



Juridical Analysis of Fintech Lending Agreement based on Civil Law Perspective in Indonesia

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ABSTRACT

The growth of fintech P2P lending is getting faster and easier to access for people who still struggle to get loans and for MSME entrepreneurs who need capital to develop their business. Investing in P2P lending offers the prospect of high returns annually, however, the investment must be in accordance with personal profile and risk appetite and how to manage it. Therefore, the objectives of this research is to find out the legal Tunaiku credit agreement based on the civil law perspective in Indonesia; legal consequences if one of the parties defaults on the credit agreement in this application; and find out the form of legal protection for other parties who are aggrieved in the application credit agreement. Analysis of legal materials using qualitative descriptive analysis with the type of normative legal research. In addition, the research approach used is a statutory approach, conceptual approach, and case study approach. Data sources were obtained from primary, secondary, and tertiary legal materials. The results of this research are (1) digital financial services activities are implemented in cooperation with third parties in the context of inclusive finance; (2) if there is a defaulted person, it is obliged to reimburse costs, losses, and interest due to non-fulfillment of an agreement in accordance with Article 1243 of the Civil Code; and (3) in order to obtain legal protection, the public is encouraged to choose a fintech lending company that has been registered with the Financial Services Authority.

Keywords: Civil Law Perspective, Fintech Lending Agreement, Juridical Analysis

INTRODUCTION

Fintech P2P lending is an online platform that provides facilities for fund owners to provide loans directly to debtors with higher returns, while fund borrowers can apply for credit directly to fund owners with easier terms and faster processes compared to conventional financial institutions. Investing in P2P lending offers the prospect of high returns annually, however, the investment must be in accordance with personal profile and risk appetite and how to manage it. Therefore, the first step in the investment process in P2P lending is to understand the risks. We should not invest funds without acknowledging the level and type of risk involved. *Tunaiku* credit fintech lending is an online platform that offers easy loans; fast disbursement; unsecured since 2014; has been officially registered and supervised by the Financial Services Authority.¹ The ease of access in submitting a loan proposal is a plus point for *Tunaiku* compared to other loans. The main aspect of fintech is the agreement between the lender (*Tunaiku*) and the debtor. Agreement is one of the sources of engagement, in addition to agreements there are provisions of law that can create an engagement.² Therefore, fintech as a service in financing and lending must follow the applicable legal regulations in Indonesia as regulated in the Civil Code Article 1313.³

There are 4 requirements that must be fulfilled by a fintech lending according to Article 1320 of the Civil Code, such as (1) agreement between the parties involved; (2) ability to make an agreement; (3) regarding a specified matter; and (4) a legitimate reason. The first and second requirements of agreement between parties involved and the ability to make an agreement are called subjective requirements, because they relate to the subjects who make the agreement. Meanwhile, the third and fourth requirements in the form of a certain subject matter and a legitimate reason are called objective requirements because they relate to the object of the agreement. If the subjective requirements (the first and second points of the valid agreement) are not fulfilled, the agreement can be canceled. However, if the objective requirements (valid conditions of the third and fourth points of the agreement) are not fulfilled, the agreement is considered null and void or it means that the agreement is considered not to have occurred.⁴ The agreements conducted by the parties involved in the *Tunaiku* Fintech Lending agreement can be categorized as electronic contract agreements and written contract agreements through the *Tunaiku* application.

¹ PT Bank Amar Indonesia, "Ajukan Pinjaman Online Tanpa Jaminan," *Tunaiku*.

² Benny Krestian Heriawanto, "Pelaksanaan Eksekusi Objek Jaminan Fidusia Berdasarkan Title Eksekutorial," *Legality : Jurnal Ilmiah Hukum* 27, no. 1 (2019): 54–67.

³ Mahkamah Agung Republik Indonesia, *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)* (Jakarta: CV. Karya Gemilang, 2013), <https://www.bpkp.go.id/public/upload/unit/maluku/files/Viewer.js/Peraturan/Hukum/KUHP-Perdata-Bagian-1.pdf>.

⁴ Salim HS, *Hukum Kontrak : Perjanjian, Pinjaman Dan Hibah*, Cetakan 1. (Jakarta: Sinar Grafika, 2015).

According to Azhari regarding the law of agreement in terms of loan interest on *Uang Teman* fintech, it indicates that the information technology-based money lending and borrowing agreement in terms of providing interest of 34% per month is invalid and should be null and void.⁵ Meanwhile, based on Tinindra's research indicates that the legal responsibility of the parties in peer to peer fintech lending is implemented based on Bank Indonesia Circular Letter No.18/22/DKSP on September 27, 2016 regarding the Implementation of Digital Financial Services (LKD) describes that digital financial services activities are the utilization of mobile-based or web-based technology in payment and financial system service activities conducted in cooperation with third parties in the context of inclusive finance.⁶ Therefore, the objectives of this research is to find out the legal *Tunaiku* credit agreement based on the civil law perspective in Indonesia; legal consequences if one of the parties defaults on the credit agreement in this application; and find out the form of legal protection for other parties who are aggrieved in the application credit agreement.

LITERATURE REVIEW

General Overview of the Agreement

The definition of an agreement is regulated in Article 1313 of the Civil Code which states that an agreement is an act in which one or more people bind themselves to one or more other people. According to the Civil Code, an agreement is basically a consensus of both parties and binds those who make it, similar to the binding of a law.⁷ In general, there are two parties in an agreement, the first party is the one that has the right to demand something called the creditor, while the second party is the one that called the debtor, these demands in law are referred to as "Achievement." Based on Article 1234 of the Civil Code, the achievements consist of (1) submitting an item or providing something; (2) doing an act; and (3) not doing an act. There are 8 principles of agreement under Law, such following below:

1. The Principle of Contractual Freedom

Indonesian contract law adopts an open system. It means that it provides freedom to a person to reach an agreement that is desired by law, as long as it does not violate the law, public order, and decency.⁸

2. The Principle of Consensual

⁵ Taufiq Ilham Azhari, "Keabsahan Perjanjian Pinjam Meminjam Uang Berbasis Teknologi Informasi Dalam Hal Pengenaan Bunga Pinjaman (Studi Pada UangTeman.Com)" (Universitas Islam Indonesia Yogyakarta, 2018).

⁶ Diniyosa Arteriovani Tinindra, "Analisis Yuridis Fintech Dalam Perjanjian Peminjaman Dana Perspektif Hukum Perdata" (Universitas Muhammadiyah Surakarta, 2020).

⁷ Marilang and Putra Astomo, *Hukum Perikatan, Perikatan Yang Lahir Dari Perjanjian* (Makassar: Indonesia Prime, 2017).

⁸ Johannes Ibrahim Kosasih, *Akses Perkreditan Dan Ragam Fasilitas Kredit Dalam Perjanjian Kredit Bank*, Cetakan Pe. (Jakarta: Sinar Grafika, 2019).

This consensual principle is contained in the provisions of Article 1320 (1) of Civil Code. Consensus means reaching an agreement for reconciliation.⁹

3. The Principle of Agreement Binding Force

This principle is stated in Article 1338 Paragraph (1) of Civil Code which explains that all agreements that are made legally shall apply as laws for those who make them.¹⁰

4. The Principle of Good Faith

This principle is contained in Article 1338 (3) of the Civil Code. It provides that the parties in a contract must have the right intention to comply with and fulfill the contract as much as possible, depending on the contract subject.

5. The Principle of Trust

The principle of trust means that each person who will make an agreement will fulfill any achievements arranged between them in the future.¹¹

6. The Principle of Sustainability

The equilibrium standard is a standard that requires both parties to conduct and fulfill the contract, and *Tunaiku* has the authority to request performance and if it is needed, amortize the performance with the debtor's assets. Although, the debtor also has the obligation to fulfill the contract in good faith.

7. The Principle of Decency

This principle is regulated in Article 1339 of the Civil Code which refers to the provisions regarding the contents of agreements.

8. The Principle of Customary

This principle is regulated clearly not only binding but also customary. This is regulated by Article 1339 and Article 1347 of the Civil Code.

In juridical terms, the validity of an agreement must fulfill the four requirements as stipulated in Article 1320 of the Civil Code, such as (1) an agreement between two parties; (2) ability to make an agreement; (3) regarding a specified matter; and (4) a legitimate reason.

⁹ Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian," *Binamulia Hukum* 7, no. 2 (2018): 107–120.

¹⁰ R. Subekti, *Aneka Perjanjian*, Cet. x. (Bandung: Citra Aditya Bakti, 1995).

¹¹ M Muhtarom, "Asas-Asas Hukum Perjanjian: Suatu Landasan Dalam Pembuatan Kontrak," *SUHUF* 26, no. 1 (2014): 48–56.

Credit Agreement in Indonesia

Some important things to know by businesses that provide lending services are required to understand the laws and regulations; and need to apply the precautionary principle in lending to prospective debtors. The business person must be observant about the assets pledged by the prospective debtor. In addition, business people must also know how to resolve problem loans, how to resolve credit agreement disputes through bankruptcy, collateral execution, and credit restructuring. Credit agreement is one of the agreements made between banks and third parties (customers). Credit agreements can actually be equated with debt and credit agreements¹². According to Article 1 No. 11 of the Banking Law, credit is defined as the provision of money or bills that can be equated with it. Based on an agreement or borrowing agreement between a bank and another party that requires the borrower to repay the debt after a certain period of time with interest.

RESEARCH METHODOLOGY

Analysis of legal materials using qualitative descriptive analysis with the type of normative legal research. Normative legal research is commonly known as doctrine because this research is conducted or aimed only at written regulations or other legal materials.¹³ In addition, the research approach used is a statutory approach, conceptual approach, and case study approach. Statutory approach is commonly known as statutory interpretation means that a critical issue for legal practice and theory, political discussion, ethical issues, and public information. For instance, a substantial majority of the US Supreme Court caseload involves statutory interpretation, almost two-thirds of the caseload by recent estimates, and in upcoming years, the court will be asked to interpret the meaning of thousands of statutory sections.¹⁴ Meanwhile, conceptual approach also can be called conceptual jurisprudence is concerned with the explanations of the core concepts of legal practice, including the interrelationships between these concepts. Moreover, the conceptual jurisprudence aims to define legal concepts, validity, and the legal system and thereby seeks to clarify the logical relationship between these concepts and other concepts that may be related to them, such as the concepts of morality, authority, legal and social obligation, and so on.¹⁵ In the case study approach, the main issue is in the selection of the case to be researched. The reasons for isolating a particular area as a case will be varied, but should always be clearly articulated

¹² K. C. MacLeod, H. P. Patterson, and C. Aiken, "Asset-Based Lending Credit Facilities: The Borrower's Perspective," *Business Law Today* (2017): 1–3.

¹³ Suratman and Philips Dillah, *Metode Penelitian Hukum : Dilengkapi Tata Cara & Contoh Penulisan Karya Ilmiah Bidang Hukum*, ed. Alfabeta (Malang, 2014).

¹⁴ D. Walton, F. Macagno, and G. Sartor, *Introduction. In Statutory Interpretation: Pragmatics and Argumentation* (Cambridge: Cambridge University Press, 2021).

¹⁵ Kenneth Einar Himma, "Conceptual Jurisprudence An Introduction to Conceptual Analysis and Methodology in Legal Theory," *Journal for Constitutional Theory and Philosophy of Law* (2015): 65–92.

and well justified. The literature does not provide an explicit explanation about the meaning of a case. The most common indication is that a case is a “bounded system.”¹⁶ Data sources were obtained from primary, secondary, and tertiary legal materials. Primary legal materials are legal materials that have juridical binding authority used by researchers in this research, such as the Civil Code, Law No. 10/1998 on Banking, Law No. 8/1999 on Consumer Protection, and so on. Meanwhile, secondary legal materials in this research, such as literature containing legal expert opinions, legal journals, and internet sites related to related topics. In addition, tertiary legal materials in this research use complementary materials such as dictionaries, encyclopedias, cumulative indexes, and so on.

RESULT AND DISCUSSION

Financial Technology

Online-based lending in financial services is commonly known as financial technology (fintech). Fintech is the utilization of technology in the financial system to create new products, services, technology, and/or business models, financial stability, financial system stability, and/or efficiency, fluidity, which can affect the security and reliability of the payment system.¹⁷ The development of Fintech is recognized to provide benefits to consumers, agents, and the national economy, but it also has potential risks that can disrupt the financial system if not properly mitigated.¹⁸ Fintech is intended to enable people to conduct online financial transactions, improve financial literacy, and realize financial inclusion in Indonesia.¹⁹ According to Rahadi, Fintech forms are divided into 4 parts, such as (1) fintech connects investors and capital seekers; (2) market aggregators; (3) risk and investment management; and (4) payment, settlement, and clearing.

Juridical Analysis of Fintech Lending in the Tunaiku App Online Fund Lending Agreement based on Civil Law Perspective

In Article 1320 of the Civil Code stipulates the terms of agreement which consists of 4 interdependent conditions, such following below:

1. There is an agreement between both parties.
2. Ability in legal action. Based on Article 1329 of the Civil Code, both parties must be legally capable. The term of legal capability means the ability in legal actions that lead to legal consequences.

¹⁶ Mateusz Stępień, “Using Case Studies for Research on Judicial Opinions: Some Preliminary Insights,” *Law and Method* (2019): 1–20.

¹⁷ Ahmad Ihsan Amri and Dr. Nynda Fatmawati, “Criminal Liability of Online Money Lenders,” *Ius Positum (Journal of law theory and law enforcement)* 2, no. 1 (2023): 122–131.

¹⁸ Dedi Rianto Rahadi, *Financial Technology* (Bogor: Filda Fikrindo, 2020).

¹⁹ Astri Rumondang et al., *Fintech: Inovasi Sistem Keuangan Di Era Digital*, 1st ed. (Medan: Kita Menulis, 2019).

3. Regarding a specified matter. According to Article 1322 of the Civil Code, only tradable goods can be covered by an agreement. In addition, Article 1333 of the Civil Code stipulates that an arrangement must contain a matter that at least regarding the type can be determined.
4. A legitimate reason. It means that something that caused someone to make an agreement, but refers to the content and purpose of the agreement itself, for example buying and selling agreements, the purpose of one party is to get the property rights of an item, while the other party wants its money.²⁰

Legal Liabilities of Joint Parties in Tunaiku Credit Fintech P2P Lending

Based on the research results regarding the legal responsibilities of the parties in *Tunaiku* fintech lending peer to peer app, the agreement is implemented based on Article 1234 of the Civil Code which describes that the performance consists of (1) submitting an item or providing something; (2) doing an act; and (3) not doing an act. An agreement creates a legal relationship between two people called an obligation. The agreement creates an agreement between the people who make it. An engagement is a legal relationship between two parties in property, in which one party (*Tunaiku* app) is entitled to an achievement and the other party (debtor) is obliged to fulfill the achievement. The legal responsibilities of these parties in the *Tunaiku* Fintech P2P Lending by Accelerator are follows:

1. The Binding Obligation;
2. Not contradict with other obligations;
3. The power and authority of the obligor to sign and deliver, and has conducted all actions necessary to obtain authorization for the signing, execution and delivery of the transaction documents;
4. Authorization of the Signatory;
5. No misleading information;
6. Compensation of the *Tunaiku* fintech loan agreement is implemented based on the Essential elements. This element represents a provision of performance that must be performed by one or more parties that reflects the nature of an agreement that distinguishes it from other agreements.

The legal responsibility of the parties in peer to peer fintech lending by *Akseleran* is implemented based on Bank Indonesia circular letter No. 18/22/DKSP on September 27, 2016 concerning the Implementation of Digital Financial Services (LKD) which states that digital financial service activities include using mobile or internet-based technology for payment systems and transactions conducted in collaboration with third parties in the context of financial inclusion.

²⁰ Retna Gumanti, "Syarat Sahnya Perjanjian (Ditinjau Dari KUHPerdata)," *Jurnal Pelangi Ilmu* 5, no. 1 (2012): 1–13.

The implementation of Fintech in the sharia banking industry will facilitate and connect business actors, especially MSMEs, to access sharia financial services products offered and apply for financing directly without having to come directly to branch offices. This model can also increase financial inclusion and improve the performance of sharia banks, especially by facilitate access of finance for SMEs.²¹ Financial technology is revolutionizing the entrepreneurial process, such as crowdfunding, mobile payments and remittance services. Funding from all over the world can be easily obtained through crowdfunding, especially if you don't know anyone.

Fintech with financial services such as crowdfunding, mobile payments, and money transfer services are leading to a revolution in the startup business. Using crowdfunding, it is possible to get funds from all over the world easily, even from people you have never met. Fintech also enables global or international money transfers. The consequences of default can be taken as follows:

1. Compensation whose legal basis is in Article 1243 of the Civil Code states that reimbursement of costs, losses and interest due to non-fulfillment of an obligation is mandatory. If the debtor, although he/she has been declared negligent, remains negligent in fulfilling the agreement, or if something that must be provided or committed can only be provided or committed in exceeding the predetermined time which occurs as consequences of: (a) the occurrence of an event of default; (b) the failure of the lender to pay any amount under the Transaction Documents when overdue; and (c) pursuant to the terms of any prepayment notice provided by the lender, the lender's portion of the loan is not prepaid.
2. Cancellation of the agreement through the court is defined as any lawsuit, claim, or dispute arising out of or in connection with this agreement including, but not limited to a matter. The Central Jakarta District Court is the forum for requesting and resolving matters concerning the signature, existence, validity, enforcement, breach, execution, interpretation, performance, termination or effect of an agreement.

The legal basis is Article 1266 of the Criminal Code which contains a voidable condition that is considered to be always included in a reciprocal agreement, if one party does not fulfill its obligations. Therefore, the agreement cannot be canceled but a request for cancellation must be submitted to the District Court. This request must also be complied the contract stipulates termination conditions regarding failure to fulfill obligations.

²¹ Novia Yusfiyanti Laili and Rohmawati Kusumaningtias, "Efektivitas Inklusi Keuangan Syariah Dalam Meningkatkan Pemberdayaan UMKM (Studi Pada BMT Dasa Tambakboyo)," *Jurnal Ilmiah Ekonomi Islam* 6, no. 3 (2020): 436–443.

The legal responsibility of the parties in fintech P2P lending by Accelerator is explained in the form of litigation, that is, the Accelerator fintech loan agreement is stated that any lawsuit, claim, or dispute arising out of or in connection with this agreement including, but not limited to a matter. A dispute concerning the signing, existence, validity, enforcement, breach, execution, interpretation, performance, termination or the consequences of termination may be referred to and resolved through the Central Jakarta District Court.

CONCLUSION AND SUGGESTION

Conclusion

Legal structure in the Tunaiku Fintech Lending app in online lending agreements based on Indonesian civil law perspective consists of 2 elements, such as subjective and objective. The subjective element as described in the terms of the validity of agreement in Article 1320 of the Civil Code consists of 4 (four conditions), consisting of (a) the agreement of both parties, in which both parties, that is, Accelerator as Tunaiku and the debtor, have agreed to conduct an agreement with the object determined by the debtor; (b) the ability to commit legal acts, the debtor in the agreement based on applicable legal provisions, this is evidenced by including a national ID card; (c) the existence of a certain thing, the debtor in this case conducts an agreement in the form of financing with Accelerator as both parties who operate the Tunaiku fintech lending business; (d) the existence of a lawful reason, the agreement conducted by the relevant parties does not violate the applicable law and does not endanger one of the parties, and the object specified in the agreement is clear. The objective element of the Accelerator fintech lending Tunaiku Credit agreement is implemented based on the provisions of Article 1338 of the Civil Code, the consequences of an agreement referred to as: (a) the agreement binds the parties, that is, Accelerator as Tunaiku Credit and the debtor and applies as a law to the parties who make it; (b) the agreement cannot be withdrawn voluntarily because it is an agreement between the two parties; (c) the agreement must be implemented in good faith, good faith means honesty or clean. However, each agreement must be implemented with full honesty. It is as a condition of the fintech agreement must include the identity of debtor either in the form of ID card or other supporters. In addition, the agreement also includes the following provisions, such as (1) the binding obligation; (2) not contradict with other obligations; (3) the power and authority of the obligor to sign and deliver, and has conducted all actions necessary to obtain authorization for the signing, execution and delivery of the transaction documents; (4) authorization of the signatory; (5) no misleading information; and (6) compensation of the *Tunaiku* fintech loan agreement is implemented based on the Essential elements. This element represents a provision of performance that must be performed by one or

more parties that reflects the nature of an agreement that distinguishes it from other agreements

Meanwhile, based on Tinindra's research indicates that the legal responsibility of the parties in peer to peer fintech lending is implemented based on Bank Indonesia Circular Letter No.18/22/DKSP on September 27, 2016 regarding the Implementation of Digital Financial Services (LKD) describes that digital financial services activities are the utilization of mobile-based or web-based technology in payment and financial system service activities conducted in cooperation with third parties in the context of inclusive finance. If the parties make a default in this case in the form of (a) an event of default, which means any specified event or condition; (b) failure to pay; (c) other obligations when not complying with any provisions in the Transaction Documents; (d) false statements; (e) cross default; (f) invalidity, for example 1) the performance of obligations under the Transaction Documents is invalid, deemed invalid or becomes invalid, and 2) does not recognize the existence or validity of a Transaction Document or shows the intention not to recognize the existence or validity of a Transaction Document; (g) changes that bring material loss; (h) destruction of collateral then Article 1243 of the Civil Code which states that the reimbursement of costs, losses and interest for non-fulfillment of an obligation, will only begin to be required, if the debtor, after being declared negligent to fulfill his obligation, continues to neglect it, or if something that must be given or made, can only be given or made, can only be given or made within the time that has been exceeded.

Suggestion

For the legislature and government, it is expected that in making regulations in the future, it must be more specific in providing provisions regarding the Tunaiku Credit fintech lending agreement regarding supervisory institutions if losses occur to Tunaiku Credit or debtors. Nowadays, the supervisory institution for fintech apps is still under the authority of OJK and it offers difficulties for OJK in monitoring due to the increasing number of fintech-based apps. In addition, for debtors, it is expected that they will be concerned about the legal standing of fintech in the future so as not to be deceived and consider the contents of the agreement in order to know everything about the process.

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