



## Factors Affecting the Unoptimized Arrangements for Legal Protection of Borrower in Information Technology Based Loan-Lending Services Transactions in Indonesia

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### **Abstract**

This study aims to take an inventory of the factors that influence the protection arrangements for borrower in information technology-based money lending and borrowing services (LPMUBTI) transactions in Indonesia that are not yet optimal. This research is a normative research that is prescriptive. The research approach used is the statutory and conceptual approach. Sources of legal materials were obtained from primary legal materials and secondary legal materials by way of literature study and analyzed using the deduction method. The results of the study show that the factors that influence the regulation of legal protection for borrower in LPMUBTI transactions in Indonesia are not optimal. This factor can be seen from several perspectives, namely from the perspective of the legal structure if it is related from this theory the phenomenon of the number of complaints regarding terror, intimidation, and so on then in this case the law enforcement officers only apply administrative and criminal sanctions to illegal LPMUBTI. The substance side has not included the accommodation of restructuring options or the like when the loan recipient cannot fulfill his achievements. In terms of legal culture, obstacles were found that the community was very minimally literate and when applying for loans they did not think about the risks.

**Keywords:** *Borrower; Legal Protection; LPMUBTI*

### **Introduction**

Technological advances are getting faster following the direction of progress and the presence of technology seems inseparable from our lives today, therefore everything feels easier and faster. Of course this makes changes in people's lifestyles, including the financial sector. It used to be difficult for Indonesians to get loans, but now it's very easy without having to go to the bank. What makes this easier is the existence of an online lender platform or commonly known as Fintech Peer-to-Peer Lending (financial technology). Fintech Lending is also known as Information Technology-Based Borrowing and Borrowing Services (LPMUBTI).

The emergence of financial technology gave rise to financial companies, one of which is in the field of LPMUBTI. The increasing number of financial technology companies emerging in the field

(LPMUBTI), of course, is getting the attention of the public and the government, in this case the regulators, namely the Financial Services Authority (OJK) and Bank Indonesia. This is stated in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing and Borrowing Services. (Priyonggojati, 2020)

LPMUBTI's arrangement is very important considering its growing presence in Indonesia because it is easy and can attract funds in various ways. Information technology-based lending and borrowing services are regulated and monitored by the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning LPMUBTI, but not all LPMUBTI companies are registered with the financial services authority, so that currently there are legal service providers and illegal or unregistered. Problems that are not registered or illegal are not merely administrative matters but further than that cause various problems which in the end are detrimental to service users.

The difficulty in taking action against illegal LPMUBTI businesses is because there are no regulations that provide strict sanctions against the existence of illegal LPMUBTI. This condition causes LPMUBTI service users to be involved in problems when billing. In this case the billing method is sometimes out of the ordinary by using threats and terror techniques which lead to human rights violations. The protection of the rights of LPMUBTI service users is still not optimal even though there are sanctions in laws and regulations regarding violations of the right to a person's sense of security through electronic media.

This is very concerning considering that users of LPMUBTI services have basic rights that need to be protected, both as consumers and as human beings who have had basic rights since birth. The protection of the basic rights of LPMUBTI service users is already contained in the Consumer Protection Act and the Human Rights Act (Pardosi & Primawardani, 2020). The impact of the problems that arise for consumers of online loan services, one of which is when collecting payments, they are made uncomfortable, feel blackmailed, terrorized and intimidated. It is indicated that the actions of the LPMUBTI organizers not only violated the law but also violated human rights, especially in Law Number 39 of 1999 concerning Human Rights Article 29 Paragraph (1) and Article 30 (Arvante, 2022).

Likewise, with violations of the use of personal data where until now there are no regulations that specifically provide strict sanctions on this matter, causing anxiety for service users as a result of misuse of the data they have. (Pardosi & Primawardani, 2020)

There are laws and regulations that have regulated a lot regarding LPMUBTI in Indonesia but there are still many parties who are harmed, so how can we prevent many parties from being harmed again. Based on this, this study formulates the problem that why the legal protection arrangements for borrower in information technology-based money lending and borrowing services transactions in Indonesia are not optimal?

## ***Discussion***

Part of a series of government efforts in a country to assist citizens in knowing and understanding their rights and obligations, as well as to overcome difficulties in obtaining justice. The government as the national authority must be able to guarantee the successful implementation of rights and obligations based on the goals of the state itself, and must socially protect all nations within the state. Providing justice to all people in this country, including in terms of legal protection.

M. Isnaeni argues that basically the issue of "legal protection in terms of its source can be divided into two (2) types, namely "external" legal protection and "internal" legal protection. The essence of internal legal protection, basically the legal protection referred to is packaged by the parties themselves

when making an agreement, where when packing the contract clauses, both parties want their interests to be accommodated on the basis of the agreement.

Lawrence M. Friedman's legal system theory (Suherman, 2004) sees the success of a law with 3 components including; First, the legal structure, which is the whole of existing legal institutions and their apparatus, such as courts and their judges, prosecutors and prosecutors and so on. (Suherman, 2004)

Second, the legal substance is a substantial system where it determines whether or not a law works, the substance is made by people in the legal system to support one another in carrying out the legal system, which includes legal rules, norms, principles, both written and non-written, including court decisions (Suherman, 2004).

Third, legal culture, namely the behavior or attitude of a person towards a law, values, beliefs, thoughts and expectations. This legal culture or culture is a social force that determines how the law is implemented, avoided or misused. Legal culture is a part that is closely related to public legal awareness, because the higher public awareness of the law, the easier it will be to create a good legal culture and be able to improve the image of the law which has been seen as unequal before the public so far (Suherman, 2004).

Consumers as users of a product/service have rights to obtain a form of protection that is legal and recognized by the state in the form of legal protection. (Winarso & Prananingtyas, 2020) Consumer behavior is generally divided into 2 (two), namely consumer behavior that is rational and irrational, along with its characteristics. (Sudaryo, 2020)

1. Characteristics of rational consumer behavior, including:
  - a. Consumers choose goods based on their needs.
  - b. Goods chosen by consumers provide optimal benefits or uses for consumers.
  - c. Consumers choose goods whose quality is guaranteed.
  - d. Consumers choose goods whose price is according to their ability or purchasing power.
2. The characteristics of irrational consumer behavior, including:
  - a. Consumers are quickly attracted by advertisements or promotions in print and electronic media.
  - b. Consumers have branded goods that are well known and widely known.
  - c. Consumers choose goods not based on their needs, but because of prestige or prestige

Factors considered by consumers in making decisions about

Product purchases are influenced by cultural, personal, social and psychological factors. (Sudaryo, 2020)

### 1. Follower Culture or Trends

The phenomenon of cultural trends occurs along with the development of technology and social media which become a vehicle for communicating and sharing ideas, ideas and activities so that other people, communities and society can know about them. This cultural trend has meaning as a form of behavior of most people or communities in their environment. This happens in everyday life and consumer behavior activities such as the development of fashion and accessories, even the use of technology.

### 2. Image or Imaging

The image concept in question is something that is abstract because it is related to ideas, impressions, and consumer beliefs about the products they consume. Image can describe the idea, support, and action taken on the product. The products they consume include positive actions or negative

responses depending on the process of their formation and the meaning obtained from the products that make them up

### 3. Life Style/Lifestyle

Lifestyle is a secondary human need and changes according to his wishes and mindset. The concept of lifestyle reflects a person's behavior which is reflected through his activities, what is in demand and opinions regarding his image, as well as to show his social status. This will shape consumer behavior patterns. This change in behavior is also due to the increased use of technology including the use of social media as a means for self-existence and self-actualization for consumers, especially after consuming a product that is highly expected so as to provide values as a symbol, class and economic status. Changes in consumption patterns as a lifestyle factor.

### 4. Prestige

Prestige is interpreted as a pride in one's abilities and makes that person different from other people. Pride is related to one's ability to have various kinds, varieties, types and quality of products that ultimately make that person different.

Various efforts were made by the government in suppressing the existence of illegal LPMUBTI, of which these efforts include currently the OJK working with the Investment Alert Task Force and the Ministry of Communication and Information (Kemkominfo) which then took action to block the illegal LPMUBTI platform.

However, this step is considered not optimal because the illegal LPMUBTI still exists. One of the reasons is the ease of technology so that the development of the illegal LPMUBTI platform is easy to do. After the LPMUBTI platform was blocked, the developer then just had to redevelop the platform using the same source code reference, then modify it by giving a new name to the blocked LPMUBTI platform (Ardani, 2019).

As a preventive action, the next government also continues to provide education and outreach to the general public so that people are not wrong in choosing, especially for LPMUBTI services. However, there are major obstacles, especially in the law enforcement process against the presence of LPMUBTI who carry out their business activities illegally and do not receive official permission from the competent body, in this case, namely the OJK. Sanctions given to official LPMUBTI in order to protect consumer interests are regulated in the provisions of Article 47 POJK NO.77/2016 in the form of administrative sanctions in the form of fines, written warnings, restricted business license activities, even the most severe sanctions, namely OJK can revoke its business license (Disemadi, 2021). In Article 285 of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector if administrative sanctions cannot be fulfilled then criminal sanctions can be imposed.

Due to legal loopholes in the implementing regulations for LPMUBTI activities, in the field of supervision and prosecution of the existence of illegal LPMUBTI a special body was formed consisting of various law enforcement agencies, supervisory agencies, and also various other parties who are members of a Task Force, hereinafter referred to as by the Investment Alert Task Force. State agencies that have joined the Task Force include OJK, Kemkominfo, banking institutions, to the Investment Coordinating Board (BKPM).

The presence of the Investment Alert Task Force (SWI) is to guarantee and create security and comfort for customers in investing. The main tasks of SWI are to collect data on illegal investment cases, conduct analysis, stop and inhibit the increasing number of illegal investment cases, provide understanding and outreach to the public, improve coordination of handling cases with relevant agencies, carry out joint investigations of illegal investment cases. SWI in this case can cooperate with the Ministry

of Communication and Information to block access to internet pages and cellular network applications. This SWI is assisted by several institutions to enforce the naughty LKMUBTI, but in reality there are still many unwanted incidents.

Judging from Friedman's theory, there are at least 3 factors, namely the law or the rules themselves, law enforcers and public awareness as legal subjects. Therefore, this problem will be seen through the Legal System Theory promoted by Lawrence M. Friedman, in which this theory carries 3 basic aspects in achieving a good law, namely legal structure, legal substance and legal culture. If related to this theory, the phenomenon of the large number of complaints regarding terror, intimidation, and so on, in this case the law enforcement officers only focus on borrower who have experienced various threats, not focusing on how to prevent these incidents from happening. In terms of substance, it has not included accommodation options for restructuring or the like when the loan recipient cannot fulfill his achievements.

### **Closing**

The factors that affect the regulation of the protection of borrower in information technology-based money lending and borrowing services transactions (LPMUBTI) in Indonesia are not optimal, which can be seen from several perspectives, namely in terms of the legal structure when linked from this theory the phenomenon of the number of complaints about terror, intimidation and so on, then in this case the law enforcement officers only apply administrative and criminal sanctions to illegal LPMUBTI. The substance side has not included the accommodation of restructuring options or the like when the loan recipient cannot fulfill his achievements. In terms of legal culture, obstacles were found that the community was very minimally literate and when applying for loans they did not think about the risks.

### **References**

- Arvante, J. Z. (2022). Dampak Permasalahan Pinjaman Online dan Perlindungan Hukum Bagi Konsumen Pinjaman Online. *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, 2(1).
- Disemadi, H. S. (2021). *JURNAL KOMUNIKASI HUKUM* Volume 7 Nomor 2 Urgensi Suatu Regulasi yang Komprehensif Tentang Fintech Berbasis Pinjaman Online Sebagai Upaya Perlindungan Konsumen di Indonesia.
- Pardosi, R. O., & Primawardani, Y. (2020). Jurnal Ham Volume 11, Nomor 3. *Perlindungan Hak Pengguna Layanan Pinjaman Online Dalam Perspektif Hak Asasi Manusia*, 365.
- Priyonggojati, A. (2020). Perlindungan Hukum Terhadap Penerima Pinjaman Dalam Penyelenggaraan Financial Technology Berbasis Peer To Peer Lending. *Jurnal USM Law Review*.
- Suherman, A. M. (2004). Pengantar Perbandingan Sistem Hukum. Jakarta: Rajawali Press.

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