

PKPU AS AN ALTERNATIVE SOLUTION TO SETTLEMENT OF INDIVIDUAL DEBTORS' DEBT IN FINTECH LENDING SERVICES

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Abstract

The resolution of individual debtor debts in Fintech Lending Services has been regulated under POJK 10/2022. In addition to dispute resolution through district courts or alternative dispute resolution mechanisms, the PKPU mechanism is available to address the debt issues of individual debtors in Fintech Lending services. This study examines the resolution of individual debtor debts through the PKPU mechanism as a more equitable, expedient, and effective alternative. The research employs normative legal methods, utilizing secondary data such as legislation and relevant legal literature. Data collection is conducted through documentation and literature studies. The findings indicate that the debts of individual debtors in Fintech Lending services can be resolved through the PKPU mechanism, as such debts fall within the scope of Law No. 37/2004. However, the application of this mechanism faces challenges, such as the requirement for applications to be filed by an advocate and the condition that there must be a minimum of two creditors, which complicates matters for individual debtors. Moreover, Law No. 37/2004 has not fully protected individual debtors, as debt forgiveness or cancellation still depends on creditors' approval.

Keywords: Bankruptcy; Debt; Fintech

INTRODUCTION

Information technology-based money lending services, known as Fintech Lending or P2P Lending, provide the convenience of online transactions that can be accessed anytime and anywhere. Unlike traditional financial services, P2P Lending presents a faster process and simpler requirements and is supported by advanced technology such as artificial intelligence. In society, this service is often referred to as an online loan or Pindar oran Online Loan (Pinjol).

As of October 2023, OJK reported that there are 101 Fintech Lending companies registered and under its supervision. In August 2023, the total loans disbursed reached IDR 20.53 trillion with 19.1 million active users. Most of the loans (74.29%) are focused on Java, and almost all borrowers (99.97%) are individuals, of which 92.93% are in the productive age range (19-54 years). This data illustrates the high level of use of Fintech Lending among the public, especially by individual/individual debtors (Financial Services Authority. 2023).

In 2022, Fintech Lending succeeded in driving an increase in financial inclusion to reach 85.10%. However, the level of financial literacy is still relatively low, only at 49.68%. Financial inclusion refers to easy access to financial services, while financial literacy is related to knowledge and ability to manage finances effectively. This inequality between inclusion and literacy creates various challenges in society.

There have been cases where a consumer borrowed from dozens of *Fintech Lending* within a week, hundreds of students faced problems due to alleged fraud, and reports of hundreds of illegal *Fintech Lending platforms*. The reasons why people use this service vary, ranging from paying off debts, fulfilling lifestyles, urgent needs, consumptive behavior, and economic pressure to buying gadgets. As of August 2023, the OJK recorded 13.6 million non-performing accounts, with 35.29% of complaints about settling debts and receivables. These complaints mainly focus on the actions of collection officers, who often terrorize debtors and their families, even triggering behavior that threatens life safety.

OJK has regulated the billing procedures for *Fintech Lending* services through Financial Services Authority Regulation Number: 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services ("POJK 10/2022"). In this regulation, the organizer must collect per the norms and provisions of the applicable law. If the debtor still fails to fulfill its obligations (default), the organizer must resolve the dispute through a civil lawsuit or alternative mechanism in accordance with the funding agreement. In addition, the Debt Payment Obligation Suspension ("PKPU") institution can be a fair, fast, transparent, and effective alternative in resolving individual debtor debt problems in *Fintech Lending*. This mechanism provides legal certainty for creditors while protecting individual debtors from actions that exceed the limit.

Considering this background, this study examines individual debtors' debt settlement process in *Fintech Lending* services through PKPU. This research focuses on the settlement mechanism and obstacles faced in handling individual debtor debt in *Fintech Lending*. This research is expected to be able to analyze these two aspects in depth and provide benefits as a source of reference for various related parties, including Fintech Lending service providers, consumers, academics, researchers, and legal practitioners. Furthermore, this research is also expected to enrich teaching materials in Bankruptcy Law, Banking Law, and Financial Institutions courses.

RESEARCH METHOD

This research is included in the category of normative legal research (Kadarudin, 2021:173), which focuses on analyzing legal sources, such as laws and regulations, legal principles, and doctrines. This study aims to examine law as a norm that regulates human behavior and provides a basis for legal arguments in situations of emptiness, ambiguity, or conflict of norms (Irwansyah, 2020: 98-100). This normative legal research utilizes various data sources, including primary legal materials (laws and regulations, minutes, judges' decisions), secondary legal materials (legal textbooks, legal dictionaries, scientific journals, and analyses from legal experts), and tertiary legal materials (encyclopedias, indexes)(Kadarudin, 2020:201). In addition, relevant non-legal materials can also be used as supplements. Data were collected through documentation study methods or literature research (Peter Mahmud Marzuki: 2013: 29-31).

RESULTS AND DISCUSSION

Previous research has explored various aspects related to *Fintech Lending activities*, including: i) the need for strict regulations and consumer protection (BaiqFitriArianti et al., 2022); ii) the attractiveness of the ease of the loan process for consumers (Raka FauzanHatamia et al., 2019); iii) people's consumptive behavior that is not proportional to their level of knowledge; iv) weaknesses in

regulation and law enforcement (Jeremy Zefanya Yaka Arvante, 2022); and v) the urgency of supervision in the implementation of OJK regulations and innovations to support industrial development while protecting consumers (ArrelySyamsa Kartika & Dewa Gde Rudy, 2022).

Previous studies have focused more on *Fintech Lending* regulations to ensure consumer protection. Instead, this research will focus on analyzing the debt and receivables settlement mechanism in *Fintech Lending*, specifically through the PKPU mechanism. Before that, this study will explore theoretical aspects related to money lending agreements and information technology-based co-financing service arrangements.

Loan Agreement

Subekti describes an agreement as an event in which one or two parties promise each other to carry out something (Subekti, 1987: 6). Setiawan views an agreement as an agreement, which is a legal action involving one or more parties who bind themselves to the other party (Setiawan, 1994: 49). Article 1313 of the Civil Code also defines an agreement as an act in which one or more parties bind themselves to one or more other parties.

An agreement is considered valid if it meets 4 (four) conditions as stipulated in Article 1320 of the Civil Code, namely the existence of an agreement, the competence of the parties, a clear object, and a purpose that does not conflict with the law. The first two conditions are related to the parties to the agreement, while the last two conditions are related to the content and purpose of the agreement (Mariam Darus, 2015: 107-108). This qualified agreement has binding force for the parties as per the law (Article 1338 of the Civil Code).

A loan agreement is a mutually beneficial agreement in civil law, where one party hands over goods that can be used up with the provision that the other party is obliged to return the goods in the same quantity and type (referring to Article 1754 of the Civil Code). In this relationship, both parties have rights and obligations: the party providing the loan has the right to request the return of the goods, while the party receiving the loan has the obligation to return the goods and has the right to request the implementation of the loan.

Subekti (2001: 168-169) classifies lending agreements into two types, namely:

- a) *Bruiklening*: This type includes borrowing goods such as cars or bicycles, where the ownership rights of the goods remain with the lender. The borrower has an obligation to take good care of the goods and return them in the same condition as when they were borrowed;
- b) Lending goods that can be replaced (*verbruiklening*): An example is borrowing money. In this type, the right of ownership of the goods passes to the borrower, but the lender has the right to demand the return of the same quantity and quality goods. Interest payments often accompany this agreement.

Borrowing money has become an important part of people's lives to support economic activities and improve the quality of life. This activity can be done in writing or orally through banking (credit) or other financial institutions (financing). Bank credit is a facility for providing funds that must be returned within a certain period of time, accompanied by interest payments. In Islamic banking, it is known that financing uses a reward system in the form of *ujrah*, without rewards, or based on the principle of profit sharing. Meanwhile, financing institutions offer various types of financing, such as for investment, working capital, multipurpose needs, and others.

A loan agreement involves two parties: the creditor as the party providing the loan and the debtor as the loan recipient. This agreement aims to fulfill the agreed obligations, namely the provision of loans by creditors and repayment by debtors. If the debtor fails to fulfill its obligations, the creditor has several options to file a claim (Subekti, 2001: 147-148), including:

- a) Requesting that the implementation of the agreement still be carried out even if it is late;
- b) Claiming compensation for losses arising from non-performance, delay, or non-compliance with agreements;
- c) Demand the implementation of the agreement as well as compensation for delay;
- d) In a reciprocal agreement, file for cancellation of the agreement along with compensation if the other party commits negligence.

Implementation of Information Technology-Based Joint Funding Services

In the era of the digital economy, innovation is growing rapidly, one of which is through the provision of information technology-based money lending services. In POJK 10/2022, the term "Information Technology-Based Money Lending Services" was changed to "Information Technology-Based Joint Funding Services" (LPBBTI). This service expands public access to online financial services products, enables the fulfillment of cash needs quickly, easily, and efficiently, and supports

increased competitiveness. In addition, LPBBTI plays an important role in facilitating MSMEs to get access to funding.

LPBBTI, or better known as *Fintech P2P Lending*, is an online loan service that is often called Pinjol. This type of service is a major player in the Fintech ecosystem in Indonesia by controlling a market share of 40%, while *Fintech Payment* is in second place with a market share of 34% (Financial Services Authority, 2021: 12). Fintech itself is a general term that includes various technological innovations in the financial sector, such as payment systems, insurance, investments, securities transaction settlements, to alternative funding platforms such as *Fintech Lending* or *P2P Lending*. Technologies such as data analysis, *blockchain*, and cybersecurity are the main supporters of developing these various services (Jelena Madir, 2021: 5).

POJK 10/2022 describes LPBBTI as a financial service that brings together funders and recipients of funds through online platforms, both in conventional and sharia schemes. The parties involved in this service include the Operator, which is the legal entity that provides the platform; Fund recipients, namely individuals or business entities that receive funding; and Funders, namely individuals or business entities that provide funds. LPBBTI organizers must be in the form of a limited liability company's legal entity, have a permit from the OJK, and be registered as an Electronic System operator. The activities carried out include productive and multipurpose funding, with Givers and Recipients of Funds being individuals or legal entities and Givers being Indonesian citizens or foreigners.

In LPBBTI, every agreement involving the Organizer, Funder, and Fund Recipient must be documented as an Electronic Document. Organizers are responsible for protecting consumers by applying the principles of transparency, fairness, reliability, and personal data protection and providing an easily accessible and affordable complaint mechanism. The stages of the funding process include registration, submission, grant, and loan repayment. In addition, the Organizer is required to ensure that the funding is in accordance with the needs and capabilities of the Fund Recipient as part of effective risk management.

If the Fund Recipient fails to fulfill its obligations, the LPBBTI Organizer is responsible for collecting, at least through issuing a warning letter in accordance with the provisions of the agreement. The Organizer may engage a third party to assist with the billing process but remains fully responsible for any consequences that arise. The collection process must comply with the norms that apply in the community and in accordance with the applicable laws and regulations.

Suspension of Debt Payment Obligations

PKPU is regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Law 37/2004). According to Munir Fuady, PKPU is a period regulated by law through a commercial judge's decision, where creditors and debtors are given the opportunity to discuss and reach an agreement on how to repay debts. This agreement may include a plan for repayment of all or part of the debt, including the possibility of debt restructuring if needed. Therefore, the postponement of debt payment obligations can be considered as a form of moratorium, or a valid legal moratorium (Munir Fuady, 1999: 177). Rachmadi Usman outlines a number of differences between PKPU and Bankruptcy as follows (Rachmadi Usman, 2004: 103):

- a. Pending Position
A person declared bankrupt will lose the ability to manage or take action against his property, while individuals in PKPU still retain the right to manage their property.
- b. Maintenance Institutions
In PKPU, the party in PKPU still has the ability to manage his property, but any action related to the asset must obtain approval from one or more party's called "administrators" or "custodians," appointed by a judge.
- c. Curator or Heritage Center
In PKPU, the Curator or the Heritage Center is not involved as in bankruptcy cases. Instead, the judge appoints one or more administrators or caretakers who are in charge of supervising and managing every action related to the property of the party that receives PKPU.
- d. Completion timeframe
The PKPU process has a maximum time limit of 270 days from when the provisional PKPU decision is issued, as stipulated in Article 288 paragraph (6) of Law 37/2004. Meanwhile, the bankruptcy process does not have a set time limit for completing the entire process after the commercial court issues the bankruptcy decision. The duration of the bankruptcy process depends on the role of the curator in managing and resolving assets declared bankrupt.

e. Procedure

In the PKPU process, the first step is to submit a PKPU application, which will then follow the issuance of a Provisional PKPU decision. After the decision is issued, the decision must be recorded in the State Gazette and announced in two newspapers, one on a national scale and one on a local scale. The next stage is the first creditor meeting, where the meeting will discuss the restructuring proposal or the decision to establish a Permanent PKPU. Restructuring proposals submitted by debtors can be approved or rejected by creditors. If the proposal is approved, there will be ratification (homologation). However, if the proposal is rejected, the debtor will be declared bankrupt, and the process will continue to the bankruptcy stage.

f. Legal consequences

After the PKPU decision was issued, no more legal remedies could be taken. However, in bankruptcy cases, there is still an opportunity to file an appeal and review after the verdict is handed down. However, based on the Constitutional Court Decision Number 23/PUU-XIX/2021, the application for a material review of Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 was declared contrary to the 1945 Constitution and no longer has binding legal force unless it is interpreted that cassation is allowed against the PKPU decision submitted by the Creditor and related to the rejection of the restructuring plan from the Debtor.

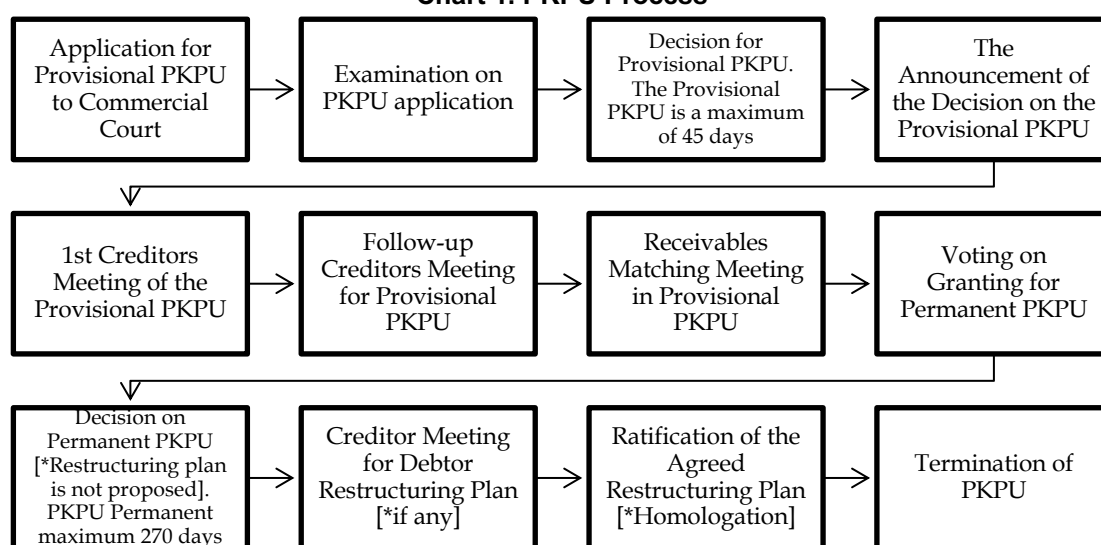
In PKPU, debt refers to obligations that can be valued in the form of money, both in rupiah and foreign currency, which come from agreements or legal provisions. If this obligation is not met, the creditor has the right to collect it from the debtor's assets. The debtor is the party that has the debt obligation, while the creditor is the party that has the right to collect the receivable.

In PKPU, an application can be submitted by the Debtor, Creditor, Prosecutor's Office, OJK, or the Minister of Finance, provided that the debtor has two or more creditors. At least one debt has matured but has not been paid (according to Article 2, paragraph 1 of Law 37/2004). This application will be approved if the condition can be proven simply in the Commercial Court (referring to Article 8, paragraph 4 of Law 37/2004).

According to Hadi Subhan, there is a difference in understanding of the concept of simple proof in the context of facts or circumstances that must be proven. The explanation of Article 8 paragraph (4) of Law 37/2004 only regulates the existence of the fact that there are two or more creditors and the existence of debts that have matured and can be collected. Meanwhile, the difference in the amount of debt disputed between the applicant and the respondent in the bankruptcy or PKPU case is not an obstacle for the court to issue a bankruptcy declaration decision (Hadi Subhan, 2008: 120).

Referring to the provisions of Law 37/2004 and the Decree of the Chief Justice of the Supreme Court Number 109/KMA/SK/IV/2020 concerning the Implementation of the Bankruptcy and PKPU Case Settlement Guidebook, the debt settlement mechanism for *Fintech Lending* services through PKPU institutions is as follows:

Chart 1. PKPU Process



Based on the explanation above, it can be concluded that the settlement of debts and receivables in Fintech Lending services can be done through the Bankruptcy and PKPU mechanisms because:

- a) Debt arising from information technology-based funding transactions is included in the definition of debt as regulated in Law 37/2004, and
- b) As providers of information technology-based funding services (LPBBTI), Fintech companies act as creditors. In contrast, recipients of funds act as debtors, so both have the right to file a bankruptcy application or PKPU to the Commercial Court.

Obstacles in settling individual debtors' debts in *Fintech Lending services* through PKPU

Although legally settling individual debtors' debts in *Fintech Lending services* can be done through the PKPU mechanism, the application of Law 37/2004 for the case faces several obstacles. This is because Law 37/2004 still regulates the PKPU mechanism in an integrated manner for business entities and individuals. One of the main obstacles is the requirement that the PKPU application must be submitted and signed by the advocate, as stipulated in Article 224 paragraph (1) *Jo.* Article 7 paragraph (1) of Law 37/2004. Considering that the average loan value of Fintech Lending service users is in the range of IDR 2.6 million to IDR 5.1 million, the obligation to use the services of an advocate to apply makes the process less efficient in terms of costs.

The second issue is related to the conditions for granting the PKPU application, as stipulated in Article 221 paragraph (1) *Jo.* Article 2 paragraph (1) of Law 37/2004, namely that the debtor must have more than one creditor. If a debtor borrows funds from more than one *Fintech Lending service*, then *the Fintech* company as the LPBBTI operator should be able to easily prove the existence of more than one creditor, for example, by requesting information from other LPBBTI operators. However, if the debtor only borrows funds from one *Fintech Lending service*, then the application for a declaration of bankruptcy or PKPU cannot meet the requirements stipulated in Law 37/2004.

These two issues show that implementing Law 37/2004, which emphasizes the payment of debtors with their assets as soon as possible, is difficult to realize effectively. In addition, the question also arises whether Law 37/2004 regulates the principle of *debt forgiveness*. According to M. Hadi Subhan, Law 37/2004 still applies the principle of *debt forgiveness*, which can be seen in the debt restructuring mechanism through PKPU. However, debt forgiveness still requires approval from creditors. This opens up the possibility of creditors rejecting the restructuring plan in PKPU, which ultimately causes the debtor to be declared bankrupt. In such a situation, the debtor's wealth (especially individual debtors) is often insufficient to pay off all debt to creditors.

CONCLUSION

Settlement of debtors in *Fintech Lending services* can be done through the PKPU mechanism. This is based on the fact that debt arising from information technology-based lending transactions is included in the definition of debt according to Law 37/2004. In addition, Fintech companies as information technology-based funding service providers (LPBBTI) act as creditors. At the same time, the recipients of funds are debtors, and both have the right to submit PKPU applications to the Commercial Court.

The requirement that the PKPU application must be submitted and signed by an advocate, as well as the requirement that the debtor must have more than one creditor, makes the application of the principle of debt collection in Law 37/2004 difficult to apply in the context of debt settlement in *Fintech Lending services*. In addition, Law 37/2004 has not provided adequate protection for individual debtors because *debt forgiveness still depends on creditors' approval*.

The Government of the Republic of Indonesia needs to consider the drafting of the Bankruptcy and PKPU Law, which specifically regulates individuals, considering the differences in the characteristics of debt and receivables transactions between individuals and business entities. This aims to overcome various problems that arise in individuals' lending transactions on *Fintech Lending services*. The law should include the principle of debt forgiveness that can be applied based on a judge's decision without requiring approval from creditors.

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