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Development of Preventive Legal Protection in the Use of Financial Technology (FINTECH) Services In Indonesia

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ABSTRACT : Unlimited technological developments in today's digital era are increasingly complete with the presence of Financial Technology (fintech) services. At this time, the growing development of fintech transactions in Indonesia is one of the crucial tasks of the Government to respond to the form of legal protection, both for business operators and for the public who act as consumers. This study analyzes the development of preventive forms of legal protection in fintech services. This research is normative legal research using a statutory approach and a conceptual approach. The results show that the provision of Fintech services in Indonesia has been accommodated in the Prevailing Laws since 2016, namely through Bank Indonesia Regulations and Financial Services Authority Regulations. Bank Indonesia Regulations and Financial Services Authority Regulations governing Fintech services are a means of legal protection for businesses and consumers both preventively and repressively. Preventive legal protection in Fintech services in Indonesia has experienced developments with the obligation for financial services businesses to establish consumer complaint service institutions as part of the implementation of internal supervision.

KEYWORDS: *Fintech, Consumer, Legal Protection*

I. INTRODUCTION

Technological advances that make it easier for people to use internet services greatly influence all aspects of human life. The development of this technology also affects business activities. The development of technology in the business world cannot be avoided in line with the increased benefit aspects obtained by society through economic digitization.

Unlimited technological developments in today's digital era are increasingly complete with the presence of Financial Technology (fintech) services. The term fintech is a financial service using a technology base that will make it easier for us to complete transactions anywhere and anytime. This new economic model, fintech, was first started in 2004 by Zopa, a financial institution in the UK that runs money lending services. Then it was followed by Bitcoin, which Satoshi Nakamoto initiated in 2008 (Muhammad et al., 2018).

Article 1 number 1 Bank Indonesia Regulation Number, 19/12/PBI/2017 concerning the Implementation of Financial Technology (PBI No. 19/12/PBI/2017), defines fintech as: "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 efficiency, smoothness, security and reliability of the payment system."

The Fintech business is a financial innovation with a touch of modern technology, which takes advantage of developments in information technology to create innovations in the financial services sector, which are faster and easier to use. Fintech is a financial product and service through a combination of technology platforms and innovative business models (Buckley & Webster, 2018). Lending and borrowing money based on information technology means startups that provide online loan platforms or provide financial services to bring together lenders and loan recipients to make a loan and borrowing agreement in rupiah currency directly through an electronic system using the internet network (Basuki & Hussein, 2018).

Along with the presence of Fintech, the financial industry is required to continue to adapt and make adjustments in its business processes in line with rapidly changing industry dynamics. If these dynamics and transformations are not well managed, it is cause for concern that they will disrupt the financial system and economy. Economic stability remains essential and should remain a significant concern, including when Fintech and digital financial services will become increasingly important in the economy. Therefore, strategies and breakthroughs are necessary so that these dynamics do not cause unexpected impacts (Pambudi, 2019).

In Indonesia, Fintech is experiencing the fastest growth, which is peer-to-peer lending (P2PL). P2PL startups in Indonesia are getting higher because of the high need for funds from unbankable people. An unbankable society means people who do not have a bank account, and in Indonesia itself, it is still quite high.

The presence of fintech-based companies on the one hand brings convenience for consumers to more freely choose products that suit their wishes, but on the other hand has a negative impact, where consumers can become objects of business activities to get the maximum profit from business actors. This phenomenon causes the position of consumers to be unbalanced with business actors and to be in a weak position (Samsul, 2004).

It cannot be denied that Fintech is present in Indonesia without proper preparation by policymakers, so that it results in the emergence of various kinds of risks to its use. One of the risks that have received a lot of attention is from a customer/customer data security perspective. The chances and safety of Fintech are hot topics because the regulations are not well socialized. So that several problems arose along the way. The growing development of fintech transactions in Indonesia is one of the essential tasks of the Government to respond to the form of legal protection, both for business operators and for the public who act as consumers. Based on this, the authors are interested in writing about development of preventive legal protection in the use of financial technology (fintech) services in Indonesia.

II. METHOD RESEARCH

This type of research is descriptive normative legal research. The research approach used is the vertical and horizontal synchronization level approach. The type of data used in this research is secondary data, including primary and secondary legal materials. The data collection technique used was document study or library material.

III. RESULT AND DISCUSSION

One of the characteristics and objectives of the law is to provide protection (protection) to the community. Law is the latest means of controlling various changes in society. The differences that exist are also capable of realizing the nation's development and state positively. Law can provide solutions to the possible use and utilization of science and technology for the most significant benefit and continuity of human life (Benuf et al., 2019).

Along with the development of the fintech industry, which is directly proportional to the public's interest as consumers to use it, a means of legal protection is also needed for both service providers as producers and the user community as consumers. Legal protection is the provision of justice, certainty, and legal benefits for all members of society manifested in a National policy that is then displayed in a Law and Regulations that can accommodate the interests of the entire community (Benuf, 2020).

According to Phillipus M. Hadjon's opinion, legal protection for the people is a government action that is preventive and repressive. Preventive legal protection aims to prevent disputes, which directs government action to be prudent in making decisions based on discretion. Repressive security seeks to resolve disputes, including their handling in the judiciary (Hatta, 2020).

The rapid growth of the fintech industry in Indonesian society, which is not accompanied by regulatory readiness to accommodate it, has created various problems. This condition justifies the classic adage "Het Rechthinkanter de feiten an" which means that the law will always be left behind with the events to be regulated, as well as in lending and borrowing transactions, where there has been a fintech service that even the law has not had time to regulate.

Fintech comes from term Fintech comes from the term financial technology or financial technology. The National Digital Research Center (NDRC) defines Fintech as "innovation financial services" or "innovation in fintech financial services," which is an innovation in the financial sector that gets a touch of modern technology. Financial transactions through Fintech include payments, investments, borrowing money, transfers, financial plans, and comparison of financial products (Ernama, 2017).

Paul Schulte & Gavin Liu stated: "*Financial technology (FinTech) is morphing into a larger field of the Internet of Thing (IO) and will be transformed exponentially in the coming decade by quantum computing. New asset classes and technologies are being created that will alter current business practices* (Paul & Liu, 2017)."

According to Roy S. Freedman in his book Introduction to Financial Technology, the limitations of Financial Technology (Fintech) in general are as follows: "*Financial technology is concerned with building systems that model, value, and process financial products such as bonds, stocks, contracts, and money. At a minimum, financial products are represented by the dimensions of price, time and credit. Like commercial*

systems, financial systems incorporate trading systems and trading technology to enable the buying and selling products at different times and in different market spaces. This includes the simultaneous buying and selling of the same product in different markets, at the same time(S. Freedman, 2006).”

The Financial Services Authority first issued fintech business arrangements in Indonesia through the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services (POJK No. 77 / POJK.01 / 2016). POJK No. 77 / POJK.01 / 2016, among others, contains provisions to minimize credit risk, protect User interests such as misuse of User funds and data, and protect national interests such as anti-money laundering and prevention of terrorism financing, as well as disturbances in financial system stability.

At POJK No. 77 / POJK.01 / 2016 used the term "Information Technology-Based Borrowing and Lending Services" as a designation for the term Fintech. Article 1 number 3 POJK No. 77 / POJK.01 / 2016 states that what is meant by Information Technology-Based Lending and Borrowing Services is the provision of financial services which aims to bring together lenders and loan recipients in the context of entering into a loan and borrowing agreement in rupiah currency directly through an electronic system using a network.

Article 7 POJK No. 77 / POJK.01 / 2016 requires Fintech service providers to register with OJK. Fintech service providers that have been registered with the OJK in carrying out their business activities have several restrictions, one of which is not allowed to carry out business activities outside those stipulated in this OJK regulation, are not authorized to act either as a lender or as a recipient of the loan. They are prohibited from giving information, not by the provisions that have been applied, and there are many other restrictions. The purpose of these prohibitions is to create legal protection for Fintech service users. Organizers found to have violated the stipulated prohibitions will be subject to administrative sanctions in the form of a written warning, fine, restrictions on the activities of a business, and revocation of a business license.

In 2017 Bank Indonesia issued a regulation regulating Fintech through PBI No. 19/12 / PBI / 2017. The promulgation of PBI No. 19/12 / PBI / 2017 is a milestone for the development of Fintech in Indonesia. This is undoubtedly good for the community because, with the regulation of Fintech in the PBI, stakeholders, especially Fintech organizers and the public, understand what transactions are allowed and the urgency of choosing digital transactions that are allowed in the territory of the Republic of Indonesia. This also means that the government also plays a role in the digital world of its citizens(Tampi, 2018).

In PBI No. 19/12 / PBI / 2017 is regulated regarding Bank Indonesia's policy in maintaining the order of payment traffic related to Fintech, including the following:

1. In terms of providing a market for business actors, Bank Indonesia ensures the protection of consumers, particularly regarding guarantees of confidentiality of consumer data and information through cybersecurity networks.
2. In terms of savings, loans, and equity participation, Bank Indonesia requires every business actor to comply with macroprudential regulations, deepening financial markets, payment systems to support operations, and cybersecurity to safeguard consumer data and information.
3. In terms of investment and risk management, Bank Indonesia also requires every business actor to comply with macroprudential regulations, deepening financial markets, payment systems to support operations, and cybersecurity to safeguard consumer data and information.
4. In terms of payment, settlement, and clearing, Bank Indonesia ensures the protection of consumers, particularly regarding guarantees of confidentiality of consumer data and information through cybersecurity networks.

PBI No. 19/12 / PBI / 2017 also regulates that Bank Indonesia guarantees security and order of payment traffic by becoming:

1. Facilitator
Bank Indonesia became the facilitator in providing land for paid traffic.
2. Intelligent business analyst
By collaborating with international authorities and agents, Bank Indonesia becomes an analyst for FinTech-related business actors to provide views and directions on creating a safe and orderly payment system.
3. Assessment.
Bank Indonesia conducts monitoring and assessment of every business activity involving FinTech and its payment system using technology.
4. Coordination and Communication.
Bank Indonesia maintains relationships with relevant authorities to continue to support the existence of the FinTech payment system in Indonesia. Bank Indonesia is also committed to supporting business actors in Indonesia by providing periodic briefings regarding FinTech.

Article 5 paragraph (1) PBI No. 19/12 / PBI / 2017 regulates the obligation for Fintech service providers to register with Bank Indonesia. This provision is to prevent the increasing number of illegal Fintech organizers in Indonesia. This registration makes it easier for Bank Indonesia to supervise Fintech operators. For violations of this registration obligation, Fintech service providers may be subject to a written warning sanction; termination of business activities; specific actions related to the operation of payment system activities; and/or recommendation to the competent authority to revoke the business license granted by the competent authority.

In 2018 the OJK issued Financial Services Authority Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector (POJK No.13/POJK.02/2018), intending to organize Digital Financial Innovation (IKD) responsibly. IKD regulation aims to support responsible IKD development, support effective IKD monitoring, and encourage synergy in the digital financial services ecosystem.

The scope of the Fintech business in this POJK is divided into eight types as stipulated in Article 3 POJK No. 13 / POJK.02 / 2018, namely:

- 1) Transaction settlement, in practice, transaction settlement is also known as settlement, such as that related to investment settlement.
- 2) Capital raising, such as equity crowdfunding, virtual exchange, and smart contracts, as well as alternative due diligence.
- 3) Investment management, including advanced algorithms, cloud computing, sharing capabilities, open-source information technology, automated advice and management, social trading, and retail algorithmic trading. Collecting and channeling funds, such as lending and borrowing based on technology applications (P2Plending), alternative adjudication, virtual technologies, mobile 3.0, and third-party application programming interfaces.
- 4) Insurance, including sharing economy, autonomous vehicles, digital distribution and security, and hedge funds.
- 5) Market support, including artificial intelligence/machine learning, machine-readable news, social sentiment, big data, market information platform, and automated data collection and analysis.
- 6) Other digital financial supporters, including social/eco crowdfunding, Islamic digital financing, e-waqf, e-zakat, robo advise, and credit scoring.
- 7) Other financial service activities, including trading invoices, vouchers, tokens, and blockchain application-based products.

Article 31 POJK No. 13 / POJK.02 / 2018 stipulates that administrators are required to apply the basic principles of consumer protection, namely: transparency, fair treatment, reliability, confidentiality, and security of consumer data/information, handling complaints, and resolving consumer disputes in a simple, fast and affordable cost. In addition, operators are also required to provide technology-based consumer service centers which at least consist of providing customer service centers that can be implemented independently or through other parties.

In 2018 OJK also issued Financial Services Authority Regulation Number 18 / POJK.07 / 2018 concerning Consumer Complaint Services in the Financial Services Sector (POJK No. 18 / POJK.07 / 2018). The purpose of the Complaint Service is to resolve Complaints in providing Consumer protection and a forum for accommodating consumer complaints, including the potential for material loss to the products and/or services of financial service entrepreneurs that consumers utilize.

Article 5 POJK No. 18 / POJK.07 / 2018 stipulates that Financial Services Business Actors are required to have written procedures regarding Complaint Services. The explanation section of POJK No. 18 / POJK.07 / 2018 also states that for Complaints that do not get a settlement solution in Financial Service Business Actors, in addition to being able to file a lawsuit through court channels, Consumers can also resolve disputes through Alternative Dispute Resolution Institutions which are listed in the List of Alternative Dispute Resolution Agencies—determined by the OJK.

IV. CONCLUSION

The implementation of Fintech services in Indonesia has been accommodated in the Prevailing Laws since 2016, namely through Bank Indonesia Regulations and Financial Services Authority Regulations. Bank Indonesia Regulations and Financial Services Authority Regulations governing Fintech services are a means of legal protection for businesses and consumers both preventively and repressively.

Preventive legal protection in Fintech services in Indonesia has experienced development. Preventive legal protection in fintech services begins with the obligation to register for financial service actors, the obligation to implement transparency in services, and the existence of an institution that carries out supervision. Along with the birth of new regulations in Fintech services, control was carried out by establishing a consumer complaint service agency.

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