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Legal Reconstruction of Standard Agreements with Exoneration Clauses on Peer-To-Peer Financial Technology Based on Justice Values

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Abstract

This research aims to examine and analyze standard peer-to-peer lending contract agreements with exoneration clauses that are not based on the value of justice. To study and analyze the weaknesses that arise in implementing peer-to-peer lending Financial Technology agreements at this time. To study and analyze the reconstruction of standard agreements with exoneration clauses on peer-to-peer lending Financial Technology based on the value of justice. The method used in this research is sociological juridical. The paradigm in this research is constructivism. The theory used in this study is the Pancasila legal theory of justice as a grand theory, the working theory of law as a middle ranged theory, and the progressive theory as an applied theory. Based on the research conducted, it was found that standard peer-to-peer lending contract agreements with exoneration clauses that are not based on the value of justice are due to overlapping rules, the lack of reach of law enforcement in standard contracts made by Financial Technology institutions, and the influence of globalization which has resulted in the growth of financial institutions. technology is getting out of control. So it is necessary to amend the provisions of the Financial Services Authority Circular Letter Number 13/Seojk.07/2014 in which the financial services business actors are not only entitled to make procedures regarding standard agreements, but it is necessary to regulate the position of Financial Technology institutions in the Republic of Indonesia Financial Services Authority Regulation Indonesia Number 10/Pojk.05/2022 concerning Information Technology-Based Joint Funding Services is clear. It is necessary to regulate information on the process of public complaints against the OJK, especially in the case of Financial Technology institutions. It is also necessary to control sanctions related to Financial Technology that violates the law, especially in standard agreements with exoneration clauses.

Keywords: Legal Reconstruction, Exoneration, Loan, Justice Value.

INTRODUCTION

Peer-to-Peer (P2P) lending services provide convenience and benefits for the community. Lending and borrowing money no longer requires a physical meeting between the borrower and the lender but is brought together through a P2P-lending application or website. The advantages of lending and borrowing money through other P2P lending services are that the requirements are very easy and the process is fast compared to borrowing money through bank institutions.

However, the ease of transactions offered by P2P lending services actually weakens the position of the lender. Lenders and borrowers in P2P lending services do not meet in person, they are only brought together by a website or online application provided by the P2P-lending provider company. This has the opportunity for fraud to occur which can be detrimental to the lender.

As an innovation in the field of financial services in this technological era, there are two institutions authorized to regulate FinTech (Financial Technology), namely Bank Indonesia (BI) and the Financial Services Authority (OJK). In Bank Indonesia Regulation No.19/12/PBI/2017 concerning the Implementation of Financial Technology ("*Fintech PBI*"), the definition used by BI regarding FinTech up to its categories and criteria has been confirmed, including loan services. Meanwhile, OJK has just issued a regulation regarding one of the FinTech products

through the Financial Services Authority Regulation No.77/POJK.01/2016 concerning Information Technology-Based Money Lending Services, namely Peer to Peer (P2P) Lending. As of 23 February 2021, the total number of fintech peer-to-peer lending or fintech lending providers registered and licensed at the OJK is 148 companies. Meanwhile, there was the addition of 4 (four) licensed fintech lending providers, namely PT Dana Syariah Indonesia, PT Berdayakan Usaha Indonesia, PT Artha Permata Makmur, and PT Kredit Prosperity of the People so that the number of licensed companies became 45 (forty-five) organizers.

Illegal fintech cases are still troubling business actors in Indonesia. This is because the OJK Investment Alert Task Force (Financial Services Authority) reported 126 illegal p2p lending in September 2020. Apart from that, they also found 50 unlicensed pawn companies and 32 investment entities. These findings add to the long list of illegal fintech p2p in Indonesia to now. Since 2018, the investment alert task force has found 2840 entities. Tongam Lumban Tobing (CNBC, 2019) as chairman of the investment alert task force said that there are still many illegal fintechs in Indonesia. In addition, they also take advantage of the financial difficulties experienced by many people due to the current COVID-19 pandemic.

For example PT. Amartha Mikro Fintek (Amartha.com) is a company that organizes P2P lending. Amartha is a service owned by PT Amartha Mikro Fintek, a company providing information technology-based joint funding services that have obtained a business license from the OJK (as defined below) based on the Decision of Members of the OJK Board of Commissioners No. KEP-46/D.05/2019, dated May 13, 2019, which was established based on applicable law in Indonesia and has its address at Jalan Ampera Raya No. 16, South Jakarta 12430. In providing its services to users, Amartha.com prepares a standard service use agreement set forth in the "*Terms and Conditions of Service*". In the standard agreement, Amartha.com sets out the transfer of responsibility if the lender or service user suffers a loss from using the Amartha.com service.

The provisions regarding the limitation of liability and compensation are exoneration clauses that are detrimental to consumers and are prohibited by law. The exoneration clause shows that there is a form of transfer of responsibility carried out by the organizer so that the service user ultimately bears the risk.

We can see standard contracts with exoneration clauses in various transactions, for example, transactions that occur at PT Amartha Mikro Fintek (2020), to facilitate the agreement the company always makes a standard credit agreement contract aimed at all customers who will enter into a credit agreement on the company. It is understandable that it would be difficult if the company had to make an agreement every time it entered into a credit agreement with one customer to another customer. However, based on these reasons, does the agreement involve the customer in making the standard contract, if not, does the standard contract that has an exoneration clause in the law of the agreement can be said to be based on the principles and values of justice?

The exoneration clause is an exception clause in a standard contract. An exoneration clause is a clause made by only one party, which is usually done without the consent of the other party. In the concept of contract law that every clause in making an agreement is based on the agreement of both parties who make the agreement. However, in reality, the exoneration clause is not based on the agreement of both parties as stated in the terms of the validity of the agreement, namely in article 1320 of the Civil Code which reads: "*For an agreement to be valid, four conditions are needed, namely 1. The agreement of those who bind themselves, 2. The ability to make an engagement, 3. A certain thing, 4. A lawful cause.*"

Based on the above, the terms of the validity of the agreement at the first point regulate that the agreement is fulfilled by the parties making the agreement, which in this case are known as the subjective terms of the agreement. If these conditions cannot be met, the agreement itself can be canceled. Not only that, even the conditions for the validity of the agreement in point 4, namely a lawful cause, are also not carried out properly, meaning that a cause for an agreement cannot conflict with the law, decency, and public order, in this case, it is an objective requirement for an agreement. If this is not fulfilled then the consequences of an agreement will be null and void as The exoneration clause in the standard contract also violates the rules contained in Article 18 of Law Number 8 of 1999 concerning Consumer Protection.

Based on the explanation above, a study was conducted with the title *"Reconstruction Of Standard Agreements With Exoneration Clauses On Peer-To-Peer Financial Technology Based On Justice Values"*. The problem that the author urges to study further in research are as follows:

1. What are the weaknesses that arise in the current implementation of peer-to-peer Financial Technology agreements?
2. How is the Legal reconstruction of standard agreements with exoneration clauses in peer-to-peer Financial Technology based on the value of justice?

METHOD OF RESEARCH

The paradigm that is used in the research is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or scientific knowledge (Faisal, 2010).

Paradigm also looked at the science of society as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is qualitative research. Writing aims to describe a society or a certain group of people or a description of a symptom or between two or more symptoms.

The approach method used in this research is *Empirical-Juridical* (Ibrahim, 2005), which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

The source of research used in this study are:

1. Primary Data is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data is an indirect source that can provide additional and reinforcement of research data. Sources of secondary data in the form of Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author uses data collection techniques, namely literature study, interviews, and documentation where the researcher is the key instrument which is the researcher himself who plans, collects, and interprets the data (Moleong, 2002).

The specification of this legal research is in the form of analytical descriptive research. Descriptive means that the researcher in analyzing wants to provide an overview or explanation of the object of his research. Primary data collection was carried out by observation (direct observation) and interviews with several informants in this study. In terms of observation or observation is an activity carried out by researchers in the context of collecting data by observing the phenomenon of a certain community at a certain time as well. This primary data is also through interviews with several sources. Deep interview (in-depth-interview) is the process of obtaining information for research purposes using question and answer while face to face between interviewers and informants or interviewees, with or without using guidelines (guide) interviews, where interviewers and informants are involved in social life for a relatively long time (Widodo *et al*., 2023).

RESEARCH RESULT AND DISCUSSION

1. Weaknesses That Arise in the Current Implementation of Peer-To-Peer Financial Technology Agreements

Based on the Financial Services Authority Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector in Article 5 to Article 8, Alternative Dispute Resolution Institutions have the following principles (Kharisma, 2020): 1. The principle of accessibility 2. The principle of independence 3. The principle of fairness 4. Principles of efficiency and effectiveness What is meant by List of Alternative Dispute Resolution Institutions is a collection of Alternative Dispute Resolution Institutions that do not conflict with the principles stipulated by the Financial Services Authority, namely the principles of accessibility, independence, fairness, efficiency, and effectiveness, and Alternative Institutions Dispute resolution included in the list of alternative dispute resolution institutions has been assessed by the Financial Services Authority involving independent parties and supervised by the Financial Services Authority. Until 2015, there were seven (7) Alternative Dispute Resolution Institutions that had been established, and this discussion for the banking sector outside court settlement was carried out through the Indonesian Banking Dispute Settlement Alternative Institution (LAPSPI) located in Jakarta. Indonesian Banking Dispute Resolution Alternative Institution is an Indonesian Banking Dispute Resolution Alternative Institution established by Associations in the field of Banking, namely the Association of National Banks (PERBANAS), Association of State-Owned Banks (HIMBARA), Association of Regional Development Banks (ASBANDA), Association of Indonesian Sharia Banks (ASBISINDO), Association of Indonesian International Banks (PERBINA), and Association of Indonesian People's Credit Banks (PERBARINDO) on 28 April 2015.

Technological progress has given rise to a new approach to the development of forms and methods of financial services. This is indicated by a change in the model, where initially most financial companies offered their services door to door or manually with their marketing agents, currently, there is a company known as "*Financial Technology*", this clearly increases consumer absorption in the capital and financial services trade sector. however, the legal politics in the sector of financial services institutions have not been able to keep up with the development of the financial services model which has developed far with the media of advances in information and communication technology. Such circumstances lead to various kinds of problems in the use of financial service institutions. Various kinds of losses caused by the lack of consumer protection in cyber-based capital lending often occur.

Based on the various explanations above, it is clear that in its development the implementation of Financial Technology is not in accordance with the principles of good ethics in making an agreement. Even though contract law recognizes the principle of freedom of contract, an agreement must also comply with the principle of good ethics so that in one of the conditions for the validity of the agreement it is known that there are conditions for an agreement with a lawful purpose

or in other words an agreement must be clear and cannot conflict with current law.

If you look at the various types of cases above, it is clear that the implementation of agreements in Financial Technology is currently not through a clear e-contract mechanism and the debtor does not fully and clearly understand the correct Financial Technology agreement. Things are getting worse with many Financial Technology business actors committing fraud and taking advantage of the public's lack of knowledge about Financial Technology. So it is also clear that justice as stated by Rawls is difficult to achieve (Solovyeva, 2022).

Basically, the rules regarding the time period for responding to complaints from consumers themselves are not clear, this is because there are no rules that apply publicly, especially in the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector regarding the period of time from the Authority Financial Services conveys its response to complaints that have been received from consumers.

The regulation regarding the time limit for following up on public complaints to the OJK is only regulated in the Financial Services Authority's internal regulations based on the Board of Commissioners' Regulations (PDK). The regulation that came into effect at the beginning of January 2017 was not a public regulation, because it was an internal regulation. The regulation explains that the Financial Services Authority will process Consumer Complaints within 30 days for Head Offices and 40 days for Regional/Regional Offices from the time the documents are complete. The impact of not regulating the time period for responding to complaints by the Financial Services Authority in the Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, namely the Consumer's right to obtain comfort and certainty of information on complaints that have been submitted to the Authority Financial Services for dispute resolution is not achieved, so that the rights are not achieved causing a decrease in the level of Consumer trust in the Financial Services Authority.

The minimum role of OJK in supervising online loans and the absence of clear technical regulations regarding online loans, both in the Financial Services Authority Regulation Number 1/POJK.07/2013 and in the Financial Services Authority Regulation Number 77/Pojk.01/2016 concerning Money-Based Lending and Borrowing Services Information Technology has resulted in the outreach of law enforcement against online lending institutions that are detrimental to consumers and unable to be effectively carried out, this is becoming increasingly complicated by the absence of regulations regarding evidence related to fraud under the guise of online loans, considering that evidence of illegal acts related to online loans is closely related to the world of information and communication technology.

2. Legal Reconstruction of Standard Agreements with Exoneration Clauses in Peer-To-Peer Financial Technology Based on the Value of Justice

Based on the various explanations above, it can be concluded that reformulation is necessary regarding the regulation of debtor protection issues in fintech cases based on Pancasila, the Preamble to the 1945 Constitution of the Republic of Indonesia, 28D of the 1945 Constitution of the Republic of Indonesia, and Law Number 39 of 1999, as well as Law Number 8 of 1999, the foothold must cover all stages, both the input stage, the reformulation process, to the output. So that the main ingredients as a constituent of the formulation in the form of perception, support, organization, and the needs of all groups of people can be absorbed fairly, then in the process of having a basic footing it will make the reformulation process more just because it is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, thus, the output will also be in accordance with these basic foundations which aim at realizing legal justice for all groups of Indonesian society including workers (Widodo, 2023).

The reformulation of provisions related to the use of foreign workers must look in all directions, meaning that it must be able to absorb the various needs of various groups related to workers, trade unions, employers, and employers' associations, not only in the interests of employers and or employers' associations. Apart from that, you also have to look at the development of the social and economic welfare of workers, not only the interests of big investors. As well as the culture and local wisdom of the Indonesian people who uphold noble values including the value of justice.

Community life in its development always requires an orderly and orderly situation, an orderly and orderly situation in the community can be realized if in a society there is one order. The order in this society is not the same, this is because an order consists of various different norms. These differences can be observed in the relationship between das sollen and das sein or between the ideals of law and law in their implementation in society. Gustav Radbruch, in Toebagus (2022) referred to this as "*ein immer zunehmende Spannungsgrad zwischen ideal und Wirklichkeit*." This opinion from Radbruch can be interpreted that any differences that exist in the existing order and norms can be seen from the existence of different content in the ideals of law and law in its implementation in society.

In its development, interpreting the law as a set of regulations governing society will only mean if it is actually supported by a clear and firm sanction system so that justice is upheld. The justice referred to is vindicative justice, not absolute justice which imposes a sentence based on legal procedures and clear and basic reasons, in the sense that it is not based on feelings of solidarity, compromise, and or other reasons that are far from a sense of justice. This is in accordance with the spirit that animates in Article 28D of the 1945 Constitution of the Republic of Indonesia.

The process of achieving a sense of justice is a chain that cannot be separated, at least from the making of laws and regulations, the occurrence of cases or legal events, to the verbal processing of police and prosecution of prosecutors, or lawsuits in civil cases, and then ending with a judge's verdict. obtain permanent legal force (*inkracht vangeweisde*) so that the quality of the process actually guarantees the quality of the culmination point of the results or benefits of a set of laws and regulations that are made. Thus it is very possible to uphold the rule of law in our country as stated by Harold J. Laksi, quoted by Sabian, "*that citizens are obliged to comply with certain laws only if the law satisfies their sense of justice."*

Edmon Makarim uses the term online contract (online contract) for an electronic contract (e-contract) and defines an online contract as an agreement or legal relationship that is carried out electronically by combining the networking of computer-based information systems with the system (e-contract) is an agreement between two or more parties that is carried out using computer media, especially the internet network. Based on how it happened, there are several forms of electronic contracts (e-contracts) that have been widely used so far (Kostrubiec, 2023):

a. Electronic contracts (e-contracts) made through electronic mail communications (e-mail). In this electronic contract, offers and acceptance are exchanged via electronic mail (e-mail) or in combination with other electronic communication media.
b. Electronic contracts (e-contracts) made through websites and other online services. In this form of contract, the offer is made through a website and the consumer accepts the offer by filling out the form on the website.

In fact, the provisions regarding e-contracts in Law Number 11 of 2008 have not been regulated, even though technological advances have created a new legal culture of contracts with an online approach. So it is clear that it is necessary to regulate electronic contracts.

Along with the development of fintech which continues to stretch to this day, of course, it must also be balanced with the presence of clear regulations and supervision of the running of the business. Based on Article 5 of Law Number 21 of 2011 concerning the Financial Services Authority (OJK), states that OJK functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector. Article 6 states more clearly that OJK carries out regulatory and supervisory duties on:

a. Financial service activities in the banking sector;
b. Financial service activities in the Capital Market sector; And
c. Financial service activities in the Insurance sector, Pension Funds, Financing Institutions, and Other Financial Services Institutions.

When referring to these two articles, OJK is an agency that regulates and supervises the growth and development of fintech. Fintech startups are part of the financial services sector, both the Bank Financial Industry (IKB) and the Non-Bank Financial Industry (IKNB) which are supervised by the OJK. Regulation and supervision are very important for the sustainability of Fintech in Indonesia. This relates to the legality of the business being run because in practice fintech development has potential risks related to consumer protection, financial system stability, payment systems, and economic stability. The purpose of regulation and supervision by OJK is to minimize these risks and support sustainable and stable economic growth.

As contained in the Financial Services Authority Regulation Number 1/Pojk.07/2013. The reform in question is changing the provisions of Article 3 of the Financial Services Authority Regulation Number 1/Pojk.07/2013 which states that financial service business actors are not only entitled to information related to consumers or debtors but are also obliged to maintain the confidentiality of consumer or debtor data. It is necessary to clearly regulate the position of Financial Technology institutions in the Financial Services Authority Regulation Number 1/Pojk.07/2013. It is necessary to regulate information on the process of public complaints against the OJK, especially in the case of Financial Technology institutions, it is necessary to control sanctions related to Financial Technology that violates the law, and it is necessary to clarify the number of fines in the Financial Services Authority Regulation Number 1/Pojk.07/2013. Then it is necessary to carry out supervision in partnership both internally and externally through communication and information technology based on supervision of Financial Technology institutions both at the national and regional levels.

Based on the analysis above, it can be said that the Financial Services Authority Regulation (POJK) Number 6/Pojk.07/2022 has many weaknesses. So it is necessary to regulate several things in the Financial Services Authority Regulation (POJK) Number 6/Pojk.07/2022 in the form of:

a. Provisions related to the amount of interest;

b. Provisions related to insurance in loans through fintech institutions;
c. There need to be special technical regulations for fintech accounts;
d. It is necessary to regulate guarantees regarding the obligations of fintech accounts to maintain the confidentiality of consumer or debtor data;
e. It is necessary to regulate the existence of limitations related to the principle of knowing your customer by fintech accounts;
f. It is necessary to regulate guarantees for the rights of debtors or consumers to receive sufficient information regarding fintech institutions and systems
g. It is necessary to state the principles and objectives of the existence of Information Technology-Based Borrowing and Borrowing Services.

In order to realize the various ideas above, it is necessary to reconstruct the provisions stipulated in the Financial Services Authority Regulation (POJK) Number 6/Pojk.07/2022 regarding the position of Financial Technology institutions, and in the Financial Services Authority Regulation Number 1/Pojk .07/2013 and regulation of the financial services authority of the Republic of Indonesia number 10 /pojk.05/2022 concerning information technology-based co-financing services clearly. It is necessary to regulate information on the process of public complaints against the OJK, especially in the case of Financial Technology institutions, it is necessary to control sanctions related to Financial Technology that violates the law, and it is necessary to emphasize the number of fines in the Financial Services Authority Regulation Number 1/Pojk.07/2013. Then it is necessary to carry out supervision in partnership both internally and externally through communication and information technology based on supervision of Financial Technology institutions both at the national and regional levels.

CONCLUSION

Based on the discussion of the problems above, it can be concluded that:

1. Weaknesses that arise in the implementation of peer-to-peer Financial Technology agreements at this time, the lack of reach of law enforcement in cases of fraud under the guise of Financial Technology institutions, the implementation of agreements in Financial Technology is currently not through a clear e-contract mechanism and parties the debtor does not fully and clearly understand the correct Financial Technology agreement. Things are getting worse with many Financial Technology business actors committing fraud and taking advantage of the public's lack of knowledge about Financial Technology. And also the influence factor of globalization which has resulted in the growth of Financial Technology institutions getting out of control.
2. The Legal Reconstruction of standard agreements with exoneration clauses on peer-to-peer Financial Technology based on the value of justice can be done by clearly regulating the position of Financial Technology institutions in the Financial Services Authority Regulation Number 1/Pojk.07/2013 and the regulation of the financial services authority of the Republic of Indonesia number 10/pojk.05/2022 regarding information technology-based joint funding services. It is necessary to regulate information on the process of public complaints against the OJK, especially in the case of Financial Technology institutions, it is necessary to control sanctions related to Financial Technology that violates the law, and it is necessary to clarify the number of fines in the Financial Services Authority Regulation Number 1/Pojk.07/2013. Then it is necessary to carry out supervision in partnership both internally and externally through communication and information technology based on supervision of Financial Technology institutions both at the national and regional levels.

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