



Liabilities of Corporates as Electronic System Providers for the Spread of Personal Data of Peer-to-Peer Lending-Based Application Fintech Users

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Abstract. The popularity of peer-to-Peer Lending Financial Technology, or commonly known as online lending or loan, is growing in society especially during the pandemic. The improvement of online lending services has come as a business opportunity for most parties, affecting countless personal data collected by online-based loan service applications when consumers apply for loan program online. The liabilities of the corporates as electronic system providers that collect the data are vital to be investigated, especially regarding the companies providing loans online and disseminating user data when consumers fail to settle the debt. Law concerning Electronic Information and Transactions and Law concerning Personal Data Protection that serve as legal protection of the personal data do not clearly govern the liabilities over corporate negligence with their position as electronic system providers when the staff intentionally distributes and/or transmits and/or allow for access to the electronic information and/or electronic documents laden with mockery and defamation. This research was conducted based on a normative method, statutory, and conceptual approaches. The research results indicate that corporate liabilities for the dissemination of the data of the users of peer-to-peer lending are governed in Law concerning Electronic Information and Transactions and Law concerning Personal Data Protection but it is only restricted to intentional acts committed by companies. The dissemination of personal data caused by corporate negligence, however, is not governed strictly in laws in Indonesia.

Keywords: Online Lending · Corporation · Electronic System Provider · Personal Data

1 Introduction

The Internet or Interconnected Network, which is one of the products of advances in information and communication technology, has a high level of popularity in society, where advances in this field of technology cannot be separated from the influence of changes in the 4.0 revolution which has brought many changes to society [1].

The presence of the Internet in life will undoubtedly give even much easier way of communicating, gaining information, or even performing business activities among

objects. Internet as the representative of the development of information technology and communication releases progressive impulse that leads further to the level of digitalization that has transformed conventional business models to digitalized businesses [2].

Financial service providers utilize technology assisted by Artificial Intelligence and state-of-the-art algorithm by innovatively using personal data collected from customers using financial services digitally [2]. Financial service businesses rely on the artificial intelligence that is usually referred to as fintech or financial technology, which aims to provide services and make financial transactions more effective and efficient [3]. One of the services given is digital loan or online lending.

The concept of Fintech as a hot business topic today has been known for a long time where in 1866 when the first communication through the Trans-Atlantic transmission cable was able to reduce communication time between North America and Europe which also facilitated the development of global telex which further improved related financial services, which is considered a fintech concept [4]. Thus, fintech in its development is closely related to the development of technology itself [5]. One of the services provided in the fintech concept that is developing today is digital-based loans or online loans.

This service uses peer-to-peer lending system, where the provider brings both the creditor and debtor into a meeting through interconnected network.

Online loan services will certainly bring positive impacts in terms of the ease that allows customers to borrow certain amounts of money, but it could also leave risks to the customers concerned when they fail to abide by the rules set. The problems arise after transactions when the debt is due for collection. The risks may also involve unreasonably high interest rate or 3% service charge to 5%, too short period to pay off the debt within only 12 months, low credit limit, and, as commonly happening in society, the leak of personal data of the application users when an application for loan is made [6].

In the administrative process, users of online-based financial services will be asked to complete the requirements that refer to the application for filling in personal data in creating an account on a certain platform. The submission of personal data is largely unaware by the public of the risk of spreading or leaking personal data that has been provided in the account on one of these online platforms.

A company providing electronic system-based loan services has the responsibility to use every piece of the information on the personal data with the consent of the party concerned. This provision is clearly governed in Article 26 Paragraph 1 of Law Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions.

The law also governs the proscription of the distribution of the data as a tort in Article 51 Paragraph 1, Paragraph 2, and Paragraph 3. The corporate liabilities are governed in Article 66 of Law concerning Personal Data Protection which can impose sanctions on the administrator, controller, instructor, beneficial owner, and/or corporate if the corporate intentionally acts against the provision set forth in Article 61 of Law concerning Personal Data Protection. This law does not strictly regulate the liability for the negligence of a corporate regarding the distribution of personal data done by the staff of the company concerned. Therefore, it is essential to study the liabilities

of corporates as electronic system providers for the distribution of personal data of Peer-to-Peer Lending-based fintech application users.

2 Research Method

This research was conducted based on normative-juridical methods, involving legislation, doctrines, and the principles of legal science to investigate the liabilities of corporates as electronic system service providers for the distribution of peer-to-peer lending-based fintech application users. This research can serve as the fundamental for the analysis of in concreto legal findings. This research also employed statutory and conceptual approaches to investigate the case.

3 Results and Discussions

3.1 Financial Technology Companies as Electronic Service Providers

The National Digital Research Center (NDRC) defines Fintech as “Innovation Financial Services” or it can be translated as a new innovation in providing financial services through online-based technology. Especially during the pandemic, where When firms and households have difficulty in accessing formal finance, they have to turn to informal finance for funds [7]. Fintech accommodates several financial activities such as payment, investment, loan, money transfer, financial planning, and other online-based services. To date, there have been 142 companies running fintech businesses [8]. Fintech also plays an important role in changing attitude and expectation of the consumers in the following ways: 1) Providing access to data and information anytime anywhere, 2) Equalizing small and big businesses, allowing them to still have high expectation even for small businesses and start-ups, 3) Digitalization in financial sectors encourages finance companies to improve their financial technology innovation to provide efficiency and increase market share [9].

The presence of fintech in society benefits certain parties in the following ways: a) Fintech provides better services, wider range of choices, affordable prices, and easier administrative process for consumers; b) Fintech simplifies transaction chains, keeps operational costs and capital low, and freezes information flow for fintech players (goods or service providers); c) fintech gives benefit to the government to encourage economic policy transmission, expedite fund circulation that increases the economy of the society, and stimulate inclusive financial national strategy (SKNI). Along with the benefits obtained from the practice of Fintech, it was recorded that 1330 people reported to the Legal Aid Institute (LBH) because 89 P2P lending applications were suspected of violating the law and human rights, user data is often misused by the loan service company [10].

In terms of ease and efficiency gained by the consumers, loans can be given efficiently to the applicants, where digitalization era these days, especially in online-based financial services, has given ease to the clients to apply for credit programs without any security required, and the administration process can be done in no time.

Fintech has transformed conventional business modes to moderate ones. Before the presence of this technology, all transactions conventionally require face-to-face meeting between the two parties, but these days, this online lending service-based technology requires no such a direct meeting between the parties.

Online financial services affect the economic activities of a state. With fintech, businesses can respond to market needs and manage the economy more efficiently. Principally, fintech not only affects the economy, but it also touches legal purview. In other words, the presence of fintech also requires the revision of the law and it has to be made stricter in regulating the dynamic of trading activities through online systems. On behalf of the government, Financial Services Authority (OJK) has set forth the basic technical rules for businesses providing electronic-based financial services under the Regulation of Financial Services Authority (POJK) Number 77/POJK.01/2016 concerning Information Technology-based Lending Services (LPMUBTI). This regulation governs LPMUBTI services, agreements, risk mitigation, Information Technology System Governance, Education, LPMUBTI User Protection, Electronic Signature, Know-Your-Customer Technique and Principle and, Prohibitions, Regular Reports, and Sanctions.

A series of actions Collecting, storing, and analyzing someone's personal data in the online business world has become natural and familiar to people who want to use the platform of a certain business based on the internet network. This also applies to loans made online, every customer who uses online loans at certain companies will face a requirement that refers to an application for filling in personal data in creating an account on a certain platform. Creating an account on a certain platform at least requires personal data in the form of name, place of birth, gender, mobile phone number as a reference for data verification and email as a means of notification of promos offered on a certain platform. Personal data uploaded on the platform is then referred to as Electronic Information.

Electronic information is collected by an electronic system, operated by an electronic system provider (PSE). Regulation of the Minister of Communication and Information Technology of the Republic of Indonesia Number 5 of 2020 concerning electronic System Provision in a Private Scope, Article 1 point 5 defines PSE as every person, state administrator, legal entity, and a member of the public that provides, manages, and/or operates electronic system independently or jointly for electronic system users for personal interest and/or the interest of others. From this definition, it can be understood that the parties providing the platform and collecting the data of the clients are referred to as PSE while the clients as electronic system users. The PSE has to keep the information given by the clients confidential and ensure that the user data are not spread. The concept of legal protection of the users implies that every person has the notarial deed to determine whether he/she is willing to share the personal data to others. Data legal protection should cover the steps intended to protect data security for users and implement the requirements in accessing user data [11].

3.2 The Liabilities of Corporates as Electronic System Providers Regarding the Spread of Personal Data of Peer-To-Peer Lending Based Fintech Application Users

Measures taken to protect personal data are the rights of every person, as in line with the provision of Article 29 Paragraph 1 of Law Number 39 of 1999 concerning Human Rights, implying that “every person has the right to the protection of personal data...”. This clause has profound meaning, where personal data is confidential and, thus, it must be protected by the state. In privacy rights, every individual has the right to protect personal data or keep them confidential.[12].

Considering that there is a greater likelihood of the spread of personal data in online-based lending services, and it commonly happens, the Indonesian government has taken serious measures in response to the necessity of guaranteeing security and the confidentiality of personal data in online-based businesses, following the promulgation of Law concerning Personal Data Protection passed on 20 September 2022. This law sets forth the provision regarding the rights of the data owners, data processing, personal data control and personal data processor, personal data transfer, prohibition of personal data use, and administrative and criminal sanctions. Personal data control refers to the party determining the purpose and responsible for processing control of the personal data, while personal data processor refers to the party performing personal data processing on behalf of personal data control, both of which could be performed by an individual, public institution, and organization/institution. Linked to PSE as in the Regulation of the Minister of Communication and Information Technology of the Republic of Indonesia Number 5 of 2020 concerning Electronic System Provision in a Private Scope, the PSE can serve as personal data controller as in Personal Data Protection Law.

Personal Data Protection law governs the prohibition of gaining and collecting personal data, revealing personal data of others, and using personal data of others, as governed in Article 51 of Personal Data Protection Law:

- 1) Every person is prohibited to gain or collect personal data of others for his/her own personal gain by acting against the law or by doing something that can disadvantage the personal data owners.
- 2) Every person is prohibited to reveal personal data of others by acting against the law.
- 3) Every person is prohibited to use personal data of others by acting against the law.

The criminal provisions regarding individuals meeting the aspects above are regulated in Article 61 of Personal Data Protection Law:

- 1) Whoever intentionally gains or collects personal data of others for personal gain or for others by acting against the law or by doing something that disadvantages personal data users as intended in Article 51 Paragraph (1) is punishable by the maximum five-year imprisonment or subject to a Rp. 50,000,000,000 (fifty billion rupiahs) fine.
- 2) Whoever intentionally acts against the law by revealing personal data of others as intended in Article 51 Paragraph (2) is punishable by the maximum two-year imprisonment or subject to a Rp. 20,000,000,000 (twenty billion rupiahs) fine.

- 3) Whoever intentionally acts against the law by using personal data of others as intended in Article 51 Paragraph (3) is punishable by the maximum seven-year imprisonment or subject to a Rp. 70,000,000,000 (seventy billion rupiahs) fine.

Furthermore, Article 66 of Personal Data Protection Law governs the liabilities held by corporates in case of meeting the aspects as mentioned in Article 61 of Personal Data Protection law. The provisions of Article 66 of this Law are as follows:

- 1) In terms of the criminal offense as intended in Article 61 to Article 64 committed by a corporate, a criminal sanction can be imposed on administrator, controller, instructor, beneficial owner, and/or corporate.
- 2) The sanction is imposed in a fine
- 3) The fine imposed on a corporate three times of the maximum fine prosecuted.
- 4) In addition to the fine as intended in Paragraph (2), the corporate concerned is also subject to the following additional sanctions.
 - a. Confiscation of profit and/or asset gained from the criminal offense;
 - b. Freezing part or the entire corporate;
 - c. Permanent prohibition of conducting particular activities;
 - d. Close down of the entire or part of the business and/or the corporate activities;
 - e. Conducting the neglected responsibilities;
 - f. Compensation.

Thus, the provisions of Article 66 Paragraph 1 of Personal Data Protection Law concerning corporate, administrator, controller, instructor, and beneficial owner can be subject to the sanctions outlined in Article 61 to 64 of Personal Data Protection Law if they are found to have intentionally committed an act prohibited and have met the aspects regulated therein.

Apart from the law, the regulation and its pattern regarding personal data are regulated in Law Number 19 of 2016 concerning Amendment to law Number 11 of 2008 concerning Electronic Information and Transactions (henceforth referred to as EIT Law). Under Article 26 Paragraph 1 and 2, EIT Law regulates the protection of personal data protection of electronic-based information and communication media users. Article 26 paragraph 1 and 2 of EIT Law states the following:

- 1) Unless stated otherwise, the use of all information on electronic media involving user personal data requires the consent of the users concerned.
- 2) Whoever has his/her right violated as intended in Paragraph (1), he/she can file a lawsuit over the loss caused according to this law.

Based on the above provisions, it can be understood that if then someone has personal data spread in the community, and there is an abuse of personal data by certain parties, the owner of the personal data can take an action in the form of filing a Civil lawsuit.

EIT Law and Personal Data Protection law govern the intention of a person or corporate but the staff of the company concerned often threaten consumers that their data are at risk of being revealed if the debtor does not pay off the debt before the due date. This unfair act is intended to support the sustainability of the business of the company and to meet the target set by the company. Moreover, access to personal data of the debtors opened by the staff is also the responsibility of the company. This case

shows there is negligence of the company, commonly referred to as culpability, described more as a guilt that is not as serious as the intention is. It is more like a lack of care, leading to unintentional act [13]. Negligence in criminal law is divided into two; the negligence of effect and the negligence of conduct. The first kind of negligence is a criminal offense caused by the negligence of a person and this negligence has led to an effect that is prohibited by law since it, for example, causes the injury or death of a person. The negligence of conduct, on the other hand, refers to an act that is obviously a criminal offense. That is, without having to investigate the effect it causes, it is obvious that the act concerned is a criminal offense, as stated in Article 205 (1) of Penal Code [14].

From the above, it is obvious that opening access to the data of debtors by the corporate/company is regarded as negligence, and, thus, it is subject to corporate liabilities as expressed by Remy Sjahdeini:

- 1) The person in charge of the corporate as an initiator must be made liable
- 2) The corporate as the initiator and the person in charge of the corporate (administrator) must be made liable
- 3) The corporate as the initiator and the corporate per se must be made liable.
- 4) The person in charge of the corporate and the corporate as the criminal offender and both must be made liable [15].

With the above liabilities, either the intention or negligence of a corporate causing criminal offense can be subject to criminal sanctions. What needs to be considered to be outlined in Personal Data Protection is setting norms regarding corporate negligence that causes the spread personal data of the users of peer-to-peer lending applications. Moreover, setting the norms regarding electronic system provision is also important to synchronize Personal Data Protection Law, EIT Law, and other regulations concerning information technology that were passed earlier.

4 Conclusion

Corporates as electronic system and online-based lending service providers are made liable for spreading Peer-to-Peer Lending Fintech application users in Indonesia. This is governed in Article 26 of Law concerning Electronic Information and Transactions and Article 66 of Personal Data Protection Law. However, the provision in Personal Data Protection law implies that criminal sanctions can be imposed on corporates if they intentionally commit an act that meets the aspects set forth in Article 61 of Personal Data Protection Law. In other words, corporate negligence regarding the dissemination of user data has not been regulated accordingly within the scope that allows for sanctions to be imposed on corporate negligence of controlling the staff intentionally spreading the personal data of the users as an attempt to collect debt from the debtors applying loan program online.

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