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Legal Protection of Fintech-Peer to Peer Lending-Based Money Loan Recipients

Johan Kuswara[1], Handoyo Prasetyo[2]

[1]Faculty of law, Universutas Pembangunan Nasional veteran Jakarta, RS Fatmawati Street, south Jakarta city ,12450 Indonesia

[2]Doctoral of Law, Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta, RS. Fatmawati Street, South Jakarta City, 12450

ABSTRACT: Research This study aims to review and analyze the legal protection of loan recipients in the implementation of financial technology. Changes in the financial sector today are fintech (financial technology), one of which is peer to peer lending. The proliferation of peer-to-peer lending-based fintech in Indonesia is often a problem, although on the other hand it is also an answer for people who need funding quickly and easily. Whereas against the rise of online lending (peer to peer lending), the government in this case is the OJK (Financial Services Authority) has taken various ways to protect the community and foster a good business climate, but the problems faced by the community still occur. The problem in this research is what form of legal protection is obtained by recipients of fintech peer to peer lending-based money based on the provisions of applicable laws and regulations? and how to increase the government's role in the implementation and development of fintech-based peer to peer lending services. The research method used in this research is normative juridical. The implementation of financial technology based on peer-to-peer lending has not gone well.

KEYWORDS: legal protection; loan; peer to peer lending

A. INTRODUCTION

Various conveniences in carrying out activities are the benefits that humans get with the information technology. One of them is the convenience in the financial sector through information technology-based lending and borrowing services or online loans (Pinjol). The existence of financial technology (fintech) has become one of the options in obtaining funding lately. Present in a modern and simple form is the reason why this system is popular. There are two fairly new systems in Indonesia that were introduced through fintech, namely Peer-to-Peer (P2P) and Crowdfunding. These two systems do seem to have similarities between one another. If examined more deeply, the two have quite a big difference.

Peer-to-Peer (P2P) is a system (platform) that brings together lenders (creditors) and borrowers (debtors). In P2P, borrowed money is also subject to a certain amount of interest per month that competes with the interest on Unsecured Loans (KTA). In practice, lending and borrowing activities in P2P are carried out online. Lenders and borrowers do not meet each other. In addition, you can get a loan without the need to guarantee anything (without collateral). After the loan is approved, you will be bound by an agreement regarding obligations to the lender.

Unlike other lending systems, in crowdfunding, you actually get some funds in the form of donations. Similar to P2P, crowdfunding involves three parties: the project owner, the funder, and the platform provider. You only need to share your business idea and the various business opportunities in the future. If someone is interested, the funder will join or jointly provide funds for the running of your business. On the other hand, crowdfunding is also used as an act of raising funds for social purposes.[1]

The existence of online loan companies is regulated in the Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. In accordance with article 8 paragraph 1 of POJK 77/2016, Providers who will carry out Information Technology-Based Lending and Borrowing Services shall submit an application for registration to OJK. In the event that the company does not register and carry out the said business activity

[1]cermati.com, Apa Perbedaan Peer-To-Peer (P2P) Lending dengan Crowdfunding? Ini Penjelasannya, https://www.cermati.com/artikel/apa-perbedaan-peer-to-peer-p2p-lending-dengan-crowdfunding-ini-penjelasannya, accessed on 7 May 2021

without a permit, it will be included in the fintech list that is not registered/licensed from the OJK (illegal fintech) and subsequently the application and electronic system will be blocked by the relevant agency.

The presence of online loans as a form of financial technology or financial technology (fintech) is the impact of technological advances and many offer loans with easier and more flexible terms and conditions compared to conventional financial institutions such as banks. In addition, online loans are considered suitable for the market in Indonesia because even though people do not have access to finance, the penetration of ownership and use of cellular phones is very high.[2]. This can be seen in the Hootsuite data-which is a report from wearesocial.com regarding the data, statistics, and trends needed to understand digital usage in Indonesia in 2021-showing that the number of Internet users in Indonesia in January 2021 exceeded 4.54 billion users. with a penetration rate of 59 percent. In addition, the population of mobile device users has an even higher number which reaches 5.19 billion users, with a penetration rate of 67 percent.[3] .

The Chief Executive of the OJK Non-Bank Financial Industry Supervisor, Riswinandi said, until December 2020, the number of new loan disbursements from the fintech lending industry grew 26.47 percent year-on-year. Simultaneously, the number of lenders and borrowers also grew by 18.32 percent and 134.59 percent year-on-year[4]. Data on fintech lending companies licensed and registered with the Financial Services Authority (OJK) as of March 16, 2021, as many as 148 companies[5]. In addition, there are also illegal online loan companies that are increasing in number.

Based on these data, it can be seen that the growth of online loan companies is increasing rapidly in Indonesia in line with the increasing use of information and digital technology during the current COVID-19 pandemic.

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Based on these data, it can be seen that the growth of online loan companies is increasing rapidly in Indonesia in line with the increasing use of information and digital technology during the current COVID-19 pandemic. The number of online loan companies makes people more tempted by the programs offered even though the online loan interest is higher than the bank. Based on the research, the majority of respondents have a good perception (70.0 percent), poor perception (27.0 percent), not good (2.0 percent) and very good (1.0 percent) towards online loan applications. Based on the age of 21-30 years have the highest level of good perception. Women have the highest level of good perception and no woman has a very good perception of online loans. Respondents who were married had the highest level of good perception. Respondents with an income equal to Rp2,557,000 have the highest level of good perception, there are respondents who have an income of less than Rp2,557,000 have a bad perception level, and there is one respondent who has a large income of Rp2,557,000 has a very good perception level. .

The majority of respondents' reasons for making online loans are the ease of collateral/no collateral, this is because 74 percent of respondents choose the convenience of collateral as the reason for borrowing online. The reason the respondents did the least was a recommendation from the family[6].

This creates problems for users of the information technology-based lending and borrowing services, especially when collecting payments as stated by the Chairman of the Indonesian Consumers Foundation (YLKI) Tulus Abadi who said that the highest problem in online loans reported by consumers was the collection method, namely reached 39.5 percent. Then, the transfer of contacts is 14.5 percent, the request for rescheduling is 14.5 percent, the interest rate is 13.5 percent. 11.4 percent administration and 3rd party billing. In addition, the problem with online loans after billing with terror is the transfer of contacts. Lenders can read all HP and Photo transactions, so personal data protection is still low. This is the third anomaly. Indonesia does not yet have a Personal Data Protection Law, so that business actors just want to do it. Likewise, the legal ones also play with two legs[7]. This

[2]Thomas Arifin,. Berani Jadi Pengusaha: Sukses Usaha Dan Raih Pinjaman (Jakarta: PT. Gramedia Pustaka Utama, 2018), p. 175

[3] datareportal.com, "DIGITAL 2021:INDONESIA", https://datareportal.com/reports/digital-2021-indonesia, accessed on March 25, 2021

[4] Liputan6.com, "OJK Catat Jumlah Nasabah Pinjaman Online Tumbuh 134,59 Persen di Desember 2020", https://www.liputan6.com/bisnis/read/4502202/ojk-catat-jumlah-nasabah-pinjaman-online-tumbuh-13459-persen-di-desember-2020, accessed on March 17, 2021

[5]Otoritas Jasa Keuangan. Penyelenggara Fintech Lending Terdaftar dan Berizin di OJK per 16 Maret 2021, https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/Penyelenggara-Fintech-Lending-Terdaftar-dan-Berizin-di-OJK-per-16-Maret-2021.aspx, accessed on March 25, 2021

[6]Susi Susanti, Persepsi Masyarakat Kota Pekanbaru Tentang Aplikasi Pinjaman Online, JOM FISIP Vol. 7: Edisi I Januari – Juni 2020

[7]harianterbit.com; Lapor OJK Jika Diganggu Pinjaman Online, Termasuk Ancaman Dengan Kata Kasar, https://harianterbit.com/read/116550/Lapor-OJK-Jika-Diganggu-Pinjaman-Online-Termasuk-Ancaman-Dengan-Kata-Kasar, accessed on March 25, 2021

statement means that online loan collection is something that needs to get the attention of many parties, considering that users of these online loan services get unpleasant treatment.

The government has issued Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. The explanation of Article 27 Paragraph (3) adds the term "distributing, transmitting or making accessible Electronic Information" the provision is a complaint offense not a general offense, it is reaffirmed that the criminal element in the provision refers to the provisions for defamation and slander as regulated in the Criminal Code. Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) was submitted to the DPR RI before being ratified. The ITE Law was promulgated on 21 April 2008 and became the first cyber law in Indonesia. Article 31 paragraph (3). The regulation stipulates that every person intentionally and without rights or against the law intercepts or intercepts Information and Electronic Documents in a computer with a certain electronic system belonging to another person. Paragraph (2) which contains the transmission of Electronic Information and Electronic Documents that are not public in a computer or certain electronic system belonging to another person, whether it does not cause any changes or causes changes, omissions, and termination of Electronic Information with Electronic Documents which is being transmitted. The provisions as referred to in paragraphs (1) and (2) do not apply to interception or wiretapping carried out in the context of law enforcement at the request of the police, prosecutors,

OJK has issued POJK Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services (LPMUBTI). This regulation is the basic implementation of P2P Lending business activities or online lending and borrowing, which is one type of fintech, including regulations regarding supervision carried out by OJK on the implementation of these business activities. The implementation of fintech P2P lending in the POJK above is grouped as other financial service institutions that are included in the realm of supervision of the Non-Bank Financial Industry (IKNB) sector. As other financial service institutions, of course the implementation of P2P lending fintech will certainly be supervised by the OJK as the authority that has the authority to supervise microprudential in Indonesia.

In the kontan.co.id report, it was stated that the Investment Alert Task Force (SWI) again found 51 illegal P2P lending alias online loans (pinjol) during February 2021. SWI has closed 3,107 illegal fintech lenders from 2018 to February 2021[8].

Deputy Chairman of the OJK Board of Commissioners, Nurhaida, stated that his party could take action on fintech if they were registered with the OJK. However, if it has not been registered, the domain is in the Investment Alert Task Force. The members of the Investment Alert Task Force consist of 13 ministries and institutions (K/L) headed by OJK. Among them are the Ministry of Communication and Information (Kemkominfo), the Police, Bank Indonesia, the Indonesian Attorney General's Office, and so on[9].

The 13 institutions are OJK, Bank Indonesia, Ministry of Trade, Ministry of Communication and Information Technology, Ministry of Home Affairs, Ministry of Religion, Ministry of Education and Culture, Ministry of Research, Technology and Higher Education, Ministry of Cooperatives and SMEs, Attorney General's Office, National Police. , the Investment Coordinating Board, as well as the Center for Financial Transaction Reports and Analysis[10].

Fintech lending closed by OJK and Kominfo can be caused by several things, including violating laws and regulations or being operationally incapable. Any violators who violate existing legal regulations can be subject to sanctions so that legal certainty can be realized for the parties. The existing law must be adapted to the principles of justice that apply in society. In enforcing the law, the elements that must be considered are: legal certainty (Rechtssicherheit), expediency (Zweckmassigkeit) and justice (Gerechtigkeit). If in carrying out business activities, the P2P lending operator is proven to have committed a violation, the operator may be imposed with or without a written warning of administrative sanctions as regulated in OJK Regulation No. 77/POJK.01/2016 Article 47 paragraph (2) LPMUBTI.

In the implementation of OJK supervision using the Regulatory Sandbox mechanism, it has several requirements, namely:

1. The Financial Services Authority determines the provider to be tested
2. The Operator fulfills at least:

a. Registered as a digital financial innovation at the Financial Services Authority or based on the application letter submitted.
b. It is a new business model.
c. Has a business scale with a wide market coverage.
d. Registered with the organizing association[11].

[8]kontan.co.id; OJK kembali temukan 51 pinjol ilegal, ini daftar lengkapnya, https://keuangan.kontan.co.id/news/ojk-kembali-temukan-51-pinjol-ilegal-ini-daftar-lengkapnya, accessed on March 25, 2021

[9] economy.okezone.com, Banyak Korban Pinjaman Online, Ini Kata OJK, Banyak Korban Pinjaman Online, Ini Kata OJK: Okezone Economy, accessed on 7 May 2021.

[10] Tirto.id, 13 Kementerian Lembaga Perkuat Koordinasi Cegah Investasi Ilegal, https://tirto.id/13-kementerian-lembaga-perkuat-koordinasi-cegah-investasi-ilegal-cK8B, accessed on, 7 May 2021

[11]Elvira Fitriyani Pakpahan, Peran Otoritas Jasa Keuangan (OJK) dalam Mengawasi Maraknya Pelayanan Financial Technology (Fintech) di Indonesia, Jurnal Magister Hukum Udayana (Udayana Master Law Journal), Vol. 9 No. 3 September 2020, 559-574, 2020.

Legal Protection of Fintech-Peer to Peer Lending-Based Money Loan Recipients

In 2018 OJK issued Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector, in this case the regulation was made with the aim of building a broad supervisory system and providing protection to the public considering the rapid progress and development of technology in the sector. digital finance that currently cannot be ignored and needs to be operated in order to be able to provide benefits for the benefit of the community. Consumer protection provided by OJK plays an important role considering the complexity of activities in the financial services sector, efforts to strengthen consumer protection, especially in the financial services sector, prioritize 5 (five) principles, namely transparency, fair treatment, reliability, confidentiality and security of consumer data/information and handling and complaints, and consumer dispute resolution in a simple, fast, and affordable way. To strengthen legal protection for the interests of the community, the law has the goal of creating an orderly society, creating order, and balance so that interactions between citizens are reflected in the legal regulations themselves. POJK Number 13/POJK.02/2018 is currently the legal umbrella established by the government through the Financial Services Authority. In this case, the OJK has a responsibility to ensure the safety of online loan application users so that they are not tempted by easy ways to get a loan, but in the end they get caught up in the high interest rates given by online loan application providers who are not registered with the OJK. To strengthen legal protection for the interests of the community, the law has a goal, namely to create an orderly social order, create order, and balance so that interactions between citizens are reflected in the legal regulations themselves. POJK Number 13/POJK.02/2018 is currently the legal umbrella established by the government through the Financial Services Authority. In this case, the OJK has the responsibility to ensure the safety of online loan application users so that they are not tempted by easy ways to get a loan, but in the end they get caught up in the high interest rates given by online loan application providers who are not registered with the OJK. To strengthen legal protection for the interests of the community, the law has a goal, namely to create an orderly social order, create order, and balance so that interactions between citizens are reflected in the legal regulations themselves. POJK Number 13/POJK.02/2018 is currently the legal umbrella established by the government through the Financial Services Authority. In this case, the OJK has a responsibility to ensure the safety of online loan application users so that they are not tempted by easy ways to get a loan, but in the end they get caught up in the high interest rates given by online loan application providers who are not registered with the OJK. and balance so that the association between citizens is reflected in the rule of law itself. POJK Number 13/POJK.02/2018 is currently the legal umbrella established by the government through the Financial Services Authority. In this case, the OJK has a responsibility to ensure the safety of online loan application users so that they are not tempted by easy ways to get a loan, but in the end they get caught up in the high interest rates given by online loan application providers who are not registered with the OJK. and balance so that the association between citizens is reflected in the rule of law itself. POJK Number 13/POJK.02/2018 is currently the legal umbrella established by the government through the Financial Services Authority. In this case, the OJK has a responsibility to ensure the safety of online loan application users so that they are not tempted by easy ways to get a loan, but in the end they get caught up in the high interest rates given by online loan application providers who are not registered with the OJK.

Research Director of the Center of Reform on Economics (CORE) Indonesia Piter Abdullah Redjalam assesses that illegal fintech or illegal online loans are actually loan sharks who have been around us but have changed faces by utilizing existing technology. According to him, there are two main causes for the continued proliferation of illegal fintech in society. "First, the demand is indeed high in the midst of tight liquidity. People who need fast funds and do not have access to formal financial institutions are a potential market for loan sharks or illegal fintech. The second reason is the limited public literacy of the financial system and fintech. This condition then used by loan sharks who have changed clothes into illegal fintechtech[12].

Based on the background that has been stated above, the following problems can be formulated:

1. What form of legal protection does the recipient of the fintech peer to peer lending-based money loan receive based on the applicable laws and regulations?
2. How to increase the government's role in the implementation and development of fintech-based peer to peer lending services?

B. RESEARCH METHODS

Throughnormative juridical research will be examined on the impact of violating the law and how the form of legal protection for users of information technology-based lending and borrowing services will be analyzed, for this reason it will be analyzed based on legal theories, legal principles, legal doctrines and related laws and regulations. . In this study using a statutory approach (statute approach), and a conceptual approach (conceptual approach). A statutory approach is needed to further study the legal basis. The statutory approach is carried out by reviewing all laws and regulations related to legal issues.

[12] Mediaindonesia.com, "Ini 2 Penyebab Menjamurnya Pinjaman Online Ilegal", https://mediaindonesia.com/ekonomi/256756/ini-2-penyebab-menjamurnya-pinjaman-online-ilegal"https://mediaindonesia.com/ekonomi/256756/ini-2-penyebab-menjamurnya-pinjaman-online-ilegal, accessed on March 17, 2021

C. RESEARCH RESULTS AND DISCUSSION

1. Legal protection

This study uses the theory of legal protection on the grounds that the law protects a person's interests by allocating his power to him, to act in the context of his interests, and that interest is the target of rights. Fitzgerald explained: "That the law aims to integrate and coordinate various interests in society by limiting the variety of interests such as in a traffic interest on the other"[13](that the law aims to integrate and coordinate the sharing of interests in society by limiting the various interests because in a traffic of interests, protection of these interests can only be done by limiting the interests of the other party). Legal protection pursued through legislation has an underlying legal principle.

Likewise, legal protection is taken through efforts to make and include steps through legislation that has a purpose, the scope of which is planned through strategies and policies. All of these things can be found in every piece of legislation that is primarily held with the same goal, namely legal protection. Pound classifies the interests protected by law into 3 (three) main categories, including public interests, social interests and private interests. Dworkin stated that rights are what everyone should uphold. As Dworkin wrote "Rights are best understood as trumps over some backround justification for political decisions that the satay at goal for the community as a whole"[14](rights are best understood as the highest value of background justification for political decisions that state a goal for society as a whole), when faced with a conflict between the exercise of one's justified right and the public interest. Dworkin recognizes that intervening in the lives of individuals to negate rights is justified, if a specific basis can be found. According to Dworkin, as quoted by Piter Mahmud Marzuki, "rights are not what is formulated but the values that underlie that formulation". The nature of rights is so valuable that it gives rise to the theory of interests and the theory of will, as proposed by Jeremy Bentem and Rudolf Von Ihering, who view that, "rights are interests protected by law".[15]. Social interests are law and order, national security, community economic protection, protection of religion, morals, human rights, inventions, health and racial unity, the environment, individual interests, and family interests. "With the guarantee of equal freedom and equality for all, justice will be realized."[16] Rights are powers that are given by law to a person with a close relationship between rights and obligations, rights are paired with obligations, "meaning that if someone has rights, then his partner is an obligation to others."[17]Rights are something inherent in humans by nature and because of these rights, a law is needed to maintain the continuity of the existence of rights in the pattern of social life, and because of this right, the law was created. These interests are not created by the state because these interests already exist in social life and the state only chooses which ones to protect. According to Peter Mahmud there are 3 (three) elements in a right, namely:

a. element of protection;
b. The element of recognition; and
c. Will element.

"When the principle of justice is implemented, a good and ethical business is born."[18] Protection is an important element in rights, as Houwing argues, sees "rights as an interest that is protected by law in a certain way."[19]The law must consider interests carefully and strike a balance between them. Van Dijk in Peter Mahmud Marzuki states that "the law must function in achieving the goal of peace and prosperity, the goal of achieving peace and prosperity can be realized if the law provides as much as possible a fair arrangement."[20]Philipus M. Hardjon argues that, "The principle of legal protection for the people against government actions rests and originates from the concept of recognition and protection of human rights. Because according to history in the west, the birth of concepts regarding the recognition and protection of human rights is directed at limiting and laying down obligations on society and the government.[21].

According to Teguh Prasetyo, "The theory of dignified justice does not only look at Indonesia's positive legal system in a closed manner in the sense that where there is a society there is always law"[22]. "The Pancasila legal system is a legal system that belongs to the Indonesian nation itself as part of the heritage of world civilization (the product of civilization). The Pancasila legal system is an authentic, original legal system or later people like to call it original.[23]. Thus, in an effort to formulate the principle of legal protection for the people based on Pancasila, it begins with a description of the concept and declaration of human rights.

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[13]J.P.Fritzgerald, . *Salmond on Jurisprudence* (London: Sweet & Mazwell, 1966), p. 53.
[14]Lawrence Friedman, . *The Legal System: A Social Scine Perpective*, p. 164
[15]Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana Prenada Media Group, 2006), p. 176
[16]Agus Yudho Hermoko, *Asas Proporsionalitas dalam kontrak komersil* (Yogyakarta: Laksbang Mediatma, 2008), p. 45
[17]*Ibid* p. 55
[18]Satjipto Rahardjo, *Teori Hukum Strategi tertib manusia linmas ruang dan General* (Yogyakarta: Genta Publishing, 2010), p. 4419
[19]*Ibid* p. 221
[20]Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana Prenada Media Group, 2006), p. 189
[21]Philipus M.Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia* (Surabaya: PT. Bina Ilmu, 1987), p. 38
[22]Teguh Prasetyo, *Keadilan Bermartabat Perspektif Teori Hukum* (Bandung: Nusa Media, 2015), p. 58
[23]Teguh Prasetyo, *Sistem hukum Pancasila* (Bandung: Nusa Media, 2016), p. 20

Pancasila is used as the ideological basis and the philosophical basis of the Indonesian nation state. Therefore, the recognition of the dignity of the Indonesian people is not the result of years of struggle, but that recognition is intrinsically attached to Pancasila which is reflected in its sila.

The legal protection given to the Indonesian people is the implementation of the principle of recognition and protection of human dignity which is based on Pancasila and the principle of the rule of law based on Pancasila. Everyone has the right to protection from the law.

Almost all legal relationships must receive protection from the law. Therefore there are many kinds of legal protection. M. Isnaeni argues that basically the issue of "legal protection in terms of its source can be divided into two (2) kinds, namely "external" legal protection and "internal" legal protection.[24]. The essence of internal legal protection, basically the intended legal protection is packaged by the parties themselves at the time of making the agreement, where when packing the contract clauses, both parties want their interests to be accommodated on the basis of an agreement. Likewise, all types of risks are endeavored to be prevented through filing through clauses that are packaged on the basis of agreement, so that with this clause the parties will receive balanced legal protection based on their mutual consent. Regarding such internal legal protection can only be realized by the parties, if their legal position is relatively equal in the sense that the parties have relatively balanced bargaining power. so that on the basis of the principle of freedom of contract, each partner in the agreement has the freedom to express his will according to his interests. "This pattern is used as the basis when the parties assemble the clauses of the agreement they are working on, so that the legal protection of each party can be realized in a straightforward manner on their initiative"[25]. External legal protection made by the authorities through regulations for the benefit of weak parties, "according to the nature of the laws and regulations that should not be biased and impartial, proportionally must also be given balanced legal protection as early as possible to other parties"[26]. Because it is possible that at the beginning of the agreement, there is a party that is relatively stronger than the partner, but in the implementation of the agreement the party who was originally strong, falls into the wronged party, for example, when the debtor defaults, the creditor should also need legal protection. The packaging of the laws and regulations as described above, illustrates how detailed and fair the authorities provide legal protection to the parties proportionally. Issuing the rule of law with such a model, of course, is not an easy task for a government that always tries optimally to protect its people. Philipus M. Hadjon said that, there are 2 (two) kinds of legal protection, namely, "preventive legal protection and repressive legal protection." On preventive legal protection,

2. Theory of Justice

Justice comes from the word fair, according to the Indonesian Dictionary fair is not arbitrary, impartial, not one-sided. Fair mainly means that a decision and action is based on objective norms. Justice is basically a relative concept, everyone is not equal, fair according to one is not necessarily fair to the other, when someone asserts that he is doing a justice, it must be relevant to public order where a scale of justice is recognized. The scale of justice varies greatly from place to place, each scale is defined and fully determined by the community according to the public order of that society.[27]In Indonesia, justice is described in Pancasila as the basis of the state, namely social justice for all Indonesian people. The five precepts contain values that are the goal in living together. The justice is based on and imbued with the essence of human justice, namely justice in the relationship between humans and themselves, humans with other humans, humans with society, nation and state, and human relationships with God.[28]The values of justice must be a basis that must be realized in living together with the state to realize the goals of the state, namely realizing the welfare of all its citizens and the entire territory, educating all its citizens. Likewise, the values of justice are the basis for the association between countries and nations in the world and the principles of wanting to create order in life together in an association between nations in the world based on a principle of independence for each nation, eternal peace, and justice in living together (justice). social).[29]

Aristotle in his work entitled Ethics Nichomachea explains his thoughts on justice. For Aristotle, virtue, namely obedience to the law (policy law at that time, written and unwritten) was justice. In other words justice is a virtue and this is general. Theo Huijbers explains about justice according to Aristotle in addition to general virtues, as well as justice as a special moral virtue, which is related to human attitudes in certain fields, namely determining good relations between people, and the balance between two parties. The measure of this balance is numerical and proportional similarity. This is because Aristotle understands justice in terms of equality. In numerical similarity, every human being is equated in one unit. For example, everyone is equal before the law.[30]In addition, Aristotle also distinguishes between distributive justice and corrective justice. According to him, distributive justice is

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Moch. Isnaeni, *Pengantar Hukum Jaminan Kebendaan* (Surabaya: PT. Revka Petra Media, 2016), p. 159

[25]*ibid* p. 160

[26]*ibid* p. 163

[27] M. Agus Santoso, *Hukum, Moral & Keadilan Sebuah Kajian Filsafat Hukum*, Ctk. Kedua, Kencana, Jakarta, 2014, p.85

[28] *Ibid*, p.86

[29] *Ibid*, p.87

[30] Hyronimus Rhiti, *Filsafat Hukum Edisi Lengkap (Dari Klasik ke Postmodernisme)*, Ctk. Kelima, Universitas Atma Jaya, Yogyakarta, 2015, p.241

justice that applies in public law, which focuses on the distribution, honorarium of wealth, and other goods obtained by members of the community. Then corrective justice relates to correcting something wrong, providing compensation to the injured party or appropriate punishment for the perpetrator of the crime. So it can be said that compensation and sanctions are corrective justice according to Aristotle. The theory of justice according to Aristotle, put forward by Theo Huijbers is as follows:[31]

a. Justice in the division of office and public property. There is a geometric similarity here. For example, a Regent has twice as important a position as a Camat, so the Regent must receive twice as much honor as the Camat. To those who are equally important are given the same, and those who are not equally important are given to those who are not.
b. Justice in buying and selling. According to him, the price of goods depends on the position of the parties. This is now impossible to accept.
c. Justice as arithmetic equality in the private and public spheres. If someone steals, then he must be punished, regardless of the position of the person concerned. Now, if an official is legally proven to have committed corruption, then that official must be punished regardless of whether he or she is an official.
d. Justice in the field of legal interpretation. Because the law is general in nature, it does not cover all concrete issues, the judge must interpret it as if he himself was involved in the concrete event. According to Aristotle, the judge must have epikeia, which is "a sense of what is proper".

According to John Rawls, justice is fairness (justice as fairness). John Rawls's opinion is rooted in Locke and Rousseau's social contract theory and the deontological teachings of Immanuel Kant. Some of his views on justice are as follows:[32]

a. This justice is also a result of a just choice. This stems from Rawls's assumption that actually humans in society do not know their original position, do not know their goals and life plans, and they also do not know what society they belong to and from which generation (veil of ignorance). In other words, individuals in society are obscure entities. Because of that people then choose the principle of justice.
b. Justice as fairness produces pure procedural justice. In pure procedural justice there is no standard to determine what is called "fair" apart from the procedure itself. Justice is not seen from the results, but from the system (or process) itself.

Two principles of justice. First, is the principle of greatest equal liberty. These principles include:[33]

a. Freedom to participate in political life (right to vote, right to stand for election);
b. Freedom of speech (including freedom of the press);
c. Freedom of belief (including religious belief);
d. Freedom to be yourself (person);
e. The right to retain private property.

Second, the second principle consists of two parts, namely the difference principle and the principle of fair equality of opportunity. The essence of the first principle is that social and economic differences should be regulated so as to provide the greatest benefit to the most disadvantaged. The term socio-economic difference in the principle of difference refers to inequality in a person's prospects for obtaining the basic elements of welfare, income, and authority. While the term most disadvantaged (most disadvantaged) refers to those who have the least opportunity to achieve prosperity, income and authority prospects.

According to Thomas Hobbes, justice is an act that can be said to be fair if it has been based on an agreed agreement. From this statement, it can be concluded that justice or a sense of justice can only be achieved when there is an agreement between the two parties who promise. The agreement here is interpreted in a broad form, not only an agreement between two parties who are entering into a business contract, leasing, and others. But the agreement here is also an agreement for the verdict between the judge and the defendant, laws and regulations that are not partial to one party but prioritize the interests and public welfare.[34]

Roscoe Pound sees justice in the concrete results it can deliver to society. He saw that the results obtained should be in the form of satisfying human needs as much as possible with the smallest sacrifice. Pound himself said that he himself was pleased to see "the widespread recognition and satisfaction of human needs, demands or desires through social control; more widespread and effective guarantees against social interests; an effort to eliminate continuous and more effective waste and avoid conflicts between humans in enjoying resources, in short social engineering is increasingly effective.[35]

According to Hans Kelsen, justice is a certain social order under which the pursuit of truth can flourish and thrive. Because justice according to him is justice for freedom, justice for peace, justice for democracy – justice for tolerance.[36]

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[31] *Ibid*, p.242
[32] *Ibid*, p. 246-247
[33] Damanhuri Fattah, *"Teori Keadilan Menurut John Rawls"*, http://ejournal.radenintan.ac.id/index.php/TAPIs/article/view/1589, last accessed on April 16, 2021
[34] Muhammad Syukri Albani Nasution, *Hukum dalam Pendekatan Filsafat*, Ctk. Kedua, Kencana, Jakarta, 2017, pp.217-218
[35] Satjipto Rahardjo, *Ilmu Hukum*, Ctk. Kedelapan, Citra Aditya Bakti, Bandung, 2014, p. 174.
[36] *Ibid*

3. Agreement

In the term agreement or contract is sometimes still understood ambiguously, many business people confuse the two terms as if they are different meanings. Agreement according to article 1313 of the Civil Code is "an act by which one or more people bind themselves to one or more people". The terms of the validity of the agreement according to article 1320 of the Civil Code:

- Agree with those who bind themselves.
  In an agreement there must be an agreement between the parties, namely the conformity of the statement of will between the two parties, there is no coercion and others, with the enactment of the agreement to enter into an agreement it means that both parties must have freedom of will, the parties do not get pressure which results in defects. for the realization of the will.
- The ability to make an engagement.
  Capable to act is the ability or ability of both parties to carry out legal actions. A competent or authorized person is an adult (21 years old or married). Meanwhile, people who are not authorized to take legal actions according to Article 1330 of the Civil Code include: (a) minors (minderjarigheid), (b) people in pardon (curandus), (c) women (wives).
- A Certain Thing.
  An agreement must have a certain object, at least it can be determined that the particular object can be in the form of objects that now exist and will exist, for example the number, type and shape. In this regard, the object that is the object of the agreement must meet several conditions, namely:

a. The goods are goods that can be traded.
b. Goods used for the public interest include, among others, public roads, public ports, public buildings, and as such cannot be used as objects of an agreement.
c. The type can be determined.
d. Upcoming goods.

- A lawful reason.
  In an agreement it is necessary to have a lawful cause, meaning that there are legal causes that form the basis of the agreement which are not prohibited by regulations, security and public order and so on.

Meanwhile, the general principles in entering into an agreement are as follows:

- Freedom of contract
  Everyone can freely make an agreement as long as it fulfills the legal requirements of the agreement and does not violate the law, decency, and public order.
- Consensual freedom
  Agreement (consensus), which is basically an agreement that has been born since the second the agreement is reached. The agreement is binding once the agreement is stated and pronounced, so there really is no need for certain formalities.
- Personal freedom[37]
  The principle of personality means that the principle of agreement only binds the parties personally and does not bind other parties who do not give their agreement. A person can only represent himself and cannot represent others in making an agreement.

The opinions of experts regarding the agreement are as follows, according to R. Subekti An agreement is a legal event where a person promises to another person or where two people promise each other to carry out something.[38]

According to R Wirjono Projodikoro An agreement is a legal relationship regarding property between two parties where one party promises to do something or not to do a promise while the other party demands its implementation.[39]

The agreement (verbintenis) contains the meaning of a legal relationshipwealthProperty law which gives the power of rights to one party to obtain an achievement and at the same time obliges the other party to fulfill the achievement.[40]

In the Big Indonesian Dictionary, the definition of an agreement is "a written or oral agreement made by two or more parties eacheach promise to comply with what is stated in the agreement.

The agreement is considered valid if it fulfills the four conditions stated in Article 1320 of the Civil Code. The terms of agreement and the terms of proficiency are referred to as subjective conditions, while the conditions for a certain thing and the conditions for a lawful cause are called objective conditions. Agreements in the implementation of credit agreements are generally the same as agreements in general. A contract or agreement is a legal relationship between one legal subject and another in the field

[37]Gunawan Widjaja, *Jaminan Fidusia*, (Jakarta: Raja Grafindo Persada, 2001), p. 18
[38] R. Subekti, *Hukum Perjanjian*, (Jakarta: PT. Intermasa, 1987), p.1
[39] Wirjono Prodjodikoro, *Asas-Asas Hukum Perjanjian*, (Bandung: PT. Sumur, 1981), p.9
[40] M. Yahya Harahap, Aspects of contract law, (Bandung: Alumni, 1982), p.25

of assets, where one legal subject is entitled to achievements and other legal subjects are obliged to carry out their achievements in accordance with what has been agreed upon.[41]

As for element from the definition of the contract above are as follows:

- There is a legal relationship. Legal relationship is a relationship that causes legal consequences, and legal consequences are the emergence of rights and obligations.
- The existence of legal subjects, namely supporters of rights and obligations.
- There is an achievement, which consists of doing something, doing something, and not doing something.
- In the field of wealth.[42]

From the definition of the contract or agreement, it can be seen that between the two parties partycarry out legal relations in the field of property. From this relationship an agreement is established in the field of assets, such as credit agreements, debts, leases and so on. In Article 1233 of the Civil Code states that "Every engagement is born either by agreement or by law", it is emphasized that every civil obligation can occur because it is desired by the parties involved in the engagement/agreement that is intentionally made by them. or because it is determined by applicable laws and regulations. Thus, it means that an engagement or an agreement is a legal relationship between two or more people (parties) in the field/field of assets, which creates an obligation on one of the parties in the legal relationship.[43]

According to article 1(11) of Law no. 10/1998 concerning Amendments to Law No. 7/1992 concerning Banking (Banking Law) as follows: Credit is the provision of money or an equivalent claim, based on approval orchancelending and borrowing between banks and other parties that require the borrower to repay the debt after a certain period of time with interest. Then what is meant by a credit agreement is an agreement for granting credit between the creditor and the credit recipient." every credit that has been approved and agreed between the creditor and the credit recipient must be stated in the form of a credit agreement. Article 1313 of the Civil Code (KUHPer) states that an agreement is an act by which one or more people remind themselves of one or more other people.

From the agreement, a legal relationship arises between the two parties, which is called an engagement. Legal relationship is a relationship that has legal consequencesthat guaranteed by law or legislation.

If one of the parties does not fulfill the rights and obligations voluntarily then one of the parties partycan sue in court. While the engagement is a legal relationship between two people or two parties: one party has the right to demand something from the other party and the other party is obliged to fulfill that claim. The party who demands something is called the creditor while the party who is obliged to fulfill the demand is called the debtor. Actually, the term credit agreement is not known in the Banking Law, it contains the words agreement or loan agreement. These words confirm that the credit relationship is a contractual relationship (a relationship based on an agreement) in the form of borrowing and borrowing. The credit agreement itself refers to the loan agreement. On the other hand, Although the credit agreement is rooted in a loan agreement, it is different from a loan agreement as stated in the Criminal Code. Article 1754 of the Criminal Code. A loan agreement is an agreement in which one party gives to the other a certain amount of goods that have been exhausted due to use, on the condition that the latter party will return the same amount of the same type and condition.

Because the credit agreement is the constituent element of the agreement in general, therefore terms The validity of the agreement is the same as the legal terms of the agreement in Article 1320 of the Criminal Code which stipulates 4 conditions, including:

Subjective Elements:

- The agreement in the contract is a feeling of willingness or sincerity between the parties involved in the agreement. Furthermore, the agreement is declared non-existent if there is a fraud, error, coercion, and abuse of circumstances.
- Skill means the people involved in the agreement are people who by law can be considered legal subjects, those who are not competent by law are people who are not yet mature, people who are placed under supervision/custodial, people who are mentally ill

Objective element

- A certain thing means that in making an agreement, what is agreed upon must be clear so that the rights and obligations of the parties can be determined.
- A lawful cause means that the agreement must not conflict with other laws, public order, and morality. Violation of the subjective element means that the agreement is legally void by itself (null and void) and therefore the agreement has no binding and coercive legal force.

[41] M. Yahya Harahap, *Segi-segi hukum perjanjian*, (Bandung: Alumni, 1982), (Jakarta: Sinar Graphic, 2010) p. 26

[42] *Ibid*, p. 27

[43] Kartini Muljadi and Gunawan Widjaja, Op.Cit, p.18

In the implementation of an agreement or contract, it has the consequence that all assets of a person or entity recognized as a legal entity, will be at stake and used as collateral for each engagement or contract of the individual and or legal entity, as described in Article 1131. Civil Code.[44]An important legal principle relating to the validity of a contract or agreement is freedom of contract. This means that the parties are free to make any kind of contract, whether there is an existing arrangement or one that has not been regulated, and is free to determine the contents of the contract themselves. However, this freedom is not absolute because there are limitations, namely it must not conflict with the law, public order, and decency.[45]

The application of the principle of freedom of contract is guaranteed by Article 1338 paragraph (1) of the Civil Code, which stipulates that "Every agreement made legally applies as law for those who make it". So all agreements or the entire contents of the agreement, as long as the making meets the requirements, applies to the makers, just like the law. The parties are free to make any agreement and put anything in the contents of a contract. The legal provisions contained in the Civil Code are only complementary, which will only apply to the parties if the parties do not regulate them themselves in the contents of the contract, except for compelling provisions that must be obeyed. Therefore, it is stated that the contract law in the Civil Code is open, means giving freedom to the parties to use it or not to use it. If the parties do not regulate it themselves in the contract, it means that they are considered to have chosen the rules in the Civil Code. In fact, the law of the contract or agreement is the result of an agreement between two parties, so that the implementation is equally happy and can enjoy what has been done by both parties. . Therefore, the creditors and debtors must work together in accordance with the established legal corridors. Civil law always regulates the legal relationship between the two parties. So that the agreement made is in accordance with its needs, and can always be used as a guide in accordance with the applicable legal rules. If the parties do not regulate it themselves in the contract, it means that they are considered to have chosen the rules in the Civil Code. In fact, the law of the contract or agreement is the result of an agreement between two parties, so that the implementation is equally happy and can enjoy what has been done by both parties. . Therefore, the creditors and debtors must work together in accordance with the established legal corridors. Civil law always regulates the legal relationship between the two parties. So that the agreement made is in accordance with its needs, and can always be used as a guide in accordance with the applicable legal rules. If the parties do not regulate it themselves in the contract, it means that they are considered to have chosen the rules in the Civil Code. In fact, the law of the contract or agreement is the result of an agreement between two parties, so that the implementation is equally happy and can enjoy what has been done by both parties. . Therefore, the creditors and debtors must work together in accordance with the established legal corridors. Civil law always regulates the legal relationship between the two parties. So that the agreement made is in accordance with its needs, and can always be used as a guide in accordance with the applicable legal rules. so that the implementation is equally happy and can enjoy what has been done by both parties. Therefore, the creditors and debtors must work together in accordance with the established legal corridors. Civil law always regulates the legal relationship between the two parties. So that the agreement made is in accordance with its needs, and can always be used as a guide in accordance with the applicable legal rules. so that the implementation is equally happy and can enjoy what has been done by both parties. Therefore, the creditors and debtors must work together in accordance with the established legal corridors. Civil law always regulates the legal relationship between the two parties. So that the agreement made is in accordance with its needs, and can always be used as a guide in accordance with the applicable legal rules.

4. Financial Technology (Financial Technology)

Financial technology or what is often called Fintech is an innovation in the financial services industry that utilizes the use of technology. Fintech products are usually in the form of a system built to carry out specific financial transaction mechanisms, including payments, funding such as lending and borrowing, banking (digital banking), capital markets (capital market), insurance (insurtech), supporting services (supporting fintech); and others (digital financial innovation).

5. Information Technology-Based Lending Services

Information Technology-Based Lending and Borrowing Services (LPMUBTI) or fintech lendingor also called fintech peer-to-peer lending is one of the innovations in the financial services sector by utilizing technology that allows lenders and loan recipients to carry out lending and borrowing transactions without having to meet in person. The mechanism for lending and borrowing transactions is carried out through a system that has been provided by the fintech lending operator, either through the application or website.

The fintech lending operator can be a legal entity or cooperative that has: system to carry out the lending and borrowing transaction mechanism online, both through the application and the website.

Fintech lending operators only act as intermediaries that bring together lenders and loan recipients. Lenders and recipientsloan You must first register and fill in the required personal data before you can apply for a loan or loan application.

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[44] Gunawan Widjaja, *Perikatan yang Lahir dari UndangUndang* (Jakarta: PT. Raja Grafindo Persada, 2003), p.1

[45] Sanusi Bintang, *Pokok-Pokok Hukum Ekonomi dan Bisnis*, (Bandung: PT. Citra AdityaBakti, 2000), hlm.16 , p.16

D. CONCLUSION

The implementation of financial technology based on peer-to-peer lending has not been going well, so there needs to be clear rules because the existing regulations are not adequate so that there is legal certainty, justice, benefit Problems that arise in the implementation of financial technology based on peer to peer lending and legal protection for recipients problems in the implementation of peer to peer lending based financial technology. Legal protection for loan recipients in the implementation of peer-to-peer lending-based financial technology and has not protected the public so that there is a need for laws and regulations and the cooperation of all parties to realize the implementation of good peer-to-peer lending-based financial technology so that there is legal certainty, justice,

Online loan arrangements are crucial considering that their presence in Indonesia has developed because it offers various conveniences in disbursing funds. Although regulation and supervision have been carried out through Financial Services Authority Regulation Number 77/ POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, not all online loan companies are registered with the financial services authority, so that currently there are service providers legal and illegal or unregistered services.

Unregistered or illegal problems are not merely administrative matters, but further than that, it causes various problems that ultimately harm the service users. The difficulty in taking action against illegal online loan businesses is because there are no regulations that provide strict sanctions for the existence of illegal online loans. These conditions make online loan service users involved in problems at the time of collection. In this case, the billing method is sometimes unreasonable by using threats and terror techniques.

The protection of the rights of online loan service users is still not optimal even though there are sanctions in the legislation regarding violations of one's right to security through electronic media. This is very concerning considering that online loan service users have basic rights that need to be protected, both as consumers and as humans who have had basic rights since birth.

The protection of the basic rights of online loan service users is already contained in the Consumer Protection Act. The lack of public knowledge about the mechanism of online loans and the rights of online loan service users is one of the causes of the lack of protection against this. In terms of service providers, it is still possible to violate consumer rights because the prosecution for violations of consumer rights is still not optimally carried out. This condition becomes a dilemma in itself because the regulators who are given the task as regulators and supervisors still find it difficult to anticipate violations of consumer rights because they are also faced with the absence of a legal umbrella that specifically regulates the implementation of financial technology in Indonesia, especially to take preventive and law enforcement actions against entities. illegal financial technology. Likewise with violations of the use of personal data, which until now there are no regulations that specifically provide strict sanctions for this matter, causing unrest for service users as a result of misuse of the data they have.

Based on the conclusions that have been stated, there are suggestions that can be used as recommendations to related parties, namely first, there is a need for coordination between the Financial Services Authority and the Ministry of Communication and Information in conducting socialization about online loans so that people can understand the difference between legal and online loan providers. illegal in terms of legality, interest rates, bidding methods and so on. This is to prevent violations when billing because service users are unable to make payments as a result of too high interest rates. In addition, the public is also given knowledge about their rights as users of online loan services and the efforts that must be made if there is a violation of their rights. This can be done by coordinating the coordination between the Financial Services Authority and the Indonesian Consumers Foundation in determining the form of an agreement or online loan document so that the contents of the clause do not harm service users. Second, the Financial Services Authority needs to prepare the Financial Technology Law as a legal basis for taking action against illegal online loans that harm the public. Third, the Indonesian House of Representatives and the Directorate General of Legislation, Ministry of Law and Human Rights need to accelerate the enactment of the Personal Data Protection Bill into law. Where is the need for further regulations regarding illegal fintech entities as well as regulations regarding the importance of the existence of an independent supervisory agency as an institution that takes action against violations of the rights to personal data of online loan service users. So far, prosecution has only been based on the Criminal Code and the Law on Information and Electronic Transactions, even though the scope of the existing law is too broad and has legal loopholes that are often exploited by illegal service providers to continue to practice online loan services in various ways.

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