Legal Protection For Victims Of Abuse Personal Data In Illegal Fintech (Online Loans) According To Law No. 19 Of 2016 About Information And Transactions

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Abstract

This study aims to determine the forms of legal protection and settlement of criminal cases of misuse of personal data carried out by financial technology based loan services or fintech Peer to Peer Lending. This study uses normative juridical research methods using a library research approach. Sources of data obtained from literature and legislation in force. The statutory approach to Law Number 19 of 2016 concerning Information and Electronic Transactions, and Regulation of the Financial Services Authority Number 77 / POJK.01 / 2016 Regarding Information Technology Based Lending and Borrowing Services. The results of this study reveal that many people are victims of misuse of personal data when lending funds using illegal fintech services or do not have permission. This form of legal protection is provided for victims of misuse of personal data in the form of preventive legal protection and repressive legal protection based on the ITE Law and POJK to provide criminal sanctions against illegal fintech services if committing an act of criminal misuse of personal data.

Keywords: Legal Protection, Financial Technology

I. Introduction

Every year the development of Information and Communication Technology, especially since the existence of Fintech, where Fintech is a new thinking in the field of finance where the thought gets a direct touch from modern technology that makes it easy for the community in carrying out all financial transaction activities. 1 The financial transaction process is divided into several processes, namely the payment process, the process of borrowing money, insurance, the process of buying and selling goods or shares.

The start-ups in Indonesia also saw huge opportunities in the Fintech industry, as evidenced by the emergence of many Fintech start-ups such as the example of UangTeman, credivo, akulaku, Modalku and many more.

Financial Technology is categorized in the form of repayment, among others, by using advanced technology to transfer funds, electronic money, electronic deposits, and mobile payments.

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1 Satjipto Raharjo, Law and Society, Angkasa, Bandung, 1986, p. 15
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One example of an illegal Fintech case (online lending) is the case of a private employee in Solo named Yuliana Indriati who was one of the victims of Financial Technology (Fintech) online loans that were either fake or fake. On social media, there are Indri photos that read are ready to do anything to pay off debt in the INCASH Pinjol application.

Here Yuliana became a victim because she delayed her loan repayments, after which she was terrorized by the INCASH loan collector’s debt collector. Next thing you know, there is a WhatsApp group whose contents are contacts on their cellphones. He was humiliated and threatened that his photo would be distributed to all contacts.

According to Indri, there has not been a one-month loan at INCASH. Indri has received an unpleasant threat. ‘The first day they threatened, then until they spread out my photo which had the writing’ sell yourself, be willing to rotate, so I didn’t feel calm,’ a statement from the victim.

II. Method

The research that the author uses is normative juridical rules. By using the type of normative juridical research, this research is normative because the rules are used by examining interrelated library materials. The occurrence of this legal research aims to find a truth in relation, that is, is there a rule of law in accordance with the norm. In normative research the writer takes library studies, located in the library of universities and regions and supported by books and journals.

III. Main Heading of the Analysis or Results

A. Forms of Difference between Illegal and Fintech Legal Fintech

The concept of fintech regulation according to the OJK and PBI has been set according to technological developments in the financial sector at banking institutions. In Indonesia, Fintech is also used to provide solutions in the financial sector and also to provide digital-based financial services that have developed very fast.

Here the lenders at the bank and at Fintech Peer to Peer Lending, namely the people really need money, while those who give loans are very different. The money in the bank comes from savings from customers who are given credit. Meanwhile lenders at Fintech

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Peer to Peer Lending are investors who deliberately lend their money to the fintech platform for profit.³

Every Fintech company in operation must have permission or prior approval from the OJK and the Fintech Peer to Peer Lending company which still has to register must follow the rules set out in Pasal 7 of the POJK which reads, the organizer must submit registration and licensing to the Financial Services Authority. After the Fintech Peer to Peer Lending Legal company has registered with the OJK, the legal fintech business actors also have the terms and obligations that have been issued by the OJK as stipulated in Pasal 8 of the POJK.

But in practice in the community does not include in the FSA. Companies that are not listed in the OJK are called illegal fintech companies, these online loan companies do not follow the applicable legal basis, so sometimes in the field there are legal entities but are not registered in the legal entity system regulated by the OJK. This Fintech Peer to Peer Lending Illegal company is the opposite of the company’s legal explanation. Intended illegal fintech is to run its business beyond the scope of the regulations issued by the FSA and the way of its establishment does not follow the rules that have been applied by Bank Indonesia Regulations (PBI). The magnitude of violations of the Fintech Illegal company that occurred in the community was because the community itself did not know much.⁴

In addition, the characteristics of this Illegal company in billing tend to intimidate or coerce the users of the fintech service while billing, one of the ways of billing carried out by the Illegal Fintech service is to use a threatening way to spread the hoax news of the users of this fintech service. This intimidation or coercion often uses a third party, namely the debt collector, for the billing process.

Based on the description above, the Fintech Legal company that is the organizer of the Legal must register and follow the rules which have been issued by the FSA and the performance of the Fintech company will always be overseen by the FSA. But for Fintech Peer to Peer Lending Illegal, the service is not regulated and supervised directly by OJK and Fintech Illegal is more looking for profits from users of the fintech services who register in their online loan services.

B. Misuse of Personal Data on Illegal Fintech (Online Loans)

In the process of lending to the illegal fintech parties, the borrower must download the application, after completion here the borrowers must first fill in the data requested by the illegal fintech service application. The initial data requested is like personal data or complete identity.

And in the misuse of personal data in question is when the borrower is unable to pay the loan bills he did then the illegal fintech is to ask the debt collector to take contact data on the borrower’s cellphone and terrorize or humiliate the borrower by spreading photos to each contact who is on a borrower’s cellphone. Not only taking contact data and distributing photos, the next treatment is to terrorize by calling borrowers to borrow with different numbers and in a manner that is not polite or send messages continuously using harsh words that are inappropriate.

Illegal fintech online loan companies also do not have interest limits and deadline limits determined from the start so that borrowers who have matured or late returned the loan funds will be subject to very strangling interest. As for examples of other cases that occurred in the city of Surabaya. A woman named Garina Irmayanti who was fooled by the illegal fintech loan company. At first he only borrowed Rp1,500,000 but Garina only got Rp1,300,000 because he was cut off by administrative costs. Garina borrowed funds online from an application called DANAQU. After borrowing these funds, it was not long after receiving news that he was sought by a debt collector named Dito. He was telephoned through his office, while talking on the phone he was cursed and said to use words that should not be. And the debt collector continues to terrorize by sending messages to his office friends.

Based on the description above the case regarding the misuse of fintech personal data, in this case the misuse of fintech data by means of absorbing personal data in this case without permission is directly used by illegal fintech parties to forcibly charge borrowers to immediately repay the loan.

C. Legal Protection For Victims Of The Abuse Of Personal Data By Illegal Fintech (Online Loans) According To UU NO. 19 Tahun 2016

The basis for granting such legal protection is still observing or following the rules of the Undang-Undang ITE and POJK, where both provisions contain preventive and
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repressive legal protection. The form of preventive legal activities is contained in the provision of Pasal 5 of the Undang-Undang OJK Number 21 Year 2011. In the Undang-Undang ITE it can be intended to provide an explanation in Pasal 26 ayat (1) Undang-Undang ITE that the legal protection of personal data is one part of personal rights (privacy rights) which means that everyone has the right to enjoy a private life and is free from all kinds of disturbances, then can communicate with others without tapping and the right to supervise access to information about one’s personal life and data. Therefore, the Peer to Peer Lending-based fintech service is obliged to protect and not divulge confidential personal data stored in the fintech application service system.

So Peer To Peer Lending-based Fintech organizers are required to carry out the rules that have been mentioned in the Article, if the organizer does not obey these rules then there are consequences that will be imposed on the organizer.

The repressive form is carried out if there has been a criminal case in violation of Fintech rules. In the online loan case process as explained by the previous writer that in some cases of data deviations committed by the organizer of fintech which uses debt collector services to collect loans from borrowers, the form of data deviation is meant to take data without permission, for example taking photos at gallery and contact numbers in one data storage on the borrower’s cellphone.

If something happens such as several cases of illegal fintech billing that occur for cases of criminal acts of misuse of personal data if it occurs between victims of fintech service users and organizers, then according to the provisions of Pasal 38 ayat (2) No.11 of 2008 Undang-Undang ITE. Where is referred to in the Act system The ITE if the victim or the community feels aggrieved by the organizers, then the victim from the fintech service may report or file a lawsuit to the court or government agency for the loss that the victim gets from the Peer to Peer Lending-based fintech service by representative, in that article concerning the loan agreement, the domain of the lawsuit is entered into civil law, but if the collection is carried out in the presence of a threat, defamation, theft of personal data and so on, then this case can enter criminal law and this case the victim can report to the party colored a duty to report forms of threats and pollution of personal data that have
been carried out by a third party or debt collector assigned by the organizer of illegal fintech.\(^5\)

Based on the description or explanation above, the forms of legal protection provided can be preventive and repressive. Preventive protection are forms of supervision that require activeness from OJK and other law enforcers, due to the large number of illegal Fintech Peer To Peer Lending organizers who do not comply with the rules contained in the Undang-Undang ITE or the rules that have been made by the FSA. \(^6\) This repressive protection concerns whether or not online victims of this loan report to the police as a form of criminal defamation or threat that has been obtained from the parties.

IV. Conclusion

1. In illegal fintech (online loans) the form is the abuse of personal data according to Undang-Undang ITE No.19 of 2016, namely theft of data in the form of electronic information and / or electronic documents, where the intended data is in the form of photos, contact numbers and so on as well as the fintech parties this if doing the billing process using the services of debt collectors and when billing is always terrorizing and billing it tends to do intimidation or coercion and threaten to spread the news hoax mock-hoax victims of illegal fintech. So from several cases that occur the government is obliged to provide socialization through print media, social media, or provide information via television that fintech online loans are very dangerous because many Indonesian people themselves do not know about this Peer to Peer Lending-based fintech service.

2. The form of protection provided for victims of misuse of personal data by illegal fintech as perpetrators of preventive crime and repressive law. In preventing preventive law protection to prevent the occurrence of a criminal offense, it can be in the form of socialization to the public about the development of information technology about the cruelty of online loans that are rife in the wider community and how to legal protection if misuse of personal data by illegal fintech companies and how reporting to authorities such as the police and others as it is. While the form of repressive legal protection is legal protection given after a criminal act takes the form

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\(^6\) Interview with Mr. Iptu Hari Siswanto as Head of the Sidoarjo Police Criminal Unit Harda Unit on Thursday 27 February 2020 at 11.00 WIB in the Harda Sat Police Criminal Unit Sidoarjo
of sanctions such as fines, imprisonment, and additional punishment if a dispute or violation of a crime has occurred. This protection is given in the face of criminal law enforcement. This form of legal protection is contained in the UU ITE and POJK. However, legal protection given to victims of misuse of personal data by illegal fintechs as perpetrators of this crime tends to provide repressive legal protection.

References

Books:


Legislation:
*Undang-Undang Informasi dan Teknologi Elektronik*
*Peraturan Otoritas Jasa Keuangan*

Others:

Interview with Mr. Iptu Hari Siswanto as Head of the Sidoarjo Police Criminal Unit Harda Unit on Thursday 27 February 2020 at 11.00 WIB in the Harda Sat Police Criminal Unit Sidoarjo