

THE IMPLEMENTATION OF JUSTICE VALUE FOR CONSUMER PROTECTION

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ARTICLE INFO

Keywords:

Consumer; Justice; Protection

ABSTRACT

The role of the internet in information technology has been used to develop the financial industry through modification and efficiency of financial services, known as Financial Technology or Fintech. Fintech has many types, including payment startups, lending, personal finance, retail investment, crowdfunding, remittances, financial research and others. Fintech, a type of technology-based lending and borrowing money or peer to peer lending (P2P-lending), is a type of Fintech that is growing rapidly in Indonesia, problems that must be resolved regarding the Implementation of Justice Value For Consumer Protection (Study of The Financial Services Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector). This research used normative juridical research method, which is focused on studying the implementation of the rules or norms in positive law, the conclusion of the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection of the Financial Services Sector in terms of its objective to provide protection to consumers is still not optimal, because the Financial Services Authority does not regulate the time frame for responding to complaints that have been submitted by the Consumers in the regulation

A. INTRODUCTION

The very rapid development of information technology has brought changes to the pattern of life of Indonesian society. Changes in the pattern of life occur in all fields, be it social, cultural, economic, and other fields. The development of information technology, among others, is marked by the development of internet technology.¹

The role of the internet in information technology has been used to develop the financial industry through modification and efficiency of financial services, known as Financial Technology or Fintech. Fintech has many types, including payment startups, lending, personal finance, retail investment, crowdfunding, remittances, financial research and others. Fintech is a technology-based type of lending and borrowing money or Peer to peer

1 Abdul Halim Barkatullah & Teguh Prasetyo, *Bisnis E-commerce: Studi Sistem Keamanan & hukum di Indonesia*, Pustaka Pelajar, Yogyakarta, 2005, page.1

lending (P2P-lending) is a type of fintech that is growing rapidly in Indonesia.

P2P-lending or technology-based lending and borrowing money services is the provision of financial services to bring lenders together with consumers in the context of making loan and borrowing agreements in rupiah currency directly through an electronic system using the internet network.² P2P lending services provide convenience and benefits to the community. Borrowing money no longer requires a physical meeting between consumers and lenders but is met through an application or website, the advantages of lending and borrowing money through other P2P-lending services are a very easy requirement and a fast process compared to borrowing money through a bank institution. However, the ease of transaction offered by P2P-lending services actually weakens the position of consumers. Lenders and consumers in P2P-lending services do not meet in person, they are only brought together by a website or online application provided by a P2P-lending provider. This has the opportunity for fraud that can harm the consumer. Peer-to-peer (P2P) lending or online lending companies have been operating in Indonesia since 2013. Initially the government thought that these P2P lending/online loans companies were illegal because they were not licensed. However, over time the government through the Financial Services.

Authority then blessed them by issuing the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. The online loan case received quite widespread coverage in June 2018 due to improper loan collection methods, but it turns out that the problem doesn't stop there; there are still many borrowers who come to LBH Jakarta from day to day and complain about various things. Since last May LBH Jakarta has received complaints from 283 victims of online loans with various forms of legal violations. The problems which are the initial findings have had a significant impact, for example billing to telephone numbers on cellphones, borrowers being get fired by the company where they work, divorced by their husbands/wives (for charging to in-laws), trauma (due to threats, profanity, and sexual harassment). Due to the very high interest rates, for example, there are many borrowers who are unable to pay are frustrated, then they try to sell their organs (kidneys) until they attempt to suicide.³ In practice there are problems that must be resolved regarding the Implementation of Justice Values For Consumer Protection (Study of Financial Services Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector)

Based on the background of the description above, the authors are interested in discussing legal issues with the title "The Implementation of Justice Values For Consumer Protection" (Study of Financial Services

² See Article 1 point 3 of the Financial Services Authority Regulation No. 77/POJK.01/2016 1998 concerning Technology-Based Lending and Borrowing Services.

³ LBH Jakarta, November, 2018

Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector.

B. RESEARCH METHODS

This article uses normative juridical, which is focused on examining the implementation of the rules or norms in positive law. Normative legal research examines legal materials that contain normative rules. The legal materials consist of primary legal materials, namely statutory regulations, jurisprudence, ratified treaties or conventions, and civil treaties of the parties⁴; secondary legal materials, namely materials that provide an explanation of primary legal materials; and tertiary legal materials, namely materials that provide guidance and explanation for primary and secondary legal materials. This study uses an analytical approach and a statute approach. The analytical approach is to analyze the meaning of law, legal principles, rule of law, legal systems and various juridical concepts. The statutory approach is to examine all laws and regulations that are related to the problem (legal issue) being faced.⁵

C. RESULTS AND DISCUSSION

1. Study of Financial Services Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector

The Financial Services Authority or better known as OJK based on Article 1 Number 1 of the Financial Services Authority Law is an institution that is independent and free from interference from other parties, which has the functions, duties and authority of regulating, supervising, examining and investigating as referred to in the Law of the Financial Services Authority. Encouraging the establishment of a financial services sector supervisory institution, one of which is the Financial Services Authority, namely for the financial services sector that works efficiently in accordance with current demands and needs.⁶ Therefore, based on Article 4 of the Financial Services Authority Law, the objective of establishing the Financial Services Authority is emphasized, namely so that all financial service activities in the financial services sector are carried out regularly, fairly, transparently and accountably, and are able to realize a sustainable growth and stable of financial system, and able to protect the interests of consumers and society.

Based on Article 4 of the Financial Services Authority Law that: "The establishment of the Financial Services Authority has the objective that all activities in the financial services sector can be:

- a. Organized regularly, fairly, transparently and accountably

4 Chuasanga A., Ong Argo Victoria, Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol.2 No.1, 2019

5 Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, 2012, page.295

6 Theresia Anita Christiani, *Bank Indonesia & Otoritas Jasa Keuangan Dalam Perspektif Hukum*, Cahaya Atma Pustaka, Yogyakarta, 2016, page.81

- b. Able to realize a financial system that grows in a sustainable and stable manner
- c. Able to protect the interests of consumers and society.”

The purpose of the establishment of the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector is expected that the Financial Services Authority can increase supervision of the financial services sector and optimize consumer protection in the financial services sector.⁷

Consumer Protection that can be seen from Article 1 Number 3 of the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection of the Financial Services Sector and Article 1 Number 1 Act No. 8 of 1999 concerning Consumer Protection is an effort to guarantee legal certainty for consumers who have carried out their obligations as a result of violation of Consumer rights by Financial Service Business Actors (PUJK). The purpose of consumer protection in the financial services sector is based on the General Explanation of Financial Services Authority Regulation Number 1/POJK.07/2013, namely to create a reliable Consumer protection system, increase consumer empowerment, and raise awareness of Financial Service Businesses regarding the importance of consumer protection so as to increase public trust in the financial services sector. Based on this description, the importance of Consumer Protection for the Financial Services Sector, namely to increase consumer confidence in Financial Service Business Actors (PUJK) in using products/services in the financial services sector.⁸

Consumer dispute resolution in the financial services sector can be resolved through several efforts that can be taken, including:

- a. Complaint resolution made by Financial Services Institutions (LJK) is called the Internal Dispute Resolution (IDR)
- b. Dispute resolution through judicial institutions or institutions outside the court (External Dispute Resolution), if the Internal Dispute Resolution is not reached.
- c. The Financial Services Authority will facilitate the settlement of Consumer disputes that cannot be resolved through the Internal Dispute Resolution, if the Alternative Dispute Resolution Institution (LAPS) has not been established or has been established but is unable to carry out its duties to resolve disputes in the financial services sector.

According to him, the rules regarding the period for responding to complaints from consumers themselves will proceed by itself. This is because there are no rules that apply to the public, especially in the

7 Jonker Sihombing, Analisis Hukum Otoritas Jasa Keuangan & Pengawasan Pasa Modal, *Jurnal Hukum Bisnis*, Vo.31 No.1, 2012, page.16

8 *Ibid.*

Financial Services Authority Regulation Number 1/POJK.07/2013 regarding Consumer Protection in the Financial Services Sector regarding the period of time from the Financial Services Authority to submit its response to complaints that have been received from consumers. He said that in fact there are already rules that regulate it only just took effect in early January 2017, namely in the internal regulations of the Financial Services Authority based on the Regulation of the Board of Commissioners (PDK). The enactment of this rule in early January 2017 is not a rule that applies to the public, because the regulation is an internal rule.

2. The Implementation of the Justice Value For Consumer Protection by Conducting a Study of Financial Services Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector)

Since January 2018, the Indonesian Consumers Foundation (YLKI) has received more than 50 online credit complaints. Most of the complaints submitted were about how to collect debt to the unclear system of calculating interest and penalties. A form of billing that is often done is by threatening to charge people whose cell phone numbers are on the consumer's contact list. LBH Jakarta claims to have received complaints from 283 online loan victims, as of last May 2018. Even though it has been regulated by the government through the Financial Services Authority (OJP), in fact there are still many parties who come to LBH Jakarta and complain about various things related to this online loan case. For example, such as the case of online loans that had stirred the public because of inappropriate collection debt methods, from complaints that came to LBH Jakarta, there were a number of preliminary findings related to online loan cases that often occur. Reported by *TribunWow.com* from the official website of LBH Jakarta, *bantuanhukum.or.id*, here are the initial findings of LBH Jakarta regarding the case.

- a. Billing with various ways of humiliating, cursing, threatening, slandering, even in the form of sexual harassment;
- b. Billing is made to all contact numbers on the consumer/borrower's cellphone (to boss work, parents-in-law, elementary school friends, etc.);
- c. Very high and unlimited loan interest;
- d. Retrieval of personal data (contacts, SMS, calls, memory cards, etc.) on consumer/borrower cell phones
- e. Billing is not yet the time timeless;
- f. Online loan provider complaint numbers that are not always available;
- g. Unclear office address of the online loan provider company;
- h. Online loan applications that change names without notification to consumers/borrowers for days but loan interest during the name change process continues

With the case of Financial Technology in the form of online loans which is very detrimental to consumers and drags consumers in a low position, a policy issued by the OJK (Financial Services Authority) is issued, namely the Financial Services Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection The Financial Services Sector is expected that with these regulations, the interests of consumers, especially in the financial services sector, will be protected, regulations or policies made by the government or institutions in it must be included in a concept, which we know as the concept of utilitarianism, where the concept of utilitarianism departs from two factors which affects human behavior, namely pain/suffering and satisfaction/happiness. These factors determine individual actions, whether the action is correct or not, and the cause and effect of the action itself. It is also said that every individual always wants happiness and avoids suffering, thus a policy of social justice is a policy that is able to produce the greatest pleasure or total utility for society. Mill emphasized that the main goal of a policy is to maximize utility (happiness) for the majority of society, because each individual has a different goal of happiness, happiness for many (society) becomes more important than happiness for those who are less (individual).

D. CONCLUSION

Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector in terms of its objective to provide protection to Consumers is still not optimal, because it does not regulate the period of time for responding by the Financial Services Authority to complaints that have been submitted by consumers in the regulations. Regulations regarding this period of time can be found in the Internal Regulation of the Financial Services Authority, namely based on the Regulation of the Board of Commissioners (PDK). Regulation of the Board of Commissioners (PDK) is a rule that does not apply publicly or is not published to the public, so that the impact arising from not regulating the time period is not regulated in the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, namely not achieving the Consumer rights to obtain comfort and certainty of information regarding follow-up actions to complaints that have been submitted to the Financial Services Authority for consumer dispute resolution. The failure to achieve this right causes a decrease in the level of consumer trust in the Financial Services Authority as an institution that has the objective of protecting the interests of consumers in the financial services sector, from a study of Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector has not maximally included the justice value, when viewed from the purpose of these regulations it is already for the convenience and happiness of consumers at large, not only consumers individually, broadly here it can mean that consumers borrow money with online loans, but the regulation has not regulated the time period providing

response by the Financial Services Authority on complaints that have been submitted by consumers in this regulation, it can be concluded that the justice value has not been maximally applied because it has not been able to produce justice for consumers.

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