



The Legal Liability of Fintech Companies for Accessing Telephone Contact Lists and Photo Galleries in the Online Loan Process

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Abstract

This research is aimed at analyzing arrangements regarding online loans in Indonesia, analyzing the protection of personal data for accessing telephone contact lists and photo galleries of users in online loans, and analyzing the legal liability of fintech companies for accessing telephone contact lists and photo galleries in the online loan process. used is a normative legal research method, using a statutory approach and a conceptual approach. The results of this first study, regulations regarding online loans according to Indonesian law are contained in POJK No.77 / POJK.0 / 2016, OJK Circular Letter No. 18 / SEOJK.02 / 2017, Bank Indonesia Regulation No. 19/12 / PBI / 2017, Bank Indonesia Regulation No.18 / 40 / PBI / 2016, Regulation of Members of the Board of Governors No.19 / 14 / PADG / 2017, and Regulation of Members of the Board of Governors No. 19/15 / PADG / 2017. Second, the protection of personal data against accessing telephone contact lists and photo galleries in online loans is in the form of preventive protection and repressive protection. Third, the legal accountability of fintech companies for accessing telephone contact lists and photo galleries in the online loan process is carried out by means of civil liability, criminal liability, and administrative responsibility.

Keywords: *Accountability of Fintech Companies; Accessing Contacts and Galleries; Online Loans*

Introduction

The emergence of Financial Technology as a new innovation in Indonesia requires special attention regarding its existence which of course can have legal consequences in the midst of society. On the other hand, currently regarding financial technology there is no specific law regulating it.

Related to the process of implementing transactions in financial technology, especially with the peer to peer landing system, where peer to peer landing is a method of providing money lending to individuals / businesses and vice versa, in essence, this peer to peer landing connects lenders (lenders / investors) with borrowers online.

Basically, the inclusion of an identity to make an agreement, both a written agreement and an electronic agreement, is a natural thing that must be done according to law, but in some practices, borrowing customers are asked for an agreement so that the company can access the telephone contact list and photos on the customer's cellphone. where the telephone contact list and photos on the customer's cellphone constitute the customer's privacy, and the telephone contacts in the telephone contact list are also the privacy of the owner, however this privacy is required in the process of peer-to-peer lending transactions or online loans. This is closely related to personal data regulated in the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

Deputy Chairperson of the Indonesian Funding Fintech Association (AFPI), Sunu Widyatmoko, admitted that fintech has the ability to access contact data for application users. Not only a contact list, but also a list of incoming and outgoing calls. In addition, in his interview by liputan6.com, he also explained that with this access the applicator can verify whether the person deserves a loan or not, because there are still many consumers who from the beginning have had bad intentions by borrowing and then not paying it.

In the existing provisions, none of them explain the provisions for providing data access in the form of a telephone contact list and photos on the cellphone of a borrower (debtor) customer as a requirement that must be met in the online loan process. For that there is a legal vacuum in this matter.

In connection with the approval of access to telephone contact lists and photos in this loan process, it is a matter that is required in the online loan process which requires approval for further processing. Thus, personal data in the form of telephone contact lists and photos can easily be accessed by the lender (creditor) if it has been approved by the borrowing customer (debtor).

It has been stated in Article 26 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, that "unless otherwise stipulated by laws and regulations, the use of any information through electronic media concerning a person's personal data must be done with the consent of the person concerned. " Which means that the use of any information through the media or Electronic Systems relating to a person's personal data must be done with the consent of the person concerned.

For this reason, guarantees for the fulfillment of personal protection are needed by requiring every Electronic System Operator, in this case a Fintech / online loan company to delete irrelevant electronic information and / or electronic documents that are under its control. So it must also determine the limits of consumer personal data that can be required in the online loan.

Protection of personal data is one part of personal rights (privacy rights). In the explanation of Article 26 of Law No. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

The personal right of borrower customers (debtors) to protect their personal data in the form of telephone contacts and photos in online loans requires strong law and legal responsibility for every action of the parties in the online loan process, including accessing telephone contact lists and photos is included in the online loan process, so a special law is needed that does not only contain administrative provisions as stated in POJK Number 77 / POJK.01 / 2016 concerning Information Technology-Based Borrowing and Lending Services.

Thus, regarding accessing telephone contact lists and photos in online loans, it is necessary to study more deeply so that the author is interested in raising the main issues, including: how to manage online loans in Indonesia, how to protect personal data from accessing telephone contact lists and

customer gallery photos in online loans, as well as how the legal responsibility of fintech companies to access telephone contact lists and photos in the online loan process.

Research Methods

This research is a normative legal research, which examines the literature and laws and regulations that are related to the problem under study. The approach method used in this research is the statute approach and the conceptual approach. This statute approach is carried out to examine all laws and regulations related to legal issues that are being discussed (researched).

A conceptual approach, which is an approach by studying the views and doctrines in legal science, legal principles, and legal concepts that are relevant to the subject of this research.

Sources and types of legal materials used in this study are primary legal materials, namely binding legal materials consisting of statutory regulations. Secondary legal materials are legal materials that provide an explanation of primary legal materials, such as in this study which includes draft laws, research results or the opinion of legal experts. As well as tertiary legal materials are legal materials that provide instructions or explanations for primary and secondary legal materials, such as Legal Dictionaries, Indonesian Dictionary, and materials from the internet.

The technique of collecting legal materials used in this research is through library research, either through tracing legislation, documents, scientific literature and research by experts by first making an inventory, clarifying, and systematizing it, then studying it according to the subject matter. the studies discussed.

Results and Discussion

Regulation of Online Loan According to Indonesian Law

Online Loans According to OJK Regulations

a. OJK Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services

Fintech peer to peer lending or online lending, is currently a type of fintech that is growing rapidly in Indonesia as the reason for the issuance of POJK Number: 77 / POJK.01 / 2016 concerning Information Technology-Based Borrowing and Lending Services and its derivative regulations, namely OJK Circular) Number: 18 / SEOJK.02 / 2017 concerning the Implementation of Governance and Risk Management of Information Technology in Technology-Based Lending and Borrowing Services.

In accordance with the mandate of Law Number 21 of 2011 concerning the Financial Services Authority (OJK), OJK as the authority that has the authority to supervise fintech-based companies, issues regulations regarding information technology-based lending and borrowing services considering that fintech companies with a peer to scheme peer lending is the scope of the OJK's authority because the company provides financial services, but the company does not yet have an institutional legal basis in carrying out its business activities (Njatrijani, 2019).

1. Parties to Online Loans

1. In accordance with what is stated in Article 1 number (7) and number (8) of the OJK Regulation Number: 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services.

Article 2 paragraph (2) POJK Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services, fintech companies or the so-called organizers are described as Other Financial Services Institutions in the form of companies in the form of Limited Liability Companies and Cooperatives.

This fintech or organizer company is again explained in Article 5 POJK Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services, that business activities that can be carried out by the Operator are in the form of providing, managing, and operating information technology-based lending and borrowing services. from the Lender to the Borrowing Party whose source of funds comes from the Lender and / or the Operator can cooperate with information technology-based financial service providers in accordance with the provisions of laws and regulations. Then in Article 6 of this regulation, it is explained that the limit for providing loans to loan recipients is set at Rp. 2,000,000,000, - (Two Billion Rupiah).

2. Mandatory Online Loan Business Requirements

Mandatory requirements for Peer-to-Peer Lending businesses or online loans as regulated in POJK No.77 / POJK.01 / 2016 concerning Information Technology-Based Borrowing and Lending Services, namely:

- 1) Clarity of form of legal entity, ownership and capital.
- 2) Apply for registration and licensing to OJK.
- 3) Availability of human resources who have IT expertise or background.
- 4) Documents in electronic form.
- 5) There is access to information for loan providers, lenders and loan recipients.
- 6) Data center and disaster recovery plan located in Indonesia and meet minimum standards, risk management and information technology security as well as resistance to system disruptions and failures, as well as information technology system management experts.
- 7) Maintain the confidentiality, integrity and availability of personal data, transaction data and financial data from the time the data is obtained until the data is destroyed.
- 8) Security system that includes procedures, systems, prevention, and countermeasures against attacks that cause disruption, failure and loss.
- 9) The agreement is implemented using a digital signature.

3. Online Loan Management Procedures.

To obtain a license as an Operator, a registered Provider is required to apply for a license as an Operator as regulated in Article 10 POJK No.77 / POJK.01 / 2016 concerning Information Technology-Based Borrowing and Lending Services.

The requirements for applying for licenses for administrators are regulated in Article 11, conveyed by the Board of Directors of the Operators to the Chief Executive of Insurance, Pension Funds, and Financing Institutions Supervisor.

In the case of Human Resources in online loans or information technology-based lending, the organizer is required to have human resources who have expertise and / or a background in information technology, at least 1 (one) member of the Board of Directors and 1 (one) person. a member of the Board of Commissioners with at least 1 (one) year experience in the financial services industry.

4. Online Loan Service Users.

Users of information technology-based or online loan services consist of loan recipients and lenders. The loan recipients consist of individual Indonesian citizens and Indonesian legal entities who must originate and live in the jurisdiction of the Republic of Indonesia. Meanwhile, lenders can come from within and / or abroad. The lender consists of individual Indonesian citizens, individual foreign citizens, Indonesian / foreign legal entities, Indonesian / foreign business entities and / or international institutions.

5. Online Loan Agreement

Information technology-based lending and borrowing service agreements or online loans are carried out electronically, including an agreement between the Operator and the Lender and the agreement between the Lender and the Borrower. With this electronic agreement, there is a legal relationship between those who bind themselves, namely the legal relationship between the online loan provider (fintech company) and the lender and the legal relationship between the lender and the loan recipient.

In Article 1 number 12 of Law Number 11 Year 2008 concerning Electronic Information and Transactions, it is explained that an electronic signature is a signature consisting of electronic information that is embedded, associated, or related to other electronic information that is used as a means of verification and authentication.

b. OJK Circular Number: 18 / SEOJK.02 / 2017 concerning Implementation of Information Technology Risk Management and Management in Technology-Based Lending and Borrowing Services

OJK Circular Letter Number: 18 / SEOJK.02 / 2017 concerning Implementation of Information Technology Risk Management and Management in Technology-Based Lending and Borrowing Services issued by OJK after the enactment of POJK No.77 / POJK.01 / 2016 concerning Technology-Based Money Lending and Borrowing Services Information, as implementing provisions of the OJK regulations.

In general provisions, number 2 explains that information technology-based lending and borrowing services are the provision of financial services to bring lenders together with loan recipients in the context of entering into a loan and borrowing agreement in rupiah currency directly through an electronic system using the internet network.

The scope stipulated in the OJK circular letter above includes:

- 1) Placement of data centers and disaster recovery and disaster recovery plans.
- 2) Management of electronic systems and information technology which includes strategic plans for electronic systems, human resources, and management of changes in information technology.
- 3) Transfer of technology management.
- 4) Information data management.
- 5) Information technology risk management.
- 6) Electronic system security.
- 7) Incident handling and resistance to interference.
- 8) Use of electronic signatures.
- 9) Service availability and transaction failure.
- 10) Information disclosure on products and services.

2. Online Loans According to Bank Indonesia Regulation (PBI) Number 19/12 / PBI / 2017 concerning the Implementation of Financial Technology

The development of technology and information systems continues to give birth to various innovations, especially those related to financial technology such as online loans to meet various needs of the community, including access to financial services and transaction processing. One type of fintech, namely online loans itself brings benefits to consumers, business actors and the national economy, which simultaneously also has potential risks if not properly mitigated can disrupt the financial system. For this reason, in addition to OJK, Bank Indonesia has also issued regulations related to financial technology, namely Bank Indonesia Regulation (PBI) Number 19/12 / PBI / 2017 concerning the Implementation of Financial Technology.

Types of lending and borrowing money based on information technology can be seen in Bank Indonesia Regulation (PBI) Number 19/12 / PBI / 2017 concerning the Implementation of Financial Technology, Article 3 paragraph (1) states that the operation of financial technology is categorized into the payment system; market support; investment management and risk management; loans, financing and provision of capital; and other financial services.

Based on this category, financial technology in the form of online loans can fall into other financial service categories. In order for this financial technology activity to take place, there are organizers that organize it. Not only in the OJK Regulation, fintech operators are also regulated in this Bank Indonesia Regulation, which in this regulation a fintech organizer is any party that carries out financial technology activities.

In the event that a fintech operator registered with Bank Indonesia has been announced, a trial called the regulatory sandbox will be conducted. Article 1 point 4 explains that the Regulatory sandbox is a limited safe testing space for testing financial technology operators and their products, services, technology and / or business models.

The regulatory sandbox function for fintech operators is to further ensure that their products, technology services, and / or business models meet the fintech criteria, which are then set by Bank Indonesia to be tested within a certain period of time. After the expiration of the period, Bank Indonesia shall determine the status of the fintech operator trial results in the form of success, failure, or other status determined by Bank Indonesia.

Licensing and approval are discussed in Article 15 of this provision, namely fintech operators belonging to the category of payment system service providers must obtain a license from Bank Indonesia in accordance with Bank Indonesia regulations governing the implementation of payment transactions. Fintech operators that fall under the category of other payment system service providers stipulated by Bank Indonesia as referred to in the Bank Indonesia regulations governing payment transaction processing operations must comply with the feasibility aspect. Payment system service providers that produce new products, services, technology and / or business models, which are:

Development of payment system products and / or service activities, but do not meet the fintech criteria as referred to in Article 3 paragraph (2), prior to continuing the marketing of products and / or services and using technology and / or business models, must first obtain approval from Bank Indonesia. in accordance with Bank Indonesia regulations in accordance with Bank Indonesia regulations governing payment transaction processing operations.

In terms of monitoring and supervision by Bank Indonesia of fintech operators registered with Bank Indonesia, fintech operators are required to submit data and / or information requested by Bank

Indonesia. Supervision is carried out on payment system service providers that have obtained a license and / or approval from Bank Indonesia.

The implementation of fintech, which is expected to run well in accordance with existing regulations, is inseparable from the provisions regarding sanctions in this Bank Indonesia Regulation, as an effect if there is a violation of this provision.

Payment system service providers who violate the provisions referred to in Article 18 and / or Article 26 are subject to administrative sanctions in the form of written warnings, fines, temporary suspension of part or all of payment system service activities, and / or revocation of their license as payment system service providers.

Accordingly, the provisions in this Bank Indonesia Regulation only stipulate administrative sanctions for violations related to fintech operations.

3. Protection of Personal Data Against Accessing Phone Contact List and Photo Gallery in Online Loan

Access to service user contact data as well as scanning of data in the gallery (gallery) in the form of audio, video, and images according to the author's opinion is irrelevant to the loan made. If this is done, further provisions are needed regarding accessing telephone contacts and galleries on mobile users of online loan services. Legal protection of personal data is regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

For electronic information, telephone contact lists and photo galleries which are also personal data of borrower customers in the online loan process, need to be protected. In accordance with Article 25 of the ITE Law, which states that electronic information and / or electronic documents compiled into intellectual works, internet sites and intellectual works contained therein are protected as intellectual property rights under the provisions of laws and regulations. The provisions in Article 25 of the ITE Law are exempted if it is stipulated otherwise by statutory regulations, the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned. This is in accordance with Article 26 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

In the elucidation of Article 26 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions the stipulated provisions have given the owner of personal data the right to maintain the confidentiality of their personal data, if their personal data has been spread and misused by other parties, so the owner of the personal data can file a lawsuit in court. The intended lawsuit is in the form of a civil suit filed based on statutory regulations. The provisions of this article constitute protection given to a person's personal data in general, meaning that in every activity involving electronic transactions using one's personal data, it is obligatory to protect and protect that personal data, with this arrangement, everyone has the right to save, care for. and maintain the confidentiality of data so that the data owned remains private. Any personal data that has been provided must be used in accordance with the consent of the person who owns it and must be kept confidential.

Article 2 of the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems, it is clear that

providers of fintech peer to peer lending services or online loans are required to carry out legal protection based on the principles of good personal data protection.

Law Number 39 of 1999 concerning Human Rights, states in Article 29 paragraph (1) that "everyone has the right to protection of personal data" From this statement, it can be concluded that the protection of personal data is a right (privacy right) owned by every person that must be protected by the state, where in privacy rights everyone has the right to cover or keep personal matters confidential (Nurmantari & Martana, 2019).

The provisions of Article 9 of the Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems explicitly provide the understanding that telephone contacts and photo galleries which are personal data of users of fintech peer to peer lending services, both borrowers and lenders, must first There is approval from the owner of personal data to the fintech peer to peer lending / online loan provider to be accessed, collected, and processed. Fintech organizers (fintech companies) and any person who collects and collects personal data must maintain the confidentiality of such personal data.

The confidentiality of personal data is also regulated in OJK Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Borrowing and Lending Services, Article 26 based on these provisions, it can be concluded that fintech organizers (fintech companies) have an obligation to keep personal data private, namely personal data. lender and loan recipient personal data.

Without the consent of the owner of the personal data, the fintech organizer (fintech company) cannot use the personal data for any activity, except with the owner's consent or otherwise stipulated in the provisions of laws and regulations. Fintech organizers are also prohibited from providing or disseminating data or information about users to third parties without the consent of the user or required by applicable laws. Thus, statutory provisions have guaranteed legal certainty regarding the protection of personal data for users of fintech peer to peer lending services or online loans.

Accessing telephone contacts and photo galleries in the online loan process according to the author's opinion is not what fintech companies should do, because telephone contact is not only the privacy of the borrower, but also the privacy of the owner of the number in the telephone contact. If the owner of the telephone number in the borrower's telephone contact has an objection to the data being known by other parties, it can cause new problems among them. As for the photo gallery, which is a very sensitive privacy for the owner, namely both borrowers and lenders. If only one photo is accessed, as is the case with a formal photo of the requirements of a conventional loan, it is normal, but if a photo gallery which consists of many photos can be accessed by fintech organizers, it is not normal because it has no relevance to a loan.

Through OJK Circular Number 14 / SEOJK.07 / 2014 concerning the Confidentiality and Security of Data and / or Consumer Personal Information, personal data that must be protected in the fintech business in Indonesia are:

- 1) Individual data, which must be protected: name, address, date of birth and / or age, telephone number and / or name of biological mother.
- 2) Corporate data, which must be protected: name, address, telephone number, composition of directors and commissioners including identity documents in the form of Identity Card (KTP) / passport / residence permit, and / or composition of shareholders.

In addition, in OJK Circular Letter Number 18/SEOJK.02 /2017, personal data that must be protected are:

- 1) Individuals such as: name, address, domicile, identity card (KTP), driving license (SIM), passport), Taxpayer Identification Number (NPWP), date of birth and / or age, e-mail address, IP address, telephone number, account number, name of biological mother, credit card number, digital identity (biometric), signature, educational history, employment history, current account, list of assets, data and other related information.
- 2) Corporation: name of corporation, address, telephone number, composition of directors and commissioners including identity documents in the form of KTP / passport / residence permit, composition of shareholders, account numbers, current accounts, list of assets, company documents, data and other related information.
- 3) Non-public data and information of a material nature: financial reports, business performance, management decisions, number of customers, data and other related information.
- 4) Data and information related to financial transactions.
- 5) Data and information related to contracts / agreements.

Protection of personal data is also regulated in the form of prohibition against wiretapping against the law as stipulated in Article 430 to Article 434 of the Civil Code. The prohibition of tapping arbitrarily or against the law, which is closely related to efforts to protect the right to privacy can also be found in Law Number 5 of 1997 concerning Psychotropics, Law Number 36 of 1999 concerning Telecommunications, Law Number 1 2003 concerning Advocates, Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking, Law Number 2008 concerning Electronic Information and Transactions, and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

Protection of user's personal data in online loans is divided into 2 (two) types, namely preventive protection and repressive protection. Preventive legal protection is legal protection that is preventive in the event of a dispute. So that this protection is carried out before the dispute occurs.

The internal rules made by this online loan provider can be in the form of a privacy policy. The privacy policy must not conflict with applicable laws and regulations. Therefore, reliable human resources who have high awareness of the need to keep the personal data of users of their services are needed. In order to increase awareness and quality of Human Resources, the organizers hold training on preventing failure of protection of personal data for their workers.

Repressive protection is legal protection that is carried out after the emergence of a dispute and aims to resolve the dispute. Disputes in online loan operations can occur between users and users or between users and providers. The dispute resolution mechanism is first carried out by filing a complaint from the party who feels aggrieved. Based on the provisions of the OJK as well as other provisions that have been mentioned above, if accessing personal data in the form of telephone contacts, photo galleries and other personal information belonging to online loan service users becomes spread or can be accessed by other parties, thus causing losses to the user, the organizer is obliged to provide compensation for his actions if it is proven to be the result of the fault or negligence of the organizer. The compensation can be in the form of a fine by paying a certain amount of money.

Fintech Company Responsibility for Accessing Phone Contacts and Photo Gallery in Online Loan Process

The responsibility of fintech companies, in this case is an online loan company, is not explicitly and firmly regulated in statutory regulations in relation to accessing telephone contact lists and photo galleries as personal data in online loans. But with regard to personal data, the responsibility of online loan fintech companies is to maintain the confidentiality of the personal data of online loan service users.

If the data is spread to other parties, then the fintech company must be responsible. In accordance with Article 26 paragraph (2) of the Law on Information and Electronic Transactions which explains that for people who feel that their rights to their personal protection are being violated, they can file a lawsuit for the losses incurred.

The responsibility of fintech companies in maintaining the confidentiality of users' personal data, is inseparable from the principle of responsibility in relation to consumer protection, consumers in this online loan service are users of online loan services. If then there is a loss or violation of consumer rights, it will result in liability consequences for those who cause such losses or those who violate consumer rights. So, it is necessary to know who should be responsible and to what extent the responsibility will be borne by the parties suspected of being responsible. (Saputra, n.d.)

In general, the principles of legal liability in consumer protection include:

a. The principle of responsibility based on error. Also known as liability based on fault, namely the principle of responsibility for mistakes. A person can only be held accountable legally if they fulfill the element of their wrongdoing. (Saputra, n.d.) This is reflected in Article 1365 of the Civil Code regarding acts against the law which must fulfill 4 (four) elements, among others:

- 1) The existence of an act
- 2) There is an error
- 3) There are losses suffered
- 4) There is a causal relationship between errors and losses

Based on this principle, no innocent person is required to compensate for the losses suffered by others.

a. The principle of presumption to always be responsible

It is also called the presumption of liability principle, which states that a person is held responsible until he can prove his innocence. So that the burden of proof is in the hands of the defendant.

b. The principle of absolute responsibility

The principle of absolute responsibility is known as strict liability and is often called absolute liability.

Strict liability is that: "concept of strict liability in tort is founded on the premise that when manufacturer presents his good to the public for asle he represents they are suitable for their intended use, and to incoke such doctrine it is essential to prove that the product was defective when place in the stream of commerce."

Strict liability does not require an agreement or contract between producers and consumers. This is because the basis for the lawsuit on strict liability can be based on the act against the law by the producer that causes losses. It can be said that strict liability is the responsibility on the basis of actions against the law (tort) with the elements of error, loss, and causality between the two. There is an opinion that says, strict liability is a principle of responsibility that determines error not as a determining factor.

Seen from the perspective of consumer legal protection, the concept of legal liability for business actors consists of product liability, contractual liability, and professional liability. Contractual liability is accountability on the basis of a contract or agreement between a business actor and a consumer in the form of a goods or services agreement (privity contract). And on the basis of the agreement (contractual relationship), the producer of the goods or services is responsible for all forms of losses suffered by consumers due to the goods they consume or the services they use. Contractual liability requires a legal relationship in the form of a contractual (Leder, 1996).

When viewed from the perspective of responsibility for personal data in online loans, online loan companies as fintech providers are responsible for the data security of their service users. Users in this case can be likened to consumers (who use online loan services), where users consist of loan recipients and lenders. Consumers are people or legal entities that use online loan services through platforms provided by fintech operators / peer to peer lending fintech companies / online loan companies). In OJK Circular Letter Noor 14 / SEOJK.07 / 2014 concerning Confidentiality and Security of Data and / or Consumer Personal Information, it explains that consumers are the parties who place their funds and / or take advantage of services available at Financial Service Businesses, including customers in banking, investors in the capital market, insurance policy holders, and participants in pension funds, based on laws and regulations in the financial services sector.

The responsibility of fintech companies as fintech organizers for accessing telephone contact lists and photo galleries related to personal data is closely related to the obligations of fintech companies as organizers. This is regulated in OJK Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services, which states that the operator must:

- a. Maintain the confidentiality, integrity and availability of personal data, transaction data and financial data that they manage from the time the data is obtained until the data is destroyed.
- b. Ensure the availability of an authentication, verification and validation process that supports non-discretion in accessing, processing and executing personal data, transaction data and financial data that they manage;
- c. Ensure that the acquisition, use, utilization and disclosure of personal data, transaction data and financial data obtained by the organizer is based on the consent of the owner of the personal data, transaction data and financial data, unless otherwise stipulated by the provisions of laws and regulations;
- d. Providing other communication media besides the electronic system of information technology-based lending and borrowing services to ensure continuity of customer service, which can be in the form of electronic mail, call centers, or other communication media; and
- e. Notify the owner of personal data, transaction data and financial data in writing if there is a failure in protecting the confidentiality of personal data, transaction data and financial data that they manage.

In Article 37 of OJK Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services, it is explained that the organizer is obliged to be responsible for user losses arising from errors and / or negligence, the board of directors, and / or employees of the organizer.

In the implementation of online loans, information technology is used as a liaison between the organizer and users of online loan services, so the operator is required to provide security for the information technology component in accordance with Article 28 POJK No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services, which states that administrators are required to safeguard the components of the information technology system by having and implementing procedures and means for securing information technology-based lending and borrowing services in order to avoid disruption, failure, and losses.

The fintech provider company, in this case an online loan company, must be responsible for its users, namely for loan recipients and lenders. The responsibility for these two users is the same in relation to accessing the phone contact list and photo gallery in online loans, both users must protect their personal data. If a fintech company as an online loan service provider violates the provisions that have been regulated so that it is detrimental to its users and the user's personal data is spread, then OJK has the

authority to impose administrative sanctions on the organizer in the form of written warnings, fines, restriction of business activities, and license revocation.

Fintech companies that do not carry out their duties, obligations and responsibilities as administrators, and have violated the law, must provide accountability for their actions. These responsibilities include:

1. Liability criminally

Criminally liable is the responsibility that is carried out if someone violates the criminal provisions. In an online loan, if the online loan provider is proven to have committed a criminal act that causes the spread of the user's personal data, then they will be held criminally responsible.

Violation of privacy is regulated in the provisions of Article 30 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, that everyone is prohibited from intentionally and without rights or against the law from accessing computers and / or electronic systems in any way for the purpose of obtaining electronic information and / or electronic documents. Violators of these provisions will be subject to criminal sanctions as stipulated in Article 46 paragraph (2) and can be sentenced to imprisonment of up to 7 (tjuh) years and / or a maximum fine of Rp. 700,000,000, - (seven hundred million rupiah). Furthermore, in connection with these provisions, Article 32 of the ITE Law regulates the prohibition of any interference, by reading:

- 1) "Everyone knowingly and without rights or against the law in any way changes, adds, reduces, transmits, destroys, removes, transfers, hides electronic information and / or electronic documents belonging to other people or public property.
- 2) Anyone who knowingly and without right or against the law in any way transfers or transfers electronic information and / or electronic documents to the electronic system of other persons who are not entitled.
- 3) The act as referred to in paragraph (1) which results in the disclosure of confidential electronic information and / or electronic documents to become accessible to the public with the data integrity that is not appropriate. "Article 48 of the ITE Law reads:

1. "Every person who fulfills the elements referred to in Article 32 paragraph (1) shall be sentenced to a maximum sentence of 8 (eight) years and / or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).
2. Every person who fulfills the elements as referred to in Article 32 paragraph (2) shall be sentenced to imprisonment of up to 9 (nine) years and / or a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah).
3. Every person who fulfills the elements as referred to in Article 32 paragraph (3) shall be sentenced to imprisonment of not more than 10 (ten) years and / or a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). "

Thus, actions that cause personal data (including telephone contact lists and photo galleries) to spread either due to negligence or deliberately by the online loan provider are criminal acts under Article 48 in conjunction with Article 32 of the ITE Law.

2. Liability in a civil manner

Civil liability is enforced if there is a violation of the provisions of civil law. Article 1365 of the Civil Code states that an act can be held accountable as long as it fulfills 4 (four) elements, namely the

existence of an act, an element of error, a loss, and a causal relationship between error and loss. In connection with that, Article 3 of the Law Number 11 of 2008 concerning Electronic Information and Transactions states the principle of prudence and also gives responsibility to each electronic system operator to implement reliable, safe and responsible electronic system accountability. Therefore, Article 26 of the ITE Law also states that anyone can file a lawsuit against the acquisition of personal data without his consent. Violation of personal data protection can be sued as an illegal act on the basis of an element of error.

3. Accountability administratively

Administratively, the responsibility for the failure of personal data protection, which if it is proven that it has taken personal data secretly without prior approval from the online loan service user, will be subject to administrative sanctions as regulated in Article 47 POJK No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services, namely in the form of written warnings, fines (obligation to pay a certain amount of money), restrictions on business activities, to revocation of licenses. Administrative sanctions in the form of fines, restrictions on business activities and license revocation can be imposed with or without the imposition of administrative sanctions in the form of written warnings, then administrative sanctions can be imposed separately or together with the imposition of administrative sanctions in the form of restrictions on business activities and revocation of licenses.

Fintech companies as providers of online loan services have responsibility for their duties and responsibilities as fintech administrators, if these things are not carried out, they will be held accountable. One of the answers is if the fintech organizer is proven to have committed an act against the law, violated the provisions of the statutory regulations, or made a mistake which resulted in the user's personal data being spread.

Criminal liability, civil liability and administrative responsibility for the actions of fintech administrators which resulted in losses for online loan service users, either by violating the law or violating applicable statutory provisions related to personal data protection, including protection of the security of telephone contacts and photo galleries of service users online loans, implemented based on the provisions of the applicable laws, both in criminal law, civil law, and administrative law.

Conclusion

1. Regulations regarding online lending or also known as fintech peer to peer lending, in Indonesia there are several related provisions that regulate it, namely provisions issued by the OJK and provisions issued by Bank Indonesia. Provisions issued by the OJK, including Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Borrowing and Lending and Financial Services Authority Circular Letter Number: 18 / SEOJK.02 / 2017 concerning Implementation of Governance and Information Technology Risk Management In Technology-Based Lending and Borrowing Services, the provisions issued by Bank Indonesia, namely Bank Indonesia Regulation Number 19/12 / PBI / 2017 concerning the Delivery of Financial Technology, Bank Indonesia Regulation Number 18/40 / PBI / 2016 concerning Implementation of Payment Transaction Processing, Regulations Members of the Board of Governors Number 19/14 / PADG / 2017 concerning Limited Trial Space (Regulatory Sandbox) of Financial Technology, and Member Regulation of the Board of Governors Number 19/15 / PADG / 2017 concerning Registration Procedures for Information Submission and Monitoring of Financial Technology Operators.
2. Protection of personal data for accessing telephone contact lists and photo galleries in the loan process is not conveyed explicitly in statutory regulations, but is conveyed implicitly. There are 2 types of

protection for personal data of online loan service users, namely preventive protection (prevention) carried out before a dispute occurs and repressive protection carried out after a dispute arises. Based on Article 25 of Law Number 11 of 2008 concerning Electronic Transactions and Information as amended by Law Number 19 of 2016, the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned. This provision is also in accordance with the provisions in Article 9 of the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems which states that the acquisition and collection of personal data by electronic system operators must be based on approval or based on provisions of laws and regulations.

3. The legal accountability of fintech companies as online loan providers for accessing telephone contact lists and photo galleries in the online loan process has not been specifically regulated. The responsibility of this fintech company can be seen from several statutory provisions. The responsibilities of online loan fintech companies are closely related to their obligations as online loan service providers. Fintech companies are responsible for the security of personal data belonging to users of their services. This is regulated in OJK Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Lending Services for Borrowing Money. Furthermore, if a fintech company is not responsible for its duties and obligations as an online loan service provider, then the fintech company must provide responsibility for both civil liability, criminal responsibility, and administrative responsibility.

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