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Legal Aspects of Financial Technology in the Perspective of Improving Public Welfare

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Abstract

This writing aims to find out the legal aspects, especially regarding criminal policies in minimizing the occurrence of criminal acts in financial technology in Indonesia in the perspective of improving people's welfare and to find out the role of law enforcement in preventing financial technology criminal acts in Indonesia in the perspective of improving people's welfare. This paper uses normative legal research methods because the focus of the study departs from norms, regulations, legal theories and therefore has the task of systematizing positive law, using the approach: statute approach, conceptual approach, and analytical approach. The technique of tracing legal materials uses document study techniques and analysis of studies using qualitative analysis. Based on the results of the study that the need for reconstruction and/or reformulation of regulations which are the basis of the implementation of financial technology in Indonesia because they are considered not to regulate completely and in these conditions, the role of law enforcement in preventing and overcoming criminal acts has a strategic position because it is part of a task in carrying out the protection and protection of the community in realizing public welfare. Based on this the authors argue that in addition to internal reform in reconstruction and/or reformulation, external improvement is also needed through ratification from various countries and governments should be related to the implementation of financial technology in one door under the government so that supervision will be better and the government to innovate financial technology as an alternative in realizing public welfare.

I. Introduction

The rapid development of information and communication technology is driving the growth of online business and e-commerce. These developments have triggered a new style of a business model based on financial technology. In the Covid 19 pandemic, as it is today, people are forced to think creatively in an effort to meet their needs. This is caused by the weakening of the country's economy both in the small business sector and in the large business sector. Therefore we need a system that can facilitate a person to get venture capital. Along with the times, someone can borrow money through an online application that is easily accessed by everyone, anywhere, anytime so there is no need to come to the Bank which is considered a longer process. In other words, financial technology has a role in expanding the reach of financial services. However, with the rapid development of technology and the necessities of life that continues to

run, making someone choose a faster, simpler alternative without thinking about or recognizing further the legal aspects of the choice, one of which is through financial technology peer to peer lending.

Economists and business people see opportunities, potential or provide a perspective on economic development through technology by paying attention to management strategies through the application of technology that is part of the revolution. Where through banking there are strict rules and in serving the community in certain areas has limitations.¹ However, seeing the growth and development of the community, then this financial technology has considerable potential in improving people's welfare. One financial technology that is still being discussed is its existence, namely the blockchain which is a tool in the process of promoting sustainable development.² However, the existence of this blockchain in Indonesia is still being debated by some people of the world because it is considered that digital currency is not a currency. In addition, the rise of online loans makes it easy for customers to lend money compared to banking services.

Today there are many different kinds of payments made in non-cash as if the community was indeed directed to adjust the times. This enables start-up companies to compete with conventional financial organizations by providing fast, easy and inexpensive solutions for all needs in the financial markets such as peer-to-peer lending. Although not all people understand what financial technology is, unwittingly the community has been led to apply financial technology, such as Kartuku, Doku, iPaymu, and many other things. By looking at the development of financial technology, it does not escape from various weaknesses that result in crime, including the sale of personal data, threats, fraud, misappropriation of customer funds, defamation, and so on due to lack of public knowledge and weak supervision causes the company financial technology illegally violates the human rights of their customers.

The discussion on financial technology is not a new discussion. Previous studies have done a lot of research related to financial technology, including, namely:

1. Nuzul Rahmayani in 2018 with the journal-title: Legal Review of Consumer Protection Related to Supervision of Financial Technology-Based Companies in Indonesia;
2. Alfhica Reita Sari in 2018 with the title Thesis: Legal Protection for Lenders in Providing Peer To Peer Lending Based Financial Technology in Indonesia.

The first study discusses consumer supervision and protection related to financial technology-based companies in Indonesia. While the second study discusses legal protection for lenders in the implementation of Peer Peer Lending-based financial technology in Indonesia. While the research conducted by the author is how criminal policy in minimizing the occurrence of criminal acts in financial technology in Indonesia from the perspective of improving people's welfare and how the role of law

¹ Hadad, M. D. (2017). Financial Technology (Fintech) di Indonesia. *Kuliah Umum tentang Fintech, Indonesia Banking School*.

² Nguyen, Q. K. (2016, November). Blockchain-a financial technology for future sustainable development. In *2016 3rd International conference on green technology and sustainable development (GTSD)* (pp. 51-54). IEEE.

enforcement in preventing financial technology criminal acts in Indonesia from the perspective of improving people's welfare.

2. Research methods

This paper uses normative legal research methods because the focus of the study departs from norms, regulations, legal theories and therefore has the task of systematizing positive law.³ use the approach: statute approach, conceptual approach, and analytical approach. The technique of tracing legal materials uses document study technique, and analysis of studies using qualitative analysis.

3. Results and Discussion

3.1 Criminal Policy in Minimizing the Occurrence of Criminal Acts in Financial Technology in Indonesia in the Perspective of Improving Public Welfare

Those countries undergoing a process of social development together with economic development create new problems and result in structural changes in society.⁴ Therefore criminal policy is put as a policy in determining an act that can be convicted.⁵ The existence of financial technology peer to peer lending is a solution as well as a problem. This is because on one hand the existence of peer to peer lending financial technology is considered as an alternative in banking services while on the other hand financial technology providers are not registered with the OJK on the grounds that they do not meet the requirements given by the OJK and also do not want to follow the rules given by the OJK which ultimately detrimental to the public as consumers. Whereas in business, economic activities are in the legal environment.⁶ which aims to protect the community in achieving community welfare.

In Indonesia, technological development has not been matched by adequate legal regulation which is one of the obstacles in law enforcement. Some regulations governing financial technology are:⁷

1. Law No. 21 of 2011 concerning the Financial Services Authority states that the regulation, supervision, and protection of the public in financial services is the responsibility of the OJK, which currently the supervision is not optimal due to the ease of organizing financial technology after being blocked by the OJK opening financial technology providers by changing new names or another name, the right term to describe it is "one to grow a thousand die".

³ Diantha, I. M. P., & SH, M. (2016). *Metodologi penelitian hukum normatif dalam justifikasi teori hukum*. Prenada Media.

⁴ Al Mugoffary, I. T. A. (2009). Kebijakan Kriminal Terhadap Upaya Penanggulangan Tindak Pidana Perdagangan Manusia Dalam Konteks Kejahatan di Bidang Ekonomi. *Risalah Hukum*, 67-83.

⁵ NATSIR, N. I. (2009). *KEBIJAKAN KRIMINAL TERHADAP TINDAK PIDANA CYBER TERRORISM* (Doctoral dissertation, UNIVERSITAS DIPONEGORO).

⁶ Wahyuni, R. A. E., & Turisno, B. E. (2019). Praktik Finansial Teknologi Ilegal Dalam Bentuk Pinjaman Online Ditinjau Dari Etika Bisnis. *Jurnal Pembangunan Hukum Indonesia*, 1(3), 379-391.

⁷ Baihaqi, J. (2018). Financial Technology Peer-To-Peer Lending Berbasis Syariah di Indonesia. *TAWAZUN: Journal of Sharia Economic Law*, 1(2), 116-132.

2. Financial Services Authority Regulation Number 77 / PJOK.01 / 2016 concerning information technology-based lending and borrowing services, which regulates agreements between the organizer and the lender and the agreement between the lender and the recipient of the loan. However, this regulation only threatens administrative sanctions in the form of blocking and revoking licenses, if proven to have committed violations, does not regulate interest arrangements, does not regulate the appropriate settlement mechanism and sanctions for online loan application.
3. Bank Indonesia Regulation Number 19/12 / PBI / 2017 concerning the Implementation of Financial Technology, which regulates the use of financial technology, which deals with risk management, financing, and so on.
4. Regulation No. 13 / POJK.02 / 2018 concerning Digital Financial Innovations in the Financial Services Sector.
5. Article 34 letter a PBI Number 18/40 / PBI / 2016 Regarding the Implementation of Virtual Currency Payment Transaction Processing, states that providers of financial technology are prohibited from using electronic money.
6. Article 35 paragraph (1) PBI No. 18/40 / PBI / 2016 Regarding the Implementation of Payment Transaction Processing, which only provides administrative sanctions.
7. Bank Indonesia Regulation No. 18/40 / PBI / 2016 concerning Implementation of Payment Transaction Processing.
8. Bank Indonesia Regulation No. 19/12 / PBI / 2017 concerning the Implementation of Financial Technology.
9. Regulation of the Members of the Board of Governors No. 19/144 / PADG / 2017 concerning Regulatory Sandboxes for Financial Technology
10. Regulation of the Members of the Board of Governors No. 19/15 / PADG / 2017 concerning Procedures for Registration, Submission of Information, and Monitoring of the Implementation of Financial Technology.

As for the online loan problems faced by the public, namely taking almost all access to the borrower's device so that online loan applications can access contacts, galleries, media and even access to connect and disconnect networks, collecting ID cards and face photos which are then distributed without permission, interest very high and without limitation, billing is not only done by borrowers or emergency contacts included by borrowers, billing is carried out by different people, the distribution of personal data, threats, libel fraud and sexual harassment, contact and location of the office of the online loan application provider which is not clear, admin fees are not clear, the application changes its name without notification to the borrower while the loan interest continues to grow, the borrower has already paid but the loan is not recorded as a loan in full with no reason to enter the system, the virtual account returns the wrong money so enough continues to grow and intimidating billing continues.

Utilization of financial technology is influenced by several factors, including social influence, economic influence, perceived benefits, perceived ease.⁸ Some examples of cases in the use of financial technology services are:⁹

1. Rupiah Plus customer named Donna borrows Rp. 1,200,000 in the process of billing terrorizing the Head of the company where Donna worked, resulting in Donna being fired and the existence of the online loan provider company being unknown;
2. An online loan customer named Zulfadhili, was killed and left a will related to an online loan that was considered a trap;
3. Online loan customer named Bds, who suffered trauma due to terror from collectors, and others

Seeing the example of the case above, the activities carried out by the organizer of financial technology is very contrary to the provisions of Article 29 of the Financial Services Authority Regulation No. 77 / PJOK.01 / 2016 concerning Technology-Based Money Lending and Borrowing Services that are required to implement transparency, fair treatment, reliability, confidentiality, and data security as well as simple, fast and affordable cost of dispute resolution. Thus, financial technology providers should do reporting on the types of business activities, but it was not done. In the concept of criminalization, acts that are contrary to moral values that live in society are categorized as a crime.¹⁰

Rational efforts in preventing the occurrence of crime by the community and reaction to crime is a criminal policy that aims to protect the community and achieve the welfare of the community.¹¹ Relation to criminal policy in minimizing the occurrence of criminal acts must be oriented towards legislation policy by using a functional, economic and humanistic approach.¹² Thus, social welfare policy and social defense are part of social policy.¹³

Based on the description above, we need reconstruction and / or reformulation of the implementation of financial technology in a comprehensive law through harmonization and integration, especially in terms of supervision and law enforcement.

⁸ Ilafi, A. P. (2019). *FAKTOR YANG MEMPENGARUHI MINAT MAHASISWA UNTUK MENGADOPSI APLIKASI BERBASIS FINANCIAL TECHNOLOGY* (Doctoral dissertation, Universitas Islam Indonesia).

⁹ Rahmadani, U. K. (2020). *PENEGAKAN HUKUM TERHADAP PELAKU TINDAK PIDANA INTIMIDASI PINJAMAN KREDIT BERBASIS FINANCIAL TECHNOLOGY*.

¹⁰ Lutham, S. (1999). Kebijakan Kriminalisasi dalam Reformasi Hukum Pidana. *Jurnal Hukum Ius Quia Iustum*, 6(11), 1-13.

¹¹ Fadri, I. (2010). Kebijakan Kriminal Penanggulangan Tindak Pidana Ekonomi di Indonesia. *Jurnal Hukum*, (3), 430-455.

¹² Priyatno, D. (2007). Reorientasi Dan Reformulasi Sistem Pertanggungjawaban Pidana Korporasi Dalam Kebijakan Kriminal Dan Kebijakan Hukum Pidana. *Syiar Hukum*, 9(3), 202-217.

¹³ Ravena, H. D., & SH, M. (2017). *Kebijakan Kriminal:[Criminal Policy]*. Prenada Media.

3.2 The Role of Law Enforcement in Preventing Financial Technology Crimes in Indonesia in the Perspective of Improving Public Welfare.

In the development of technology, as it is today, social media has become a necessity, and lifestyle for some people in general, through social media promotions, news and others can be quickly known to the public. By looking at such conditions, law enforcement has a strategic role in the prevention and eradication of criminal acts, because this is the main task of law enforcement. Therefore, professionalism, integrity, and the spirit of law enforcement determine the success of law enforcement.

In the effort to uphold the law, it is inseparable from the interaction between the criminal justice sub-systems in which there are duties, responsibilities and authorities. As a sub-system, the Police Force is the frontline in determining success in providing services to the community directly and determining the overall process of the criminal justice system. An advocate has an important role in every legal process both at the level of investigation to the stage of carrying out the decision, therefore an advocate is important in the law enforcement process.¹⁴ In addition to the police, the Attorney General has the duty to uphold the law, namely as a state tool in upholding the law that aims to protect and protect the public.¹⁵ Judges play a role in addition to deciding cases also have a role in legal discovery, therefore Judges must have quality knowledge and thought processes.¹⁶ And correctional institutions have a role as an institution that organizes the program of guidance, rehabilitation and social reintegration of prisoners.¹⁷

One of the financial technology products is peer-to-peer lending which is a lending and borrowing money service provider platform. In this system, borrowers and money lenders are brought together. The advantages of a peer to peer lending system with existing banking services are that the process is fast, the conditions are easy, it can bridge small micro-businesses, without collateral/collateral, can be reached anywhere, anyone, anytime, apart from that peer to peer lending also opens up the potential to new economic segments that have not yet been reached by banking services.¹⁸

This peer to peer lending-based financial technology uses many promotions through online media such as websites, SMS, and so on. In addition to the form of financial technology loans, there is also a financial technology in the form of investment, in which there are facilities in the form of CCTV connected to mobile phones so that investors can supervise by calculating the profit sharing. Another type of financial technology is financial technology in the form of donations, where donors click on the

¹⁴ Asshiddiqie, J. (2007). Peran Advokat dalam Penegakan Hukum. *Bahan Orasi Hukum pada acara "Pelantikan DPP IPHI Masa Bakti, 2012*.

¹⁵ Saragih, Y. M. (2017). Peran Kejaksaan dalam Pemberantasan Tindak Pidana Korupsi Di Indonesia Pasca Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi. *Al-Adl: Jurnal Hukum*, 9(1), 49-66.

¹⁶ Siahaan, L. O. (2006). PERAN HAKIM DALAM PEMBARUAN HUKUM DI INDONESIA Hal-Hal Yang Harus Diketahui (Proses Berfikir) Hakim Agar Dapat Menghasilkan Putusan Yang Berkualitas. *Jurnal Hukum & Pembangunan*, 36(1), 27-46.

¹⁷ Wulandari, S. (2019). Peran Lembaga Pemasarakatan Dalam Pemberian Remisi Bagi Narapidana. *Jurnal SPEKTRUM HUKUM*, 14(1), 83-95.

¹⁸ Tampubolon, H. R. (2019). Seluk Beluk Peer to Peer Lending Sebagai Wujud Baru Keuangan di Indonesia. *Jurnal Bina Mulia Hukum*, 3(2), 188-198.

link provided by the organizer of financial technology, thus funds will be collected and will be donated to the recipient of the donation.¹⁹

Financial technology companies as part of innovation in economic development and technological development, although they can easily carry out these business activities, as part of the implementation of financial technology, must meet the requirements set by the government. This is where the role of law enforcement in carrying out supervision and carrying out prevention and enforcement of criminal acts from financial technology. Supervision is carried out starting from the establishment of the operating company, transaction mechanism, form of protection, interest rates, the confidentiality of documents, mechanism for late payments, electronic documents, dispute resolution.

4. Conclusion

Along with the development of globalization, crime has also increased both in terms of quantity and quality. This is inseparable from the legislation that is lagging and/or the absence of legislation that contains a complete set of efforts to protect the community in achieving community welfare. including regulations regarding Peer Peer Lending financial technology which has various mechanisms in which the system can be used as an alternative in the welfare of the people in Indonesia. Therefore, we need a harmonization and integration in formulating values, norms, regulations that accommodate acts that are prohibited by law through the efforts of reconstruction and/or reformulation of existing laws and regulations. Criminal policy in minimizing the occurrence of criminal acts in financial technology in Indonesia, in addition to internal reforms in the system, it is also necessary to ratify regulations in various countries so that criminal policy improvements both through penal efforts and through non-criminal efforts are expected to be more precise and have maximum impact and create legal certainty.

The role of law enforcement in preventing financial technology crime has a strategic position because law enforcement in criminal acts is part of the task. In carrying out its role, law enforcement must have extensive knowledge and be able to make legal discoveries related to financial technology that are part of economic and technological innovation. The police as the frontline in carrying out their duties that are directly dealing with the community and perpetrators of crime must have spirit, professionalism and high integrity in upholding the law, especially in terms of prevention and prevention rather than emphasizing enforcement. Therefore through supervision efforts and supported by appropriate criminal policies, the role of law enforcement becomes very important in implementing legal certainty in order to protect the community in realizing the welfare of the community. Based on this, the authors argue that the government should be able to take over the prospects of the implementation of financial technology so as to minimize the potential for misuse and / or illegal operations so that legal certainty and supervision will be more centralized and controlled, in addition it is expected the government in addition to taking the prospect and closing the establishment outside the government's path in other words one door, it is also hoped that the government can develop this financial technology

¹⁹ Wulandari, F. E. (2018). PEER TO PEER LENDING DALAM POJK, PBI DAN FATWA DSN MUI. *Ahkam: Jurnal Hukum Islam*, 6(2), 241-266.

system into a system that provides benefits for the community in realizing the welfare of the community. This is because the concept of financial technology is very good but needs improvement in terms of regulation and its oversight or law enforcement.

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