The Urgency of Law Renewal Regarding the Protection of Consumer Personal Data in Financial Technology Companies that Abuse Consumer Personal Data Protection

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Abstract

The use of Financial Technology based on Peer to Peer Lending in information technology–based lending and borrowing services in Indonesia has always increased, especially since the Covid–19 pandemic. In the use of Financial Technology based on Peer to Peer Lending, consumers must provide personal data including all data, information, information and documents, both electronic and non–electronic and emergency telephone numbers. Unfortunately, there are cases of misuse of personal data, namely if consumers have not paid off the loan, the Financial Technology Company threatens to disseminate photos and personal data of the borrower if they do not pay off the loan immediately. One of the factors that influence the misuse of personal data is the absence of facilities and regulations that comprehensively regulate the protection of personal data in Indonesia. The purpose of this study is to analyze of legal protection against consumer personal data in Financial Technology companies. This research uses a normative juridical approach that uses data obtained through library materials. The results of the study indicate that there is a need for legal reform regarding the protection of personal data in Indonesia by issuing regulations at the level of the Act, although there are several regulations governing the protection of personal data electronically, but these regulations do not provide firm certainty on the protection of personal data.

Key words: customer, urgency of law, financial technology, legal protection, personal data,

Introduction

The development of information technology in the economic field is one that has an influence on the progress of technological development to facilitate the needs of the community.(Supriyanto, 2019) Currently, Non–Bank Financial Institutions have become one of the innovative solutions for the current economic development. The innovation that is said to be a solution for economic development in the world is financial technology services or financial technology (fintech).(Hiyanti et al., 2020) Fintech financial services are believed to be able to be an easy and fast alternative financing solution. This concept presents a more practical financial transaction process using a platform/application.(Martinelli, 2021)

Various Fintech platforms exist, one of the platforms that is widely used is online–based Fintech lending with Peer–to–Peer Lending (P2P) schemes that can be downloaded by the public/debtors. Through this platform, people
who need a certain amount of funds can quickly and easily get a loan without the need to apply for credit to a bank. (Handayani & Sulistiono, 2020)

The use of Peer to Peer Lending–based Financial Technology in information technology–based lending and borrowing services in Indonesia has always increased, especially since the Covid–19 pandemic. (Winarto, 2020) As a result of the Covid–19 pandemic, many people are experiencing economic difficulties, so many people apply for online loans.

In the use of Peer to Peer Lending–based Financial Technology, consumers are required to provide personal data including all data, information, information and documents, both electronic and non–electronic and emergency telephone numbers. (Pradnyawati et al., 2021) Personal data that has been provided is then stored and managed in connection with the provision of Services on the Platform and in the context of utilizing Services on the Platform. (Yunianti, 2019)

Regulations regarding personal data in the digital world are contained in Law Number 11 of 2008 which was changed to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Also regulated in Permenkominfo No. 20 / 2016 concerning Protection of Personal Data in Electronic Systems. On the other hand, the issuance of new regulations regarding fintech, especially the peer to peer lending (P2P) sector as stated in POJK No. PBI/2017 concerning the Implementation of Financial Technology and Circular Letter of the Financial Services Authority Number 18/SEOJK.02/2017 concerning Governance and Information Technology Risks in Information Technology–Based Lending and Borrowing Services. (Ginting et al., 2021)

However, recently, public complaints about online lending and financial technology (fintech) have become increasingly popular in the public discussion. There are cases of misuse of personal data, namely if the consumer has not paid off the loan, the Financial Technology Company threatens to distribute photos and personal data of the borrower if he does not pay off the loan immediately. (Wijayanto et al., 2020) One of the factors that influence the misuse of personal data is the absence of facilities and regulations that comprehensively regulate the protection of personal data in Indonesia.

As a result of these problems, consumers’ rights to protection of personal data have become shaky so that many consumers are urging the Financial Services Authority to immediately reform with the aim of defending the credibility of the non–bank financial industry that oversees especially fintech. (Priscyllia, 2019) The reason is that consumers have a number of rights that must be fulfilled, especially the protection of fintech–based personal data which is crucial in order to protect the rights of these consumers as stated in Article 4 of Law No. 8 of 1999 concerning Consumer Protection. (Niffari, 2020) So that positive legal regulations in Indonesia related to the fintech industry are the main elements that must be addressed considering the increasingly complex problems that arise as a form of prevention, supervision, and protection against these problems. (Anggraeni, 2018)

Based on the description of the background above, the protection of personal data is a consumer right. So that it is necessary to update the law on personal data protection. So the focus of writing this article is how to renew the law on legal protection of consumer personal data in Financial Technology companies.

**Method**

The research method used is normative juridical, namely research using data obtained through library materials. (M.H & M.Hum, 2018) This research is based on the legislation and the applicable civil law literature. The first step carried out by this research is based on secondary data consisting of primary legal materials which include laws and regulations, books related to personal data protection which are used as a form of solution to existing problems in society regarding personal data protection, secondary legal materials, namely includes scientific works, research results and literature related to the substance of research and tertiary legal materials, namely journals and encyclopedias. (Benuf & Azhar, 2020)

**Results & Discussion**

**Legal Updates on Legal Protection of Consumer Personal Data in Financial Technology Companies**

Protection of personal data is divided into two, namely general and specific. Public in nature means personal data that is obtained publicly in accessing public services or listed in official identities. Personal data that is specific means that the personal data is sensitive to the security and comfort of the life of the owner of the personal data, in addition to obtaining personal data that contains the specific nature must be with the consent of the owner of the personal data.

If it is related to the development of technology and information, especially in the misuse of personal data on online loans, it can be based on Article 28 G paragraph (1) of the 1945 Constitution, It is stated that "Everyone has the right to protect their personal, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right. (Situmeang, 2021)

However, the state of Indonesia does not yet have special rules that regulate the protection of personal data, only to the extent of other rules that generally regulate the protection of personal data.
Protection of personal data has also been regulated in Law no. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, which are contained in Article 26 paragraphs (1) and (2) which state that: (1) Unless otherwise stipulated by 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. (Widyantari & Sulistiyono, 2020)

However, in Law No. 19 of 2016 concerning ITE, it does not explain specifically about "personal data", in the explanation of Article 26 it only mentions that the protection of personal data is part of personal rights and personal rights contain three meanings, namely: First, personal rights are the right to enjoy a private life and be free from all kinds of interference. Second, the right to privacy is the right to be able to communicate with other people without spying. Third, privacy rights are the rights to monitor access to information about someone's life and data. (Sinaga & Putri, 2020)

Protection of personal data in Ministerial Regulation No. 20 of 2016 when the Electronic System Owner commits a violation, it is only subject to administrative sanctions. As in the explanation of CHAPTER IX Article 36 paragraph (1) of Ministerial Regulation no. 20 of 2016: "Every person who obtains, collects, processes, analyzes, stores, displays, announces, transmits, and/or disseminates Personal Data without rights or not in accordance with the provisions in this Ministerial Regulation or other laws and regulations shall be subject to administrative sanctions in accordance with the provisions of the legislation in the form of: a. verbal warning; b. written warning; c. temporary suspension of activities; and/or d. announcements on online sites (online websites)." (Kesuma et al., 2021) According to the author, this administrative sanction will benefit the financial technology company when it misuses personal data, so only administrative sanctions will be imposed on him without any fines on the basis of his responsibility for the violations he has committed. This actually makes the incident happen again because it does not have a deterrent effect on the financial technology company.

Meanwhile, in banking and finance, Law No. 10 of 1998 also mentions the regulation of personal data. Among other things, regulating matters relating to bank secrecy, on the basis of the principle of secrecy, banks are required to keep all matters relating to information and data concerning customers, both their financial situation and personal information confidential. Meanwhile, in terms of finance, OJK issued regulation No. 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector, in Article 30 it is stated that maintaining the confidentiality, integrity, and availability of personal data, transaction data, and data managed from the data obtained until destroyed, becomes the obligation of the Fintech business operator. (Shofiyah & Susilowati, 2019)

Judging from the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology–Based Borrowing–Lending Services. The sanctions that have been stipulated in the LPMUBTI POJK are in Article 47 (1) for violations of obligations and prohibitions in OJK regulations, “OJK has the authority to impose administrative sanctions against the Operator in the form of: 1) Written warning; 2) Fines, namely the obligation to pay a certain amount of money/funds; 3) Restrictions on business activities; and 4) Revocation of license.” (Mutia & Maulana, 2020) Looking at the current implementation of the LPMUBTI POJK, it can be stated that it has not been running effectively, this can be seen and seen from 3 (three) aspects, namely: In substance, the regulations for the LPMUBTI POJK are still rigid, while the development of online lending and borrowing activities is very dynamic, so the LPMUBTI POJK should be flexible so that it can always be relevant to any developments that occur. (Anggitafani, 2021) Structurally, LPMUBTI POJK already has a structure or institution that enforces these rules well and clearly, namely by OJK and can coordinate with other relevant law enforcement agencies. Culturally, online lending and borrowing activities are new in Indonesian society, so this also affects the effectiveness of the LPMUBTI POJK. Overall, it can be stated that the LPMUBTI POJK has not been effectively implemented in the community. (Aswandi et al., 2020)

Personal data protection is an urgent issue that requires clear rules to be issued, the plan to make a Law on Personal Data Protection has been launched several years ago, the discussion has reached the stage of the bill on PDP. (Bukit & Ayunda, 2022) The bill, which consists of 15 chapters, specifically regulates the protection of personal data, is a breath of fresh air for eradicating personal data protection issues or problems. With the occurrence of many problems with personal data leakage, it is appropriate that the Bill on PDP is immediately passed into law, in order to overcome problems related to the protection of personal data against financial technology companies that misuse consumer’s personal data.

In the discourse on the ratification of a law, it cannot be separated from the principle of legal expediency, the PDP Bill in terms of legal expediency, already has the right criteria, because the PDP Bill is currently the only rule that spearheads the eradication of cases of personal data breaches. According to Mochtar Kusumaatmadja in Sudikno Mertukosumo, the main and first goal of law is order, the need for order. This is a fundamental requirement for the existence of an orderly human society. While expediency is the most important thing in a legal goal, regarding the discussion of the purpose of the law first it is known whether what is meant by its own purpose and which has only human goals but law is not a human goal, law is only one tool to achieve goals in social life and patriotic. The purpose of the law can be seen in its function as a function of protecting human interests, the law has a target to be achieved.
The purpose of the PDP Bill itself is to provide order in people’s lives by guaranteeing the right to privacy of personal data, which is currently starting to be disturbed by the interests of financial technology companies.

Conclusion

The problem of misuse of personal data is a very serious matter in handling, because considering the lack of regulatory regulations and legal rules that can ensnare Financial Technology companies that abuse personal data, therefore the ratification of the PDP Bill into a law is very necessary, so there are regulatory regulations special can protect the privacy rights of citizens, without fear of misuse of data by Financial Technology companies. So that there are no more cases of threats to the spread of personal data. With this, cases of misuse of personal data in Indonesia can be eradicated in depth, because there are clear regulations and binding legal rules for Financial Technology companies that abuse personal data so that there is a need for legal reform regarding the protection of personal data in Indonesia by issuing regulations. at the level of the Law, although there are several regulations governing the protection of personal data electronically, these regulations do not provide firm certainty regarding the protection of personal data.

References


