

Fulfillment of the Principle of Good Faith in Peer-to-Peer Lending Agreements According to the Perspective of Civil Law

Yohana Puspitasari Wardoyo^{1*} Muhammad Luthfi² Tinuk Dwi Cahyani³

^{1,2,3} Faculty of Law (University of Muhammadiyah Malang), Malang, Indonesia

*Corresponding author. Email: joanna.wardoyo@yahoo.com

ABSTRACT

Peer to Peer Lending (P2P Lending) is a method of providing money loans online that are currently in the community by bringing lenders together with borrowers. In line with this, in its implementation, there are many problems such as the imposition of high-interest rates on borrowers. How is the implementation of P2P Lending agreement between borrowers and lenders when viewed from the perspective of civil law? By using normative method found the results of research that the parties should meet each other's principle of good faith in carrying out the agreement so that the parties can carry out their respective rights and obligations properly.

Keyword: *agreement, good faith, P2P Lending.*

1. INTRODUCTION

The financial services industry from year to year continues to experience significant developments. Of course, this is in line with the development of existing technology. Internet users in Indonesia in early 2021 reached 202.6 million people. This number increased by 15.5 percent or 27 million people when compared to January 2020. The total population of Indonesia itself is currently 274.9 million people. This means that internet penetration in Indonesia in early 2021 reached 73.7 percent [1]. One of the developments that utilize technology in the financial sector is popular with the term Financial Technology, lately, the development of fintech is quite rapid so that it can change a person's lifestyle. Several fintech that is developing in Indonesia includes crowdfunding, microfinance, peer-to-peer (p2p) lending, market comparisons, and digital payment services.

The fintech that is currently in demand by the public is P2P Lending which is a technology-based platform to digitally bring together borrowers who need business capital with lenders[2]. One of the advantages of P2P lending is that it can provide fast funding distribution, (mostly) without collateral, and the terms/processes are easier because they can be done remotely using a smartphone. P2P Lending focuses on small and microloans, which includes funding for small businesses with short loan terms. Focusing on small and micro-scale loans makes people tend to choose P2P Lending to get money loans to meet their daily needs [3]. P2P

Lending is regulated in Financial Services Authority Regulation/Peraturan Otoritas Jasa Keuangan (POJK) Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services/Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi (LPMUBTI). According to in Financial Services Authority/Otoritas Jasa Keuangan (OJK) data as of July 27, 2021, there are 121 (one hundred and twenty-one) Fintech Lending company registered and licensed at OJK [4].

Legally, the event of borrowing and borrowing money is a civil agreement, there are 2 agreement mechanisms, namely between the owner of the funds and the platform, and between the platform and the recipient of the loan. The agreement arises from an agreement (consensualism) that is preceded by the existence of an equal will by the parties. In addition, in carrying out the agreement, the principle of good faith must be understood and applied as well as possible by the parties in order to prevent the occurrence of default in the implementation of the agreement as stipulated in Article 1338 of the Civil Code that: "Agreement must be carried out in good faith. Some of the problems that arise as a result of P2P Lending practices include the existence of many Illegal P2Ps (not registered and licensed by the OJK), low public knowledge of low P2P Lending practices, leaking borrower data, unethical collection mechanisms, and high loan interest rates.

The results of the study state that these risks need to be considered when deciding to become a Lender or Borrower in P2P Lending such as High-interest risk for borrowers, Must pay a service fee of 3% to 5%, Maximum short repayment period of 12 months, Low

online loan credit limit, Risk of leaking mobile phone data applying for online loans so that credit activities through online can provide loopholes by irresponsible people not to fulfill their obligations or achievements on the credit, due to the absence of credit supervision face to face and in distance from each party. There was a viral case of borrowing in the city of Malang, reported via www.kompas.com a kindergarten teacher in Malang owed 24 online loan services. From the beginning, only borrowing Rp. 1,000,000 (one million rupiahs) in 1 online loan service, now the total debt bill has swelled to Rp. 40,000,000 (forty million rupiah). Debt swelled due to "digging a hole to cover the hole" paying debts by creating new debts in other P2P Lending applications, including illegal P2P Lending, as was the case with the Head of OJK Jember Region as accessed through www.kompas.com who tried to borrow funds through illegal lending. as much as Rp. 1,000,000 (one million rupiahs) but he only received funds in the amount of Rp. 700,000 (seven hundred thousand rupiahs) with loan interest of Rp. 56,000 (fifty-six thousand rupiahs) and no loan period.

From the various cases that occurred due to interest issues which were considered by the borrowers to be very unrealistic that cause an accumulation of loan interest. The regulation on interest standardization must be clarified again. This refers to the Financial Services Authority Regulation No. 77 /POJK.01/2016 concerning Information Technology Lending and Borrowing Services. Therefore, the rapid development of digital technology has had a huge impact on the growth of the FinTech industry entering the financing sector and this cannot be avoided [5]. In the formulation of Article 17 paragraph (1) of POJK 77 of 2016 above, it can be seen that in terms of determining the interest of credit agreements between debtors and creditors, it is only based on considerations of fairness and development of the national economy[6]. Of course, the formulation of the article above, especially the word "fairness" has a very broad interpretation and can lead to confusion from the norms contained in the formulation of the article. So it is necessary to clarify the meaning of the word fairness to create legal certainty in society. The problem of not informing the interest rate in the Peer to Peer Lending platform can be a factor in the non-fulfillment of the principles of the agreement, especially the principle of good faith.

In terms of determining the interest of the credit agreement as regulated in the formulation of Article 17 paragraph (1) of POJK 77 of 2016 can be interpreted broadly, in principle the P2P Lending agreement must bring benefits in order to avoid *kemudharatan/harm*. Does not contain elements that can damage it such as usury, tyranny, and fraud. Based on the background that has been described, the formulation of the problem is important to obtain a clear picture of the problem to be studied, therefore the formulation of the problem to be discussed in this study is How is the fulfillment of the

principle of good faith towards P2P Lending agreements from a civil law perspective?

2. METHODS

The method used by the author in this study is a normative juridical method, namely research through literature study which includes primary legal materials, especially those related to the problems in the research in this study. The materials used in this research are legal in the form of legal materials used in normative research including statutory regulations, relevant scientific works, books, and mass media.[7] Then the legal material is processed and analyzed and then poured in the form of a discussion. The approach method uses a statutory approach, a concept approach.

Methodological, systematic, and consistent analysis of legal materials is the main method used to compile and manage the data obtained, so that the data can produce a conclusion that can be accounted for, then analyzed using descriptive analysis. The legal data analysis used is the content analysis method, to analyze the content and validity of the data obtained from various sources [8].

3. RESULT AND DISCUSSION

The mechanism for implementing P2P Lending practices is regulated in POJK 77/POJK.01/2016. As discussed in the introduction, P2P Lending is an intermediary that brings together the owner of the funds with the borrower so that there are 2 stages of implementing the agreement from this practice, first between the owner of the fund and the intermediary/platform, the second is the agreement between the platform and the borrower. Regarding the P2P Lending practice mechanism with customers, there are 3 things that prospective borrowers must do to be able to apply for a loan:

- a. Download the P2P application on the Google Play Store/App Store (there are many kinds of P2P platforms);
- b. Fill in the identity on the available loan form and upload a photo of your ID card and a selfie photo;
- c. Feasibility analysis by P2P companies, approval of fund owners;
- d. Loan disbursement.

The mechanism can be said to be very easy, the parties do not need to enter into an agreement face to face, it is enough to use an electronic contract, this is under article 1 number (17) of the ITE Law that Electronic contracts are parties' agreements formed with an electronic system. In this case, there is also an electronic agreement stipulation as regulated in Article 46 of PP No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions that an electronic contract is valid if: there is an agreement between the parties, carried out by a competent or

authorized legal subject in accordance with the provisions of the law, there are certain things and the object of the transaction must not conflict with the laws and regulations and public order. When viewed from the point of view of the Civil Code, these conditions are the same as those regulated by Article 1320, which is the agreement of the parties, the skills of the parties, certain matters, and the lawful causes.

In principle, the agreement made must be based on the "attitude" of good faith from the parties as regulated in Article 1338 (3) of the Civil Code. The implementation of the principle of good faith in the agreement is indeed important, in principle the parties bound in the agreement must obtain as clear as possible information. In terms of agreements in general, there are several stages:

- a. Pre-contract stage, before consensualism, the parties negotiate
- b. In the contractual stage, the achievement of the negotiation results of the parties
- c. Contract execution is the achievement of objectives.

In this stage, the principle of good faith will know each other's information from each party because in principle the parties agree with a good purpose, both for the parties involved and not harming the public interest. The application of the principle of good faith in the P2P Lending agreement does not seem to have been implemented properly, the problems that arise as described in the background illustrate that the agreement is not implemented.

The case experienced by the Head of OJK Jember, for example, is that there is no loan period in the agreement. This happens because there is no information regarding the term of the agreement from the platform. This can lead borrowers to Default and benefit the platform only. The longer the borrower is "delaying the arrears" the higher the interest charged [9]. According to POJK 77/POJK.01/2016, three references serve as basic principles in developing responsible online lending and borrowing service behavior guidelines. First, product transparency and bidding methods. The platform is required to include the information of all costs arising from debt, including costs incurred in advance, interest, late fees, and others. Second, prevention of excessive borrowing. With this reference, Fintech business actors offer loans that aim to increase the ability and resilience of the consumer economy, not to plunge into debt bondage. Third, Fintech companies must implement the principle of good faith related to offering practices. Then, Fintech business actors are required to provide and collect human debt without violence, both physical and non-physical, including cyberbullying.

The first point is in line with Article 9 of the ITE Law which states that business actors who offer products through an electronic system must provide complete and correct information related to contract terms, producers, and products offered. Good faith leads

to three forms of behavior or subjectivity of the parties to the contract, namely; The parties must adhere to their promises and words; The parties are prohibited from taking advantage with behavior that is misleading for one of the parties; Each party must behave respectfully and honestly when the obligation is not expressly agreed upon. Good faith according to Prof. Sutan Remy Sjah Deini is the intention of the parties, in agreeing not to harm the promised partner and not to harm the public interest.

4. CONCLUSION

That there are two kinds of principles of good faith, namely the principle of good faith subjectively and objectively. That the principle of good faith subjectively is the honesty of people in carrying out legal actions, while objectively it is an agreement that is carried out by complying with norms and propriety. The application of the principle of good faith in the P2P Lending agreement has not yet been implemented, the application of high interest and unclear information in the agreement are factors that have not implemented the principle of good faith so that the purpose of the agreement is not implemented.

REFERENCES

- [1] Kompas.com, "Jumlah Pengguna Internet Indonesia 2021 Tembus 202 Juta," 2021.
- [2] H. R. Tampubolon, "SELUK-BELUK PEER TO PEER LENDING SEBAGAI WUJUD BARU KEUANGAN DI INDONESIA," *J. Bina Mulia Huk.*, vol. 3, no. 2, pp. 188–198, 2019.
- [3] A. Khoirunisa, A. Suwandono, and H. N. Muchtar, "Implementasi Besaran Bunga Peer to Peer Lending Berdasarkan Asas Itikad Baik dalam Pemanfaatan Teknologi Informasi Serta Pengawasannya," *Widya Yuridika*, vol. 3, no. 1, p. 29, 2020.
- [4] OJK, "ojk.go.id," 2021.
- [5] Istiqamah, "ANALISIS PINJAMAN ONLINE OLEH FINTECH DALAM KAJIAN HUKUM PERDATA," *Jurisprudentie*, vol. 6, no. 77, pp. 291–306, 2019.
- [6] D. R. I. Hapsari and K. D. Kurniawan, "Consumer Protection in the Banking Credit Agreement in Accordance with the Principle of Proportionality under Indonesian Laws," *Fiat Justisia J. Ilmu Huk.*, vol. 14, no. 4, p. 337, 2020.
- [7] K. Juniardi, K. Komariah, and D. R. I. Hapsari, "Penerapan Asas Kebebasan Berkontrak Dan Asas Proporsionalitas Dalam Perjanjian Kerja Antara Pekerja Dengan Pengusaha di Banjarmasin," *Indones. Law Reform J.*, vol. 1, no. 2, pp. 257–272, 2021.
- [8] S. Soekanto, *Pengantar Penelitian Hukum*. 1986.
- [9] Regional.kompas.com, "Cerita Kepala OJK Jember Jajal Pinjol Ilegal, Pinjam Rp 1 Juta Hanya Dikirim Rp 700.000," 2021. .