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LEGAL PROBLEMS OF INFORMATION TECHNOLOGY-BASED LOAN LENDING AGREEMENTS

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ABSTRACT

This article aims to analyze legal problems in information technology-based lending and borrowing agreements and how legal protections are for parties in information technology-based lending and borrowing agreements. The method used in writing this article is a normative legal research method with a statute approach. The legal problem of information technology-based lending and borrowing agreements is in the subjective requirements, especially regarding the ability to make agreements that result in the Court's cancellation of the contract. However, the government has provided legal protection to the parties (lenders and loan recipients) in information technology-based lending and borrowing agreements in the form of a prohibition on the inclusion of several things in the standard clauses as regulated in Article 18 of the Consumer Protection Law.

KEY WORDS

Legal problems, financial technology, information technology, loan lending, agreement.

The development of law from time to time continues to change along with the community's needs. Similarly, contract law continues to develop alongside the advancement of science and technology. It starts from agreements known in the Civil Code (Nominaat Agreements), such as lending and borrowing agreements, deals that at the time, the Civil Code was enacted (Innominaat Agreements), such as electronic contracts (Makarim, 2004; Salim, 2016).

Based on the provisions of Article 1754 of the Civil Code, "borrowing is an agreement in which one party gives another party a certain amount of goods that have run out due to use, on the condition that the latter party will return the same amount of the type and condition. the same thing." In lending and borrowing, usually, both parties meet in person to make a loan agreement. In contrast to the deal, in an information technology-based lending and borrowing agreement, the two parties (the lender and the borrower) never meet in person to agree. Therefore, information technology-based lending and borrowing agreements as innominate agreements.

To find out the difference between lending and borrowing agreements in general and information technology-based lending and borrowing agreements, see the table below:

Due to the different forms of lending and borrowing agreements, this information technology-based lending and borrowing to electronic contracts as contained in Law Number 11 of 2008 jo. Law Number 19 of 2016 concerning Information and Electronic Transactions is the Law on Electronic Transaction Information. Furthermore, article 1, number 17 of the Electronic Transaction Information Law stipulates that an electronic contract is an agreement through an electronic system. Therefore, the term "online contract" refers to an electronic contract (e-contract) (Smedinghoff & Bell, 1997). Based on telecommunication networks and services (telecommunication-based) and made easier by the existence of a global computer network, the internet, the network (Makarim, 2004).

According to Mariam Darus Badruzaman, there are six parts Electronic Trade

Contract: a trade contract, electronic (digital) media, an electronic signature, and a digital signature. There is no need for the parties to be there in person. The deal is on a public network. The system is open, which is the internet or WWW. The contract can be in any country (Badruzaman, 2001). Thus, an electronic contract (e-contract) is an agreement between two or more parties using computer media, especially the internet network. Based on the method of occurrence, there are several forms of electronic contracts (e-contracts) that have, namely, electronic contracts (e-contracts) conducted through electronic mail communication (e-mail). In this electronic contract, the offer and acceptance are exchanged via electronic mail (e-mail) or in combination with other electronic communication media. Electronic contracts (e-contracts) through websites and other online services (Smedinghoff & Bell, 1997).

Table 1 – Differences between Lending and Borrowing Agreements in General and Information Technology-Based Lending and Borrowing Agreements

No.	General Lending and Borrowing Agreements	Information Technology-Based Lending and Borrowing Agreements
1.	Agreements occur when both parties meet face to face.	Agreements can occur even if the parties do not meet in person.
2.	Both parties must agree on the terms of the agreement before it is written and signed.	Both parties' agreement is recorded in an electronic document.
3.	To find out that the parties are legally proficient, both parties meet in person, and the parties provide personal data in the form of a photocopy of their ID card.	To find out that the parties are legally proficient, the two parties do not need to meet in person; it is enough to provide personal data in the form of a photo/scan of an ID card.
4.	The contents of the agreement can be made by both the parties or one of the parties in the form of a standard contract.	Only one of the parties is responsible for drafting the contract's substance, which is done in the form of a standard agreement.
5.	Lenders can ask for collateral or guarantees from borrowers.	Collateral from the borrower to the lender.

Source: Researchers, processed, 2022.

As a standard agreement, in addition to containing the characteristics of a legal agreement, the electronic contract also includes the following aspects: Electronic contracts can occur remotely, even beyond national borders, via the internet. Therefore, parties to an electronic agreement generally have never met face to face (faceless nature), perhaps never even met (Badruzaman, 2001). However, according to Johannes Gunawan, whom Sukarmi quoted, electronic contracts still raise several legal issues. For example, using digital signatures as a replacement for handwritten signatures is still insufficient to build trust in all parties and make it possible for them to sign an electronic contract (Sukarmi, 2008).

METHODS OF RESEARCH

Doctrinal legal research with the statute approaches was employed using primary legal materials (Kharel, 2018) in statutory regulations and secondary legal materials (all relevant legal publications and literature).

RESULTS AND DISCUSSION

In the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, there are three parties in this lending and borrowing service, namely the provider, the loan recipient, and the lender. Article 1 point 6 states that the provider is an Indonesian legal entity that provides, manages, and operates information technology-based lending and borrowing services. Article 1, number 7 says that a borrower is a person and the legal entity with the debt due to an information technology-based loan service agreement. Finally, article 1 point 8 states that a lender is a person, legal entity, and business entity with receivables due to an information

technology-based lending and borrowing service agreement.

Article 18 of Financial Services Authority Regulation Number, 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services mentions that there are two agreements for the implementation of information technology-based lending and borrowing services, namely the agreement between the provider and the lender and the agreement between the lender and the recipient. Article 19 paragraph (1) and Article 20 paragraph (1) confirm the agreement between the provider, the lender, the lender, and the loan recipient in an electronic document. Article 1, number 12, says that electronic records are any electronic information sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms that can be seen or heard through a computer or other electronic system (Loan). Includes, but is not limited to, writing, sound, pictures, design maps, photos, or the like, letters, signs, numbers, access codes, symbols, or perforations that have meaning or can buy a computer. Law Number 11 of 2008 concerning Information and Electronic Transactions.

In principle, the legal relationship between the provider, the lender, the provider, and the borrower stems from an information technology-based lending and borrowing agreement. From this agreement arise rights and obligations for both parties. The lender's rights are the provider's obligations, and the lender's obligations are the operator's rights and the relationship between the provider and recipient of the loan. This situation places each party's position (provider, the provider, and the recipient of the loan) in the same or equal part.

Article 1338, paragraph 1 of the Civil Code states that all agreements made legally apply as law for those who make them means that the parties are free to make agreements. Therefore, this article manifests the principle of freedom of contract. Salim H.S. argues that the principle of freedom of the contract is a principle that gives liberty to the parties to make or not enter into an agreement, agree with anyone, determine the content of the deal, its implementation, and its requirements, and select the form of the agreement, namely written or oral (Salim, 2016). According to Fani Martiawan Kumara Putra, the existence of the principle of freedom of contract, as well as the demands of the development of the business world, which requires speed and certainty, of course, requires a service effort that is practical, efficient, and also effective. Therefore, standard contract service (standard) in the business (is also known as a legal contract (Putra, 2015).

The creditor (business actor) always prepares the standard contract unilaterally. The contract generally contains conditions that limit the creditor's obligations. These conditions are called exoneration clauses or exemption clauses. Although the substance of the contract does not meet the sense of fairness, the conditions are detrimental to the debtor (the consumer). There are only two choices, namely accepting or rejecting the contract without being able to propose or even change the substance of the contract, which is considered burdensome. Because the debtor needs the contract, the debtor signs it. This standard agreement is called a coercive agreement (the *Dwang contract*) or take it or leave it contract (Makarim, 2004)

The form of information technology-based lending and borrowing agreements is a standard contract. In the legal agreement, the lender has decided what it says about how to end the agreement, how to make it last longer, and how to settle disagreements and exoneration clauses. On the other hand, the borrower cannot determine the contents of the agreement, and there are only two choices, accept or reject the agreement. The advantages of standard agreements are fast (efficient) services for high-frequency transactional activities but can still provide strength and legal certainty (practical). Meanwhile, the disadvantages of definitive agreements are that consumers or loan recipients have a weak bargaining position and the potential for misuse of circumstances (*Misbruik Van Omstandigheden*) by the organizer to the lender and the borrower.

This information technology-based lending and borrowing agreement risks both parties, the lender and the borrower. The risk for the lender is the potential for fraud (*Bedrog*) by the loan recipient providing false personal data so that it cannot say when it is due. It may happen considering the two parties have never met in person and the loan recipient only provides a photo of an ID card sent online. The risk for the loan recipient is the potential for

misuse of personal data by the lender to the detriment of the loan recipient. As an agreement, the information technology-based lending and borrowing agreement must meet the legal requirements of a deal as contained in the Civil Code.

According to Article 1320 of the Civil Code, four conditions for the validity of an agreement Agree on those who bind themselves, The ability to make an engagement, A specific thing, and a lawful cause. Condition 2 is one of the problems in information technology-based lending and borrowing agreements. How do we know that both parties are proficient in agreeing, considering that they do not know each other, have never met in person, and judge whether they are capable only through files uploaded via the internet? It could be that the person who uploaded the file is not the personal data owner. Of course, this can be checked by the organizers ahead of time, for example, by having a virtual interview where both parties can see each other using a laptop camera or a cellphone.

Terms 1 and 2 are subjective because they relate to the subject of the agreement, while terms 3 and 4 are objective. After all, they relate to the object of the agreement (Syahrani, 1989). If the subjective conditions, the contract can be canceled by the judge at the request of the incompetent party or freely given the deal. The right to request the cancellation of this agreement is limited to 5 years (Article 1454 of the Civil Code). So as long as the deal remains binding.

Meanwhile, the agreement is null and void by law if the objective conditions. From the beginning, there was never an agreement or an engagement. So there is no basis for demanding each other in front of the judge (Court). If these conditions, then the information technology-based lending and borrowing agreement is valid. Article 1338 paragraph (1) of the Civil Code states that all deals made legally apply as law for those who make them (Subekti & Tjitrosudibio, 1999). The principle of Pacta Sunt Servanda, in the article, is about what happens when an agreement. As it befits a law, this principle says that judges or other third parties must follow the terms of contracts. They cannot change the parties' terms (Salim, 2016).

Article 18 paragraph (1) of the Electronic Transaction Information Law states that Electronic Transactions, as outlined in Electronic Contracts, are binding on the parties. Thus, the parties (provider, provider, and recipient of the loan) are bound to execute the electronic contract. Although, according to Ahmadi Miru, the standard warranty is still an agreement that binds the parties who signed it, although it must that the clauses contained in the legal contract transfer the burden of responsibility from the drafting party of the standard contract, any losses that arise in the future will remain. Borne by the parties who must be accountable based on the clause of the agreement, except if the clause is a prohibited clause based on Article 18 of Law Number 8 of 1999 concerning Consumer Protection, from now on referred to as the Consumer Protection Act (Miru, 2011).

CONCLUSION

The legal problem of information technology-based lending and borrowing agreements is in the subjective requirements, especially regarding the ability to make agreements that result in the court's cancellation of the contract. However, the government has provided legal protection to the parties (lenders and loan recipients) in information technology-based lending and borrowing agreements in the form of a prohibition on the inclusion of several things in the standard clauses as regulated in Article 18 of the Consumer Protection Law.

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