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Personal Data Protection Violations By Fintech Lending in Indonesia

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Abstract: The development of increasingly modern technology has changed the pattern of human behavior and work methods, which were initially conventional and then digitalized, one of which is marked by the presence of financial technology (fintech) lending. The rise of fintech lending development also has a negative impact, one of which is in terms of processing the personal data of fintech lending users. Hence, the Financial Services Authority formed POJK 10/2022. In connection with this, the PDP Law has also come into force in Indonesia. This paper aims to look at personal data protection violations by fintech lending, considering that two institutions have the authority to handle these violations. The method used is doctrinal legal research. The approach used is the statute approach. The results showed that to supervise fintech lending, it is necessary to classify its position first. If fintech lending is an LPBBTI organizer, it is supervised by OJK. Meanwhile, if fintech lending is the controller of personal data, it is supervised by the PDP Authority. As for reports or complaints of allegations and/or violations of personal data protection committed by fintech lending; examination and investigation of complaints of alleged violations of personal data protection; and imposition of administrative sanctions for violations of personal data protection by fintech lending are the authority of the PDP Authority, not OJK.

Keyword: Personal Data, Fintech Lending, OJK, PDP Authority

INTRODUCTION

Changes in life are inseparable from the influence of globalization. The development in the field of information technology is one of the rapid developments of the globalization era. The development of information technology that can be seen directly is the use of the internet (Nababan & Sinaga, 2021). This can be proven by a survey conducted by the Indonesian Internet Service Providers Association, with the number of people connected to the Internet in 2021-2022 as many as 210,026,769 people out of a total population of 272,682,600 Indonesians. The development of increasingly modern technology has changed the pattern of human behavior and work methods, which were initially conventional and then digitized, such as economic activities through e-commerce. This formal government sector utilizes e-government, court administrative services that utilize e-court services, and so on (Hertianto, 2021). In addition, the impact of technological development and the internet has also penetrated

the Indonesian financial industry, which is characterized by the presence of financial technology (fintech) (Santi *et.al.*, 2017).

The National Digital Research Center (NDRC) in Dublin, Ireland, defines fintech as innovation in financial services, which is an innovation in the financial sector that gets a touch of modern technology. The process of fintech revolves around creating software to process the usual activities of financial institutions to improve the consumer experience and streamline the payment process to be more efficient or enable consumers to fulfill their financial needs (Fin, 2016). The products produced by fintech are systems built with the aim of carrying out a specific financial transaction mechanism and can be accessed through applications or web pages. One form of system from the technology is fintech lending or fintech peer to peer lending. The system is a platform for conducting online lending and borrowing transactions so that they do not have to meet face-to-face and do not need to use collateral (Stevani & Sudirman, 2021). Since the Covid-19 pandemic, the existence of fintech has been increasingly used by the public to minimize direct transactions. Based on data from the Financial Services Authority, until March 9, 2023, the total number of peer-to-peer lending or fintech lending providers licensed by OJK was 102 companies.

The existence of fintech lending in the community can be accepted to have a positive impact on economic activities because it can easily carry out the lending and borrowing process, which tends to be more practical than banks, which are also financial services industries. However, on the other hand, the presence of fintech lending can also provide risks to the parties involved because fintech is used as a medium for committing crimes such as cybercrime, theft of personal data, misuse, tapping, fraud, or burglary. Therefore, OJK ratified Regulation No. 77/POJK.01/2016 on Information Technology-Based Money Lending and Borrowing Services, whose substance includes lending and borrowing service providers, business activities, lending limits, registration and licensing, agreements, governance, and risk mitigation (Stevani & Sudirman, 2021).

However, the presence of these regulations has yet to be able to solve the current fintech problems, one of which is the presence of illegal fintech lending. Satuan Tugas Pemberantasan Aktivitas Keuangan Ilegal (Satgas PASTI) has made various efforts to minimize the number of illegal fintech lending, such as blocking the sites, websites, and applications of all illegal entities so that the number of illegal fintech lending stopped from 2017 to January 2024 is 6,991 (Bestari, 2022). On the internet, many illegal fintech lending applications are advertised; even in PlayStore, there are also many illegal fintech lending applications found. Therefore, regulation and supervision are very important for the sustainability of fintech lending in Indonesia, especially with regard to the legality of the business being run (Santi *et.al.*, 2017).

Regardless of the legality of the establishment of fintech, before carrying out financial transactions, of course, you must fulfill the requirements for using fintech in the form of sending personal data such as name, address, electronic mail, and so on. This causes frequent misuse of personal data. The lack of public awareness of the vulnerability of misuse of personal data is the reason people easily apply for online loans through fintech lending applications (Wijayanto *et.al.*, 2020). According to Dejan Jankovie, when personal data has been input or entered into an information technology system, the owner of the personal data can no longer strictly control his personal data (Jankovie, 2012).

One of the misuse of personal data by fintech lending is the buying and selling of personal data. The buying and selling of personal data of fintech users is done by offering consumers personal data on sites that have been created (Nababan & Sinaga, 2021). One example of a case is what happened to Kreditplus, which has been owned by PT Financial Multi Finance since 1994. A total of 896,170 data in the form of names, identity cards (KTP), emails, passwords, addresses, cellphone numbers, employment data, and guarantor family data were sold on one of the underground forums. The data is sold at a price of 1,500 US dollars or, if converted in

rupiah, around IDR 22,000,000. However, the data that was sold was allegedly leaked and used by bad people who misused the data for criminal acts (CNN Indonesia, 2020). In addition, there is actually still much data traded on the dark web that is still suspected of being obtained from fintech lending. Therefore, the role of personal data in terms of safeguarding access and processing both nationally and internationally is very important to get adequate protection (Wolters, 2017).

In this regard, OJK issued OJK Regulation Number 10/POJK.05/2022 on Information Technology-Based Funding Services, which contains access and use of personal data as well as data period and data deletion and administrative sanctions. In 2023, OJK issued OJK Circular Letter Number 19/SEOJK.05/2023 on the Implementation of Information Technology-Based Funding Services as a follow-up to POJK Number 10/POJK.05/2022. The SEOJK is a concrete manifestation of the implementation of the roadmap for developing and strengthening fintech lending 2023-2029 on the pillars of regulation, supervision and licensing. In line with this, in 2022, the Law of the Republic of Indonesia Number 27 of 2022 concerning Personal Data Protection came into force, one of which regulates institutions or, in this case, the institution of the Personal Data Protection Authority (PDP authority). The PDP Authority is tasked with overseeing the management of personal data by electronic system providers, both government and private so that they meet the criteria in the PDP Law that the PDP Authority is required to be independent (Kominfo RI, 2022). The existence of OJK and the presence of a PDP authority raises questions regarding which institution handles cases of personal data protection violations by fintech lending. At the same time, both have the authority to do so.

Roida Nababan and Nelson Persada Sinaga have conducted previous research by examining "Legal Protection for Consumers whose Personal Data is traded in peer-to-peer lending fintech applications." The paper discusses data that is misused in the use of peer-to-peer lending fintech. Furthermore, Winnie Stevani and Lu Sudirman have also examined "The Urgency of Financial Technology User Data Protection against Online Crime in Indonesia," whose substance generally includes fintech arrangements in Indonesia, the legal effectiveness of fintech user data, and the urgency of resolving online crime against fintech user data in Indonesia. Unlike the previous paper, this paper will examine the institutions that handle allegations and/or violations of personal data protection in the pillars of reports/complaints, follow-up or settlement, and sanctions. Therefore, the novelty of this research is that it will further discuss OJK's current supervision of fintech lending as well as the role of OJK and PDP authorities towards allegations and/or violations of personal data protection by fintech lending.

This research will explore how OJK supervises fintech lending in Indonesia. In addition, this research will also explore the role of OJK and the PDP authority in relation to allegations and/or violations of personal data protection by fintech lending.

METHOD

The This type of research is doctrinal legal research. Doctrinal research is prescriptive legal research, values of justice, validity of legal rules, legal concepts, and legal norms (Marzuki, 2006). The approach used is a statutory approach, while the data used is secondary data consisting of primary legal materials in the form of PDP Law and POJK Number 10/POJK.05/2022; secondary legal materials in the form of literature and/or articles related to fintech lending and personal data protection. Data collection is carried out through library research or literature study, which is a data collection technique obtained from laws and regulations, books, journals, and opinions of scholars, which are then collected and reviewed to determine their relevance in answering the problem formulation (Soekanto, 2008). This research uses qualitative data analysis. The data obtained will be analyzed to get answers to the formulation of the problem, which will then be presented descriptively.

RESULTS AND DISCUSSION

Financial Services Authority Supervision of Fintech Lending

The Financial Services Authority is an independent institution and free from interference from other parties, which has the functions, duties, and authority to regulate, supervise, examine, and provide services. Article 5 of Law Number 21 of 2011 on the Financial Services Authority (OJK Law) stipulates that OJK functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector. In the context of fintech peer to peer lending, OJK's role is as follows:

1. As the organizer of the regulatory system for the development of the fintech peer to peer lending industry, the Financial Services Authority has issued written regulations in the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Technology-Based Joint Funding Services (LPBBTI). This regulation was issued with the aim of providing a forum and legal basis for the organizers of one of them, fintech peer to peer lending in Indonesia, as well as providing consumer protection and trust for people who will use fintech peer to peer lending.
2. As a supervisor of the implementation of the rules of fintech peer to peer lending, which in this context is the Financial Services Authority Regulation on Information Technology-Based Money Lending and Borrowing Services (LPMUBTI), supervision can be carried out routinely. It should not be interrupted, meaning that it must be carried out inherently or continuously.

OJK currently supervises fintech lending through 3 (three) methods, namely:

1. Offsite, through reports submitted to OJK and also a host-to-host implementation plan with the company's server by utilizing the Database Element Structure.
2. Market Conduct (Semi SRO), in accordance with Article 48, all Operators must be registered as members of the association appointed by OJK. OJK has appointed the Indonesian Joint Funding Fintech Association (AFPI) on January 17, 2019. AFPI has a Code of Conduct and provides several arrangements that have yet to be regulated by OJK, including the maximum interest limit and collection procedures. OJK regularly meets AFPI at least once every week.
3. Onsite, through a direct inspection mechanism that is carried out both regularly and at any time.

OJK's supervision is not only conducted when fintech lending operates, but also before it operates. Therefore, OJK's supervision of fintech lending can be divided into two stages, namely pre-operational business and during business operations. Technically, the pre-operational stage is in the form of applying for registration and licensing of the organizer to OJK, as such registration is mandatory in the establishment of a fintech. The organizers regulated in the regulation are in the form of limited liability companies or cooperatives. If the organizer has been registered with the OJK, it is obliged to apply for a license as an organizer within a maximum period of 1 (one) year from the date of registration with the OJK so that the OJK at this stage oversees the licensing. The pre-operational stage supervision also regulates OJK's supervision of changes in organizer ownership, which must first obtain approval from OJK. Suppose an organizer has obtained a license and states that it is unable to continue its operational activities. In that case, it must apply for revocation of the license at its request to OJK, along with the reasons for the inability and a plan for resolving the rights and obligations of users (Santi *et.al.*, 2017).

OJK carries out two types of supervision during business operations, namely, submission of reports by companies or organizers (self-assessment system) and examination by OJK (officer supervisory system). The first type of supervision is the Self assessment system, in the form of submitting reports by the company or organizer, consisting of supervision of finances and business activities, supervision of the implementation of the articles of association carried

out through periodic reports. The second type of supervision is the officer supervisory system, which is a periodic examination conducted by the OJK. The examination is a series of activities carried out by OJK to collect, search, process, and evaluate data and information regarding the business activities of Information Technology-based money lending and borrowing services (Santi *et.al.*, 2017).

The Role of OJK and PDP Authority on Allegations and/or Violations of Personal Data Protection by Fintech Lending

POJK Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services is no longer in accordance with industry developments and legal needs, so to encourage the development of information technology-based funding service providers, OJK established POJK Number 10/POJK.05/2022 concerning Technology-Based Joint Funding Services (LPBBTI). In the regulation, fintech lending is referred to as an LPBBTI organizer, which is an Indonesian legal entity that provides, manages, and operates LPBBTI either conventionally or based on sharia principles.

Article 44 paragraph (1) POJK 10/2022 regulates the obligations of the organizer, including maintaining the confidentiality, integrity, and availability of personal data, transaction data, and financial data that it manages from the time the data is obtained until the data is destroyed; ensuring the availability of authentication, verification, and validation processes that support non-denial in accessing, processing, and executing personal data, transaction data, and financial data that it manages; and ensure that the acquisition, use, utilization, and disclosure of personal data, transaction data, and financial data obtained by the organizer are based on the consent of the owner of the personal data, transaction data, and financial data unless otherwise determined by laws and regulations. If there is a failure to protect the confidentiality of personal data, transaction data, and financial data managed by the organizer, the organizer must notify the owner of personal data, transaction data, and financial data in writing.

Apart from regulating these obligations, POJK 10/2022 also regulates access to personal data, use of personal data, data period, and data deletion. Article 47, paragraph (1) stipulates that the organizer must obtain consent from the owner of personal data to obtain and use personal data. Furthermore, Article 48 paragraph (1) stipulates that the organizer is obliged to store personal data in the electronic system for a minimum of 5 (five) years from the end of the business relationship. Provisions regarding the mechanism and requirements for deleting personal data are regulated in Article 48 paragraph (4) - Article 48 paragraph (6). If the organizer violates the provisions stipulated in Article 44, Article 47, and Article 48, it will be subject to administrative sanctions by OJK. The sanctions are regulated in Article 49, which explains that organizers who violate the provisions referred to in Article 44, Article 47 paragraph (1), and Article 48 paragraph (1) and / or paragraph (3) are subject to administrative sanctions in the form of written warnings; fines, namely the obligation to pay a certain amount of money; restrictions on business activities; and/or license revocation.

The PDP Law, which will come into force in Indonesia in 2022, has also mandated the establishment of an institution to carry out the formulation and determination of policies and strategies for Personal Data Protection, which serves as a guide for, among others, personal data controllers. Fintech lending in the PDP Law are categorized as personal data controllers, which are any person, public body, and international organization acting alone or jointly in determining the purpose and exercising control over the processing of personal data. Unlike the POJK, in the PDP Law, supervision of personal data processing by personal data controllers is carried out by the PDP Authority (Kominfo RI, 2023). The PDP Authority in the PDP Law is referred to as an institution established by the President and responsible to the President. The authority of the PDP Authority is stipulated in Article 60 of the PDP Law, namely formulating

and stipulating policies in the field of personal data protection; supervising the compliance of the Personal Data Controller; imposing administrative sanctions for violations of Personal Data Protection committed by the Personal Data Controller and/or Personal Data Processor; assisting law enforcement officials in handling alleged Personal Data criminal acts as referred to in this Law; cooperate with Personal Data Protection institutions of other countries in the framework of resolving alleged violations of cross-border Personal Data Protection; conduct an assessment of the fulfillment of the requirements for the transfer of Personal Data outside the jurisdiction of the Republic of Indonesia; give orders in the framework of follow-up supervision results to the Personal Data Controller and/or Personal Data Processor; publish the results of the implementation of supervision of Personal Data Protection in accordance with the provisions of laws and regulations; receive complaints and/or reports regarding alleged violations of Personal Data Protection; conduct and on complaints, reports, and/or results of supervision of alleged violations of Personal Data Protection; summon and present any Person and/or Public Entity related to alleged violations of Personal Data Protection; request information, data, information, and documents from any Person and/or Public Entity related to alleged violations of Personal Data Protection; summon and present experts needed in the examination and investigation related to alleged violations of Personal Data Protection; conduct examination and investigation of electronic systems, facilities, spaces, and/or places used by Personal Data Controller and/or Personal Data Processor, including obtaining access to data and/or appointing third parties; and request legal assistance to the prosecutor's office in the settlement of disputes over Personal Data Protection. In addition, the imposition of administrative sanctions in this Law is given by the PDP Authority. Administrative sanctions in the PDP Law are regulated in Article 57 in the form of written warnings, temporary suspension of personal data processing activities, deletion or destruction of personal data, and/or administrative fines.

Based on the description above, there are two different institutions for the same authority in handling reports or complaints of alleged and/or violations of personal data protection committed by fintech lending. The question is, between the two institutions, who is more entitled to supervise fintech lending? Who is more entitled to receive reports of alleged violations of personal data protection by fintech lending? Who is more entitled to conduct an examination and investigation of complaints, reports, and/or the results of supervision of alleged violations of personal data protection? Who has the right to impose administrative sanctions for personal data protection violations by fintech lending?

To answer this question, it is necessary to first classify the position of fintech lending. With regard to supervision, fintech lending as OJK supervises LPBBTI organizer, while fintech lending as the personal data controller is supervised by the PDP Authority. Meanwhile, for reports or complaints of suspected and/or actual personal data protection violations committed by fintech lending; examination and investigation of complaints of suspected personal data protection violations; and imposition of administrative sanctions for fintech lending' personal data protection violations, the PDP Authority is more entitled to do so. This is because OJK only functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector as stipulated in the OJK Law, while the PDP Authority specializes in supervising the implementation of personal data protection and administrative law enforcement for violations of the PDP Law. The OJK Law also stipulates that OJK's authority is to impose administrative sanctions on parties that violate laws and regulations only in the financial services sector. Therefore, the personal data stipulated in Article 44, Article 47, and Article 48 of POJK 10/2022 is the obligation of fintech lending as personal data controllers, not as LPBBTI organizers.

Based on this, the PDP Authority is more entitled to impose administrative sanctions on fintech lending that violate personal data protection because the violation occurs in the position

of fintech lending as personal data controllers. Meanwhile, OJK does not have the authority to impose administrative sanctions for violations of personal data protection committed by LPBBTI organizers as stipulated in Article 49 POJK 10/2022. However, OJK may impose administrative sanctions in the form of license revocation if there has been a decision from the PDP Authority that fintech lending violates personal data protection due to its position as an LPBBTI organizer. Nonetheless, there needs to be an understanding between OJK and PDP Authority in supervising fintech lending and handling personal data protection violations by fintech lending.

CONCLUSION

The development of fintech lending in Indonesia occurs due to globalization and information technology, thus providing easy access in terms of financial lending, but also poses a risk of misuse of personal data. OJK's supervision is not only conducted when fintech lending operates, but also before it operates. OJK's supervision of fintech lending can be divided into two stages, namely pre-operational business and during business operations. Meanwhile, there are two types of supervision conducted by OJK during business operations, namely submission of reports by companies or organizers (self-assessment system) and inspection by OJK (officer supervisory system). The self-assessment system is a supervision of finances and business activities, while the officer supervisory system is a periodic inspection conducted by the OJK.

Fintech lending supervision is conducted by OJK and PDP Authority, depending on the position of fintech lending. If fintech lending is an LPBBTI organizer, it is supervised by OJK. Meanwhile, if the fintech lender is a personal data controller, it is supervised by the PDP Authority. As for reports or complaints of alleged and/or actual personal data protection violations committed by fintech lending; examination and investigation of complaints of alleged personal data protection violations; and imposition of administrative sanctions for fintech lending' personal data protection violations, the PDP Authority, not the OJK. This is because OJK only functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector as stipulated in the OJK Law, while the PDP Authority specializes in supervising the implementation of personal data protection and administrative law enforcement against violations of the PDP Law. The OJK Law also stipulates that OJK's authority is to impose administrative sanctions on parties that violate laws and regulations only in the financial services sector. Therefore, the personal data stipulated in Article 44, Article 47, and Article 48 of POJK 10/2022 is the obligation of fintech lending as personal data controllers, not as LPBBTI organizers. However, OJK may impose administrative sanctions in the form of license revocation if there has been a decision from the PDP Authority that fintech lending violates personal data protection due to its position as an LPBBTI organizer.

Based on this, it is recommended that the PDP Authority, once established, make a Memorandum of Understanding (MoU) with OJK on coordination in the protection of personal data by fintech lending.

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