

PRINCIPLE OF BALANCE IN FINANCIAL TECHNOLOGY'S PEER-TO-PEER LENDING CONTRACT

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ABSTRACT

Online loans have snowballed in recent years. The growth of online loans, also known as Peer-to-Peer Lending (P2P Lending) or Financial Technology, has been troubling the public. The P2P Lending collecting method has been harassing the people. P2P lending sends the collection letter to customers' contact addresses, distributes personal pictures, and imposes high interest. This research aims to discuss the Principle of Balance in P2P Lending contracts. This research uses a normative judicial method. The study examines the phenomenon of P2P Lending in public. This research concludes that the P2P Lending agreement does not meet the conditions in the contract based on the Principle of Balance. This research proposes that the relevant authorities review each P2P Lending agreement to achieve the Principle of Balance.

Keywords: Principles; Contract; Agreement; Principle of Balance

1. Introduction

Online loans have disrupted the public with their collection schemes. The collection is done by disseminating information to the debtors' relatives without permission. In some cases, online loan companies send vulgar photos and personal data of debtors to a broad audience on social media (CNN Indonesia, 2021). Online loan companies can also transfer funds directly to the victim's account, even though the account holder has never applied for an online loan (Alfi, 2021). The police have released the list of online loan companies that have not been registered with the Indonesian Financial Services Authority (OJK) (CNN Indonesia, 2021).

There are seven traps set by illegal online loans, namely very high fees, high-interest rates, and fines, short loan term, loan officers asking for permission to be able to access all data and contacts on mobile phones, collecting the payment with terror, intimidation, and harassment, not providing services for customer complaints, and offering loans with a barrage of messages (Dewi, 2021). The Speaker of the People's Consultative Assembly, Bambang Soesatyo, has asked the Indonesian Financial Services Authority to issue clear collection rules for online loans (Jelita, 2021).

The current economy has caused the non-bank financial institution sector to experience rapid development. The emergence of Financial Technology marks this development. One of the businesses provided by Financial Technology is Peer-to-Peer Lending which conducts its business operation by providing online loans and deposits (Tjandara, 2020).

Several violations of the rules have been found by online loan providers, such as data dissemination, abuse, agreements between parties who borrowers harm, and collection methods that are not per the rules (Agung &

Erlina, 2020). The implementation of Peer-to-Peer Lending has several problems, including the risk of high interest rates, which causes many debtors to fail to pay and improper collection methods (Wahyuni, & Turisno, 2019).

From the perspective of business ethics, online loan activities can be carried out by maintaining mutual trust, which significantly influences the company's reputation. However, if the company is illegal, it can commit criminal acts such as fraud, money laundering, or misuse of consumer data. This condition is worsened by the fact that many people do not know about the financial technology business. Legal protection for loan recipients in the implementation of Peer-to-Peer Lending-based financial technology has not protected the community adequately, so there is a need for law and regulation and cooperation of all parties to realize the implementation of good Peer to Peer Lending-based financial technology that provides legal certainty, justice, benefit, and protection for the community. (Priyonggojati, 2019).

Peer-to-Peer Lending found several problems, including the risk of high interest rates, which causes many debtors to fail to pay, and improper collection methods (Novita & Imanullah, 2020).

The service provider is obliged to provide legal protection for users of Fintech Peer-to-Peer Lending services (Syaifudin, 2020)

Loan amount, loan term, debt to income ratio, violations in the last two years, inquiries over the previous six months, and revolving credit utilization significantly negatively influence the lending company's success (Andriansyah & Winarno, 2019).

The research will discuss the fulfillment of the principles in the contract, especially regarding the principle of balance in lending and borrowing contracts between debtors and online loan technology companies. Discussions related to the Principle of Balance can still be rarely found. Research on the behavior of online loan technology companies has been widely carried out. Most existing research is related to debt collecting. The research question is: Does the loan agreement between the debtors and the online loan company have fulfilled the Principle of Balance per the Principle of Balance in the contract?

2. Method

This research is conducted as an effort to understand and solve problems scientifically, systematically, and logically. The study is initiated because of the gap between *das sollen* and *das sein*, namely, between the existing theory and reality. The method used in this study is a normative juridical approach considering the problems studied and adhering to the juridical aspects, namely based on norms, rules, and legal theories. In other words, this research refers to applicable legal products and is based on the reality that occurs in the field.

The specification used in this study is descriptive analysis because this research is expected to obtain a clear, detailed, and systematic picture. It is called analysis because the data acquired will be analyzed for solving problems per applicable legal provisions. The purpose of this research in using descriptive analysis is to provide an overview of reality on objectively examined objects (Wahyuni & Turisno, 2019).

3. Results and Discussion

Agreement Theory

Loan agreements have existed for more than 2600 years. The loan was not initially in the form of money but land and building loans. Credit contracts have existed since 611 BC. This contract took place in the days of the Babylonian legal system. This contract involved binding collateral for land and buildings as collateral for a loan with an interest rate of 11 1/3 percent per year. Money loans have existed since 598 BC. The loan contract involved interest. Another loan contract was an unsecured loan contract with a stake of 20% per year, issued in the fifth year of King Nabonidius' reign (Fuady, 2013).

Other debt obligations were also written in the Hindu and Indian Law, particularly in the Manu Law, which regulates a valid engagement or contract. According to the Law, it must meet certain conditions, such as the parties are not intoxicated, not mentally insane, not underage, not overly old, abnormal, and independent. The contract must not conflict with applicable laws and customs. The agreement must not also be made under pressure. Several things regarding debts between creditors and debtors are regulated in the Manu Law, including the allowed

collection process, how to withdraw loaned goods, the number of fines that can be imposed if the debtor does not pay, the interest that the creditor can charge the debtor, the arrangement of the amount of interest on the debtor's principal loan, an extension of debt if the debtors are unable to pay at maturity, and others.

In addition to the legal history above, the history of Greek law also regulates the law of engagement, including debts. The practice of contract law also existed in the past of Roman law. The contract that emerged included a system of deposit contracts, loan contracts, barter contracts, buying and selling contracts, rental contracts, and contracts to do something. The Roman law was in power from 275 BC to 5 BC.

The law of debt covenants also existed in the Twelve Articles of Law (The Twelve Tables) in the classical Roman Law. Debts are in Table 3, which regulated that people who do not pay debts may be held hostage.

The Code of Canon Law (Corpus Iurist Canonici) is a codification of Roman law and Christian teachings during the Middle Ages. In the Code of Canon Law, there are contracts and transfers of other assets in Book V Chapter III.

Legal Principle in Contracts

In a contract, it is mandatory to fulfill several principles (Markoni, 2020, Muhtarom, 2014), namely:

- a. Freedom of contract Principle
- b. Balance Principle
- c. Consensuality Principle
- d. Facta Sunt Servanda Principle
- e. Good Faith Principle
- f. Personality Principle

This research will discuss the Principle of Balance. A contract that two parties make must be balanced. The agreement's contents must stipulate equal rights and obligations between the seller and the buyer if the contract is related to the sale and purchase of shares in a company.

With the Principle of Balance in the contract, it can be concluded that the agreement of the online loan company does not fulfill the principle of contract, especially the Principle of Balance. This is because loan companies charge high-interest rates, high fines, and high administrative costs. In addition, online loan companies also collect personal data from the debtors with access to the debtors' communication devices. However, the debtors have approved this per the Principle of Legal Certainty and the Principle of Consensuality. However, this agreement is not explained correctly by the online loan company to the debtors. This personal data collection can also be classified as not fulfilling the Principle of Good Faith.

Socialization to the public on the principles of contracting is critical, primarily related to online loans. Regulators need to regulate the contracts. In addition to warranties, regulators also need to handle the procedures for collection by online loan companies. Therefore, online loan technology companies can contribute to national economic development without harassing the debtors or people close to the debtors.

4. Conclusion

A contract is a bond between two or more parties who sign it. The loan agreement contract is an agreement between an online loan company and a debtor. A mandatory agreement contains several principles. One of the principles in the deal is the Principle of Balance. The online loan agreement does not meet the Principle of Balance. The online loan agreement is more profitable for online loan companies than customers. High interest rates, large fines, hefty fees, and access to communication devices have shown no Principle of Balance in the contract. Tech companies have the upper hand in this regard. Regulators need to re-regulate this matter, especially the content of online loan agreements. Regulators need to socialize loans through technology companies

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