

# The Protection of Consumers' Personal Data in Financial Technology–Based Online Lending: A Legal Perspective in Indonesia

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**Abstract :** *Technological advancements have accelerated the use of financial technology (fintech), particularly in online lending services, which facilitate public access to credit but simultaneously raise legal challenges related to the protection of consumers' personal data. Unauthorized collection, use, or dissemination of personal data by online loan providers without the consent of data subjects poses significant risks to consumer rights. This study examines the legal framework governing personal data protection in online lending services in Indonesia and analyzes the sanctions imposed for violations. Using a normative juridical approach, the study reviews relevant statutory regulations, including Law Number 11 of 2008 on Electronic Information and Transactions, as amended, and Financial Services Authority Regulation Number 77/POJK.01/2016 on Information Technology–Based Money Lending Services. The findings indicate that service providers are legally obligated to ensure the confidentiality, integrity, and availability of consumers' personal data and to obtain consent for its use. Violations of these obligations are subject to administrative sanctions, including warnings, fines, restrictions on business activities, and license revocation.*

**Keywords :** *Protection; Personal data; Online loans*

**Abstrak :** Perkembangan teknologi telah mempercepat penggunaan financial technology (fintech), khususnya dalam layanan pinjaman daring, yang mempermudah akses masyarakat terhadap kredit namun sekaligus menimbulkan tantangan hukum terkait perlindungan data pribadi konsumen. Pengumpulan, penggunaan, atau penyebaran data pribadi oleh penyelenggara pinjaman daring tanpa persetujuan subjek data menimbulkan risiko serius terhadap hak-hak konsumen. Penelitian ini mengkaji kerangka hukum perlindungan data pribadi dalam layanan pinjaman daring di Indonesia serta menganalisis sanksi atas pelanggaran yang terjadi. Penelitian ini menggunakan pendekatan yuridis normatif dengan menelaah peraturan perundang-undangan yang relevan, termasuk Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik sebagaimana telah diubah, serta



Peraturan Otoritas Jasa Keuangan Nomor 77/POJK.01/2016 tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi. Hasil penelitian menunjukkan bahwa penyelenggara layanan memiliki kewajiban hukum untuk menjamin kerahasiaan, integritas, dan ketersediaan data pribadi konsumen serta memperoleh persetujuan dalam penggunaannya. Pelanggaran terhadap kewajiban tersebut dikenai sanksi administratif berupa peringatan, denda, pembatasan kegiatan usaha, hingga pencabutan izin.

**Kata kunci :** Perlindungan; data pribadi; pinjaman online

## Introduction

The development of information technology, particularly *interconnected networking* (the internet), has had a significant impact on all aspects of human life. Modern life today relies heavily on technological advancements.<sup>1</sup> The high number of internet users in Indonesia has also contributed to the rapid growth of *Fintech companies*.<sup>2</sup> Thus, in 2019, total transactions in the *Fintech peer-to-peer* (P2P) lending industry reached IDR 26 trillion.<sup>3</sup> Further data can be seen from the number of licensed *Fintech companies* registered with the Financial Services Authority (OJK) as of August 2021, which totaled 116, including PT. Lentera Dana Nusantara, PT. Alfa Fintech Indonesia, PT. Fintech Bina Bangsa, and many others.

The rapid development of information technology requires the use of information technology in everything, including the economic sector.<sup>4</sup> The use of information technology in the economic sector is known as *financial technology* (Fintech), which aims to simplify financial sector transactions for consumers.<sup>5</sup> *Fintech* is a financial system supported by *artificial intelligence* and the internet such as digital payments and online financing.<sup>6</sup> Consumers can experience digital financial system services simply by opening a smartphone.<sup>7</sup> One of the *Fintechs* used by the Indonesian people is online loans or so-called *peer to peer landing / person to person landing* (P2P Landing). Online loans are different from conventional loans managed by banks, pawnshops or other similar financial institutions using complicated requirements and procedures.<sup>8</sup> Based on Article 1 paragraph 6 of OJK Regulation No. 77 / POJK.01 / 2016

<sup>1</sup> Aiman, Syahrul. "Technological developments and challenges in bioethanol research in Indonesia." *Indonesian Journal of Applied Chemistry* 16, No. 2 (2014): 108-117.

<sup>2</sup> Farah Margaretha, "The Impact of Electronic Banking on Indonesian Banking Performance" *Journal of Finance and Banking*, ( 2015 ): 514-516.

<sup>3</sup> Krisnawati, Devi. "The role of digital technology development in marketing strategies and distribution channels for MSMEs in Indonesia." *Krisnadwipayana Business Management Journal* 6, No. 1 (2018): 69-74

<sup>4</sup> Zamroni, Mohammad. "The development of communication technology and its impact on life." *Jurnal Dakwah* 10, No. 2 (2009): 195-211.

<sup>5</sup> Erna Priliastari, "The Importance of Personal Data Protection in Online Loan Transactions (The Urgency of Personal Protection in Peer to Peer Lending), *National Law Magazine*, 2, ( 2019 ): 20

<sup>6</sup> Andri Kristanto, (2003), *Data Security in Computer Networks*, Yogyakarta: Gava media, pp. 12-13

<sup>7</sup> I Dewa Gede Adi Wiranjaya and I Gede Putra Ariana, 2016, Legal Protection Against Violations of Consumer Privacy in Online Transactions, *Kerta Semaya*, 4, No. 4, ( 2016 ): 3.

<sup>8</sup> Budiayanti, Eka. "Efforts to Overcome Illegal Online Loan Services." *Journal of the Research Center of the Indonesian House of Representatives Expertise Agency* 11, No. 4 (2019): 1-5.

concerning Information Technology-Based Money Lending Services, online loans are managed by Financial Institutions in the form of Start-up companies as organizers who present, manage, and operate online Money Lending Services.<sup>9</sup>

The lending system in online loan applications is implemented using a *peer-to-peer lending system*, which is a loan agreement that connects lenders and borrowers via the internet. The presence of *peer-to-peer lending* in Indonesia can certainly have a positive impact, namely, some residents living in remote or isolated areas can easily borrow and lend money. With this online loan, credit disbursement can be carried out quickly.<sup>10</sup> Furthermore, loans can be granted without collateral, unlike banks, which legally prohibit unsecured loans. While banks may provide loans without collateral, this does not necessarily mean that the loans are unsecured.<sup>11</sup> However, in practice, *the Fintech business* has potential risks, at least two of which are consumer data security risks and transaction errors.<sup>12</sup>

These two risks will then result in losses for each party in the *Fintech business*.<sup>13</sup> The emergence of online crimes such as wiretapping, hacking, and *cybercrime* in banking financial transactions makes people hesitant to conduct online transactions.<sup>14</sup> Violations related to personal data in this era of advanced technology are very common, therefore, legal protection is needed to assure the public that their privacy remains protected.<sup>15</sup> For example, disseminating personal data and the amount of debt to all contacts or social media without the knowledge or permission of the owner of the personal data. Various violations have been found, such as charging very high interest rates, collecting debts through abusive methods (threats, slander, sexual harassment), accessing all personal data on the victim's device without the victim's permission and distributing it. This contradicts the rules that should be established after an electronic agreement is formed between the *Fintech business organizer* and the consumer.<sup>16</sup> The electronic agreement covers the rights and obligations of the parties. Legal protection is regulated by the Minister of Communication and Information Technology Regulation No. 20 of 2016, POJK No. 77 of 2016, POJK No. 13 of 2018, and the OJK Circular Letter. Protected objects include personal data, corporate personal data, data related

<sup>9</sup>Sinta Dewi, "The Concept of Legal Protection for Privacy and Personal Data Associated with the Use of Cloud Computing in Indonesia", *Yustisia*, 5, No. 1 (2016): 25

<sup>10</sup>Alfhica Rezita Sari, 2018, "Legal Protection for Lenders in the Implementation of Peer to Peer Lending-Based Financial Technology in Indonesia", Undergraduate Thesis, Faculty of Law, Islamic University of Indonesia, Yogyakarta, p. 97

<sup>11</sup> Nugroho, Hendro. "Legal Protection for Parties in Online Loan Transactions." *JUSTITIA: Journal of Law and Humanities* 7, No. 2 (2020): 328-334.

<sup>12</sup> Wahyuni, Raden Ani Eko, and Bambang Eko Turisno. "Illegal Financial Technology Practices in the Form of Online Loans Reviewed from the Perspective of Business Ethics." *Journal of Indonesian Legal Development* 1, No. 3 (2019): 379-391.

<sup>13</sup> Nizar, Muhammad Afdi. "Financial technology (Fintech): Concept and implementation in Indonesia." (2017): 5-13.

<sup>14</sup> Wibowo, Budi. "Analysis of fintech regulations in building the economy in Indonesia." *Journal of Electrical Engineering Masters, Mercu Buana University* (2016): 1-9.

<sup>15</sup> Hiyanti, Hida, et al. "Opportunities and challenges of Islamic fintech (financial technology) in Indonesia." *Scientific Journal of Islamic Economics* 5, No. 3 (2020): 326-333.

<sup>16</sup> Suharini, Suharini, and Ratih Hastasari. "The Role of the Financial Services Authority Against Illegal Fintech in Indonesia as an Effort to Protect Consumers." *Jurnal Akrab Juara* 5, No. 3 (2020): 25-38.

to financial transactions, contract/agreement data, and material non-public data.<sup>17</sup>

Recently, the police have raided several locations of illegal online loan syndicates in the Jakarta area. On October 13, 2021, the Indonesian National Police's Criminal Investigation Unit arrested seven individuals operating an illegal online loan business in Cengkareng, West Jakarta. The arrests stemmed from reports from members of the public who had been victims of these online loans. During the loan process, the victims were frequently threatened and verbally sexually harassed. Based on these reports, the police immediately launched an investigation and arrested the perpetrators. Based on the background description above, the problem in this research is how to regulate personal data protection for online loans and what are the sanctions for personal data violations.

## Methods

According to Bahder Johan Nasution, methodology is a branch of science that studies research methods. Therefore, a research method is a technical description of the methods used in research.<sup>18</sup> Meanwhile, according to Peter Mahmud Marzuki, research methods and objectives are the responsibility for selecting the issue, research object, method, and research objectives.<sup>19</sup>

In this study, the author used a normative juridical method, first collecting legal documents related to the problem and then objectively examining the laws and regulations in force in other countries and Indonesia to conduct the study. This research is descriptive in nature, namely describing and analyzing the issues raised with the aim of providing a concrete picture of the problem of the dissemination of personal data by online loan providers without notification and without permission from the owner can be detrimental to consumers.

Meanwhile, normative legal research includes studies on:<sup>20</sup> Principles of law; Legal systematics; Level of legal synchronization; Comparative law; and Legal history. Normative legal research focuses on positive law with the following aspects: 1) studying rules from a technical perspective, 2) discussing law, 3) discussing law from a legal perspective, 4) discussing concrete legal problems.

<sup>21</sup>Meanwhile, according to *D Meuwissen*, the main tasks of normative legal science are: 1) describing positive law, 2) systematics of positive law, 3) interpreting positive law, 4) analyzing positive law, and 5) assessing positive

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<sup>17</sup> Santi, Ernema, Budiharto, and Hendro Saptono. "Financial Services Authority Supervision of Financial Technology (Financial Services Authority Regulation Number 77/POJK. 01/2016)." *Diponegoro Law Journal* 6, No. 3 (2017): 1-20.

<sup>18</sup>Bahder Johan Nasution, *Legal Science Research Methods*, 2nd edition, Bandung, Mandar Maju, 2016, p. 3.

<sup>19</sup>Peter Mahmud Marzuki, *Legal Research*, Revised Edition, Jakarta, Kharisma Putra Utama, 2016, p. 2

<sup>20</sup>Bahder Johan Nasution, *Legal Science Research Methods*, 2nd edition, Bandung, Mandar Maju, 2016, p. 86

<sup>21</sup>Sahuri L, *Corporate Accountability in the Perspective of Indonesian Criminal Law Policy*, Doctoral Dissertation, Postgraduate Program, Airlangga University, Surabaya, 2003, p. 64.

law.<sup>22</sup>

This research is descriptive in nature, describing the symptoms within the community surrounding the case under study. The approach used is a qualitative approach, a research method that produces descriptive data.<sup>23</sup> The author's use of a qualitative approach aims to understand the phenomena being studied.<sup>24</sup> This research was conducted with the aim of determining legal principles applicable to both written and unwritten positive law.<sup>25</sup>

## Result And Discussion

### Regulatory Framework for Fintech in Indonesia

*Fintech* business is a financial innovation with a touch of modern technology, which utilizes developments in information technology to create new innovations in the financial services sector, which are faster and easier to use.<sup>26</sup> *Financial Technology* (Fintech) is a financial product and service provided through a combination of a technology platform and an innovative business model. The business activity of the *Fintech business* is electronic Financial Services (hereinafter referred to as LJK). Therefore, *the Fintech business* is a business model that provides LJK by utilizing information technology. *Fintech is an innovation that involves the use of modern technology in the field of financial services.*<sup>27</sup> Therefore, when viewed from the business system, *Fintech businesses* operate electronic systems to provide financial services institutions (FSI) with their customers. Therefore,<sup>28</sup> *Fintech* businesses are bound by laws and regulations concerning electronic systems and financial services institutions.<sup>29</sup> Therefore, *Fintech businesses* are regulated and supervised by the Ministry of Communication and Information Technology of the Republic of Indonesia (Kemkominfo RI) as the electronic systems regulator, and Bank Indonesia and the Financial Services Authority (OJK) as the financial services system regulators.<sup>30</sup>

<sup>22</sup>Sahuri L, *Corporate Accountability in the Perspective of Indonesian Criminal Law Policy*, Doctoral Dissertation, Postgraduate Program, Airlangga University, Surabaya, 2003, p. 65

<sup>23</sup>Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: UI Press, 1986, p. 32.

<sup>24</sup>Soerjono Soekanto, *Introduction to Research.....Ibid.*

<sup>25</sup>Soerjono Soekanto, *Introduction to Research Ibid.* p. 252.

<sup>26</sup> Bimo, Widhi Ariyo, and Alvin Tiyanasyah. "The Role of the Financial Services Authority in Supervising Information Technology-Based Loans (Fintech Lending)." *Monetary: Journal of Finance and Banking* 7, No. 1 (2019): 16-33.

<sup>27</sup> Lestari, HestyD. "Financial Services Authority: A new system for regulating and supervising the financial services sector." *Journal of Legal Dynamics* 12, No. 3 (2012): 557-567.

<sup>28</sup> Santi, Ernama, Budiharto Budiharto, and Hendro Saptono. "Financial Services Authority Supervision of Financial Technology (Financial Services Authority Regulation Number 77/POJK. 01/2016)." *Diponegoro Law Journal* 6, No. 3 (2017): 1-20.

<sup>29</sup> Samsul, Inosentius. "Protection of Financial Services Consumers After the Establishment of the Financial Services Authority (OJK)." *Rule of Law: Building Law for Justice and Welfare* 4, No. 2 (2016): 153-166.

<sup>30</sup>I Dewa Gede Adi Wiranjaya and I Gede Putra Ariana, " Legal Protection Against Violations of Consumer Privacy in Online Transactions ", *Kerta Semaya*, 4, No. 4 ( 2016 ), 3-14

The scope of *Fintech implementation* as regulated in Article 3 paragraph (1) of Bank Indonesia Regulation (PBI) No. 19/12/PBI/2017 concerning *Fintech Implementation* is categorized into 5 (five) as follows:

1. Payment system (digital payment) which includes authorization, clearing, final settlement, and payment execution.
2. Market supporters are *Fintechs* that use information technology and/or electronic technology to facilitate the provision of faster and cheaper information related to products and/or LJK to the public.
3. Investment management and risk management.
4. Loans, financing and capital provision.
5. Other financial services besides the four things mentioned previously

Furthermore, based on the Financial Services Authority Regulation (Referred to as the OJK regulation), it explains that the OJK organizes an integrated regulatory and supervisory system for all activities in the financial services sector, so the *Fintech business* is also a business supervised by the OJK. The regulation of the *Fintech business* in Indonesia was first issued by the OJK through the Financial Services Authority Regulation (POJK) No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services. Information technology-based money lending means a startup that provides an online loan platform or the provision of financial services to bring together lenders and borrowers to make loan agreements in rupiah directly through an electronic system using an internet network.<sup>31</sup>

The Financial Services Authority (OJK)'s regulation and supervision of *fintech businesses* are also stipulated in POJK No. 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector, which aims to implement Digital Financial Innovation (IKD) responsibly. Regulation of IKD aims to support responsible IKD development, effective IKD monitoring, and foster synergy within the digital financial services ecosystem.<sup>32</sup> The existence of the Financial Services Authority (OJK) as a supervisory institution in the financial services sector is expected to protect consumers from PUJK which is detrimental to consumer interests, in this case *Fintech consumers*. The OJK as an institution that has the authority to supervise business activities in the financial services sector, must be able to protect consumers who use financial services who place their funds and/or utilize services available at financial services institutions. In this study, specifically *Fintech consumers*.<sup>33</sup> This is as stipulated in Article 4 letter c of Law No. 21 of 2011 concerning the Financial Services Authority which states that one of the objectives of the establishment of the OJK is to be able to protect the interests of consumers and the public in the financial services sector. This protection is intended to provide a sense of security to consumers as users of financial services. *Fintech consumers* as users

<sup>31</sup>Sinta Dewi, "The Concept of Legal Protection of Privacy and Personal Data Associated with the Use of Cloud Computing in Indonesia", *Yustisia*, 5, No. 1, (2016): 25-35.

<sup>32</sup>Bambang Eko Turisno, "Consumer Protection in Drug Advertising", *Journal of Legal Issues*, 4, No. 1, (2012), 20-28.

<sup>33</sup>Murdadi, Bambang. "The Financial Services Authority (OJK), the New Supervisory Agency for Financial Institutions, Has Investigative Authority." *Value Added Economics and Business Magazine* 8, No. 2 (2012). 24-35



of financial services have the right to obtain protection of their personal data at *Fintech companies* that provide financial services to them.<sup>34</sup>

Based on the two regulations from the institutions that have been described one by one above, it can be concluded that the scope of *the Fintech business* consists of payment systems/transaction settlements ( *digital payments* ); market support, loans, financing, and capital provision/capital collection, investment management, insurance, other digital financial support, and other financial service activities.<sup>35</sup>In its implementation, the *Fintech business* uses instruments, namely electronic contracts, so it must comply with the rules regarding electronic contracts as regulated in Law (UU) No. 19 of 2016 concerning Amendments to Law No. 11 of 2008.

### Legal Basis for Personal Data Protection in *Fintech*

Based on the Regulation of the Minister of Communication and Information Technology No. 20 of 2016 concerning the Protection of Personal Data in Electronic Systems, personal data is certain individual data that is stored, maintained and kept accurate and its confidentiality is protected. Protection of personal data in electronic systems includes protection against the acquisition, collection, processing, analysis, storage, display, announcement, delivery, dissemination and destruction of personal data. The implementation of personal data protection in electronic systems must be based on the principle of respect for personal data as privacy.<sup>36</sup>

Every owner of personal data has rights to their data in an electronic system. These rights are regulated in Article 26, namely: the right to the confidentiality of their personal data; submitting complaints to the minister in order to resolve personal data disputes regarding the failure of the electronic system organizer to protect the confidentiality of their personal data; gaining access or the opportunity to change or update their personal data without disrupting the personal data management system, unless otherwise stipulated by statutory provisions; gaining access or the opportunity to obtain the history of their personal data that has been submitted to the electronic system organizer as long as it is still in accordance with statutory provisions; and requesting the destruction of certain personal data belonging to them in the electronic system managed by the electronic system organizer, unless otherwise stipulated by statutory provisions.<sup>37</sup>Users of electronic systems have an obligation to maintain the confidentiality of personal data obtained, collected, processed, and analyzed; using personal data only according to the user's needs; protecting personal data and documents containing such personal data from misuse; and being responsible for personal data in their control, whether

<sup>34</sup> Rasjad, Sandi FS. "Regulation and Supervision of Banking by the Financial Services Authority." *Lex et Societatis* 3, No. 3 (2015) : 12-24

<sup>35</sup> Maulidiana, Lina. "The Function of the Financial Services Authority as a National Banking Supervisory Institution in Indonesia." *Progressive Justice* 5, No. 1 (2014) : 45-52

<sup>36</sup> Sugangga, Rayyan, and Erwin Hari Sentoso. "Legal Protection for Illegal Online Loan (Pinjol) Users." *Pakuan Justice Journal of Law* 1, No. 1 (2020): 47-61.

<sup>37</sup> Manullang, Mirzan Feridani. "A Legal Review of Online Lending Practices Compared to Conventional Lending Practices." (2021). 12-24

under their control as an organization under their authority or individually, in the event of misuse.<sup>38</sup>

Electronic system organizers have an obligation to certify the electronic systems they manage in accordance with the provisions of laws and regulations; maintain the truth, validity, confidentiality, accuracy and relevance as well as suitability for the purpose of obtaining, collecting, processing, analyzing, storing, displaying, announcing, sending, disseminating and destroying personal data; notify the owner of personal data in writing if there is a failure to protect the confidentiality of personal data in the electronic system they manage; have internal rules related to the protection of personal data in accordance with the provisions of laws and regulations; provide an audit trail of all activities of the electronic system they manage; provide options to the owner of personal data regarding whether the personal data they manage can/ or cannot be used and/ or displayed by/ to third parties with their consent as long as it is related to the purpose of obtaining and collecting personal data; provide access or opportunity to the owner of personal data to change or update their personal data without disrupting the personal data management system, unless otherwise stipulated by the provisions of laws and regulations; destroy personal data in accordance with the provisions of this Ministerial Regulation or other provisions of laws and regulations that specifically regulate each supervisory and regulatory agency.<sup>39</sup>

Any party who obtains, collects, processes, analyzes, stores, displays, announces, sends and/or disseminates personal data without rights or in violation of these regulations and other laws and regulations will be subject to administrative sanctions in the form of verbal warnings, written warnings, temporary suspension of activities and/or announcements on online sites (*online websites*).<sup>40</sup> Furthermore, based on POJK No. 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector and POJK No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services, it states that *Fintech business operators* are required to maintain the confidentiality, integrity, and availability of personal data, transaction data and financial data they manage from the time the data is obtained until the data is destroyed. Requirements for the use of user data and information include : 1) obtaining consent from users; 2) conveying limitations on the use of data and information to users; 3) conveying any changes to the purpose of data and information utilization to users in the event of changes to the purpose of data and information utilization; and 4) the media and methods used to obtain data and information guarantee confidentiality, security, and integrity. Consumer data protection relating to personal data is regulated in

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<sup>38</sup> Manurung, Devaline. Obligations of Peer to Peer Lending (P2P Lending) Based Financial Technology Providers Regarding the Provision of Loan Recipient Data by Financial Technology Providers Regarding Data Confidentiality . Diss. Atma Jaya University Yogyakarta, 2020.

<sup>39</sup> Nurmantari, Ni Nyoman Ari Diah, and Nyoman A. Martana. "Legal Protection of Borrower's Personal Data in Online Loan Application Services." *Kertha Wicara: Journal of Legal Studies* No. 8 (2019): 1-14.

<sup>40</sup>E. Santi, B. Budiharto & H. Saptono "Financial Services Authority Supervision of Financial Technology (Financial Services Authority Regulation Number 77/POJK. 01/2016)", *Diponegoro Law Journal* , ( 2018 ) , 13 -23 .



Article 26.<sup>41</sup> This article requires service providers to maintain the confidentiality of service users' personal data. Furthermore, Article 29 stipulates that service providers must implement the basic principles of user protection, namely transparency, fair treatment, reliability, data confidentiality and security, and simple, fast, and affordable user dispute resolution.<sup>42</sup>

### Personal Data Protection Regulations for Online Loans

Debt collection efforts carried out by online lenders often involve threats of violence and/or other similar actions. This is intended to instill fear in borrowers and force them to pay their debts. One victim, Kasiyatun, a resident of Bubutan, Surabaya, revealed the cruelty of online lenders in their debt collection efforts. The violence continued even after her debt had been paid off. Kasiyatun's experience included the distribution of personal data to colleagues, along with messages containing insults. The harassment lasted for two months, and throughout the process, Kasiyatun felt pressured and discouraged. Kasiyatun stated that she no longer wanted to be entangled in online lending.

Protection of personal data has been regulated in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions, which is stated in Article 26 paragraphs (1) and (2) which state that:<sup>43</sup>

- a. Unless otherwise stipulated by statutory regulations, the use of any information via electronic media concerning a person's personal data must be carried out with the consent of the person concerned.
- b. Any person whose rights as referred to in paragraph (1) are violated may file a lawsuit for losses incurred based on this Law.<sup>44</sup>

The provisions stipulate that, to the owner of personal data to maintain the confidentiality of his personal data, if his personal data has been spread and misused by another party, then the owner of the personal data can file a lawsuit in court.<sup>45</sup> The lawsuit in question is a civil lawsuit filed based on statutory regulations. The provisions of the article are the protection provided to a person's personal data in general, meaning that in every activity involving electronic transactions that use a person's personal data, it is mandatory to maintain and protect the personal data, with these regulations, everyone has

<sup>41</sup> Ispriono, Taufiq, et al. "Legal Protection of Access to Personal Data for Online Loan Guarantors in Indonesia." *Proceedings of the Conference on Law and Social Studies*. ( 2021 ). 21-31

<sup>42</sup> Hartanto, Ratna, and Juliyani Purnama Ramli. "Legal Relationships of the Parties in Peer-to-Peer Lending." *Ius Quia Iustum Law Journal* 25, No. 2 (2018): 320-338.

<sup>43</sup> Novinna, Veronica. "Consumer Protection from the Dissemination of Personal Data by Third Parties: The Case of Fintech "Peer to Peer Lending"." *Udayana Master of Law Journal* 9, No. 1 (2020): 92-110.

<sup>44</sup> Palinggi, Sandryones, and Erich C. Limbongan. "The Influence of the Internet on the Ecommerce Industry and Regulation of Customer Personal Data Protection in Indonesia." *Semnas Ristek (National Seminar on Research and Technology Innovation)*. 4. No. 1. (2020): 23-45

<sup>45</sup> Zaeni Asyhadie, ( 2006 ), *Business Law and its Implementation in Indonesia*, PT Raja Grafindo Persada, Jakarta, p. 24

the right to store, care for and maintain the confidentiality of their data so that the data they own remains private. Any personal data that has been provided must be used in accordance with the consent of the person who owns it and must be kept confidential.<sup>46</sup>

Regarding personal data protection in online lending services, the Financial Services Authority (OJK) has issued Regulation No. 77/POJK.01/2016 concerning Information Technology-Based Lending Services. This regulation regulates the protection of borrowers' personal data when using technology-based lending services. Article 26 letter a of this POJK states that providers are required to maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data they manage from the time the data is obtained until it is destroyed.<sup>47</sup> This means that lenders are obliged to maintain the confidentiality of borrowers' personal data from the time the loan agreement is drawn up until its completion.<sup>48</sup> This obligation must be implemented to achieve protection of borrowers' personal data.<sup>49</sup>

Article 26 letter c of the POJK states that the organizer is obliged to guarantee that the acquisition, use, utilization, and disclosure of personal data obtained by the Organizer is based on the consent of the owner of the personal data, transaction data, and financial data, unless otherwise stipulated by statutory provisions. Based on this article without the consent of the owner of the personal data (borrower), the lender cannot use the personal data for any activity, except with the consent of the owner or otherwise stipulated in statutory provisions.<sup>50</sup> Online loan organizers are also prohibited from providing or disseminating data or information about users to third parties without the consent of the user or required by statutory provisions. The provisions stipulated in these statutory regulations have guaranteed legal certainty regarding the protection of personal data. This protection takes the form of granting the borrower the right to have their personal data protected in the implementation of online loans.<sup>51</sup> If these rights are violated, the borrower can resolve the problem through legal remedies, namely non-judicial (outside the courts) and judicial (courts) remedies.<sup>52</sup>

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<sup>46</sup>Celina Tri Siwi Kristiyanti, ( 2011 ) , Consumer Protection Law, 3rd Edition, Sinar Grafika, Jakarta, p. 38

<sup>47</sup> Priliyasi, Erna. "The Importance of Personal Data Protection in Online Loan Transactions." *National Law Magazine* 49, No. 2 (2019): 1-27.

<sup>48</sup> Agung, Andi Arvian, and Erlina Erlina. "Legal Protection for Consumers Using Online Loan Services." *Alauddin Law Development Journal* 2, No. 3 (2020): 432-444.

<sup>49</sup> Lestari, Ade Putri. "Certainty of Legal Protection in Standard Clauses in Online Loan Agreements in Indonesia." *SUPREMASI: Journal of Law* 2, No. 2 (2020): 174-193.

<sup>50</sup> Syaifudin, Arief. "Legal Protection for Parties in Peer-to-Peer (P2P) Lending-Based Financial Technology Services (Case Study at PT. Pasar Dana Pinjaman Jakarta)." *Dinamika: Scientific Journal of Legal Science* 26, No. 4 (2020): 408-421.

<sup>51</sup> Priyonggojati, Agus. "Legal Protection for Loan Recipients in the Implementation of Peer-to-Peer Lending-Based Financial Technology." *Usm Law Review Journal* 2, No. 2 (2019): 162-173.

<sup>52</sup> Novita, Windy Sonya, and Moch Najib Imanullah. "Legal Aspects of Peer-to-Peer Lending (Identification of Legal Problems and Resolution Mechanisms)." *Jurnal Privat Law* 8, No. 1 (2020): 151-157.

## Sanctions for Personal Data Breaches

Violations of personal data result in legal consequences for the violators.<sup>53</sup> Legal consequences are the consequences arising from legal actions committed by legal subjects.<sup>54</sup> Therefore, the legal consequences of a personal data breach by an online loan provider include sanctions.<sup>55</sup> Legal protection is necessary for borrowers against unilateral actions by business actors (in this case, lenders), and borrowers have the right to seek legal redress.<sup>56</sup> To achieve legal protection, sanctions are necessary for its implementation.<sup>57</sup> Sanctions are motivated by the public's need to address crimes or violations occurring within their environment. Sanctions will foster order and security within the community.<sup>58</sup>

If it is associated with the dissemination of personal data carried out by the online loan organizer,<sup>59</sup> it can be categorized as defamation as regulated in Article 27 paragraph (3) of Law No. 11 of 2008 concerning Electronic Information and Transactions which states that, Any Person who intentionally and without the right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation, then the sanctions imposed are regulated in the criminal provisions of the ITE Law, namely in Article 45 which states that, Any Person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment of up to 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah). In addition to criminal sanctions, specifically violations of personal data in the field of online loans can also be subject to administrative sanctions, as regulated in Article 47 of POJK No. 77/POJK.01/2016.<sup>60</sup>

For violations of the obligations and prohibitions in this OJK regulation, the OJK has the authority to impose administrative sanctions on the Organizer in the form of written warnings, fines, namely the obligation to pay a certain amount of money, restrictions on business activities and, revocation of permits. Furthermore, Article 47 paragraph (2) and (3) of the POJK states that administrative sanctions in the form of fines, restrictions on business activities and revocation of permits, can be imposed with or without prior imposition of administrative sanctions in the form of written warnings, then administrative sanctions in the form of fines can be imposed separately or

<sup>53</sup> Dewi, Sinta. "The Concept of Legal Protection for Privacy and Personal Data Associated with the Use of Cloud Computing in Indonesia." *Yustisia Jurnal Hukum* 5, No. 1 (2016): 35-53.

<sup>54</sup> Nurmantari, Ni Nyoman Ari Diah, and Nyoman A. Martana. "Legal Protection of Borrower's Personal Data in Online Loan Application Services." *Kertha Wicara: Journal of Legal Science* 8 (2019): 1-14.

<sup>55</sup> Rizal, Muhammad Saiful. "Comparison of Personal Data Protection in Indonesia and Malaysia." *Jurnal Cakrawala Hukum* 10, No. 2 (2019): 218-227.

<sup>56</sup> Indriani, Masitoh. "Protection of Online Consumer Privacy and Personal Data in Online Marketplace Systems." *Justitia Jurnal Hukum* 1, No. 2 (2017): 80-100.

<sup>57</sup> Latumahina, Rosalinda Elsina. "Legal Aspects of Personal Data Protection in Cyberspace." (2014): 40-50.

<sup>58</sup> Yuniarti, Siti. "Legal Protection of Personal Data in Indonesia." *Business Economic, Communication, and Social Sciences (BECOSS) Journal* 1, No. 1 (2019): 147-154.

<sup>59</sup> Aswandi, Ririn, Putri Rofifah Nabilah Muchsin, and Muhammad Sultan. "Data Protection and Personal Information Through the Indonesian Data Protection System (IDPS)." *Legislative Journal* 3, No. 2 (2020): 167-190.

<sup>60</sup> Rumlus, Muhamad Hasab, and Hanif Hartadi. "Policy for Combating Personal Data Theft in Electronic Media." *Human Rights Journal* 11, No. 2 (2020): 285.

together with the imposition of administrative sanctions in the form of restrictions on business activities and revocation of permits. A written warning is a written warning given by the OJK to online loan organizers so that the organizers do not repeat the violations committed and harm other parties. Fine sanctions are obligations given by the OJK to online loan organizers to pay a certain amount of money, thus providing a deterrent effect to the organizers because they have violated and harmed other parties.

Restrictions on business activities are restrictions on the capacity of online loan providers to accept borrowers for a specific period. This is done to prevent potential customers from being harmed by personal data breaches by the provider. Revocation of a business license is the most severe sanction imposed on online loan providers. This sanction prevents the provider from legally conducting its business activities. These administrative sanctions are imposed by the Financial Services Authority (OJK), which oversees activities in the financial services sector, including online loans. Sanctions are imposed on online loan providers after the OJK receives reports from several affected parties. Subsequent investigations are conducted. If the provider is proven to have violated laws and regulations and caused harm to several parties, sanctions will be imposed.

## Conclusion

Based on research results related to Personal Data Protection Regulations for Online Loans The parties in the *Fintech business* consist of *Fintech business organizers* or producers and *Fintech users* or consumers. The relationship between the parties in the *Fintech business* occurs through an electronic agreement, namely an agreement made using electronic media. The electronic agreement contains the rights and obligations of the parties in the *Fintech business*. The obligations of *Fintech organizers* include maintaining the confidentiality, integrity, and availability of personal data and transaction data.

The protection of borrower's personal data in online loan services is regulated in POJK No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services, which is emphasized in Article 26 that the organizer is obliged and responsible for maintaining the confidentiality, integrity and availability of user personal data and in its use must obtain approval from the owner of the personal data unless otherwise determined by the provisions of laws and regulations and sanctions for violations of personal data which include defamation, are regulated in Article 45 of the ITE Law in the form of criminal sanctions. In addition to criminal sanctions, specifically regulated in Article 47 paragraph (1) POJK No. 77/POJK.01/2016, namely administrative sanctions, in the form of written warnings, fines, restrictions on business activities, and revocation of permits.

## Recommendation

The government and the supervisory institutions OJK and Kominfo need to strengthen supervision of online loan financial technology providers,

particularly regarding the management and dissemination of consumer personal data, and online loan providers are required to implement the principles of personal data protection, clear informed consent, limitations on the purpose of data use, and electronic system security.

Strict and consistent enforcement of sanctions is needed for organizers who violate personal data protection provisions, and organizers must be transparent in conveying privacy policies to consumers so that they do not disseminate personal data without explicit permission from the data owner.

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