



THE EXISTENCE OF THE ROLE OF FINANCIAL SERVICES AUTHORITY INSTITUTIONS IN HANDLING FINANCIAL TECHNOLOGY CRIMES

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Abstract - Changes in people's lifestyles as a result of developments in information technology have also brought changes to the world of financial administration, including to lending institutions. This is demonstrated by the presence of fintech. The progress of the digital financial world, including fintech institutions in Indonesia, has not been matched by adequate legal policies in terms of regulating online loans by fintech. This has given rise to various problems, including criminal cases committed by means of fraud and threats made by means of fintech institutions and online loans. In this regard, the OJK, which is the authorized institution for handling fintech issues that lead to criminal matters, is not yet optimal. This doctrinal article intends to discuss issues related to the existence of the role of the Financial Services Authority in handling financial technology crimes. Based on existing studies, it was found that the OJK, which is the party responsible for fintech criminal matters, has not been able to supervise and protect fintech users. This is the basis for the need to make formulations related to supervision and prosecution through criminal law specifically against financial technology institutions that are illegal and commit acts against the law in a real way, where the law enforcement agency is the OJK in partnership with the judiciary. OJK must also be able to issue laws and regulations that are able to protect the public from the dangers of Fintech.

Keywords: Financial Technology, Financial Services Authority, Criminal

INTRODUCTION

Advances in information and communication technology and the increasing public demand for lending institutions to support economic needs have quickly created various breakthroughs in the sector of implementing digital-based financial services institutions. One of them is shown by the existence of financial technology institutions or often called *fintech*, as *fintech* financial service institutions are basically institutions engaged in the field of financial services, where fintech has products in the form of providing financial services, with creative ideas and technological innovation, as well as modes of payment activity. The remittances, intermediation of funds, and investments that are oriented towards advances in information and communication technology (Kennedy, 2017).

Fintech products that are often needed by most people are peer to peer lending, namely the practice or method of lending money to individuals or businesses and vice versa, applying for loans to lenders, which connects lenders or investors online. Juridically, this is indicated by the provisions of Article 1 number 6 POJK No. 77/POJK.01/2016 concerning Information Technology-Based Borrowing Services which states that:

Information Technology-Based Borrowing-Lending Service Provider, hereinafter referred to as the Operator, is an Indonesian legal entity that provides, manages, and operates Information Technology-Based Borrowing-Lending Services.

POJK Provisions No. 77/POJK.01/2016 concerning Information Technology-Based Lending Services, this was later updated with the Republic of Indonesia Financial Services Authority Regulation Number 10/Pojk.05/2022 concerning Information Technology-Based Joint Funding Services.

Article 116 of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 10/Pojk.05/2022 Concerning Information Technology-Based Joint Funding Services states that:



Information Technology-Based Borrowing-Lending Services as referred to in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services is declared as LPBBTI based on this Financial Services Authority Regulation.

Information Technology-Based Co-Funding Services or LPBBTI according to Article 1 paragraph (1) of the Republic of Indonesia Financial Services Authority Regulation Number 10/Pojk.05/2022 Concerning Information Technology-Based Co-Funding Services is the provision of financial services to bring together funders and recipients of funds in conducting conventional funding or based on sharia principles directly through electronic systems using the internet (Assalmani, 2021).

The implementation of information technology-based funding in everyday life is carried out by fintech institutions in the online lending sector. Implementation of online loans in its development is not without risk. Legal provisions have not been regulated at the law level related to fintech, making online loan transactions between fintech institutions and users of fintech services often experience various problems.

One of them is the criminal issue. One of these problems can be seen in the online loan case that occurred in Manado, North Sulawesi. The police succeeded in uncovering the modus operandi used to collect debts from *Pinjol* (Online loans) users, namely by threatening to share indecent photos belonging to customers. So that the victim wants to pay for the loan, the perpetrator gives instructions to the operator to collect by threatening and spreading indecent photos. The pornographic photos used to threaten to be distributed are only edited. The perpetrators stuck the faces of customers in pornographic photos and then spread them as threats. This is clearly the spread of false information that can harm a consumer from financial technology.

This problem occurs as a result of the absence of criminal arrangements for perpetrators of crimes with online or fintech lending modes. To overcome this, the active role of the Financial Services Authority or OJK is needed. The role of the OJK in this fintech criminal matter has not been very visible in the community. The Financial Services Authority (OJK) noted that there were 3,903 public complaints regarding online loans, alias illegal loans, from January 1 to May 29, 2023. The largest number of complaints came in January 2023, namely 1,173 complaints. Then, in February 2023 the OJK received 636 similar complaints, in March 2023 there were 980 complaints, in April 2023 there were 694 complaints, and in May 2023 there were 420 complaints (Katadata Media Network, 2023). The data from the OJK itself shows that the OJK has not been optimal in preventing and supervising problematic fintech institutions, especially in terms of fintech crimes.

The problem of fintech as a criminal actor is not only studied by the author's writings. Previously there were several articles related to this topic. Article written by Otniel Yustisia Kristian, with the title "Legal Protection of Users of Fintech P2P Lending Services From Economic Crimes and Against Illegal Fintech P2P Lending Service Providers". The study in this article states that there is a potential for misuse of Fintech P2P Lending services as a means of economic crime. Some of the things that make P2P Lending services vulnerable to being misused as a means of economic crime are due to the existence of illegal Fintech P2P Lending services that do not submit registration and licensing to the OJK, the existence of electronic procedures and verification for Users, and access to Fintech service providers P2P Lending for personal data so that it is possible to misuse personal data for economic purposes. There is Legal Protection for Users of Fintech P2P Lending Services from economic crimes. This protection consists of criminal law protection, civil law protection, as well as preventive legal protection by establishing rules or regulations that prevent the use of Fintech P2P Lending services as a means of economic crime (Kristian, 2022).

Article written by Saida Dita Hanifawati, with the title "Urgency of Enforcement of Criminal Law on Recipients of Illegal Peer To Peer Lending Fintech Activities and Protection of Personal Data". The study in this article shows that the bad thing that accompanies the development of online lending is the existence of a P2P lending platform without a permit from the Financial Services Authority (OJK) or not officially registered with the OJK. The existence of this illegal P2P platform has claimed many victims and caused people to be in debt with enormous interest. Illegal P2P lending platforms are increasing every year in Indonesia, however law enforcement against eradicating this



crime is still very minimal or has not been implemented optimally. Even though there are many articles that can be used to ensnare the crime, in fact there are only 2 criminal decisions related to the settlement of this case. Law enforcement that has been used so far has placed more emphasis on threats of violence or intimidation directed privately at perpetrators, as stipulated in Article 45 (4), Article 27 (4) of Law no. 19 2016 concerning changes to Law No. 11 of 2008 concerning ITE. This research also found the fact that in Indonesia the protection of personal data has not become something that must be protected by the State (Hanifawati, 2021).

The issue to be discussed in the author's article is different from the two articles above, the author focuses more on issues related to the existence of the role of the Financial Services Authority in handling Financial Technology crimes (Sugiono, 2009)

METHOD

The type of research used in this study is a type of doctrinal research, where the research conducted is research related to the analysis of the norms behind the text of laws and regulations, both juridically and philosophically.

DISCUSSION

1. *Construction of Punishment in Fintech Criminal Cases as a Special Crime*

The criminal act referred to in a fintech criminal agreement is different from criminal fraud, this is because the fintech act begins with a digital agreement approved by the fintech service user, so proving the existence of a criminal act of fraud is not easy, this becomes more complicated because there is no criminal provisions regulated in laws and regulations related to fintech.

Fintech is a civil act that was born as a new legal action with new methods and new consequences. This is because the fintech agreement was born out of the economic needs of the community where the agreement and law used as the basis is digital civil law, apart from that fintech does not recognize any collateral objects, either movable or immovable objects.

Evidence of the fact that there has been an agreement is evidenced by evidence in the form of digital documents that specifically regulate loans between fintech providers and fintech users.

As for the debt agreement contract in the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions it is not emphasized that it is a loan agreement or fintech loan agreement, considering that electronic contract agreements are in the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions is still broad, and fintech contracts are special digital contracts that contain legal principles of capital loans which are of course different from digital agreements in general.

Regarding criminal offenses in cases of providing fintech services, the electronic criminal offenses that often occur are:

1. Delict of accessing digital transaction user information unlawfully or without permission.
2. Delict on the dissemination of personal data of users of digital transactions unlawfully or without permission.
3. Threat offense by electronic means.
4. Delict of fake news related to an information product of goods and services in electronic transactions.

Fintech-related offenses as special crimes where the modus operandi is carried out specifically through means related to fintech have not been regulated as a separate legal regulation. This can result in summaries in proving the existence of offenses in a series of fintech agreements, given the willingness of fintech service users to blur an unlawful act where in a fintech agreement that is detrimental to service users after the willingness of users will be considered not an unlawful act because the service user agreeing to various fintech agreement clauses electronically which harm them, this occurs as a result of the lack of understanding of fintech service users towards the use of digital-based fintech services. As for other aspects of the offense case in the fintech agreement, namely the offense related to fraud which is also difficult to prove because there is an agreement



approved by fintech service users, therefore it must be proven first that there is abuse of civil conditions as a way to prove the existence of an unlawful act which in the end can be drawn into the criminal area, this becomes complicated because it has to go through the use of digital media (Wardani et al., 2022; Syaafi et al., 2023).

2. *OJK's Role in Eradicating Illegal Fintech Institutions*

Advances in technology have given birth to a new approach in the development of forms and methods of financial services. This is indicated by a change in the model, where initially most financial companies offered their services door to door or manually with their marketing agents, currently there is a company known as "Financial Technology", this clearly increases consumer absorption in the capital and financial services trade sector (Mansyur, 2021). However, the legal politics in the sector of financial services institutions have not been able to keep up with the development of the financial services model which has developed far with the media of advances in information and communication technology. Such circumstances lead to various kinds of problems in the use of financial service institutions. Various kinds of losses caused by the lack of consumer protection in cyber-based capital lending often occur (Basuki & Husein, 2018).

This problem can be seen in the loan case involving an honorary teacher in Semarang Regency. An honorary teacher named Afifah Muflihati (27) is trapped in an online loan (*pinjol*). From those who initially borrowed IDR 3.7 million, it then swelled to IDR 206.3 million. Afifah said that when she needed money, she found an advertisement on her cell phone that referred to an online loan application. In the loan application that Afifah downloaded, it turns out that it is connected to other loan applications. After following the terms of the loan, in the end, Rp 3.7 million was transferred directly to Afifah's account, even though she had hoped to get Rp 5 million. At that time the money had not been used at all but within 5 days Afifah was billed with threats that her full identity would be shared (Purbaya, 2021). Another case is the case of four online loan suspects who made bills by threatening and humiliating users of online loan services. This online lending institution uses a mode with an application called "Krib Bro" (Chaterine, 2023).

Based on the various cases above, it is clear that the role of the Financial Services Authority in Indonesia is still not effective. The Financial Services Authority (OJK) quantitatively recorded that there were 3,903 public complaints regarding online loans, aka illegal loans, from January 1 to May 29, 2023. The largest number of complaints came in January 2023, namely 1,173 complaints. Then, in February 2023 the OJK received 636 similar complaints, in March 2023 there were 980 complaints, in April 2023 there were 694 complaints, and in May 2023 there were 420 complaints (Katadata Media Network, 2023). Until now, various fintech cases that have occurred in society have not received serious attention from the OJK.

Based on the various explanations above, it is clear that in its development the implementation of financial technology is not in accordance with the principles of good ethics in making an agreement. Even though contract law recognizes the principle of freedom of contract, in an agreement it must also comply with the principle of good ethics so that one of the conditions for the validity of the agreement recognizes the terms of the agreement with a lawful purpose or in other words an agreement must be clear and cannot conflict with current law.

If you look at the various cases above, it is clear that the current implementation of agreements in financial technology is not through a clear e-contract mechanism and the debtor does not fully and clearly understand the correct financial technology agreement. It is clearly seen that the task of the Financial Services Authority (OJK) namely to regulate and supervise financial service activities in the banking sector, capital market sector, and IKNB sector, has not been realized in general, while in particular supervision of the non-bank financial industry, which is within IKNB including fintech institutions, it can be said that OJK's duties have also not shown results, especially in terms of supporting the eradication of illegal fintech. It is known that after the issuance of Law of the Republic of Indonesia Number 4 of 2023 concerning Development and Strengthening of the Financial Sector, OJK is no longer just a supervisory institution for various online or fintech lending institutions. Article 1 paragraph (1) fourth part regarding OJK regulations. Law of the Republic of Indonesia Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector



states that "the Financial Services Authority is an independent state institution that has the functions, duties and powers of regulation, supervision, inspection, and investigations as referred to in this Law".

Article 48B of the Law of the Republic of Indonesia Number 4 of 2023 Concerning the Development and Strengthening of the Financial Sector then also states that:

- (1) The Financial Services Authority has the authority to stipulate the commencement, discontinuation or termination of investigations into criminal acts in the financial services sector.
- (2) Before stipulating the commencement of the investigation as referred to in paragraph (1), the Financial Services Authority conducts an investigation into alleged criminal acts in the financial services sector.
- (3) At the investigation stage as referred to in paragraph (2), a party suspected of having committed a crime in the financial services sector may submit an application to the Financial Services Authority for settlement of violations of laws and regulations in the financial services sector.
- (4) The Financial Services Authority evaluates the application for settlement of violations as referred to in paragraph (3) and calculates the value of losses for violations.
- (5) In evaluating the application for settlement of violations and calculating the value of losses for violations as referred to in paragraph (4), the Financial Services Authority considers at least:
 - a. whether there is settlement or not for losses arising from criminal acts;
 - b. transaction value and/or loss value for violations; And impacts on the financial services sector, FSI, and/or the interests of customers, financiers or investors, and/or the public.
- (6) In the event that the Financial Services Authority approves the request for settlement of violations, the party submitting the application for settlement of violations must carry out the agreement including paying compensation.
- (7) In the event that the agreement as referred to in paragraph (6) has been fully complied with by the party submitting the request for settlement of the violation, the Financial Services Authority shall stop the investigation.
- (8) Compensation as referred to in paragraph (6) is the right of the injured party and is not the income of the Financial Services Authority.
- (9) In addition to compensation as referred to in paragraph (8), the Financial Services Authority has the authority to determine administrative measures in the form of imposing administrative sanctions against parties suspected of committing criminal acts in the financial services sector.
- (10) Administrative sanctions as referred to in paragraph (9), include:
 - a. written warning.
 - b. restrictions on products and/or services and/or business activities in part or in whole.
 - c. freezing of products and/or services and/or business activities partially or wholly.
 - d. management dismissal.
 - e. administrative fines.
 - f. product and/or service license revocation.
 - g. revocation of business license; and/or
 - h. other administrative sanctions stipulated by the Financial Services Authority.
- (11) In case of:
 - a. The Financial Services Authority does not approve the request for settlement of violations; or
 - b. the party submitting the request for settlement of the violation does not fulfill part or all of the agreement as referred to in paragraph (6), the Financial Services Authority has the authority to proceed to the investigation stage.
- (12) The provisions referred to in paragraph (1) to paragraph (11) are carried out according to the characteristics of each financial services sector.
- (13) Further provisions regarding procedures for settlement of violations and requests for settlement of violations as referred to in paragraph (1) to paragraph (11) are regulated in the Financial Services Authority Regulation.



The provisions referred to in Article 1 paragraph (1) fourth part related to OJK regulations in the Law of the Republic of Indonesia Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector which were then strengthened by Article 1 paragraph (6) of the Law of the Republic of Indonesia Number 4 of 2023 concerning Development and Strengthening of the Financial Sector and also the existence of Article 48B of the Law of the Republic of Indonesia Number 4 of 2023 Concerning the Development and Strengthening of the Financial Sector. It clearly shows that OJK currently also has a law enforcement function in the area of investigation of cases of financial service providers. So that the OJK should not be able to wait for complaints first by fintech users and then take law enforcement action against fintech that commit crimes and harm society (Prayogo&Chornous, 2020; Marwan &Prayogo, 2019). The mechanism that was not optimal in law enforcement in the fintech case ultimately resulted in the OJK being sued by the online loan victim unit in 2018. At that time, the loan victim unit felt that their personal data had been shared, experienced harassment and threats during billing and fraud because the amount of the loan and the amount of debt repayment were disproportionate, through consolidation carried out by the Indonesian Legal Aid Institute, felt that OJK was not carrying out its obligations and duties. as mandated by law, as a result of this LBH and the victims will file a lawsuit with the OJK (Tempo, 2023). Currently, the role of the OJK as law enforcer in the field of fintech law is also not clearly visible. The various data above show that illegal fintech institutions that harm society have not been handled clearly and properly.

Apart from that, this has actually made financial technology a means of fraud in order to get the maximum profit which is also supported by cyber bullying (Widijowati, 2022). So, it is clear that this situation is far from the mandate of Pancasila, the 1945 NKRI Constitution, the Consumer Protection Law, Law Number 39 of 1999 concerning Human Rights. This is getting worse when e-contracts are not regulated in Law Number 11 of 2008 concerning ITE.

CONCLUSION

The increasing need for loan funds with light conditions in society, which is supported by technology, making it easier for people to find loan funds to meet their economic needs, has made fintech a digital financial institution that is increasingly needed. In fact, this is not yet in line with a clear and good monitoring and protection system for fintech users. OJK, which is the party responsible for fintech criminal matters, has not been able to supervise and protect fintech users. This is the basis for the need to make formulations related to supervision and prosecution through criminal law specifically against financial technology institutions that are illegal and commit acts against the law in a real way, where the law enforcement agency is the OJK in partnership with the judiciary. The OJK also needs to ensure the presence of laws and regulations that regulate the existence and mechanism of loan disbursement by borrowers in a rigid manner. Protection for the community must be the main guideline for every stakeholder in producing statutory regulatory products.

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