

CONSTRUCTION OF PENALIZATION IN PERSONAL DATA PROTECTION FOR UTILIZATION OF FINANCIAL TECHNOLOGY APPLICATIONS

Erwin Asmadi¹

¹Universitas Muhammadiyah Sumatera Utara
(e-mail: erwinasmadi@umsu.ac.id)

Abstract: *Advances in technology and information are also increasingly eroding the boundaries of privacy belonging to others. It is very easy for someone's personal data to be shared and misused. Vigilance of this crime must always be put forward. because the purpose of this hack is usually to carry out fraud mode, data tapping, hacking, email spamming, and also manipulation of other people's data, which will then result in both material and immaterial losses. The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data. Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology, explained that one of these regulations was made by considering the needs of the community related to innovation in the field of financial technology services. For the sake of improving and developing this financial technology, it has been regulated in Bank Indonesia regulation Number 19/12/17, specifically in Article 11 paragraph (1) that every financial technology operator must first be tested through a Regulatory Sandbox organized by Bank Indonesia. The existence of a Regulatory Sandbox aims to prevent various risks that exist in Fintech innovation when products are marketed, such as: customer confidentiality, data theft, cyber attacks and various other risks.*

Keywords: *Penalization Construction, Personal Data Protection, Financial Technology*

Introduction

We are increasingly feeling the impact of the development of science and technology. It is undeniable that the power of thought also develops, and creates a new science. But in fact, not everyone can use this knowledge properly and correctly, so that it often causes harm to many people.¹ Besides bringing many benefits as well as positive values, technology can also be detrimental to the life of a nation. Rapid changes in the world we live in and developments in digital technology have been taking place rapidly in various parts of the world, including Indonesia.² The advancement of digital technology has had an impact on humans from two sides, the positive side has brought convenience in the midst of society, but the negative side is the emergence of various problems over time. The economic sector has also been affected by two sides of the development of digital technology, one of which is the emergence of Financial Technology or can be shortened to Financial Technology which means Financial Technology.

¹ I Gusti Ayu Suanti Karnadi Singgi, I Gusti Bagus Suryawan, and I Nyoman Gede Sugiarta, Penegakan Hukum Terhadap Tindak Pidana Peretasan Sebagai Bentuk Kejahatan Mayantara (Cyber Crime), *Jurnal Konstruksi Hukum*, 1.2 (2020), 334–39.

² Sri Adiningsih, *Transformasi Ekonomi Berbasis Digital di Indonesia*, Gramedia Pustaka Utama, Jakarta: 2019, hlm., 2.

Advances in technology and information are also increasingly eroding the boundaries of privacy belonging to others. It is very easy for someone's personal data to be shared and misused. Vigilance of this crime must always be put forward, because the purpose of this hack is usually to carry out fraud mode, data tapping, hacking, email spamming, and also manipulation of other people's data, which will then result in both material and immaterial losses.

In the process, a number of problems arose with the development of Financial Technology in Indonesia. These problems are related to Financial Technology companies and consumers who use these Financial Technology services. One of the legal issues that arise in the Financial Technology industry is about how to protect consumers' personal data. This is very important, because it is known that in the Financial Technology industry, especially in P2P (peer-to-peer) Lending, it seems that there are still a lot of consumers' personal data being misused, such as access to consumers' telephone contacts.

Regarding the rights that consumers have, referring to Article 4 of the Consumer Protection Act Number 8 of 1999, it can be seen that every consumer has various rights that must be fulfilled, and based on the Articles of the Consumer Protection Act it can then be understood that data protection Personal consumers in the Financial Technology industry are very important in order to protect the rights of the consumers concerned.

Regulation in the Financial Technology industry is seen as very crucial considering the many and varied legal issues that have arisen and of course this is also done so that prevention and management of these problems can be carried out. Rules related to the protection of personal data, especially personal data in electronic systems, are contained in the Electronic Information and Transaction Law Number 11 of 2008 and have been further regulated in the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Protection of Personal Data in Electronic System.

Literature Review

1. Personal Data Protection

The definition of personal data is also contained in Article 1 paragraph (1) of the Regulation of the Minister of Communication and Informatics Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems which states that: "Personal Data is certain individual data that is stored, cared for, and safeguarded protect confidentiality. "In addition, in Article 2 it is also stated that the protection of the acquisition, collection, processing, analysis, storage, display, announcement, delivery, dissemination and destruction of personal data is the protection of Personal Data in Electronic Systems as a form of respect for personal data as privacy.

The scope and scope of protection of a person's personal data, namely, public disclosure of embarrassing personal facts, publicity that wrongly places a person in public, control without permission of someone's likeness for the benefit of others.³ The concept of privacy was first developed by Warren and Brandeis who wrote an article in the scientific journal Harvard University Law School entitled "The Right to Privacy" or the right not to be disturbed. In the journal, according to Warren and Brandeis, with the development and

³ Arthur R. Miller, *The Assault on Privacy: Computers, Data Banks, and Dossiers*, (Ann Arbor: University of Michigan Press, 1971) hal.25.

advancement of technology, a public awareness has arisen that an awareness has been born that there is a person's right to enjoy life.⁴

2. Utilization of Financial Technology Applications

Financial Technology is an umbrella term for innovative technology-based financial services and the business models that accompany these services.⁵ Financial Technology adapts technological developments that are integrated between the financial sector and banking institutions, so that it is expected to be able to facilitate all financial transaction processes that are more practical, safe and modern, including developing digital-based financial services in Indonesia, namely payment channel systems, digital banking, online digital insurance, peer to peer (P2P), lending, and crowdfunding.⁶

In simpler terms, fintech can be used to describe any innovation as it relates to how businesses seek to improve the process, delivery and use of services.⁷

Financial Technology (Fintech) has a variety of services and products that can be utilized by the public. Fintech classification based on Bank Indonesia, is divided into 4 types, namely:

1. Peer-to-Peer (P2P) Lending and Crowdfunding, P2P lending and crowdfunding, this one Fintech is like a financial marketplace. This platform is able to bring together parties who need funds with parties who can provide funds as capital or investment. Peer-to-peer lending or P2P lending can also be interpreted as a service for lending funds to the public. The funds can come from the community itself or from the company that built the platform.
2. This type of Fintech Investment Risk Management can be used to monitor financial conditions and also make financial planning easier and more practical. This type of investment risk management is usually present and can be accessed using a smartphone, where you only need to provide the data needed to be able to control finances.
3. Payment, Clearing and Settlement Fintech of this type, there are several financial startups that provide payment gateways or digital wallets. Fintech payment gateways connect e-commerce businesses with various banks so that sellers and buyers can make transactions. The two products are still included in the Fintech category.
4. The Hariya Fintech Market Aggregator refers to a portal that collects various types of information related to the financial sector to be presented to its users. Usually this type of Fintech has coverage of information related to finance, tips, credit cards, and other financial investments. The presence of this type of Fintech is expected to absorb a lot of information before making financial decisions.

Method

⁴ Latumahina, RE, 2014, "Aspek Hukum Perlindungan Data Pribadi Di Dunia Maya", Jurnal GEMA AKTUALITA, Vol.3, No. 2, Hal. 14-25

⁵ Iman, N. (2020). The rise and rise of financial technology: The good, the bad, and the verdict. *Cogent Business and Management*, 7(1).

⁶ Nizar, M. A. (2017). *Teknologi keuangan (Fintech): Konsep dan implementasinya di Indonesia*. *Warta Fiskal*, 5 (March), 5–13.

⁷ Gomber, P., Kauffman, R. J., Parker, C., & Weber, B. W. (2018). On the Fintech Revolution: Interpreting the Forces of Innovation, Disruption, and Transformation in Financial Services. *Journal of Management Information Systems*, 35(1), 220–265.

The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data.⁸ Soerjono Soekanto states that there are 5 scopes of legal research, namely research on legal principles, legal systematics, level of legal synchronization, legal history and comparison.⁹ Judging from its nature, this research is analytical descriptive in nature, namely describing all the symptoms and facts as well as analyzing the existing legal problems.¹⁰

Result and Discussion

1. Legal Protection of Personal Data for the Utilization of Financial Technology Applications

The concept of personal data protection explains that each individual has the right to determine whether he will join the community and share/exchange personal data or not. Data protection law includes measures to protect the security of personal data, as well as conditions regarding the use of personal data of individuals.¹¹

According to Article 1 paragraph 2 of the Law of the Republic of Indonesia Number 27 of 2022 concerning Protection of Personal Data which reads: Personal Data Protection is the entire effort to protect Personal Data in the Personal Data processing chain in order to guarantee the constitutional rights of Personal Data subjects.

The responsibilities of fintech business actors towards their consumers are regulated in Law Number 8 of 1999 concerning Consumer Protection. According to the Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 20 of 2016 Article 1 paragraph (1), it states: "Personal data is certain individual data that is stored, cared for, guarded for truth and protected by confidentiality." In Article 1 Paragraph (2) it has been explained that personal data is true and real information belonging to each individual which can be used in accordance with the provisions of the legislation. The data is confidential and must receive owner approval before being circulated or used by other parties.

The personal data in question is personal data in electronic systems. Basically, there is no special regulation regarding the protection of personal data in the ITE Law. Only Article 26 of the ITE Law explicitly contains provisions regarding personal data. Several other articles in the ITE Law do contain provisions regarding personal data, but only implicitly or implicitly.

- a. Article 26 Paragraph (1) of the ITE Law states, "Unless otherwise provided by laws and regulations, the use of any information through electronic media that concerns a person's personal data must be carried out with the consent of the person concerned."

⁸ Koto, I., & Faisal, F. (2021). Penerapan Eksekusi Jaminan Fidusia Pada Benda Bergerak Terhadap Debitur Wanprestasi. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4(2), 774-781.

⁹ Zainuddin, Z. (2022). Implementation Of The Change Of The Chairman Of The Labuhan Batu Selatan Regional People's Representative Council. *International Journal Reglement & Society (IJS)*, 3(1), 11-18.

¹¹ Sinta Dewi, 2016, "Konsep Perlindungan Hukum Atas Privasi dan Data Pribadi Dikaitkan dengan penggunaan Cloud Computing di Indonesia", *Yustisia*, Volume 5, Nomor 1, Januari-April 2016, h. 25.

- b. Article 26 Paragraph (2) of the ITE Law states, "Every person whose rights are violated as referred to in paragraph (1) can file a lawsuit for losses incurred under this Law."

Based on the article above, it can be seen that if someone uses other people's information through electronic media without first asking or getting approval from the owner concerned, then that person can be sued for the losses he has done, exceptions only apply if there are other provisions based on the regulations legislation.

The problem of personal data security cannot be taken lightly, because personal data is often an easy target for cybercriminals or irresponsible cybercriminals. But before further discussing personal data. first of all, it is necessary to know what are the definitions of personal data.

In Article 1 number 27 of the Government Regulation of the Republic of Indonesia Number 82 of 2012 provides the following definition of personal data: "personal data is certain individual data that is stored, cared for, and guarded for truth and protected confidentiality." Likewise in Article 1 number 1 of the Minister of Communication and Information Regulation Number 20 of 2016, it also provides the following definition of personal data: "personal data is certain individual data that is stored, cared for, and safeguarded and protected by confidentiality." Referring to Article 1 point 2 of the Minister of Communication and Informatics Regulation Number 20 of 2016, the use of individual data must be in accordance with the provisions of laws and regulations and contain every real and correct information that is attached and can be identified, either directly or indirectly.

It was explained that personal data that is general in nature means personal data that can be obtained in general in accessing public services or listed in an official identity. Meanwhile, specific personal data means personal data that is sensitive to the safety and comfort of the life of the owner of the personal data and to obtain it only with the consent of the owner of the personal data, exceptions are made only if there are other provisions based on the law. Basically, every consumer as the owner of personal data can also submit a complaint or complaint and has the right to have his complaint heard and resolved immediately, this is important as a form of legal protection for consumers.¹²

The main focus on efforts to protect personal data in the Fintech industry can also be done by:¹³

- a. Data encryption related to consumers, this must be done by Fintech service actors,
- b. Consumer data security is something that must be maintained by Fintech service actors,
- c. Data access management is mandatory for Fintech service actors,
- d. From the consumer side, it is necessary to have consumer rights to request and receive explanations from Fintech service actors regarding the use of consumer data and information that has been given to them.

In consideration of Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology, it is explained that this regulation was made by considering the needs of the community regarding innovation in the field of financial technology services. For the sake of improving and developing this financial technology, it

¹² Elvira Fitriyani Pakpahan, Legal Protection Against Depositors' Customers With Mudharabah Contract On Islamic Banks, *Jurnal Pembaharuan Hukum*, Vol 6, No 1, 2019, hlm., 47.

¹³ Rinitami Njatrijani, Perkembangan Regulasi Dan Pengawasan Financial Technology Di Indonesia, *Diponegoro Private Law Review*, Vol. 4, No. 3, 2019, hlm., 471.

has been regulated in Bank Indonesia regulation Number 19/12/17, specifically in Article 11 paragraph (1) that every financial technology operator must first be tested through a Regulatory Sandbox organized by Bank Indonesia. The existence of a Regulatory Sandbox aims to prevent various risks that exist in Fintech innovation when products are marketed, such as: customer confidentiality, data theft, cyber attacks and various other risks. Then related to violations committed by financial technology providers, of course there are sanctions that must be accepted. Sanctions will be received if the financial technology provider does not register and has violated various provisions stipulated in this regulation. The arrangements regarding sanctions can be seen in Article 20 paragraph (1), Article 20 paragraph (2) and Article 20 paragraph (3) of Bank Indonesia Regulation Number 19/12/17. In these Articles, there are various sanctions that have been regulated and all of them are included in administrative sanctions.

Regarding personal data protection, one of the provisions is regulated in Article 8 paragraph (1) which contains obligations as a registered financial technology provider and one of its obligations is to maintain the confidentiality of consumer data and/or information, including transaction data and/or information. . Thus, if the confidentiality of data and/or information belonging to a consumer is violated, the sanctions that can be given to the financial technology operator are in the form of a written warning and/or removal of the said financial technology operator from the list of technology operators at Bank Indonesia.

2. Implementation of the Personal Data Protection Act in Regulating Personal Data Protection for the Utilization of Financial Technology Applications

In carrying out its business activities, there are several prohibitions for fintech which are regulated in various laws and regulations. For example, in POJK No. 13/2018 which prohibits fintech from providing data and/or information about consumers to third parties. However, the prohibition is excluded in terms of:

- a. Consumers give consent electronically; and/or
- b. Fintech is required by statutory provisions to provide data and/or information about consumers to third parties.

Electronic system operators have internal regulations regarding the protection of personal data for owners of personal data. With the existence of rules regarding self-regulation standards provided by the government, it is hoped that the security of personal data for owners of personal data can be properly maintained by electronic system operators, and can prevent acts of hacking or hacking targeting personal data for owners of personal data..¹⁴

Law Number 27 of 2022 explains, In its provisions the owner of personal data can make a complaint that there has been a failure in protecting personal data to the ministry of communication and information technology. Consumers no later than make a complaint to the ministry of communication and information technology, namely within 30 days after the owner of the personal data becomes aware of a failure to protect his personal data. In his report the owner of personal data must bring supporting evidence. If the complaint has been received by the ministry of communication and information technology, the personal data dispute resolution institution must respond to the complaint no later than 14 working days after the complaint was received. Settlement of personal data disputes is carried out by

¹⁴ Refaldy Braif Carundeng, Anna S. Wahongan & Presly Prayogo, "Perlindungan Hukum Terhadap Data Pribadi Konsumen Yang Diretas Berdasarkan Peraturan Menteri Komunikasi Dan Informatika Nomor 20 Tahun 2016 Tentang Perlindungan Data Pribadi Dalam Sistem Elektronik," *Jurnal Lex Privatum* 10, no. 1 (Januari 2022): 191-192

deliberation or through other alternative settlements. If no agreement is found in the deliberations, the owner of the personal data can file a civil lawsuit in accordance with the provisions of the law.

Conclusion

Protection of personal data belonging to individuals/individuals tends not to be optimal. Convergence towards the protection of personal data is possible, it is hoped that with the birth of the Personal Data Protection Act it can provide clear arrangements for the parties involved such as processors or processing units, controllers and places for storing personal data so that personal data protection can be accounted for between the processor or processing unit, the controller and the repository of personal data.

References

- Arthur R. Miller, 1971. *The Assault on Privacy: Computers, Data Banks, and Dossiers*, Ann Arbor: University of Michigan Press.
- Elvira Fitriyani Pakpahan, Legal Protection Against Depositors' Customers With Mudharabah Contract On Islamic Banks, *Jurnal Pembaharuan Hukum*, Vol 6, No 1, 2019
- Gomber, P., Kauffman, R. J., Parker, C., & Weber, B. W. (2018). On the Fintech Revolution: Interpreting the Forces of Innovation, Disruption, and Transformation in Financial Services. *Journal of Management Information Systems*, 35(1), 220–265.
- I Gusti Ayu Suanti Karnadi Singgi, I Gusti Bagus Suryawan, and I Nyoman Gede Sugiarta, Penegakan Hukum Terhadap Tindak Pidana Peretasan Sebagai Bentuk Kejahatan Mayantara (Cyber Crime), *Jurnal Konstruksi Hukum*, 1.2 (2020), 334–39.
- Iman, N. (2020). The rise and rise of financial technology: The good, the bad, and the verdict. *Cogent Business and Management*, 7(1).
- Koto, I., & Faisal, F. (2021). Penerapan Eksekusi Jaminan Fidusia Pada Benda Bergerak Terhadap Debitur Wanprestasi. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4(2), 774-781.
- Latumahina, RE, 2014, "Aspek Hukum Perlindungan Data Pribadi Di Dunia Maya", *Jurnal GEMA AKTUALITA*, Vol.3, No. 2
- Nizar, M. A. (2017). Teknologi keuangan (Fintech): Konsep dan implementasinya di Indonesia. *Warta Fiskal*, 5 (March), 5–13.
- Refaldy Braif Carundeng, Anna S. Wahongan & Presly Prayogo, "Perlindungan Hukum Terhadap Data Pribadi Konsumen Yang Diredas Berdasarkan Peraturan Menteri Komunikasi Dan Informatika Nomor 20 Tahun 2016 Tentang Perlindungan Data Pribadi Dalam Sistem Elektronik," *Jurnal Lex Privatum* 10, no. 1 (Januari 2022): 191-192
- Rinitami Njatrijani, Perkembangan Regulasi Dan Pengawasan Financial Technology Di Indonesia, *Diponegoro Private Law Review*, Vol. 4, No. 3, 2019
- Sinta Dewi, 2016, "Konsep Perlindungan Hukum Atas Privasi dan Data Pribadi Dikaitkan dengan penggunaan Cloud Computing di Indonesia", *Yustisia*, Volume 5, Nomor 1, Januari-April 2016
- Sri Adiningsih, 2019. *Transformasi Ekonomi Berbasis Digital di Indonesia*, Gramedia Pustaka Utama, Jakarta.
- Zainuddin, Z. (2022). Implementation Of The Change Of The Chairman Of The Labuhan Batu Selatan Regional People's Representative Council. *International Journal Reglement & Society (IJRS)*, 3(1), 11-18.