
LEGAL GUARANTEE OF CONFIDENTIALITY OF CUSTOMER DATA IN ONLINE LOAN BUSINESS SERVICES

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Abstract

Fintech emerged along with changes in people's lifestyles which are currently dominated by users of information technology and the demands of a fast-paced life. Personal data and consumer behavior are part of big data whose economic value can be high, and vulnerable to The Ministry of Communication and Information (Kominfo), OJK, and the police in supervising online loan services. Customer data protection is regulated in Ministerial Regulation (Permen) Number 20 of 2016 concerning Personal Data Protection.

Keyword : Legal protection, Customer data, Online loans.

INTRODUCTION

Financial technology or known as fintech is a combination of financial services and technology that changes the business model from conventional to moderate where previously payment transactions had to be done face-to-face and brought some cash, now payments can be made anywhere, anytime even at any time. remotely and done in a short time. The existence of fintech makes buying and selling transactions and payment systems more efficient and economical but still effective. There are three types of financial technology, which are as follows :

1. Third-party payment systems. Examples of third-party payment systems are crossborderEC, online-to-offline (O2O), mobile payment systems, and payment platforms that provide services such as bank payments and transfers.
2. Peer-to-Peer (P2P) Lending. Peer-to-Peer Lending is a platform that brings lenders and borrowers together via the internet. Peer-to-Peer Lending provides credit and risk management mechanisms. This platform helps lenders and borrowers meet their respective needs and make efficient use of money.
3. Crowdfunding, Crowdfunding is a type of Fintech in which a concept or product such as design, program, content, and creative work is publicly published, and people who are interested and want to support the concept or product can provide financial support. Crowdfunding can be used to reduce entrepreneurial financial needs, and predict market demand.

The rapid development of fintech is marked by the existence of an online loan program, with this technological advancement, someone who wants to get capital loan assistance, simply downloads an application or accesses a loan service provider's website, fills in data, uploads the required documents and in a matter of fast time, the loan has been received by the customer (Priliasari, 2019). If the speed of this online loan is compared to conventional banks, significant differences are found. In conventional banks, it takes 7-14 working days, while online loans only take 4 hours to 3 days (Hadad, 2017).

The increase in loan distribution indicates that the public has trusted online loan service providers (Ross & Squires, 2011). Based on the age classification in the OJK report, it is known that the majority of online loan users are customers aged 19-34 years. The rise of

online loans has given rise to new online loan companies in Indonesia, so to monitor the growth of this online loan service, the OJK issued OJK Regulation (POJK) No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services which requires online loan service companies to register their companies with OJK. In addition, the regulation also requires online loan service companies to prioritize information disclosure to prospective borrowers so that they can assess the borrower's risk level and determine the interest rate.

One of the impacts of the presence of this online loan is the misuse of customer data and information (Karuniahaj, 2019). Customers do not realize that online companies also record various personal data contained in their smartphones when they are used to registering. In addition, customers sometimes unknowingly agree to a contract in which can use the contents of their data, so be aware is needed in signing fintech contracts.

Until now, there is no special protection regarding personal data. This is a crime loophole, which makes certain individuals dare to misuse public data, which is even more fatal, these data can be traded (Gurning, 2022). If there is a case of someone who is a victim of misuse of personal data, it will be very difficult to solve the case because there is no agency or law enforcement can process it (Arifin et al., 2017). Personal data and consumer behavior are part of big data whose economic value can be high. So, it is very tempting to misuse it. For this reason, there is a need for a synergy of cooperation between the Ministry of Communication and Information (Kominfo), OJK, and the police in supervising online loan services.

Although the Minister of Communication and Information (Menkominfo) has recently issued a Ministerial Regulation (Permen) Number 20 of 2016 concerning Personal Data Protection, the Ministerial Regulation is only an implementing regulation, and has nothing to do with Government Regulations and Laws..

METHOD RESEARCH

The method used in writing this applied paper is the descriptive analytical method, namely by using data that clearly describes the problems directly in the field, then analyzing and concluding to reach a problem solution. The method of collecting data is through observation and literature study to obtain problem-solving in the preparation of this paper.

A normative juridical approach, which means that in this study the main materials studied are primary legal materials, secondary legal materials, and tertiary legal materials.[4] The data that has been obtained, then processed, and then analyzed qualitatively is done by describing the data generated in the form of a descriptive sentence or explanation. From the data analysis, it is continued by drawing conclusions inductively, a way of thinking based on general facts, then proceeding with specific conclusions which are the answers to the problems based on the results of the research, and then suggestions are given.

RESULT AND DISCUSSION

A. Definition of Financial Technology

Fintech comes from the term financial technology or financial technology. The National Digital Research Center (NDRC) in Dublin, Ireland, defines fintech as "innovation financial services" or "innovation in fintech financial services", which is an innovation in the financial sector that gets a touch of modern technology. Financial transactions through fintech include payments, investments, lending money, transfers, financial plans, and comparisons of financial products (Gulamhuseinwala et al., 2015). Currently, there are 142 identified companies engaged in fintech (Ngani, 2012).

B. Fintech Development

Fintech emerged in line with changes in people's lifestyles which are currently dominated by users of information technology, the demands of a fast-paced life. With Fintech, problems in buying and selling transactions and payments such as not having time to look for goods to shopping places, to banks/ATMs to transfer funds, reluctance to visit a place because of unpleasant services can be minimized. In other words, Fintech helps buying and selling transactions and payment systems to be more efficient and economical but still effective (Santi et al., 2017).

Globally, fintech shows rapidly growing in various sectors, ranging from payment startups, lending, financial planning (personal finance), retail investment, crowdfunding, remittances, financial research, and others. Indonesian Fintech players are still dominant in the payment business (43%), loans (17%), and the rest are in the form of aggregators, crowdfunding and others (Hadad, 2017).

C. Legal Protection of Customer Personal Data According to the Regulation of the Financial Services Authority of the Republic of Indonesia Number 13 /Pojk.02/2018 concerning Digital Financial Innovation in the Financial Services Sector

The definition of Personal Data can be found in the Government Regulation of the Republic of Indonesia Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions. Personal data is certain personal data that is stored, maintained, and kept true and protected by confidentiality (Situmeang, 2021). Article 1 number 22 of the Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration, also defines such personal data.

D. Consumer Data Protection according to Financial Services Authority Regulation Number 77 /Pojk.01/2016 concerning Information Technology-Based Lending and Borrowing Services, Following are the articles that regulate the Confidentiality of Consumer Data:

Article 26

The organizer must:

1. Maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data that it manages from the time the data is obtained until the data is destroyed.
2. Ensure the availability of authentication, verification, and validation processes that support denial in accessing, processing, and executing personal data, transaction data, and financial data it manages.
3. Guarantee that the acquisition, use, utilization, and disclosure of personal data, transaction data, and financial data obtained by the Operator is based on the approval of the owner of personal data, transaction data, and financial data, unless otherwise stipulated by the provisions of laws and regulations.
4. Provide other communication media other than the Electronic System of Information Technology-Based Lending and Borrowing Services to ensure continuity of customer service which can be in the form of electronic mail, call centers, or other communication media.
5. Notify in writing the owner of the personal data, transaction data, and financial data in the event of a failure to protect the confidentiality of personal data, transaction data, and financial data managed by him.

Article 26

Regulates the obligations of information technology-based lending and borrowing service providers, which is one type of Fintech Business that is developing in Indonesia. The obligations can be seen in letters a, b, c, d, and e above.

Article 29

The Operator is required to apply the basic principles of User protection, namely: a. transparency; b. fair treatment; c. reliability; d. data confidentiality and security; and e. User dispute resolution is simple, fast, and affordable.

Article 29

Stipulates that information technology-based savings and loan service providers are required to apply the basic principles of User protection, namely: transparency, fair treatment, reliability, confidentiality and data security, and User dispute resolution in a simple, fast, and affordable way.

Article 39

1. The Operator is prohibited in any way from providing data and/or information regarding Users to third parties.
2. The prohibition as referred to in paragraph (1) is exempted in the event that: a. User gives consent electronically; and/or b. required by the provisions of the legislation.
3. Cancellation or partial amendment of approval for the disclosure of data and/or information as referred to in paragraph (2) letter a shall be made electronically by the User in the form of Electronic Document.

Article 39

Stipulates that the Operator is prohibited in any way from providing data and/or information regarding Users to third parties. except in the case of The user gives consent electronically; and/or, required by the provisions of laws and regulations. Cancellation or partial change of consent for the disclosure of data and/or information is done electronically by the User in the form of an Electronic Document ([Azis & Rahmawati, 2021](#)).

Article 47

1. For violations of obligations and prohibitions in this OJK regulation, OJK has the authority to impose administrative sanctions on the Operator in the form of: a. written warning; b. fines, namely the obligation to pay a certain amount of money; c. limitation of business activities; and D. license revocation.
2. The administrative sanctions as referred to in paragraph (1) letters b to d, may be imposed with or without being preceded by the imposition of administrative sanctions in the form of a written warning as referred to in paragraph (1) letter a.
3. Administrative sanctions in the form of fines as referred to in paragraph (1) letter b may be imposed separately or jointly with the imposition of administrative sanctions as referred to in paragraph (1) letter c and letter.

Article 47

1. For violations of obligations and prohibitions in this OJK regulation, OJK has the authority to impose administrative sanctions on the Operator in the form of: a. written warning; b. fines, namely the obligation to pay a certain amount of money; c. limitation of business activities; and D. license revocation.
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imposed with or without being preceded by the imposition of administrative sanctions in the form of a written warning as referred to in paragraph (1) letter a.

3. Administrative sanctions in the form of fines as referred to in paragraph (1) letter b may be imposed separately or jointly with the imposition of administrative sanctions as referred to in paragraph (1) letter c and letter.

Article 47 stipulates that in violation of the obligations and prohibitions in this OJK regulation, OJK has the authority to impose administrative sanctions on the Operator in the form of written warnings, fines, namely the obligation to pay a certain amount of money, restrictions on business activities, and revocation of licenses. Administrative sanctions can be imposed with or without being preceded by the imposition of administrative sanctions in the form of a written warning. Administrative sanctions in the form of fines can be imposed separately or together with the imposition of administrative sanctions.

E. Financial Services Authority Circular Letter Number 14/SEOJK.07/2014 Regarding Confidentiality And Security Of Consumer Data And/or Personal Information

Provisions regarding the implementation of the principles of Confidentiality and Security of Consumer Data and/or Personal Information as regulated in Article 2 letter d, Article 31 and Article 49 in the Circular Letter of the Financial Services Authority as follows:

In this Financial Services Authority Circular Letter, Consumer Personal data and/or information is data and/or information, which includes the following:

1. Individual: Name, address, date of birth and/or age, telephone number, and/or Name of the biological mother.
2. Corporation: Name, address, telephone number, the composition of directors and commissioners including identity documents in the form of Identity Card/passport/residence permit; and/or composition of shareholders.

Financial Services Business Actors, hereinafter abbreviated as PUJK, are Commercial Banks, Rural Banks, Securities Companies, Investment Advisors, Custodian Banks, Pension Funds, Insurance Companies, Reinsurance Companies, Financing Institutions, Pawn Companies, and Guarantee Companies, both of which carry out activities conventional and sharia business ([Abdurrahman Konoras, 2021](#)).

Consumers are parties who place their funds and/or take advantage of the services available at PUJK, including customers in banking, investors in the capital market, policyholders in insurance, and participants in pension funds, based on the laws and regulations in the financial services sector.

Protection of Consumer Personal Data and/or Information, Financial Service Business Actors are prohibited in any way from providing personal data and/or information regarding their Consumers to third parties ([Benuf et al., 2019](#)). Except in the event that the Consumer gives written consent and/or is required by laws and regulations.

If the Consumer gives written approval, the Financial Services Provider may provide Consumer Personal Data and/or Information with the obligation to ensure that the third party does not provide and/or use the Consumer's Personal Data and/or Information for purposes other than those agreed between the PUJK and the third party.

The procedure for written approval from the Consumer can be stated in the form of, among others, the choice of agreeing or disagreeing or giving a sign of approval. in documents and/or product and/or service agreements ([Satory, 2015](#)).

If a PUJK obtains personal data and/or information of a person and/or group of people from another party and the PUJK will use such data and/or information to carry out its activities, the PUJK is required to have a written statement that the other party has obtained

written approval from a person and/or a group of people to provide the said personal data and/or information to any party including PUJK.

The FSB is required to establish written policies and procedures regarding the use of Consumer Personal Data and/or Information which at least contains:

1. Explain in writing and/or verbally to Consumers regarding the purpose and consequences of granting written consent as well as providing and/or disseminating Consumer Personal Data and/or Information as referred to in number 2 letter a (Amalia, n.d.).
2. Request for written approval from Consumers in the event that the FSB will provide and/or disseminate Consumer Personal Data and/or Information to third parties for any purpose, unless otherwise stipulated in the applicable laws and regulations.

CONCLUSION

Based on the description in the discussion above, the form of traffic accidents can be resolved through restorative justice according to Article 236 (2) of Law No. 22 of 2009 which is only minor traffic accidents, according to Article 63 of the National Police Chief Regulation No. 15 of 2009 2013 is a minor traffic accident, and based on the SE Chief of the National Police No. 8 of 2018 is a crime that does not result in human casualties. In general, the considerations of Unitlaka investigators in resolving traffic accidents and road transportation outside the court carried out by Unitlaka only refer to the habits carried out in Unitlaka and the basis for settlement outside the court is a letter of peace agreement by both parties involved in traffic accidents.

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