



Application of the Principle of Appropriateness in a Peer to Peer Lending Contract

Haposan Siallagan¹, Debora², Michelle Lukcy Magdelene³

Program Studi Ilmu Hukum, Fakultas Hukum, Universitas HKBP Nommensen, Indonesia . E-mail: debora@uhn.ac.id

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ABSTRACT

In implementing P2PL, an agreement is an important tool that binds the legal relations of the parties and evidence of the existence of a transaction. The contents of an agreement cannot be separated from the Appropriateness principle. The P2PL organizer is not responsible for the risk of default. Failure to fulfill the principle of decency in the P2PL agreement results in no justice being realized, because certain parties are harmed. This study discusses the standard contracts in P2PL agreements and the application of the principle of appropriateness in P2PL agreements as an effort to fulfill justice. Based on the research results, the type of contract used in P2PL is a standard contract which tends to show an imbalance in the rights and obligations of the parties. The benchmark for the principle of Appropriateness contained in Article 1339 of the Civil Code can be determined from a sense of justice. Adequacy requirements originate from laws and regulations which can be realized by balancing the positions of the parties. In forming laws and regulations, it must be able to accommodate the interests of all parties. If there is a dispute related to the implementation of the agreement, the law enforcer must Appropriateness principle of justice compared to agreements made on the basis of mere freedom of contract. P2PL organizers without collateral clearly do not provide good protection to lenders. The consequence of the unsecured loan system is high interest rates. Billing mechanisms often result in defamation

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Corresponding Author:

Debora,
Faculty of Law,
Universitas HKBP Nommensen, Indonesia
Jl. Sutomo No. 4 A Medan, Indonesia
Email: debora@uhn.ac.id

1. Introduction

The The Revolutionary Era was not just a symptom that impacted the technology sector, but was able to help create new markets and ultimately replace the previous technology in various sectors of people's lives. The existence of the globalization discourse has awakened the spirit of an old debate about what happens when law is grafted from one place to another. The industrial revolution developed significantly and influenced developments, especially in the financial sector, which collaborated in the financial sector with technology so that it gave birth to a financial innovation, namely Financial Technology (Fintech). Fintech is a product that

combines a technology platform with a business innovation model. The existence of Fintech originated from Silicon Valley which is in the southern part of the San Francisco Bay Area in California. Fintech developments have spread to New York, Singapore, Hong Kong, and several global countries. The P2PL system, which is able to directly connect borrowers and loan recipients, has made this system rooted in Singapore. Singapore has succeeded in creating a cash-intensive economy in which the majority of transactions are made off-site. The condition of Singapore has had a positive impact on the development of alternative credit systems, particularly online loan platform innovations. While in Indonesia as much as US \$ 56 million has been generated by startups.

In responding to technological developments and the needs of the community, Fintech providers provide various types of financial service products. Bank Indonesia through BI Regulation No. 19/12/PBI/2017 concerning Implementation of Financial Technology, categorizes Fintech which consists of 4 types starting from, namely 1) Peer to Peer Lending (hereinafter referred to as P2PL) and Crowdfunding; Investment Risk Management; 3) Payment, Clearing and Settlement; and 4) Market Aggregator. This type of P2PL is a service that is in great demand by the people of Indonesia. Fintech with the P2PL system is the prima donna in Indonesia due to the convenience it offers, namely collateral-free loans. Fintech funding is a P2PL market in which lenders and platforms provide cash and benefit from loan repayments and interest. Data from the Financial Services Authority (OJK) show that the existence of Fintech continues to grow, which in 2006-2007 was only 7%, but in 2017 it was able to reach 78% or there were 135-140 P2PL providers. In 2017 the total transaction value reached IDR 202.77 trillion. The number of Fintech P2PL companies as of March 2023 based on OJK data is 102 fintech companies.

In the P2PL system, an agreement is a tool that maintains legal relations and evidence of the existence of a transaction. The contents of an agreement cannot be separated from the sense of justice. The existence of law in an agreement functions to achieve, namely: justice, benefit, and legal certainty. According to Theo Huijbers, there are three things that the law wants to achieve, namely first, protecting the interests of the wider community. Second, maintaining the interests of the wider community. Third, create justice in the midst of society. The P2PL agreement is made by the P2PL platform where the position of the consumer or loan recipient and the lender has no room to contribute to making the agreement. If the lender agrees with the contents of the agreement, the recipient of the loan "clicks". The form of the P2PL agreement is categorized as a standard agreement.

A standard agreement is an agreement where the contents are first designed, made and offered by one of the parties. The characteristic of a standard agreement is that it is made in the form and if the other party agrees, it is only sufficient to include informational data. However, if the recipient of the loan does not agree to the contents of the agreement, there will be no room for negotiation so that in implementing a standard agreement, the term "take it or leave it" is known. The existence of a standard agreement illustrates the imbalance in the position of the parties in the agreement. Pitlo classifies standard agreements as included in forced agreements (dwang contracts). The process of making standard agreements when viewed from a theoretical juridical perspective means that what is desired by the legislation has not been fulfilled and some legal experts actually reject the existence of standard agreements. However, due to the needs of the community, the purpose of the law itself has been sidelined.

The implementation of P2PL implements a system without collateral or guarantees in the lending and borrowing agreement. There is no guarantee from both the organizer and the borrower, placing the implementation of P2PL has legal consequences, namely losses are suffered by the lender in the event of a default. The implementation of P2PL without a special collateral object results in creditors being in a position where repayment is not prioritized because they are concurrent creditors. The implementation of P2PL without collateral does not provide good protection for the lender, coupled with the fact that the parties have never met and the recipient of the loan can easily run away. In order to minimize losses that may be

experienced by lenders, organizers set high loan interest. In the event of a default, the collection mechanism used by P2PL organizers often results in defamation of the debtor, which is detrimental to the debtor and is felt to have violated the principle of decency. The failure to fulfill the principle of decency in the agreement made by the P2PL organizers has an impact on not achieving justice for the parties who commit themselves to the P2PL agreement.

In the third book of the Civil Code, there are principles that must be met in the making of the contents of the agreement so as to create a balance of rights owned by the parties. The existence of the principle becomes a guideline or guide as well as a warning for the parties in making and implementing agreements. That whatever is stated in an agreement then an agreement becomes a law for them. Nieuwenhuis said that there are two foundations in legal principles, namely legal principles originating in the reality of society and secondly originating from values that are guided by society. The legal principle is the most important basis for the emergence of a statutory regulation, where the existence of the statutory regulation ultimately boils down to this principle.

The Appropriateness principle in implementing P2PL is a legal issue that is studied in this research. The definition of proper in the Big Indonesian Dictionary is defined as the word good, proper, appropriate, appropriate, reasonable, reasonable and should or should be. The Appropriateness principle is a balancing tool in distributing profits and losses in the implementation of agreements with the parties so that a sense of justice is born. Appropriateness principle is commonly applied in addition to the existence of law where a sense of justice affects the contents of the agreement. The government's role as the maker of laws and regulations is able to be sensitive in providing solutions to problems and developments. Adequacy is usually used as something based on statutory regulations, so that it becomes an element that adds to the provisions of these regulations. The sense of justice will affect the contents of an agreement. Thus, the role of the government or policy makers is expected to have a high level of sensitivity in responding to any problems and to be pro to the public interest regarding the use of technology. Through these laws and regulations, P2PL organizers in carrying out P2PL activities are in a predetermined area and the public as service users can enjoy P2PL services safely and fairly.

It takes an understanding of the standard agreement from a legal standpoint in the financial sector. In principle, all P2PL service companies that are licensed or registered should naturally serve as guidelines or role models for business actors who wish to form a company engaged in P2PL services related to the use of standard agreements. The use of standard agreements that apply legal principles by P2PL organizers is expected to be able to accommodate the interests of all parties so that a sense of justice is achieved for the parties.

Previous research regarding the implementation of P2PL fintech has been widely researched by previous researchers such as by Rinitami Njatrijani in 2019 with the study title Development of Regulation and Supervision of Financial Technology in Indonesia; Veronica Novinna in 2020 with the article entitled Consumer Protection from Dissemination of Personal Data by Third Parties: Cases of Fintech Peer "To Peer Lending"; as well as Nuzul Rahmayani in 2018 with a study on consumer protection related to supervision of fintech business actors; Raden Ani Eko Wahyuni and Bambang Eko Turisno in 2019 who examined illegal P2PL fintech practices from the perspective of business ethics in Indonesia. As for what distinguishes it from previous studies, this study focuses more on examining objectively, namely: First, to analyze how standard contracts are in P2PL in Indonesia and how the application of the principle of decency in P2PL agreements fulfills justice for the parties.

2. Method

Legal research is an activity carried out in a systematic order, starting from methods and ways of thinking to examine a legal issue or legal event that arises in society. The method applied in this study is normative legal research, which examines these legal issues using literature or

secondary data. This study does not only examine legal events from the side of written law that is related to legal issues, but examines it from all aspects and also traces it from the literature.

3. Analysis and Results

3.1. Standard Contract in Agreement Peer to Peer Lending

Article 1313 of the Civil Code says that an agreement is an act by which one or more people bind themselves to one or more people. The word deed in Article 1313 of the Civil Code gives the meaning that it is possible for an agreement to be realized if there is a real action, it can be in oral or written form and of course it does not fulfill if it is only in the mind. In Indonesian law, there are several types of agreements, both those that have been regulated in law and those that have not been regulated. In an agreement there is an element of fair exchange in terms of determining the rights and obligations of each party in the agreement. Determination of rights and obligations is a benchmark in realizing a sense of justice for the parties. Freedom of contract is the basis for P2PL organizers in carrying out P2PL activities. P2PL organizers as business actors certainly have deeper and broader knowledge regarding the needs of their business activities.

Today the type of agreement that is mostly applied in the world of telecommunications and fintech is a contract with a standard agreement. The implementation of the P2PL standard agreement is a consequence of the 4.0 revolution era. standard agreements or also known as standard clauses provide convenience benefits in transactions and are able to save time for both business actors and consumers. A standard agreement is an agreement whose contents are made or determined by one party, and does not provide room for negotiation or in other words the other party does not have the opportunity to negotiate the contents of the agreement. The use of agreements in the form of standard agreements has been regulated in the Consumer Protection Act Number 8 of 1999 concerning Consumer Protection. The existence of standard agreements is important along with the era of the digital revolution which has an impact on the non-optimal fulfillment of the requirements in Article 1320 of the Civil Code regarding the elements of the agreement. The application of the elements of the agreement is not as free as in an ordinary agreement. Other parties only contribute to filling out informational data when they agree with the content determined by the organizers or the company. Meanwhile, the provisions contained in the Consumer Protection Act are limited to provisions that standard agreements are not permitted to contain exoneration clauses. Where business actors are prohibited from transferring their responsibilities to consumers.

System *fintech* P2PL, the method used is direct interaction *online* which facilitates the meeting of P2PL service users. The interaction is limited by the agreement made by the organizers. P2PL has differences with the provisions in Article 1754 of the Civil Code regarding loan agreements. The implementation of the P2PL implementation involves three parties consisting of the Operator, the lender and the recipient of the loan. The mechanism for implementing a P2PL agreement is that the P2PL Provider has limited authority, namely channeling funds to the recipient of the loan according to the choice of the lender. So that the final decision and risk of the lending action is placed on the lender. P2PL organizers are prohibited from owning and managing lenders' funds as is done in the banking system. These provisions are based on the legal consequences of the standard agreement that has been stipulated and the legal relationship that occurs between the parties arising from the power of attorney agreement. P2PL organizers in P2PL activities domiciled for and on behalf of the Lender.

In Article 30 of OJK Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services, it is determined that a legal relationship in the form of an agreement occurs between the organizer and the lender and the agreement between the loan recipient and the lender. However, the relationship between the organizer and the borrower is not specified in this regulation. In Article 32 paragraph 1 and Article 31 paragraph 1 of OJK Regulation Number 10/POJK.05/2022, it expressly stipulates that agreements are contained in the form of electronic documents.

Arrangements regarding electronic contracts are regulated in Article 1 point 17 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions which defines that an electronic contract is an agreement between parties made through an electronic system. Through Article 18 paragraph (1) the ITE Law also clarifies that: "Electronic Transactions that are poured into Electronic Contracts are binding on the parties. Electronic contracts that are used in organizing P2PL as long as they meet the elements as stated in Article 1320 of the Civil Code can be used as valid legal evidence.

Technological advances have changed the form of a standard contract, namely a contract in a form *electronic* or also known as *click-wrap*. In looking at the elements of the agreement in the electronic contract, if the user agrees to the contents of the electronic contract, then it is enough to "click" on the agreement section. Electronic contracts become legally binding tools whose implementation uses a communication system connected to the internet. In using electronic contracts, I first start with downloading an application or registering to a certain account, in this case a P2PL platform account. in the system P2PL, electronic contracts are provided by the P2PL Organizer and users in the service only need to click if they agree to the contents of the electronic contract. electronic contract forms have met the characteristics of a standard agreement.

The standard contract in electronic form that is applied to the implementation of P2PL if examined from Article 1320 of the Civil Code, then the subjective element, namely agreeing to be confined by the principle of freedom of contract. Where the P2PL organizer has the freedom to determine the contents of the agreement, while the recipient of the loan and the lender do not have an equal position in determining the contents of the agreement. This imbalance triggers the emergence of disputes in the future. Article 18 of the Consumer Protection Act has placed restrictions on the application of standard agreements. However, these restrictions have not been maximized considering that various violations are still found in society. For this reason, supervision is needed in the use of standard agreements or standard agreements in business activities or activities by institutions determined by the government.

3.2. Application of Appropriateness Principle in the P2PL Agreement as an Effort to Fulfill Justice

The application of interest provisions is contained in agreements on lending and borrowing money or goods that are used up as stipulated in Article 1765 of the Civil Code. Meanwhile, for the amount of loan interest, the Civil Code does not specify the amount. In terms of determining the loan interest rate, the parties must have an agreement which is stated in writing or can follow the provisions for the interest rate according to the State Gazette of 1848 Number 22: 6 percent. P2PL services are economic activities that have benefits for the wider community. Philosophically, Article 33 of the 1945 Constitution states that the state has the authority to regulate vital economic activities to improve people's welfare. The existence of P2PL services has an effect on increasing people's welfare through the provision of easily accessible financial services, especially for people who *unbankable*.

OJK Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Lending and Borrowing Services, hereinafter referred to as POJK, as the legal umbrella for P2PL implementation activities. However, in its implementation, the implementation of P2PL has experienced many cases of default because the Borrower does not have the ability to return the loan along with the interest on the loan as previously agreed. The default case is the beginning of other cases related to the way the lender collects money. As for the method of billing that is improperly carried out by the P2PL organizers. Based on Article 31 paragraph POJK No. 10 /POJK.05/2022, a P2PL agreement must be contained in an electronic document in which the collateral object is listed (if any). These provisions have an impact on the existence of a guarantee object to become something that is not required to be included in the implementation of P2PL. these provisions have an impact on the existence of risks faced by lenders in the event of default or if the recipient of the loan is in a condition *default*. In principle, the existence of

collateral or collateral will position a special guarantee for the lender. There is an agreement between the parties in the implementation of P2PL legally based on the principle of consensualism. However, there is a business mode charge by the P2PL organizer to withdraw funds in the event of a default by utilizing personal data.

The weak position of P2PL service users is also caused by various factors, namely for the recipient of the loan, the economic factor is a weakness. The urgent need makes the position weak and very dependent so that it is forced to accept the contents of the agreement which incidentally harms it. In terms of the level of knowledge, it is also a weakness of the service user due to the lack of financial literacy. That all the principles contained in the third book of the Civil Code are the basis for the parties in designing and implementing the contents of the agreement. There are several principles, starting from the principle of agreement, the principle that the agreement is a law for the parties who promise, the principle of balance to the principle of decency.

In its implementation, it is often found in the implementation of contract making, one party designs a contract that only benefits his party, and there are even contracts whose contents try to transfer responsibility to another party. The application of the principle of freedom of contract in the process and implementation of standard agreements is minimal. The sense of fairness in the contract is often ignored. Whereas the application of the principle of freedom of contract in the implementation of P2PL has many irregularities. The principle of freedom of contract is interpreted by P2PL organizers as going too far which has an impact on ignoring a sense of justice and decency.

The Appropriateness principle regulated in Article 1339 of the Civil Code is a benchmark to see how far the sense of justice is in making and implementing agreements for parties who promise. The existence of the principle of decency cannot be ignored, because this principle is able to create a sense of justice in the implementation of agreements. The balance of the rights of the parties will be achieved if the principle of decency is used as an instrument for forming an agreement. Basically fulfilling the interests of one party is not permitted on the basis of overriding the interests of the other party. The principle of decency is part of good faith, where the principle of decency and good faith is an important part of implementing an agreement. Whereas OJK is mandated by laws and regulations to oversee the implementation of P2PL, especially P2PL that has been registered and or licensed. This supervision is carried out in order to avoid violations of decency and fairness in the implementation of P2PL in Indonesia.

4. Conclusion

The contents of an agreement cannot be separated from the issue of fairness, where the P2PL Provider is not responsible for the risk of default in accordance with POJK No. 10/POJK.05/2022. Failure to fulfill the principle of decency in the P2PL agreement results in no justice being realized, because certain parties are harmed. This study discusses the standard contracts in P2PL agreements and the application of the principle of decency in P2PL agreements as an effort to fulfill justice. The type of contract used in P2PL is a standard contract which tends to show an imbalance in the rights and obligations of the parties. The principle of Appropriateness principle in Article 1339 of the Civil Code relates to the contents of the agreement, through this principle the size of the relationship is also determined by a sense of justice. The terms of decency are rooted in the nature of legal regulations in general, by balancing the interests of several parties. In formulating and implementing the contents of the legal substance, the interests of all parties must be considered. If a dispute arises regarding an agreement, law enforcement must prioritize justice by not solely based on an agreement based on freedom of contract but must pay attention to the harmony of the principles of the agreement. Loans without a special collateral object in the implementation of P2PL do not provide good protection to lenders, where the recipient of the loan can easily run away considering the parties have never met. The consequence of the unsecured loan system is the high interest rate on loans. The collection mechanism that harms the debtor due to default by

committing defamation is deemed to violate the principle of decency. The failure to fulfill the principle of decency in the P2PL agreement results in not realizing justice for all parties involved in the agreement, because certain parties are harmed. The role of the state as a policy maker that aims to create justice is also important in holding a movement to educate every member of society as a service user *Fintech* This P2PL. Education will be successful if the community has the desire to find detailed and comprehensive information on both the strengths and weaknesses of P2PL services before deciding to become P2PL service users.

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