LEGAL PROTECTION FOR CREDITORS AGAINST DEBTORS IN DEFAULT PEER TO PEER LENDING AGREEMENT

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Abstract

The purpose of this research is to determine the validity of the Civil Code perspective on peer to peer lending agreements and to determine the factors that hinder creditor returns and the role of the OJK in protecting creditors. This research uses normative juridical methods, namely obtained from library materials and related literature such as books, journals and so on. Peer to peer lending agreements made using an electronic system are basically valid because they fulfill the 4 requirements in Article 1320 of the Civil Code. There are several factors that hinder returns and creditors, namely, individual characteristics, business, credit, internal and external factors. OJK's role in protecting lenders in peer to peer lending agreements, OJK provides sanctions to organizers for losses from fund owners due to errors and negligence in cases where there is a lack of transparency, not acting fairly, not being reliable, not maintaining data confidentiality and security.

Keywords: Legal protection, creditors, default, peer to peer lending

INTRODUCTION

Indonesia is the largest archipelagic country in Asia, with a population of around 260 million people spread across 17,000 islands , this geographical condition can give rise to conflicts regarding aspects equalization n buildingand development economy. The role of banking which is great in activities The economy must also be supported by strong regulations to create a healthy banking business . Technology information and Good communication can be trusted to provide benefits to various countries in the world . The emergence of information technology is believed to bring a good transformation for world economic growth . This role is usually influenced by 2 consequences , namely: First , information technology provides a lot of demands on various technological products themselves and secondly; can provide convenience in business transaction activities , especially financial business in addition to other businesses .

Thus, it can be said that information technology can change people's lifestyle needs in the socio -economy, from conventional transactions or socialization to electronic transactions or socialization.

Usually fintech is a system created to operate detailed agreements. Meanwhile , fintech lending is an idea in the financial sector that uses technology that allows creditors and debtors to carry out borrowing and lending agreements without meeting directly . The basic forms of fintech include; Borrowing funds for business capital or meeting needs (P2P Lending), Investment, digital wallet (e-wallet), Insurance, Financing (Crowdfunding, Credit Fa ci lities).

Arrival _ fintech has given rise to many financial companies such as information technology-based money lending and borrowing services (P2P Lending), companies in the field fintech many have emerged in the form of (P2P Lending) of course attention in the public and the government is getting things in the regulations that are O jk No. _ 77/POJK. 01/2016 regarding facilities borrow borrow Information technology based money . Agreement is the most important source in birth , it is true that most agreements result from agreements , but as mentioned above there are sources of rr others give birth to bonds . Source r r i ni including Laws , so that there are obligations arising from agreements and there are also obligations arising from laws.

Agreement P2p loans which are currently popular are also widely used by the public, namely technology-based money loan agreements, in accordance with OJK regulation No.77/POJK. 01/2016 is a financial services provider that connects lenders and loan recipients to carry out loans and borrow directly from an electronic system using the internet.

RESEARCH METHOD

The author applies a type of research, namely normative juridical, based on secondary primary data as the basis for the research and uses the method of recording regulatory data and literature related to the research problem. In this research, the author uses secondary data, namely data collected to answer this research problem. Secondary data sources are legal regulations, literature as well as reading books and articles on the internet that are related to the problem to be researched. The author uses library study techniques, the librarian's study consists of legal regulations, literature, as well as reading books and articles on the internet that are related to the problem to be researched. Data analysis in this research is qualitative data which refers to data in the form of literature reviews such as statutory regulations. , literature, as well as reading books and articles on the internet, then collected and analyzed all the data thoroughly.

RESULTS AND DISCUSSION

Legal Regulation of Peer To Peer Lending from the Perspective of the Civil Code

Online loans are a means of providing online loans to financial service providers. Therefore, an online loan agreement is a type of ordinary agreement, but the difference is that the intermediary is through online media. In making an online loan agreement between creditors and debtors, there is no need for direct interaction. However, this interaction can be carried out with electronic devices.

An agreement that is valid and binding on both parties must fulfill the elements determined by law. Article 1320 of the Civil Code regulates that an agreement must fulfill four conditions, namely :

1) Agree with them who said himself ,
2) Skills _
3) There was a certain thing
4) For a legitimate reason.

To determine the legal arrangements for p2p lending agreements, one must actually look at whether Article 1320 of the Civil Code is appropriate as a legal requirement for determining the legal arrangements for peer to peer lending agreements from the perspective of the Civil Code, namely:

a. Agree to Bind Yourself

Article 1320 paragraph 1 of the Civil Code regulates agreements, namely the adjustment of a letter of desire between one or more people and another party. An agreement begins with equality or the same desires of both parties signing the agreement.

Agreement is required in making an agreement, meaning that both parties must have freedom of will, meaning that the parties do not experience pressure which results in defects in realizing their will. Basically, an agreement always begins with an offer made by one party and acceptance by the other party.

b. Skills / Ability to Create an Engagement

The second condition for the validity of an agreement based on Article 1320 of the Civil Code is the ability to enter into an agreement, the second condition for the validity of an agreement is the ability to enter into an agreement. The ability to carry out legal actions means allowing independent legal actions to be binding on oneself without being contested. According to RSubekti, that people who have matured or consequence and healthy is competent according to _ law. P a s a l1329 The Civil Code regulates that everyone cannot be said to be incapacitated _ For mem e make an engagement. In Article 1330 the Civil Code does not determine who is who ca k kap take action for k k make an agreement, but determine it in a certain way negative namely about who is incompetent do agreement.

c. A Certain Thing

In an agreement there must be something or an object promised in the agreement. If a dispute occurs, this becomes the basis for determining the debtor's obligations. The subject matter mentioned in the agreement at least contains the type of goods, and the goods must already be in the debtor's hands at the time the agreement is made. The agreed amount of goods does not need to be stated, it only needs to be calculated or determined.

d. Halal reasons

Fourth , the necessary conditions make up I am rati ng the agreement is valid according to P a s a l 1320 KUH Civil law is something which is permissible/halal reasons. There are times when an agreement is without reason or made for a false reason. Such an agreement does not have the power to state that " an agreement is without a chapter , or is made based on a chapter . " what is false or forbidden, has no power ".

In conducting research on online debt receivable agreements, the author uses the example of PT Julo as a provider of information technology-based money lending services. Julo fintech is an online loan service provider company registered and regulated by the financial services authority with registration number KEP–16/D.05/2020 in accordance Law of the Republic of Indonesia and OJK Regulation number 77/POJK.01/2016. The products offered by Julo are julocicill and julomiini. Julocicill is an unsecured product service that is suitable for loan repayment with a period of 3 to 6 months. Meanwhile, julomi is a service product without guarantee and the return period is one month..

The services provided by Julo are Julo installments and Julo mini. Julo cicill is a service product that has a payment term of 3 to 6 months with an interest rate of 4% per month. Meanwhile, Julomini is a service product that has a repayment period of 1 month with an interest rate of 10% per month. In a s e baby a ng halal, so the julo interest rate for julocicil products is 4% and for juloomini products it is 10% per month. As a simulation, taking a loan at Julo, it looks like this: if you borrow money at Julo in installments of IDR 4000,000.00 with a loan term of 6 months or 6 installments, Julo will set the monthly installments at IDR 906,666.00. The total return that must be returned within 6 months is IDR 5,349,996.00. The interest rate on the loan is 36% in six months. The total loan does not include an administration fee of IDR 125,000.00 or a monthly late fee of IDR 55,000.00 (if there is a delay in payment).

Electronic contracts are an example of the concept of freedom of contract as stated in Article 1338 of the Civil Code. A contract is always based on the concept of freedom, which can be described as the legality of all agreements made between all parties depending on non-morality, order, and other principles.

Factors that can hinder the return of creditors' funds in default of debtor loans

Before funds are given, the creditor must be sure that the credit given will indeed be returned and this confidence comes from the creditor's assessment before the funds are given. Factors that influence the level of loan repayment include:

a. Individual characteristic factors:
   Age
   Relating to a person's age of maturity and experience in running a business. Meanwhile, Rustani believes that age will influence entrepreneurial courage in making decisions. Because

of this, it is thought that the more mature a person is, the more intelligent and rational their decision making is .
Level of education
The level of education is considered as one of the factors that influences a person's personality. The higher a person's level of education, the broader his knowledge and insight. This also includes understanding the potential of the business to be more productive, increase income, and facilitate credit payments. On the other hand, the lower the level of education, the slower the ability to absorb information and the slower the development of the business.
economic conditions
Economic conditions are the root of credit problems. Rustam said that payment failure can be caused by two things, namely the customer is able but does not want to pay, and the customer is unable to pay due to external factors, such as changes in economic conditions which affect the customer's financial condition.

b. Effort factor
Net operating profit
Net profit can be understood as the difference between operational income and costs in a certain period. The net profit of a business is considered to have a positive influence on the smoothness of credit payments, because the more profitable the business is, the better the ability to manage the business, the higher the ability to pay installments and interest charges , so that the opportunities for smooth repayment and credit are also greater.
Length of Business
The length of business is related to the amount of business experience one has. The more experience a person has, the better his or her ability to manage a business. Masttuty believes that longer business experience can positively impact a business's success by increasing understanding and ability in managing a business. When the business is successful, income or profits will increase. Therefore, the length of the debtor's business is considered to have a positive impact on credit returns .

c. Credit factor
Amount loan
The loan amount is the amount of credit distributed to the organizer to MSME entrepreneurs. The aim of providing credit is to help SMEs with capital. With additional capital, it is hoped that SMEs will be able to develop their businesses and increase their chances of successful credit repayment. It can be seen that the loan amount has a positive impact on credit repayment.
Loan Term
The loan term is the due date on which the debtor pays off the principal and interest. The loan period will affect the amount of installments and interest paid each month. The longer the loan term, the lower the monthly installments and interest payments. Long loan terms increase the credit risk itself .

d. Internal factors
Siamat believes that the factors that influence credit Problems come from internal factors related to with the implementation of policies and regulations within its scope, such as loose credit policies and a lack of credit management and supervision systems.

e. External factors
External external factors are related to the decline in economic activity and high credit interest rates, the use of an unhealthy business competition environment by debtors, debtors experiencing business failure, and disasters

OJK's role in protecting lenders in online loans

Indonesia is a law and order country considering Article 1 paragraph (3) of the 1945 Constitution concerning the State of the Unitary Republic of Indonesia. As law and order, it certainly has a legitimate purpose. The point of regulation is to make social demands organized, keeping things under control and in balance. By submitting a request in public, it is believed that it can provide legitimate confidence for legal certainty for the community.

Through electronic media, online loan transactions function as a financial service that connects lenders and prospective borrowers. OJK regulates financial services, including online loan transactions, just like other financial service providers such as banks, pawnshops and other financial institutions. OJK's involvement in fintech peer-to-peer lending services is based on Article 5 of Law

Number 21 of 2011 concerning the OJK Law which states that the OJK regulates an integrated system of regulation and supervision of all financial sector activities.

these regulations, the role of the OJK is that the organizer must be responsible if the default is the result of an error or negligence caused by the organizer's directors or employees which could result in losses. creditor then organizers can be given sanctions in accordance with Article 47 POJK. Namely in the form of administrative sanctions given to the organizers of the rra. The objection to OJK 's provisions is:

a. Written warning
b. A fine is in the form of an obligation to pay a certain amount of money
c. Restrictions on business activities
d. Permission to revoke.

If the creditor's complaint to the organizer does not result in an agreement, the creditor can settle the case in court or outside court. Article 25 of OJK Regulation Number 18/POJK .07/2018 concerning Consumer Complaint Services in the Financial Services Sector states that to facilitate requests for resolution of consumer complaints (in this case creditors), as information users of technology-based money lending and borrowing services who are harmed by financial service providers (in this case information-based money lending and borrowing providers Teknologii), disputes can be resolved through alternative dispute resolution institutions or submitting them to the OJK. Financial services circulars and OJK authorities do not clearly regulate how to resolve compensation disputes.

CONCLUSION

Debt receivable agreement using p2p lending which is done through system electronic , has fulfilled the four requirements of Article 1320 civil law and is basically valid. Factors that can hinder the return of creditor funds are: individual characteristic factors : age, level of education, economic conditions . business factors, net business profit and length of business , credit factors, loan amount and loan duration , internal factors and external factors. The role of the OJK is to provide sanctions to organizers for losses from fund owners due to errors and negligence in cases where there is a lack of transparency, not acting fairly, not being reliable, not maintaining data confidentiality and security.

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