



## CONSUMER PERSONAL DATA LEGAL PROTECTION ON ILLEGAL FINTECH LOANS

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**Abstract:** Currently, there are many online loans that make it easy for people to access credit. In addition to providing convenience, online loans can also harm the public by disseminating personal data. The protection of the rights of online loan service users is considered not optimal. This study aims to find out about the misuse of technology, especially in financial technology. The research method used is a normative juridical approach, the research phase is a literature study, data collection techniques through document studies and normative qualitative data analysis. The results of the study show that consumer protection and consumer personal data protection are indispensable. In this regard, it is important to review the legal protection of borrowers' personal data in online loan application services and sanctions for violations of personal data. The state has provided consumer protection as regulated in Law Number 21 of 2011 concerning Consumer Protection and Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector.

**Keywords:** *Online Loans, Fintech, Personal Data.*

## INTRODUCTION

Currently, the world has entered the Industrial Revolution 4.0 and has changed every aspect of human life. The Industrial Revolution 4.0 is marked by the increasing use of information technology in all fields, making a difference in every life. The development of information and communication technology (ICT) has had a major impact on human life. The development of information and communication technology has brought rapid changes in the social, economic and cultural fields. Various conveniences in carrying out activities are benefits that humans get from the existence of this information technology. One of them is the ease of use of the financial sector. With highly advanced technological developments, the financial sector is also developing in a more efficient and modern direction. Technology and finance are closely related. Currently, there is a type of technology that can bring financial innovation through modern technology, which is called financial technology.

Financial technology or financial technology is better known as fintech. According to T.I.F. Rahma, fintech is the use of financial system technology that produces new products, services, technologies and or business models and can have an impact on monetary stability, financial system stability, efficiency, smoothness, security and reliability of the payment system. (T.I.F,2018)

Online and fintech loans are considered suitable for the Indonesian market due to very high ownership and use of mobile phones, even though people do not have access to finance.

This can be seen from Hootsuite data that Indonesian internet users reached 132.7 million in January 2018 with a penetration rate of 50%. In addition, the population of mobile device users is even larger, reaching 177.9 million, with a penetration rate of 67%. (Fajar Sidiq,2020).

Based on this data, it is not surprising that the growth of online loans is growing rapidly in Indonesia. This can be seen from the data obtained from the Financial Services Authority (OJK), at least in the period June 2021, there were 124 fintech lending providers in Indonesia that had licensed OJK, with an accumulation of 115 conventional fintech lending companies and 9 sharia fintech lending companies.(Financial Services Authority, 2021).

In today's society, there are many small business actors who start their own businesses and provide funds for them. However, when they need to expand their business, they are faced with financing (capital) problems. Due to limited knowledge and remote access to banks, many people fall into the trap of moneylenders to borrow money. Then many company employees have financial difficulties for their daily needs, so they have to go to the bank to find a loan. However, it is difficult to get a loan from a bank for various reasons, such as the time it takes to get a loan at a bank, the complexity of the procedure and the difficulty in fulfilling the requirements. Seeing the phenomenon of Fintech development and the need for financial loans by the public, there is a demand for new innovations, namely the existence of fintech P2P lending applications or

online money loans. In addition, loan repayments and repayments in installments are made via ATM and bank transfers, so it doesn't take much time. This convenience and efficiency is expected to become a community financial solution.

Even though online loan interest rates are higher than banks, the many online loan companies make it easy for people to be interested in the programs offered. This creates problems for users of these online loan services, especially when making money.

Tulus Abadi, chairman of the Indonesian Consumers Foundation (YLKI) said that the highest problem in online loans reported by consumers was the method of collection, which reached 39.5%. Then contact transfers are 14.5%, reschedule requests are 14.5%, interest rates are 13.5%, administration are 11.4% and third party billing. In addition, the problem with online loans after terror billing is the transfer of contacts. Personal data protection is still low, because lenders can read all cellphone transactions and photos. OJK has frequently received complaints regarding the misuse of personal data by financial service consumers, but law enforcement on the protection of personal data in Indonesia is considered to be ineffective.

Regulations regarding legal protection of personal data of fintech users are scattered in several articles in Indonesian laws and regulations, including those regulated in the Minister of Communication and Information Regulation (Permen Kominfo) Number 20 of 2016

concerning Protection of Personal Data in Electronic Systems; OJK Regulation Number 77/POJK.01/2016 Concerning Information Technology-Based Money Lending Services; OJK Regulation Number 13/POJK.02/2018 Concerning Digital Financial Innovation in the Financial Services Sector; and finally in the latest OJK Regulation, namely OJK Regulation Number 06/POJK.07/2022 Concerning Consumer and Community Protection in the Financial Services Sector.

OJK Regulation Number 06/POJK.07/2022 was issued on April 18, 2022 and officially revoked and declared the previous regulation no longer valid, namely OJK Regulation Number 01/POJK.07/2013 Concerning Consumer Protection in the Financial Services Sector. The purpose of enacting the latest OJK Regulation is as a form of OJK's efforts to strengthen aspects of consumer protection in the financial services sector, where these efforts are very much needed considering that technological developments and innovations in the financial and banking sectors move very quickly and dynamically. Likewise, legal ones also play two legs. This statement means that online loan collection requires the attention of many parties, considering that users of these online loan services experience unpleasant treatment and can even lead to violations of human rights

## **MAIN PROBLEM**

From some of the descriptions above, the problems that are the subject of discussion in this study are as follows:

1. What are the Rules regarding Online Loans?
2. What is the legal relationship between the parties?
3. What are the rights of users of online loan services as consumers?
4. How is Consumer Legal Protection in Online Loans?

## **METHOD OF RESEARCH**

The research method used is a juridical-normative approach, the research stage is a literature study, data collection techniques are through document studies and normative qualitative data analysis. This research produces descriptive data. However, due to limited research time, the authors try to write using existing literature studies in scientific journals/articles and the latest news.

The author also limits the problem to legal issues experienced by online loan service users who are considered not optimal. This situation needs attention, considering that service users, both as consumers and as human beings who have basic rights from birth, have basic rights that need to be protected. Therefore, it is necessary to socialize online loans, draft the Financial Technology Act as a legal basis for taking action against illegal online loans, and enact laws on the protection and threat of personal data.

## **RESEARCH RESULT AND DISCUSSION**

### **1. Rules regarding Online Loans**

Legal development is an effort to form new laws to renew positive law. Legal development means building a legal system, along with instruments related to the upholding of the legal system. In

the 2005-2025 National Long-Term Development Plan (RPJPN), legal development is carried out to achieve the mission of creating a competitive nation and a democratic society based on law (Chapter III Appendix to Law No. 17 of 2007 concerning RPJPN 2005-2025).

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that, "Indonesia is a country based on law". This assertion is that the Indonesian State is based on law (*Rechtstaat*) and not based on mere power (*Machtsstaat*). Thus in practice the life of society, nation and state must fulfill and realize the requirements and legal principles contained in a rule of law state. If we look further from Article 1 Paragraph (3), the implementation of national development must be accompanied by legal regulations that regulate it. The role of law in development is to ensure that development takes place in an orderly manner based on law. In its development, the intermediary function held by various financial service institutions has made a significant contribution in providing funds to finance national economic development. Therefore, the state always pays attention to the development of the activities of the financial services sector by seeking to establish an integrated and comprehensive regulatory and supervisory framework for the financial services sector. In order to realize legal development.

In the economic field a regulation has been formed which will lead to the welfare of society. Economic law is the whole rule of law that

regulates and influences everything related to the life of the national economy, be it private or public legal rules, written or unwritten, which regulate the activities and life of the country's national economy. (Dwi Ratna Indri Hapsari, 2018).

The rapid growth of the economy contributes to the emergence of economic laws that function to limit and regulate the economic activities of a country while still taking into account the interests and rights of the people. Protection of the rights and interests of citizens is the government's obligation, in order to achieve a goal, namely a prosperous country. The form of protection of the rights and interests of the community is manifested through formal law which aims to achieve national economic development through government policies. In the context of realizing the development of information technology-based financial service institutions so that they can contribute more to the national economy, regulations have been drafted governing peer-to-peer lending. The regulation is designed as regulation and supervision to further encourage the growth of the Fintech ecosystem so that people can increasingly benefit from it.

Online lending is peer-to-peer lending, or crowdfunding, which is a subset of fintech. In this case, the Financial Services Authority (OJK) has an important role in overseeing financial service institutions, including the online lending sector. This is in accordance with what is stated in Law Number 21 of 2011 concerning Article 6 of the Financial Services Authority which states that

OJK carries out regulatory and supervisory duties on:

- a. financial service activities in the banking sector
- b. financial services activities in the capital market sector
- c. financial service activities in the field of insurance, pension funds, financial institutions, and other financial service organizations.

Referring to the article, it appears that regulation and supervision of other financial service institutions, including online loan services, is one of the mandates of the Financial Services Authority. The existence of online loans in Indonesia is really developing, so that special arrangements and supervision regarding online loans are carried out through the Financial Services Authority regulation Number 77/POJK.01/2016 concerning information technology-based loan services (POJK). P2P lending). This POJKP2P loan regulates one type of fintech that is currently developing in Indonesia, namely peer-to-peer lending (P2P lending). This is because the OJK realizes the urgency of having provisions to manage fintech lending and borrowing, while taking into account the culture of lending and borrowing (debt) that is still strong in Indonesian society. In addition, fintech technology companies that apply peer-to-peer lending schemes fall under the authority of the OJK in providing financial services. However, the company does not yet have an institutional legal basis to carry out its business activities.

## 2. Legal Relations Between the Parties

According to the provisions of the Civil Code, online loans are classified in the lending and borrowing contract stipulated in Article 1754 of the Civil Code. The lending and borrowing contract according to Article 1754 of the Civil Code with the following contents: Borrowing - borrowing is an agreement in which one party gives the other party a certain amount of goods that are used up due to usage, with the condition that the latter party will return the same amount of the same type and condition. In P2P lending there are 3 (three) parties, namely the Lending Provider and the Borrower, each of which creates a legal relationship.

Providers of Information Technology-Based Borrowing-Lending Services, hereinafter referred to as Providers based on Article 1 number 6 POJK 77/POJK.01/2016, are Indonesian legal entities that provide management and provide technology-based lending and borrowing services. The organizer of this online lending and borrowing agreement is another financial service institution in the form of a legal entity in the form of a limited liability company or cooperative. Legal entities that provide IT-based lending and borrowing services must submit an application and permit to the OJK. Borrower pursuant to article 1 No. 7 POJK No. 77/POJK.01/2016 is a person and/or legal entity that has debt due to an Information Technology-Based Borrowing-Lending Service

agreement. The borrower is then taken over by the lender. Borrower terms and conditions are the policies of each organizer. Lenders according to Article 1 Number 8 POJK Number 77/POJK.01/2016 are people, legal entities or business entities that have receivables due to Information Technology-based lending and borrowing service agreements. A lender is a party that provides loans or funding to loan recipients who need funds which are then brought together by the organizers. The legal relationship between the organizer and the lender is based on an agreement that arises after the approval of the agreement (in online form). However, the relationship between the provider and the lender arises when the agreement between the supplier and the lender has been approved. An agreement that arises when the loan recipient commits to the organizer to provide a loan against a loan offer submitted by the loan recipient through the organizer. This arrangement agreement is considered the beginning of the loan agreement that will occur between the lender and the borrower because a new loan agreement will occur when the lender agrees to provide loan funds to the borrower who is the prospective loan recipient. However, the organizer's involvement in the agreement between the lender and the borrower is only an intermediary that binds the two. The performance agreement is strengthened by confirmation from the organizer of the sponsorship agreement for the bid submitted. This confirmation is

marked by the submission of loan documents by the lender while the relationship between the lender and the recipient of the loan is established by the loan contract specified in Article 1754 Civil Law.

### 3. Rights of Users of Online Loan Services as Consumers

Service user rights are a very important aspect of online loan service providers. In this case, the offer offered is an encouragement for someone to use online credit services. Therefore, online credit service providers must also be able to pay attention to the rights of users of online credit services as consumers.

The Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing and Borrowing Services does not spell out in detail the rights possessed by users of online loan services. However, the articles that regulate what online lenders must and cannot do show that the rights of users of these services can be explained as follows:

- a. (Article 30 Paragraph (1)) The right to the latest information regarding Information Technology-Based Money Lending Services.
- b. (Article 31 Paragraph (1) and Paragraph (2)) The right to information on receiving, delaying, or rejecting requests for Information Technology-Based Money Lending Services and their reasons
- c. (Article 32 Paragraph (1) and Paragraph (2)) The right to obtain information from

electronic documents using the Indonesian language which is easy for users to read and understand. The Indonesian language in the document can also be paired with other languages if necessary

- d. (Article 36 Paragraph (1)) The right to protection from all efforts to transfer the responsibility or obligations of the Operator to the User.
- e. (Article 36 Paragraph (2)) The right to protection from the user's obligation to comply with new regulations, additions, continuations and/or changes made unilaterally by the Operator during the period the user is utilizing the service.
- f. The right to receive compensation for user losses arising from errors and/or negligence of directors and/or administrator employees.
- g. (Article 39) The right to protection of giving data or information about users to third parties without the user's permission. These rights are rights that should be owned by users of online loan services. (Republic of Indonesia, 2016).

Likewise, in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection Article 4 which regulates the rights possessed by consumers as follows:

- a. The right to comfort, security and safety in consuming goods and/or services

- b. The right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and the conditions and guarantees promised
- c. The right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services
- d. The right to hear opinions and complaints about the goods and/or services used
- e. The right to obtain proper advocacy, protection and efforts to resolve consumer protection disputes
- f. The right to obtain consumer guidance and education
- g. The right to be treated or served properly and honestly and not discriminatory
- h. The right to receive compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as they should be
- i. The rights regulated in the provisions of other laws and regulations. (Republic of Indonesia, 1999).

Users of online loan services as consumers have rights that must be considered by online credit companies. However, what happened was just the opposite. If the business process is not in accordance with the wishes of the service provider, for example, service users are treated improperly, online loan service providers violate the rights of

service customers under certain conditions. For example, from collectors and debt collection agencies that aim to frighten and embarrass users of online credit services by sending photos to users of online credit services or writing letters to known parties and also threats to report to the authorities. This of course violates Article 29 Paragraph (1) and Article 30 of Law Number 39 of 1999 concerning Human Rights and Article 4 of Law Number 8 of 1999 concerning Consumer Protection. Given that Indonesia is a rule of law country, this situation is very worrying, but crimes that disturb human peace and security continue. Articles in the Criminal Code and Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions have not been able to fulfill the aspect of protecting the interests of users of online loan services.

The scope of criminal law cannot cover all criminal acts in online loan processing. So far, online credit encouragement has been imposed on alleged criminal activities in the form of spreading personal data via electronic media, threats of debt collection, fraud, defamation, or sexual harassment. In addition, users of online loan services who have been treated unpleasantly are reluctant to report to the police about the treatment they have received because of unpaid loans. online loan companies also have the discretion to continue to carry out their actions in carrying out threats and terrorizing users of online loan services. In this case, the police cannot take action



without complaints by users of online lending services, considering that this crime is included in a complaint offense, what is meant by a complaint offense is an offense whose prosecution is only carried out if there is a complaint from the affected party.

Complaint offenses are distinguished according to their nature as:

- a. Complaint offenses are absolute. By their nature, these offenses can only be prosecuted on the basis of a complaint.
- b. Relative complaint offenses are called relative because in these offenses there is a special relationship between the maker and the person affected. Based on this, many violations of the rights of users of online loan services as consumers are not followed up as a result of no complaints regarding violations of these rights.

#### **4. Consumer Legal Protection in Online Loans.**

Actually the law was created to provide protection to the community. Protection of the rights of users of online loan services is a necessity. In this case the government has a very important role in providing protection through laws and regulations as well as through strict actions as an effort to prevent and handle cases of violations of the rights of users of online loan services. These violations even lead to human rights violations as a result of threats and terror against users of online loan

services who are deemed negligent in making payments. In the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Technology-Based Borrowing and Borrowing Services, peer to peer lending users are described as lenders and loan recipients, as follows: "Lenders are people and/or legal entities that have receivables due to agreement on Information Technology-Based Borrowing and Borrowing Services" while "Loan Recipients are people, legal entities, and/or business entities that have debts due to a Money-Lending Service agreement." The rights of online credit service users who are violated as a result of intimidation or terrorism by online credit companies must be protected by human rights. Threats and fear create fear, embarrassment, and discomfort due to the dissemination of information.

In this regard, Article 12 of the Universal Declaration of Human Rights (UDHR) also states, "No one may be subject to arbitrary interference with his personal affairs, family, household or correspondence; also not allowed to violate the honor and good name. Everyone has the right to legal protection against such disturbances or violations. "The contents of the UDHR are also disclosed in Indonesian laws and regulations, particularly Law no. 39 concerning Human Rights, 1999. (Republic of Indonesia, 1999).

Talking about consumer protection specifically has been regulated in Law Number 8 of 1999 concerning Consumer Protection (UUPK). Consumer protection as

regulated in Law no. 8 of 1999 concerning Consumer Protection in principle is all efforts to guarantee legal certainty to provide protection to consumers. The UUPK also regulates consumer rights and obligations which are used as a basis for providing consumer protection. Consumer rights as regulated in Article 4 UUPK are:

- a. The right to comfort, security and safety in consuming goods and/or services
- b. The right to choose goods and/or services and to receive said goods and/or services in accordance with the exchange rate and the conditions and guarantees promised.
- c. Right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services
- d. The right to hear opinions and complaints about the goods and/or services used
- e. The right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes
- f. The right to receive guidance and consumer education
- g. The right to be required or served properly and honestly and discriminatively
- h. The right to obtain compensation, loss and/or replacement, if the goods and/or services received are not as they should be
- i. The rights regulated in the provisions of other laws and regulations.

In addition to consumer rights, UUPK also regulates consumer obligations, namely:

- a. read or follow the instructions for information and procedures for the use or utilization of goods and/or services, for the sake of security and safety.
- b. in good faith in conducting transactions for the purchase of goods and/or services.
- c. pay according to the agreed exchange rate.
- d. follow efforts to settle legal disputes on consumer protection properly.

Apart from being regulated in the UUPK, consumer protection is also outlined in the form of preparing a National Financial Inclusive Strategy which is stipulated through Presidential Regulation Number 82 of 2016 by prioritizing 5 (five) pillars, namely: the Financial Education Pillar, the Community Property Rights Pillar, the Intermediation Facility Pillar and the Financial Distribution Channels, the Government Sector Financial Services Pillar, and the Consumer Protection Pillar where consumer protection is intended to provide a sense of security to the public in interacting with Consumer Protection financial institutions. (Presidential Regulation, 2016).

The Financial Services Authority (OJK) as the institution responsible for the financial services sector has provided protection to consumers as stipulated in the Financial Services Regulation Number 06/POJK.07/2022 concerning

Financial Sector Consumer Protection. This regulation has regulated the obligations of business actors. In addition, OJK has also taken actions in the form of consumer loss prevention measures, complaint services to legal defense of consumers in the financial services sector. Measures to prevent consumer losses are carried out by providing information and education related to the characteristics of the financial services sector. In addition, OJK can ask financial service companies to stop their activities if they can harm consumers or the general public. Customer complaint services are carried out by creating consumer complaint tools and mechanisms that have been infiltrated by economic actors in the financial services sector. In addition, the OJK is legally in the form of ordering financial service institutions to take certain steps in resolving consumer complaints and conducting legal proceedings against business actors or other parties that harm consumers.

## **CONCLUSION**

Online loan arrangements have become a hot topic of conversation as they exist in Indonesia, which offers various facilities for disbursing funds. Protection of the rights of users of online loan services is not optimal even though there are legal sanctions for violating the right to be secured through electronic media. This is of great concern because users of online loan services have basic rights that need to be protected, both as consumers and as humans who have basic rights from birth. Protection of the basic rights of users of online loan

services is contained in the Consumer Protection Act and the Human Rights Act. The lack of public understanding of the online loan mechanism and the rights of users of online loan services is one of the reasons for the lack of security for this. On the part of service providers, consumer rights violations can also occur because the prosecution of consumer rights violations is still not optimal. This condition itself becomes a dilemma because it is still difficult for the regulatory agency in charge of managing and supervising consumers to anticipate violations of consumer rights which also face non-compliance, especially implementing preventive and repressive measures against illegal financial technology practices. Likewise with violations of personal data, which so far do not have special regulations that provide severe sanctions. In this case, it causes psychological instability for service users due to misuse of their data. In principle, the state has provided consumer protection for online loans as regulated as consumer rights in the Consumer Protection Act No. 8 of 1999 concerning Consumer Protection and the Financial Services Authority has also provided consumer protection in the form of loss prevention measures for consumers, legal protection for demanding services to consumers. in the financial services industry. Efforts to prevent consumer losses are carried out by providing information and education relevant to the characteristics of the financial services industry.

Apart from that, there is also Ministerial Regulation Number 20 of 2016 concerning personal data protection. However, this is not enough to protect consumers.

Therefore, the government must immediately protect customer personal data so that it is not misused.

Based on the conclusions, there are suggestions that can be used as recommendations to related parties, namely:

(1) There needs to be coordination between the Financial Services Authority and the Ministry of Communication and Information in socializing online loans so that the public understands the differences between legal and illegal online loan providers in terms of legality, interest, providing methods and so on. This is to avoid human rights violations when making payments, because service users cannot pay due to high interest rates. Apart from that, the community is also given knowledge of their rights as users of online lending services and the steps that must be taken if their rights are violated, especially those that result in the violation of men's rights. This can be done in collaboration with the Ministry of Law and Human Rights of the BPHN.

(2) There needs to be coordination between the Financial Services Authority and the Indonesian Consumers Foundation in determining the form of an online loan agreement or document so that the contents of the provisions do not harm service users.

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