



Legal Protection of Consumer Personal Data in Indonesia Fintech Peer-To-Peer Lending Pioneers

Prita Fiorentina¹ ✉, Dewi Sulistianingsih², Aprilia Niravita³, and Ayup Suran Ningsih⁴

^{1,2,3,4}Faculty of Law, Universitas Negeri Semarang, Indonesia, Indonesia

DOI: <http://dx.doi.org/10.15294/pandecta.v17i2.40235>

Article Info

Article History:

Received: October 14th 2022

Accepted: December 16th 2022

Published: December 29th 2022

Keywords:

Personal data protection;

pioneer;

peer-to-peer lending

Abstract

The development of the Financial Technology Industry, especially Peer-to-Peer Lending in Indonesia, brings various conveniences as well as risks. With multiple platforms providing Peer-to-Peer Lending services, it also has an impact on the amount of personal data collected by each platform. This can pose a threat related to consumer personal data, such as cases that have recently emerged. Some Peer-to-Peer Lending platforms abuse their customer's personal data by spreading it to other parties. Things that should not be done considering the loan agreement that has been agreed between the borrower and the Peer-to-Peer Lending platform regarding personal data that must be safeguarded and if urgently requires this data must be approved by the borrower. This research will discuss the legal protection regulations for the personal data of Peer-to-Peer Lending consumers and discuss the policies implemented by one of the pioneers of Peer-to-Peer Lending in Indonesia regarding the importance of protecting consumer personal data. This research is empirical legal research that uses interviews as a source of data. This study used a qualitative approach to collect primary and secondary data. This research will discuss the current legal regulations related to the protection of personal data including the existence of the Personal Data Protection Law and discuss the policy and implementation of Peer-to-Peer Lending pioneers in Indonesia regarding the protection of borrowers' personal data.

A. Introduction

The development of technology has become a familiar thing. In the digital era, technology has played an important role in almost all aspects of human life. The economic aspect is no exception, which is an important aspect of a country's survival and its people's survival. Reflecting on the past few years, technology has not played an important role in the economic world, especially in the banking and financial institution sphere. In addition, today's technology is very fast in terms of data collection, storage, and analysis.¹

The presence of information technology-based financing institutions or money-lending institutions became the basis for the Financial Services Authority in formulating the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money lending Services.

Peer-to-Peer Lending Organizers in carrying out their business, are accommodated by an organization for business actors in Peer-to-Peer Lending. OJK officially based

Dalam Perlindungan Terhadap Hak Atas Privasi Seseorang Di Indonesia," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* 7, no. 2 (2020): 265–289, <http://openjournal.unpam.ac.id/index.php/SKD/article/view/9214>.

1 Eka Martiana Wulansari, "Konsep Perlindungan Data Pribadi Sebagai Aspek Fundamental Norm



Address : UNNES Sekaran Campus, Gunungpati, Semarang, Central Java Indonesia 50229

E-mail : pritaflor@students.unnes.ac.id

on letter no. S-5/D.05/2019 appointed the Indonesian Joint Funding Fintech Association (AFPI) to become the official association that accommodates technology-based money lending and borrowing service providers in Indonesia. If a bank credit assessment for a prospective borrower is carried out by checking through Bank Indonesia Checking, the Peer-to-Peer Lending organizers can also do the same thing to evaluate the credit of the borrower candidate. The Indonesian Joint Funding Fintech Association (AFPI) already has a Fintech Data Center (FDC) data center for Fintech service providers.²

Illegal Fintech there will be sanctions related to violations committed, OJK has a Cyber Patrol which aims to eradicate illegal Fintech which is carried out through patrols by the Investment Alert Task Force, OJK, the Indonesian Ministry of Technology and Information, and The Indonesian Joint Funding Fintech Association (AFPI).³

Based on OJK data, as of April 22, 2022, there have been 102 companies with their respective platforms that have been registered and received business licenses from OJK. Based on information on the OJK website, organizers who already have licensed or registered status can already run a service business in information technology-based money lending but must still comply with applicable regulations and not be against the law.⁴

The real case related to the dissemination of personal data occurred around April 2021, there was a video uploaded by an account on one of the social media showing a person spreading personal data to all contacts

on the consumer's mobile phone accompanied by a sentence threatening to do so immediately. installment payments that have been delayed beyond the due date. This has a huge impact on consumers because the spread of this data to all contacts they have will worsen the consumer's name in the eyes of relatives because they have not been able to pay installments that exceed the due date.⁵

This privacy-related issue proves how important it is to protect personal data. This statement is strengthened by the increasing number of internet and cell phone users. There is also an increasing number of cases related to the leakage of personal data which also results in the emergence of various other criminal acts so the creation of legal regulations to protect personal data is important.⁶

Based on the introduction described above, this research will discuss regulations governing the protection of personal data in the Fintech industry and the policies of one of the pioneers of Fintech Peer-to-Peer Lending in Indonesia regarding the protection of consumers' personal data.

B. Method

This legal research is empirical legal research, which is a legal research method that looks at the law in a real sense or sees and examines the working of law in society.⁷ Empirical legal research can be said to be field research, which examines the legal provisions that apply in society and finds out the relevant facts and data needed.⁸ In empirical legal research, secondary data becomes the initial data that is examined and then re-

2 AFPI, "Lembaga Riset Kebijakan," *Asosiasi Fintech Pendanaan Bersama Indonesia*, last modified 2019, accessed July 5, 2022, <http://afpi.or.id/>.

3 Ubaidillah Kamal and Ayup Suran Ningsih, "Pandecta The Urgency of Revising The Finance Services Authority Regulation Number 77 / POJK . 01 / 2016 as An Umbrella Law in Practicing Peer to Peer Lending Based on Financial Technology in Indonesia," *Pandecta Research Law Journal* 16, no. 1 (2021): 186–194.

4 Otoritas Jasa Keuangan, "Perusahaan Fintech Lending Berizin Dan Terdaftar Di OJK Per 22 April 2021," last modified 2022, accessed May 10, 2022, <https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/ Penyelenggara-Fintech-Lending-Berizin-di-OJK-per-22-April-2022.aspx>.

5 Hendra Kusuma, "Pinjol Diduga Ancam Sebar Data Pribadi, Ini 4 Faktanya," *Detik Finance*, accessed June 25, 2022, <http://finance.detik.com/fintech/d-5532397/pinjol-diduga-ancam-sebar-data-pribadi-ini-4-faktanya?single=1>.

6 I Nyoman Adi Pardana, Sihabudin Sihabudin, and Dhiana Puspitawati, "Implikasi Hukum Penggunaan Data Pribadi Pihak Ketiga Terhadap Keabsahan Perjanjian Pinjam Meminjam Uang Berbasis Teknologi Informasi," *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 4, no. 2 (2019): 341–351.

7 Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Depok: Prenadamedia Group, 2018).

8 Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Jakarta: Sinar Grafika, 2012).

arches primary data obtained from the field as data in society.⁹ A qualitative approach is used to study problems with descriptive¹⁰ explanations in the form of an explanation of the data obtained based on the object studied. With a research focus, a study can be more focused on collecting data and information related to research.¹¹

The collection of data needed in this study comes from Primary Data and Secondary Data, Primary data is data obtained directly in the field through one method such as interviews with relevant agencies. While Secondary Data is data that comes from various official written sources such as books, articles, official documents, results of previous research, as well as other written sources that can be accounted for.

C. Result and Discussion

1. Regulations related to personal data protection in the Fintech industry

In this study, the focus is on Fintech Peer to Peer Lending, so the regulations regarding the protection of consumer personal data that will be described will focus more on regulations related to Peer to Peer Lending in Indonesia. Until now, the party that has the authority regarding regulations related to Fintech in Indonesia is the OJK. In regulations related to Fintech, OJK has updated the Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services which replaces the Financial Services Authority Regulation Number 77/POJK.01/2016 of 2016 concerning Technology-Based Borrowing and Borrowing Services. Information, where the previous regulations were deemed irrelevant and not following the industry that had developed and the legal needs in these developments.

In its implementation, Fintech also has links to the use of information technology in terms of the use of electronic contract instru-

ments in its agreements so in this case Fintech is also regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.¹²

Even though there are regulations related to Fintech, they still cannot provide legal protection for all the necessary aspects. One of the things is related to a very important aspect of Fintech, namely consumer personal data. Personal data is very important as an aspect that needs to be protected, given that until now there are more and more cases of the spread of personal data by fintech service providers for various reasons. The distribution of this data is carried out by individuals who deliberately disseminate data to intimidate and coerce owners of personal data who do not make payments according to the loan agreement previously agreed upon by the debtor and the Peer-to-Peer Lending service provider. But in fact, the loan agreement has been discussed regarding the borrower's personal data which according to the service provider's statement will be collected only for storage and for data collection purposes and calculating credit scores without personal data being known by other parties. And in the agreement of each Peer-to-Peer Lending platform regarding consumer personal data if it is to be used by a Peer-to-Peer Lending service provider, it must be accompanied by permission from the owner of the personal data if there is a need to require consumer personal data.

Protection of personal data is a respect for the right to privacy of each person.¹³ Because everyone has Human Right to be able to protect himself. However, in reality, there are many cases of debtors or loan recipients being terrorized by the service provider because the debtor has not been able to make payments according to the agreed time, so the loan service provider misuses the

9 Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986).

10 Burhan Ashshofa, *Metode Penelitian Hukum* (Jakarta: PT. Rineka Cipta, 2016).

11 Lexy J Moleong, *Metodologi Penelitian Kualitatif* (Bandung: PT. Remaja Rosdakarya, 2006).

12 Kornelius Benuf et al., "Efektifitas Pengaturan Dan Pengawasan Bisnis Financial Technology (Peer to Peer Lending) Di Indonesia," *Pandecta* 15, no. 2 (2020): 198–206.

13 Michael Leunard, Sari Mandiana, and Jusup Jacobus Setyabudhi, "Analisis Yuridis Tentang Peretasan Data Pribadi Penumpang Lion Air," *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum* 6, no. 2 (2020): 55–58.

borrower's personal data.¹⁴

After waiting for a long time without clarity regarding the legal regulatory limits in terms of consumer personal data in the Fintech Peer-to-Peer Lending industry, finally, new regulations that focus on personal data have been passed. On October 17, 2022, it was ratified and promulgated, Law Number 27 of 2022 Concerning Personal Data Protection. Previously, this law became urgent in the Fintech Peer to Peer Lending industry because neither the POJK nor the laws related to Fintech that were previously in effect regulated in detail regarding the protection of personal data. With the development of this industry and the various problems of legal violations that arise regarding personal data being misused by related parties, the Personal Data Protection Act is urgently needed to address these legal needs.

2. Pioneer Peer-to-Peer Lending policy regarding consumer personal data protection

Something that can move legal regulations so that they effectively show their potential to regulate is called a legal event, a legal event itself is an event in society that drives a statutory regulation.¹⁵

In today's increasingly advanced industrial and technological developments, the rule of law is a concept that is relevant and ideal if then all series of activities are based on and limited by clear and firm laws, to create legal certainty.¹⁶ The concept of financial technology (peer-to-peer lending) is an adaptation of technological developments that have been integrated with the financial sector to present a more efficient and more modern transaction process in the financial sector.¹⁷

The presence of peer-to-peer lending in Indonesia began with the emergence of PT. Pasar Dana Pinjaman with the Danamas platform.¹⁸ Danamas is the first peer-to-peer lending platform that is licensed and registered with the Financial Services Authority since July 6, 2017. Then followed by the presence of PT. Investree Radhika Jaya with the Investree platform which has also been licensed and registered with the Financial Services Authority since May 13, 2019.

The peer-to-peer concept that is implemented at Investree is like peer-to-peer in general, where lenders and borrowers are brought together on a platform to enter a fund lending and borrowing agreement.¹⁹

Regarding data protection and data restrictions based on POJK and other applicable laws and regulations. Because currently there are many cases of the spread of consumer personal data due to payment delays, threatening the spread of data like that. Because of that, to prevent consumer data leakage, Investree collaborates with various partners to maintain the data storage system at Investree so that system damage does not occur. And for several repetitions, the IT team always checks the data system so that the system always maintains data security. So far, our data system has always been safe and there has never been any leakage of consumer data due to regular maintenance and checking. (Legal Counsel of Investree, Interview, July 2nd, 2021).

In the policy of maintaining consumer personal data privacy, it must be submitted to service providers as business actors. Business actors are responsible for protecting the personal data of their consumers according to the loan agreement agreed upon by both parties.²⁰

14 Erna Priliyasi, "Pentingnya Perlindungan Data Pribadi Dalam Transaksi Pinjaman," *Majalah Hukum Nasional*, 2019.

15 Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT. Citra Aditya Bakti, 1991).

16 Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum," *Crepido* 1, no. 1 (2019): 13–22.

17 Dita Perwitasari, "Legal Certification in Electronic Credit Agreement," *Journal of Private and Commercial Law* 2, no. 2 (2018): 125–133.

18 "Penyelenggara Fintech Lending Berizin Di OJK per 22 April 2022," *Otoritas Jasa Keuangan*, accessed September 15, 2022, <https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/Penyelenggara-Fintech-Lending-Berizin-di-OJK-per-22-April-2022.aspx>.

19 Investree, "Cara Cerdas Meminjam Dan Mendanai," accessed April 15, 2022, <https://investree.id/how-it-works>.

20 Muhammad Saiful Rizal, Yuliati Yuliati, and Siti Hamidah, "Perlindungan Hukum Atas Data Pribadi Bagi Konsumen Dalam Klausula Eksonerasi

Requests for access to the borrower's personal data in the loan agreement should only be related to the emergency number that the company will contact if the borrower defaults. If only a family or relative's number is included, the company can and may only contact that number, and it is forbidden to access other numbers that are not listed or other personal data without permission from the owner of the personal data.²¹

Regarding consumer protection in terms of features that can only be accessed according to the POJK, namely the Camera, Microphone, and Location features, according to a source on the Investree platform, it is not focused on accessing these features, because it is the Investree that pays attention to being able to get approved for the loan by completing documents as requirements as previously mentioned such as business legality or business establishment deed, then you must have an NPWP, financial reports, bank statements, company profiles, and there must be invoices or bills for borrowing invoice financing. These features are not prioritized on the Investree platform, the requirements to become a borrower must be completed. Usually, Investree has a team that will visit or visit the prospective borrower's company to match the data submitted. But not all visits are carried out because currently there is already a digital track record to prove the existence of company data through the data in the company profile. Investree also sometimes cooperates with PEFINDO²² to be able to find out the credit rating of a company (Legal Counsel Investree, Interview, July 2nd, 2021).

Personal data protection has the concept that everyone has the right to determine their fate whether to permit²³ Personal data

protection has the concept that everyone has the right to determine their fate whether to permit.²⁴

D. Conclusion

The development of information technology has had an impact on the implementation of the industrial sector including the financial services industry. Fintech is concrete proof of this development. With the development of technology, it needs to be balanced with the development of legal regulations that can cover all aspects. In this case, the formation of Legal Protection of Personal Data will make it easier to regulate the protection of the personal data of consumers in the Fintech industry. Even though the implementation of these regulations is still not optimal, at least there are clear boundaries that can be used as legal certainty if there are violations related to personal data committed by unscrupulous fintech service providers in Indonesia.

Investree, one of the pioneers of Fintech Peer-to-Peer Lending service providers in Indonesia has its policies regarding consumer personal data. With partners and related teams to maintain the security of lender and borrower data. Periodically, Investree's technology team checks the security of consumers' personal data to avoid data leakage. And recently there is the Personal Data Protection Act, and the legal boundaries regarding the protection of personal data are becoming obvious.

E. Bibliography

- AFPI. "Lembaga Riset Kebijakan." *Asosiasi Fintech Pendanaan Bersama Indonesia*. Last modified 2019. Accessed July 5, 2022. <http://afpi.or.id/>.
- Ashshofa, Burhan. *Metode Penelitian Hukum*. Jakarta: PT. Rineka Cipta, 2016.
- Benuf, Kornelius, Ery Agus Priyono, Siti Mahmudah, and Siti Malikhatus Badriyah. "Efektifitas Pengaturan Dan Pengawasan Bisnis Financial Technology (Peer to Peer Lending) Di Indonesia." *Pandecta* 15, no. 2 (2020): 198–206.
- Efendi, Jonaedi, and Johnny Ibrahim. *Metode Penelitian Hukum Normatif Dan Empiris*. Depok: Prenadamedia Group, 2018.
- Transportasi Online," *Legality : Jurnal Ilmiah Hukum* 27, no. 1 (2019): 68–82.
- 21 Upik Mutiara and Romi Maulana, "Perlindungan Data Pribadi Sebagai Bagian Dari Hak Asasi Manusia Atas Perlindungan Diri Pribadi," *Indonesian Journal of Law and Policy Studies* 1, no. 1 (2020): 43–55.
- 22 "PEFINDO Biro Kredit," last modified 2022, accessed July 8, 2022, <https://www.idscore.id/about>.
- 23 *Undang-Undang NOMOR 27 TAHUN 2022 TENTANG PELINDUNGAN DATA PRIBADI*, 2022.
- 24 Fanny Priscyllia, "Perlindungan Privasi Data Pribadi Dalam Perspektif Perbandingan Hukum," *Jatiswara* 34, no. 3 (2019): 239–249.

- Investree. "Cara Cerdas Meminjam Dan Mendanai." Accessed April 15, 2022. <https://investree.id/how-it-works>.
- Julyano, Mario, and Aditya Yuli Sulistyawan. "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum." *Crepido* 1, no. 1 (2019): 13–22.
- Kamal, Ubaidillah, and Ayup Suran Ningsih. "Pandecta The Urgency of Revising The Finance Services Authority Regulation Number 77 / POJK . 01 / 2016 as An Umbrella Law in Practicing Peer to Peer Lending Based on Financial Technology in Indonesia." *Pandecta Research Law Journal* 16, no. 1 (2021): 186–194.
- Kusuma, Hendra. "Pinjol Diduga Ancam Sebar Data Pribadi, Ini 4 Faktanya." *Detik Finance*. Accessed June 25, 2022. <http://finance.detik.com/fintech/d-5532397/pinjol-diduga-ancam-sebar-data-pribadi-ini-4-faktanya?single=1>.
- Leonard, Michael, Sari Mandiana, and Jusup Jacobus Setyabudhi. "Analisis Yuridis Tentang Peretasan Data Pribadi Penumpang Lion Air." *YUSTISIA MERDEKA : Jurnal Ilmiah Hukum* 6, no. 2 (2020): 55–58.
- Moleong, Lexy J. *Metodologi Penelitian Kualitatif*. Bandung: PT. Remaja Rosdakarya, 2006.
- Mutiara, Upik, and Romi Maulana. "Perlindungan Data Pribadi Sebagai Bagian Dari Hak Asasi Manusia Atas Perlindungan Diri Pribadi." *Indonesian Journal of Law and Policy Studies* 1, no. 1 (2020): 43–55.
- Otoritas Jasa Keuangan. "Perusahaan Fintech Lending Berizin Dan Terdaftar Di OJK Per 22 April 2021." Last modified 2022. Accessed May 10, 2022. <https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/Penyelenggara-Fintech-Lending-Berizin-di-OJK-per-22-April-2022.aspx>.
- Pardana, I Nyoman Adi, Sihabudin Sihabudin, and Dhiana Puspitawati. "Implikasi Hukum Penggunaan Data Pribadi Pihak Ketiga Terhadap Keabsahan Perjanjian Pinjam Meminjam Uang Berbasis Teknologi Informasi." *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 4, no. 2 (2019): 341–351.
- Perwitasari, Dita. "Legal Certification in Electronic Credit Agreement." *Journal of Private and Commercial Law* 2, no. 2 (2018): 125–133.
- Prihasari, Erna. "Pentingnya Perlindungan Data Pribadi Dalam Transaksi Pinjaman." *Majalah Hukum Nasional*, 2019.
- Priscyllia, Fanny. "Perlindungan Privasi Data Pribadi Dalam Perspektif Perbandingan Hukum." *Jatiswara* 34, no. 3 (2019): 239–249.
- Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti, 1991.
- Rizal, Muhammad Saiful, Yuliati Yuliati, and Siti Hamidah. "Perlindungan Hukum Atas Data Pribadi Bagi Konsumen Dalam Klausula Eksonerasi Transportasi Online." *Legality : Jurnal Ilmiah Hukum* 27, no. 1 (2019): 68–82.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: UI Press, 1986.
- Waluyo, Bambang. *Penelitian Hukum Dalam Praktek*. Jakarta: Sinar Grafika, 2012.
- Wulansari, Eka Martiana. "Konsep Perlindungan Data Pribadi Sebagai Aspek Fundamental Norm Dalam Perlindungan Terhadap Hak Atas Privasi Seseorang Di Indonesia." *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* 7, no. 2 (2020): 265–289. <http://openjournal.unpam.ac.id/index.php/SKD/article/view/9214>.
- "PEFINDO Biro Kredit." Last modified 2022. Accessed July 8, 2022. <https://www.idscore.id/about>.
- "Penyelenggara Fintech Lending Berizin Di OJK per 22 April 2022." *Otoritas Jasa Keuangan*. Accessed September 15, 2022. <https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/Penyelenggara-Fintech-Lending-Berizin-di-OJK-per-22-April-2022.aspx>.
- Undang-Undang Nomor 27 Tahun 2022 Tentang Perlindungan Data Pribadi, 2022.
- Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik
- Peraturan Otoritas Jasa Keuangan Nomor 10/POJK.05/2022 Tentang Layanan Pendanaan Bersama Berbasis Teknologi Informasi
- Peraturan Otoritas Jasa Keuangan Nomor 77/POJK.01/2016 Tahun 2016 tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi