

LEGAL CERTIFICATION IN ELECTRONIC CREDIT AGREEMENT

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Abstract

Today's business development is very advanced. No longer developing only business that leads conventionally but also leads to technology-based business. The business of trade and services that lead to this technology also eventually also requires assistance from the financial services sector in the context of developing its business. Financial technology or better known as fintech is innovation in the field of financial services. Fintech is better known in recent years in the business world. This happens because technology evolves with the times. The development and evolution of this technology can make individuals today become easier in doing business. One service from Fintech that is currently popular is often also called Peer-to-Peer (P2P) Lending, or a company that brings lenders with loan seekers in one container, which financing or credit agreement is carried out with an online system and with the form of a standard agreement electronically. The financing or credit agreement is signed with an electronic signature and no stamp. This will cause problems if there is a default when the loan payment cannot be paid. What legal certainty can be given to creditors and debtors in the loan agreement. The research method used in this paper is a normative juridical legal research method. Where normative legal research is carried out by examining legislation and other literary materials.

Keywords: Business, Technology, Agreement on Lending and Borrowing Money, Peer to Peer Lending

INTRODUCTION

Technology has become a familiar thing heard by us today. Technology can help a person or group work more efficiently, easily and quickly. Technological advancements make any activity easier and faster, including in terms of economic activities. However, it does not rule out the possibility that these fast-paced activities can have an impact on the perpetrators. As from legal certainty if there is a default on the parties or one of their parties.

Financial technology or what is called fintech, which stands for financial technology, is a term that we can often hear today. As one of the facilities to carry

out technology-based economic activities. If further interpreted, fintech is an innovation that develops in the field of financial services in order to carry out these economic activities. It can also be said that it is currently developing and making one's life seem easier, especially in the field of financial services.

In the present time the development of information technology is very rapid and has been realized. Dissemination of information has exceeded regional boundaries and time differences have no longer been an obstacle for humans to communicate with each other. Unlimited advances and developments in multimedia telecommunications and increased cross-border speeds, now there is a need for law in the use of the relevant information. If without law, information technology will be used without the widest limits without the existence of rules that limit and maintain. Even the use of this technology has driven business growth very rapidly, this is caused by various information that can be presented through long-distance relationships easily can be obtained. They or those who wish to enter into transactions do not have to meet directly as in traditional economic activities, only through computer equipment and telecommunications. Therefore we need law in the use of information technology, with the existence of laws and regulations the parties or people who will use technology no longer immediately use unlimited and rule-free technology.

The concept of fintech is an adaptation of technological developments combined with the financial or financial fields so that it can present a more efficient, safe and modern process of financial transactions. Basic forms of fintech include payments (digital wallets, P2P payments), investments (equity crowdfunding, Peer to Peer Lending), crowdfunding, micro-loans, credit facilities), insurance (risk management), cross-process (big data analysis , predictive modeling), Infrastructure (security).¹

The more established financial companies in the field of information technology-based money lending services or so-called peer-to-peer or P2P lending, the more they get a place and attention from the public and of course also

¹ Nofie Iman, *Financial Technology and Financial Institutions*, Gathering Mitra Linkage Bank Syariah Mandiri, Yogyakarta, 2016, page 7.

from regulators, the Financial Services Authority (OJK) and Bank Indonesia. This is stated in the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Information Technology Based Lending and Borrowing Services. This service is a way out and a new innovation in the financial sector where there are many Indonesian people who have not been touched by banking services (unbanked people), but these communities have used and are familiar with technology. Fintech service based on P2P Lending is one solution to the limited access to financial services in the country and to realize financial inclusion through synergy with financial institutions and other technology companies.²

RESEARCH METHODS

The research method used in writing this journal is a normative juridical legal research method. Normative legal research is carried out by examining laws and regulations, regulatory regulations and other literary materials. This normative research uses a statute approach and regulations from the regulator, namely the Financial Services Authority and the conceptual approach. The data used is secondary data which is legal material. Legal material is information or correct information about the object of research consisting of primary legal material, secondary legal material, and tertiary legal material.³ Even this normative juridical study is carried out by studying books, reading materials and legislation that support and are related to legal review of the rules deemed to be in accordance with written legal research. This normative research is carried out on theoretical matters of legal principles, legal basis, and legal concepts.⁴

RESULTS AND DISCUSSION

P2P (peer to peer) lending is a technology platform that brings together digital borrowers (SMEs) who need venture capital with lenders who expect competitive returns.⁵ P2P lending is the implementation of financial services to

² <http://nasional.kompas.com/read/2016/11/26/060000226/p2p.lending.sebagai.wujud.baru.inklusi.keuangan>, Akses 17/11/2018, Time 16.47 WIB.

³ Soerjono Soekanto & Sri Mamuji, *Normative Legal Research*. Jakarta: PT. Raja Grafindo Persada, 2012.

⁴ A. K. Muhammad, *Law and Legal Research*. Bandung: PT. Citra Aditya Bakti, 2004.

⁵ <http://nasional.kompas.com/read/2016/11/26/060000226/p2p.lending.sebagai.wujud.baru.inklusi.keuangan>, Akses 17/11/2018, Time 16.50 WIB.

bring lenders and loan recipients together in an agreement to borrow and borrow money through an electronic system using internet networks and of course information technology. This P2P lending service is the organizer of Indonesian legal entities that provide, manage and operate information technology-based money lending services. Loan recipients (borrowers) are people and / or legal entities that have debts due to Information Technology Based Lending and Borrowing Services agreements. Lenders (Investors) are people, legal entities, and / or business entities that have receivables because of Information Technology-Based Lending and Borrowing Services agreements. The regulations regarding P2P lending have been mentioned previously as regulated in POJK Number 77 / POJK.01 / 2016.

Whereas in Bank Indonesia Regulation No.19 / 12 / PBI / 2017 concerning the Implementation of Financial Technology (PBI Tekfin), the definition used by BI concerning fintech has been confirmed to its categories and criteria. Definition of Financial / Fintech Technology

Article 1: “Financial Technology is the use of technology in the financial system that produces new products, services, technology and / or business models and can have an impact on monetary stability, financial system stability, and / or efficiency, smoothness, security and reliability of the payment system”.

Financial / Fintech Technology Implementation Category.

Article 3 paragraph 1: (1) Payment system; (2) Market support; (3) Investment management and risk management; (4) loans, financing, and provision of capital; and (5) Other financial services.

Financial / Fintech Technology Criteria.

Article 3 paragraph 2: (1) Innovative; (2) Can have an impact on existing products, services, technology and / or financial business models; (3) Can provide benefits to the community; (4) Can be used widely; and (5) Other criteria stipulated by Bank Indonesia.

On POJK No.77 / POJK.01 / 2016 concerning Information Technology Based Lending and Borrowing Services. Information Technology Based Lending

and Borrowing Service is the implementation of financial services to bring lenders and loan recipients together in order to enter into a loan and loan agreement in rupiah directly through an electronic system using the internet network.

So it can be said that the parties involved in P2P lending-based fintech services are the provision of information technology-based lending services (start up or platform), lenders, and loan recipients. The mechanism of the Fintech Operator system will bring together the borrower and the party giving the loan. Whereas in Fintech services based on P2P lending is a marketplace for online or electronic money-lending activities.

P2P lending is also more in demand by the community because it can accommodate unsecured loans because they are provided without collateral. P2P Lending can bridge credit worthy SMEs to become bankable by providing loans without collateral.⁶ Of course this is different from the nature of loans from banks that apply the 5C principle (Character, Capacity, Capital, Collateral, Condition) as a reference for eligibility. Peer to peer lending that is known in society today or often in social languages is referred to as "online debt" is part of crowdfunding which has been known in America and Europe since 2006.⁷

The platform of P2P lending is now commonly accessed by the public, both by loan seekers and the people who want to invest to make loans. People can access P2P lending through market place lending as a means of meeting lenders and loan recipients (online).

However, in determining the feasibility of loans for the P2P lending model to date there is no clear standard of effect. So this can open up the possibility for the escape of a risky loan, which is a risk of default, where the borrower or borrower cannot pay off the debt, which in turn will harm the community or other borrowers and lender investors.

⁶ <http://nasional.kompas.com/read/2016/11/26/060000226/p2p.lending.sebagai.wujud.baru.inklusi.keuangan>, Akses 17/11/2018, time 17.58 WIB.

⁷ <http://id.beritasatu.com/home/perlindungan-konsumen-peer-to-peer-lending/178314>, Akses 17/11/2018. atime 18.01 WIB.

So with the changing era, from the conventional era to the digital era, which will certainly affect the legal design that supports the business needs of the community.

LEGAL CERTAINTY

If we talk about the legal certainty of P2P lending, of course we will talk and discuss legal certainty in general. Whereas according to Gustav Radbruch there are three basic values (Grundwerten), namely Legal Certainty (Rechtssicherheit), Benefit (Zweckmassigkeit) and justice (Gerechtigkeit).⁸

To achieve legal certainty, namely so that there is certainty about what is allowed and what should not be done by members of the community.⁹ Legal certainty is actually an idea that cannot be formally defined grammatically. The language used in formulating the provisions in the law (the law) cannot be formulated rigidly. Because language has its own limitations first. Besides that, the texts in the law (law) actually has certain intents which of course are difficult to interpret in a standard manner.¹⁰

Legal certainty is the protection of the judiciary against arbitrary actions, which means that someone will be able to obtain something expected in certain circumstances.¹¹ It is expected by the community that a legal certainty is the main goal so that the community can be more orderly in social life.

Justice is an important thing and must be considered in every implementation and law enforcement. Law is not synonymous with justice. The law is general, binding on everyone, generalizing.¹²

Legal certainty is basically an implementation of the law in accordance with what is and develops in the community, so that the community can ensure that the law can be implemented properly. Finally it relates to one another that, legal

⁸ Sudikno Mertokusumo dan Pitlo, *Chapters on the Discovery of Law The second print.*, Citra Aditya Bakti, Bandung, 2013, page 1.

⁹ Wirjono Prodjodikoro, *Violating Acts Seen From the Angle of Civil Law*, Mandar Maju, Bandung, 2000, page 11.

¹⁰ E. Fernando M. Manullang, *Legism, Legal Legality and Certainty of Law*, Kencana Prenamedia Group, Jakarta, 2016, page 179.

¹¹ Sudikno Mertokusumo, *Know the Law of the Second Preface*, Liberty, Yogyakarta, page.160.

¹² Peter Mahmud Marzuki, *Introduction to Law Sciences*, Kencana Predana Media Group, Jakarta, 2008, page 161.

certainty is related to law enforcement. Without a legal certainty a person will not know what he has done, causing anxiety towards the community concerned.

Normative legal certainty is when a regulation is made and promulgated in a certain way because it regulates clearly and logically. Obviously in the sense that it does not cause doubt (multi-interpretation) and is logical in the sense that it becomes a norm system with other norms so that it does not clash or cause norm conflicts. The norm conflict resulting from rule uncertainty can be in the form of norm contestation, norm reduction or norm distortion.¹³

Legal certainty can be seen from two angles, namely certainty in the law itself and certainty due to law. Certainty in law means that every legal norm must be formulated with the sentences in it not containing different interpretations. The result will bring obedient behavior or non-compliance with the law. And when faced with the substance of legal norms that regulate it, sometimes with the substance of legal norms that regulate it, sometimes it is unclear or imperfect so different interpretations arise. This will certainly result in legal uncertainty. While certainty because the law meant that because the law itself was a certainty.¹⁴

Furthermore, if we describe the concrete events that occur, namely by the existence of a P2P lending agreement, where there is a lender, investor and borrower, a borrower of money that enters his party, meaning that the parties have agreed on the agreement that was held. This can mean that legal certainty has been fulfilled, but in terms of the platform that provides meeting facilities in this virtual world, whether it is the establishment of a business or the legalization of business, as well as other regulations that discuss this there is no higher legal umbrella. Up to now, P2P lending has only taken place in the regulatory regulations, namely Bank Indonesia regulations and the Financial Services Authority regulations.

Even this is stated in article 18 paragraph (1) of the UUIE that "Electronic Transactions that are poured into Electronic Contracts bind the parties", which means that if one of the parties to the contract cannot fulfill the agreement that occurs in an electronic transaction which results in a loss, the party who is harmed

¹³ Van Apeldoorn (eds), *Introduction to Law, translation of Oetarid Sadino*, Pradnya Paramita, Jakarta, 1990, page 109.

¹⁴ *Ibid*, page 111.

due to the electronic transaction has the right to file a compensation claim. The words "all agreements made legally apply as laws for those who make them" as Article 1338 of the Civil Code above, contain the intention that book III of the Civil Code adheres to the principle of freedom of contract, meaning that: "Any person may enter into any agreement, even though he has not or not regulated in law. Although this principle applies, freedom of contract is limited by three things, namely not prohibited by law, not contrary to morality and public order".¹⁵ It can also be interpreted that electronic transactions carried out in the context of borrowing and borrowing information technology-based money are legal and have legal certainty. Where the agreement made is valid, with the fulfillment of Article 1320 of the Civil Code, where it states the legal terms of the agreement, both subjective conditions (skills and agreements) and objective conditions (certain causes and reasons that are lawful).

CONCLUSION

In terms of legal certainty for credit agreements electronically it can be said to be fulfilled due to the fulfillment of the terms of the agreement contained in article 1320 of the Civil Code, then in Article 1338 of the Civil Code "all agreements made legally apply as laws for those who make them", followed by arrangements the law regarding electronic transactions in Indonesia, especially in the scope of private law based on the provisions in Book III of the Civil Code concerning Engagement which adheres to an open principle or contractual freedom, which can be interpreted that the parties are given the freedom to make agreements as long as there is an agreement, capable of acting in the law, a certain matter and a reason that is lawful. The agreement itself occurs when both parties reach an agreement on the main things agreed upon.

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Regulations

Code of Civil law

Electronic Information and Transaction Law

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POJK Number 77 of 2016