

The Role of The Financial Services Authority in The Legal Protection of Privacy Rights in Connection with Personal Data of Fintech Lending Debtor in Indonesia

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Abstract

The speed of disbursement of funds also makes fintech lending seems easy. Consequently, many people are interested to make credit. There are more than 900 alleged violations of law and human rights by online funding applications, including alleged violations of the privacy rights of the debtor's personal data where billing is submitted not only to the debtor but also to all telephone contacts stored on the debtor's cellphone without consent. This study is a prescriptive normative study through library research to look for secondary data by using primary, secondary, and tertiary legal materials and field researches. The study reveals several results. Firstly, although the Regulation of the Financial Services Authority Number 77 of 2016 has been published, fintech providers registered in the Financial Services Authority have not upheld a legal culture to protect debtors on the use of debtors' personal data. Secondly, fintech lending makes it easier for Indonesian people to have a positive impact due to the speed of the application fund disbursement system but this convenience is not matched by the knowledge of debtors who do not read and pay attention to the contents of electronic contracts. Thirdly, as long as the Personal Data Protection Bill has not been ratified, as a preventive measure, the Financial Services Authority can take some alternative roles, namely Financial Services Authority should be involved in reviewing electronic contracts made by fintech lending and giving feasible recommendations on electronic contracts made by parties and standardize electronic contract contents so that each fintech lending company has the same and clear contract contents set by the Financial Services Authority.

Keywords: Fintech, Privacy, Violation

Peran Otoritas Jasa Keuangan (OJK) dalam Perlindungan Hukum Hak Privasi atas Data Pribadi Konsumen Peminjam Fintech Lending di Indonesia

Abstrak

Kecepatan pencairan dana membuat peminjaman fintech tampak mudah. Akibatnya, banyak orang tertarik untuk memberikan kredit. Ada lebih dari 900 dugaan pelanggaran

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hukum dan hak asasi manusia oleh aplikasi pendanaan online, termasuk dugaan pelanggaran hak privasi data pribadi debitur di mana penagihan diajukan tidak hanya kepada debitur tetapi juga ke semua kontak telepon yang disimpan di ponsel debitur tanpa persetujuan. Penelitian ini adalah penelitian normatif preskriptif melalui penelitian kepustakaan untuk mencari data sekunder dengan menggunakan bahan hukum primer, sekunder, dan tersier serta penelitian lapangan. Studi ini mengungkapkan beberapa hasil. Pertama, meskipun Peraturan Otoritas Jasa Keuangan No. 77 tahun 2016 telah diterbitkan, penyedia fintech yang terdaftar di Otoritas Jasa Keuangan belum menegakkan budaya hukum untuk melindungi debitur dalam penggunaan data pribadi debitur. Kedua, pinjaman fintech memudahkan orang Indonesia untuk memiliki dampak positif karena kecepatan sistem pencairan dana aplikasi tetapi kemudahan ini tidak diimbangi dengan pengetahuan debitur yang tidak membaca dan memperhatikan isi kontrak elektronik. Ketiga, selama RUU Perlindungan Data Pribadi belum disahkan, sebagai tindakan pencegahan, Otoritas Jasa Keuangan dapat mengambil beberapa peran alternatif, yaitu Otoritas Jasa Keuangan harus dilibatkan dalam meninjau kontrak elektronik yang dibuat oleh pinjaman fintech dan memberikan rekomendasi yang layak tentang kontrak elektronik dibuat oleh para pihak dan membuat standar konten kontrak elektronik sehingga setiap perusahaan pemberi pinjaman fintech memiliki isi kontrak yang sama dan jelas yang ditetapkan oleh Otoritas Jasa Keuangan.

Kata kunci: *Fintech, Pelanggaran, Privasi*

A. Background

Article 1, Paragraph 3, of the Financial Services Authority Regulation Number 77/POJK.1/2016 on Information Technology Based Money Lending and Borrowing Services defines it as a financial service provider that bring together creditor and debtor entering into loan and loan agreements in rupiah directly by means of an electronic system through the internet network. According to the Regulation, fintech lending companies are required to register to the Financial Services Authority. According to the data from the Financial Services Authority, 106 companies have been registered. On the other hand, the authority also notes that 970 fintech lending companies have not been registered. In short, they are illegal.

Service of fintech lending begins with the registration by debtor agreeing to the standard clauses set by provider of fintech lending application. In this process, a civil law agreement arises between the borrower and the lender. The engagement is regulated in Book III of Civil Code, Article 1233. It states that “every engagement is born good because of agreement, good because of the law”. Article 1234 of the Civil Code states that “each engagement is to give something, to do something, or not to do something”. The borrower as the user of the fintech lending application is a consumer. Therefore, the interests of the borrower need to be protected in accordance with consumer rights regulated by Article 4 of the Law Number 8 of 1999 on Consumer Protection.

In carrying out fintech lending activities, the user’s personal data will be requested by the fintech lending company. The data will be used as identification

and record of accomplishment of debtor or user. Article 1, Point 1, of the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 on Protection of Personal Data in the Electronic System explains that Personal Data is certain personal data that is stored, maintained, and is kept true and protected by confidentiality. The data contains true and real information that exists in the person who provided the information and can be identified in each individual who is useful in accordance with the provisions in the legislation. Therefore, identity in entering into a fintech loan agreement is included in the personal data held by the owner of the data, namely individuals.

In practice, misuse of personal data is often found. For instance, other parties to make loans online somewhere else since it is very easy use debtor's personal data. The easiness makes many individuals to make loans using fintech lending. The ease of borrowing money has made people not careful, especially in protecting their personal data.

The Government of Indonesia also recognizes the weak protection of personal data. Noor Iza, Head of the Sub-Directorate of e-Business Technology and Infrastructure at the Directorate of e-Business Directorate General of Informatics Application of the Ministry of Communication and Information Technology, mentions that the protection of personal data has not been regulated in the law. However, the regulation has been included in Government Regulation Number 82 of 2012 on System and Operation Electronic Transactions.¹ The draft of the Regulation of Minister of Communication and Information on Protection of Personal Data in the Electronic System received criticism from the Institute for Policy Research and Advocacy (ELSAM). In its criticism, ELSAM states that the protection of personal data is part of the right to privacy that requires legal legitimacy at the level of the Law. In addition to criticism of the legislative model, ELSAM also noted four other weaknesses, namely the criteria for personal data that can be accessed by law enforcement, rights recovery mechanisms, supervising the implementation of personal data protection in the electronic system, and finally the need for an independent authority for dispute resolution.²

On November 2018, *Hukum Online* mentions that the Jakarta Legal Aid Institute collected 1,330 alleged violations of law and human rights by online loan applications include very high interest rates without any restrictions, then unclear admin fee payments. Most debtors apply for loans of no more than Rp 2 million. However, the interest to be paid is more than the value of the loan. There are also alleged violations of the right to privacy of personal data from debtors. Billing is done not only to the borrower but also to all telephone contacts stored on the debtors' cellphones. If the borrower is in arrears, the officer of the fintech lending

¹ Anggara, *Menyeimbangkan Hak: Tantangan Perlindungan Privasi dan Menjamin Akses Keterbukaan Informasi dan Data di Indonesia*, Jakarta: Institute For Criminal Justice Reform (ICJR), 2015, p. 4.

² Wahyudi Djafar, *Kritisi Rancangan Peraturan Kementerian Kominfo tentang Perlindungan Data Pribadi*, Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2015, p. 1

application will create a WhatsApp group, followed by a contact list in the borrower's telephone contact. Subsequently, a photo of the debtor's Identity Card is distributed to the group. Defamation that undermines the credibility of fintech debtors often occurs. Debtors can also be threatened, slander, fraud, up to sexual harassment. The Legal Aid Institute also found that the contact and office location of the fintech lending application provider were unclear and were not even registered. Applications can also be renamed without notice to borrowers, while loan interest is growing.³ The fintech lending application also disappears from the Appstore or Playstore so it cannot be accessed. Weaknesses of lending applications also often occur because the system that is managed is not good enough so that when debtor has paid the loan, the loan is not written off because it is not included in the system.⁴ The Indonesian Fintech Association also stated that the violations that are often committed by fintech lending are the use of personal data of users that are not in accordance with their purpose and objective.⁵ For example, Rupiah Plus collects credit payments by misusing the contact number list on their customer's cellphone. In fact, many people who were contacted from the contact number list did not know anything about the loan. It is not only violates consumer protection but also disturbs the privacy of others who are not related to the loan.

Table 1. Alleged Violations of the Right to Privacy (Source: LBH Jakarta and OJK RI)

Number	Alleged Violations of Rights to Privacy	Year
1	970	2018
2	990	2019

The table records the last two years alleged violations of the right to privacy by fintech lending providers in Indonesia. The data is an elaboration from the Jakarta Legal Aid Institute (LBH –Lembaga Bantuan Hukum) and the Financial Services Authority (OJK –*Otoritas Jasa Keuangan*), which received complaints of violations

³ Yulistyne Kasumaningrum, "Dua Sisi Fintech: Diantara Peluang Dan Tantangan", *Pikiran Rakyat*, <https://www.pikiran-rakyat.com/ekonomi/2019/10/10/fintech-diantara-peluang-dan-tantangan>, accessed on October 10, 2019 at 09:00 pm.

⁴ Ambaranie Nadia Kemala Movanita, "Dugaan Pelanggaran Fintech: Bocorkan Data Pribadi Hingga Pelecehan Seksual", *Kompas*, <https://ekonomi.kompas.com/read/2018/12/10/063800526/dugaan-pelanggaran-fintech-bocorkan-data-pribadi-hingga-pelecehan-seksual>, accessed on October 9, 2019 at 12:30 pm.

⁵ Murti Ali Lingga, "Fintech Lending Kerap Salahgunakan Data Pribadi Peminjam", *Kompas*, 2019 <https://money.kompas.com/read/2019/07/05/142700126/fintech-lending-kerap-salahgunakan-data-pribadi-peminjam>, accessed on October 10, 2019 10:00 pm.

committed by 89 fintech lending organizers. The LBH states that as of November 2018, there were 1,330 complaints of violations of law and human rights committed by Fintech Lending. Most of victims (A total of 975) were women and the complaints came mostly from Jakarta. As of November 2018, there were around 970 alleged violations of the right to privacy against users or customers of fintech lending. As of October 2019, there were at least 990 alleged violations of the right to privacy to fintech lending customers. Reported violations are the distribution of personal data through WhatsApp, threats, defamation, sexual harassment, and a well-managed loan system. According to the LBH Jakarta and the OJK, the main source of this problem is the protection of personal data of fintech lending application users, which is very minimal.

The table also indicates that the alleged violation of the right to privacy is increasing rapidly every year. This shows that the protection of personal data in fintech lending is still not protecting its customers properly because the number is increasing every year regarding invasion of privacy. Protection of personal data is the right to privacy of a person of economic value to third parties who wish to utilize the data. Based on the data, law enforcement for the Regulation of the Financial Service Authority Number 77 of 2016 has not been able to protect the privacy of customers properly. Therefore, an alternative role form of OJK is needed to protect the privacy of customers to minimize violations of the right to privacy that is often times it happens to fintech lending.

This article examines a fintech lending company related to alleged violations of the right to privacy of personal data from their customers. Based on the data, it is revealed that the fintech lending provider violated the law by selling the customer's personal data and then accessing the list of telephone numbers on the borrower's cellphone, and even visiting the home and school of the debtor's children. This study formulated a problem regarding how alternative forms of legal protection to protect fintech lending customers in the context of respecting the privacy rights of customers' personal data.

B. Data Privacy Policy for Electronic Personal Data in Indonesia

Personal data is a part of the right to privacy. It is a derogable right of human rights that can be restricted. It means that the exercise of the right must be done by paying attention to and respecting the rights of freedom of others. It should not interfere with national security or public order.⁶ In addition, restrictions or exceptions to the right to privacy can also only be done for valid reasons through consent and based on the law. In this case, the data is someone's personal that may not be desired to be published or known by other people or the public. In this case, personal data is often also interpreted as data that can be in the form of

⁶ Irawati Handayani, "Jus Cogens-International Law and Social Contract," *Book Review Padjadjaran Jurnal Ilmu Hukum*, Vol. 3, No. 3, 2016, p. 653

identity, code, symbols, letters, or verses of someone's personal marker that are personal.⁷ Protection of personal data is related to the concept of privacy. The concept of privacy itself is the idea of maintaining personal integrity and dignity.⁸ Privacy includes the right to control one's personal information and the ability to determine in any case and how the information should be obtained and used.⁹

The right to privacy through data protection is not only important but also a key element for individual freedom and dignity. Data protection is a powerful driver for the realization of political, spiritual, religious, and even sexual freedom. The right to self-determination, freedom of expression and privacy are important rights to make us human beings.¹⁰ According to Stephens-Davidowitz, personal data is the same thing as the human body. It means the data is the same thing as parts of the body that cannot be touched and owned without permission.¹¹ Kang defines personal data as an information closely related to someone that can distinguish the characteristics of each person.¹² The form of data protection is divided into two forms: visible and invisible data.¹³ In the history of its development, privacy is a universal concept. It is known in various countries both in the form of laws and in the form of ethical rules. For example, in the Netherlands, it is known as *dignitas*, which means personal rights. In Germany, it is known as *persönlichkeitsrecht*, which means personal rights as embodiment of one's personality. In Switzerland, the term is *Geheimssphäre*, which means individual privacy.¹⁴

Implicit rules regarding personal data can be found in Articles 28F and 28G, Paragraph 1, on freedom to store information and protection of data and information attached to individuals. Provision of personal data is increasingly widespread through online applications in Indonesia, lead to uncertainty about what things can be taken by online applications. The absence of strict sanctions on online applications that utilize personal data from users' unwise causes material and immaterial losses and even crimes.¹⁵ Regulations regarding personal data in Indonesia are contained in the Law Number 11 of 2008 as amended by the Law Number 19 of 2016 on Information on Electronic Transactions, specifically in Article

⁷ Rosalinda Elsin Latumahina, "Aspek Hukum Perlindungan Data Pribadi Di Dunia Maya", *Jurnal Gema Aktualita*, Vol. 3, No. 2, 2014, p. 16.

⁸ Wahyudi Djafar dan Asep Komarudin, *Perlindungan Hak atas Privasi di Internet-Beberapa Penjelasan Kunci*, Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2014.

⁹ Edmon Makarim, *Pengantar Hukum Telematika*, Jakarta: Raja Grafindo Persada, 2005, p. 163.

¹⁰ Sinta Dewi, "Konsep Perlindungan Hukum atas Privasi dan Data Pribadi dikaitkan dengan Penggunaan Cloud Computing di Indonesia", *Yustisia Jurnal Hukum*, Vol. 5, No. 1, 2016, pp. 22–30.

¹¹ Seth Stephens-Davidowitz, *Everybody Lies Big Data dan Apa Yang diungkapkan Internet tentang Siapa Kita Sesungguhnya*, Jakarta: Percetakan PT. Gramedia, 2019, pp. 62–74.

¹² Jerry Kang, "Information Privacy in Cyberspace Transactions", *Stanford Law Review*, Vol. 50 No. 4, 1998, p. 5.

¹³ Purwanto, *Penelitian Tentang Perlindungan Hukum Data Digital*, Jakarta: Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM RI, 2007, p. 13.

¹⁴ Sinta Dewi, *Perlindungan Privasi Atas Informasi Pribadi dalam E-Commerce menurut Hukum Internasional*, Bandung: Widya Padjajaran, 2009, p. 7.

¹⁵ Kukuh Tejomurti (et.al.), "Legal Protection for Urban Online-Transportation-Users' Personal Data Disclosure in the Age of Digital Technology", *Padjajaran Journal of Law*, Vol. 5, No. 3, 2018, p. 494.

26. It reads "Unless otherwise stipulated by legislation, use, any information through electronic media that involves a person's personal data must be carried out with the consent of the person concerned". This article does not define personal data but mentions personal data as a part of personal rights. The Law Number 19 of 2016 on Electronic Transaction Information does not explain the definition of personal data. Therefore, the Law is ambiguous since it does not explain the scope of personal data itself.¹⁶ There is no comprehensive protection of personal data that is regulated in Indonesian law.

The concept of personal data protection first appeared in 1960s. Personal data protection arrangements are the key to business and economic problems in the modern era because they often involve data manipulation such as customer data segmentation, including data mining and data picking. The issue of the right to privacy is important because it relates to the protection of Human Rights, listed in Article 12 of the Universal Declaration of Human Rights (UDHR) of the United Nations as follows.

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".

Furthermore, Article 28G of the 1945 Constitution of the Republic of Indonesia mentions the following.

"Every person has the right to protect their selves, family, honor, dignity, and property under his authority, and is entitled to a sense of security and protection from the threat of fear to do or not do something that is a human right".

The 1945 Constitution of the Republic of Indonesia mentions that "The national goal is to protect the citizens of Indonesia and the whole country, as well as to promote the general welfare and the intellectual life of the nation and the establishment of the world order based on freedom, social justice, and world peace."¹⁷

Cannataci states that if a person feels his privacy data is well protected, then the individual will have the choice to live the life based on motivation and reasons authentically, not the result of manipulation or pressure from others.¹⁸ Concerns about the violation of the right to privacy are important, in addition to being in the

¹⁶ Setyawati Fitri Anggraeni, "Polemik Pengaturan Kepemilikan Data Pribadi", *Jurnal Hukum Dan Pembangunan*, Vol. 48, 2018, p. 819.

¹⁷ Sinta Dewi Rosadi, 'Protecting Privacy On Personal Data In Digital Economic Era: Legal Framework In Indonesia', *Brawijaya Law Journal*, Vol. 5, No. 1, 2018, p. 2

¹⁸ Joe Cannataci, *Sudahkah Smart City Melindungi Hak Privasi Masyarakat Modern?*, Jakarta: Lembaga Studi Dan Advokasi Masyarakat (ELSAM), 2017, p. 4.

context of state life, it is obligatory to protect the right to privacy of citizens, as well as the existence of several acts of crime that have occurred in Indonesia and harming the citizens themselves.

The comprehensive regulation governing personal data protection is the European Union's General Data Protection Regulation (GDPR). The charter governing basic rights in the European Union regulates the right to protect personal data. As a follow up, GDPR 2016/679 has been enacted to protect individuals in processing personal data and exchanging information in connection with such personal data. This regulation takes effect on May 25, 2018. The vulnerability of the online system, especially the possibility of interruption of personal information about financial or medical conditions that consumers routinely provide to banks, retailers, agents, and insurance and credit companies has added to the concern of consumers who use online transactions without adequate security.¹⁹ Dissemination of consumer information collected through questionable means and the potential theft of important information stored by companies by insiders has caused anxiety for those who intend to conduct transactions online.²⁰ At present, there are more than 75 countries that place data protection in legislation.²¹ They are, among others, the Data Protection in the United States²², Data Protection in the United Kingdom²³, Data Protection in Argentina²⁴, Personal Information Protection and Electronic Documents in Canada²⁵, Personal Data Protection Act in Japan, Indian Information Technology Regulations, South Korea Personal Information Protection Act, Singapore Data Protection Law, and the Philippine Personal Data Act.

Article 26C of the Financial Services Authority Regulation Number 77/POJK.01/2016 on the Information Technology Based Lending and Borrowing Services explains that all actions related to personal data, transaction data, and financial data are carried out based on the owner's consent or regulation. According to the regulation, the OJK only protects personal data in registered and legal fintech lending. For unregistered and illegal fintech lending, the OJK is not responsible and does not protect the personal data of its users. The ease in fintech lending transactions makes people more interested in it than banks. There are some weaknesses of fintech lending, which is quite detrimental to its users. In conducting fintech lending transactions, the agreements often force users and

¹⁹ Geistiar Yoga Pratama, Suradi Aminah, "Perlindungan Hukum terhadap Data Pribadi Pengguna Jasa Transportasi Online dari Tindakan Penyalahgunaan Pihak Penyedia Jasa berdasarkan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen", *Diponegoro Law Jurnal*, Vol. 5, No. 3, 2016, hlm. 5.

²⁰ Assafa Endershaw, *Hukum E-Commerce Dan Internet Dengan Fokus Di Asia Pasifik*, Yogyakarta: Pustaka Pelajar, 2007, p. 412.

²¹ Graham Greenleaf, "India's U Turns on Data Privacy", *Privacy Laws and Business International Report*, Issues 110-114, 2011, p. 7.

²² The Privacy Act of 1974

²³ Data Protection Act 2018

²⁴ Law Number 25326 on The Personal Data Protection Law

²⁵ Personal Information Protection and Electronic Documents Act (PIPEDA)

most users simply agree to the agreements without reading and reconsidering the contents of the agreement. The facilities available in the fintech lending transaction that blinded the public to the importance of personal data and agreed to just like that personal data were distributed to third parties. Even though there are rules regarding personal data that can be opened in conducting fintech lending transactions, only cameras, microphones, and locations, in reality some fintech lending requests to access contacts registered on the borrower's cellphone, then access the chat on the borrower's cellphone. However, in fact it requests not only to access camera, microphone, and location but also the contacts on the debtor's cellphone.

The opinion of Warren and Brandeis in their work entitled "The Right to Privacy" states that privacy is the right to enjoy life and the right to be respected for feelings and thoughts.²⁶ Personal data is an asset or commodity of high economic value.²⁷ According to the Human Rights Commission of the United Nations, there are reasons why privacy is classified as a basic human right because the protected are humans as individuals who need to develop their personality by providing zones (space) for themselves.²⁸ Technological advances pose a threat to personal privacy and information security.²⁹ The right to protection of personal data develops from the right to respect personal life or is called the right to private life.³⁰ The concept of personal life is related to humans as living things. Thus, the individual is the main owner of the right to protect personal data.³¹ Makarim, referring to some experts, mentions that there are three important principles regarding personal rights. They are:³²

1. the right to keep personal life to be not disturbed by others;
2. the right to keep sensitive confidential personal information; and
3. the right to control the use of personal data by other parties.

According to Munir, privacy can be categorized into four groups.³³ They are:

1. privacy of information, related to the way collection and management of personal data such as credit information and health records;

²⁶ Sinta Dewi, *Aspek Perlindungan Data Privasi menurut Hukum Internasional, Regional dan Nasional*, Bandung: Refika, 2015, p. 12.

²⁷ Edmon Makarim, *Kompilasi Hukum Telematika*, Jakarta: PT. Raja Grafindo Perkasa, 2003, p. 3.

²⁸ Nihal Jayawickrama, *The Judicial Application of Human Rights Law, National, Regional and International Jurisprudence*, United Kingdom: Cambridge University Press, 2002, p. 605.

²⁹ Daniel Harianja, "Politik Hukum dalam Perlindungan Data Pribadi Di Indonesia", *Tesis Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Atmajaya Yogyakarta*, 2015, pp. 111-112.

³⁰ Graham Greenleaf, *Asian Data Privacy Laws - Trade and Human Rights Perspectives*, New York: Oxford University Press, 2014, p. 104.

³¹ Ariel Salmang, "GDPR, Ai and Machine Learning in the Age of Data Privacy", *Intouch International Journal*, Vol. 1, Summer 1991, pp. 11-13.

³² Edmon Makarim, *Tanggung Jawab Hukum Penyelenggara Sistem Elektronik*, Jakarta: Rajawali Pers, 2010, pp. 298-299.

³³ Abu Bakar Munir, Siti Hajar and Mohd Yasin, *Privacy and Data Protection*, Malaysia: Sweet & Maxwell Asia, 2002, p. 3.

2. privacy of body organs, related to the physical protection of a person such as procedures for examining the use of drugs, taking biometric data such as fingerprints or retina of the eye;
3. privacy of communications, including protection of one's communications, for example letters, telephone, e-mail or other forms of communication;
4. privacy over territories, for example privacy in a domestic or residential environment and privacy at workplace.

Human rights are regulated in the 1945 Constitution and the Laws and Regulations confirm that the concept of the rule of law has the characteristic of protecting personal data as the privacy of every individual. In reality, the existing regulations have not been implemented properly so that violations of personal data in Indonesia continue to increase every year. The advancement of technology and information does not minimize the violations and even makes the violations increase. The birth of online money lending or known as fintech lending does not solve the problem of personal data in Indonesia, even the majority of violations that occur in fintech lending are violations of personal data. Indonesian people awareness on personal data are considered a quite low. The large number of individuals who do not keep confidential information relating to themselves or their families reinforces this. When asked for a telephone number there are still many individuals who do not ask the purpose. When reading a contract before making a transaction in fintech lending, there are still individuals who only directly approve without really knowing and understanding the contents of the contract. The contracts of fintech lending were made with standard agreements that make customers not care about the contents of the contract. Weak awareness of the public also triggers more violations of personal data that occur in Indonesia. Not all people in Indonesia also understand that the loss from the violation of personal data cannot be assessed in value, because it is not only a physical loss but a loss that can disrupt personal life. From this explanation, the alternative role form of OJK was formed as an effort to make the community more aware of the importance of personal data as a form of appreciation for humans as individuals who live in a country and minimize the violations that occur related to personal data of each individual.

C. Misuse of Customer Personal Electronic Data and Potential Violations of the Right to Privacy

Globalization causes technology to develop rapidly which has an impact on changes in human life systems and the internet as one of the basic human needs. This has an impact on financial services institutions in Indonesia, namely new breakthroughs in lending through fintech lending. Various innovations of the fintech model have begun to develop in Indonesia with the establishment of financial institution companies, which is one illustration that the development of financial institutions

in Indonesia is very innovative.³⁴ Fintech lending is a type of crowdfunding that in practice uses the internet or social media as a means to raise funds.³⁵ Crowdfunding is an open call to provide financial resources.³⁶ Fintech lending is a financing model that allows a loan to borrow money without the existence of a financial institution because it uses technology and big data to connect creditors and debtors more quickly and easily than banks.³⁷ Fintech lending is a picture of an online market where creditors can lend money to debtors.³⁸ Initially, fintech was originated from the Silicon Valley and later expanded to New York, London, Singapore, Hong Kong, and several other global cities.³⁹ There are different methods between fintech lending and banks. Banks have 5C principles, namely Character, Capital, Capacity, Collateral, and Condition of Economy.⁴⁰ Fintech lending does not apply the principle 5C.

In fintech lending, creditors invest directly in the application and they can find out information about debtors. The application provides various functions to show their credibility. The debtors' personal data were requested when they propose credit and the terms and conditions of making a loan in the form of a standard clause that is *I agree, I accept*, which makes the borrower in the position take it or leave it. Therefore, the method in fintech lending is different from borrowing money in conventional banks.⁴¹ Fintech lending gives the authority to the organizer to recommend, choose, and analyze loan conditions and select creditors and debtors.⁴² This platform also allows lenders to collect their funds to finance borrower requests.⁴³

In the fintech lending mechanism, there are three parties. They are (1) creditors, as a party who have capital and have the desire to provide loans, (2)

³⁴ Satria Utama and Inayatul Ilahiyah, "Pengembangan Model Low Cost Islamic Peer to Peer Financing Berbasis Finansial Technology untuk Akselerasi Kinerja UMKM", *Islamic Economics Journal*, Vol. 4, No. 2, 2018, p. 2.

³⁵ Nick Sanjaya, "Analisis Yuridis Perlindungan Konsumen Terhadap Pemberi Pinjaman Dalam Peer to Peer Lending Berdasarkan Undang-Undang No. 21 Tahun 2011 Tentang Otoritas Jasa Keuangan", *Karya Ilmiah Fakultas Hukum Universitas Katolik Parahyangan*, 2017, hlm. 45.

³⁶ Paul Belleflamme, Nessrine Omrani, and Martin Peitz, "The Economics of Crowdfunding Platforms", *Information Economics and Policy*, Vol. 33, 2015, p. 1.

³⁷ Olivier Garret, "The 4 Best P2P Lending Platforms For Investors In 2017 -- Detailed Analysis", *Forbes*, <https://www.forbes.com/sites/oliviergarret/2017/01/29/the-4-best-p2p-lending-platforms-for-investors-in-2017-detailed-analysis/>, accessed on October 12, 2019 at 11:00.

³⁸ Alexandra Mateescu, "Peer-to-Peer Lending", *Data & Society Research Institute*, 2015, p. 2.

³⁹ Budiharto, Sartika Nanda Lestari, and Gusto Hartanto, "The Legal Protection of Lenders in Peer to Peer Lending System", *Law Reform*, Vol. 15 No. 2, 2019, p. 278.

⁴⁰ Sentosa Sembiring, *Hukum Perbankan*, Edisi Revisi, Bandung: Mandar Manju, 2012, p. 200.

⁴¹ Huaqing Wang, Kun Chen, Wei Zhu, and Zhenxia Song, "A Process Model on P2P Lending", *Financial Innovation*, Vol. 1 No. 3, 2015, pp. 1–17.

⁴² Kevin Davis, Rodney Maddock, and Martin Foo, "Catching up with Indonesia's Fintech Industry", *Law and Financial Markets Review*, Vol. 11, No. 1, 2017, pp. 33–40.

⁴³ Zaiyan Wei and Mingfeng Lin, "Market Mechanisms in Online Peer-to-Peer Lending", *Management Science*, Vol. 63, No. 2, 2017, pp. 1–22.

creditors, as a party who need capital to run their businesses, and (3) the fintech lending company as a platform bringing together creditors and debtors.⁴⁴

There is a privacy policy of a fintech lending company in Indonesia that their application can access, obtain, store, manage, and/or use personal data contained in electronic devices (smartphones or cell phones), hardware (hardware), or software (software), electronic documents, applications or electronic systems belonging to the user or controlled by the user with the user's consent by notifying the destination.

However, in practice, this was not done according to the proper procedure. Then there is an article that states that creditors who do not have the knowledge and experience of borrowing and lending are advised not to use this service. This has violated human rights, in accordance with Article 14 of Law Number 39 of 1999 on Human Rights that everyone has the right to obtain information needed to develop his person and environment.

This study examines two victims of alleged violations of the right to privacy from online loans residing in Jakarta. The two customers, namely the initials YR and ER in Jakarta, describe the act of charging roughly by exposing their debts to their contacts via WhatsApp and SMS in rude manners.

Number	Victim	Threat	Alleged Violation
1	YR	<p>Sentences via whatsapp:</p> <p>a. <i>"Sampe anda tidak bayarkan saya blast semua kontak anda!!!"</i> [Until you pay me, I blast all your contacts!!!]</p> <p>b. <i>"Saya bikin malu keluarga anda atau bayarkan sekarang!!!"</i> [I embarrass your family or pay it now!!!]</p> <p>c. <i>"Data-data anda ada di saya semua saya kirimkan foto anda dan saya kirimkan KTP anda ke keluarga anda kalau anda minjem di Online !!! saya bikin malu saudara anda temen anda semua kalau anda tidak bayarkan sore ini !!!"</i> [I have all of your data are with me. I will send your photos and I will send your ID to your family to tell them that you borrow</p>	Violation of privacy rights of personal data

⁴⁴ Wurianalya Maria Novenanty, "Perlindungan Hukum bagi Lender dan Borrower dalam Peer to Peer Lending di Indonesia," *Proceeding APHK IV Mencari Model Pembaruan Hukum Perikatan Penormaan Prinsip dan Langkah Legislasi*, Palembang, 9-11 Oktober 2017, p. 6.

		<p>money online! I will shame your friends and family if you do not pay this afternoon !!!]</p> <p>d. <i>"Sampai anda tidak membayar saya bikin resah keluarga anda atau kantor anda sekarang."</i></p> <p>[Until you pay, I will make your family or your office discomfort now]</p>	
2	ER	<p>The fintech lending debt collector comes to the debtor's house where the debtor's mother lives with the debtor. The home address is obtained from data requested by the fintech lending application. The debt collector shouts angrily in front of the debtor's house and impolitely invites the debtor to come out.</p> <p>A few days later, the debt collector, without permission entered the home page, all telephone contacts from the debtor were contacted, and went to the school of debtor's child.</p>	Alleged violation of privacy rights of personal data.

(Source: interview with the victims)

The data in the table indicates that business owners who own, process, and utilize personal data of users have used personal data that leads to violations of the rights of privacy of users. The risk of violations will be higher if the data held by fintech lending providers are managed unprofessionally and non-transparently. The leak of personal data is a risk that must be avoided by consumers and business actors because violation of privacy causes the loss that is difficult to assess. The loss can be far greater than the physical loss because it may disrupt personal life. Therefore, if there is a loss suffered, the victim must obtain compensation.

D. Alternative Roles of the Financial Services Authority in Legal Protection of Personal Data of Fintech Lending Consumers in Indonesia

The development of information technology is currently taking place through online media. Data or information conveyed through online media is actually a valuable thing. In addition, activities that take place online also have risks because they can cause problems if the data or information is leaked so that it can be misused by irresponsible parties. Personal data is important to protect so it is not misused and exploited by irresponsible parties. Therefore, a clear and detailed legal protection design is needed to regulate and protect customers in fintech lending.

Article 2, Paragraph 1, of the Regulation of the Minister of Communication and Information Number 20 of 2016 on the protection of Personal Data explains that it

covers protection of the acquisition, collection, processing, analysis, storage, appearance, announcement, transmission, distribution, and destruction of Personal Data. In this case, the importance of establishment of the Personal Data Protection Law is undeniable. It must regulate the protection of personal data to face the possible violation of personal data. The consumers must be able to report immediately about violations of their privacy because violations of privacy will interfere for the safety of the individual's life, the security of the family, and even property rights. Another thing about the importance of the Personal Data Protection Law is to fill state legal vacuum in protecting citizens, especially regarding their privacy rights.

Fintech lending providers must be responsible for the safety of consumers' personal data since they own, process, and use the big data. It can be started from the requirement for the transparency of processing and the use of personal data of users to be transferred to special commissions, such as the OJK, to protect the consumers.⁴⁵ In an effort to standardize services, the government must also regulate the substance of technical arrangements relating to the implementation and process of fintech lending because almost all of them have specific systems that require specific standards. The OJK is in charge of overseeing the financial services sector and the Central Information Commission (KIP—*Komisi Informasi Pusat*) can coordinate in the framework of legal protection for the public. They must be supported by regulations that regulate technical matters regarding the transparency mechanism, as long as the Draft Law on Personal Data Protection has not yet been ratified. The KIP, as an independent institution, was born based on the Law Number 14 of 2008 on the Transparency of Public Information. The Commission consists of the Central Information Commission, which is based in the National Capital, the Provincial Information Commission, which is based in the Provincial Capital. At least the FSA in each region and KIP in the area can coordinate with each other in the context of legal protection, especially related to violations of personal data privacy committed by fintech lending, which is spread throughout Indonesia. The Provincial Information Commission must also reflect the elements of government and elements of society.

In formulating the principles of legal protection in Indonesia, the foundation is ideology and state philosophy. The conception of legal protection for the people in the West is based on the concept of *rechtstaat* and rule of law. By using the Western conception as a framework of thinking with a foundation on Pancasila, the principle of legal protection in Indonesia is the principle of recognition and protection of human dignity that originate from Pancasila. The principle of legal protection against government actions rests and comes from the concept of the recognition and protection of human rights because according to its history in the

⁴⁵ Aana Sofa Yukung, "Urgensi Peraturan Perlindungan Data Pribadi dalam Era Bisnis Fintech," *Jurnal Hukum dan Pasar Modal*, Vol. VIII, Edisi 16, 2018, p. 15

West, the birth of the concepts of recognition and protection of human rights is directed to the limitations and placement of community obligations and government.⁴⁶ Legal protection can be divided into two types as follows.

1. Preventive Legal Protection

Legal protection that aims to prevent before a violation occurs. This is done by means of the laws and regulations intended to prevent the occurrence of a violation and provide signs or restrictions in carrying out an obligation. Implicit regulations of personal data can be found in Article 28C, Paragraph (1), Article 28D, Article 28G, Article 28I of the 1945 Constitution of the Republic of Indonesia. The regulations also cover Article 29, Paragraph 1, Article 31, Article 32 of the Law Number 39 of 1999 on Human Rights. In addition, Article 26 of Law Number 19 of 2016 on the Amendment to the Law Number 11 of 2019 on Electronic Information and Transactions also contains some rules of personal data. Lastly, the Government Regulation Number 82 of 2012 on the Implementation of Electronic Systems and Transactions and the Regulation of the Minister of Communication and Informatics Number 20 of 2016 on Protection of Personal Data in Electronic Transactions also covers the rules of personal data.

In the context of the enactment of the Personal Data Protection Law and the weak enforcement of the Regulation of the Financial Services Authority Number 77/2016 in legal protection for the right to privacy of the personal data, as a preventive measure, some alternative roles of the OJK can be proposed as follows.

- a. Article 9 of the Regulation of the Financial Services Authority Number 77/2016 stipulates that registered fintech lending providers are required to submit periodic reports in every three months containing the number of lenders and loan recipients; quality of loans received by loan recipients; and activities that have been carried out after being registered in OJK. From the various reports, the FSA can be able to oversee and review all contracts made by fintech lending companies. The OJK can check the electronic contracts made by fintech lending companies and makes rules related to the standard content of electronic contracts that can be applied by fintech lending companies. This prevents injustices and losses for users in making electronic contracts since all customers will always have the same electronic standard contracts with all fintech lending companies. This is important since this study found that there were electronic loan contracts appointing a certain court without pre-contract communications with the debtors. The debtors can face difficulties if the place of residence is very far from the court (outside the borrower's jurisdiction). For instance, the debtor is in the Sulawesi Island, while in the electronic contract designating the South Jakarta District Court in case of a dispute.

⁴⁶ Philipus M. Hadjon, *Perlindungan Rakyat bagi Rakyat Indonesia (Sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara)*, Surabaya: PT. Bina Ilmu, 1987, p. 38.

According to the 1996 UNICTRAL Model Law on Electronic Commerce, electronic documents must be understood as a form of agreement of the parties. It is not only formulated in the form of electronic agreements but also in features provided, such as “I agree” or “I accept” as a form of agreement, because the recipient can face the condition of take it or leave it. It is also regulated in Article 36 of the Financial Services Authority Regulation Number 77/POJK.01/2016 on the Information Technology Based Money Lending and Borrowing Services. However, the standard contract is suspected to be detrimental to users of fintech lending applications because electronic contract makers namely fintech lending providers often does not provide a clear contract in writing.

- b. The OJK should immediately establish an Alternative Institution for Fintech Lending Dispute Resolution and advised the parties (fintech lending providers and their consumers) to apply Online Dispute Resolution (ODR) in resolving fintech lending disputes.
- c. Another alternative role is that the OJK and the KIP can coordinate in exercising their authority in the context of legal protection for fintech lending users who violate the right to privacy of users’ personal data. Not only are these two regulatory authorities required, but they must also have authority, impartiality, and be the body that oversees the implementation of data protection laws. Strong regulation will still not be effective if strong law enforcement authority and proper compensation procedures do not support it even though the regulator’s ability to provide penalties is still limited.

2. Repressive Legal Protection

Legal protection aims to provide sanctions such as fines, imprisonment, and other additional penalties given when violations have occurred. For instance, customers can submit a complaint to the fintech lending, which usually can be done in the application. Complaints can be in the form of written complaints that can be made via email or website and unwritten complaints by contacting the fintech lending application call center. It can also be submitted directly to the customer service of the Directorate General of Post and Information Technology Licensing and Information Technology. Imposition of sanctions can also be carried out, in this case in the form of administrative sanctions that have been regulated in Article 36, Paragraph (1), of the Regulation of the Minister of Communication and Information Number 20 of 2016 on the Protection of Personal Data in Electronic Systems. Sanctions can also be in the form of civil sanctions based on Article 38 of the Electronics Information and Transaction Law.

E. Conclusion

Personal data as a part of human right must be protected by the state because it is a powerful driver for the realization of the freedom of individuals to express

themselves in determining their own destiny. Personal data is an important element of every individual that must be protected. The absence of comprehensive personal data protection in Indonesian Law and the inexistence of a good legal culture in the protection of consumers regarding the right to privacy of personal data can cause individuals to feel that their rights to privacy have not been adequately protected. On the other hand, the era of business development and information technology is increasingly developing. Therefore, there are several alternative roles proposed. First, the OJK can play a role in overseeing and reviewing all electronic fintech lending contracts with consumers so that electronic contracts are expected to have implications for the realization of justice for both parties. Second, the OJK immediately establish an Alternative Institution for Fintech Dispute Resolution Online in order to facilitate both parties to settle dispute efficiently and effectively. Third, in the context of the enactment of the Personal Data Protection Law, as a preventive measure, the OJK and the KIP can coordinate in exercising their authority in the context of legal protection for fintech lending providers who violate the right to privacy of personal data both in central as well as in regions.

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