



Juridical Overview of Online Loan Transactions (Fintech) Judging from Law Number 11 of 2008 About Information and Electronic Transactions

Satino^(✉), Yuliana Yuli Wahyuningsih, and Citraresmi Widodoesmi Putri

Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta, Depok, Indonesia
satinowonogiri@gmail.com

Abstract. Online loans are credit problems, but online loans have two conflicting interests, on the one hand the creditor demands payment of the debt along with interest and fines. On the other hand, the debtor feels disadvantaged due to the actions of the creditor who misuses the debtor's personal data to carry out terror in billing. The purpose of this study is to examine the legal protection for debtors in online loan transactions related to personal data misused by creditors and the resolution of bad credit problems and problems arising from misuse of personal data by online creditors. By using a normative juridical research method, this research refers to the ITE Law and related laws. The results of the study suggest that: first, in the provisions of the ITE Law and PM 20/2016, the protection of personal data has been regulated in Article 26 paragraph (1) of the ITE Law and in Article 26, Article 27, and Article 36 paragraph 1 of PM 20/2016. Second, based on the provisions of the ITE Law or PM 20/2016 misuse of personal data, the threat of sanctions can be in the form of administrative sanctions, fines, and/or criminal sanctions. Therefore, the settlement of misuse of personal data by creditors can be done in a civil or criminal manner.

Keywords: Online Credit · Misuse of Personal Data

1 Introduction

1.1 Background

In connection with technological developments and the progress of the times, in our daily lives, the level of human needs will increase over time among those who do not think about the future risks of making online loans which are so burdensome to the customers themselves. As is known, the various needs can be classified based on their intensity or importance, which includes primary, secondary, and tertiary needs. Primary needs are needs related to maintaining a decent life in social life. These needs are basic and must be met by humans, which consist of: clothing, food, and shelter (a house). Without food, humans will die, as well as without clothing and shelter, humans will be tormented and vulnerable to disease. While secondary needs are needs related to efforts to create or increase the happiness of life, Secondary needs are only there to help you

live, but they can also help you with technology. In this day and age, people always want something, even if they can't have it, so one way around this is to borrow money online. Therefore, fulfillment can be postponed after the primary needs can be met, for example, education, entertainment, and so on. The tertiary needs are needs related to efforts to create or increase self-esteem, prestige or prestige. For tertiary needs, fulfillment can be postponed after primary and secondary needs are met, for example, overseas vacations, jewelry, and branded goods.

However, to meet their needs, every human being has different abilities. For the rich, of course, it is not difficult to realize their desires. However, for those who are materially incapable, it is not easy to realize their desires, be they for urgent or non-urgent needs. The fulfillment of non-urgent needs can still be delayed, but urgent needs must demand that they be fulfilled immediately. The problem is, of course, to fulfill it, it cannot be separated from the problem of cost or funds needed and is usually not small in number, while for those who can't afford it, the available funds are sometimes insufficient. For this reason, most of the solutions used to deal with the lack of funds are debts to other parties. In other words, first borrow money from other people or ask for credit from creditors. Then, when the loan is due, pay it back with interest as a thank you or payment.

In everyday life, the word credit is not a foreign word in our society. The word credit is not only known by the people in big cities, but even in the villages, the word credit is already very well known. The term credit comes from the Greek (*credere*) which means trust (truth or faith). Thus, giving credit is a form of trust. This means that the creditor will only give credit if he really believes that the credit recipient (debtor) will repay the loan he received in accordance with the terms and conditions agreed by both parties. Without this belief, a credit institution (creditor) will, of course, not dare to take the risk of providing a loan.

While discussing the difficulty of debtors obtaining credit facilities from banks due to the precautionary factor that must be applied by the bank, this does not seem to apply to parties who run online lending and borrowing businesses. Credit loans that are currently being widely offered through online media are thanks to advances in the sophistication of digital financial technology. Simply by clicking a button on a cellphone like snapping a finger, money immediately slides into the borrower's (debtor's) account. In just 5 (five) minutes, it's really fast and modern, it makes people who are in financial trouble addicted at the same time. Technological developments have indeed made the current situation into an era of versatility and easy-going. You could even say that the era is getting crazier. Just type "borrow money" in a Google search, and a series of online loan applications and sites with the trending term "financial technology" will appear.

When viewed from the field of business, by providing credit loans to the public, fintech can be said to have the same type of business as the type of bank business in general. However, if we look again at the definition of a bank according to the Banking Law Article 1 Number 2, it states that a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms in order to improve the standard of living of the people at large. So fintech cannot be called a bank because the money lent to debtors does not come from public deposits (customers), but from fintech funds themselves, or it can also be funds belonging to funders and fintech as a liaison only.

In normal cases, the debtor's hope by applying for credit from the creditor is to be able to cover costs in meeting an urgent need or to increase the business he is doing while increasing his finances. So that at maturity they will be able to pay off the loan along with the interest according to the time period agreed upon by both parties. Likewise with the expectations of creditors in general, as creditors, creditors, of course hope that at maturity the debtor is able to pay off the loan along with the interest. However, not all loan repayment processes can run smoothly according to the expectations of the parties. This, of course, is something that might happen in a credit transaction because the smooth process of paying off debt depends on the ability of the debtor to pay and not a few things that lead to disputes between the parties.

Conflict is basically something that is inevitable in our lives. Conflict is part of dissociative social interaction. If this conflict is allowed to drag on and is prolonged and not immediately addressed, it will lead to the social disintegration of a nation. As for a situation that has a great opportunity for conflict to.

When differences arise, namely differences in interests, whereas as we know, in Indonesia as a state of law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, that: "The State of Indonesia is a state based on law." Therefore, all problems must be resolved based on the provisions of the applicable legal regulations. In accordance with the way it works, namely through digital means, if there is a problem with online debt transactions related to misuse of personal data, it can be resolved by referring to Law No. 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 (UU ITE) and Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems (PM 20/2016) as well as related laws. The ITE Law was formed with considerations to ensure the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of security and public order in a democratic society, so that justice, public order, and legal certainty can be realized. In addition, the ITE Law was formed with the following considerations:

1. National development is a continuous process that must always be responsive to various societal dynamics.
2. Information globalization has placed Indonesia as part of the world's information society, thus requiring the establishment of regulations regarding the management of information and electronic transactions at the national level so that the development of information technology can be carried out optimally, evenly, and spread to all levels of society in order to educate the nation's life.
3. The rapid development and the progress of information technology has led to changes in the activities of human life in various fields that have directly influenced the birth of new forms of action;
4. The use and utilization of Information technology must continue to be developed to maintain, maintain and strengthen national unity and integrity based on laws and regulations for the national interest.
5. Utilization of Information Technology plays an important role in trade and national economic growth to realize people's welfare.
6. The government needs to provide support.

Development of information technology through legal infrastructure and regulations to ensure that information technology is used safely and to prevent its misuse while taking religious and socioeconomic factors into account.

The cultural values of the Indonesian people based on the considerations as referred to in letters a, b, c, d, e, and f above, the government feels the need to enact a Law on Information and Electronic Transactions.

Meanwhile, the Minister of Communication and Informatics Regulation Number 20 of 2016 concerning the Protection of Personal Data in Electronic Systems (PM 20/2016) was made with the consideration of implementing the provisions of Article 15 paragraph (3) of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, which reads: further regarding the guidelines for the protection of Personal Data in the electronic system as referred to in paragraph (2) (i.e. if there is a failure in the protection of the Personal Data it manages, the Electronic System Operator is obliged to notify the owner of the Personal Data in writing), is regulated in a Ministerial Regulation”.

The ITE Law and PM 20/2016 contain sanctions for those who violate them. As stated in Article 26 paragraph (1) of the ITE Law, “Unless stipulated otherwise by laws and regulations, the use of any information through electronic media involving a person’s personal data must be carried out with the consent of the person concerned.” (Indonesia, Law, 2016, p. 5). While in PM 20/2016, personal data protection includes protection against the acquisition, collection, processing, analysis, storage, appearance, announcement, transmission, dissemination, and destruction of personal data. So, according to Article 26 PM 20/2016, the owner of personal data has the right to the confidentiality of his data, has the right to file a complaint in the context of resolving personal data disputes, has the right to get access to obtain his personal data history, and has the right to request the destruction of certain personal data belonging to him in the electronic system. Every electronic system operator is obliged to notify the personal data owner in writing if there is a failure to protect the confidentiality of personal data (Article 28 letter c PM 20/2016). Those that must be submitted include:

1. The reasons or causes for the failure of confidential protection of personal data can be done electronically.
2. It must be ensured that it has been received by the Personal Data Owner if the failure contains a potential loss for the person concerned
3. Written notification is sent to the Personal Data Owner no later than 14 days after the failure is known. (Indonesia, Regulation of the Minister of Communication and Information Technology, 2016, p. 16).

In addition to administrative sanctions, in accordance with UU ITE 2008 and the 2016 ITE Law, if it is proven that there is a violation of misuse of personal data by a third party and it fulfills a criminal element, misuse of personal data information and

If it causes losses as regulated in the 2008 ITE Law Article 27 paragraphs (1), (3), and (4) in conjunction with Article 36 in conjunction with Article 51 paragraph (2), it can be sentenced to a maximum imprisonment of 12 years and/or a maximum fine of 12 billion (Indonesia, Law, 2008, p. 23). Thus, even though the online creditor application argues that when an application is installed by a prospective debtor, there must be a question

that in essence asks permission from the prospective debtor to access important data on a smartphone, this cannot be justified if the application (creditor) uses the personal data of the user (debtor) to harm, defame, slander, or terrorize the person concerned or by abusing the contact number list on the debtor's cellphone.

Although it can be understood in normal cases, in the event of bad credit, it is certainly not something that is easily accepted by creditors. The creditor will certainly try as much as possible to demand his rights, namely the repayment of debts and interest, in any way, even with actions that are classified as rude, and this can be said to often happen and become a complaint in the community, especially as experienced by loan debtors on line. The debt collectors on online creditors that are currently booming will carry out terror and threats, even by abusing the debtor's personal data to suppress and intimidate debtors who they consider problematic through the people around them.

By looking at how it works, which lends funds from personal pockets, not from public savings funds such as banks, online loan applications are like the practice of loan sharks or moneylenders using digital technology. What distinguishes it from the practice of conservative moneylenders is that, in the practice of conservative moneylenders, they do not collect from other than the borrower. Even if they are billed at home, they will meet their wife and child, then give the message: "Tell it to your father or husband". But digital loan sharks don't work this way when it comes to billing. They will send billing information to everyone, even parents, in-laws, relatives, bosses, and coworkers at work, saying, "Look, this guy has debts." Until the end, not a few people were expelled from their workplaces because the employers did not want to hire people who had financial problems. In addition, the billing method for digital moneylenders who practice threats, slander, and sexual harassment is, of course, very disturbing to the public in general and debtors in particular.

Digital persecution refers to the actions of a number of online loan creditors, also known as online moneylenders, who judge debtors on a movement basis via social media. The act of digital persecution and misuse of debtor's personal data clearly violates the rules, but what makes the author can't understand how this can happen in the community, even though the rules already exist, law enforcement officers are ready to act at any time within 24 h, and the government through the Ministry of Communication and Informatics as policy.

The makers are, of course, also aware of the unrest that is currently rife in the community.

Based on the description of the problem against the background above, the author is interested in studying it in the form of writing a thesis with the title: Online Loan Transactions Judging from the Law on Information and Electronic Transactions (Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 About Information and Electronic Transactions).

Formulation of the problem:

Starting from the background of the problems above, some of the main problems to be studied are as follows:

1. How is legal protection for debtors in online loan transactions regarding personal data misused by creditors?

2. How to solve the problems of bad credit and the misuse of personal data by online creditors?

Research purposes

Research conducted must have goals and benefits to be obtained from the results of the research. In formulating research objectives, the authors adhere to the problems that have been formulated. The objectives of this research are as follows:

1. To know and examine the legal protection for debtors online loan transactions related to misused personal data
2. To find out and examine the resolution of bad credit problems and the problem of misuse of personal data by online creditors.

2 Overview of Online Loans

2.1 Theoretical Basis

To look at legal issues in depth, you need several theories. A theory is a set of assumptions, concepts, and definitions that are used to develop, emphasize, and explain a social phenomenon. A theory is a relationship between two or more facts, or an arrangement of facts in certain ways. This fact is something that can be observed and generally be tested empirically. Therefore, in its simplest form, a theory is a relationship between two or more variables that has been tested for truth. For this reason, in writing this thesis, the author uses Legal Protection Theory to examine legal protection for debtors in online loan fund transactions related to personal data misused by creditors and Legal Certainty Theory to examine the settlement of bad credit problems and problems of misuse of personal data by online creditors.

2.1.1 Legal Protection Theory

According to Maria Theresia Geme, "Legal protection is related to the state's actions to do something by (enforcing state law exclusively) with the aim of providing guarantees for the certainty of the rights of a person or group of people." The theory of legal protection is a theory that examines and analyzes the form or form or purpose of protection, the protected legal subject, and the object of protection provided by law to the subject.

The theory of legal protection is a theory that examines and analyzes the form or form or purpose of protection, protected legal subjects, and objects of protection provided by law to the subject. The theory of legal protection is the protection of dignity and human rights based on legal provisions by the state apparatus. Thus, legal protection is an absolute right for every citizen and is an obligation that must be carried out by the government, especially considering that Indonesia is known as a state of law.

The theory of legal protection is one of the most important theories to be studied because the focus of the study of this theory is on the legal protection provided to the community without exception including the weak community who are ordinary and do not know what their rights should be or where to ask for legal protection if their rights are violated, even to the point of trampling on their dignity. The essence of legal protection is

the guarantee that if the rights of an interest are harmed or violated, there will be certainty about the availability of recovery for the losses incurred as well as legal remedies in the context of the recovery, whether it is judicially or conceptually non-judicial.

Furthermore, in discussing legal protection for debtors in online loan transactions related to personal data misused by creditors and the arbitrary actions of online loan creditors in collecting loans, of course it cannot be justified. Although the creditor has the right to claim his right to get the payment of debt repayment and interest, the implementation of the collection must not trample on the debtor's self-esteem and must still respect the dignity of the debtor as an essential human right. Therefore, in addressing this problem, it is necessary to have a balanced solution and legal certainty that can protect the interests of all parties.

2.1.2 Legal Certainty Theory

Grammatically, certainty comes from the word definite, which means it is fixed, must, and of course. The definition of certainty is highlighted in the Big Indonesian Dictionary.

Namely, that the subject or (condition) is certain (already fixed), provisions, stipulations. While the notion of law is the legal instrument of a country that is able to guarantee the rights and obligations of every citizen, legal certainty is a provision or stipulation made by the legal apparatus of a country that is able to provide guarantees for the rights and obligations of every citizen. Legal certainty refers to the application of a clear, permanent, and consistent law where its 26.

Implementation cannot be influenced by subjective conditions. Citing the opinion of Lawrence M. Wriedman, a Professor at Stanford University, he is of the opinion that to realize "legal certainty" must at least be supported by the following elements: legal substance, legal apparatus, and legal culture.

According to Maria S.W. Sumardjono, regarding the concept of legal certainty, namely that "normatively, legal certainty requires the availability of statutory regulations that operationally support its implementation. Empirically, the existence of laws and regulations needs to be implemented consistently and consistently by the supporting human resources.

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law will be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.

This statement is in line with what Van Apeldoorn said, that legal certainty has two aspects, namely that the law can be determined in concrete terms and legal security. This means that the party seeking justice wants to know what the law is in a particular case before starting a case and provides protection for justice seekers.

Furthermore, regarding legal certainty, Lord Lloyd said that: "... Law seems to require a certain minimum degree of regularity and certainty, for without that, it would be impossible to assert that what is operating in a given territory amounted to a legal system" [1, p. 34]. From this view, it can be understood that without legal certainty, people do not know what to do, and in the end, there will be uncertainty, which will eventually lead to violence (chaos) due to legal indecision. Thus, legal certainty refers

to the application of a clear, permanent, and consistent law where its implementation cannot be influenced by subjective circumstances. 2010, p. 34).

Kelsen defines law as a system of norms, which are statements that emphasize aspects of “should” or “should” by incorporating some rules about what must be done. Norms are the product of deliberative human action. Laws that contain general rules serve as guidelines for individuals to behave in society, both in their relationships with fellow individuals and in their relationships with society. These rules become limitations for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules creates legal certainty.

Regarding the discussion regarding the resolution of bad credit problems and the problem of misuse of personal data by online creditors, in this case, the online creditors will inevitably try to demand their rights, namely to ask for full payment of the debt they have given along with the interest according to the agreement. On the other hand, the debtor in this case is a weak party, in which the ignorance or lack of human resources of the debtor has been used by online moneylenders under the guise of online loan assistance to ensnare him in a vicious circle. For this reason, the presence of the government as a policy maker is needed to provide the best solution or solution as a settlement and prevention of the same case by issuing rules or enforcing existing rules so that it can be used as a reference or legal basis for taking action against cases of online loan aid funds which is troubling for some people who feel aggrieved by its existence.

3 Research Methods

A method is a way of working or working procedures to be able to understand the object that is the target of the science concerned. Methods can also be interpreted as guidelines, the way a researcher learns and understands the environment he or she faces. Research is a scientific activity that is needed to obtain accurate data so that it can answer problems in accordance with existing facts or data and be justified. Research is based on certain methods, systematics, and thoughts that aim to reveal the truth in a systematic, methodological, and consistent manner. Systematic means using a certain system, methodological means using a certain method or method, and consistent means that there are no contradictory things within a certain framework.

Thus, the legal research method is a way to find the right answer regarding a problem regarding the law. According to Soetandyo Wignjosoebroto, the type of method to be used in legal research will greatly depend on the concept being validated regarding law. Legal research is a scientific activity based on certain systematics, methods, and thoughts, which aims to study one or several certain legal phenomena by analyzing them. Apart from that, an in-depth examination of the legal facts is carried out, in order to then seek a solution to the problems that arise from the phenomenon in question.

In this research, the writer uses a qualitative research method that does not require a population and a sample. Normative juridical research that is qualitative in nature refers to research that refers to legal norms contained in laws and regulations and norms that live and develop in society. A scientific method can be trusted if it is compiled using an appropriate method. The method is a way of working or working procedures to be able to understand the object that is the target of the science concerned. Methods are

guidelines that a scientist uses to learn and understand the environments he encounters. In this study, the authors used the following methods:

Online Loan Transaction Analysis Reviewed from The Law Concerning Electronic Information and Transactions costs. At that time, Fatma had just been accepted to work in an office in Jakarta and needed money for mobility to and from work.

3.1 Legal Protection for Debtors in Online Fund Loan Transactions Regarding Personal Data Misused by Creditors

When applying for the loan, the online loan application only asked for a photo ID card and a photo of Fatma while holding her ID card, and in just a matter of minutes, Rp.500,000,-went into Fatma's account. But with the ease that is so tedious, doesn't it invite questions? People say: "There ain't no such thing as a free lunch." As a result of the ease with which the loan was obtained, Fatma must repay the loan within 14 days at a high interest rate of 30%, or 2.14% per day, which amounts to Rp. 650,000,-. At first, with the loan and high interest rates, Fatma felt that it was not a problem for him. Considering the urgency, Fatma felt able to pay when it was payday.

When payday arrived, Fatma immediately paid off her debt, and not long after transferring the payment, Fatma received a short message containing the next loan offer with a higher nominal value, which was Rp.800,000,-. Without thinking, Fatma immediately clicked on the link linked to the message. With a larger loan nominal, of course, the funds that must be returned are also larger than the previous loan, although the second loan is subject to lower interest rates. For the second loan, Fatma has to pay off the loan plus interest to a maximum of Rp. 950,000 with the same time span of 14 days. Thus, the interest rate is lower than the first loan, which is 18.75%, or around 1.33% per day, not 2.14% per day like Fatma's prime debt.

At first, Fatma still had time to joke: "Who doesn't want money with such convenience?" Therefore, after paying off their debt of IDR 800,000 plus interest, when the next loan offer of IDR 1,000,000 came in the middle of the month, Fatma grabbed him again, especially since by that time his finances were already drained to pay off the debt. Fatma has been trapped. The money from her monthly salary has run out, and Fatma is back in debt to meet her daily needs. And so on, a dangerous loop that many, like Fatma, don't realize until the noose begins to suffocate. The third loan of Rs. 1.000.000, must be returned along with the interest to Rs. 1.250.000, with a grace period of 30 days to pay it off.

Fatma began to feel the problem when the payment deadline fell in the middle of the month when the salary had not yet fallen. Fatma is really confused. To pay off her online loan, Fatma is forced to borrow from her co-workers at the office. When the online loan was paid off, Fatma again grabbed the online loan offer to pay off his debts to his colleagues and to meet his daily needs. For the fourth online loan offer, the loan nominal offered did not increase gradually as before; it remained at Rp. 1,000,000,-but with a higher interest rate of Rp. 1,400,000,- the interest jumped 40%. The next problem she experienced again was Fatma's confusion over when the debt was due in the middle of the month. Fatma also opened another online loan application to cover debt in the first application. The second online loan application that Fatma used was known from a short SMS message. The second application often sends SMS to the user's mobile number to

offer a loan. In the end, Fatma continued to dig the hole and close the hole with four online loan applications at once. The devil's snare is getting perfect; a state of chaos has come.

Two days before one of her debts was due, the lender's application sent a notification message to all of her contact numbers that Fatma had debts. Of course, Fatma was shocked and embarrassed, and one of his coworkers discovered that Fatma had debts in the fintech lending application. Not only that, the debt collector also calls Fatma 5–10 times every day to the office number and shouts at Fatma that she is a thief. Until finally, Fatma got a warning from her boss at the office. Besides that, her family and friends also bombarded her with a series of questions that added to the burden on Fatma's mind.

Fatma has fallen so deep, her mental state becomes depressed, she is afraid to work, she is afraid to leave the house, her reputation is completely destroyed, she is afraid of anything and is always filled with feelings of shame. Not even that, Fatma also received harassment from debt collectors. On the phone, the debt collector said: "You're naked, naked, dancing. I'll Consider the debt paid off! If it happens to ordinary people who do not understand and because of extreme fear, the debt collector's orders (trap) will be obeyed and then, we can guess, videos or nude photos will be distributed to further suppress debtors who they find difficult. The bill Fatma is not the only victim of the vicious snare of online loans; there are many other victims, some of whom even intend to sell their kidneys to the point of committing suicide in order to escape the terror of debt collectors. The behavior of a number of online loan lenders, also known as online moneylenders, who judge debtors on a movement basis via social media can be referred to as digital persecution. The act of digital persecution and misuse of a debtor's personal data clearly violates the rules.

The Indonesian Consumers Foundation (YLKI) noted that complaints related to misuse of personal data were among the most reported by the public, either directly or indirectly. YLKI chairman Tulus Abadi said that recently, many people have reported complaints related to online shopping and online loans (fintech). "The most dominant is fintech, and after tracing, the majority of misuse of consumer personal data comes from illegal online loans, which is 70%, although there are also legal fintechs," said Tulus Abadi.

The most frequent misuse of personal data includes telephone numbers, photos, videos, and various things stored on consumer cellphones because all of them can be tapped by fintech parties. "Indeed the OJK (Financial Services Authority) regulation says it is permissible to take data, but only a few items. But the fact is that all the data on the borrower's cellphone is tapped and misused," said Tulus Abadi.

The Indonesian Consumers Foundation (YLKI) noted that the theft of personal data during 2019 was mostly carried out not only in the banking sector, but that there were many complaints in the fields of e-commerce and financial technology (fintech), especially online loans. At the conference held last January, 2020, the number of consumer complaints in 2019 was 1,871. Consisting of individual complaints in as many as 563 cases and group category complaints in as many as 1,308 cases. Complaints about online loans are in second place out of the top five sectors with the highest number of complaints, as listed in Table 1.

Table 1. Personal Data Theft During 2019

No	Type of Complaint	Amount
1	Banking	106 cases
2	Online loan	96 cases
3	Housing	81 cases
4	Online shopping	34 cases
5	Leasing	32 cases

Source: conference held by YLKI in January 2020

If you refer to the rules, fintech companies may not use personal data of customers or consumers as long as there is no agreement between the two parties. Consumers who experience misuse of personal data by legal fintechs can immediately report it to the OJK. It is different if borrowing from fintech is illegal because they are not under the auspices and responsibility of the OJK. “Illegal fintech cannot report to the OJK, because the operator alone doesn’t necessarily exist in Indonesia,” said Tulus Abadi. The chairman of YLKI, Tulus Abadi emphasized that “There are still many illegal fintechs, while those who have registered often misuse the personal data of consumers. I was once visited by a fintech player registered with the OJK. They say that personal data is needed to pressure consumers to immediately return their money,” said Tulus Abadi when contacted by merdeka.com. If you owe a bank loan, there is a guarantee of land, vehicles, and so on. Then what is the guarantee for fintech? If not that way, which way should I press? “Because there is no guarantee other than personal data, nor do you meet with borrowers,” said Tulus, imitating the words of the fintech business actor. Thus, according to Tulus Abadi, the reason for personal data being used as collateral is that consumers have never met with fintech business actors. There is no agreement made directly or face-to-face, so it is the personal data that is usually used as collateral. So, because it is technology-based, the fintech must have a definite guarantee.

Case Analysis

Based on the brief description above, the authors’ analysis is as follows:

Considering legal protection for debtors in online loan transactions related to personal data misused by creditors and the arbitrary actions of online loan creditors in collecting loans Maria Theresia Geme argues that: “Legal protection is related to state actions to do something by (enforcing state law exclusively) with the aim of providing guarantee the certainty of the rights of a person or group of people.” Thus, although the creditor has the right to claim his right to get the payment of debt repayment along with the interest, for the implementation of the collection, it should not trample on the debtor’s self-esteem and must still respect the dignity of the debtor as an essential human right.

If we look at the provisions in the 4th paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, it is stated that the Government of the Republic of Indonesia has a constitutional obligation to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation’s life, and participate in implementing a world order based on freedom, eternal peace, and

social justice. So, in the context of the development of information and communication technology, especially in cases of misuse of personal data on online loans, the purpose of the state should be.

This is realized in the form of providing protection of personal data for every resident and citizen of Indonesia. The law as a legal policy in a government administration in order to achieve the goals of the state is an important instrument in the rule of law (rule of law). Thus, a regulation established by the government is an instrument to provide protection and law enforcement.

By looking at how it works, which lends funds from personal pockets, not from public savings funds such as banks, online loan applications are like the practice of loan sharks or moneylenders using digital technology. What distinguishes it from the practice of conservative moneylenders is that, in the practice of conservative moneylenders, they do not collect from other than the borrower. Even if they are billed at home, they will meet their wife and child, then give the message: "Tell it to your father or husband". However, in the practice of digital loan sharks, this is not the case in billing. The digital loan sharks will disseminate billing information to everyone, even to parents, in-laws, relatives, superiors, and colleagues at work: "Here, this guy has deb". Until the end, not a few people were expelled from their workplaces because the employers did not want to hire people who had financial problems. In addition, the billing method for digital moneylenders who practice threats, slander, and sexual harassment is, of course, very disturbing to the public in general and debtors in particular. Related to the pretext or reasons for fintech actors who say that if you owe a bank loan, there is a guarantee of land, vehicles, and so on, then fintech uses personal data as collateral. According to the author, as long as personal data is only used for the purpose of determining the identity of the debtor and is not misused by fintech actors, then there is nothing to be concerned about because all lending and borrowing transactions require the identity of the debtor for later collection purposes.

As regulated in Article 1338 paragraph 1 of the Civil Code, it is stated that all agreements made are legally binding as law for those who make them. Therefore, the actions of the creditor demanding the payment of debt repayment and interest are the rights that must be fulfilled by the debtor. However, the actions of online creditors who misuse the debtor's personal data in making collections cannot be justified. If referring to the provisions of Article 1234 of the Civil Code,

"Every engagement to give something, to do something, or not to do something."

Thus, achievement can be in the form of giving something, doing something, or not doing something. What is meant by "something" here depends on the parties who have a legal relationship; what will be given; what will be done; or should not be done. So, for the creditor's actions that deviate from the agreement and harm the debtor, it is appropriate if the debtor demands his right to obtain legal protection for his personal data that is misused by the creditor to collect. The online creditor's actions that misuse the debtor's personal data can be categorized as an act of default.

Specifically, "not doing anything" that deviates from the agreement and is included in actions that are detrimental to the debtor, namely abusing the debtor's personal data to commit terror, which can cause the debtor's mental state to become depressed, afraid

to go out of the house, his reputation is completely destroyed, he wants nothing to be afraid of and is always filled with feelings of shame.

Therefore, referring to the provisions of Article 1234 of the Civil Code, the actions of creditors who abuse the debtor's personal data can be said to have defaulted, so that the legal consequence is that the debtor can demand termination/cancellation of the engagement/agreement accompanied by a claim for compensation as stipulated in Article 1266 The Civil Code stipulates that the creditor's actions in default in this case are in the form of misuse of the debtor's personal data. As a result of the law, the debtor can request the cancellation of the agreement through the court. Furthermore, if it refers to the provisions of Article 1267 of the Civil Code, the legal consequence is that the debtor can request the cancellation of the agreement with compensation.

In the case of misuse of personal data by creditors online under the pretext of doing the billing, the debtor of course, feels humiliated by the creditor. Online creditors' actions that judge debtors on the basis of movements through social media can be referred to as digital persecution. The act of digital persecution and misuse of a debtor's personal data clearly violates applicable laws. In Law No. 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 (UU ITE) and Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems (PM 20/2016), there are legal protection rules for data as stated in the ITE Law Article 26 paragraph (1) and Article 15, and in PM 20/2016 Article 26, Article 36 paragraph (1), and anyone who misuses personal data will receive administrative sanctions in accordance with the provisions of the legislation-invitations in the form of: verbal warnings, written warnings, temporary suspensions, activities, and/or announcements on online websites (Article 36 paragraph (1) PM 20/2016). And can also be subject to criminal sanctions if the violation of misuse of personal data meets the criminal element. With this regulation, it is expected not only to provide legal protection to the community (victims) but also to automatically require certainty over data and information management, especially in the management of personal data, because without proper and proper data management, it will lead to misuse and attacks. Cyber crime or cybercrime.

The following is an explanation of the articles in the ITE Law and PM 20/2016 which provide protection and sanctions for perpetrators of personal data abuse:

a. Article 26, UU ITE

One of the provisions in the ITE Law which regulates the protection of personal data and personal.

Article 26 of Law No. 11 of 2008 Concerning Information and Electronic Transactions, which states as follows:

1. Unless otherwise stipulated by the laws and regulations, the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned.
2. Any person whose rights are violated as referred to in paragraph (1) may file a lawsuit for the losses incurred under this law.

The consent referred to in the article implies that it is not merely agreeing and willing that personal data be used, but there is a need for awareness to give

consent to the use or utilization of personal data in accordance with the purposes or interests conveyed at the time of data acquisition. If the misuse of personal data fulfills the elements of Article 26 paragraph (1) of the ITE Law, a lawsuit can be filed on the basis of the losses caused by the loss.

b. Article 15, UU ITE

Another form of protection in the ITE Law is contained in Article 15, namely regarding preventive measures regarding the obligations of electronic system operators in providing electronic systems, which reads:

1. Each electronic system operator must operate the electronic system reliably and safely and be responsible for the proper operation of the electronic system.
2. The electronic system operator is responsible for the electronic system operator.
3. The provisions referred to in paragraph (2) shall not apply if it can be demonstrated that coercive circumstances, errors, and/or negligence on the part of the electronic system user occurred.

Based on the explanation of Article 15 of Law No. 11 of 2008 concerning ITE, it explains what is meant by “reliable,” “safe and “responsible,” namely: “reliable” means that the electronic system has capabilities that are in accordance with the needs of its use, while “safe” means that the electronic system is protected. Physically and non-physically, “operating properly” means that the electronic system has the capability according to its specifications. “Responsible” means that there are legal subjects who are legally responsible for the operation of the electronic system. In the event of system damage or failure, the obligation to administer the electronic system based on Article 15 paragraph (2) of the ITE Law, Electronic Transaction System Operation (PSTE), is to notify the user in writing.

Meanwhile, in the Minister of Communication and Informatics Regulation Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems (PM 20/2016), the protection of personal data is regulated in:

c. PM 20/2016 Article 26

Legal protection for personal data in Article 26 PM 20/2016 also states that the owner of personal data has.

Article 28 letter c PM 20/2016 requires every electronic system operator to notify the Personal Data Owner in writing if there is a failure to protect the confidentiality of personal data in the electronic system he manages. Those that must be submitted include:

1. The reason or cause of the failure of the protection of confidential personal data can be done electronically.
2. It must be ensured that the personal data owner has received it if the failure contains potential losses for the person concerned.

Written notification is sent to the Personal Data Owner no later than 14 days after the failure is known.

d. PM 20/2016 Article 36 paragraph (1)

which states that the protection of personal data includes protection against the acquisition, collection, processing, analysis, storage, appearance, announcement, transmission, and/or dissemination of personal data, and for those without rights or not in accordance with the regulations in PM 20/2016 or the laws and regulations. Other laws are subject to administrative sanctions in accordance with the provisions of laws and regulations in the form of verbal warnings, written warnings, temporary suspensions, activities, and/or announcements on online websites (websites).

To replace the loss, due to his fault, he issued the loss. This is in line with the provisions stipulated in Article 1365 of the Civil Code, where it is stated that an act can be held legally responsible as long as it fulfills four (four) elements, namely:

1. There was an action
2. There is an element of error
3. There is a loss
4. There is a causal relationship between errors and losses.

So, if it refers to the provisions stipulated in Article 1365 of the Civil Code for the actions of creditors who misuse the debtor's personal data, as the party who is harmed, the debtor has the right to get legal protection as it should be, namely to get compensation for the losses he suffered due to the creditor's actions.

As for the claims of online creditors for their rights based on the provisions of Article 1338 paragraph 1 of the Civil Code, namely to obtain repayment payments for loans they have given to debtors, as previously explained above, if it refers to the provisions of Article 1234 of the Civil Code in conjunction with Article 1266 of the Civil Code in conjunction with Article 1267 of the Civil Code or Article 1365 of the Civil Code, the legal consequence is that the debtor can request the cancellation of the agreement accompanied by a claim for compensation. Misuse of personal data information to carry out acts containing extortion and/or threats or threats of violence or intimidation that are intended personally and cause harm, as regulated in the ITE Law Article 27 paragraph (4) in conjunction with Article 36 in conjunction with Article 51 paragraph (2), can result in a maximum 12-year prison sentence and/or a 12-billion fine.

4 Conclusion and Recommendations

1. Legal Protection for Debtors in Online Fund Loan Transactions Regarding Personal Data Misused by Creditors

In the provisions of the ITE Law, PM 20/2016 and other related laws, it is clearly stipulated that personal data is protected by law as stipulated in Article 26 paragraph (1) of the ITE Law, Article 26, Article 27, and Article 36 paragraph (1) of PM 20/2016, and anyone who misuses personal data will be penalized. In addition to being subject to administrative sanctions as regulated in Article 36 paragraph (1) PM 20/2016, in the ITE Law, if it is proven to meet criminal elements, misuse of personal data information, and cause losses as stipulated in Article 27 paragraphs (1), (3), and

(4) in conjunction with Article 36 in conjunction with Article 51 paragraph (2), it can be sentenced to a maximum imprisonment of 12 years and/or a maximum fine of 12 billion.

In addition, the actions of creditors who misuse personal data belonging to the debtor without the consent of the debtor can also be categorized as unlawful acts. This is in line with the provisions stipulated in Article 1365 of the Civil Code, as the party who is harmed by the debtor should be entitled to legal protection as it should be, namely getting compensation for the losses he suffered due to the actions of the creditor.

2. Resolution of Bad Credit Problems and Problems of Misuse of Personal Data by Online Creditors

If we look back at the provisions governing sanctions for misuse of personal data, which can be in the form of fines and/or criminal sanctions, we can conclude that the settlement of misuse of personal data by creditors can be done in a civil or criminal manner. Debtors can settle civil disputes through litigation, namely by filing a civil lawsuit in court, or through non-litigation channels, namely by submitting an application to the Financial Services Authority (OJK) to facilitate the resolution of consumer complaints, as stated in Article 39 paragraph (1) of POJK No. 1/POJK.07/2013 of 2013.

As for the criminal settlement, the debtor can do it by making a police report regarding the misuse of personal data or criminal acts of extortion, intimidation with threats, or sexual harassment by creditors. From the police, the case will be transferred to the prosecutor's office if the case file is complete or P21 for further trial in court. However, all final settlements still depend on the decision of the court judges or law enforcers as the authorized party to mediate the problem, because basically, between law in the book and law in action are not always in line, depending on the perspective of law enforcers as well as in assessing cases and in enforcing the rule of law in force.

Suggestion:

For the community:

Stay away from all forms of online loan offers because, behind the ease of the loan disbursement process offered, of course, there is something to watch out for, namely the bondage of the debt repayment period with various fines if the debtor cannot expand according to the maturity determined by the creditor. Even if you are forced to seek a loan for an urgent need, it is better to apply for a loan at a pawnshop or national bank with a clearer repayment period.

For Executives:

The existence of an online loan business may be better eradicated or prohibited from its activities. The online loan business is like a loan shark business that is done online. As a consideration, the government can conduct direct observations in the community directly so that it can see firsthand how many victims there have been of online lending activities and only the owners of capital have made profits from the difficulties experienced by the community. Therefore, the existence of an online loan business can be said to be more miserable for the community than the benefits.

For Judiciary:

For law enforcers, work by prioritizing conscience and applying the provisions of the rule of law properly. The public can only hope for justice from law enforcers who are authorized by the state to uphold justice and act as protectors for justice seekers.

For the Legislature:

1. According to the author's personal opinion, there are similarities between the sounds of Article 27 paragraph (4) and Article 29 of ITE, so that it can lead to confusion if there is a violation as stipulated in Article 27 paragraph (4) or Article 29, using sanctions in the provisions of Article 51 paragraph (2) or Article 45 paragraph (4) or Article 45B.
2. Regarding the violation of Article 29 itself, there is also confusion about the sanctions that will be imposed, referring to the provisions which include Article 45 paragraph 3, Article 45B, and Article 51 paragraph 2 in conjunction with Article 36.
3. So, according to the author, there needs to be a more in-depth study, which can then be used as input or ideas for the competent authorities to make revisions regarding the similarity of the sound of Article 27 paragraph (4) with Article 29 of the ITE Law, and also revisions to fines and criminal sanctions for those who violate Article 27 paragraph (4) or Article 29. Thus, there is certainty and firmness on which sanctions rules are applied if there is a violation of Article 27 paragraph (4) or Article 29 of the ITE Law.

Reference

1. Buana, Mirza Satria. 2010. The Attraction of the Principle of Legal Certainty (Legal Certainpi) and the Principle of Justice (Substantial Justice) in the Decisions of the Constitutional Court, Master of Law thesis at the Islamic University of Indonesia, Yogyakarta.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

