



ENHANCING CONSUMER PROTECTION IN INDONESIA'S FINTECH INDUSTRY: SAFEGUARDING THE RIGHTS OF FINTECH SERVICE USERS

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Abstract

Indonesia, a developed nation, is currently emphasizing its developmental efforts, particularly in the economic sphere. Given that financial resources are not evenly distributed among the Indonesian population across all levels and regions, financial institutions play a crucial role in bolstering the country's economic resilience. Banks, in particular, provide loans to individuals in need of quick funds, addressing society's economic requirements more equitably. With the advancement of technology, the financial sector has undergone a transformation towards digitalization. In this study, a normative method is employed to examine the vertical and horizontal aspects encompassing laws and regulations. The focus is on the legal protection extended to users of online loan services, aiming to identify the safeguards available for consumers utilizing such services. The government, in its commitment to safeguard the Indonesian population residing in the digital realm, particularly in the financial sector where information technology is utilized, has implemented several regulations. Notable among these are the Financial Services Authority Regulation Number 77/POJK.01/2016, the Information and Electronic Transactions (ITE) Law, the Personal Data Protection Law, and the Consumer Protection Law. Given the inherent significance of personal data in the digital world, it becomes crucial to protect it as it forms an integral part of an individual's legal identity. Any misuse of personal data by irresponsible parties infringes upon an individual's rights as a legal subject.

Kata kunci:

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Abstrak

Indonesia sebagai negara maju saat ini sedang menitikberatkan upaya pembangunannya, khususnya di bidang ekonomi. Mengingat sumber daya keuangan tidak merata di antara penduduk Indonesia di semua tingkatan dan wilayah, lembaga keuangan memainkan peran penting dalam memperkuat ketahanan ekonomi negara. Bank, khususnya, memberikan pinjaman kepada individu yang membutuhkan dana cepat, menangani kebutuhan ekonomi masyarakat secara lebih adil. Dengan kemajuan teknologi, sektor keuangan telah mengalami transformasi menuju digitalisasi. Dalam penelitian ini digunakan metode normatif untuk mengkaji aspek vertikal dan horizontal yang meliputi peraturan perundang-undangan. Fokusnya adalah pada perlindungan hukum yang diberikan kepada pengguna layanan pinjaman online, yang bertujuan untuk mengidentifikasi perlindungan yang tersedia bagi konsumen yang menggunakan layanan tersebut. Pemerintah dalam komitmennya untuk melindungi masyarakat Indonesia yang hidup di ranah digital, khususnya di sektor keuangan yang memanfaatkan teknologi informasi, telah menerapkan beberapa regulasi. Yang menonjol di antaranya adalah Peraturan Otoritas Jasa Keuangan Nomor 77/POJK.01/2016, UU Informasi dan Transaksi Elektronik (ITE), UU Perlindungan Data Pribadi, dan UU Perlindungan Konsumen. Mengingat signifikansi yang melekat pada data pribadi di dunia digital, menjadi penting untuk melindunginya karena merupakan bagian integral dari identitas hukum individu. Setiap penyalahgunaan data pribadi oleh pihak yang tidak bertanggung jawab melanggar hak individu sebagai subjek hukum.

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INTRODUCTION

Indonesia, as a developing nation, is currently focused on advancing its economy, particularly in the banking and financial sectors.¹ Banks play a pivotal role in supporting economic growth and striving to enhance the quality of life for the Indonesian people.² As financial institutions, banks gather public funds and redistribute them back to the community in various forms.³ Economic activities are deeply intertwined with people's lives and are influenced by factors such as the environment and individuals' mindsets, resulting in varying standards of living

¹ Disemadi, H. S., & Regent, R. (2021). Urgensi Suatu Regulasi yang Komprehensif Tentang Fintech Berbasis Pinjaman Online Sebagai Upaya Perlindungan Konsumen di Indonesia. *Jurnal Komunikasi Hukum (JKH)*, 7(2), 605-618.

² Fais, K. (2021). Perlindungan Hukum Bagi Pengguna Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi. *Al-Adl: Jurnal Hukum*, 13(1), 70-90.

³ *Ibid.*

among the population.⁴ Consequently, individuals employ diverse means to fulfill their economic needs, ranging from employment to sustain their families to seeking financial assistance from institutions like banks.⁵ However, due to Indonesia's archipelagic nature, with numerous islands scattered throughout the country, not all residents have equal access to and benefit from the services provided by financial institutions.⁶ The concentration of banking services in urban areas creates a social disparity between those residing in remote regions and their urban counterparts.⁷

This situation is a common occurrence in developing countries like Indonesia, where limited bank branches make it challenging to access quality services.⁸ However, technology has brought about positive changes in financial institutions, as they transform and adapt their services to the digital realm.⁹ This, in turn, presents a new challenge for Indonesian legislation, which must ensure legal certainty, fairness, and benefits in regulating these technology-driven services.¹⁰ The advancement of financial technology, commonly known as Fintech, has played a significant role in this regard. To address the developments in technology-based finance, the government, acting as the regulator, has issued regulations through the Financial Services Authority (OJK). One such regulation is the Financial Services Authority Regulation Number 77/POJK.01/2016, which specifically pertains to Information Technology-Based Lending Services.

The Peer-to-Peer (P2P) Financial Technology Lending service involves several parties, namely organizers, lenders, and loan recipients. According to data released by the Financial Services Authority, as of March 9, 2023, there are 102 registered companies that have obtained permits from the authority.¹¹ Currently, numerous companies offer technology-based money lending services, providing a convenient and efficient means for the public to access funds quickly. These services are easily accessible to individuals even in remote areas, setting them apart from traditional borrowing from banking institutions, which often come with more complex loan application processes compared to P2P technology-based services.

As users of technology-based lending and borrowing services, the public needs to exercise caution in selecting trusted service providers who have obtained permission from the Financial Services Authority. These authorized providers operate under supervision and benefit from legal protection in accordance with the

⁴ Alamanda, A. E. (2022). Empowerment Community Welfare After the Pandemic in Indonesia: The Role of Fintech?. *Journal of Judicial Review*, 24(2), 209-224.

⁵ Stevani, W., & Sudirman, L. (2021). Urgensi Perlindungan Data Pengguna Financial Technology terhadap Aksi Kejahatan Online di Indonesia. *Journal of Judicial Review*, 23(2), 197-216.

⁶ Rahmayani, N. (2018). Tinjauan Hukum Perlindungan Konsumen Terkait Pengawasan Perusahaan Berbasis Financial Technology di Indonesia. *Pagaruyuang Law Journal*, 2(1), 24-41.

⁷ Nugroho, H. (2020). Perlindungan Hukum bagi Para Pihak dalam Transaksi Pinjaman Online. *Jurnal Hukum Positum*, 5(1), 32-41.

⁸ Disemadi, H. S. (2021). Fenomena Predatory Lending: Suatu Kajian Penyelenggaraan Bisnis Fintech P2P Lending selama Pandemi COVID-19 di Indonesia. *Pandecta Research Law Journal*, 16(1), 55-67.

⁹ Tan, D. (2022). Demystifying the proliferation of online peer-to-peer lending in Indonesia: Decoding fintech as a regulatory challenge. *Asian Journal of Law and Society*, 1-25.

¹⁰ Sugiarto, I., & Disemadi, H. S. (2020). Consumers Spiritual Rights In Indonesia: A Legal Study Of Sharia Fintech Implementation In The Consumers Protection Perspective. *Jurnal IUS Kajian Hukum dan Keadilan*, 8(3), 437-452.

¹¹ Anonim. (2023). Penyelenggara Fintech Lending Berizin di OJK per 9 Maret 2023, <https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/Penyelenggara-Fintech-Lending-Berizin-di-OJK-per-9-Maret-2023.aspx>, 14 Mei 2023.

prevailing laws in Indonesia, particularly the Financial Services Authority Regulations Number 77/POJK.01/2016 regarding Information Technology-Based Borrowing Services. Before applying for a loan from a lending service provider, it is crucial for individuals to verify the status of the provider's business permit on the Financial Services Authority's website. This step aims to prevent the leakage and unauthorized dissemination of personal data submitted to the lending service provider by unscrupulous individuals. By ensuring that the service provider holds a permit from the Financial Services Authority, they are bound by the regulations outlined in Article 26 of the POJK Number 77/POJK.01/2016, which obliges organizers to maintain the confidentiality of user-provided data. Furthermore, the use of such personal data must be obtained with the owner's permission unless otherwise mandated by the applicable laws.¹²

As technology continues to advance, the proliferation of online loan providers has grown rapidly due to the increasing public demand for quick and convenient access to funds.¹³ Unfortunately, it is inevitable that some of these loan service providers operate illegally without obtaining the necessary permits from the Financial Services Authority.¹⁴ This poses a significant risk to users' personal data, which can be disseminated without being bound by the regulations outlined in POJK Number 77/POJK.01/2016. Individuals who are in urgent need of money may not realize the potential dangers involved. They often overlook the fact that personal data, including identity cards, photos, user locations, and personal phone numbers, which are used as collateral, may be mishandled or neglected by these unauthorized providers.

RESEARCH METHODS

In this study, the authors employ a normative legal research methodology. Normative legal research involves analyzing a research topic by examining relevant statutory regulations and positive laws in a vertical and horizontal manner.¹⁵ The approach utilized is the statutory approach, also known as the Statue Approach. According to Peter Mahmud Marzuki, the statutory regulation approach entails a comprehensive examination of all relevant laws and positive legal provisions that pertain to the issues or problems under study. This approach aims to ensure a thorough and systematic analysis, which involves selecting the appropriate laws and regulations that address the studied issues to avoid any legal gaps or inconsistencies. The systematic arrangement of these norms ensures a comprehensive understanding of the legal framework.¹⁶ In this study, the authors gathered data from three types of legal materials: primary, secondary, and tertiary sources. The data collection process involved conducting a literature review of

¹² Nurmantari, N. N. A. D., & Martana, N. A. (2019). Perlindungan Hukum Terhadap Data Pribadi Peminjam Dalam Layanan Aplikasi Pinjaman Online. *Kertha Wicara: Journal Ilmu Hukum*, 8(12), 1-14.

¹³ Disemadi, H. S. (2021). Legal Aspects Of 'Gali Lubang Tutup Lubang' in Fintech P2p Lending Business During Covid-19. *Tadulako Law Review*, 6(2), 237-256.

¹⁴ Ningsih, S. W., & Fitri, W. (2022). Aspek Penegakan Hukum Terhadap Kejahatan Fintech Syariah Pada Masa Pandemi di Indonesia: Perspektif Hukum Jinayah. *JUSTISI*, 8(1), 15-29.

¹⁵ Muhaimin. (2020), *Metode Penelitian Hukum*. Mataram: Mataram University Press.

¹⁶ *Ibid.*

primary legal materials and secondary legal materials.¹⁷ Once the data and materials were collected in a lawful manner, the next step was data processing.¹⁸ This involved technically managing the legal data and materials to establish an organized and systematic representation of the conditions and circumstances under study. The research utilized qualitative data analysis methods, which involved systematically organizing and correlating the collected data. This descriptive analysis facilitated the examination and interconnection of issues, facts, and legal materials, leading to the formulation of conclusions based on the findings of the research.

RESULTS AND DISCUSSION

Online loans have been experiencing significant growth in Indonesia, providing a convenient and fast cash solution for those in need.¹⁹ This development is a result of the positive utilization of rapidly evolving information technology in the financial sector.²⁰ While online lending services are not explicitly regulated under Indonesian laws and regulations, there are several relevant regulations governing this industry. These include:

1. Law Number 8 of 1999 concerning Consumer Protection (Law No. 8/1999)
2. Law Number 19 of 2016 Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (Law No. 19/2016)
3. Government Regulation Number 71 of 2019 Amendment to Government Regulation Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions (Law No. 71/2019)
4. Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Implementation of Financial Technology
5. Regulation of the Financial Services Authority Number 77/PJOK.01/2016 concerning Online Lending and Borrowing
6. Circular Letter of the Financial Services Authority Number 18/SEJOK.02/2017 concerning Implementation of Governance and Information Technology Risk Management in Technology-Based Money Lending Services
7. Financial Services Authority Regulation Number 13/PJOK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector
8. Bank Indonesia Regulation Number 18/17//PBI/2016 concerning the Second Amendment to PBI Number 11/12/PBI/2009 concerning Electronic Money
9. The Personal Data Protection Act.

These regulations provide a framework for the operation and governance of online lending platforms, consumer protection, data privacy, and risk management in the financial technology sector. While specific regulations directly targeting online lending services may be absent, these regulations are utilized to govern and ensure the fair and secure operation of the industry.

¹⁷ Disemadi, H. S. (2022). Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies. *Journal of Judicial Review*, 24(2), 289-304.

¹⁸ Weley, N. C. (2023). The Indonesian Law Ideology Dynamics in Supporting Legal Protection of Copyright in the Era of Society 5.0. *Barelang Journal of Legal Studies*, 1(1), 1-12.

¹⁹ Disemadi, H. S., Yusro, M. A., & Balqis, W. G. (2020). The Problems of Consumer Protection in Fintech Peer To Peer Lending Business Activities in Indonesia. *Sociological Jurisprudence Journal*, 3(2), 91-97.

²⁰ Muryanto, Y. T., Kharisma, D. B., & Ciptorukmi Nugraheni, A. S. (2022). Prospects and challenges of Islamic fintech in Indonesia: a legal viewpoint. *International Journal of Law and Management*, 64(2), 239-252.

As per Bank Indonesia Regulation No. 19/12/PBI/2017 concerning Implementation of Financial Technology (PBI Fintech), Article 1, paragraph (1) states that "Financial Technology is the use of technology in the financial system that produces products, services, technology, and/or new business models and may have an impact on monetary stability, financial system stability, and/or the efficiency, smoothness, security, and reliability of the payment system." Fintech refers to the application and utilization of technology to enhance banking and financial services. Typically, startups employ technology in the form of cutting-edge software, the internet, communication tools, and computerization to streamline the payment process and enable consumers to engage in various financial activities such as savings, investments, or making payments.²¹ The primary objectives of fintech are to save time, enhance efficiency, and provide additional convenience to users.

One form of fintech is peer-to-peer lending, which is an information technology-based money-lending service that connects borrowers and lenders directly, also known as online loans. Peer-to-peer lending enables individuals who require funds, even with small amounts, to obtain loans without the need to go through traditional banking channels. This approach is considered more efficient and aligned with people's needs, as it involves simplified requirements and eliminates the need for collateral. The peer-to-peer lending service is accessible to the public through mobile applications, allowing users to apply for loans quickly, at any time and from anywhere. This differs from the credit facilities offered by banks, which typically involve a formal application process, collateral provision, and a credit agreement between the bank and the customer.²²

The proliferation of online loans has experienced significant growth, with thousands of fintech companies offering these services emerging within a span of two years.²³ According to data from the Financial Services Authority (OJK), as of January 2021, there were 148 registered fintech platforms. This number reflected a decrease compared to the early months of 2020, which saw 164 platforms in operation. Additionally, it is worth noting that there are also a substantial number of illegal fintech platforms operating in the market, amounting to thousands in number.²⁴

Online loans offer numerous advantages and features that benefit consumers, setting them apart from traditional banking services.²⁵ Nowadays, individuals seeking a loan can simply download a mobile application or visit the website of a loan service provider. They can then fill out the necessary information, upload the required documents, and within a short period, the loan amount will be deposited directly into their account. This convenience provided by online loans and fintech platforms, however, also comes with certain risks. One of these risks is the potential for the easy dissemination of borrowers' personal data due to the online

²¹ Dewi, D. A. T., & Darmawan, N. K. S. (2021). Perlindungan Hukum Bagi Pengguna Pinjaman Online Terkait Bunga Pinjaman Dan Hak-Hak Pribadi Pengguna. *Acta Comitas*, 6(02), 259.

²² *Ibid.*

²³ Muryanto, Y. T., Kharisma, D. B., & Ciptorukmi Nugraheni, A. S. (2022). Prospects and challenges of Islamic fintech in Indonesia: a legal viewpoint. *International Journal of Law and Management*, 64(2), 239-252.

²⁴ Dewi, D. A. T., & Darmawan, N. K. S. (2021). *Op.Cit.*

²⁵ Disemadi, H. S. (2022). Titik Lemah Industri Keuangan Fintech di Indonesia: Kajian Perbandingan Hukum. *Jurnal Pembangunan Hukum Indonesia*, 4(3), 471-493.

nature of the loan verification process.²⁶ During the data verification stage, the online loan provider may request access to various data on the borrower's smartphone. While this access is typically required for assessing prospective borrowers and ensuring the accuracy of the application, there have been cases where this access has been misused for other purposes, such as generating unauthorized bills.²⁷ It is essential for consumers to be cautious and mindful of the privacy risks associated with providing personal data during the online loan application process.²⁸

The regulations governing Fintech-based online loans were implemented by the government to ensure the security, fairness, and legal certainty for the Indonesian people, safeguarding their rights as legal subjects from any infringements by irresponsible parties. As part of the online loan application process, users are required to provide personal data, such as ID cards, personal telephone numbers, emails, access to user locations, and access to personal contacts on their mobile devices. Traditionally, when individuals borrowed money from financial institutions like banks, they would sign a contractual agreement to establish legal certainty between creditors and debtors.²⁹ However, with the advent of online loans, this process has transformed into electronic form. Electronic contracts are governed by Article 1, number 17 of the Information and Electronic Transactions Law (ITE), which defines electronic contracts as agreements between parties made through electronic systems. The legal validity of electronic contracts is outlined in Article 18, paragraph (1) of the ITE Law, stating that electronic transactions contained within electronic contracts are binding on the parties involved.

The public, as legal subjects and consumers of online loan services, are provided with legal protection through various regulations implemented by the government, including the Information and Electronic Transactions (ITE) Law, Financial Services Authority Regulation (POJK), Consumer Protection Law (UUPK), and Personal Data Protection Law. The Consumer Protection Law encompasses several consumer rights, which include:

1. The right to security and convenience, ensuring that consumers are provided with safe and convenient goods or services.
2. The right to receive goods or services in accordance with the agreed-upon conditions, exchange rate, and guarantees.
3. The right to obtain accurate and transparent information about the goods and services offered by business entities.
4. The right to express opinions and have complaints addressed regarding the purchased goods or services.
5. The right to receive protection, advocacy, and appropriate dispute resolution mechanisms.

²⁶ Sudirman, L., & Disemadi, H. S. (2022). Legal Protection for Borrowers and Business Dispute Resolution in Fintech Lending Services. *Jurnal Jurisprudence*, 11(2), 187-204.

²⁷ *Ibid.*

²⁸ Disemadi, H. S., Silviani, N. Z., Jaya, D., Haiti, R., Gea, L. K. B., Tobing, J. J., & Kasturi, M. I. (2022). Literasi Masyarakat Pesisir terhadap Perlindungan Data Pribadi dalam Transaksi Financial Technology. *Jurnal ABDIMASA Pengabdian Masyarakat*, 5(2), 68-76.

²⁹ Putri, P. M. D. (2022). Perlindungan Bingkai Fintech Di Indonesia Ditinjau Dari Perspektif Hukum Bisnis. *Jurnal Penegakan Hukum Indonesia*, 3(1), 29-39.

6. The right to receive guidance as consumers.
7. The right to be treated equally, honestly, and without discrimination.
8. The right to receive compensation or reimbursement for goods or services that do not meet the promised and agreed-upon standards.
9. Other rights stipulated in relevant laws and regulations.³⁰

These regulations aim to ensure that consumers are safeguarded from unfair practices and violations of their rights, providing them with avenues for complaint resolution and compensation when necessary.

According to Law no. 27 of 2022 on the Protection of Personal Data, personal data refers to information about individuals that can be identified either electronically or non-electronically, directly or indirectly.³¹ In the realm of Fintech, particularly in lending and borrowing services, there are potential risks that can harm users, such as the unauthorized disclosure or misuse of personal data by unscrupulous individuals. The Personal Data Protection Act, specifically in Article 65 paragraphs 1-3, establishes that collecting or using someone's personal data without their consent can lead to criminal consequences outlined in the subsequent Article 67 paragraphs 1-3, including a maximum imprisonment of 5 years and a maximum fine of Rp. 5,000,000,000.00 (five billion Rupiah). Article 26 of the Personal Data Protection Act covers matters pertaining to online loan service providers, outlining the following provisions:³²

1. Safeguarding the confidentiality, integrity, and availability of personal data, transaction data, and financial data from the moment of acquisition until their destruction.
2. Ensuring the availability of authentication, verification, and validation processes that support non-repudiation when accessing, processing, and executing personal data, transaction data, and financial data.
3. Obtaining, using, utilizing, and disclosing personal data, transaction data, and financial data based on the owner's approval, except where otherwise stipulated by laws and regulations.
4. Providing alternative communication channels, such as electronic mail, call centers, or other means, to ensure uninterrupted customer service beyond the Information Technology-Based Money Lending Service Electronic System.
5. Notifying the owner of personal data, transaction data, and financial data in writing if there is a breach of confidentiality concerning the data they manage.

Furthermore, under Article 29 of CHAPTER VII, which pertains to Education and Protection of Users of Information Technology-Based Borrowing and Lending Services, consumer protection is addressed. Service providers are mandated to adhere to the fundamental principles of user protection, which include:³³ Transparency, Fair treatment, Reliability, Data confidentiality and security, and Prompt and affordable resolution of user disputes.

In cases where these principles are violated by the online loan service provider, resulting in losses for the user due to unlawful acts, the provider is

³⁰ Disemadi, H. S., & Regent, R. (2021). *Op.Cit.*

³¹ Undang-Undang No. 27 Tahun 2022 tentang Perlindungan Data Pribadi

³² Peraturan Otoritas Jasa Keuangan Nomor 77/POJK.01/2016 tentang Praktek Pinjam Meminjam Uang Berbasis Teknologi Informasi.

³³ *Ibid.*

obligated to provide compensation as stipulated in Article 1365.³⁴ The victim has the right to seek compensation, which may take the form of monetary reimbursement for the incurred losses or restoration to the original condition (*natura*) prior to the incident. However, if someone wants to demand compensation for an unlawful act committed by another person, then he must pay attention to the following elements:³⁵ The act must be an unlawful act; Error (*schuld*); Loss (*schade*); and Causal relationship (*oorzakelijk verband*).

In the event that an online loan service provider engages in unlawful conduct as defined by the applicable laws, and such actions result in losses for the user, the affected user has the right to file a claim for compensation.³⁶ This claim aims to restore their rights as legal subjects that have been infringed upon due to the provider's wrongdoing. The user is entitled to seek redress for the damages caused, taking into account the causes and consequences of the loss incurred. By making a claim for compensation, the user seeks to assert their rights and seek appropriate remedies for the harm they have suffered.

CONCLUSION

The government has taken steps to safeguard the Indonesian people, particularly in the financial sector, as they increasingly engage in online-based money lending services. To ensure adequate protection, several regulations have been implemented, including Financial Services Authority Regulation Number 77/POJK.01/2016, the Information and Electronic Transactions (ITE) Law, the Personal Data Protection Law, and the Consumer Protection Law. These regulations address the importance of protecting personal data in the digital realm, recognizing it as an integral part of an individual's identity as a legal subject. Misuse of personal data by irresponsible parties can infringe upon an individual's rights and legal standing. Therefore, it is crucial to establish safeguards and regulations to protect personal data and uphold the rights of individuals in the digital era.

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³⁴ Putra, M. R. (2021). Tanggung Jawab Direksi Perseroan Terbatas Atas Perbuatan Melawan Hukum Di Indonesia. *Lex Renaissance*, 6(1), 107-119.

³⁵ *Ibid.*

³⁶ Novinna, V. (2020). Perlindungan Konsumen dari Penyebarluasan Data Pribadi oleh Pihak Ketiga: Kasus Fintech "Peer to Peer Lending". *Jurnal Magister Hukum Udayana*, 9(1), 92-110.

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