

CIVIL LAW PROTECTION OF PERSONAL DATA RELATED TO *ONLINE LOANS* PROVIDED BY *ONLINE LENDING SERVICES*

Ria Amiroh Sya'bani¹; Syahrul Machmud²; Huala Adolf³

Master of Laws at Langlangbuana University^{1,2,3}

Email : ria.as18@gmail.com

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ABSTRACT

Article 1 number 1 of the PDP Law states that "personal data is data about natural persons who are identified or can be identified individually or in combination with other information, either directly or indirectly, through electronic or non-electronic systems." Based on Article 44 paragraph (1) letters a and c of the Republic of Indonesia Financial Services Authority Regulation Number 10/Pojk.05/2022 concerning Information Technology-Based Joint Funding Services, providers are obliged to maintain the confidentiality, integrity and availability of Personal Data, transaction data and financial data managed from the time the data is obtained until the data is destroyed and guarantees that the acquisition, use, utilization and disclosure of Personal Data, transaction data and financial data obtained by the Operator is based on the consent of the owner of the Personal Data, transaction data and financial data. This research discusses civil law protection for personal data related to *online loans* distributed by *online* lending services, especially related to the dissemination of personal data by *online* loan companies . This research aims to examine and assess legal protection for *online* loan service users whose personal data is disseminated by *online* loan companies. This research is normative juridical research that is descriptive in nature. The author uses secondary data consisting of primary legal materials in the form of basic norms or rules, basic regulations, statutory regulations, and secondary legal materials in the form of literature consisting of draft laws, books, scientific works of legal scholars, results research, journals, magazines and so on.

INTRODUCTION

Human life has been greatly influenced by advances in information technology today. Information technology has given humans various conveniences in various things, such as easy *online loans*. Before the evolution of Industry 4.0, all aspects of life, including the financial sector, were carried out manually (traditionally). Today, the company's work is starting to expand into technology-enabled financial services, giving rise to what is called *fintech* .

The term *fintech* itself can be interpreted as the application of Information Technology in the financial sector, financial and digital innovation, as well as *startups* (financial industries other than banks or financial services). According to Bank Indonesia, *fintech* is the result of combining financial services with technology that changes conventional business models into moderate ones, thereby helping buying and selling transactions and payment systems become more efficient, economical and remain effective.

fintechs that operate as *P2P lending services* must have a business license, which is indicated by having proof of registration as an LPMUBTI organizer. As of 2020, in Indonesia there are already 161 *fintech* business entities that have official permits.

Data According to the World Bank , *users and providers of fintech* services are growing very rapidly. By 2022, *fintech* users worldwide will reach 20 percent. In 2007 *fintech users* were only in the range of 7 percent.

Online loans in the implementation of providing credit can be implemented quickly. Apart from that, credit can be given without collateral. This is different from banking loans which require customers to provide certain collateral. Even though banks can provide credit without special collateral, this does not mean that the credit is provided without any collateral at all.

Providing credit without collateral means that prospective borrowers do not need to include asset documents such as land certificates, salary slips and other high-value items. The agreement between the prospective borrower and the *online loan party* does not have to be made face to face. There is no survey process to determine whether a loan application is declared successful or not.

Online loan application practices, the process of collecting personal data is the terms and conditions at the start of using the application. When a user has agreed or accepted the terms and conditions of the application, the user or customer is deemed to have agreed to these terms.

online loan debt collectors. The process of disseminating personal data begins with the mechanism for collecting, retrieving and disseminating personal data carried out by *online loan applications*.

The practice of disseminating personal data in *online* loan collection efforts has exceeded what is meant by consent, and this violates the provisions on personal data protection as regulated in Article 26 paragraphs (1) and (2) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law) which reads:

“ Article 26

- (1) Unless otherwise determined by statutory regulations, the use of any information via electronic media that concerns a person's personal data must be carried out with the consent of the person concerned;
- (2) "Every person whose rights as intended in paragraph (1) have been violated may file a lawsuit for losses incurred based on this Law."

Personal data protection is also regulated in Article 1 number 2 of Law Number 27 of 2022 concerning Personal Data Protection (hereinafter referred to as the PDP Law) which states "Personal Data Protection is the overall effort to protect Personal Data in the process of processing Personal Data in order to guarantee the constitutional rights of the subject Personal data".

The Financial Services Authority (OJK) also regulates the protection of personal data as stated in Article 44 paragraph (1) letters a and c of the Republic of Indonesia Financial Services Authority Regulation Number 10/Pojk.05/2022 concerning Information Technology-Based Joint Funding Services (hereinafter referred to as POJK No 10/Pojk.05/2022) which reads:

“Article 44

- (1) The organizer must:
 - a. 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;
 - b. Guarantee that the acquisition, use, utilization and disclosure of Personal Data, transaction data and financial data obtained by the Operator is based on the consent of the owner of the Personal Data, transaction data and financial data, unless otherwise determined by statutory provisions”

The lender is obliged to keep the borrower's personal data confidential, starting from the process of making the loan agreement, until the completion of the agreement. These obligations must be carried out in order to achieve protection of the borrower's personal data.

This provision has given the owner of personal data the right to maintain the confidentiality of his personal data. If his personal data has been spread and misused by other parties, then the owner of the personal data may suffer losses, both material and immaterial because he has committed an unlawful act as regulated in Article 1365 Civil Code.

Practices in the field show that there is a spread of personal data caused by *online loans* with the aim of terrorizing them into paying off debts, such as a reader of *Detik's Advocate* who complained that his personal data was disseminated by *online* loan services. : "Initially he borrowed money from an online loan because he had an urgent need and could pay it off and he didn't know that the application he was using had lots of online loans in it so that with one press everything was

approved without him realizing it, he had also been terrorized by several online loans who distributed the data to contacts on his cellphone saying he was a fugitive."

Dissemination of personal data also occurred in Garut in July 2023, as many as 407 residents in Garut had their identities stolen to owe money to *online loans*. Previously, hundreds of residents in Sukabakti Village, Tarogong Kidul District, Garut Regency, were billed by debt collectors, even though they felt they had not borrowed money.

The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) has constitutionally stated that Indonesia is a legal state. Article 1 paragraph (3) of the 1945 Constitution contains the meaning of this term. Even though there are differences in the 1945 Constitution before and after the amendment, what needs to be underlined is that the essence of both terms has the same goal, namely "to make the Indonesian State a Lawful State based on Pancasila with the aim of The aim is to realize the Indonesian state of life as a safe, peaceful, prosperous and orderly country where the legal status of every citizen is guaranteed, so that harmony, balance and harmony can be achieved between individual interests and group interests."

Based on this, because Indonesia has been declared a country of law, all actions must be regulated under the rule of law, including borrowers' personal data in terms of borrowing and borrowing money, which can now be done online *through* an application called *FinTech Lending*.

Protection of personal privacy and privacy, including personal data as part of human rights, is regulated in Article 28G paragraph (1) of the 1945 Constitution which reads "Everyone has the right to protection of personal self, family, honor, dignity and property under his control, and have the right to a sense of security and protection from the threat of fear of doing or not doing something which is a human right."

The term legal protection theory comes from English, namely *legal protection theory*, while in Dutch it is called *theory van de wettelijke bescherming*, and in German it is called *theory der rechtliche schutz*. Legal protection is to provide protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights provided by law.

Legal protection is protection given to legal subjects in the form of instruments, both preventive and repressive, both verbal and written. In other words, it can be said that legal protection is a separate illustration of the function of law itself, which has the concept that law provides justice, order, certainty, benefit and peace.

Legal protection theory is a theory that examines and analyzes the form or form and objectives of protection, the legal subjects being protected and the objects of protection provided by law to the subjects. The elements listed in the definition of legal protection theory include the following 3 things :

1. The existence of a form or form of protection or purpose of protection;
2. Protected legal subjects; And
3. Object of legal protection.

Protection is a right that protects legal subjects through applicable laws and regulations and its implementation is enforced with sanctions. Legal protection can be divided into 2, namely :

1. Preventive legal protection, namely protection provided by the government with the aim of preventing violations before they occur. This is contained in statutory regulations with the aim of preventing violations and providing signs or replies in carrying out an obligation.
2. Repressive legal protection, namely repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment and additional penalties given if a dispute has occurred or a violation has been committed.

Its function as a protector of human interests is that the law has a purpose. Law has targets to be achieved. The main aim of law is to create an orderly society, creating order and balance. Human interests are expected to be protected when society is orderly. To achieve its goals, law is responsible for dividing the rights and obligations of people in society, providing authority, regulating how to solve legal problems, and maintaining legal certainty.

RESEARCH METHODS

Descriptive normative juridical research . The author uses secondary data consisting of primary legal materials in the form of norms or basic rules, basic regulations, statutory regulations, jurisprudence, and court decisions and secondary legal materials in the form of literature consisting of draft laws, books, scientific works. legal scholars, research results, journals, magazines and so on.

RESULTS AND DISCUSSION

Civil Law Protection Of Personal Data Related To *Online Loans* Provided By *Online Lending Services*

Indonesia is a legal state regulated in Article 1 paragraph (3) of the 1945 Constitution which combines the Continental European legal system (*Rechtstaat*) and *positive Anglo-Saxon* values , so Indonesian law is a system that is referred to as a mixed system. This legal system was then called the Pancasila legal system.

The Indonesian legal system contains elements that support each other to predict and overcome problems in society, nation and state, in accordance with the foundations and philosophy of national life, namely Pancasila and the 1945 Constitution of the Republic of Indonesia.

Through this legal system, legal rules in Indonesia exist in a hierarchical and group system. Everything that always applies, follows and is based on the rules above it until it reaches the fundamental rules of the Republic of Indonesia (*staatsfundamentalnorm*), namely Pancasila.

Law is the totality of rules and norms that apply in a shared life that regulate behavior, the implementation of which can be enforced by the presence of sanctions. Law regulates legal relations consisting of ties between individuals and society and between individuals themselves which are reflected in rights and obligations.

The law balances individual interests with the interests of society. Because society consists of individuals interacting with each other, there is always conflict or tension between individual interests and the interests of society. The law seeks to reduce this conflict or tension.

Based on this, Indonesia is a country of law, all actions are regulated by law, including the protection of personal data of someone who makes an *online loan* . *Online loans* have negative effects, namely causing several problems. This happens because people are too interested in *online loans* without considering the risks associated with them.

The general risks of *online loans* are high loan interest rates compared to bank interest rates, very short loan terms, and inhumane debt collection in the form of threats or disseminating personal data information to people close to *online loan service users* .

online loan services must be protected from rights violations due to elements of threats and intimidation from *online loan companies* . Someone feels afraid, embarrassed and uncomfortable after their personal data is shared by an *online loan company* with friends, family and people who know *online loan service users* .

online loan service users . The government plays a very important role in providing protection in this case by establishing laws and regulations and firm action to prevent and deal with violations of the rights of *online loan service users* . Human rights violations even occur due to threats and terror against *online loan customers* who are deemed negligent or unable to pay their debts.

The function of law is to protect human interests and with the aim of creating an orderly society, order and balance. The task of law is to divide rights and obligations between individuals in society, divide authority, regulate how to solve legal problems and maintain legal certainty.

Article 1 of the 1945 Constitution states that Indonesia is a legal state, apart from that the state also guarantees the legal rights of its citizens, because the law also functions as an instrument of protection for legal subjects and legal protection will be a right for every citizen.

Hetty Hasanah is of the opinion that legal protection is any effort that can guarantee legal certainty, so that it can provide legal protection to the parties concerned or those taking legal action.

Through the PDP Law which has been passed in Indonesia, it provides more legal certainty regarding the protection of personal data. Article 1 number 1 of the PDP Law states that "personal

data is data about natural persons who are identified or can be identified individually or in combination with other information, either directly or indirectly, through electronic or non-electronic systems."

Online loan companies in POJK No. 10/Pojk.05/2022 Article 1 number 10, namely: Funders are individuals, legal entities and/or business entities that provide funding. Funders are personal data controllers as described in Article 1 point 4 of the PDP Law, where personal data controllers are every person, public body and international organization acting individually or jointly in determining the purposes and exercising control over the processing of personal data.

In the PDP Law, several articles can clearly protect the personal data of *online* loan service users , namely :

Article 27

Personal data controllers are obliged to carry out personal data processing in a limited and specific manner, legally and transparently.

Article 28

Personal data controllers are obliged to process personal data in accordance with the purposes of processing personal data.

Furthermore, regarding the protection of personal data, it has also been regulated in Articles 36 to 38 which read:

Article 36

In processing personal data, personal data controllers are obliged to keep personal data confidential.

Article 37

The personal data controller is obliged to supervise every party involved in the processing of personal data under the control of the personal data controller.

Article 38

The personal data controller is obliged to protect personal data from unlawful processing.

These are several articles of the PDP Law that can protect personal data, in this case for users of online loan services when there is dissemination of personal data in the context of debt collection by *online lending companies* .

Online loan companies that collect debts from *online loan service users* by contacting the people closest to *online loan service users* are an act against the law, because they make *online loan service users* feel embarrassed and uncomfortable and this is very detrimental to *online loan service users* . This action violates the provisions of Article 1 number 2 of the PDP Law in conjunction with Article 26 paragraphs (1) and (2) of the ITE Law in conjunction with Article 44 paragraph (1) letters a and c POJK No. 10/Pojk.05/2022. Violations of articles related to the protection of personal data, as previously described, are also regulated in Article 57 paragraph (1) to paragraph (5) of the PDP Law. Based on Article 57, if a violation occurs, administrative sanctions will be imposed in the form of:

- a. Written warning;
- b. Temporary suspension of personal data processing activities;
- c. Deletion or destruction of personal data and/or;
- d. Administrative fines.

That based on this , *online* loan service users who are harmed due to their personal data being disseminated by *online loan companies* can also file a lawsuit against the law to the District Court, in accordance with Article 1365 of the Civil Code which states " Every act that violates the law and brings loss to other people , requires the person who caused the loss through his fault to compensate for the loss."

online loan services can demand compensation or restoration of their honor and good name in court, this is in accordance with the provisions of Article 1372 of the Civil Code which states " Civil lawsuits regarding matters of insult are filed to obtain compensation for losses and restoration of honor and good name".

CONCLUSIONS

Law protection for personal data of *online loan service users* is regulated in Article 27, Article 28, Article 36, Article 37 and Article 38 of the PDP Law. Violations of these articles are also regulated in Article 57 of the PDP Law, which can be subject to administrative sanctions in the form of written warnings to sanctions in the form of administrative fines.

Law protection for personal data of *online loan service users*. If there is dissemination of personal data by *online loan services*, namely informing other parties of matters related to personal data, then *online loan service users* can also take legal action by filing a lawsuit against the law to the District Court, in accordance with Article 1365 of the Civil Code. Users of *online loan services* can demand compensation or restoration of their honor and good name in court, this is in accordance with the provisions of Article 1372 of the Civil Code.

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