

The Development of Indemnity Law in Indonesia (A Study of Problems Raised by the Existence of Peer to Peer Lending)

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Abstract— Upon its arrival in Indonesia, fintech adds a new nuance in the development of business and indemnity law in Indonesia. Its emergence is triggered by the lifestyle changes of millennial people. Business activities nowadays increasingly developing and they lead to a healthy competition atmosphere. In order to compete well, the business activities require good capital and business considerations. The most important survival factors of businesses, especially those which develop in the millennial era are the capital, the good management and the good legal compliance. Fintech activities consist of 5 (five) categories of implementation, which are (a) a payment system; (b) a market support; (c) an investment management and a risk management; (d) lending, financing/ funding, and capital raising; and (e) other financial services. A peer to peer lending which is part of fintech is the most appropriate choice in the millennial era and the acceleration of indemnity law provides facilities for easy debt servicing. How will the indemnity law in Indonesia develop with the existence of a peer to peer lending. This paper is based on the results of legal research conducted at *Otoritas Jasa Keuangan* (the Financial Services Authority) and several companies in Indonesia. A peer to peer lending is a breath of fresh air in Indonesia, especially for the indemnity law, and its presence certainly raises the pros and cons as well as its own problems. On one hand, a peer to peer lending benefits the indemnity law in Indonesia, on the other hand it raises some inevitable problems along with its arrival.

Keywords— *Indemnity Law, Peer to Peer Lending, Indonesia*

I. INTRODUCTION

The indemnity law in Indonesia is developing through times. It began with the law products during the Dutch and Japanese occupations in Indonesia to the independence of Indonesia[1]. The development of indemnity law is among others triggered by the need of businesspeople to gain financial access, especially from banking[2]. Banking certainly has a big influence to the development of indemnity law. It is a combination of regulations governing or related to indemnity in terms of debts and receivables (of money) which are found in various applicable regulations at present[3].

Upon its arrival in Indonesia, FinTech (Financial Technology) adds a new nuance in the development indemnity law in Indonesia especially in banking. This technology is a term used to represent companies offering modern technology in the sector of finance[4]. This digital technology-based financial service has developed rapidly along with the digital technology advancement[5]. Banks have recently shifted from relying on offices and other conventional services to using this digital application service. This means that there is an inevitable change or transformation of banking nowadays[6]. FinTech's services like crowdfunding, mobile payments, and money transfer services results to the revolution in stratup businesses[7]. Financial Technology (FinTech) industry serves a method of financial service which is getting more popular in this digital era[8].

In Indonesia, FinTech becomes an extremely potential market opportunity. Indonesia's vast geography, a considerable middle class growth, and a relatively inadequate

financial product penetration support the creation of a strong market for fintech development[9]. FinTech develops in various sectors, starting from a startup payment, lending, personal finance plan, retail investment, crowdfunding, remittance, financial research, etc. The concept of Fintech adapts the technology development which is integrated with financial sector from bank institutions. Therefore, it is expected that it can facilitate more practical and modern financial transaction processes including digital-based financial service that have developed today in Indonesia, like payment channel system, digital banking, online digital insurance, peer 2 peer (P2P) lending, as well as crowdfunding[10]. P2P lending is one of the FinTech sectors which provides significant development in the indemnity law.

The P2P lending in Indonesia serves as an evidence of the significant development of indemnity law. It is undeniable that P2P lending provides progress that is beyond expectation in the provisions of indemnity law. This is facilitated by the internet technology. P2P Lending is a pattern of online lending through internet technology that brings creditors and debtors together.

Although P2P lending is still relatively new in the world of banking in Indonesia, its significant effect in providing financial services has made P2PILending much in favor of Indonesian people. People start to look at P2P lending because it has its own advantages compared to banks (existing collateral institutions). When someone applies for a loan from the bank, the main thing that must be fulfilled is whether he has conditions in the form of collateral. Not many people can meet the collateral requirements in applying for a loan. P2P

lending facilitates debtors who do not have collateral as a condition of loans in banks or collateral institutions. P2P lending is a new method that allows someone to loan money through an application or a website to apply for an unsecured loan. Previously to borrow and borrow at a bank or financial institution, someone must have a collateral. Having a collateral is an absolute requirement for loan approval. This is where the indemnity law in Indonesia has developed. It does not focus on collateral anymore but on business interests that facilitate the loan lending process.

P2P is present by bringing new developments to the indemnity law that requires collateral. The process is fast and follows the development of the millennial era. Indonesia is not the originator of P2P lending. Zopa, the first P2P lending company in the world, was born in the UK in 2005. There first three P2P lending providers are Zopa, Prosper and Lending Club. They were launched in 2005-2007 in the United Kingdom and the US. Prosper emerged in America in 2006 as the first P2P Lending company. Only then did P2P Lending expand to other countries throughout the world.

P2P Lending is a small credit transaction that is easy, fast, transparent and direct. P2P Lending originating from the UK has spread to various countries and is now accepted by all types of small lenders and borrowers who have problems with loans[11]. P2P Lending targets are mostly personal loans and small businesses. Small business (MSMEs) conditions tend to require fast cash to run and expand the business. They need financial institutions that can provide loans without collateral. The MSMEs also only require a small and fast funding boost, rather than a large cash with a longer loan approval process. Sometimes the businesses need urgent and unexpected cash[12].

II. RESEARCH METHOD

This research is a qualitative study using a socio legal approach. To complete the data in order to achieve the research objectives, the selected research locations are DKI Jakarta, both OJK (Financial Service Authority) in Semarang and Jakarta. The research resides in Jakarta with the consideration that OJK is the institution that has the authority to set policies and supervision regarding the implementation of fintech. The research data was carried out with interviews, document (text) and material interpellation.

III. RESULT AND DISCUSSION

A. THE EXISTENCE OF PEER TO PEER LENDING IN INDONESIA

The development of indemnity law in Indonesia began during the Dutch and Japanese occupations to Indonesian independence and reformation periods. The legal provisions governing indemnity are Act No. 5 of 1960 concerning Basic Rules for Agrarian Principles, and followed by various other laws and regulations such as Act No. 42 of 1999 concerning Fiduciary Guarantees, Act No. 4 of 1996 concerning Mortgage Rights. A loan, either using fiduciary, and mortgage still requires a collateral. From an investor's perspective, loans with collateral are certainly more secure. This is reasonable

because if the borrower does not show good faith to repay the loan, there is collateral that can be used as 'compensation' for the loan.

The latest developments in this millennial era is the emergence of an online-based loan service called Peer to Peer Lending (P2P Lending). This Information Technology-Based Money Loan Service is the provision of financial services that brings together lenders and loan recipients in the context of entering into loan agreements to borrow in Rupiah directly through an electronic system using the internet network.

P2P Lending loan services can be accessed by the public through a twenty four hour nonstop application. This is certainly different from credit facilities or other banking services where the debtor applying for a loan must come to the relevant banking office and must undergo a queuing process until signing a credit agreement[13]. In addition, the loan through P2P Lending does not require any collateral, which of course is different from credit facilities or banks which usually require collateral[14].

P2P lending service activities bring together lenders and loan recipients[15]. P2P lending activities involve 3 parties, namely loan recipients, lenders and P2P Lending providers as intermediaries who bring together lenders and loan recipients.

The Loan Service Providers are Indonesian legal entities that provide, manage, and operate the Information Technology-Based Loan Services, while loan recipients are people and/ or legal entities that have debts due to an agreement with the Loan Service Provider. Lenders are people, legal entities, and/ or business entities that have receivables due to an Information Technology-Based Loan Service agreement.

P2P Lending is very useful for people who want to develop their business but are blocked by a capital problem. Because P2P Lending does not require collateral, to overcome the inherent risks, P2P Lending need to foster trust. In the context of online P2P lending, both trust in the lenders and trust in the loan services are significant factors that influence lenders' lending intentions[16]. To develop lender's trust, borrowers must provide high quality information for their loan requests and the intermediaries must provide high quality services and adequate security protection.

In Indonesia, the development of P2P Lending is under the supervision of the Financial Services Authority (OJK). OJK supervises the operations of these activities and they are governed by OJK Regulation Number 77/ POKL.01/ 2016 concerning Information Technology-Based Loan Services, OJK Circular Letter (SEOJK) Number 18 / SEOJK.02 / 2017 and several other laws and regulations. However, until now there has not been a law that specifically regulates P2P Lending, the law which is higher than ministerial regulations and OJK regulations.

This very rapid development of P2P lending occurs because the lending process is very different from that of existing conventional financial institutions. How P2P loans can fit into the existing legal framework with respect to the existing indemnity laws in Indonesia. Indonesia is better familiar with fiduciary, mortgage guarantees, mortgages. All of the agreements require a collateral in the form of an object of the loan agreement. The emergence of P2P Lending is new

in the indemnity law mechanism in Indonesia and it provides a new nuance in the development of indemnity law in Indonesia.

The loan provided by P2P Lending services can be a solution for micro, small and medium enterprises (MSMEs), both those which will start their businesses or those which are developing their businesses. MSMEs which get loans several times will increase their income. Certainly, this can increase the desire of MSMEs to develop their business and help increase the economic growth[17]. The relatively easy and fast requirements make P2P Lending service one of the people's options for applying for loan funds. The existence of P2P Lending services greatly facilitates the community (individuals) and MSMEs that lack capital in developing their businesses.

According to the FinTech directory data as issued by the Financial Services Authority (OJK), as of January 2019, there were already 5,160,120 borrower accounts in Indonesia. This shows the high interest of the Indonesian people to use P2P Lending as a credit transaction service. OJK data also show that as of January 2019, the number of loans from P2P Lending services in Indonesia reached Rp. 25,921,718,376,110. This is proof that Indonesian people need and pay more attention to P2P Lending services. The community plays a role and participates in the Peer to Peer Lending services.

Currently there are a lot of companies engaging in the area of P2P Lending. Twthese companies carry out their activities by creating websites or applications that function as a meeting place for lenders and loan recipients. The data from the OJK until June 2019 there are 113 companies engaging in the field of P2P Lending.

B. THE PROBLEMS OF PEER TO PEER LENDING IN INDONESIA

P2P Lending is one of the activities or systems in the FinTech company that directly brings together the owner(s) of the fund (investor/ lender) with the borrowe(s)r of funds. It is made possible by the creation of an online platform that provides facilities for fund owners, to provide loans directly to creditors with a higher return. However, the borrowers will also benefit because they can apply for loans on easier and faster terms and processes, and without involving any collateral, than that offered by other conventional financial institutions, such as banks[18].

P2P Lending offers several advantages, among others: (1) the loans are relatively faster and easier to be administered than that of banks in general; (2) there is no collateral involved in the loans; (3) the borrowers do not necessarily have to go to a certain place because the loan can be done anywhere by using the internet facilities; (4) both parties do not have to meet directly because everything is done online; (5) the loan can fill funding needs in Indonesia especially for unbanked people.

P2P Lending has several shortcomings as well, including: (1) people lack understanding of the risks involved in P2P Lending; (2) there are no integrated P2P Lending service user data such as in banks to find out P2P Lending service user data; (3) the regulations are still new and not too comprehensive; (4) there is no law that sui generis regulates

P2P Lending; (5) the infrastructure in Indonesia is not yet adequate for the development of P2P Lending, so that not everyone can reach P2P Lending.

The creditors try to get as much valid information about the borrowers as possible, while the borrowers try to hide some personal data to prevent violations of their personal data. The violations can occur if the customer contact data are spread and it is acknowledged that fintech has the ability to access application user contact data. The purpose for having the ability to access contact data of the application users is to find out the credit scoring model, whether the customer is indeed eligible to make loans or whether he/she has other intentions. Delay in payments sometimes happens but, with the data registered on this platform, the organizer can access all personal data, telephone numbers and other data. When a late payment occurs, the organizer hires a collector to collect the debt. When collecting the debt, the collector does not only contact the person concerned, but also other phone numbers in the loan recipient's smartphone contact list that are not included in the emergency contact. Thus, making the recipient of the loan at a loss from the incident. Debt collectors also use violence and threats that make borrowers uncomfortable. Although the installments have been paid, the collector keeps in contact and threatens to spread photos and personal data of the loan recipient to immediately pay off the debt[19].

In the increasingly digital world, P2P Lending as a new online financing source has some differences from banks in general. All this information about P2P Lending, which has an impact on modern society with the various facilities offered, has made P2P Lending the right choice for the people of Indonesia. However, P2P Lending poses risks that haunt parties involved in P2P Lending. P2P loans involve a number of risks for uninformed participants and those who do not pay attention to regulations related to P2P Lending. Organizers of P2P Lending services, borrowers, and lenders must understand the regulations related to the implementation of P2P Lending so that things that are not detrimental to the parties will not occur. P2P Lending is not immune to problems.

There are problems regarding P2P Lending that will rise when risks in P2P Lending occur. The risks that may rise are fraud, recession or economic crisis, bankruptcy of P2P Lending companies, and default[20]. Fraud is a condition in which the borrower is not the owner of the actual identity so there is a possibility that payment will not be made at all. The borrowers can be victims of identity theft from persons who falsify the information on salaries and debt obligations that will affect the ability to pay. Fraud can also occur when a borrower uses another person's identity to register a P2P Lending service. Therefore, when the P2P Lending approves of the loan of the prospective borrower, the risk of default can occur. In this case, both the borrowers and providers of P2P Lending services must be careful.

Recession or economic crisis will not only cause P2P Lending problems but also the disruptions of a country's economic conditions. Externally, there are three factors that influence the economic crisis, namely: Globalization of the capitalist economy, market fluctuations, the role of speculators[21]. The globalization of capitalist economy is a condition in which the trades basically explain the ongoing processes of internationalization of currencies of a number of

large countries on a very large scale that not only carries out national and regional economic sovereignty, but runs a very competitive competition, in which the imperialization and supremacy of the economic power of the big industrial nations over small country are very influential. Second, market fluctuations are conditions in which the exchange rate of the national currency against foreign exchange is not an internal problem (government policy) but it is determined by the market. Third, the role of speculators. Speculators apply the economic law which states that with the higher demand there will be the higher selling value.

Another problem is when the P2P Lending company goes bankrupt. This is a separate problem in P2P Lending. The bankruptcy risk is caused by unexpected conditions which cannot be avoided by the company. They should have a reputation and integrated portfolio and are supported by a solid and experienced management and operational team.

The final problem is the problem of default. This problem occurs because of a default from the borrower. Non-performing loan risk due to default on the P2P Lending loan agreement still occurs. The data from OJK as of January 2019 show that there are default cases as much as 1.68%. There are two legal ways that can be done to protect lenders in the implementation of P2P Lending services against the risk of default, namely by preventively applying the basic principles as stipulated in the Article 29 POJK 77/2016 which includes, the principle of transparency, fair treatment, reliability, confidentiality and security data, as well as user dispute resolution in a simple, fast and affordable cost. Then, the second is a repressive way in the form of compensation payments that arise due to the other's mistakes

IV. CONCLUSION

The emergence of P2P Lending in Indonesia has clearly given a new nuance in the indemnity law in Indonesia. P2P Lending adds to the long line of alternative loans that can be chosen by the people with the fact that the public must understand the ins and outs of P2P Lending so that disputes do not occur in the future. There are still problems regarding P2P Lending, although all parties always try to minimize the existing problems.

Since there is a high growth in the distribution of funds through P2P lending schemes, the Indonesian government must immediately prepare regulations to regulate lending or P2P lending activities. The regulations from OJK have not been able to protect debtors or creditors in the P2P Lending mechanism. With the sui generis regulations specifically regulating P2P Lending, the hope of the Indonesian people to guarantee the activities of P2P Lending will be realized.

V. ACKNOWLEDGMENT

This research was funded by the Faculty of Law, University of Diponegoro. Our gratitude goes to the Dean of the Faculty of Law of the University of Diponegoro and other parties for helping the writers in their research and in writing this article.

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