



Juridical Review of Debtor Data Dissemination in Online Loan Default Cases

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Article Info

Article history:

Received 13 February, 2024

Revised 25 March, 2024

Accepted 4 April, 2024

Keywords:

Online Loans;

Defaults;

Dissemination of Debtor Data

ABSTRACT

In general, in online loans, when a default occurs, the creditor will contact all of the debtor's contacts via telephone, SMS, or via the Whatsapp application by spreading the debtor's data. This may be valid if it refers to the legal terms of an agreement as set forth in POJK number 77/POJK.01/2016 because the debtor is considered to have violated the agreement or contract. However, Law Number 11 of 2008 concerning Information and Electronic Transactions (abbreviated as the ITE Law) prohibits anyone who intentionally and without rights distributes electronic information and/or documents containing threats of violence or intimidation. This is in accordance with the mandate of Article 28G paragraph (1) of the Constitution of the Republic of Indonesia which states that: "everyone has the right to personal, family, honor, dignity and property protection under his authority and has the right to feel safe and is entitled to protection from the threat of fear to do or not do something

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INTRODUCTION

Online lending, which stands for financial and technology, is a new industry based on financial services. Online loan application companies can easily track mobile phone activity, contact data, and other important personal information contained in mobile phone devices. Knowing how or why these access permissions work, those who complain about data misappropriation should realise that they have very expensive digital assets in their mobile devices and should understand that these digital assets give them a very strong bargaining position. In addition, the online credit application also has a credit agreement or terms and conditions that need to be complied with by both parties (creditors and debtors). In the contract or terms and conditions, there is a sentence stating that the creditor will not disseminate data information to third parties unless there is a delay in payment.

If the debtor agrees, the credit process continues, but if they do not agree, the credit process is cancelled. Only a handful of customers read the credit agreement contract and terms and conditions, so there are still many complaints about the spread of data information that leads to defamation. Another thing that needs to be known is that the online credit application throws the credit collection task to third parties such as collector agencies (ranging from desk collection to remedial collection) to collect the agreed credit refund or there may be some online loan companies that do not throw the collection to third parties. As a case in point, this happened to one of our online loan customers, Yoshua. "I borrowed from several applications, including Tunai Rupiah and Dana Kilat." According to Yoshua, in the Tunai Rupiah application there are many lenders or co-operatives or loan sharks who call their entities such as Dana Speed, Datang Pinjam, Pinjam Sono, and so on. Pinjol causes more harm to borrowers. The interest rate alone is almost 50 per cent with a tenor of only 7-10 days. "Because I was late in repaying the loan, they distributed photocopies of my ID card and photos of

me saying that I was a fraudster because I lent money without paying to the contact numbers in my WA application," said Yoshua.[1].

The rules regarding credit through online applications are relatively new, OJK Regulation No. 77/POJK.01/2016 on Information Technology-Based Money Lending and Borrowing Services has been issued. However, the existing regulations still do not provide good and clear legal protection both for creditors who provide credit funds, especially in the event of bad credit (default) and for debtors who obtain credit facilities. Generally, in online lending, when a default occurs, the creditor will contact all contacts owned by the debtor via telephone, SMS, or through the Whatsapp application by spreading the debtor's data. This may be valid when referring to the legal requirements of an agreement as stated in POJK number 77/POJK.01/2016 because the debtor is considered to have violated the agreement or contract. However, Law No. 11/2008 on Electronic Information and Transactions (abbreviated as ITE Law) prohibits any person who intentionally and without right to disseminate information and/or electronic documents containing threats of violence or fear. This is in accordance with the mandate of Article 28G paragraph (1) of the Constitution of the Republic of Indonesia which states that: "every person has the right to protection of person, family, honour, dignity, and property under his/her control as well as the right to feel secure and entitled to protection from the threat of fear to do or not to do something".[2].

Based on the explanation above, the existence of problems regarding the dissemination of debtor data in online loan default cases is a very interesting thing to study. The researcher chose this topic because the case of spreading debtor data by online loan creditors can be studied from various legal perspectives in Indonesia so that the author will formulate in a scientific work of legal writing in the form of an article with the title: "Juridical Review of Debtor Data Dissemination in Online Loan Default Cases".

METHOD

In writing this study the author uses normative juridical research. Legal research with a doctrinal approach in the nature of normative juridical legal research or normative legal research is basically an activity that will examine aspects to solve problems contained in positive law. In this normative legal writing, researchers use two kinds of approaches, namely the Statute Approach and Conceptual Approach. The method of collecting legal materials in this research is carried out by conducting literature studies to obtain legal materials in the form of applicable laws and regulations, research journals and books as a complement.

RESULTS AND DISCUSSION

Legal Consequences of Dissemination of Debtor Data in Review of Applicable Legal Provisions

In the contract or terms and conditions that apply, there is a sentence stating that the creditor will not disseminate data information to third parties unless there is a delay in payment. If the debtor agrees, then the credit process continues, but if he does not agree, then the credit process is cancelled. Only a handful of customers read the credit agreement contract and terms and conditions, so there are still many complaints about the dissemination of data information that leads to defamation. Another thing that needs to be known is that the online credit application throws the credit collection task to third parties such as collector agencies (ranging from desk collection to remedial collection) to collect the agreed credit refund or there may be some online loan companies that do not throw the collection to third parties.

This was the case for Yoshua who borrowed from several apps, including Tunai Rupiah and Dana Kilat. In the Tunai Rupiah application, there are many lenders or cooperatives or loan sharks who call their entities such as Dana Speed, Datang Pinjam, Pinjam Sono. Online loans cause more harm to borrowers. The interest rate alone is almost 50 per cent with a tenor of only 7-10 days. "Because I was late in repaying my loan, they distributed a photocopy of my ID card and a photo of myself saying that I am a fraudster because I lend money without paying to the contact numbers in my WA application," said Yoshua. 2 The rules for the implementation of goods credit through online applications are relatively new, OJK Regulation No. 77/POJK.01/2016 on Information Technology-Based Money Lending and Borrowing Services has been issued. However, the existing regulations still do not provide good and clear legal protection both for creditors who provide credit funds, especially in the event of bad credit (default) and for debtors who obtain credit facilities. Generally, in online loans, when a default occurs, the creditor will contact all contacts owned by the debtor via telephone, SMS, or through the Whatsapp application by spreading the debtor's data. This may be valid when referring to the legal requirements of an agreement as stated in POJK number 77/POJK.01/2016 because the debtor is considered to have violated the agreement or contract. Law No. 11/2008 on Electronic Information and Transactions (abbreviated as ITE Law) prohibits any person who intentionally and without right to disseminate information and/or electronic documents containing threats of violence or fear.

Article 28G paragraph (1) of the Constitution of the Republic of Indonesia which states that everyone has the right to protection of person, family, honour, dignity, and property under their control and is entitled to feel safe and entitled to protection from threats of fear to do or not to do something.

In the threat of terror through whatsapp messages by the creditor to the debtor, including making threats through electronic media which can be subject to criminal charges based on Law Number 11 of 2008 concerning Electronic Information and Transactions Article 29 jo. Article 45B of the ITE Law. Article 29 of the ITE Law states "Every person intentionally and without right sends Electronic Information and/or Electronic Documents containing threats of violence or personal fear." Article 45B of the ITE Law states that: "Any person who intentionally and without right transmits Electronic Information and/or Electronic Documents containing threats of violence or personal fear as referred to in Article 29 shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp.750,000,000.00 (seven hundred fifty million rupiah)." The provisions in Article 45B of the ITE Law also include cyber bullying that contains elements of threats of violence or fear and results in physical, psychological, and/or material loss.

As discussed in this chapter, personal data is a citizen's right to privacy that is guaranteed and protected by the state. The act of disseminating personal data is an act that violates the guarantee of protection of the right to privacy of a citizen as described in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely: "Every person shall have the right to the protection of his/her person, family, honour, dignity, and property under his/her control, and shall have the right to security and protection from threats of fear to do or not to do something which is a human right."

Provisions regarding the protection of personal data through electronic media are contained in Article 26 paragraphs (1) and (2) of the ITE Law, namely: Unless otherwise provided by laws and regulations, the use of any information through electronic media concerning a person's personal data must be done with the consent of the person concerned. Any person whose rights are violated as referred to in paragraph (1) may file a lawsuit for losses incurred under this law. It is also explained in Article 32 paragraph (2) of the ITE Law that: "Every person intentionally and without right or unlawfully by any means moves or transfers Electronic Information and/or Electronic Documents to the Electronic System of another person who is not entitled." [3].

Personal data is the privacy right of every citizen that is protected by the state. The act of disseminating personal data/identity of a citizen is an act that violates the guarantee of protection of the right to privacy of a citizen. Online loan companies that commit offences in the form of spreading personal data can be charged with Article 32 juncto (jo) Article 48 of the ITE Law. Basically, you are obliged to repay all loans even if they come from illegal online loans, because there has been an agreed lending agreement between you and the illegal online loan company. In relation to the disturbance you are facing, you can make a complaint to the Financial Services Authority (OJK) based on Article 29 of Law Number 21 of 2011 concerning the Financial Services Authority, which reads: OJK conducts consumer complaint services which include: preparing adequate tools for consumer complaint services that are harmed by actors in Financial Services Institutions; creating a mechanism for consumer complaints that are harmed by actors in Financial Services Institutions; and facilitating the settlement of consumer complaints that are harmed by actors in Financial Services Institutions in accordance with laws and regulations in the financial services sector. Based on your complaint, OJK can later block and suspend the business of unregistered and unlicensed (illegal) providers. [4].

Misuse of personal data that is not in accordance with agreed interests, in accordance with Article 26 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. Therefore, every person whose rights are violated as referred to in Article 26 paragraph (1) of the ITE Law can file a lawsuit for the losses caused. Thus, if someone feels harmed because their personal identity is misused, a civil lawsuit can be filed. The lawsuit referred to in this case is a tort lawsuit. In relation to the disturbance experienced by online loan customers, they can make a complaint to the OJK based on Article 29 of Law Number 21 of 2011 concerning the Financial Services Authority. Protection of one's personal data (personal data) is needed because it is closely related to the current technological developments in the internet world which have progressed very rapidly so that people can access one's personal data without the knowledge of the party concerned. The government and the House of Representatives have established Law No. 27 of 2022 on Personal Data Protection. If the previous regulations mostly regulate the mechanism and system of personal data protection and administrative sanctions, this law has also included criminal sanctions against perpetrators of personal data abuse.

This is not good by utilizing personal data that is used in the loan collection process by contacting the contact number on the debtor customer's cellphone which is not even the contact number registered as an emergency number if the customer cannot be contacted. This certainly creates a sense of discomfort and insecurity by people who positively welcome technological innovation in the economic field. Prospective customers generally get offers through text messages. With the lure of fast disbursement and without difficult conditions. In addition, the economic situation is another reason why people can fall into the "trap" of online loans. Simply by uploading documents such as KTP, SIM, NPWP, salary slip, passbook, family card, selfie photo and giving access permission to the prospective

customer's telephone device, they can get a cash loan disbursement with a nominal value ranging from Rp.500,000, - to Rp1,000,000,- or even more. But unfortunately, the convenience obtained is not directly proportional to the security or confidentiality of personal data that has been uploaded. Maintaining the confidentiality of personal data of every citizen is a state obligation in accordance with the 1945 Constitution Article 28 G paragraph (1). "Rogue" companies begin to appear when customers are approaching maturity, maturity and beyond maturity. It is at this time that online loan service providers begin to collect in ways that are not ethical. from verbal abuse to the dissemination of customers' personal data that has nothing to do with debt and credit. Supervision and regulation specifically related to online lending is carried out through Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. It is then clarified in OJK Circular Letter Number 14/SEOJK.07/ 2014 concerning Confidentiality and Security of Consumer Personal Data and/or information. These regulations range from legality requirements, rights and obligations to regulating the issue of sanctions for actions that are not in accordance with OJK and related regulations applicable in Indonesia.

However, the sanctions in the OJK regulations themselves are only administrative sanctions against companies or online loan service providers. More broadly, the scope of information and electronic transactions is clearly regulated in the Law on Electronic Information and Transactions. Illegal access to electronic documents and information is an act committed without rights or against the law, which means that violating the act outside of reasonable ways and conditions in accessing electronic systems as it should be, is one of the elements to fulfill unlawful acts. The regulation of consumer protection in Indonesia has been specifically regulated in Law Number 8 of 1999 concerning Consumer Protection and is an umbrella act in consumer protection in Indonesia. Basically, consumers of services in the financial services sector can also be protected by the law when they are harmed by business actors in the financial services sector. [5]. Law Number 8 of 1999 concerning Consumer Protection Article 4 regulates the rights of consumers. online loan customers as consumers certainly have rights that must be considered by online loan companies. Furthermore, the protection of personal data in general is also contained in Law Number 39 of 1999 concerning Human Rights. When referring to the current laws and regulations, actions that can be taken by victims or consumers whose personal data is misused by online loan services can file a lawsuit or demand the implementation of administrative sanctions to service providers. However, legal action that is only limited to filing a lawsuit or demanding the implementation of administrative sanctions is still lacking in the protection of personal data abuse.

The Indonesian Criminal Law does not yet regulate legal jurisdiction over cyber crimes, which will then have an impact on the protection of privacy rights. The public needs to understand that, to be able to distinguish legal and illegal applications with the logo of OJK, AFPI as the authority that oversees all financial activities. The importance of this knowledge is because OJK's authority regarding public complaints is only limited to providers registered with OJK in accordance with the mandate of the Law on OJK. OJK also explains that all lending and borrowing mechanisms carried out and user complaints are outside the authority of OJK. The risk of billing and dissemination of personal data is not the responsibility of OJK. Even if the service provider is proven to have committed a violation, OJK can only impose administrative sanctions.

The rapid growth of fintech in Indonesia is the background for the Financial Services Authority (OJK) to issue OJK Regulation No. 77/POJK.01/2016 on Technology-based money lending and borrowing services or also known as peer to peer lending (P2P). The rapid development of fintech has also given rise to illegal fintech, especially in illegal online loans that are not registered and still operate in Indonesia freely. [6].

The operation of these illegal online loans is feared to potentially cause losses to the community and the state. According to OJK's official publication, there are at least 51 more companies that provide lending and borrowing services that have been registered and obtained a license to provide services from OJK. [7]. In reality, there are still many online loan application companies on the Google Play Store that operate without a license from the OJK. At least 65% of online loan applications that do not have OJK licenses such as Pinjamku, Pintar Loan etc.¹³ The supervision of online money lending and borrowing must be of greater concern because it is related to the products offered by the company itself. For example, there are regulations regarding how OJK supervises online money lending. OJK has appealed to the public to be more careful about fintech-based online lending and borrowing services.

The benefits provided by the development of fintech for the national economy is that fintech is able to provide loans easily and quickly. The type of fintech that is widely used by the public is P2P Lending because the process and procedures in online lending and borrowing offered in the P2P Lending system can be done quickly and easily. On the other hand, a number of illegal online loans have sprung up and can be easily accessed by the public. There are many violations of the law committed by illegal online loans so that the existence of these violations will certainly harm the community. Illegal online loans are in principle not included in OJK supervision because OJK can only supervise legal

online loan companies. Efforts that can be made by OJK are by cooperating with several government agencies to form an Investment Alert Task Force which is tasked with one of them to oversee illegal fintech. OJK through the Investment Alert Task Force coordinates with related parties such as the Ministry of Communication and Information to block, the Police to take action in the criminal element, the Bank to break the chain of illegal online loans during new account registration. Educating the public to be more careful in making online loans. The obstacle experienced by OJK is that the blocking that has been carried out has not been able to effectively prevent the emergence of illegal online loans. One of the reasons is because the creation of applications on Google is open so that illegal online loan companies can re-create similar services even though they have been blocked many times. Various kinds of financial technology are developing more and more rapidly, even government regulations are quite difficult to keep up with. In this case, the Financial Services Authority (OJK) has an important role to organize the regulation and supervision of all financial services activities in Indonesia. The existence of the Financial Services Authority Institution (OJK) provides convenience to all people involved in financial technology. Since December 31, 2012, the functions, duties, and authority of regulating and supervising non-bank financial institutions are directly supervised by the Financial Services Agency.

The Financial Services Authority (OJK) Law basically contains regulatory and supervisory provisions of the financial services sector. Based on the provisions of Article 5 of Law Number 21 of 2011 that "The Financial Services Authority (OJK) functions to organize an integrated system of regulation and supervision of all activities in the financial services sector". The Financial Services Authority (OJK) has the authority to carry out regulatory and supervisory duties in the financial services sector. Therefore, the role of the Financial Services Authority (OJK) on technology-based money lending and borrowing must be maximized. The Financial Services Authority (OJK) has a role to oversee peer to peer lending financial technology. The role of The role of the Financial Services Authority (OJK) in information technology-based money lending services is as a regulator/regulator and also as a supervisor. Basically, the debtor, the recipient of the loan, is obliged to pay the debt in accordance with what has been agreed. If the debtor is late in paying the debt, a fine will be imposed according to what has been agreed. If the debtor still does not pay the debt, the creditor has the right to sue on the basis of default. to sue on the basis of default based on Article 1238 of the Civil Code. However, in the practice carried out by illegal fintech, if there is a default by the debtor there is a default by the debtor, using methods that are not good. Many cases that have occurred in Indonesia regarding illegal online loans. Basically OJK has issued OJK Circular Letter Number 14/SEOJK.07/2014 regarding Confidentiality and Security of Data and / or Consumer Personal Information. At Article 2 Paragraph (1) states that: "PUJK is prohibited in any way, provide personal data and/or information about their consumers to third parties". In reality, there are still cases of online money lending and borrowing, whose data is spread, threatened and intimidated. Because as a debtor, the fintech as the lender is considered to have violated the law by disseminating their personal data and conducting collections that are not only made to the borrower or the emergency contact included by the borrower. Based on this, with the regulations issued by OJK on online money lending, money lending companies should not be arbitrary towards customers. How is OJK's legal protection to customers who are harmed by illegal online loans. Basically, if there are financial service institutions including online loan financial services, which are licensed and registered with the OJK, then the OJK has the right to impose sanctions in the form of administrative sanctions. administrative sanctions.

CONCLUSION

Based on the results of the discussion, it can be stated that the legal consequences of the dissemination of debtor data in terms of applicable legal provisions, that creditors can be sued civilly as a form of tort as stipulated in the provisions of Article 26 paragraph (1) of the Electronic Information and Transactions Law, that: Any person whose personal rights are violated may file a lawsuit for the resulting losses. If someone feels harmed because their personal identity is misused, then a civil lawsuit can be filed as a form of tort. In relation to the disturbance experienced by In connection with the disturbance experienced by online loan customers, complaints can be made to the OJK based on Article 29 of Law Number 21 of 2011 concerning the Financial Services Authority Legal protection of debtors for the dissemination of their personal data by creditors can be carried out if the Online loan is registered with the OJK. OJK's legal protection to customers who are harmed by illegal fintech is carried out by preventing losses to the public as consumers and legal defense. Article 28 paragraph 1 of the Financial Services Authority Law is a preventive measure of legal protection for the public with finance as providing information and education to the public on the characteristics, products and services in the financial services sector, by providing information and education the public will know the characteristics and products in the financial services sector. characteristics and products in the financial services sector.

SUGGESTION

Suggestions that can be given, namely: (1) OJK should evaluate the development of fintech in Indonesia, especially online loans, in addition to the need for socialization and the formation of a financial services sector. There needs to be socialization and the formation of a supervisory body so that customers are not harmed by companies offering online loan products. After the evaluation, there needs to be strict regulations against illegal online loans. online loans that are illegal. (2) The borrower of funds / customers should be able to increase trust or trust in fintech, so that the economy can stabilize and from the borrower and anticipate obstacles related to the implementation of credit granting including if there is misinformation. implementation of lending including in the event of misinformation or transaction errors. (3) There needs to be coordination between OJK and the Ministry of Communication and Information Technology in conducting socialization about online loans so that the public can understand the differences between legal and illegal online loan providers in terms of legality, interest rates, bidding methods, and so on. and so on. To prevent human rights violations during collection because service users are unable to make payments as a result of interest rates that are too high and the public is also given knowledge about their rights as users.

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