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Legal Protection of Creditors in Financing Agreements through Digital Credit Services (Paylater)

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Abstract

This paper discusses the characteristics of financing agreements in digital credit services (paylater) and their legal protection for creditors. The research method uses a doctrinal with legislation and conceptual approach. Sources of legal materials include primary and secondary legal materials. The analysis uses prescriptive logic and legal reasoning. The results show that the development of electronic-based payment systems has an effect on the creation of electronic money in a payment system that provides convenience, flexibility, and efficiency in transactions. Electronic-based transactions are growing rapidly along with the changing patterns of people's shopping from offline to online. Marketplace in its development creates financial technology, namely paylater. The paylater implementation is carried out with an online agreement contained in an electronic document using a computer network that is connected. Lenders and borrowers are linked by the peer to peer lending (P2P) financial services. The characteristics of the financing agreement in the practice of digital credit services (paylater) are the same as conventional agreements which must meet the terms and elements of the agreement as stipulated in the Civil Code. However, in the paylater financing agreement, apart from the borrower and lender, parties are providing financial services to bring together lenders and loan recipients to enter into a lending and borrowing agreement, namely the marketplace, which is outlined in an electronic document. Legal protection for creditors in case of default can apply for dispute resolution through BPSK, Alternative Dispute Resolution Institutions, and District Courts.

Keywords: *Agreement, creditor, financing, paylater*

Abstrak

Paper ini membahas tentang karakteristik perjanjian pembiayaan dalam layanan kredit digital (paylater) dan perlindungan hukumnya terhadap kreditur. Metode penelitian menggunakan doktrinal dengan pendekatan perundang-undangan (statute approach), dan pendekatan konseptual (conceptual approach). Sumber bahan hukum meliputi bahan hukum primer dan sekunder. Analisis menggunakan preskriptif dengan logika dan penalaran hukum. Hasil penelitian menunjukkan bahwa, perkembangan sistem pembayaran berbasis elektronik berpengaruh pada terciptanya uang elektronik dalam sistem pembayaran yang memberikan kemudahan, fleksibilitas, dan efisiensi dalam bertransaksi. Transaksi berbasis elektronik berkembang dengan pesat seiring dengan berubahnya pola belanja masyarakat dari offline ke online. Marketplace dalam perkembangannya

menciptakan financial technology yaitu paylater. Pelaksanaan paylater dilakukan dengan perjanjian online yang termuat dalam dokumen elektronik dengan penggunaan jaringan komputer yang saling terhubung. Penerima pinjaman dan pemberi pinjaman dihubungkan oleh layanan jasa keuangan peer to peer lending (P2P). Karakteristik perjanjian pembiayaan dalam praktik layanan kredit digital (paylater) sama dengan perjanjian konvensional dimana harus memenuhi syarat dan unsur perjanjian sebagaimana yang diatur dalam KUH Perdata. Namun, dalam perjanjian pembiayaan paylater selain pihak peminjam dan pemberi pinjaman, terdapat pihak penyelenggaraan layanan jasa keuangan untuk mempertemukan pemberi pinjaman dengan penerima pinjaman dalam rangka melakukan perjanjian pinjam meminjam yaitu marketplace, yang dituangkan dalam dokumen elektronik. Perlindungan hukum terhadap kreditur jika terjadi wanprestasi maka dapat mengajukan penyelesaian sengketa melalui BPSK, Lembaga Alternatif Penyelesaian Sengketa, dan Pengadilan Negeri.

Kata Kunci: Kreditur, perjanjian, pembiayaan, paylater

Introduction

Satjipto Rahardjo argues that the law exists in society to integrate and coordinate interests that may conflict with one another. The coordination of these interests is carried out by limiting and protecting these interests. (Rahardjo, 2000) The essence of internal legal protection, namely legal protection that 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 an agreement. Likewise, all types of risks are sought to be prevented through filing through clauses that are packaged on the basis of agreement, so that with this clause the parties can obtain legal certainty that is balanced with the consent of the parties. Regarding the legal position of the parties are relatively equal, which means that the parties have relatively balanced bargaining power, so that on the basis of the principle of freedom of contract, each party has the freedom to express their will in accordance with their respective interests. This situation becomes the basis when the parties make the clauses of the agreement, so that legal certainty for the parties can be realized in a straightforward manner on the initiative of the parties themselves. Everything that exists in the world should have given rise to the basics of justice for humans, thus the law not only traces the balance between various interests that conflict with each other, but also for get a balance between the demands of justice with "order" or "legal certainty". (Asikin, 2011)

Financial Technology (Fintech) is an innovation in the financial services industry that utilizes the use of technology. Fintech products are usually in the form of a system built to carry out specific financial transaction mechanisms. Fintech consists of two words, namely

financial and technology which when translated into Indonesian becomes financial technology. Financial technology in a simple context is a service that is engaged in the financial sector offered by bank and non-bank financial institutions by utilizing technology to improve services to make it easier for the community. (Fitria, 2020) The growth of fintech in Indonesia according to the total increase in companies from year to year has increased, starting at the turn of 2013-2014 which had 40 companies developing in the turn of 2015-2016 which increased to 165 companies. Fintech operators are strong in the payment business (43%), loans (17%), and the rest are in the form of aggregators, crowdfunding, and others. The abundance of potential that fintech has needs to be given space to develop. (Wijaya, 2019)

The use of digital wallets as a means of payment is highly favored by the public during the COVID-19 pandemic. The development of digital wallet transactions coincides with the changing pattern of people's shopping from offline to online. The increase in digital wallets occurred during a pandemic because people like to make cashless payments because it is considered more efficient and easy without the need to leave the house. Digital wallets that have been integrated into the marketplace will certainly experience significant development, this was conveyed directly by the Economist of the Institute for Development of Economics and Finance (Indef) Bhima Yudhistira. The shift in people's lifestyles, which are currently more often at home, has played a role in increasing online shopping activities.

The increasing use of digital wallets is in line with the easier it is to find loan services without using a credit card when making transactions on a marketplace platform called a paylater. The paylater feature is a feature that allows consumers to be able to buy an item with payments that can be paid in installments, but with an agreed timeframe. Paylater users are increasing along with the increasing use of the marketplace to meet the various needs of the community. Data from the 2019 Fintech Report published by DSRResearch, the use of paylater (56.7%) is a service that is in great demand by the public who is in third place under digital wallets (82.7%) in first place and investment applications (62.4%) in second place. (Eka, 2020)

Based on a report from McKinsey, the Indonesian marketplace industry is estimated to have a profit of \$40 billion by 2022. Meanwhile, in 2019, the capitalization value of the online trading market has reached \$21 billion. or equivalent to 294 trillion Rupiah, this is reinforced by findings from WeAreSocial which states that 90% of internet users in

Indonesia have shopped online. Another factor is related to the low ownership of bank credit cards. Data from Bank Indonesia, in February 2020 there were 17.61 million credit cards circulating in Indonesia. This figure is considered very small compared to the total population of Indonesian people.

Fintech refers to a digital platform that offers financial services to consumers. One of the fintech products is Peer to Peer Lending (hereinafter referred to as P2P). P2P is a financial service provider that connects lenders to loan recipients. Borrowing and borrowing from conventional financial institutions is one of the most influential financial instruments. Financial institutions and business units engaged in the savings and loan sector are often seen as similar to P2P, this is because for example a financial institution does not use lending and borrowing instruments, then the financial institution can be declared to be ineffective.

Paylater is an information technology-based money lending service that brings together lenders and loan recipients in the context of purchasing loan facilities by lenders to borrowers in rupiah currency directly through the platform as stated in POJK Number 77/POJK.01/2016 concerning Lending and Borrowing Services. Information Technology Based Money (hereinafter referred to as POJK LPMUBTI). This paylater service is provided by e-commerce which is used as a payment method when shopping online in the marketplace application. At the beginning of the existence of this paylater it could only only felt by sellers in the marketplace, but now it can also be felt by private users based on special terms and conditions.

The existing agreement on the paylater is not limited only between the user and the marketplace, because the paylater is a form of P2P agreement which is a loan agreement from the user to the provider, which is contained in the use of the paylater payment method in the marketplace application, with the existence of the organizer it is also possible to have various kinds of agreements in the use of the paylater method, with the formation of an agreement between the parties, it can also be seen that the parties have an obligation to fulfill the achievements of other parties and if there are parties who do not fulfill their obligations, the negligent party is considered a default and action can be taken to the party can fulfill its obligations. (Aulina, n.d.) This is related to the agreement that has been agreed by the parties, where if there is a default, the operator is not responsible for the risk because the agreement and decision are only agreed upon by the service user. If there is a default by the borrower due to not paying the loan to the lender, then the loss is fully borne by the lender. This

condition is increasingly interesting to discuss because based on records from the OJK, non-performing loans or 90-day loan defaults (TWP90) for fintech lending have continued to increase since the Covid-19 pandemic. In February 2020 it was 3.92%, while as of August 2021 the TWP90 of 157 fintech lending providers had an average of 8.88 %. Therefore, this paper discusses the characteristics of financing agreements in digital credit services (paylater) and their legal protection for creditors.

Method

This research is a doctrinal with a statute and conceptual approach. Sources of legal materials, primary and secondary legal materials, are related to legal issues. Analysis of legal materials uses prescriptive analysis with logic and deductive legal reasoning. Deductive legal logic and reasoning are done by concluding a problem in general to the problem faced in particular, which becomes a reference and legal consideration to analyze problems from concepts or theories that are generally applied to describe legal facts or compare using issues or theories. legal problems that occur, systematically from a collection of legal materials obtained, and equipped with the opinions of scholars related to study materials as comparative material.

Discussion

1. Characteristics of Financing Agreements Based on Digital Credit Services (Paylater)

The agreement according to Black's Law Dictionary is an agreement or agreement of two or more parties. The agreement creates an obligation for both parties. Based on the explanation above, it can be concluded that the agreement is defined as an agreement from both parties to carry out an obligation whether to be carried out or not to be carried out. (Salim, 2003) Meanwhile, according to Subekti, if there is someone who makes a promise to another person or an agreement occurs between people in doing something, it is called an agreement. Based on the events above, an agreement creates a relationship between people, where the relationship is called an engagement. When viewed based on its form, an agreement is a series of words that contain promises both written and spoken orally. (A. P. Subekti, 2001)

An agreement is an act in which at least one person binds themselves to at least one person as stated in Article 1313 of the Civil Code. Article 1338 of the Civil Code states that all arrangements made legally, in particular depending on the terms of the validity of the agreement, will apply as law to the individual who made them. An arrangement that has been finalized cannot be deleted unless the arrangement is hosted for approval by two meetings or as a reason permitted by law, it is declared adequate. To reach an agreement at the meeting, arrangements must be made in hard copy as valid proof. (Widjaja, 2007) According to Prodjodikoro, what is meant by an agreement is a legal relationship regarding property between two parties, where one party promises or is deemed to have promised to do something or not to do something, while the other party has the right to demand the implementation of that promise. (Pradjodikoro, 1981) According to Harahap, an agreement or *verbintenis* is a legal relationship of wealth or property between two or more people that gives strength to the rights of one party to obtain achievements and at the same time obliges the other party to carry out achievements. (Salim, 2003) Meanwhile, according to Salim, an agreement is a legal relationship between one subject and another subject in the field of resources, where one legal subject has the privilege to complete it as other legal subjects who are obliged to complete their achievements by what he has agreed. (Salim, 2003)

The stages in the agreement, among others: 1) pre-contractual, namely actions that include in negotiations with studies on offers and acceptance; 2) contractual, which is about the meeting of two statements of will that bind both parties; 3) post-contractual, namely the stage in the implementation of the rights and obligations to be realized through the agreement. The agreement has an element of promise, where a promise is given by one party to another (Salim, 2003). A person who is bound by a promise is also bound by an obligation that must be carried out by the law that determines. If someone agrees with another person, then that person is bound by legal arrangements that arise of his own free will.

The components of the agreement include: 1) the existence of a legal relationship, namely a relationship that has a legal effect. The legitimate outcome is the development of rights and commitments; 2) the existence of a valid subject. The legitimate subject matter, particularly allied rights and commitments. Subjects in contract law include legal subjects that are managed in the Civil Code, as it is realized that Civil Law fulfils the requirements of legal subjects which consist of two parts, on certain people and legal substances. The aim is that the individuals who agree as indicated by the Civil Law are individuals or groups, but also

legal elements, such as companies, cooperatives and limited risk organizations; 3) the existence of achievements according to Article 1234 of the Civil Code consists of offering something, achieving something, and not achieving something; 4) in the field of resources, in general, the arrangements that have been reached between a minimum of two business actors are written in a structured structure which is then marked by a meeting which is known as a business contract. (Husni, 2009)

Agreement is the source In a commitment as indicated by Subekti, commitment is a valid relationship between two individuals or two meetings, because one meeting has the option to request something from the other party, and the other party is obliged to fulfill that request. (Subekti, 2005) Commitment can also be understood from various sources guaranteed in the name of law. Commitments born from enactment can also be separated into agreements that are brought into the world because of the law in particular (Article 1352 of the Civil Code) and arrangements that come from the law because of someone's demonstration. Then the arrangement that was born from a law due to a person's demonstration can be isolated again into an agreement that is understood from the demonstrations obtained and those obtained from demonstrations that are against the law (Article 1353 of the Civil Code).

In the relationship between people who cause an agreement, there will also be an engagement. The agreement is the source of the engagement, in addition to other sources. An agreement is also called an agreement, because the two parties agree to do something. Therefore, agreement and agreement have the same meaning. Based on this explanation, an engagement is an abstract understanding, while an agreement is a real thing or a concrete event. An agreement is said to be something abstract because it cannot be seen in real but can only be imagined, whereas agreements are generally seen both in written and oral form so that the contents or the words containing the promise can be heard. (Badrulzaman, 2005)

The main legal basis for implementing an agreement is Article 1313 of the Civil Code, which states that an agreement is an act where one or more people bind themselves to one or more other people. Based on that event, a legal relationship was born between the parties called an engagement in which there are rights and obligations of each party. The provisions of a substantial arrangement are arrangements that meet the needs established by law. In accordance with the provisions of Article 1320 of the Civil Code, for the legitimacy of an agreement, four conditions are required, namely:

a. Deal

Agreement is an agreement of will between at least one individual and another party. (Yahman, 2011) Basically, the way most meetings are carried out is specifically, with the use of extraordinary language, both verbally and in hard copy form. The motivation behind the creation of structured arrangements is to provide a valid guarantee to the meeting and as outstanding evidence when debates arise in the future. (Salim, 2008) This agreement must be given unconditionally, which implies that there is no impact from outside parties and no disruptive influences such as: (Salim, 2008)

- 1) Coercion, to be a mental impulse or mental compulsion, not physical coercion. For example, one party because of being humiliated or feared is forced to agree to an understanding.
- 2) Mistake, which occurs when one of the parties makes a mistake about the main things guaranteed or about the product that is the object of the agreement.
- 3) Fraud, which can occur if one party knowingly provides false data combined with multiple transactions to convince the other party to agree to an agreement. For example, selling a trade-in vehicle that has been cleaned in such a way that it looks as if it is new by letting the buyer know it is new.

2. Talk to make a deal.

The ability to act is one of the legitimate abilities, namely the ability to carry out legitimate activities. Legitimate activities are activities whose results are lawful. An individual who should be equipped to carry out legal activities is an adult, implying that he has arrived at the age of 21 or is currently married even though he is not yet 21. (R. Subekti & Tjitrosudibio, 2006) Article 1330 of the Civil Code decides people who are not ready to conclude an agreement, to be more specific as follows:

- 1) Individuals who are not yet mature.
- 2) Those who are prohibited or under custody.
- 3) Women in matters defined by law as well as all persons prohibited by law from entering into certain agreements (eg married women). However, the agreement was not declared, with the provisions of Article 31 of Law Number 1 of 1974 concerning Marriage and the Circular Letter of the Supreme Court Number 3 of 1963, which stated that husband and wife are equipped to carry out legal activities, including establishing agreements.

3. Halal clause

The third prerequisite of Article 1320 of the Civil Code in relation to the provisions of the legitimacy of the regulation is a definite matter. In a definite sense there are certain articles or things that are identified with their arrangement. The specific things mentioned in Article 1320 of the Civil Code are commitments and rights. This implies that the specifics are what have been resolved, specifically the rights and commitments of both parties. (Khairandy, 2014)

4. Certain Things

What is meant is that an agreement must have an object, it must be about certain things, namely the rights and obligations of both parties regarding what was agreed.

The first and second terms are known as the emotional terms of an agreement relating to the individual or the subject of the agreement. While the third and fourth conditions are referred to as target conditions concerning the agreement itself. Basically, an agreement must contain several regulatory components, the elements of which are as follows: (Miru, 2007)

- a. The essential element, without this component in an agreement, will cause the agreement planned by the parties to be different and not in accordance with the wishes of the parties. The essential element is the *conditio sine qua non* of an agreement, where without this component the agreement becomes non-existent, or can be invalid and null and void. The essential element in the agreement depends on the type of agreement. For example, the agreement in the paylater, the consumer must have an understanding of the use of e-money in the payment, because without this understanding the agreement is invalid and void on the grounds that there are no definite things that have been agreed upon.
- b. The *Naturalia* element is a condition that is generally expressed in an agreement. However, without the merging of the terms mentioned, an agreement is still valid and does not make the agreement non-binding. In contrast to the essential elements which if not fulfilled will result in a legally invalid agreement. The *Naturalia* element is a general matter that is usually regulated by the parties which is usually included in the agreement. If there are conditions that are generally recorded and then not contained or controlled in the agreement, then the law will act as if filling the existing void and must be in

accordance with the legal nature of the agreement, namely *accessoir* which is also called discretionary law.

- c. The accidental element in the agreement is an integral component/complementary element in an agreement. This element is a specific issue expressed in the agreement, which is affirmed and agreed upon by the parties. The word accidental implies that it can exist or can be arranged, or may not exist, depending on the wishes of the parties with important considerations or not to do.

The form of agreement in the Civil Code is not explained directly, but if you analyze the various arrangements in the Civil Code, the agreement can be divided into two (2) forms, namely a written agreement (compiled) and an oral agreement. Agreements are a means of social and individual life that are widely applied to every activity of daily life, including business activities. Marketplace services are the result of technological innovation that has penetrated the electronic business sector with the ease of shopping for goods/services to individuals who surf in cyberspace.

The birth and development of laws on information technology have been driven by the union between telecommunications and informatics and one of them is supporting the introduction of options for the implementation of business activities known as electronic commerce (hereinafter referred to as marketplace). (Dewi, 2009) Electronic transactions have become a part of everyday life both locally and across countries. Electronic transactions have legal provisions both widely and internationally with the enactment of the United Nations Convention On The Use Of Electronic Communication In International Contracts in 2005 (hereinafter referred to as the electronic communication convention or abbreviated as ECC). (Bahri, Yahanan, & Trisaka, 2019)

The definition of electronic transactions based on Article 1 paragraph (2) of Law Number 19 of 2016 concerning Information and Electronic Transactions is a legal legal act and is directed to use a PC, computer network (PC), and/or other electronic media. As indicated by Julian Ding, as quoted by Mariam Darus Badruzaman, the notion of an electronic commerce transaction is an exchange between a dealer and a buyer to provide merchandise and business or to take control of rights. (Badruzaman, 2001) This agreement is carried out with electronic media (computerized media) where the meeting is not actually present and this media is in a public organization with an open framework, specifically the

web or the internet. This exchange occurs without regard to provincial boundaries and public preconditions).

In practice, transactions in the marketplace are divided into two types, namely:

- a. Electronic exchange is by implication, precisely the legal relationship between the buyer and seller, which is an agreement made via the web, but product delivery is carried out in a typical manner as is usually done in the exchange of merchandise;
- b. Direct electronic exchange, particularly official connections completed via the web, both in contract creation and product delivery, generally in standard exchanges, for example offering downloadable programs, movies, music or data.

Marketplace transactions are currently more in demand because they have the following advantages:(Dewi, 2009)

- a. For Entrepreneurs
 - 1) Expanding the market to the world level with little capital considering the fact that through the web business people can no doubt, quickly and economically can get more buyers;
 - 2) Allows the organization to reduce the size of stock and excess inventory because product capacity will depend on buyer orders;
 - 3) Expanding organizational capabilities by expanding the efficiency level of workers in agreements and organizations;
 - 4) Reduced correspondence costs because the cost of using the web is much cheaper;
 - 5) Improve the organization's image with better assistance to buyers, disclosure of new colleagues, less complex work actions, and faster access to data.
- b. For Consumers.
 - 1) Allows shoppers to shop or make different exchanges 24 hours for all regions around the world;
 - 2) Give more decisions to buyers;
 - 3) Offering merchandise or services at a generally lower cost;
 - 4) In the administrative area the delivery of shipments is faster;
 - 5) Buyers can trade data.
- c. For Society
 - 1) Allows multiple people to work from their homes;

- 2) Allowing multiple merchants to sell their wares or services at lower prices so that individuals can buy their goods and goods;
- 3) Can reach buyers who are in remote areas;
- 4) Can encourage the implementation of public administration, for example medical care, counseling, circulation of social administration.

Paylater is a means of payment used by consumers with the marketplace. This type of payment instrument is the same as the use of electronic money because the *paylater* is one of the electronic money. While its use is the same as using a credit card, where consumers can make payments that are financed first by the marketplace, and then consumers make payments to *marketplace* at the appointed time.

Paylater can be categorized as e-money because its use and registration procedure is done online and with reference to Bank Indonesia Regulations PBI number. No. 11/12/PBI/2009. E-money in English is defined as a means of payment that replaces conventional money that can be used and distributed as a medium of exchange, which is stored in digital format in a computer or micro chip in a card. (Settlements, Monetary, & (Basle), 1996) E-money based on the range of use is divided into two, Single Purpose is e-money that can only be used for payment transactions for obligations that arise of one type of economic transaction, and Multi-Purpose is e-money that can be used for various types of economic transactions. (Muamar & Alparisi, 2017)

PayLater is an information technology-based lending and borrowing service that brings together lenders and loan recipients in the context of purchasing loan facilities by lenders to borrowers in rupiah currency directly through the platform as stated in POJK Number 77/POJK.01/2016 concerning Lending and Borrowing Services. Information Technology Based Money (hereinafter referred to as POJK LPMUBTI). This service is provided by *shopee* which is used as a payment method when shopping online in the *shopee* marketplace application. At the beginning, the existence of this *spaylater* could only be felt by sellers in the marketplace, but now it can also be felt by private users based on special terms and conditions. An example is *Spaylater* as a p2p product from PT Lentera Dana Nusantara which provides loans to make it easier for borrowers to buy products without the need to pay directly on the *shopee* marketplace platform or also known as fintech. The definition of Fintech as described by the National Digital Research Center (NDRC) is a term used to refer to an innovation in the field of financial services which refers to financial innovation with a

touch of modern technology, there are 3 (three) parties involved in the paylater financing agreement. These parties are legal subjects who support rights and obligations. These parties include marketplaces as providers, marketplace users as loan recipients, and lending companies.

Penyedia Marketplace

Penyedia Paylater

Chart

Pengguna/Konsumen

Paylater Providers, Marketplace Partners and Consumers.

Source: Personal Analysis

Along with globalization, which presents the internet with various facilities and advantages, it gives birth to online or information technology-based agreements in the financial services sector. An online agreement at a glance is an agreement that is wholly or partially born with the help and facilities on an interconnected computer network, where the agreement is contained in electronic documents and other electronic media. (Santi, Budiharto, & Saptono, 2017) In the Indonesian context, the official definition of P2P lending can be seen in Article 1 point 3 of the LPMUBTI POJK which reads, information technology-based money-borrowing services are the provision of financial services to bring together lenders and loan recipients in order to enter into lending and borrowing agreements in rupiah currency. directly through an electronic system using the internet network.

The legal relationship in fintech based on the LPMUBTI POJK arises because of a loan agreement. Borrowing and borrowing according to Article 1754 of the Civil Code is an agreement in which one party gives to the other a certain amount of goods that have run out due to use, on the condition that the latter party will return the same amount of the same type and quality. .

The subject in the loan agreement is the lender (creditor) and the borrower (debtor), while the object in the loan agreement is all goods that are used up on the condition that the

goods must not conflict with the law, morality and public order. . The online money-borrowing agreement or also known as P2P is basically the same as a conventional money-borrowing agreement, only the difference is that the parties do not meet in person, the parties do not need to know each other because there is an organizer who will bring the parties together and the implementation of the agreement is carried out. by online.

Article 1 point 3 POJK LPMUBTI, that information technology-based lending and borrowing services is defined as the provision of financial services to bring together lenders and loan recipients in order to enter into lending and borrowing agreements in rupiah currency directly through an electronic system using the internet network. The loan service agreement is regulated in fintech based on the LPMUBTI POJK. It is regulated that in Article 18 of the POJK, the agreement for the implementation of information technology-based lending and borrowing services includes:

- a. Agreement between the operator and the lender; and
- b. Agreement between the lender and the borrower.

Article 19 of the POJK explains that the agreement for the provision of information technology-based money-borrowing services between the operator and the lender is set out in an electronic document. Electronic documents in Article 1 number 12 of the POJK are defined as any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms.

Legal relations are the basis for the realization of the implementation of financing *inpaylater* where the definition of legal relationship is a relationship that is regulated by law and has legal consequences.(Simorangkir, Erwin, & Prasetyo, 1980)Meanwhile, from this relationship, there will be legal consequences, namely the consequences arising from legal relationships, for example marriage between a man and a woman is a legal relationship that gives rights and obligations to both parties. Every legal relationship has two aspects: In terms of *bevoegdheid* (power/authority or rights) with the opposite *plicht* or obligations. The authority granted by law to a legal subject (person or legal entity) is called a right. This means that it can be said that every time there are parties who carry obligations and there are also parties who have rights, then there is a legal relationship. Legal relations have 3 (three) elements, namely:(Hasanah, n.d.)

- a. There are people whose rights/responsibilities are opposite each other;
- b. The existence of an object that applies based on rights and obligations;

- c. There is a relationship between the owner of the right and the bearer of the obligation or there is a relationship with the object in question.

Terms of legal relationship is the existence of a legal basis, namely the legal regulations governing the legal relationship, and the emergence of legal events. The legal basis is a legal norm that forms the basis for every legal action by legal subjects, both individuals and in the form of legal entities. In addition, the legal basis can also be in the form of legal norms or provisions in statutory regulations which are the basis or basis for the formation of newer and/or lower levels of legislation in the hierarchy or order of statutory regulations. While the definition of a legal event is an event that can move the law / cause legal consequences, so that not all events can be said to be legal events.

Before becoming a lender, Paylater financing company collaborated with a marketplace platform as an information technology-based money lending service provider, Paylater is a legal fintech that has a clear legal entity and is registered with the OJK and is a peer to peer lending product that already has permission from the OJK. related to its business which is classified as a non-bank financial institution that cooperates with the marketplace party (hereinafter referred to as the organizer) in order to provide credit facilities in the marketplace digital wallet application. The cooperation is held in an agreement between the organizer and the lender, namely the agreement for the provision of information technology-based lending and borrowing services made and signed by and between the operator and the lender (the Implementation Agreement). After the collaboration, the finance company is the lender for the marketplace users who use the paylater facility.

The Lending Company, has given its power of attorney based on an information technology-based lending and borrowing service agreement made and signed by and between the organizer and the lender (operating agreement) to take all actions related to loans to shopee. So shopee, apart from being the organizer, also acts as the creditor's/lender's power of attorney. When a shopee user applies for a paylater facility, the application is then accepted by the marketplace then the marketplace user uses the amount of funds through the paylater facility contained in the digital wallet application, which in this case is an agreement between the lender and the loan recipient, then he is the recipient loan.

The legal relationship is born from an agreement between the parties which causes one party to have obligations and the other party to have rights. According to Article 1233 of the Criminal Code, every engagement is born out of agreement and law. That is the legal

relationship of the parties that occurs because of agreement. Approval in the context of the marketplace user agrees to use the loan facility through the paylater facility in the marketplace digital wallet. An engagement to "give something" is regulated in Article 1235 to Article 1238 of the Civil Code, and an engagement to "do something" is regulated in Article 1239 to Article 1241 of the Civil Code, while an engagement to "not do something" is regulated in Article 1239 jo. Article 1242 of the Civil Code. Based on these articles, the financing agreement with the paylater is included in the category of an engagement to provide something. According to Article 1235 Paragraph (1) of the Civil Code, every agreement to give something is the obligation of the debtor to surrender the object in question and to take care of it as a good housewife, until the time of delivery, in an agreement to give something if the debtor fails to hand over the object. the engagement and the debtor is found guilty, the creditor can sue the debtor to pay fees, losses and interest. Therefore, the existence of an agreement born of an agreement to be accepted in the legal constellation, it must be made correctly or legally by the provisions of Article 1320 of the Civil Code.(Bakarbesy, SH, ANAND, & SH, 2018) An agreement born from an agreement so that its existence can be accepted in the legal constellation, the agreement as the source must be made correctly or legally as stipulated in Article 1320 of the Civil Code.(Isnaeni, 2017)

The loan agreement in the legal relationship discussed in this study is a reciprocal agreement, which means that if one party does not fulfil the contents of the agreement, one party can sue the other party according to his achievements. In this case, the most likely party for default/default is the paylater user. Breach of promise/default of paylater users is measured according to a mutually agreed deadline, namely paylater bills come out on a predetermined date in the month of borrowing and will be due on another date that has been determined in the following month, so that if it exceeds that time and the user/consumer who uses the paylater facility has not yet paid, then he can be said to have wanprestasi. Article 9 Number 1 regarding Compensation in the service document of this financing agreement it is written that the paylater user as the loan recipient is deemed to have defaulted if: 1) the loan recipient is negligent or fails to make full payment of loan funds and service fees, after the expiration date. due, without or with a notification letter of delay and/or failure of payment; or; 2) the loan recipient provides data or information that is not true or can be misleading which may affect the implementation of this agreement; or 3) the loan recipient is negligent or fails to carry out its obligations by the terms and conditions in this

agreement and the site conditions; or 4) the borrower loses his right, authority, and/or capacity to carry out this legal action, in particular, to carry out this agreement; or; 5) the loan recipient violates the applicable laws and regulations where the violation causes the non-performance of this agreement or losses to the provider and/or lender.

2. Legal Protection for Creditors in Financing Agreements through Paylater

The implementation of peer to peer lending-based financial technology creates new legal problems, where if the loan recipient defaults (risk of default), the funds lent by the lender will not be returned. Therefore, the risk of default is detrimental to the lender because the Marketplace is only a place provider for lenders and loan recipients to enter into peer to peer lending based money lending agreements. This means that the service provider is not the party that enters into the loan agreement, but the party authorized by the lender to distribute the loan funds to the loan recipient. Therefore, the organizer has no responsibility in the event of a loss, because this agreement is only carried out by the lender and the loan recipient.

The lawsuits that cannot be submitted by lenders, include: 1) lenders cannot file lawsuits against loan recipients or service providers due to errors or negligence of service providers as access providers to loan recipients who do not have good faith good; 2) the lender cannot file a lawsuit against the service provider if the lender suffers a loss due to the actions of the borrower in the peer to peer lending-based money lending service. The intended loss is caused by the loan recipient defaulting or failing to pay; 3) in the event of a default or default by the loan recipient, the organizer will only seek it through the collection unit and assist in mediating.

According to Shopee's Terms & Conditions as a marketplace for loan service providers, the form of responsibility of the service provider if the loan recipient does not carry out his achievements, will take the following actions: 1) the loan recipient will be contacted by the organizer; 2) if for 2 (two) months there is no certainty to return the loan funds in good faith, then the organizer through its members goes to the house of the borrower; 3) if it has been 9 (nine) months there is no certainty, the service provider cooperates with insurance as a guarantor to pay the loss received by the lender by paying 70% of the funds previously lent to the loan recipient. (Shopee, n.d.) Meanwhile legal consequences, if the loan recipient does not carry out its performance, the organizer will

impose sanctions in the form of Suspen. Suspen is stopping or disabling something either temporarily or permanently. Therefore, to overcome the problems as above, in 2020 there will be a data centre for users of information technology-based lending and borrowing services called Pusdafil (Fintech Lending Data Center). This Pusdafil automatically includes the track records of loan recipients who have not paid their debts, so that they can be seen by all providers of peer to peer lending-based financial technology services throughout Indonesia. (Kusuma, n.d.) According to the Indonesian Joint Funding Fintech Association (AFPI), Pusdafil will be fully integrated in 2020, so that peer to peer lending fintech providers in Indonesia can share data on delinquent loan recipients.

Protection for business actors in relation to paylaters can use Law Number 8 of 1999 concerning Consumer Protection. The regulations in the UUPK are not only intended to protect consumer rights because the purpose of the UUPK is to provide the maximum benefit to the parties, so there are also regulations that protect the rights of business actors. Article 6 letter a of the UUPK states that business actors have the right to receive payments in accordance with the agreement. The UUPK does not explain the enforcement of these rights, but the existence of these regulations shows that business actors can enforce their rights if there are consumers who have bad intentions. The enforcement of the rights of business actors can also be seen in Article 5 letter d of the UUPK which states that consumers have an obligation to follow legal efforts to settle consumer protection disputes properly. The UUPK does not explain how to resolve disputes that can be done by business actors, but it can be seen that business actors can sue for compensation to consumers and consumers have an obligation to follow dispute resolution efforts submitted by business actors.

POJK Number 1 of 2014 also states that consumers and financial service institutions can settle disputes out of court through the Alternative Dispute Resolution Institution or through the courts. This shows that business actors also have the right to settle disputes through Alternative Dispute Resolution Institutions. The UUPK also does not prohibit business actors from making efforts to resolve disputes using the methods provided for consumers, therefore business actors can also submit dispute resolution efforts through BPSK and the District Court.

Conclusion

The characteristics of the financing agreement in the practice of digital credit service (paylater) are the same as conventional agreements which must meet the terms and elements of the agreement as stipulated in the Civil Code. However, in the paylater financing agreement other than the borrower and lender, there are parties the provision of financial services to bring together lenders and loan recipients in order to enter into lending and borrowing agreements, namely the marketplace. The agreement for the implementation of information technology-based lending and borrowing services includes the agreement between the provider and the lender and the agreement between the lender and the loan recipient. The agreement is written in electronic documents. Electronic documents in Article 1 number 12 of the POJK are defined as any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms. In the event of a wanprestasi, legal remedies that can be taken by the parties who feel aggrieved can carry out dispute resolution through BPSK, the Alternative Dispute Resolution Institution, and the District Court.

Bibliography

- Asikin, Z. (2011). *Pengantar Ilmu Hukum*. Jakarta: Rajawali Pers.
- Aulina, L. (n.d.). *Langkah Hukum Atas Tagihan Paylater Fintech*.
- Badruzaman, M. D. (2001). *Kompilasi hukum perikatan*. Bandung: Citra Aditya Bakti.
- Badruzaman, M. D. (2005). *Aneka Hukum Bisnis*. Bandung: Alumni.
- Bahri, S., Yahanan, A., & Trisaka, A. (2019). Kewenangan Notaris Dalam Mensertifikasi Transaksi Elektronik Dalam Rangka Cyber Notary. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 142–157.
- Bakarbessy, L., SH, M. H., ANAND, G., & SH, M. K. (2018). *Buku Ajar Hukum Perikatan*. Zifatama Jawara.
- Dewi, S. (2009). *Cyberlaw Perlindungan Privasi Atas Informasi Pribadi Dalam E-Commerce Menurut Hukum Internasional*. Bandung: Widya Padjajaran.
- Eka, R. (2020). *Studi Paylater Indonesia 2020*.
- Fitria, A. (2020). ASPEK HUKUM DIGITAL LENDING DI INDONESIA. *Vol. 17 No. 4- Desember 2020*, 437.

- Hasanah, S. (n.d.). *Sovia Hasanah, Arti Peristiwa Hukum dan Hubungan Hukum*.
- Husni, M. (2009). Tinjauan Umum Mengenai Kontrak. *Bahan Kuliah Perancangan Kontrak*.
- Isnaeni, M. (2017). *Selintas Pintas Hukum Perikatan (Bagian Umum)*. Surabaya: PT. Revka Petra Media.
- Khairandy, R. (2014). *Hukum Kontrak Indonesia Prespektif Perbandingan (bagian pertama)*. Yogyakarta: FH UII Press.
- Kusuma, H. (n.d.). *OJK Bangun Pusat Data Fintech Lending, Pelototi Perilaku Nasabah Pinjol*.
- Miru, A. (2007). *Hukum Kontrak Perancangan Kontrak*. Jakarta: Raja Grafindo Persada.
- Muamar, A., & Alparisi, A. S. (2017). Electronic money (e-money) in maqashid al-sharia perspective. *Journal of Islamic Economics Lariba*, 3(2), 75–84.
- Pradjodikoro, W. (1981). *Asas-Asas Hukum Perjanjian*. Bandung: Sumur.
- Rahardjo, S. (2000). *Ilmu Hukum*. Bandung: Citra Aditya Bakti.
- Salim. (2008). *Hukum Perjanjian: Teori dan Praktik Penyusunan Perjanjian*. Jakarta: Sinar Grafika.
- Salim, H. S. (2003). *Perkembangan Hukum Kontrak Innominaat di Indonesia*. Jakarta: Sinar Grafika.
- Santi, E., Budiharto, B., & Saptono, H. (2017). Pengawasan otoritas jasa keuangan terhadap financial technology (peraturan otoritas jasa keuangan nomor 77/pojk. 01/2016). *Diponegoro Law Journal*, 6(3), 1–20.
- Settlements, B. for I., Monetary, B. for I. S., & (Basle)., E. D. (1996). *Implications for Central Banks of the Development of Electronic Money*. The Bank.
- Shopee. (n.d.). *Terms & Conditions Shopee*.
- Simorangkir, J. T. ., Erwin, R. T., & Prasetyo, J. . (1980). *Kamus Hukum*. Jakarta: Aksara Baru.
- Subekti. (2005). *Hukum Perjanjian*. Jakarta: Intermasa.
- Subekti, A. P. (2001). *Hukum Perjanjian, cetakan 19*. Jakarta: Intermasa.
- Subekti, R., & Tjitrosudibio, R. (2006). *Kitab Undang-undang Hukum Perdata*. Jakarta: Pradnya Paramita.
- Widjaja, G. (2007). *Seri Hukum Bisnis Memahami Prinsip Keterbukaan(Aanvullend Recht) dalam Hukum Perdata*. Jakarta: Raja Grafindo Persada.

Wijaya, A. S. (2019). *Perkembangan Fintech Dan Pengaruhnya di Indonesia*.

Yahman. (2011). *Karakteristik Wanprestasi dan Tindak Pidana Penipuan Yang Lahir Dari Hubungan Kontraktual*. Jakarta: Prestasi Pustakarya.



