

# Legal Protection for Default Debtors in Online Loan Agreements

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**Abstract.** The development of information technology in the economic realm, especially related to online loans Fintech peer-to-peer lending platforms have had a positive impact, however there are certain operational challenges, particularly the issue of debtor default. This thesis combines qualitative and quantitative research methods with a normative legal research strategy. Data collection techniques are interviews and literature study, and the method of analysis is qualitative. The findings of this study show that there are still hazards that might hurt both lenders and loan recipients as a result of ambiguous legislation governing Peer-to-peer lending firms that use fintech.

**Keywords:** Default; Online Loans; financial technology

## 1 Introduction

The rapid development of technology, primarily digital technology, provides convenience to the community on all lines.[1] Internet and gadgets are forms of such development. These two things are currently a factor in the growth of the online business and online trading/e-commerce business. Online loans are one of the In the financial sector, there have been technical advancements. Fintech (financial technology) is a term that refers to the use, is often used in running the online loan business. This concept comes from peer-to-peer (P2P), which was used for music sharing, the idea of Napster in 1999. Then in 2004, the concept penetrated the financial sector by a financial institution that acts as a money lending service in the UK, followed by the birth of virtual money BITCOIN was the idea of Satoshi Nakamoto in 2008. There have been many innovations produced in the development of the fintech industry until now.[2]

In the past, an individual often needed a loan, either for his interest or business interest; the first option he would choose was to apply for a loan from an official financial institution such as a bank. In the past, every individual who wanted to get additional income, this individual often used investment as his primary choice, either through mutual funds or bank deposits. For someone who applies for a loan from a bank, the main thing that must be met is whether they have a condition in the form of collateral. This guarantee requirement in applying for a loan is that not everyone can fulfill, especially for small and medium businesses.

Peer-to-peer lending is one manifestation of fintech companies' focus often carried out. Several focuses are the work of fintech companies, including Payments, Personal Finance, Retail Investments, Crowdfunding, Remittances, and Financial Research are all areas of lending are all examples of financial services. from one person to another Lending is described as the

act of lending money to individuals or businesses and vice versa, as well as the process of applying for loans from lenders, which connects lenders with borrowers or investors online.<sup>3</sup> Among the community itself, peer-to-peer lending is often referred to as an online loan. This service is a new method used for every borrower of funds through an application or a fintech company website where the borrower does not need to include collateral in the loan process.<sup>[3]</sup> peer to peer lending itself has several advantages and disadvantages, such as:<sup>[4]</sup>

Lack	Excess
<p>a. When your creditworthiness declines, interest rates on peer-to-peer lending rise.</p> <p>b. If you pay late, your payment will be very large, however if you do not pay your loan, the amount you will have to pay later could explode.</p> <p>d. Loans are only appropriate for short-term use because bills will continue to climb as the loan term lengthens.</p> <p>d. While it's possible that all of your loan funding demands will be met, there's no guarantee that all loan applications will be approved..</p>	<p>a. For the borrower, one of the most notable advantages of peer-to-peer lending is the low interest rate Especially when contrasted to legitimate financial organizations like banks. A personal loan, on the other hand, may have an interest rate from a financial institution ranging from 12-to 20%, which is still lower than a credit card payment. Peer-to-peer loans, on the other hand, have lower interest rates.</p> <p>b. Another benefit is that the loan application process is less formal than applying for a loan at a bank. The procedure is significantly more efficient and straightforward. Furthermore, there are no "extra" restrictions that must be completed in order for your loan to be granted.</p> <p>c. If you have a bad reputation when it comes to financial loans, you can explain why this happened afterwards. You can also ask for a loan for any reason as long as someone is willing to invest the money.</p> <p>d. Finally, peer-to-peer lending is a no-collateral loan.</p>

Regulation 77/POJK.01/2016 of the Financial Services Authority on Lending and borrowing services based on information technology, which acts as a legal umbrella for peer-to-peer lending activities, was published by the Financial Services Authority, one of Indonesia's financial supervisory authorities. "Information Technology-Based Lending and Borrowing Services," as defined in Article 1 paragraph (3) of the regulation, are "financial services that connect lenders and loan recipients to enter into direct lending and borrowing agreements in rupiah currency via an electronic system connected to the internet network."

The implementation of online or peer-to-peer lending uses electronic contracts as the legal basis between the parties. Electronic contracts are one of the legal relationships that are expressly Amendments to Law No. 19 of 2016 are governed by this law. Article 1 number 17 of Article 11 of Law No. 11 of 2008 Concerning Information and Electronic Transactions (UU ITE) and Article 11 1 number 15 of Government Regulation Number 82 of 2012 Concerning the Implementation of Electronic Systems and Transactions (UU ITE) of Law No. 11 of 2008 Concerning Information and Electronic Transactions (UU ITE) both clarify this (PP PSTE). Both articles contain the exact definition of electronic contracts, namely the parties' agreement

made through the electronic system. Meanwhile, the Electronic System itself, according to The Law on Electronic Information and Transactions and Article 1 point 1 of the Government Regulation on the Operation of Electronic Systems and Transactions define a collection of electronic equipment and procedures for collecting, processing, analyzing, storing, displaying, broadcasting, transferring, and disseminating electronic data Prior to the enactment of the Government Regulation No. 82 of 2012 on the Implementation of Electronic Transactions and Systems, as well as the Electronic Information and Transactions Act (EIT Act), Indonesia was always guided by the Civil Code/Burgelijk Wetboek (BW) as legal protection, as defined in Article 1313, which defines an agreement as an act by which one or more people form a bond with one or more other people.

Peer-to-peer lending is generally convenient for anyone looking to borrow money or start a business. Peer-to-peer lending, on the other hand, is not necessarily lucrative for individuals looking to borrow money or capital. In an electronic contract or electronic agreement, It is even more skewed toward the side with unrestricted contract-making authority, which should benefit both parties. Because it is generated by default by the peer-to-peer lending service provider during the implementation of the peer-to-peer lending agreement. As a result, the hoped-for benefits of peer-to-peer lending services are not realized have not materialized will not be completely achieved.[5]

Consumers have been harmed by peer-to-peer lending services because of agreements that benefit the agreement's architects, such as intimidation, terror, and legal violations (sexual harassment, data dissemination, and others). Because the guarantor is unable to repay his debts, these infractions occur. It is important to note, however, that any civil law violation committed by the victims (borrowers) in the form of default (late payment, inability to pay) does not automatically make them criminal law violators.

Intimidating billing is an act that online loan service providers prohibit. This is stated in the Indonesian Fintech Association's code of ethics All online loan providers are required by the code of ethics or behavior to emphasize good faith when collecting debtors' loans. Online loan companies must also submit billing settlement procedures to debtors, namely when the debtor is late and the loan payment fails. The procedures used in the collection process include providing warning letters, scheduling requirements, and Remote communication with loan receivers, such as via phone, email, or other means of communication.

## **2 Research Methods**

The author employed a qualitative research method in his investigation. Qualitative research is a type of descriptive-analytical data analysis that produces descriptive-analytical data. These facts are communicated vocally or in writing, and actual conduct is explored and studied in its entirety.

In this study, the authors use an empirical juridical approach by examining primary data in the field at the Financial Services Authority and reviewing legal issues related to legal protection for online loan customers and how to resolve peer-to-peer lending disputes. In other words, this research method includes a legal a statue-based method, and a conceptual-based approach (conceptual approach). The legal approach (statue approach) entails going over all of the laws and regulations that pertain to dealing with legal matters. The conceptual method differs from how law science develops ideas and doctrines.

A study requires complete data; in this case, it is intended that the data collected has a high enough validity and reliability value. The method of data collecting followed in this study is to use interviews with resource persons following the problems discussed and literature study to

obtain secondary data. Researchers collect secondary data related to the problem to be studied for later clarification and further analysis following the objectives and existing problems.

The method of data collecting followed in this study is. A qualitative method is a method that analyzes qualitative data, namely data consisting of a series of words. Using an analysis of the data that has been collected, then systematically described and linked between one data and another, at the end compiled or presented in the form of legal writing. 13 In this paper, the author describes the national legislation related to consumer protection in the e-contract in the event of a default by a business actor.

### **3 Results and Discussion**

#### **3.1 Legal Position of the Parties in the Online Loan Agreement**

Online loans, or what is often referred to as Online-Based Borrowing-Lending Services, are different from borrowing and borrowing money as regulated in CHAPTER III of the Civil Code, which only involves two parties in its implementation, namely the lender the loan recipient. Online loans themselves involve several parties, namely:

a method based on statues, and a method based on concepts (conceptual approach). The legal approach (statue approach) comprises reviewing all applicable laws and regulations when dealing with legal issues. The conceptual technique is not the same as the way law science produces ideas and theories. that are not legal entities. A limited liability company legally registered with the Ministry of Law and Human Rights is a form of legal entity that can only carry out online lending activities. Judging from the legal capacity, legal entities have a better position when compared to non-legal entities considering that legal entities are legal subjects or supporters of rights and obligations that can be held accountable on behalf of these legal entities.

Consumers have been harmed by peer-to-peer lending services as a result of agreements that benefit the agreement's architects, such as intimidation, terror, and legal infringement (sexual harassment, data dissemination, and others) as a result of an information technology-based loan and borrowing service agreement, according to the Act. The loans could be from within or outside the country, according to Article 16 of POJK No. 77/POJK.01/2016. Individual Indonesian and foreign individuals, Indonesian and foreign legal entities, Indonesian and foreign corporate entities, and All of the world's financial institutions could be prospective lenders.

A borrower is defined as a person or legal organization who has debts due to an There is a provision for information technology-based lending and borrowing services in Article 1 point 7 of POJK No. 77/POJK.01/2016 regarding Information Technology-Based Lending and Borrowing Services. Borrowers who participate in peer-to-peer lending system must be residents According to the law, Article 15 of the POJK, you must be a citizen of the Unitary State of the Republic of Indonesia and have a legal address there. An Indonesian citizen or an Indonesian legal entity company might be the loan receiver. It should be understood in the article that it is not clear that the borrower mentioned is the party who has the debt without mentioning with whom the loan recipient binds himself in the loan or loan agreement. It is as if the loan recipient has a loan agreement with the provider of peer-to-peer lending or online loans. Receiving and distributing monies to the public is similar to banking company activities.

Despite the fact that the borrower begins an online loan application and completes an online loan form to obtain the loan, the lending and borrowing The lender and the borrower form a relationship in peer-to-peer lending recipient system. Loan. The loan receiver and the lender did not have a loan agreement.

Therefore, in a peer-to-peer lending system, the distribution of loans to loan recipients must not be between the provider and the loan recipient but between the lender and the loan recipient. To achieve this, the lender must give express power to the operator to channel the funds to the loan recipient through an escrow account and virtual account. The borrower who will repay the loan, in this case, should be able to pay it directly via the organizer's escrow account, which will be transmitted to the lender's virtual account considering the The lender and the borrower have a legal connection.[6]

From the above, it can be understood that those involved in online loan activities are not only Both lenders and borrowers are involved. However, in this study, the author only examines the legal relationship in the form of an agreement between the giver and the recipient of the loan. Based on the principles of freedom in the agreement, the debtor's position or the recipient of the online loan is not balanced. In the Civil Code, several principles must be considered, namely: The principles of contract freedom, good faith, pacta sunt servanda, and consensuality are the first three.

Where it is a principle that occupies a central position in contract law, Article 1338 of the Civil Code paragraph (1) is said to make a statement that we are allowed to make any agreement, and it will bind us as binding by law. However, regarding the online loan agreement, it is a standard agreement, where the contents or clauses of the online loan agreement have been standardized and stated in a form. Prospective loan recipients have to agree if they accept. There is no opportunity for prospective recipients to discuss further the bank's content or agreement as the lender proposed.

If reviewing each party's obligations in the standard agreement from the point of view of the Civil Code, the lender's obligation is not to ask for back what he has lent before the expiration of the time specified in Article 1759 of the Civil Code specifies the agreement. In addition, if a time has not been determined, the judge has the power of the person who lent, or the lender demands the return of the loan, according to the circumstances, gives the borrower only a leeway in Article 1760 of the Civil Code.

Meanwhile, under Article 1763 of the Civil Code, the loan receiver is required to return the items in the same amount, condition, and at the stipulated period. Another obligation of the borrower is that if the borrower cannot return the goods, he borrowed in the same amount and condition. He is obliged to pay the price, in which case the time and place must be considered where the goods must be returned according to the agreement. If this time and place have not been determined, the price of the goods must be taken at the time and place where the agreement has occurred (Article 1764 of the Civil Code). If interest has been agreed upon, the interest that has been agreed upon must be paid until the time of returning or depositing the principal money (Article 1766 of the Civil Code).

If you look at the parties' obligations, the author believes that the position of the two should be balanced as well as if it is associated with the principles of the Civil Code. However, as a result of the standard clauses of the agreement, the position of the two parties is not balanced where the position of the lender is more dominant and profitable than the recipient of the loan.

### **3.2 Legal protection of Default Debtors in Online Loan Agreements**

Problems that often occur in borrowing and Using information technology or the internet to borrow money loans are usually defaults committed by the recipient of the loan.[7] The main party is the leading party who will be harmed by the lender who funds the loan application on the operator's platform. The first example is Investree as a Fintech service provider Using information technology or the internet to borrow money in accordance with the appropriate legal requirements if the loan recipient defaults. The requirements included in the code of conduct

that must be followed by members of the Indonesian Joint Funding Fintech Association apply in the billing procedure here (AFPI). The lender has the right to sue the loan receiver. However, Investree cannot guarantee that the Attempts by a third party or the court system to recoup the remaining loan will be successful, and the lender may still lose all of the monies deposited. Investree is a financial technology firm based in Jakarta, Indonesia, that specializes in peer-to-peer lending. This business was founded in established in October 2015. Peer-to-peer lending, or P2PL for short, is a technique of connecting people with money lenders with money lenders based on information technology. Fintech Investree does not open branches anywhere, but its scope of work is throughout Indonesia because it uses online applications to run its business.

Then there is the Crowdo platform. This platform expressly does not provide any guarantees to lenders who have channeled their funds through Crowdo. This risk may occur when investing or providing loans to borrowers even though Crowdo. However, in the event that the loan receiver defaults within two months, Crowdo will proceed with the liquidation of the guarantee, and the proceeds from the liquidation will be used to pay the principal of the guarantee to the lender for the loan recipient who provided the guarantee in the borrowing and borrowing process. In this case, the problem is for unsecured loan recipients. The solution from Crowdo in the event of a default is that Crowdo will assist by mediating the loan recipient for a potential repayment solution by informing the ongoing process to the borrower. Crowdo is similar to the previous fintech, and this fintech is based in Jakarta. It does not have branches anywhere, but the process of its business activities covers all of Indonesia because it uses information technology media or online-based applications.[8]

The two examples of these platforms are examples that provide the right solution in default to loan recipients. However, there are also legal or illegal platforms that apply collection solutions to defaulting loan recipients by intimidating and intimidating loan recipients and their closest people. The lender has used the personal data of the loan recipient arbitrarily and without consent. This violates the legal rules of (1) Any electronic media information on a person's data must be used with the person's permission unless otherwise stipulated by laws and regulations. (2) Any individual whose rights have been violated in the manner described in paragraph (1) may sue for damages the losses, i.e.

These provisions are a type of data In any activity involving electronic transactions that employ a person's It is needed to save Under these arrangements, everyone has the right to save, maintain, and preserve personal data; under these arrangements, everyone has the right to store, maintain, and defend the confidentiality of data stored, guaranteeing that the data stored stays private.

The Financial Services Authority released Information Technology-Based Lending and Borrowing Services, which is governed by Financial Services Authority Regulation No. 77/POJK.01/2016, to secure personal data for online loan services. When borrowers use technology-based loan and borrowing services, this guideline protects their personal information. The operator must "keep the confidentiality, integrity, and availability of personal data, transaction data, and financial data that they administer" from the time the data is collected until it is destroyed. according to Article 26, letter an of this POJK. This means that the lender should keep the borrower's data confidential starting from the process of the loan agreement being made until the completion of the agreement. This obligation must be carried out to protect the borrower's data.

The organizer is also required to "guarantee that personal data is acquired, used, and disseminated Unless the regulations say otherwise, the Operator gets personal data, transaction data, and financial data in line with the provisions of this POJK's Article 26 letter c." from data subjects with their consent owner." legislation." According to the article, the lender is only

allowed to use personal data with the owner's consent or as required by law. specified by laws and regulations without the authorization of the personal data owner (borrower). The The Indonesian Fintech Association's (Aptech) Code of Ethics and Behavior, also known as the Code of Conduct, mandates fintech companies to have and submit settlement and collection procedures to clients, particularly borrowers and lenders, in the event of a loan default. The consumer must then be informed of the procedures to be followed in the case of a loan default or delay. Warning letters, requirements for scheduling or rescheduling loans, and remote participation with the borrower (desk collection), which may include phone, email, or other kinds of communication, are examples of these collection techniques. Customers must also be notified of scheduled inspections or correspondence with the collection team, as well as loan write-offs, by fintech companies.

When it comes to invoicing, the A fintech company must use a third party that is not on the authority's block list (must be certified) or is affiliated with the Association. Then, in order to combat loan in the real world and on the internet (cyberbullying), Fintech organizations are prohibited from use intimidating tactics, such as physical threats, and emotional abuse, or any other means that violate SARA or degrade the honor, dignity, or reputation of the individual, and self-esteem of recipients, property, or relatives and family. Loan Recipients. Online loan activities need to be understood if the loan recipient does not carry out its obligations following the agreement's contents or defaults. The lender will lose, and the default will occur. One of the factors is the form of error or negligence of the fintech operator in selecting, analyzing, and approving loan applications, which are considered qualified and worthy to be offered to lenders so that employees, in this case, act on behalf of the organizers. So that here the lender can hold the organizer accountable, and if the organizer cannot provide accountability, it can be subject to sanctions following Article 47 of POJK Number 77/POJK.01/2016 covers information technology-based borrowing and lending services. The following are the administrative fines that can be levied on providers who do not fulfill the terms of this Financial Services Authority rule: 1. A written warning; 2. A fine, which entails the payment of a particular amount of money; 3. Restrictions on business activities; and 4. License revocation.

In this study, the author focuses more on the legal protection of online loan debtors intimidated by online loan providers due to default. Regarding the case here, the author tries to examine it in 2 ways, namely, the first is preventive legal protection and the second is legal protection that is repressive. Preventive protection is a legal safeguard aimed at preventing disputes. As a result, legal protection is provided before a disagreement arises. Fintech service providers can provide legal protection for users of Peer to Peer Lending-based Fintech services before a dispute arises.

Before the issue developed, the organizers attempted to implement the Consumers of Fintech services should be protected by the following legal concepts. These principles are governed by Article 29 of POJK Number 77/POJK.01/2016, which addresses Information Technology-Based Lending and Borrowing Services concerns, which include openness, fairness, trustworthiness, secrecy, data security, and simple, rapid, and easy settlement of User complaints. The price is reasonable.

In addition, there is a code of ethics and behavior or Code of Conduct for Responsible Lending. as a guideline for every fintech operator in running their business. It is explained in the code of ethics and behavior that three fundamental principles form the core of this code of conduct, namely transparency of products and offering methods, prevention of over-indebtedness, and good faith in the offering, granting, and collecting debts. The meaning of product transparency and the method of offering is the application of the principle of transparency by including the company address, email, and telephone number for customer

complaints. It is expected that consumers can accept debts responsibly and minimize the risk of fraud and unethical practices. The second principle regarding the prevention of excessive borrowing intends to encourage fintech operators not to plunge consumers into debt bondage. Thus, the operator is prohibited from providing debt to the borrower without prior approval. In addition, the organizer is also required to conduct research and verification the borrower's financial condition. Then, the organizers are also prohibited from manipulating consumer data to make the lending and borrowing process go more smoothly. The final concept is that debts should be offered, given, and collected in good faith. Fintech companies are barred from using physical and non-physical violence against customers, including cyberbullying, as a result of this concept. Then, the organizers are also prohibited from using third parties who have a bad reputation based on information from the authorities and associations in debt collection.[9]

While oppressive legal protection is intended to resolve conflicts, it can only be put in place after the first conflict has erupted. During the implementation of Peer to Peer Lending-based Fintech, disputes might emerge between users and other users, as well as between users and suppliers. If the dispute is about a fact, there is a specific procedure for resolving it. A party who believes they have been wronged may file a complaint to have the disagreement handled as soon as possible.

Fintech platform operators have received complaints from To respond swiftly to users of Fintech services based on peer-to-peer lending or online loans. Following receipt of the aggrieved party's complaint in this matter, the Fintech user must: a. Examine complaints internally in a competent, correct, and objective manner; b. Conduct analysis to ensure the complaint's integrity, as stated The financial service actor in this case is a Peer to Peer Lending-based Fintech service provider, as stated in Article 38 of POJK Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector; and c.

According to the requirements of the POJK, if the loan recipient defaults in the future and the default is found to be attributable to the organizer's fault or negligence, the organizer is obligated to compensate the loan recipient.

#### **4 Conclusion**

Activities in online lending or borrowing and borrowing money based on information technology involve several parties, including Lenders, Online Loan Service Providers, and Loan Recipients. However, the parties who carry out the online Only the lender and the loan recipient are parties to the loan agreement. The legal position contained in the online agreement discussed in this study is not balanced between the lender and the loan recipient. This happens because the agreement made by the lender is standard, and the borrower only has to accept or reject the agreement.

Legal protection of debtors who default on online loan services and receive harsh treatment and sexual harassment through electronic media can be done in 2 ways, namely preventively protecting before a dispute occurs or preventing disputes by taking preventive efforts from the online loan service provider and the second is repressive was to protect by resolving disputes, meaning through dispute resolution outside the court or inside the court.

#### **References**

- [1] E. E. Supriyanto, "Strategi Penerapan Kebijakan Sovereign Wealth Funds (SWFs) di Indonesia: Studi Literatur dan Studi Komparatif Oman," *J. Inov. Ilmu Sos. dan Polit.*, vol. 3, no. 1, p. 10, Apr. 2021, doi: 10.33474/jisop.v3i1.6959.

- [2] S. Chishti and J. Barberis, *The Fintech Book: The Financial Technology Handbook For Investor, Entrepreneurs And Visionaries*. John Wiley & Sons, 2016.
- [3] P. Sironi, *FinTech Innovation: From Robo-Advisors to Goal Based Investing and Gamification*. 2016.
- [4] H. Agusta, "Perlindungan Data Pribadi Penerima Pinjaman Dalam Transaksi Pinjam Meminjam Uang Berbasis Teknologi Informasi (Peer to Peer Lending)," *Krtha Bhayangkara*, vol. 14, no. 2, pp. 163–192, 2020, doi: 10.31599/krtha.v14i2.189.
- [5] and S. B. Y. Pratiwi, Dita Tania, "Perlindungan Hukum Terhadap Konsumen (Penerima Pinjaman) Financial Technology Yang Berbasis Peer To Peer Lending Di Indonesia," *J. Huk. Adigama*, vol. 3, no. 1, pp. 472–493, 2020.
- [6] N. Desideria, "Problematika Hukum Dalam Penggunaan Financial Teknologi," Universitas Pancasakti Tegal, 2021.
- [7] A. A. Agung and Erlina, "Perlindungan Hukum Terhadap Konsumen Pengguna Jasa Pinjaman Online," *Alauddin Law Dev. J.*, vol. 2, no. 3, pp. 432–445, 2020.
- [8] N. Perkin and P. Abraham, *Building the agile business through digital transformation*. Koganpage, 2017.
- [9] M. A. Nizar, "The Controversies of Digital Currency," *Munich Pers. RePEc Arch.*, no. 97940, pp. 1–22, 2020.