

Legal Force of Information Technology-Based Money Lending Agreements

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Abstract: This study aims to determine and determine the legal force of information technology-based money lending agreements. The research method used is the normative legal research method, namely legal research that uses secondary data sources. Namely, secondary data sources in the form of or thoughts of experts or experts who study in the form of books, journals, such as literature books on the basics of agreement law and laws and regulations. The results of the study obtained are that Information Technology-Based Money Lending Services (Fintech Lending) are an innovation in the financial sector that allows online lending transactions using an electronic system. Online loan agreements are regulated by the Financial Services Authority Regulation Number 10/POJK.05/2022. This agreement is legally valid and has legal force as long as it meets the valid requirements according to Article 1320 of the Civil Code, namely agreement, ability, a certain thing, and a lawful cause. The resolution of disputes in information technology-based loan agreements when a default occurs can be carried out through litigation or non-litigation. The litigation path is usually referred to as the path taken in court, while the non-litigation path is through the Alternative Dispute Resolution Institution (LAPS), which can be taken through mediation, arbitration, and binding opinions. The recommendation from this study is to provide education to users about the terms and conditions of the agreement, focus on the validity and certainty of law, and strengthen regulations on personal data security and dispute resolution mechanisms.

Keywords: Legal Force, Agreement, Borrowing and Lending, Information Technology.

A. INTRODUCTION

In human life and all its activities, it cannot be denied that it is inseparable from technological developments. With the development of world technology that is increasingly sophisticated every day, technology has become a part of people's daily lives. Through advanced technological developments in the economic sector, one of which is in the financial sector, it has led to developments in a more efficient and modern direction, all kinds of community activities are facilitated by technology. The implications of this era are enormous when digital-based technology is used by people in everyday life, for example to increase work productivity, build socio-economic relationships, and help facilitate various things. One example is the loan borrowing of money that was previously done conventionally, occurred directly between the parties.[1] Now, with technological advances, borrowing money can be done through online applications, whether the application acts as an organizer or intermediary between the lender

and the borrower. [2] The rapid development of information technology has brought about significant changes in various aspects of life, including the economic and financial sectors. One emerging innovation is information technology-based money lending services, commonly known as peer-to-peer lending (P2P lending). Through digital platforms, borrowers can connect directly with lenders, bypassing conventional financial institutions like banks.[3]

Financial technology acts as an intermediary between those with surplus funds and those lacking funds, acting as a financial intermediary. Fintech, or online money lending services, differs from traditional money lending services as stipulated in Article 1754 of the Civil Code. In a money lending agreement, as stipulated in Article 1754 of the Civil Code, the parties involved are the lender and the borrower, who have a direct legal relationship through the loan agreement. The lender is obliged to provide the other party with a certain amount of goods that are used up with the condition that the loan recipient will return the same amount of the same kind and condition. [4] Meanwhile, in fintech services, the lender does not meet directly with the loan recipient, even the parties may not know or know each other because in fintech there is a forum that connects the interests of both. The convenience and efficiency offered by these services have attracted widespread public attention. [5] However, this phenomenon has also raised various legal issues, particularly regarding the legal validity of digitally created agreements. In information technology-based lending and borrowing transactions, agreements between the parties are often made electronically and governed by terms and conditions set by the platform provider.[6] This raises questions about the validity and legal enforceability of these agreements, particularly in the context of civil law in Indonesia.[1]

Considering the provisions of Article 1320 of the Civil Code, one of the requirements for a valid contract/agreement is that it be based on mutual agreement between the parties. Considering this, debtors in online credit and fintech lending transactions deserve further review, particularly regarding when the agreement between the parties in electronic contracts in fintech transactions occurs, so that the requirements for a valid agreement can be met.[7] Furthermore, issues such as the potential lack of public understanding of the legal consequences of digital agreements arise due to the frequent application of standard clauses, provisions unilaterally established by businesses and mandatory for consumers to comply with. Online lending agreements have the same legal force as conventional lending agreements. This creates an imbalance between businesses and consumers, especially when consumers do not understand the legal implications of the agreed-upon clauses.[8] This lack of public understanding, in addition to the risk of legal disputes between borrowers and lenders, further emphasizes the importance of examining the legal aspects of these transactions. Within the applicable legal framework in Indonesia, Law Number 19 of 2016, amending Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), and Regulation of the Financial Services Authority of the Republic of Indonesia Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding, serve as the primary legal frameworks relevant in this context.[9] However, the implementation and oversight of IT-based lending agreements still face various challenges. In the organization and implementation of online-based lending practices, supervision is also required by institutions operating in the financial sector.[8] In this

case, supervision is assigned to the Financial Services Authority which has the authority to directly supervise the implementation of online-based lending practices, and Bank Indonesia, as an independent financial institution, also has the authority to grant permits to online-based lending providers and also supervise their implementation. However, despite existing regulations, the implementation of IT-based loan agreements is not without its challenges. Some of the challenges that frequently arise include:

1. Validity of electronic agreements: Do digitally created agreements meet the requirements for a valid agreement as stipulated in the Civil Code?
2. Consumer protection: The risk of personal data leaks, high interest rates, and data misuse by fintech platforms.
3. The existence of illegal platforms: Many online lending service providers are not registered with the Financial Services Authority (OJK) and operate outside the legal framework.

Based on this background, this study aims to analyze the legal force of information technology-based loan agreements in Indonesia. This research is expected to provide a deeper understanding of the legal aspects of digital agreements and contribute to the development of more comprehensive regulations to protect all parties involved in these transactions.

Based on this description, the author is interested in addressing the problem formulation: "What is the legal force of information technology-based loan agreements and how are disputes resolved for the parties in information technology-based loan agreements in the event of default?"

B. METHOD

The research method used is the normative legal research method, namely legal research that uses secondary data sources. What is meant by secondary data sources are all publications on law that are the result of the processed opinions or thoughts of experts or specialists who study them in the form of books, journals, such as literature books on the basics of contract law. In this study, the author uses several types of approaches. The author focuses this research on the Library Approach, the library approach is a data collection technique by conducting a review study of books, literature, notes, and existing reports. In connection with the method used in this study is a library method with a normative research type, this research was conducted in three stages: Primary Data Material, Secondary Data, and Tertiary Data. All data collected by the author is then analyzed to produce conclusions from the materials obtained in accordance with the problems discussed in this study. The method used for analysis is a qualitative method. Qualitative is analyzing the presentation of the results of the writing that has been systematically studied with legal studies and theories and positive law. This is to explain legal research problems in logical, scientific and easy-to-understand sentences.[10]

C. Legal Force of Information Technology-Based Money Lending Agreements

Online loans are money lending transactions conducted online through electronic platforms. Online loans are a facility that provides money lending services. The online loan agreement is similar to a regular loan, but the difference is that it is conducted online. In practice, debtors

and creditors do not need a physical space to interact with each other; instead, the transaction is conducted electronically. Information technology-based money lending is closely related to Law Number 19 of 2016, Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, because these online transactions use an information technology-based online platform.[11] Article 1 paragraph (2) of the ITE Law defines electronic transactions as legal acts carried out using computers, computer networks, computer networks, and/or other electronic media. Therefore, online loans are included in online transactions and are subject to regulations governing data security, transparency, and consumer protection. Article 1 defines Information Technology-Based Joint Funding Services, hereinafter abbreviated as LPBBTI, as the provision of financial services to bring together lenders and recipients to conduct conventional or Sharia-based financing directly through an electronic system using the internet.[12]

Furthermore, the LPBBTI implementation agreement stipulated in Article 30 must consist of at least:

1. Agreement between the organizer and the funder; and
2. Agreement between the funder and the recipient.

Article 32 states that the funding agreement between the funder and the recipient must be set out in an electronic document. This electronic document must contain at least:

- a. Agreement number;
- b. Agreement date;
- c. Identities of the parties;
- d. Rights and obligations of the parties;
- e. Funding amount;
- f. Economic benefits of the Funding;
- g. Installment value;
- h. Term;
- i. Collateral, if any;
- j. Related costs;
- k. Provisions regarding fines, if any;
- l. Use of Personal Data;
- m. Dispute resolution mechanism; and
- n. Mechanism for resolving rights and obligations in accordance with statutory provisions if the Organizer is unable to continue its operational activities.

Based on Article 32 of OJK Regulation NO. Under OJK Regulation No. 10/POJK.05/2022, funding agreements can be made in electronic form, thus remaining valid and legally binding. However, to determine the validity of an online loan agreement, it is necessary to refer to the basic principles of contract law as stipulated in the Civil Code (KUHPer). Article 1313 of the

Civil Code stipulates that an agreement is an act carried out by one or more persons to bind themselves to another person. In the context of online loans, the parties entering into the agreement are the lender and the borrower. Agreements made between the lender and the borrower must meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. This article stipulates four main requirements:

1. Agreement of Those Binding Themselves
2. Capacity to Enter into an Agreement
3. A Specific Subject Matter
4. A Reason Not Prohibited

D. Dispute Resolution for Parties in Information Technology-Based Loan Agreements in the Event of Default.

In a loan agreement, default occurs when the debtor is unable to pay or is late in paying the specified loan installments.[13] Default is a term used in civil law to describe a scenario where one party does not carry out a previously agreed agreement. This is in line with Article 1238 of the Civil Code, which explains that "default occurs if the debtor is declared in default by a written order, or by a similar deed, or based on the power of the agreement itself, namely if this agreement results in the debtor being deemed in default by the passage of the specified time."

Similar issues arise with Shopee PayLater due to frequent defaults, such as late payment of bills, which require paying a predetermined fine of 5% of the total bill. Defaults in Shopee PayLater are usually caused by debtors failing to pay their outstanding Shopee PayLater bills. Debtors who fail to pay their Shopee PayLater bills often cause problems with the Shopee PayLater service.[14] Defaults can vary, from not paying bills by the specified date to not paying them at all. Defaults in IT-based lending can be resolved through the courts or out of court:

1. Dispute resolution through litigation

Litigation is a dispute resolution method in court, where all disputing parties face each other to defend their rights in court. The final outcome of a dispute resolution through litigation is a decision declaring a win-lose solution. The judiciary, as an institution created by the legal system, functions as a means of fair dispute resolution through a simple, expeditious, and inexpensive judicial process. Dispute resolution procedures conducted through litigation are conducted in accordance with the formal provisions of civil procedural law.

The analysis and discussion contain a description of the research results using a conceptual or theoretical approach. The analysis and discussion must have a legal basis in the form of legislation, court decisions, customary law, and customs. It is recommended to write Indonesian terms in italics. Furthermore, several points need to be clarified and detailed in the analysis and discussion according to the problem and using sub-chapters. Examples of sub-chapters are as follows:

2. Dispute resolution in an information technology-based loan agreement outside the courts can be carried out by the following institutions:
 - a. Alternative Dispute Resolution Institutions (LAPS)

Financial Services Authority Regulation No. 1/POJK.07/2014 concerning alternative dispute resolution institutions in the financial services sector, Article 1 paragraph (2). Disputes between consumers and PUJK can also be resolved outside the courts, namely through LAPS. The legal policy direction is more directed towards dispute resolution through LAPS.[15] Based on the mandate of the POJK on Consumer Protection, Financial Services Authority Regulation No. 1 of 2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector was issued. To realize an integrated LAPS, as well as to balance technological developments, Financial Services Authority Regulation Number 1/POJK.07/2014 concerning Alternative Institutions for Consumer Dispute Resolution in the Financial Services Sector was then refined by Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector (hereinafter referred to as POJK LAPS). Dispute resolution services at the Alternative Dispute Resolution Institution (LAPS) namely by means of mediation, arbitration, binding opinions Dispute resolution can be resolved through litigation (court) or non-litigation (outside the court). Article 38 and 39 of Law No. 11 of 2008 concerning ITE stipulates that "everyone can proceed in accordance with the provisions of laws and regulations." Civil lawsuits are carried out in accordance with the provisions of laws and regulations. In addition to resolving disputes through civil proceedings, the parties can also resolve disputes through arbitration or other alternative dispute resolution institutions in accordance with laws and regulations. Alternative Dispute Resolution (APS) or Alternative Dispute Resolution (ADR) is increasingly used by business actors as a way to resolve disputes outside the court. Fintech users include creditors and debtors. Creditors (lenders) must be protected so that funds are not lost from the organizer. Civil disputes between creditors, debtors and organizers Dispute resolution must also be expedited through alternative dispute resolution methods. APS in several countries with advanced information and communications technology (ICT) have established special bodies to resolve fintech disputes online, commonly known as Online Dispute Resolution (ODR).

E. CONCLUSION.

Information Technology-Based Money Lending Services (Fintech Lending) are a financial innovation that enables online lending transactions using electronic systems. Online loan agreements are regulated by Financial Services Authority Regulation Number 10/POJK.05/2022. These agreements are legally valid and enforceable as long as they meet the legal requirements as stipulated in Article 1320 of the Civil Code, namely agreement, capacity, a specific matter, and a lawful cause. Dispute resolution in IT-based loan agreements in the event of default can be carried out through litigation or non-litigation. The litigation route is commonly referred to as the route taken in court, while the non-litigation route is through the

Alternative Dispute Resolution Institution (LAPS), which can include mediation, arbitration, and binding opinions. Fintech providers should provide education to prospective users about the terms and conditions of the agreement, including the legal consequences in the event of default. This can also be done through a national financial literacy campaign, focusing on validity and legal certainty, namely by having digital validity such as certified electronic signatures, this agreement can be legally recognized and provide legal protection to the parties involved, and strengthen the legal position of the parties in the transaction, strengthen regulations on personal data security and fast and efficient dispute resolution mechanisms to provide solutions to potential conflicts.

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