

LAW ENFORCEMENT EFFORTS ON ILLEGAL FINANCIAL TECHNOLOGY LENDING PRACTICES BY DIRECTORATE OF CYBER CRIMES OF INDONESIAN NATIONAL POLICE CRIMINAL INVESTIGATION DEPARTMENT

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ABSTRACT

This study is conducted in order to examine the practice of law enforcement efforts on illegal financial technology (fintech) lending practices. Illegal fintech lending practices operate without referring to the regulations issued by Financial Services Authority Number 77/POJK.01/2016 concerning Information Technology-based Lending and Borrowing Services. The Financial Services Authority (OJK), as the fintech lending regulator, has formed Investment Alert Task Force (SWI) to deal with the issues of illegal online lending practices, but it still leaves criminal implications that are the responsibility of Indonesian National Police. This research employs the qualitative approach with the case study method. Data collection is done through interview and literature study. Data analysis techniques are done through data reduction, data presentation, and conclusions. Based on the research findings, it is found out that law enforcement factors have worked optimally. However, there is no regulation that stipulates illegal fintech lending practices as crimes and the fact that there is still a low public financial literacy are the dominant factors affecting law enforcement efforts on illegal fintech lending practices.

Keywords: law enforcement; fintech lendings; illegal

1. INTRODUCTION

Illegal fintech lending practices which then have criminal implications are ultimately the responsibility of the National Police as a form of community service, especially in the field of law enforcement in order to be able to provide a sense of justice, legal certainty, and to maintain social order in society.

Online lendings, also known as fintech lendings or peer to peer

lendings can simply be understood as a technological innovation of how to lend and to borrow money using an application. Internationally, this lending and borrowing activity is better known as fintech lending practices. Bank Indonesia (BI) and Financial Service Authority (OJK) also prefer to use the term fintech lending, with the reason that they can attract investors from abroad, even though Indonesian people are more familiar with the term

online lendings or abbreviated as *pinjol*. In this study, the author prefers to use the term fintech lending in order to facilitate the process of analysis to the most relevant discussion with the legal norms that exist in Indonesia. The use of the term fintech lending is also expected to provide information to other researchers internationally.

Fintech lending is appears as the result of technological developments. Currently, the whole world has entered the fourth era in industrial revolution or what is often referred to as the era of the industrial revolution of 4.0. Indonesia is also one of the countries that are going through a digital transformation process towards the era of the industrial revolution of 4.0. Each era has its own characteristics that influence the development of human civilization. Technological developments at every stage of the industrial revolution affect how humans meet their needs.

This characteristic of industry of 4.0 is often associated with the emergence of the internet. Industry of 4.0 optimizes the elements of operationalization, communication and information technology so that the automation process in the manufacturing industry runs optimally (Gilchrist, 2016). Fuchs explains that in the most extreme form of industry of 4.0, “an item is fully produced, shipped, used, repaired, and recycled automatically without human intervention, through a network of various technologies using the internet” (Fuchs, 2018).

The development of information and communication technology allows us to borrow money only with a National Identity Card (KTP) and a mobile phone connected to the internet. Technological sophistication in banking and non-bank financial sectors are referred to as financial technology

(fintech). One of the fintech services that are increasingly in demand by the Indonesian people is fintech lending services.

Fintech lending companies are basically technology companies. Even though they are engaged in the financial service sectors, fintech lending companies are not non-bank financial institutions. Non-bank financial institutions in Indonesia include Development Financing Institutions, Issuer Intermediaries and Securities Trading, Insurance Companies, P.T. Pegadaian (a state-owned pawnshop company), and Cooperatives.

The parties involved in fintech lending industries include creditors and lending recipients. All of these parties have the rights and obligations as regulated in the Regulation of Financial Services Authority Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services, hereinafter abbreviated as POJK 77/2016. Therefore, the definition of illegal fintech lending that is the object of discussion in this study is fintech lending that does not meet the rules stipulated in POJK 77/2016. In principle, the illegal fintech lending practice is not registered and does not have a permit from the OJK.

Based on Article 1 of POJK 77/2016, the definition of Borrowing and Borrowing Services Information Technology based is the provision of financial services to bring together lenders or lendings and lending recipients in order to enter into lending and borrowing agreements in rupiah currency directly through an electronic system using the internet network.

The rapid development of fintech lending industries in Indonesia is expected to be able to improve the country's economy. One indicator that

can be used to determine economic improvement is to measure the level of financial literacy and financial inclusion of the community. Financial literacy is the level of public understanding on financial products. Meanwhile, financial inclusion itself can be understood as increasing access to financial products and services, or in other words, counting the number of people who have used financial product services.

With various hopes promised by fintech lendings, on the other hand, they still leave various problems, ranging from social problems to criminal problems. The types of criminal problems that often occur in illegal fintech lending practices are defamations, threats of violence, sexual harassment through electronic media, and illegal access to sensitive consumer data. Such criminal problems that occur due to the existence of illegal fintech lending entities are the responsibility of the National Police as law enforcers in order to provide legal protection and guarantee legal certainty.

2. LITERATURE REVIEW

2.1 Legal Efforts done by OJK to overcome illegal fintech lending services

Pramitha Asti (2020) explains in her research results that the development of fintech is useful in increasing national economic growth because one of the fintech products known as fintech lending can provide services to the public in the form of easy and fast money lendings.

According to Hadjon (1997:1) the authority possessed by OJK is attributive authority. This means that such authority originates from the division of power by laws and regulations. In

other words, the implementation of the authority of OJK is, indeed, in accordance with the provisions of Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority. (OJK) as the financial services authority in Indonesia.

In addition to the authority to supervise and regulate fintech lending industries, OJK is also authorized to protect the public using fintech lending services. The supervision carried out by OJK is only on legal fintech lending companies that are registered and have a permit from OJK itself, but the supervision of illegal fintech lending companies is left to Investment Alert Task Force (SWI) to handle. The task force (SWI) is a forum for coordinating with fellow regulatory agencies, law enforcement, supervisory agencies and other parties who are the members of SWI to handle alleged violations of the law in public fundraising and investment activities. Several agencies that are the members of SWI include: OJK, Ministry of Trade, Banking, Ministry of Cooperatives and Small and Medium Enterprises, and Investment Coordinating Board (BKPM) as the regulator. The Attorney General's Office and the National Police are also the members of the law enforcement agencies. The Ministry of Communication and Information Technology is also the member as a supporting institution. The task force has made efforts to deal with illegal fintech practices, starting from blocking sites, conducting joint investigations into suspected illegal business activities, asking parties who have illegal investments to stop their business

activities, and improving coordination in handling cases with relevant agencies.

2.2 Legal System Theory

According to Lawrence M. Friedman (1975: 6-8), the success or failure of law enforcement depends on the legal system, which consists of legal structure, legal substance, and legal culture. Friedman further explains as follows:

a. Legal structure

This aspect is a structural element that determines whether or not the law can be implemented properly. In Law No. 8 of 1981 concerning the Criminal Procedure Code as a formal criminal law (providing guidelines for the implementation of material criminal law), the legal structure in force in Indonesia includes Indonesian National Police, Attorney General's Office, Court, and includes Correctional Institution. A law cannot be enforced if law enforcement officers are not credible, competent, and independent.

b. Legal substance

According to Lawrence M. Friedman's theory, this aspect is called a substantial system that determines whether or not a law can be implemented. Substance means a product produced by someone who is in a legal system which includes decisions and regulations made by the state. Its substance also includes living law, not just the rules in law books.

In Indonesia, which adheres to the Civil Law legal system, one of the impacts is the principle of legality in the Criminal Code. Article 1 of the Criminal Code stipulates that "no action can be punished if there are no rules that regulate it." Thus, whether or not an act is subject to criminal sanctions depends on whether the act has been regulated in the regulations legislation.

c. Legal culture

Friedman describes this as a human attitude towards law and the legal system, namely his beliefs, values, thoughts, and expectations. Legal culture is the atmosphere of social thought and social forces that determine how the law is used, avoided, or abused. The level of community compliance with the law is also an indicator of the functioning or not of the law in society.

2.3 Police Science Concept

According to Farouk Muhammad, the definition of police science is an applied science that studies social phenomena and social problems related to the police and elaborates them using theories and research results from various other related disciplines (sociology, law, economics, management, state administration, and other sciences such as psychology, anthropology, and so on) Muhammad & Djaali, 2005).

Police science is the main theoretical framework in order to solve social problems and legal problems in this research, in

particular how the law enforcement process is carried out by the National Police so that the National Police can actively contribute to working with OJK to indirectly participate in improving financial literacy and financial inclusion in order to improve Indonesian economic growth.

The main tasks of the National Police are generally stated in Law No. 2 of 2002 concerning the Indonesian National Police. Article 13 states that the National Police is tasked with maintaining security and public order; enforce the law; and protect, nurture, and serve the community. Therefore, the implementation of police science aims to improve the implementation of the main tasks of the National Police optimally. The three main tasks of the National Police above cannot be separated from one another. Law enforcement is only one form of the National Police services to the community. Security and public order will be realized properly if the law enforcement process is carried out by the National Police in a professional manner. Professional law enforcement will make people feel protected and served, so that life in society will be maintained in order.

Therefore, the concept of police science cannot be separated from the concept of law enforcement which is one of the main tasks of the Indonesian National Police. The concept of police science which is used as an analytical tool in this research also employs the concept of law enforcement in depth as part of police science itself.

3. METHOD

The purpose of this study is to analyse how the law enforcement process is carried out by the National Police against crimes committed by illegal fintech lending providers. Therefore, the appropriate research approach to be used in this study is the qualitative approach. The author uses the qualitative approach because this research intends to understand the phenomena of what is experienced by the research subjects holistically by means of descriptions in the form of words and language, in a special natural context and by utilizing various scientific methods. In this approach, the author acts as a key instrument, meaning that the author collects his own data through documentation, behavioural observations, or interviews with informants/participants regarding the object of research (Creswell, 2016: 248).

The scientific method is a way of finding the truth that is not only based on inductive or deductive reasoning, but is also comprehensive or a combination of inductive thinking and deductive thinking (Farouk and Djaali, 2005: 2). Related to specific research problems, in this study, the author uses a case study research method. Creswell (1998: 36-37) states that a case study is a research design in which the researcher develops an in-depth analysis of a case, often a program, event, activity, process, or one or more individuals. The problems studied are limited by time and activity. In carrying out the research, the authors collect complete information using various valid data collection procedures in accordance with the specified research time span.

The main secondary data in this study is taken from the only case of illegal fintech lending practices

handled by Directorate of Cybercrime of the National Police Criminal Investigation Department in 2019. Other secondary data sources are taken from several regulations, monthly reports from OJK to the National Police, Indonesian Joint Funding Fintech Association (AFPI), data on victims of illegal fintech lending practices issued by LBH (legal aid services) of DKI Jakarta Chapter, data from the Ministry of Communication and Information of the Republic of Indonesia regarding illegal fintech lending activities carried out until the end of 2020. Behind the rapid development of fintech lending practices in the community, on the other hand there are 1330 complaints related to fintech lending practices according to LBH DKI Jakarta, and only one case has been investigated by Directorate of Cyber Crimes of the National Police Criminal Investigation Department. This is a very interesting phenomenon for the writer to know the reason behind this fact. What is actually going on?

4. RESULTS AND ANALYSIS

4.1 Development of fintech lending in Indonesia

a. Internet Penetration

The phenomenon of the rapid growth of fintech lending practices is closely related to the level of internet penetration in Indonesian society. The history of the entry of the internet in Indonesia began with the successful implementation of ARPAnet (Advanced Research Projects Agency network) belonging to the US Department of Defense in 1969. Internet communication standards set out in ARPAnet are TCP/IP (Transmission

Control Protocol/Internet Protocol) and the use of DNS (Domain Name System) makes the internet easy to implement in every country around the world.

According to "whois" data from the American Registry for Internet Numbers (ARIN) and the Asia Pacific Network Information Center (APNIC), the first internet protocol (IP) from Indonesia came from UI-NETLAB with IP Address Number 192.41.206/24 registered by University of Indonesia on June 24, 1988. In the early 1990s, the internet network was developed in Indonesia by several people known as the *Paguyuban* Network. At that time, the internet only used technology in the form of TCP/IP packet radio. This technology is then used as an internet gateway in Indonesia with the domain name AMPR.org which stands for Amateur Packet Radio Network which only has 386 computers using DOS Operating System and NOS programs.

The invention of this technology is then used as the basis for an internet service provider (ISP) business that provides internet connection services at a certain rate. This business opportunity was then exploited by Sanjaya, a UI lecturer student who lives in the Rawamangun UI Lecturer Complex. Sanjaya succeeded in establishing the first ISP in Indonesia under the name of IndoNet. This discovery became the inspiration for

BRM. Roy Rahjasa Yamin to create Radnet. The two ISPs were the first in Indonesia to obtain a permit from the Ministry of Posts and Telecommunications of the Republic of Indonesia in 1995.

The development of ISP technology has been growing since then. IPTEKnet ISP is the first ISP that can use internet lines with a bandwidth capacity of 64 Kbps. By using the Lynx remote browser in America, internet users in Indonesia can access the internet faster through the HTTP (Hyper Text Transfer Protocol) that we usually encounter as a website address format on the internet.

Along with the increasing number of ISPs in Indonesia offering internet connection service providers, such as IndiHome, Biznet, Firstmedia, MyRepublic, IndosatM2, CBN, CircleOne, PRONet, Wasantara, and many more, the number of internet users in Indonesia is increasing rapidly.

From the results of research conducted by HootSuite, a content management service in collaboration with social media marketing agency, We Are Social about the digital developments throughout the world including Indonesia in 2021 with the title 'Digital2021' report, it is found out that Internet users in Indonesia as of January 2021 reached 202.6 million people. This mean that internet penetration in Indonesia has reached 73.7% of Indonesia's

total population (274.9 million people). This number increased by 27 million or 15.5% from the last January 2020 period which was only 175.4 million people. Then, from this data, it is also seen that the number of Indonesians who are active on social media is 170 million people. Based on the level of internet usage, Indonesia is in the 8th position among other countries globally.

From the detected active signal connections (without internet), there were 345.3 million cellular telephone connections. So when compared to the total population of Indonesia, the ratio is 125.6%. This means that the number of active mobile phones is greater than the total population of Indonesia itself. Of all internet users in Indonesia, 96.4% access the internet using mobile phones. Therefore, around 195.3 million Indonesians already have internet access anywhere, not only at home. This condition makes the average time spent by Indonesians in a day accessing the internet is 8 hours 52 minutes, or more than a third of Indonesian people connect to the internet a day.

b. Fintech Lending market growth

Indeed, the increasing internet penetration has an impact on the development of fintech in Indonesia. The presence of fintech as a form of technological innovation in the financial sector also affects

economic growth. The many facilities offered by various types of fintech that are popular in the community make people more familiar with technological developments, especially fintech lending.

Garvey (2017) reports that fintech industry in general has entered Indonesia since 2006. However, indicators that can explain the characteristics of fintech in that year are still not as complete as they are today. The data that can be used for reference are only the number of companies and market size. In 2006, there were only four fintech companies in Indonesia. Then, the number developed into sixteen companies in 2007.

Then, it is only in a period of four years, the nine companies developed into 25 entities in 2011 and did not experience any additions until the end of 2012. So if quantified, the fintech growth in 2006-2007 reached 300% and in the period 2011-2012 only reached 177.78% of growth. In the next period of 2013, the number of fintech entities reached 40 companies. This condition persisted until the end of 2014, so that the growth of fintech in Indonesia in the 2013-2014 period compared to the 2011-2012 period increased by 60%.

The development of fintech which became the parameter that fintech began to be accepted by the public was in the 2015-2016 period which reached 165 companies. The

increase of 125 entities from the 2013-2014 period which only amounted to 40 companies became the starting point that fintech began to be accepted by the public as a financial innovation that had a positive impact with an increase of 312.5% from the previous period between 2013-2014.

The increasing number of fintech entities and their types can be used as an indicator that in 2016 in Indonesia, there was a very rapid expansion of the fintech sector market. From the perspective of market growth (market size) for the period 2013-2015, the development of fintech in Indonesia only reached 24.2% on average per year. This is very different from the development of fintech for the 2015-2016 period which reached 1464% worth US\$ 2.26 million (equivalent to IDR 30.3 billion) to US\$ 35.35 million (equivalent to IDR 470.6 billion) through the fintech sector.

The increase in the growth of the fintech lending sector in Indonesia since 2016 cannot be separated from the effect of the enactment of POJK 77/2016 starting December 29, 2016. This is very appropriate to do considering the size of the Indonesian fintech lending market. The Indonesian government through OJK issued the POJK 77/2016 in order to protect consumer interests related to the security of funds and data, prevent money laundering activities

including terrorism financing, and maintain national financial system stability.

4.2 Legal System

a. Legal Structure

This aspect is a structural element that determines whether or not the law can be implemented properly. In the Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), the legal structure in force in Indonesia includes the National Police, Attorney General's Office, Courts, and includes Lawyers, Notaries, and Correctional Facilities. The legal structure talks about legal institutions that function as law enforcers both materially and legally to ensure the achievement of legal objectives in the form of legal certainty, justice, benefit, and peace (Soeroso, 2009: 56).

In the context of the fintech lending industry, the legal structure that is responsible as the main regulator is OJK. However, because the phenomenon of fintech lending is one of the multidimensional disruptive innovations, OJK then formed SWI as a coordination forum for 13 Ministries/Agencies and did not carry out law enforcement processes.

b. Legal Substance

In Lawrence M. Friedman's theory, this aspect is called a substantial system that determines whether the law is enforced or not. Substance means a product produced by

someone who is in a legal system which includes decisions and regulations made by the state. Its substance also includes living law, not just the rules in law books. In Indonesia, there is no regulation that defines illegal fintech lending as a crime.

c. Legal Culture

Friedman describes this as human attitudes toward law and the legal system, namely the beliefs, values, thoughts, and expectations of humans towards it. Legal culture is the atmosphere of social thought and social forces that determine how the law is used, avoided, or abused. In its clearest form, legal culture can be identified from the level of community compliance with the law. This indicator is a measure of the functioning or not of the law in society. In the context of illegal fintech lending with criminal implications, legal culture is a factor that has not developed properly

5. DISCUSSIONS

Structurally, the composition of law enforcement that regulates, supervises, and protects fintech lending consumers has already had a good function. The authority of each ministry/institution can support each other in increasing financial literacy and financial inclusion of the Indonesian people. As the most obvious aspect of the legal system, the legal structure has the advantage of high flexibility, namely being able to adapt its service operations adaptively to the conditions of the community according to their needs.

OJK as the main regulator of the financial services sector has not yet fully exercised its authority. Article 1 paragraph (1) of OJK Law states that the functions, duties and authorities of OJK include investigations. However, because there is no definition stating that illegal fintech lending practice is a crime, even OJK has not been able to do much to overcome the emergence of illegal fintech lending practice.

Once the illegal fintech lending practices have criminal implications, this condition has entered the realm of law which is the responsibility of the National Police. However, if the initial problem is not resolved properly, namely fixing the fintech lending architecture to become more established, then illegal fintech lending entities will still be the main enemy of investment in Indonesia. Public confidence in financial service actors will decline, which will hamper the economic growth.

Collaboration between law enforcement agencies is absolutely necessary to deal with illegal fintech lending practices that rapidly grow in the market in our country. The nature of such collaboration can start from the earliest preventive level to the level of law enforcement in accordance with the authority possessed by each ministry/institution. Preventive cooperation is one of the best options in dealing with illegal fintech lending practices because at the law enforcement level, existing legal instruments do not provide a deterrent effect for illegal fintech lending entities/companies. In addition, the instruments used are outside the authority of the National Police because they are more civil cases in nature. Therefore, law enforcement factors play an important role in the functioning of the law so that fintech lending practices can be controlled as

well as possible to improve the economy, but on the other hand it does not cause other problems that harm the community.

6. CONCLUSIONS

Illegal fintech lending in principle can be understood as a fintech lending entity that does not comply with POJK 77/2016 as the main legal umbrella for regulating information technology-based money-borrowing services. The problem is that POJK 77/2016 “does not reach” fintech lending entities that are not registered or licensed by OJK. Carrying out application-based lending and borrowing business operations without having official standards will result in operations that deviate from the norms and values of good borrowing and borrowing money practices.

Deviations that occur also range from very high lending interest rates, unclear office addresses, substandard employee competencies, disruptive product offerings via SMS, to those with criminal implications. Deviations in fintech lending activities that have criminal implications are generally in the form of excessive access to personal data, unethical billing processes using disrespectful words/sentences, defaming consumers, and even threats.

The implementation of law enforcement against illegal fintech lending entities with criminal implications is carried out by the Directorate of Cyber Crimes of Criminal Investigation Department of the National Police and their staff at police region and police resort levels. The application of the articles used refers to the Electronic Information and Transaction Law (UU ITE) as the main criminal law. Indonesian National Police is not authorized to directly handle illegal fintech lending entities

as criminal acts, because currently illegal fintech lending is only an administrative violation whose regulation is outside the scope of the National Police's authority.

It is highly expected that the improvement of the Indonesian economy originating from the fintech lending industry. Therefore, if the prosecution of illegal fintech lending practices is carried out massively, rigidly, without consideration, and only with a repressive approach that is only carried out by the National Police, investment in Indonesia will decline.

7. IMPLICATIONS

In the absence of criminal regulations that define illegal fintech lending practices as crimes, the following implications emerge:

- a. From the beginning, the National Police is not authorized to take action against fintech lending companies that start operating without permission from OJK. However, if fintech lending regulations are tightened to become like banking regulations, then 'innovation' which is the main character of fintech lending from the non-bank financial industry will not develop.
- b. Every action taken by the National Police must really consider many aspects in order to avoid the decline in the level of investments in Indonesia.
- c. National Police take action in the fintech lending industry in the context of violations of laws regulated in ITE Law, including the Criminal Code, not from violations of regulations in the economic sector.

Based on the implications that the author has mentioned above, the author suggests to:

- a. build internal cooperation between the National Police investigators, Police Science College (PTIK), and the National Police Research and Development Center in conducting research on the theme of ideal fintech lending regulations. The results of the study can be used as study material from the perspective of law enforcement which considers the need for joint investigations with regulators and other stakeholders as well as involving community participation. Thus, the National Police plays an active role in contributing to the development of national law.
- b. suppress the development of the illegal fintech lending market in Indonesia, the National Police can carry out the disruptive policing activities. One of the things the author recommends is to take preventive control measures based on the Regulation of the Minister of Communication and Information Technology Number 5 of 2020 concerning the Management of Private Scope Electronic System Operators.
- c. give a chance to the National Police to establish procedures for handling fintech lending practices that have criminal implications. The regulation can be in the form of the National Police Chief Regulation which regulates the Standard Operating Procedure (SOP) for controlling illegal fintech lending practices in accordance with the nature of police activities based on the level of urgency of fintech lending problems, ranging from pre-emptive, preventive, to repressive actions.

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