

LEGAL CONSEQUENCES AGAINST Default in USING THE SPAYLATER FEATURES ON THE SHOPEE APPLICATION

Elvira Fitriyani Pakpahan, Felicia, Febriyana Laia, Torry Hia

Faculty of Law, Prima Indonesia University, Medan, Indonesia
UNPRI Main Campus Jl Cover No. 4, West Sei Putih, Medan City, North Sumatra Province, 20118
elvirapakpahan@unprimdn.ac.id, felicia@gmail.com, febriyani@gmail.com, torry@gmail.com

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Abstract

In this pandemic era, our mobility and range as a human being is getting smaller. Luckily, we are now live in a digital world where everything can be done online. Such as shopping for daily necessities can also be done online. The payment options provided are also quite a lot. One of them is pay later. One of the marketplaces that provides this option is Shopee with the SPayLater service. To explore what are the legal consequences of default in the use of SPayLater services, legal arrangements regarding FinTech and how to minimize the occurrence of misuse of SPayLater services by using normative juridical research methods is the main goal of this study. Based on the results of this study, that there are still a lot of individuals who actually do not comprehend if this SPayLater service is a binding agreement. If there is misuse or Negligence in its use, it can be penalized. As a result, users feel disadvantaged because they get a fairly large fine compared to their actual purchases.

Keywords: online, payment options, pay later, legal, misuse

INTRODUCTION

Most of the activities in our lives can be controlled by technology in this era of globalization. Previously, when we wanted to shop, we had to go to the store first to choose an item and then make a payment so that we could have the item. But now everything can be done at home with just one click. Starting from shopping for household needs, ordering food, buying plane tickets and much more. All these transactions can also be paid online.

With the increasing number of requests from the public, electronic commerce or *e-commerce service providers* are also competing to make the latest and most interesting innovations possible. One of them is the variety of payment methods that can be used. The current payment options that are widely used are credit cards, online debits, bank transfers, COD (*Cash on Delivery*) or most people call them pay on the spot and the latest is *pay later services*. *Pay later* is a loan service whose concept is almost like the function of a credit card, namely that we can borrow money from a party with a certain time limit. The difference is that *pay later* is generally provided and can only be used for the intended *e-commerce*.¹ One of the *e-commerce companies* that has the *pay later service* is Shopee.

Shopee is an *online shopping site* that was founded in 2015 in Singapore under the auspices of the SEA Group or previously known as Garena by its founder Forrest Li. Since it was built, Shopee has not only been in Indonesia but has reached Malaysia, Thailand, Taiwan, Vietnam, the Philippines, and most recently in 2019 Shopee visited a country outside Asia, namely South America to be precise in Brazil.² In Indonesia, the Shopee company name is PT. Shopee International Indonesia.

The *pay later* service owned by Shopee is called SPayLater. SPayLater makes it easy for consumers to shop on credit without using a third party. Where before this SPayLater feature, credit could be made but it had to involve other parties or third parties in the form of applications such as Kredivo, Akulaku and Indodana. This type of credit is called the Information Technology - Based Lending and Borrowing Service (LPMUBTI) which is generally referred to as a *FinTech -based lending and borrowing agreement. Peer to Peer (P2P) Lending*.

This SPayLater service can be regarded as a form of agreement because it has achievements that must be fulfilled by the parties. In an agreement, in order to be legally enforceable, the parties who have made the agreement must fulfill all the achievements that have been made. The conditions for the validity of an agreement are contained in Article 1320 of the Civil Code which contains :

1. There is an agreement for those who have tied up self;
2. The parties must be proficient in carrying out a engagement;
3. One thing is certain; and
4. One reason that lawful.

The agreement has already been provided by the organizer and is usually listed when you want to register for the SPayLater service where the contents are the terms and conditions provided and must be approved by the user.

This paper also discusses the regulation of FinTech in Indonesia, the legal consequences of default in the use of the SPayLater feature and how the efforts of the parties to minimize the occurrence of misuse of SPayLater services because this study aims to provide knowledge in the use of *pay later services* and solutions if there is negligence from one of the parties because there are still many people who use this SPayLater service but do not understand the rules or regulations given when accepting the terms and conditions shared by the organizers. This causes the borrower to experience substantial losses if he violates the provisions provided, such as the accumulation of bills received beyond the nominal purchase transaction of goods.

Thus, if any party is negligent in carrying out its obligations, that party is considered a default and can be punished in accordance with the agreed terms.

The law regarding Default has been regulated in Article 1243 of the Civil Code, which essentially states that the debtor is required to reimburse costs, losses and interest if the debtor does not fulfill his commitment and even if the debtor has been recognized as negligent but still fails to fulfill the agreement or if there is something wrong with the agreement. must be submitted or carried out but can only be submitted or carried out at a time that has passed the specified time.

FinTech Usage Settings in Indonesia

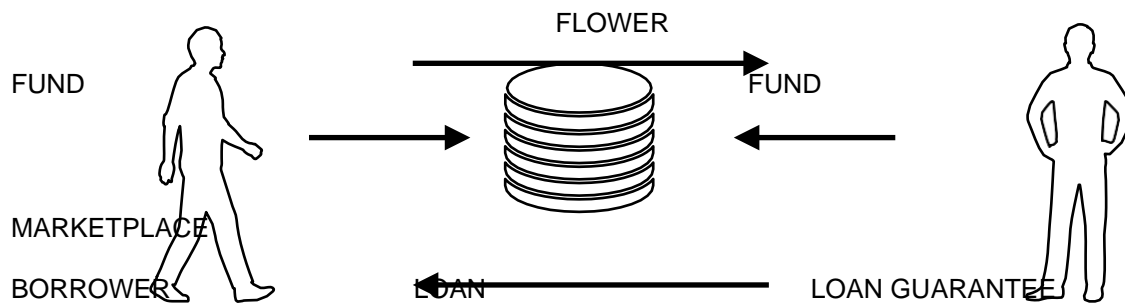
Financial Technology or *FinTech* is a type of company engaged in the financial services sector based on digital technology.³ The existence of *FinTech* makes it easier for people to make loans. Previously , people had to go to the bank first to make a loan or credit. In addition to the procedure which is quite difficult, the interest given is also relatively high. This is one of the reasons why many

people switch to using *online loans at FinTech* companies.

The use of *FinTech* from year to year is increasing along with the rapid growth of startup companies in Indonesia. There are several types of *FinTech* that can be used, including: (1) *Asset management*, (2) *Crowdfunding*, (3) *e-money*, (4) *Insurance*, (5) *Peer to peer (P2P) Lending*, (6) *Payment gateway*, (7) *Remittance*. Currently in Indonesia, the use of *FinTech* The highest usage is the type of *Peer to Peer (P2P) Lending*.⁴

Peer to peer (P2P) Lending is a type of online loan through a platform called a *marketplace*. The function of the *marketplace* itself is to provide security and help in the relationship between borrowers and lenders to enable parties to enjoy the same benefits as competitive interest loans for borrowers and return favorable results for lenders.⁵ The main difference between P2P Lending and Banks is that P2P does not collect funds from the public. The following is an overview of how P2P Lending works:

OVERVIEW OF HOW FINTECH P2P LENDING WORKS



As of 02 March 2022, the total number of FinTech companies Licensed and legally registered P2P Lending registered with the Service Authority Finance (OJK) there are as many as 102 companies.⁶ Multiple P2P service sites Well-known lenders in Indonesia and registered with the OJK are Investree, Amarnya, Asetku, ShopeePayLater, Indodana, Modalku, Akseleran, Kredit Pintar, and TaniFund.

The Financial Services Authority or OJK is an agency created with the functions and duties to manage and monitor all activities in the financial services sector (Banking, Capital Market and Non-Bank Financial Industry such as insurance, pension funds, financing institutions and guarantee providers). The conditions given by OJK to those who wish to register their companies are that companies in the form of PT must have a minimum paid-up capital of Rp. 1,000,000,000 (one billion rupiah) and for cooperatives they must have a minimum capital of Rp. 1,000,000,000. (one billion rupiah). Once registered, the company must have paid-in capital or own capital of at least Rp. 2.500,000,000, - (two billion five hundred million rupiah). After that, the company must report every three months and the company that has been given a permit must provide online monthly and annual reports to the company OJK.⁸

Settings Regarding Use of FinTech in Indonesia

FinTech P2P Lending is basically a loan agreement, where the borrower and lender are brokered by the *marketplace* as the organizer without having to meet in person. The entry of *FinTech* is a new breakthrough that is efficient and easy to use aspect-business aspects in Indonesia.⁹ In the third book on engagements in the Civil Code in Article 1754, it is said that borrowing and borrowing is a form of agreement in which one party offers a certain number of goods which are exhausted due to use to the other party with the stipulation that the other party will later give back an amount that is not different. with different types and conditions as well. In this case, a certain item referred to in Article 1754 of the Civil Code is money.

Based on Article 1765 of the Civil Code, it is allowed to enter into agreements with interest in making loans in the form of money or other objects that can be used up. Interest is an additional fee that must be paid by the borrower for the loan services provided by the lender. The determination of the amount of interest from the loan agreement can be determined by law or determined by the parties themselves but must be clearly written in the contents of the agreement.¹⁰

Due to the increasingly widespread use of *P2P Lending*, through the OJK, the Government issued a statutory rule that is useful for regulating and supervising *FinTech P2P Lending* activities called the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Money-Based Lending Services. Information Technology. With the Financial Services Authority Regulation Number 77/POJK.01/2016, it can become a legal umbrella for users and providers of *FinTech services*. *P2P Lending* in conducting online lending and borrowing transactions. There are several points contained in this regulation, including discussing the role of each party, the limits of granting loan funds, registration and licensing, change of ownership, revocation of licenses, lender and loan recipient agreements and risks.

In addition to the Financial Services Authority Regulation Number 77/POJK.01/2016, *P2P Lending* is also regulated in Bank Indonesia Regulation Number 18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing. In Article 4 paragraph 1 Bank Regulation Indonesia Number 18/40/PBI/2016 stated that the organizers must not only register with the OJK but the company must also have a license from Bank Indonesia. Not only that, the regulation regarding *FinTech* through Bank Indonesia is explained in more detail in Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology. According to Article 2 of the regulation, it is stated that the function of Bank Indonesia is to be able to develop and enhance innovation in the financial sector by applying the principles of consumer protection as well as risk and prudent management in order to protect monetary stability, financial system stability, and an *efficient*, smooth, protected payment system, also *reliable*. Basically, the role of Bank Indonesia in this scope is to be able to support and recognize *FinTech* as a legal payment system in Indonesia.

Online Loan Services Illegal

With the increasing use of *FinTech services in Indonesia*, more and more illegal or unregistered *online* loan services have emerged. We often find these illegal loan services in our daily lives, one of which is in the form of SMS that offers loans from relatively small to large amounts, starting from hundreds of thousands to hundreds of millions of rupiah with very small interest.

Because of the tempting offer that many people believe and in the end deceived. So in this case, the role of OJK is very important to eradicate illegal online loan service sites. Where monthly OJK can remove tens to hundreds of illegal sites.

Fortunately, in the current era of globalization, information is easier to obtain. So to find out whether an online loan service is licensed or not, it is enough to visit the official OJK website to see a list of *FinTech P2P Lending providers*. That way, it can minimize the occurrence of *online loan fraud*.

A clear and registered loan provider company, for example, is PT. Lentera Dana Nusantara and PT. Commerce Finance. Loan facilities from PT. Lentera Dana Nusantara and PT. Commerce Finance which is quite well known today is SPayLater on the Shopee online shopping application. By activating the SPayLater service, users can already shop on credit on the Shopee application by safe.

How to Use the Service SPayLater

SPayLater is one of the payment methods that can be used currently on the Shopee application. This SPayLater service can only be used in buying and selling transactions on Shopee. But not all users can activate it. This activation can be done if the user has met the following conditions: the Shopee account has been registered and verified and the Shopee account must also be three months old, Shopee Pay has been active and verified, the Shopee account is often used to transact up to a certain limit and the Shopee application on the phone is the latest version. After fulfilling these requirements, Shopee will later provide an invitation to users to activate the SPayLater service.

The process of activating the SPayLater service can be quite fast and easy. Actually, the description of the terms and conditions is also quite clear, concise, and easy to understand. These requirements are listed in the section after clicking "Activate Now". It explains how SPayLater works, registration terms and conditions, payment terms and conditions, and how to pay with SPayLater. However, if the user is not careful, then they can not read the provisions because they are in the lower.

The Legal Role of Agreements in *Pay Later Services*

The legal role of the agreement in the SPayLater service is contained in the terms and conditions section. When a user activates the SPayLater service, it is considered to have accepted the terms and conditions that have been given. Therefore, the user must be careful and understand what is written in the provisions before activating it.

Based on Article 1313 of the Civil Code, an agreement is an act where one party binds himself to another party. In this case, it means that the user binds himself to Shopee because he is the lender. The following are some of the things that are agreed upon in the SPayLater service agreement, which are as follows:

1. The billing details will appear according to the billing due period that has been selected. If the user selects the 5th, the bill will be issued on the 25th or if the user selects the 25th, the bill will be issued every 15th. The user does not need to wait for the due date to pay bill.
2. Billing details contain a list of orders that have been completed from the billing date to the day before the billing next.
3. The handling fee for the SPayLater service is 1% transaction.

Example: Transactions made between October 05-November 04 will be recorded in the invoice on November 15 and must be repaid by November 25 at the latest.

Although it has been explained in detail about the payment process, not a few people still do not understand so that there is negligence in carrying out their achievements. Late payments can be subject to fines and will automatically be added to the next month's bill of 5% of the total bill. In this case, the user is expected to be more careful in making payments before maturity because if they are negligent, there can be loss of fees and interest.

Legal Consequences for Default in the Use of SPayLater Services

In making an agreement, one of the four legal conditions in an agreement is an agreement made by the binding parties. The agreement is not only in the form of things that must be fulfilled by the parties, but an agreement also includes a method of settlement in the event of a dispute. One of the main causes of a dispute in an agreement is that there are parties who break their promises or the legal language is: default.

Default arose from the Dutch "*wanprestasie*" in Indonesian which it means performance bad (wanbeeher it means management bad,

wanddad bad deeds).¹³ Another word for default is negligence

(*vercium*), omission, broken promise or broken promise. In short, if someone does not carry out his achievements or obligations according to the contents of the agreement, it can be said that the person has defaulted.¹⁴ On the other hand, the fulfillment of obligations in an agreement is called achievement. These obligations are contractual because they come through laws and regulations and contracts or agreements made by the parties party.

According to Surbeki, there are several elements that state that someone has defaulted, including:

1. Achievements or actions that are not fulfilled.
2. Achievements or deeds are fulfilled but are not the same as things that already promised.
3. Meet the achievements but late.
4. Doing forbidden things in agreement.

Meanwhile, according to Yahya Harahap, a person is said to have defaulted if in carrying out the agreement he did negligence (*vercium*) causing delays from the agreed time and/or in carrying out his achievements not properly.

In using the SPayLater service, the dispute resolution method is determined by Shopee as the organizer. The form of default that occurs is usually a delay in paying bills or not paying at all. Meanwhile, there are 2 prospects for the cause of default, namely factors originating from outside or from within a party. External factors mean things or events that are unexpected and unexpected suddenly occur when the agreement has been made. It is also called a state of coercion, which means that one party is prevented from fulfilling the achievements of another party. Parties who cannot carry out their obligations cannot be subject to sanctions and neither party must be held accountable.

According to Article 1243 of the Civil Code, before it is determined that a person is in default, the creditor must first declare the debtor as negligent. Usually the statement of negligence is given in the form of a letter called a Warning Letter or Summons. The negligence statement contains a warning or warning from the creditor to the debtor when at the latest he must fulfill his achievements and if it passes, it can be declared negligent. Default due to credit jams can occur for two reasons, namely:

- a. From the organizers, which in the process of analyzing user or debtor data, the organizers of the analysis are not careful so that what will happen is unpredictable or there is cooperation from the analysis party with the user which results in the analysis being carried out with subjective.
- b. From the debtor's side, there are two things that lead to defaults in credit, namely: the first is the intentional factor, meaning that the obligation is not carried out intentionally and the second is an unintentional factor, where the debtor's desire to pay but does not capable.

Fees, Losses and Interest in Default

When someone has been declared negligent in carrying out his achievements, that person must carry out reimbursement of costs, losses and interest to other parties. This is also regulated in the Civil Code which in Article 1243 regarding the definition of default which essentially says that compensation for losses and interest costs arising from the non-performance of an engagement then begins to be prosecuted if the debtor, after being declared in default, persists. does not carry out the engagement, or if there is something to be submitted or done that can only be submitted or done during the grace period that has been set exceeded.

Article 1365 of the Civil Code provides several types of possibilities in making claims for compensation, namely (MA Moegni Djodirdjo 1976: 102):

1. Substitute in the form money.

2. Change to the original state (*nature*).
3. Stating if the act carried out is an act against law
4. Prohibition in carrying out an act.
5. Removing something that is against the law or against the law.
6. Announce about a decision or something that has been repaired.

Legal Consequences Occurrence Default According to the Civil Code

There are 4 consequences if there is a default, namely:

- a. the engagement will remain take place.
- b. Compensation and expenses from the risk are transferred or charged to the debtor's loss if the obstacle arises after default.
- c. According to Article 1266 of the Criminal Code, if a reciprocal agreement creates an engagement, the creditor can be released from his obligations because the article says "In a reciprocal agreement it is considered that the conditions for cancellation are always listed, if the obligations of one party are not fulfilled then the agreement is not null and void by law and the cancellation is obligatory. submitted to court. Even though there are conditions in the agreement regarding the cancellation of the agreement that cannot be fulfilled, the submission must still be carried out. If the conditions for cancellation are not stated in the agreement, in accordance with the conditions seen by the judge, in accordance with the defendant's request, it is free to give a period of time for fulfilling obligations, but that period cannot exceed one month.

According to the provisions of the Organizer (Shopee)

Based on the provisions provided by Shopee, if the user makes negligence, the user must reimburse costs, losses and interest with the following arrangements:

1. As much 5% from total bill worn if occur lateness payment.
2. Access to the use of applications and vouchers will be restricted.
3. The credit level at the OJK SLIK (Financial Information Service System) which functions to obtain financing from banks or other companies can be hindered.
4. Execution of billing field.

Prevention of financing from banks or other companies means that if the user is late in paying the bill, it can affect the user's overall *credit score because the loan is registered with the OJK*. *Credit score* is a number or predictive value of financial risk belonging to loan customers that is useful to assist banks in analyzing whether customers are eligible for loans.

Efforts to Minimize the Occurrence of Misuse of Services SPayLater Effort Government

With the increasing circulation of illegal online loans in Indonesia, the government too must be swift in doing prevention and eradication. One of the efforts that has been made by the government is the legalization of the Regulation of the Financial Services Authority Number 77/POJK.01/2016 as legal protection in the implementation of *FinTech activities*.

Not only the *FinTech Law* can be a legal umbrella for the organizers and users. However, for users of legal protection, it is further explained in Law Number 8 of 1999 concerning Consumer Protection. In Article 1 Number 10 of the Consumer Protection Law, it is explained about standard agreements or standard clauses. Standard agreement is the type of agreement used for credit. A standard clause is a rule or provision that has been prepared in advance unilateral, in Thing this from party organizer. Goal is so that the principle of freedom of contract is carried out equally between the operator and the user. But sometimes in an agreement the position of the organizer and the user in something negotiation occur lame overlap and on finally there is parties who feel disadvantaged.²³ But because of the conditions and provision made by the organizer, it tends to be more profitable for the organizer than the user.

So in UUPK Number 8 of In 1999, Article 18 regulates various prohibitions or limitations in making standard clauses in an agreement, which are as follows:

- 1) The law prohibits business actors from making and including standard clauses in every document or agreement on the offer of goods and/or services with the aim of trading them. if:
 - a. Saying the responsibility of business actors transferred;
 - b. Saying if the goods have been purchased by the consumer, the business actor may

- refuse to return the goods;
 - c. Saying that business actors may refuse to return fees that have been paid for goods and or services that have been purchased by the customer consumer;
 - d. Saying the power given to business actors from consumers either directly or indirectly in completing all actions of one party related to goods that have been spent by consumers on a regular basis installment;
 - e. Arrangements for the cause of loss in the use of goods or the use of services purchased by consumer;
 - f. Granting authority to business actors in reducing the use of services or reducing consumer assets which are objects of sale and purchase service;
 - g. A statement of consumer compliance with regulations that are new, additional, continued and/or advanced changes that are carried out on one side by business actors when consumers use services that have been provided. purchased;
 - h. A statement if the consumer gives power of attorney to the business actor in the imposition of a right of responsibility, lien, or security right on goods that are spent by consumers on a regular basis. installments;
- 3) Business actors are not allowed to include standard clauses that are located or in a form that is difficult to see or difficult to read clearly, or whose disclosure is difficult to understand. understood.
 - 4) The statement is null and void if every standard clause that has been determined by the business actor according to a document or agreement that meets the provisions as referred to in paragraphs (1) and paragraphs (2).
 - 5) Business actors must make adjustments to standard clauses that are contrary to the law this.

Although Article 18 of the UUPK explains that if there is a violation, the agreement can be null and void by law, on the part of the user there is an awareness that they feel aggrieved and file a lawsuit, the cancellation of which must then be ratified by a judge in accordance with Article 1266 paragraph 3.

Furthermore, the government's effort in terms of consumer protection is the government's duty to the Consumer Dispute Settlement Agency (BPSK) as the supervisory body in the inclusion of standard clauses. However, in its regulation in Article 52 of the UUPK it is stated "supervision of the inclusion of standard clauses", which means that the protection is repressive in nature which in fact legal protection should be. preventive.

Efforts of the Organizer (Shopee)

Efforts to minimize abuse of SPayLater services by shopee are one of them in the account selection process that can activate SPayLater services. To activate the service, the user account must be at least 3 months old and reach a certain purchase target. If the target has not been reached, the user cannot activate the SPayLater service on his account.

Although the activation process is quite short, the data requested by shopee is also quite complete. Starting from a picture of an ID card, two *emergency* contact numbers, to verifying the user's face. So if there is abuse by the user or debtor, it will be easier to track it.

User Effort

In this case, the party who must take the greatest preventive attitude is the user because in the standard agreement all conditions are determined directly by the organizer, so if there is abuse by the user, it will have a big impact on the user. Users also have to be smart in choosing which organizers are registered with OJK and which ones are not illegal.

Before activating the SPayLater service, the user must also understand the contents of the agreement provided by Shopee because if it is late in terms of payment, fines can be imposed up to direct billing in the field. In addition, when the SPayLater service has been activated, it cannot be deactivated again, so if the user does not want to use the service anymore, he must delete his entire account and create a new account. again.

Not only that, by registering for the SPayLater service, the option will continue to be installed when you want to *check out*. This can be misused by other parties who can hack the user's account so that in the end the user must bear the bill that does not belong to him.

CONCLUSION

According to Article 1320 of the Civil Code regarding the conditions for a valid agreement, the first *point* states "Agreement that binds both parties" which means that when someone has activated

the SPayLater service, that person has bound himself and agreed to the terms and conditions that have been given by the Shopee party even though the form is a standard agreement where there is no negotiation regarding the contents of the agreement.

Therefore, the user must understand what the contents of the agreement are before activating the SPayLater service so as to minimize the occurrence of negligence or abuse. If it is proven to carry out things that are contrary to the things agreed upon, then Shopee as the organizer has the right to declare that the user has defaulted.

After being declared in default, the user must fulfill his obligations as agreed, such as reimbursement of costs, losses and interest to the organizer in accordance with Article 1243 of the Civil Code. Furthermore, the bodies that regulate the continuity of the *online* lending and borrowing process are the Financial Services Authority (OJK) and Bank Indonesia together with the Government related.

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