

ALTERNATIVE LEGAL PERSPECTIVE FOR RESOLUTION OF DISPUTES REGARDING THE PHENOMENON OF ONLINE LOANS

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Abstract: This research aims to find out what the role of the Financial Services Authority is in legal protection for online lenders without collateral who fail to pay and, how legal remedies are regulated in resolving disputes between online lenders without collateral who fail to pay. The type of research used is normative research which is based on primary legal materials and secondary legal materials, namely an inventory of regulations and written materials related to. As an OJK supervisor, the role is to supervise implementation based on existing regulations. There are two legal protections provided by the OJK for insurance providers, namely supervision in the form of preventive legal protection, namely through adequate education, openness and transparency of information, fair treatment implementing asset protection, supervising consumer protection units and submitting a list of legal platforms via the portal. OJK, secondly, supervision takes the form of repressive legal protection, namely after a payment failure occurs, namely the OJK's role is to assist with collection through third parties, namely mediators, restructuring and reporting complaints to the OJK regarding payment failures to try to resolve the dispute. Regulation of legal remedies for resolving disputes between online lenders without collateral who fail to pay is regulated in POJK No 6/POJK.07/2018 which can be taken through financial services institutions, then can be taken through court institutions or outside the court, namely the Dispute Resolution Arbitration Institute (LAPS).

INTRODUCTION

The development of the times which is supported by advances in technology and information which can be utilized by the wider community has had a major influence on human life. Various conveniences in carrying out activities are a big advantage, especially in Indonesian financial institutions, this is supported by improvements in the banking and non-banking sectors. Many financial institutions

are growing and developing with various alternative loan services on offer, making people very interested, one of which is online loans. Financial institutions have 6 roles, including the following:

- a. Collecting Community Funds;
- b. Distribute Community Funds;
- c. Asset transmutation;
- d. Liquidity;
- e. Income Reallocation;
- f. Financial Transactions.

Apart from that, financial institutions also have a fund distribution function, namely the business activity of borrowing funds in the form of credit that can be lent to the public. Along with technological developments in this era of globalization, any community activity will not be separated from the help of technology. Likewise, financial institutions are now starting to shift to technology-based financial institutions. One of the advances in the financial sector currently is innovation in the field of fintech (financial technology). The presence of online loans as a form of 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. Apart from that, online loans are considered suitable for the market in Indonesia, because even though people do not have access to finance, penetration of cell phone ownership and use is very high. The presence of fintech is increasingly gaining attention from the public and regulators, namely the Financial Services Authority (OJK) and Bank Indonesia. This is stated in Financial Services Authority Regulation No 77/POJK.01/2016 concerning Information Technology-Based Money Loan Services which states that information technology has been used to develop the financial industry which can encourage the growth of alternative financing for the community and in order to support the growth of financial services institutions. based on information technology so that it can contribute more to the national economy. The POJK regulates peer to peer lending and borrowing services. This service is a breakthrough in that many Indonesian people have not been touched by

banking services but are already literate in information and communication technology (ICT). P2 lending-based fintech services are one solution to limited access to financial services in the country and realizing financial inclusion.

Through its synergy with financial institutions and other technology companies. P2p lending based fintech services consist of:

1. information technology-based lending and borrowing service providers;
2. lender;
3. borrower.

The mechanism is that the system from the fintech provider will bring together the borrower and the party providing the loan. So it could be said that this p2p lending based fintech service is a marketplace. For online lending and borrowing activities, or more familiarly we know online loans. The emergence of fintech companies and the provision of information technology-based money lending and borrowing services that have been registered and supervised by the OJK, also still give rise to legal problems where these fintech companies are only providers that provide a forum for lenders to channel funds to loan recipients. The organizer is not a party to the loan agreement entered into by the lender and loan recipient, so the organizer is not responsible and liable in the online loan agreement if there is a failure to pay by the loan recipient. The absence of a legal relationship between the provider and the users of the lending and borrowing services has legal consequences, especially for lenders who cannot file legal claims against the provider if the lender experiences losses due to failure to pay by the loan recipient. In implementing p2p lending-based fintech, further supervision is needed because fintech is included in microprudential so that activities will always be supervised by the Financial Services Authority (OJK).

A microprudential supervisory system means that the OJK has authority that is more focused on analyzing the development of individual financial institutions. Therefore, activities carried out by p2p-based fintech must remain within the legal corridor of OJK supervision as regulated in Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Legal and Community Protection in the Financial Services sector. In general, problems that are often reported to the

Financial Services Authority (OJK) result from two things. The first is consumers' incomplete understanding of the financial products/services they use. This condition is in line with the OJK that the level of financial literacy is still relatively low. Even though consumers or the public feel they are familiar with the financial service products circulating in Indonesia, in reality there are still few who understand in detail the characteristics, types, benefits, risks and costs of the financial products and services used. Second is the condition where there are still many Financial Services Business Actors (PUJK) who do not apply consumer protection principles in running their business. Many PUJKs are not optimal in providing information and educating consumers about their products and services, using product contracts/agreements that are difficult for consumers to understand, after sales service that is not in accordance with the initial agreement, and other things that can cause dissatisfaction, which will ultimately lead to consumer complaints. According to the default report that has come to the Financial Services Authority, it shows that the Financial Services Authority is still lacking in providing protection to consumers of information technology-based money lending and borrowing services, especially to online lenders.

The development of information technology-based money lending and borrowing services cannot be separated from the role of lenders, where lenders channel their funds to loan recipients through providers in the form of investments. Distribution of funds by lenders is a form of concern for Indonesia's economic development. Fund distribution is generally aimed at helping Micro, Small and Medium Enterprises (MSMEs) in developing their businesses and individuals who need loans to meet their daily needs. This is one of the positive things obtained to spur economic development to a better stage. However, on the other hand, there are also problems faced by lenders in this information technology-based money lending and borrowing service, namely the occurrence of default. Failure to pay is a frightening threat for lenders. This failure to pay occurs because of the ease of technology-based lending and borrowing services. The convenience is obtained because in this online loan service, lenders do not need to meet in person. Loan recipients only need to open the application and fill out the loan form online. To provide legal certainty and maintain a stable investment climate in information

technology-based lending and borrowing services, the role of the government through the Financial Services Authority is needed to provide comfort in investing.

Based on the background above, the author formulates the problem as follows:

1. What is the role of the Financial Services Authority in legal protection for online lenders without collateral who fail to pay?
2. What are the legal arrangements for resolving disputes between online lenders without collateral who fail to pay?

RESEARCH METHODS

The research carried out is normative legal research. The first step taken is normative legal research which is based on primary legal materials and secondary legal materials, namely an inventory of regulations relating to the role of the Financial Services Authority in legal protection for online lenders without collateral who fail to pay. The legal material analysis technique used in this research is a step related to the management of legal materials collected to research problems such as those contained in the problem formulation. The technique used is reasoning analysis technique. The reasoning used is inductive reasoning, namely by looking at existing facts or symptoms and then trying to abstract and look for principles that have been mastered to build a hypothesis. After that, the legal material is interpreted, then analyzed so that it will provide a solution.

RESULTS AND DISCUSSION

A. The Role of the Financial Services Authority in Resolving Online Loan Defaults

Online lending and borrowing services are based on a mutual agreement between the lender and recipient of the loan, which is then made in the form of an agreement outlined in an electronic document. This agreement gives rise to legal relations. Legal relationships cannot be separated from an agreement. An agreement is a legal relationship between two parties in which one party has the right to demand something from another party, and the other party is obliged to fulfill these demands.

Based on Article 32 of the Financial Services Authority Regulation Number 10/POJK.05/2022, the loan agreement between the lender and the loan recipient is set out in an electronic document which must contain at least;

- a. Agreement number;
- b. Agreement date;
- c. Identity of the parties;
- d. Rights and obligations of the parties;
- e. Funding amount;
- f. Economic benefits of funding;
- g. Installment value;
- h. Time period;
- i. Object of collateral (if any);
- j. Associated costs;
- k. Provisions regarding fines, if any;
- l. Use of personal data;
- m. Dispute resolution mechanisms;
- n. Mechanism for settling rights and obligations in accordance with statutory provisions if the organizer is unable to continue its operational activities

Sample case

❖ Pinjol to watch a concert

Exactly in May 2023, when information about Coldplay concert tickets became widespread, the increase in the use of online loans (pinjol) increased, marked by high demand for this loan facility.

Not only that, there are also quite a few lending companies that are distributing promotions, as a result more and more people are making applications. The financial services authority (OJK) has warned people not to get into debt for something as consumptive as watching a concert.

❖ Pinjol for crypto trading until a life is lost

Not long ago, tragic news emerged that really caught the public's attention, especially if it wasn't the murder of a University of Indonesia student.

The murder case of the victim with the initials MNZ (19) by his senior AAB (23) has attracted quite a lot of public attention recently. As is known, the motive for the murder was motivated by "the perpetrator's failure to trade crypto worth Rp. 80 million. The motive for the murder was because he was caught in a loan debt of Rp. 15 million submitted due to investment losses.

B. Arrangements for Legal Remedies in Resolving Disputes from Unsecured Online Lenders Who Fail to Pay

The implementation of online loan-based fintech that does not run according to the agreement will cause disputes for users of the service. The problem can be resolved by means of the party who feels aggrieved by making a complaint that non-compliance with the contents of the agreement that has been agreed by the parties is one of the reasons a dispute occurs. The path to resolving disputes can be through litigation (court) or non-litigation (outside court). Based on data obtained from Mr. Alvian M Nashir, as a junior supervisor for the Non-Bank financial industry at the Financial Services Authority office, Regional Office 5, North Sumatra, regarding the occurrence of payment default disputes, it is as follows; "In the event of a dispute, the resolution mechanism is as follows;

1. Users (funders or recipients of funds) can submit complaints to the company's complaints unit, with the aim of resolving the problems that occur.
2. Furthermore, in the event that there is no agreement, the user can submit a complaint to the OJK, by sending a letter to the OJK office via the Consumer Protection Portal Application (APPK) at the address <http://kontak157.ojk.go.id/appkpublicportl>. Furthermore, if there is no common ground on the problem, it can be forwarded to an Alternative Dispute Resolution Institution.

The form of protection provided by the OJK includes if there are and are found to be actions that violate and result in losses, the OJK will ask to stop the business activities of the online loan business actor. Apart from that, the OJK will also carry out legal defense in the interests of the public as consumers in the form of filing lawsuits in court against parties who cause losses and will also provide warnings in the form of warnings to business actors who are considered deviant to immediately correct them. In Article 45 of the ITE Law, legal protection for online loan consumers is provided with criminal sanctions for violations of personal data which include defamation. Apart from these criminal sanctions, Article 47 paragraph (1) POJK no. 77// POJK.01/2016 specifically regulates administrative sanctions, namely in the form of written warnings, fines, restrictions on business activities, and revocation of permits, especially for legal online loan business actors. It is hoped that the OJK will be committed and consistent in providing protection to consumers so that everything can run well because the condition of consumers is weak and many have suffered losses, requiring increased efforts to protect, so that consumer rights can be upheld. Guidance for business actors also needs to be carried out so that they do not violate ethics. and legal regulations and the public can take advantage of online loans quickly, cheaply and on target.

For information, the dispute resolution mechanism is a general stage, each problem will be considered in each case, so that it is possible to find the right solution for the user. With regard to dispute resolution if a payment failure occurs which is not due to a decrease in ability to pay, the resolution is through other stages, including collection. The party who experiences a loss can resolve the dispute by initially filing a complaint. Fintech platform operators can follow up on applications submitted by service users. The methods that can be taken to file a complaint include:

- ❖ Verbally by telephone or short message and/or;
- ❖ Written via letter (email), fax, page (website).

Several things must be done by financial services business actors, namely organizers, after the complaint stage from parties who experience losses, in accordance with the provisions of Article 14 POJK No. 18/POJK.07/2018;

- ❖ Internal examination of complaints competently, correctly and objectively
- ❖ Carrying out analysis to ensure the truth of complaints.

Alternative Dispute Resolution (APS) is a legal remedy outside of court that is often found in terms of resolving disputes outside of court. This happens because the process taken is considered more efficient and effective. Alternative dispute resolution models that can be used by business actors include;

- ❖ negotiation;
- ❖ binding opinion;
- ❖ mediation;
- ❖ conciliation;
- ❖ adjudication and;
- ❖ arbitration.

Alternative dispute resolution models have been regulated by Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which came into effect on 12 August 1999. Basically, the Financial Services Authority has regulated the prevention of peer to peer lending risks, including in the provisions of POJK 77/ POJK.01/2016 article 29 states that organizers are obliged to apply the basic principles of user protection including transparency, fair treatment, reliability, data confidentiality, resolving user disputes simply, quickly and at affordable costs. One way that can provide legal protection for consumer interests is by providing an obligation for online loan providers to have a consumer complaints service. On this basis, the Financial Services Authority has formulated provisions in the form of Financial Services Authority Regulation No. 18/POJK.07/2018 concerning Consumer Complaint Services in the Financial Services Sector, which is a forum for accommodating consumer complaints, including the potential for material loss to the perpetrator's products and/or services. financial services businesses utilized by consumers. In article 1 number 6 POJK no. 18/POJK.07/2018 states that a complaint is an expression of consumer dissatisfaction, either verbally or in writing,

which is caused by a loss in fulfilling agreements and/or financial transaction documents that have been agreed upon. The purpose of the complaint service is of course to resolve complaints in providing consumer protection. The scope of complaint services includes receiving complaints, handling complaints, and resolving complaints. Article 7 POJK No 18/POJK.07/2018 states that financial services businesses are obliged to receive and record complaints submitted by consumers and/or consumer representatives. Complaints can be made orally, including by telephone or short message and in writing via letters, electronic mail (email), facsimile, websites and electronic media officially managed by financial services businesses which can be used to submit complaint documents. Article 9 paragraph (2) POJK No 18/POJK.07/2018 states that in verbal complaints, financial services businesses are obliged to carry out verification when the complaint is submitted by the consumer.

Furthermore, Financial Services Business Actors are required to submit confirmation of receipt of the complaint including the complaint registration number and date of receipt of the complaint by the consumer submitting the oral complaint based on the provisions of article 11. Based on Article 10 paragraph (2) POJK No 18/POJK.07/2018 the document in question includes identity consumer, special power of attorney, in the event that the consumer carries out a complaint process to the consumer representative, type and date of financial transaction, and the problem involved. Furthermore, article 12 states that Financial Services Business Actors are required to submit proof of receipt of the complaint, the date of receipt of the complaint and the telephone number of the function or complaint service unit that consumers can contact. Regarding consumer handling mechanisms, Article 14 POJK No 18/POJK.07/2018 states that after receiving complaints from consumers and/or consumer representatives, Financial Services Business Actors are obliged to carry out follow-up actions in the form of internal examinations of complaints competently, correctly, and objectively and analytically. to ensure the veracity of the complaint. In the case of oral complaints, Financial Services Business Actors are required to follow up and resolve verbal complaints no later than 5 (five) working days after the complaint is received based on Article 15, for follow-up complaints regulated in Article 16 POJK No

18/POJK.07/2018 which states that Financial Services Business Actors are required to carry out follow-up actions and resolve complaints in writing no later than 20 (twenty) working days after documents directly related to the complaint are received in full. After a consumer complaint has been handled, based on the provisions of Article 22 POJK No. 18/POJK.07/2018, it is stated that Financial Services Business Actors can submit a response to the complaint in the form of an explanation of the problem, in the event that there is no error by the Financial Services Business Actor which causes losses and/or potential consumer losses and settlement offers in the event that there is an error that causes consumer losses and/or potential losses. The response to a complaint can be in the form of a settlement offer, including a statement of apology and an offer of compensation (redress/remedy) if the consumer's complaint is true.

The complaint resolution mechanism can be taken in 2 stages, namely, the first is the resolution of the complaint carried out by the Financial Services Institution (internal dispute resolution) then the second can be taken through the judiciary or outside the judiciary (external dispute resolution). Article 25 paragraph 1 POJK No. 18/POJK.07/2018 states that in the event that a consumer refuses a response to a complaint from a Financial Services Business Actor, the Financial Services Business Actor is obliged to provide information regarding efforts to resolve the dispute which can be done through the court or outside the court. The explanation of Article 25 states that a dispute is a complaint that does not obtain a resolution agreement between the consumer and the Financial Services Business Actor. Dispute resolution outside of court is carried out through Alternative Dispute Resolution Institutions which are included in the List of Alternative Dispute Resolution Institutions determined by the Financial Services Authority and included in agreements and/or financial transaction documents between Financial Services Business Actors and consumers. Based on article 4 letter (a) of the Financial Services Authority Regulation No.1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector, it is stated that Alternative Dispute Resolution institutions included in the list of Alternative Dispute Resolution Institutions consist of;

- ❖ Mediation;

- ❖ Adjudication and;
- ❖ Arbitrage.

CONCLUSIONS AND RECOMMENDATIONS

The role of the Financial Services Authority (OJK) in legal protection for online lenders without collateral who fail to pay is as a regulator and supervisor. As a regulator/governor, the OJK has issued several written regulations regarding information technology-based money lending and borrowing services, including; POJK No 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services, POJK No 18/POJK.07/2018 concerning Consumer Complaint Services in the Financial Services Sector and POJK No 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector as well as several other regulations. As an OJK supervisor, the role is to supervise implementation based on existing regulations, this aims to create a conducive atmosphere and also as a law enforcer. Regulations for legal remedies for resolving disputes between online lenders who fail to pay are regulated in POJK No. 18/POJK.07/2018, namely that they can make complaints verbally by telephone or short message, and can be in writing in the form of letters (email), facsimiles, or pages (website). The Financial Services Authority issued POJK which can assist in resolving disputes over online loans that fail to pay through POJK No. 18/POJK.07/2018 concerning Consumer Complaints in the Financial Services sector. The POJK contains a complaint handling mechanism. Articles 7-13 regarding receiving complaints, Articles 14-20 regarding handling complaints and Articles 21-25 regarding resolving complaints.

The mechanism for resolving complaints can be achieved through financial services institutions (internal dispute resolution) and then through judicial institutions or outside judicial institutions (Dispute Settlement Arbitration Institution) in accordance with Article 25 POJK No 18/POJK.07/2018. It is expected that the Financial Services Authority, through Financial Services Business Actors, will collaborate with insurance companies to provide legal protection for lenders in the event of default by the loan recipient, so that the lender does not completely lose the money and can be protected by insurance. It is hoped that the

Financial Services Authority will prepare regulations regarding collection mechanisms in online loan services and form a team to form collections in the event of payment failure according to standard operational procedures, so that the administration of online loans will be more well organized.

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