banks which are legally prohibited from providing loans without collateral, and even though banks provide loans without certain collateral, that does not mean the loan is completely without collateral.

Financial technology can be seen as an innovation in the financial sector that is

touched by modern technology, because it consists of two elements: finance and technology. Fintech is a phenomenon that combines technological and financial capabilities to change business models and lower barriers to entry.

The meeting between the Lender and the Loan Recipient is carried out in accordance with the meaning of Article 1 paragraph (6) of the Law on Information Technology-Based Money Lending and Borrowing, namely an Indonesian legal entity that provides, manages and organizes information technology-based money lending and borrowing, services are provided by the Provider. Borrower Services (P2PL Organization). Organizers can also fulfill intermediary requirements for organizers who carry out their activities through intermediaries. Make it easy for users to get to know each other creating legal relationships. A legal relationship is the definition of a relationship in which the law imposes rights on one party and obligations on the other party (Hidayani, 2020). In this case, the organizers facilitate it due to users' interest in having access to better financial conditions safely, transparently and easily (Novita, 2020). P2PL users are divided into two, namely:

- 1). Lenders, are individuals who seek a higher rate of return than can be collected from other interest-bearing accounts.
- 2). The loan recipient is an Indonesian citizen (WNI), considering that it is done in rupiah currency. Loan recipients are often

individuals seeking loans to refinance debt at a reasonable rate or small businesses that have difficulty obtaining low-value loans from traditional institutions. (Rahadiyan, 2019). Furthermore, the parties who can become Peer to Peer Lending providers in Indonesia are P2PL Organizers as intermediaries or facilitators who must have credibility with users, especially loan recipients, so that their rights as stipulated in laws and regulations and accountability are not violated as a form of returning the loan to the lender. Loan (Laksmi et al., 2020)

The Financial Services Authority (OJK) is an independent body that has the functions, obligations and authority of regulation, monitoring, inspection and investigation. OJK was established based on Law Number 21 of 2011 concerning the Financial Services Authority. The mission of this authority is to organize an integrated regulatory and supervisory system for all financial services sector activities (Andiaqsalwinasi, 2020). OJK is responsible for the role of the Capital Markets and Financial Institutions Supervisory Agency (Bapepam-LK) in regulating and supervising capital markets and financial institutions, as well as the role of Bank Indonesia in regulating and supervising banking to protect consumers of financial services. Established as an alternative, the Financial Services

Authority was established with the aim of integrating all activities of the Financial Services Authority with the following objectives::

- 1). Held regularly, fairly, transparently and clearly;
- 2). Realizing a financial system that grows sustainably and stably; And
- 3). Protecting the interests of consumers and society(Wardana, 2011).

However, in the context of online loan services, there is often misuse of consumer personal data by irresponsible parties. Misuse of personal data may include identity fraud, manipulation of financial data, or misuse of data for illegal purposes. This poses significant risks to consumers, including financial loss, identity theft, and the possibility of incurring unwanted debt (Akbar, 2021).

Protecting consumers with online loan services is very important to overcome the problem of misuse of personal data. However, these protection efforts must be supported by an appropriate legal framework. In this case, civil law plays an important role in determining consumer protection rights as well as lenders' responsibilities if personal data is misused in online loans. (Indonesia, 2022).

At this point, it is important to carry out an in-depth analysis of the existing civil law framework to protect consumers in the context of online lending. This analysis will involve a review of applicable laws and regulations, including Law Number 09 of 2016 concerning

Electronic Information and Transactions (UU ITE), Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law) and OJK Regulation No. 06/POJK.07/2022 concerning Consumer Protection in the Financial Services Sector. Furthermore, starting from this background, the analysis of this research is legal protection for victims of misuse of personal data when making online loans.

II. RESEARCH METHODOLOGY

This research will take a normative legal research approach or doctrinal legal research, where library materials and secondary materials are researched as basic research materials, and research is carried out based on regulations related to the topic being discussed. (Liber Sonata, 2014). The main point of the study is that law is conceptualized as norms and rules that apply in society and become a reference for society's actions. Therefore, legal research focuses on valid legal treasures, legal principles and doctrines, legal conclusions in certain cases, and legal conclusions. Legal codification, degree of legal harmonization, legal comparison and legal history (Purwati, 2020). This normative legal study also uses scientific research methods to find the truth based on legal logic from the normative side. Scientific logic in normative legal research is based on the study of scientific fields and normative law, namely law which is the object of law itself (Liber Sonata, 2014).

III. DISCUSSION AND RESULTS

Legal Protection for Victims of Misuse of Personal Data When Making Online Loans

Personal data protection is an important aspect that must be paid attention to by all electronic system operators. Due to current technological developments, new forms of crime may emerge in cyberspace. Currently, it has become commonplace for people who try to access a website to enter or register personal information such as name, cellphone number and Population Identification Number (NIK). This includes customers and prospective customers who utilize IT-based credit and loan services or online loans.(Purnama & Alhakim, 2021). Requiring customers to provide a cellphone number or NIK that is directly connected to their address is problematic, causing personal information to leak due to customer negligence. If personal information is leaked due to customer negligence, the customer becomes an easy target for crime, but not only the customer is the victim, but those closest to the customer are also affected. (Rahadiyan, 2019).

One example of a customer's personal information being leaked is the discovery of a customer's relative's telephone number on the customer's cell phone. In this case, online loan partners are free to obtain information in the form of telephone numbers of all of the customer's relatives and publish the customer's telephone numbers. One relative and

emergency contact number (*emergency contact*) (Literature Ongko, 2021).

In terms of financial technology adoption, regulators and the Indonesian government need to be prepared to face it, especially from institutional aspects, business operations and risk mitigation perspectives. One of the aims of establishing the Financial Services Authority (OJK) is to protect the interests of consumers and the public in business activities in the financial services sector. Consumer protection entrusted to the OJK is strictly regulated in Law Number 21 of 2011(Benuf, 2020).

Consumer protection in the financial services sector aims to create a reliable consumer protection system, increase consumer empowerment and awareness of financial services companies. about the importance of consumer protection in increasing public trust in the financial services sector. Money lending services based on information technology and Bank Indonesia regulations Number 19/12/PBI/2017 concerning the Application of Financial Technology as a Legal Basis for Implementing Online Loan Agreement Activities. These two regulations were created to keep pace with the rapid development of financial technology(Financial Services Authority, 2022).

In credit activities via electronic means, all agreements stipulated between debtors and creditors are stated in electronic contracts.

Discipline relating to electronic contracts is contained in article I number 17 of the Law on Information and Electronic Transactions (ITE). Regarding Misuse of Personal Data which is misused by irresponsible parties, in fact there is legal certainty for consumers who experience this, in theory the law put forward by Moch.Isnaeni that . According to M. Isnaeni, legal protection is essentially divided into two parts (1) Internal legal protection is the protection given by the parties when entering into a contract at the beginning of the lending process, if they want to make the terms of the contract and stipulate that they will consider their respective interests. each. Efforts can be made to ensure that applications are prepared based on agreement and risk. This allows both parties to reach a balanced and mutually agreed agreement which means equal bargaining power and (2) external legal protection. Guaranteed by political interest groups. In this case, the government must not take sides in its own interests by regulating the interests of weak groups according to its legal nature. Disputes between parties(Rineska, 2020).

In Burgerlijk Wetboek (BW) which was then translated by Prof. R. Subekti, SH and R. Tjitrosudi bio into the Civil Code (KUHPer) that regarding contract law is regulated in Book III concerning Engagements, where ha! It regulates and contains property law regarding the rights and obligations that apply to certain people or

parties. The existence of an agreement, or what is currently commonly known as a contract, cannot be separated from the fulfillment of the conditions regarding the validity of an agreement/contract as stated in Article 1320 of the Civil Code, as follows: 1. The existence of an agreement (agreement) from the binding parties. 2. Having the ability (COJJetency) to make an agreement, 3. Regarding a certain matter (bapaalde ondenverp). 4. For a lawful cause (goordoofde oorzak)(Syaifuddin, 2016)

If any of these requirements are not met, the right to recognition becomes void and the legal presumption cannot be challenged. A contract becomes valid and legally binding for the parties making the contract if the four conditions of the contract are fulfilled. Disputes between debtors and creditors because the debtor may not have read the contract thoroughly and the contract clearly states that misuse of personal data is a crime that is classified as cybercrime. The function of the law here is to provide equality for vulnerable and oppressed communities who are victims of misuse of personal data through illegal online loan applications(Wahyudi, 2013).

In developments in the industrial era 4.0, the financial sector is one sector that has experienced very significant changes. This is called financial technology. Based on Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of financial technology, it provides an understanding of

financial technology, namely the use of technology that is within the scope of finance and can produce new products, services, technology and business models and can have an impact on stability. monetary, financial system stability, as well as efficiency, smoothness, security and reliability in the payment system(Omarini, 2018).

Financial technology provides answers to life's problems. Traditional financial institutions provide financing for people's lives. As we all know, before the development of the Industrial Era 4.0, the operations of banks and other financial institutions were very complex and time consuming. Therefore, financial technology provides convenience and speed for people in the transaction process, especially in carrying out financial transactions in terms of financing(Dani et al., 2022).

Financial technology is here to provide answers to financial problems in people's lives in conventional financial institutions. As we know, before the development of the industrial era 4.0, affairs in financial institutions such as banking were complicated and took a long time. Therefore, financial technology provides convenience and speed for people in carrying out transaction processes, especially in carrying out financial transactions in terms of borrowing funds.(Alfian, 2016).

Online loans themselves are a means of entering into loan and credit agreements and are operated by online service providers. In

other words, online loans are products and services such as credit loans that utilize information technology. When you borrow money using an online loan, the funds will be disbursed immediately and no collateral or collateral is required. Therefore, online loans are often touted as a solution for people who need money, so they can apply for a loan without having to come directly to a place that is usually used as a place for loan sharks or places to borrow money.(Rineska, 2020).

There are several advantages to using online loans. Fast process and the need for face-to-face conversation if you have questions about the loan requirements documents. Online loans also have favorable terms for stakeholders. Usually there is no collateral and no certain nominal amount to provide a loan. Flexibility is another advantage of taking out an online loan, because you don't need to go to an online loan office. Online Loans also offers services such as loan calculators. A loan calculator is a service that helps borrowers find out how much money they can borrow(Nicoletti, 2017).

Not all online loans out there are safe to use. In the world of online loans, there are legal and illegal online loans. Legitimate online loans are officially registered with the Financial Services Authority and supervised by the Financial Services Authority. Legitimate online loans have clear addresses and information about the company that is easy for the general public to obtain. You have

choices in terms of financing, as well as transparency of information regarding financing costs and fines. Using legal online loans is safer because you only have access to your camera, microphone and location.

Illegal online loans are characterized by not being officially approved by financial regulators and not having a clear business address. When it comes to financing, you have no choice. This loan has no credit limits or interest rates. Illegal online loans can access all the data on the borrower's cellphone and use this data to insult someone or defame someone by distributing personal photos and videos. Customers also have no point of complaint regarding illegal online loans (Researched, 2021).

Perpetrators who use other people's data obtain other people's personal data in various ways. In this case, illegal online loans inject features similar to spyware into users' cellphones. When a user installs an illegal online loan application, the application usually requests access to their contact list, inbox and other personal data.

The name of the application is Spyware. This is a type of malware (malicious software) designed to infiltrate a user's computing device and collect sensitive credentials from a computer system without the user's consent. Once installed, it monitors your activity on your computer and the internet and sends your details to other users. This malware can also steal login IDs, passwords,

and credit card information (Tjahjadi & Santoso, 2023).

Any software can be classified as spyware if it is downloaded without the user's permission. Spyware is a relatively controversial group of malware, because even when installed for relatively harmless reasons, it can violate the end user's privacy and potentially be misused. It does not consist of just one type of program, but is an entire category of malware that includes adware, keyboard loggers, Trojans, and mobile information stealing programs (Tjahjadi & Santoso, 2023).

For parties who feel that their right to protect their personal data has been violated, that party can take two legal protection routes, namely non-litigation legal protection and litigation legal protection. The process of resolving problems through non-litigation usually involves someone acting as a mediator. In fact, this is the mediator between financial services institutions, namely the Financial Services Authority or OJK. Parties who feel disadvantaged can make a complaint to the OJK and the party who causes harm will be subject to sanctions, known as administrative sanctions. Administrative sanctions in 1:1 cases are regulated in POJK No.77/POJK.01/2016, especially in article 47, which contains provisions for administrative sanctions in cases of misuse of data in online loans. Article 47 states that if there is a violation of obligations and prohibitions in the

regulations made by the OJK, the OJK has the authority to use administrative sanctions in the form of written warnings, fines that will be given a certain amount, restrictions on business activities, and revocation of permits. Then in article 47 paragraphs 2 and 3 POJK it is written that administrative sanctions in the form of fines, restrictions on business activities and revocation of permits can be imposed by giving a written warning first or not.(Chrismastianto, 2017).

There are several forms of legal protection against cases of misuse of personal data by other people in online loans, which can be explained as follows:

a. Administrative Legal Protection.

Personal data protection is regulated in Law Number 19 of 2016 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law) which includes protection from unauthorized use, protection by electronic system operators, and protection from illegal access and interference. In relation to the protection of personal data from unauthorized use, Article 26 paragraph (I) of the ITE Law can be used as a legal basis for providing personal data protection relating to cases of misuse of personal data against victims whose data is used in online loans unilaterally without the owner's consent. such personal data. Article 26 paragraph (I) of the ITE Law explains that the use of any information via electronic media that concerns a person's personal data must be done with the

prior consent of the person concerned. Based on the explanation of this article, it can be understood that the use of personal data in ha! anything via electronic media, must obtain approval from the owner of the personal data. The general explanation does not explain in detail what is included in personal data, but only explains that in the use of information technology, the protection of personal data is one part of personal rights (privacy rights).

b. Civil Legal Protection

Any person who suffers losses as a result of online loans, including the use of their personal data in the form of telephone numbers or population data, can file a lawsuit for compensation. This is regulated in the provisions of Article 26 paragraph (2) of the ITE Law which explains that every person whose rights as intended in paragraph (I) are violated can file a lawsuit for the losses caused. So, in accordance with the provisions in Article 26 paragraph (2) of the ITE Law, every person who has personal data and that personal data is used without permission in ha! anything as long as it is via electronic media, then the person who feels aggrieved can file a lawsuit for the losses they have experienced. According to Article 39 paragraph (I) of the ITE Law, it is explained that any person who is harmed can file a civil lawsuit which is carried out in accordance with statutory regulations. Meanwhile, Article 39 paragraph (2) of the ITE Law explains that apart from civil lawsuits, parties can resolve disputes

through arbitration or other alternative dispute resolution institutions.

Regarding using other people's data without prior permission from the owner of the personal data, the victim can also sue on the basis of a lawsuit, namely Article 1365 of the Civil Code concerning unlawful acts. The actions carried out by the Online loan party have fulfilled the elements of unlawful acts regulated in Article 1365 of the Civil Code, namely the act of the Online loan party accessing customer data illegally, they were then contacted continuously and even terrorized and threatened, where the actions of the Online loan party makes a person feel disadvantaged in the form of immaterial loss, where the data owner feels disturbed because he is contacted continuously, besides that it can cause fear in the future due to harsh words and threats from the online loan party. Furthermore, the appropriate type of accountability to be applied to perpetrators of personal data theft is accountability for mistakes with a reversal of the burden of proof. In this case, it is sufficient for the injured party to prove that they experienced losses caused by the unauthorized use of their personal data, while it is the defendant who must prove (if possible) that he was not the one at fault for the misuse of the personal data.

c. Criminal Legal Protection

The actions of online loan parties whose data is used without the knowledge and consent of the owner of the personal data, namely the

owner of the telephone number or other personal data, is an unlawful act. Where the form of action from the online loan party is taking data and information from the borrower using a computer or computer network without the knowledge of the borrower. The online loan party accesses the borrower's personal data and then moves or transfers the data obtained with the aim of contacting and terrorizing the parties whose personal data is used as the borrower's identity. Parties who suffer losses due to someone using their personal data can report to the police with the subject of the complaint referring to the provisions of Article 32 paragraph (2) of the ITE Law which explains that every person intentionally and without rights or against the law in any way transfers or transfers electronic information and /or electronic documents to other people's electronic systems without authorization..

IV. CONCLUSION

Legal protection for debtors in financial technology-based money lending services. The organizers of this activity have rules and regulations. Fintect operators or organizers are required to comply with and implement the provisions of Financial Services Authority Regulation no. 22/POJK. 2023 concerning information technology-based credit and lending services. These regulations cover institutions, registration, licensing, credit restrictions and information management, organizers, activity restrictions, risk

management, consumer protection reporting, and education. In accordance with the provisions of Article 29 POJK 2023, organizers are obliged to implement the basic principles of consumer protection. However, this regulatory instrument does not comprehensively regulate the losses experienced by victims due to the use of their personal data related to online loan issues.

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