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# Legal Protection of Debtors in Information Technology-Based Loan Agreements in Indonesia

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**ABSTRACT**
This study aims to analyze the legal protection of debtors in information technology-based money lending agreements in Indonesia. The approach taken is based on the main legal material by examining theories, namely by studying books, laws and regulations and other documents. The nature of the research used is prescriptive, namely legal research to find legal rules, legal principles, and legal doctrines to answer the legal problems at hand. The results of this study indicate that the Legal Protection of Debtors in Information Technology-Based Money-Lending Services mandated to the Financial Services Authority as an institution authorized to regulate and supervise Information Technology-Based Money-Lending Services that only have permits based on the Law of the Republic of Indonesia Number 21 The year 2011 did not reflect the independence of the Financial Services Authority as a regulator and supervisor in the implementation of Technology-Based Money Lending and Lending Services because consumers, in this case, debtors, were not protected from unlicensed providers.
**Keywords:** Debtor; Agreement; Money; Information Technology

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## I. INTRODUCTION

Currently, the relationship between law, economics and technology has become a concern, both in terms of science and practice. But there are concerns that the use of this technology will pose a serious challenge, where technological advances are currently considered to be a challenge in the legal and regulatory framework which has the potential to change the basic values of the legitimacy of the social order and the legal framework.

Current technological developments have also penetrated the financial services sector. *Finance technology* or commonly abbreviated as *fintech* is a *platform* in the financial sector that is very popular among the public, where *fintech* is an innovation that is developing concerning the use of technology that aims to provide solutions in the financial sector. The use of *fintech* refers to financial services that enable consumers to use services that are easily accessible via electronic devices thereby reducing interaction with service providers.

The development of *fintech* in Indonesia is certainly certain, this is because the community feels helped by the existence of financial services with a very simple mechanism. *Fintech* or financial technology is a sector in the *start-up* that focuses on maximizing the use of technology in terms of changing or accelerating access to financial services. One of the forms of *financialtechnology* is *peer-to-peer lending* (hereinafter referred to as *fintech* P2P *Lending*). *Fintech* P2P *Lending* is a new method that allows a loan seeker through an application or site to apply for a loan without collateral (collateral).

Fintech P2P *lending* is the practice of individual funding without going through a bank which is carried out *online* through various *platforms* and credit check tools developed by P2P lending companies themselves. In the *Fintech* P2P *Lending*, there are two types of approaches, namely the existence of investors as lenders or creditors and loan recipients or debtors. Fintech P2P *Lending* allows everyone to provide loans or apply for loans from one another for various purposes without using the services of legitimate financial institutions as intermediaries. The *Fintech* P2P Lending system is very similar to the *marketplaceonline* which provides a meeting place between buyers and sellers.

*Peer to Peer lending* in the elucidation of Article 1 paragraph (3) POJK No. 77/POJK.01/2016 is referred to as "Information Technology-Based Money Lending Services". This information technology-based money-lending service is the provision of financial services to bring together lenders and loan recipients in the context of entering into loan-borrowing agreements in the rupiah currency directly through an electronic system using the internet network. The use of electronic systems in information technology-based money lending

services, namely a series of electronic devices and procedures that function to prepare, process, analyze, store, display, announce, send and/or disseminate electronic information in the field of financial services.

According to data released by OJK, in 2021 the number of *fintech* has increased quite significantly, namely, there were 102 registered and licensed online loan business actors as of May 31 2022, there were 95 *platforms* with conventional systems and 7 *platforms* with sharia systems.

In its development, *fintech* has posed challenges to existing regulations. The development of *fintech has* resulted in the emergence of new types of business models and financial products that do not yet have legal regulations.

A research result conducted by the *Financial Stability Board (FSB)* explains that the development of *fintech has* resulted in the decentralization of the financial system. So that from a legal point of view, this event raises its challenges in the realm of regulation, where regulators are required to be able to create a regulatory system that can provide guarantees of certainty and legal protection for parties who are also able to encourage the growth of the economic sector.

companies *Fintech* currently causing legal problems in Indonesia. This can be seen from the number of complaints and problems faced by consumers. The Financial Services Authority (OJK) recorded complaints against providers of official Information Technology-Based Money Lending Services, as well as illegal organizers reaching 19,711 cases during the 2019-2021 period. As for those who entered into serious complaints as much as 47.03 per cent of the total cases of 9,270 cases, while the remaining 10,441 were included in the category of light or moderate violations.

Indonesia has Law Number 8 of 1999 concerning the Protection of Composites and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2016 concerning Information and Electronic Transactions. At the time it was formed, the Consumer Protection Act was not yet in the context of the development of electronic financial transactions so it was not specifically able to provide special protection to consumers in electronic transactions. In addition, the UUPK only regulates the relationship between business actors and consumers. It is different from the Electronic Information and Transaction Law which was formed already in a situation of growth and development of electronic transactions, however, even so, the Electronic Information and Transaction Law has not explicitly regulated the issue of technology-based money lending services.

At present legal protection by the state for debtors who have a weak bargaining position is urgent. Where the relationship between the parties in information technology-based money lending and borrowing services transactions is increasingly open and free, cooperation between parties and the state is urgently needed to regulate the pattern of relations between organizers, creditors, debtors and the legal protection system for debtors. Legal protection of debtors' rights as consumers in information technology-based money lending and borrowing service transactions can not only be supported by one legal aspect but by a system of legal instruments capable of providing simultaneous and comprehensive protection.

One of the main aspects of information technology-based money-lending transactions that can be used as a benchmark for consumer protection is agreements, in this case, electronic contracts. an electronic contract is an agreement between the parties made through the Electronic System. The importance of electronic contracts in technology-based transactions, in general, can be seen from the provisions of Article 9 of the Electronic Information and Transaction Law which confirms that "Businesses that offer products through Electronic Systems must provide complete and correct information regarding contract terms, manufacturers and products offered", these provisions regulate the issue of complete and correct contract terms.

Electronic contracts are a type of contract where the regulatory rules are contained in Law Number 19 of 2016 concerning electronic information and transaction rules in Indonesia, specifically in Article 1 number 17 which is then explained again in Government Regulation Number 82 of 2012 concerning the Implementation of Systems and Transactions Electronic in Article 1 number 15. The two articles contain the same definition of electronic contracts, namely agreements between parties made through an electronic system. While the Electronic System itself, according to Article 1 point 5 of the ITE Law and Article 1 number 1 of the Government Regulation concerning the Implementation of Systems and Electronic Transactions, is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit and/or disseminate electronic information. Before Law 19 of 2016 concerning Information and Electronic Transactions and Government Regulation Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions, Indonesia was always guided by the Civil Code/Burgerlijk Wetboek (BW), as contained in Article 1313 of the Civil Code which contains the definition that the Agreement is an act by which one or more people bind themselves to one or more other people. The problem with the actual terms of the agreement is more than just complete and correct information, the balance between the parties must be a concern. This can be replaced by a measure of fairness between the provider of Information Technology-Based Borrowing and Borrowing Services (*Peer to Peer Lending)* and the debtor.

Based on the above phenomenon, the research issues to be discussed are, what is the nature of debtor protection in information technology-based money-lending agreements and how does the legal protection of

debtors in information technology-based money-lending agreements, as well as what factors affect legal protection information technology-based money lending in Indonesia.

## II. RESEARCH METHOD

This study uses a normative juridical approach. The juridical approach is used to analyze various principles and theories related to research. The approach taken is based on the main legal material by examining theories, namely by studying books, laws and regulations and other documents. The nature of the research used is prescriptive, namely legal research to find legal rules, legal principles, and legal doctrines to answer the legal problems faced

## III. DISCUSSION

**John Rawls's Theory of Justice**

Some of the concepts of justice put forward by the American philosopher at the end of the 20th century, John Rawls, such as *A Theory of Justice, Political Liberalism, and The Law of Peoples*, have a considerable influence on the value discourse - of the value of justice. (Faiz, 2009, p. 135)

John Rawls, who is seen as a *"liberal-egalitarian of social justice"*, argues that justice is the main virtue of the presence of social institutions *(social institutions)*. However, benevolence for the whole society cannot rule out or challenge the sense of justice of everyone who has obtained a sense of justice. Especially weak people who seek justice. (Faiz, 2009, p. 140)

Specifically, John Rawls developed the idea of the principles of justice by making full use of his creative concept known as the "original position" (*original position*) and "veil *of ignorance*. (Faiz, 2009, p. 140)

While the concept of the "veil of ignorance" is translated by John Rawls that everyone is faced with closing all facts and circumstances about himself, including certain social positions and doctrines, thus blinding any concept or knowledge of justice that is growing. With that concept, John Rawls led the public to obtain the principle of fair equality with his theory known *as "Justice as fairness"*.

In John Rawls's view of the concept of "original position" there are the main principles of justice, including the principle of equality, that is, everyone is equal to freedom that is universal, essential and incompatible with the social and economic needs of each individual.

The first principle is stated as the principle of *equal liberty (equal liberty principle)*, such as freedom of religion *(freedom of religion)*, political independence *(political liberty)*, freedom of opinion and expression *(freedom of speech and expression)*, while the second principle is expressed as the principle of difference *(the difference principle)*, which hypothesizes on the principle of equal opportunity *(equal opportunity principle)*.

John Rawls further emphasized his views on justice that justice enforcement programs with a populist dimension must pay attention to two principles of justice, namely, first, giving equal rights and opportunities to the broadest basic freedoms of equal freedom for everyone. Second, being able to rearrange the socio-economic disparities that occur so that they can provide reciprocal benefits. (Kelsen, 2011, p. 7)

Thus, the principle of difference requires that the basic structure of society be arranged in such a way that the prospect gap gets the main things of welfare, income, and authority reserved for the benefit of the most disadvantaged people. This means that social justice must be fought for two things: First, to correct and improve the condition of inequality experienced by the weak by presenting empowering social, economic and political institutions. Second, every rule must position itself as a guide to develop policies to correct the injustices experienced by the weak.

**Legal Theory of Agreement**

Article 1313 of the Civil Code stipulates that an agreement is an act by which one person or more binds themselves to another person. This article explains in simple terms the meaning of an agreement which describes the existence of two parties that are bound to each other. This understanding is not very complete, but with this understanding, it is clear that in the agreement one party binds itself to another party. (Miru & Pati, 2011, p. 63)

Wirdjono Prodjodikoro defines an agreement as a legal relationship regarding property between the two parties, in which one party promises or is assumed to promise to do something, while the other party has the right to demand the implementation of that promise. (Prodjodikoro, 2000, p. 5)

**Principles of Agreement**

Principles have levels seen from the gradations of their abstract nature, namely the *ideological* (philosophical), constitutional (structural) principle, conceptual (political) principle, and operational (technical) principle. . The differences between these various principles are not principled, but gradual. The rule of law forming itself in law can also be classified into sub-systems related to each other in a harmonious and harmonious relationship, not clashing because they have principles and integrated joints. (Badrulzaman, 1983,

pp. 15-16) In this connection, what is meant by legal principles are generally applicable principles in the field of law? So the principles of civil law are special principles that are part of the legal principles that apply in special fields, in addition to other legal principles, such as the principles of criminal law, constitutional law principles and so on. It is not uncommon for specific legal principles to be the same as general legal principles, but it is not certain that general law principles apply in a special law.

In contract law, several legal principles can be found related to the birth of the agreement, the contents of the agreement, the binding force of the agreement, and those related to the implementation of the agreement.

The legal principle or *rechtsbeginsel* is not a concrete regulation that applies, but a theoretical matter that underlies, and supports a regulation, whether in the form of philosophy, principle or basis. Article 11 *Algeimeine Bepalingen* (AB), emphasizes that "if a judge faces a case where it is clear that no legal regulations have been applied, then the judge cannot refuse to provide justice based on the pretext that the law is incomplete and no regulations have been applied. Judges are obliged to provide justice by seeking legal principles that can be used as the basis for their decisions, and if necessary apply customs or customs as the basis for their decisions.

Thus, it can be said that the legal principle must be sought with thought, and not determined by the authorities so that it is something whose position can be considered higher and more basic than the regulations themselves. The use of legal principles is not an obligation, but something that logically applies automatically, so no need to ask for approval from anyone. The principle is something higher, more universal, using thought. (Soemitro, 2017, pp. 15-16) Legal principles are abstract because they have been embodied in positive law, in this case, written basic law.(Badrulzaman, 1983, pp. 25-26)

In an engagement, the parties are bound by an agreement, each of which has certain obligations. The creditor or the party who delivers something/goods and obtains something must provide sufficient information about what he/she has submitted. On the other hand, the debtor or the party who receives something/goods and therefore delivers something/goods and therefore submits a certain amount of payment must be scrutinized and taken very carefully so that the achievements received are by the achievements given or vice versa.

**Research Results**

The agreement originated from the existence of a difference or dissimilarity of interests between the parties involved. Contractual relations that are born from an agreement generally begin with a negotiation process between the parties. The use of the terms "agreement" and "contract" is often still understood ambiguously to this day. From the perspective of Burgerlijk Wetboek, it can be understood that agreements and contracts have the same meaning whereas agreements or agreements (*overeenkomst*) have the same meaning as contracts (*contract*). (Yudha, 2009, p. 15) Article 1313 of the Civil Code provides a formulation of a contract or agreement, namely an agreement is an act by which one or more people bind themselves to one or more other people. The agreement or contract made will give rise to an engagement. As stated in article 1233 of the Civil Code that an agreement or contract is a source of engagement. Thus the contract or agreement is one of the two legal bases other than the law that can give rise to an agreement. (Yudha, 2009, p. 19)

The understanding of the agreement according to Wirjono Projodikoro that the agreement is a legal action regarding assets between two parties, in which one party promises or is considered not to promise to do something or not to do something, and the party that others have the right to demand the implementation of the promise. (Mertokusumo, 1999, p. 110)

In addition, KRMT Tirtodiningrat defines an agreement as a legal act based on an agreement between two or more people to cause legal consequences that can be enforced by law. Another understanding put forward by Subekti is that an agreement is an event where a person makes a promise to another person or where two people promise each other to do something.(Meliala, 1987, p. 1)

So for this it is necessary to understand that there is something called "Legal Facts", then from these legal facts there are "Human Actions", from human Actions then cause "Legal" Actions and from Actions, The law creates an "Agreement" as a legal action. In its implementation, there is what is mentioned as an agreement of multiple legal actions, such as buying and selling and leasing. Then the second is the Agreement of Unilateral Legal Actions such as Wills. So an agreement can be said to be a legal act that causes the change/deletion of rights or creates a legal relationship that causes legal consequences, which is the goal of the parties. (Heriyanto, 2020)

Traditionally an agreement or contract can be understood as: "an agreement between two or more people that contains a reciprocal promise or promises that can be enforced based on law, or whose implementation is based on the law to a certain degree recognized as an obligation" (Heriyanto, 2020)

The agreement is also said to be a legal act *(juridical act)* of two parties which contains elements of a promise given by one party to the other party, and each party is bound by the legal consequences arising from promises. it was of his own free will. (Miftah, 2020)

According to Subekti, an agreement is an event where someone promises to another person or where two people promise each other to do something. From the definition of the agreement, it can be concluded that an agreement is a series of words that contain promises or the ability of two parties, both orally and in writing, to do something or cause legal consequences. (Retna, 2012)

The definition of engagement according to the doctrine (experts) is a legal relationship in the field of assets between two or more people, where one party (the debtor) is obliged to perform an achievement, while the other party (the creditor) is entitled to the achievement. . (Tri, 2019) In other words, the agreement gave birth to an agreement and the agreement is the most important source that gave birth to an agreement. The definition of an agreement according to Wirjono Projodikoro that an agreement is a legal act concerning assets between two parties, in which one party promises or is deemed not to promise to do something or not to do something, and the other party has the right to demand the implementation of the promise. In addition, KRMT Tirtodiningrat defines an agreement as a legal action based on an agreement between two or more people to cause legal consequences that can be enforced by law. (Nitami Putri, 2019) Another understanding put forward by Subekti is that an agreement is an event where a person makes a promise to another person or where two people promise each other to do something. So that it can be seen that the agreement is a legal act that binds the parties to each other. Borrowing Money is an activity that is an agreement. Furthermore, Article 1233 of the Civil Code states, that "Each agreement is born either because of agreement or because of the law", it is emphasized that every civil obligation can occur because it is desired by the parties involved in the agreement/agreement that is intentional.

The definition of a money lending agreement according to Article 1754 of the Civil Code reads: Borrowing is an agreement whereby one party gives to another party a certain amount of goods that are used up due to use, on condition that the latter party will return the same amount of the same kind and the same situation.

The object of the lending and borrowing agreement in Article 1754 above is in the form of items that are used up due to usage. Money can be the object of a lending and borrowing agreement because it includes goods that run out due to use where money functions as a medium of exchange. The function or significance of a contract or agreement according to Agus Yudha is: (Tasya, 2022)

a) The contract is a legal vessel for the parties to express their respective rights and obligations (exchanging concessions and interests);
b) Contracts as rules of the game;
c) Contracts as evidence of a legal relationship;
d) Contracts support a conducive business climate *(win-win solution; profit efficiency).*

The Form of Legal Protection Required by Debtors of Information Technology-Based Borrowing and Borrowing Services. Legal protection is all forms of efforts to protect human dignity and respect as well as recognition of human rights before the law. There are two forms of legal protection, namely preventive legal protection and repressive legal protection.

Efforts to eliminate (*minimize*) problems related to law enforcement in the field of *fintech*, (Effendy, 2012, pp. 125-126) include rearranging the substance of the law through reviewing and structuring laws and regulations regarding *financial technology* related to existing online loans Currently, it refers to the order of law by taking into account the general principle and hierarchy of legislation. The arrangement of the substance of the law related to legislation products, it is good to pay attention to the opinion of Gustav Radbrouch who stated that "*das Strafrecht reformieren heiszt nich das Strafrect verbesen, sondern erersetzen durch etwas Besseres"*, reforming the law, namely not just fixing it, but replacing it with a better one.

Legal subjects that exist in technology-based money-lending services are not only limited to *Platform*s but also to corporations. So to provide optimal legal protection the government must pay attention to several aspects, in this case, the author emphasizes more on the value aspect of Technology-Based Lending and Lending Service Arrangements.

Philipus M. Hadjon argues that "The principle of legal protection for the people against government actions rests on and originates from the concept of recognizing and protecting human rights. Because according to its history in the West, the birth of concepts regarding the recognition and protection of human rights is directed at restrictions and placing obligations and justice in society and government.

Hans Kelsen argues that justice is born from positive laws determined by humans, in this case, Hans Kelsen emphasizes that the concept of justice includes a clear and value-free understanding. Crimes in the *fintech* are unlawful under the Financial Services Authority Law and Financial Services Authority Regulations (POJK) and conflict with the 2nd precept “Fair and Civilized Humanity” and the 5th precept Pancasila “Social Justice for All Indonesian People '.

The law must be able to realize the purpose of its presence where it is needed and act in the interests of those for whom it is present. (Augustine, 2017) The law does not only guarantee the public interest but also

must balance public interests with individual interests to achieve the greatest happiness for as many people as possible. According to Meuwissen, law reaches out to structuring the social life of humans who have free human rights, by creating fair rules for the business needs of all parties. (Sri, 2015)

Legal certainty emphasizes that the law or regulation is enforced as desired by the sound of the law. Sociological value emphasizes the benefits in society itself. The community expects that the birth of law in the form of legal rules will provide benefits and justice. Even though justice and legal certainty are polemics that collide with each other. More and more laws meet the requirement of "fixed rules," which eliminate as much uncertainty as possible.

Van Apeldoorn emphasized that the more precise and sharp the legal regulations are, the more pressing is justice. Truth and justice do not come from outside, but from power (the Ruler). So that the adage that the highest justice is the highest injustice (*summum ius, summa iniura) appears.* Thus, there is an antinomy between demands for justice and demands for legal certainty. (Satrianto, 2015)

Thus the researcher tries to use the ideas of David Hume's philosophical thought, Jeremy Bentham *(utility theory)*. From the point of view of the values of justice and social values that to achieve happiness one must act fairly so that justice is also closer to social giving social happiness to others, this was also conveyed by Hume with brilliant critical-rational thinking which undermined the theoretical basis of natural science at that time. Hume emphasized that something useful must be able to bring happiness to individual humans. All legal decisions must guarantee human happiness both as individuals and socially. (Subagiyo, 2018)

David Hume was an important philosopher who greatly influenced Bentham's thinking. The principle of association refers to the relationship between ideas and language, the relationship between ideas and ideas. Meanwhile, the principle of greatest happiness refers to the goodness of an individual. Judging from the background of his ideas, we can understand that Bentham's thoughts were inspired by the rise of humanism at that time which exalted the intrinsic value of the human dignity of every individual. The value of humanism seems to be the basic spirit that is firmly attached to Bentham's legal thinking.

As a supporter of the *utility theory*, Bentham said that the purpose of law must be useful for individuals in society to achieve the greatest possible happiness. -The consequences are good for as many people as possible. So a value of legal protection in the *fintech* means fair if the position of the parties in the lending and borrowing agreement has a position that does not distinguish between social, and economic conditions and the position of the service user, in this case, the debtor in the Technology-Based lending and borrowing agreement.

## IV. CONCLUSION

Debtor Legal Protection in Information Technology-Based Money-Lending Services mandated to the Financial Services Authority as an institution authorized to regulate and supervise Information Technology-Based Money-Lending Services that only have permits based on the Law of the Republic of Indonesia Number 21 of 2011 has not reflected the value of the independence of the Financial Services Authority as a regulator and supervisor in the implementation of Technology-Based Lending and Borrowing Services is because consumers, in this case, debtors, are not protected from unlicensed providers.

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