



## LEGAL ANALYSIS OF THE OBLIGATIONS OF ELECTRONIC SYSTEM OPERATORS (PSE) IN PROTECTING THE CONFIDENTIALITY OF ONLINE LOAN BORROWERS' DATA

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### Abstract

Technology-Based Peer-to-Peer Lending Services are a formal form of online lending services initially regulated by POJK No. 10/POJK.05/2022. On the one hand, these online loans make it easier for the public to obtain funds quickly; on the other hand, they also have the potential to harm those involved—for example, the rampant buying and selling of users' personal data from fintech apps, which recently made headlines on social media. Some sellers of personal data possess thousands to millions of records, including ID cards (KTP), family cards (KK), and even selfies taken with ID cards. Such data breaches should not occur, as personal data within electronic systems is confidential. The research method employed by the author is normative legal research; additionally, this study was conducted using a qualitative approach, focusing on data collection through library research. Electronic System Operators are obligated to maintain confidentiality and security by implementing robust security systems (encryption) to prevent failures in personal data protection. Ultimately, customer data may only be used for the original purpose for which it was collected; Electronic System Operators must not sell or disclose data to third parties for marketing purposes without consent. The misuse of personal data by online lending businesses constitutes an unauthorized act and is explicitly prohibited in the electronic agreement between consumers and the business. Consequently, any actions taken without the consent of both parties constitute a breach of contract and may also be deemed unlawful.

**Keywords:** *Electronic System Operators, Data Confidentiality, Borrowers, Online Loans.*

### INTRODUCTION

The convenience of the digital age offers convenience for every user, including online loans, due to their ease, speed, and practicality. This has led to an increasing number of Indonesians. Most people who use financial technology services, particularly online loans, do so not out of choice but out of necessity.<sup>1</sup> In practice, online lenders often use their customers' or consumers' personal data as a condition for borrowing. This is classified as a personal right, which is a sensitive matter related to a person's personal data or identity. This identity includes National Identity Cards (KTP), Driver's Licenses (SIM), Passports, Family Cards (KK), Taxpayer Identification Numbers (NPWP), Account Numbers, Fingerprints, Personal Identification Numbers, and so on.<sup>2</sup> While online loans make it easier for people to obtain funds quickly, they also have the potential to harm those involved, such as fraud and privacy violations. Many cases of online loans are currently occurring due to the distinction between online loans registered and supervised by the Financial Services Authority (OJK) and those not registered with the OJK, commonly referred to as illegal online loans.

<sup>1</sup> H. T. Sasmita, S. Kamilah, R. I. Wardodo dan T. D. S. W. Wicaksana, Analisis Faktor Perlindungan Konsumen dalam Urgensi Pembentukan Undang-Undang Pinjaman Online (*Peer To Peer Lending*), Media Iuris, Vol.5, No.1 (Februari 2022), Hlm.40.

<sup>2</sup> Sekaring Ayumeida Kusnadi, Andy Usmina Wijaya, Perlindungan Data Pribadi Sebagai Hak Privasi, AL WASATH Jurnal Ilmu Hukum, Vol. 2 No. 1, April 2021. hlm. 2.

This phenomenon is inextricably linked to the rapid development of online lending services in Indonesia, legally known as Information Technology-Based Joint Funding Services (LPBBTI). LPBBTI is an official form of online lending service initially regulated by POJK Number 10/POJK.05/2022. In line with industry dynamics and the need to strengthen the financial sector, this regulation has now been revoked and refined by POJK Number 40 of 2024, which remains the primary legal basis today. This regulation still requires every platform to obtain an OJK license and become a member of the Indonesian Joint Funding Fintech Association (AFPI). The existence of AFPI (Indonesian Joint Funding Fintech Association) is crucial because it establishes a code of ethics for debt collection and competency standards for debt collectors. In practice, violations of the code of ethics and misuse of personal data remain common in the online lending sector. As stated in the 1945 Constitution, Article 28 letter G Paragraph (1) states that "Everyone has the right to protection of themselves, their family, their honor, their dignity and their property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right."

The rampant buying and selling of personal data from fintech app users has been circulating widely on social media. Some sellers of personal data have thousands to millions of ID card (KTP) and family card (KK) data, even selfies using ID cards. This data leak should not have occurred, because personal data in electronic systems is confidential. The organizers/platforms of these online applications are required to have good system security, protect their systems, and conduct regular system checks to prevent illegal acts of unauthorized data. The importance of regulations regarding the protection of personal data is now recognized by the government. Illegal acts in cyberspace are a very worrying phenomenon, considering that hacking and misuse of personal data have become part of the activities of cybercriminals.

## LITERATURE REVIEW

Online lending services, legally known as Information Technology-Based Joint Funding Services (hereinafter referred to as LPBBTI), have a clear legal basis for fintech regulations in Indonesia, particularly the Information Technology-Based Joint Funding Services (LPBBTI) sector. The primary instrument is now Financial Services Authority Regulation (POJK) Number 40 of 2024. This regulation refines the previous provisions in POJK Number 10/POJK.05/2022.17, Chapter XV of POJK 40/2024, specifically Article 179. Information Technology Based Money Lending Services are financial services that connect lenders and borrowers to enter into loan agreements in rupiah directly through an electronic system. Data protection implies that individuals have the right to determine whether or not to share or exchange their personal data. Furthermore, individuals also have the right to determine the terms of such transfer. Furthermore, privacy protection. The right to privacy has evolved to include the right to protect personal data.

Based on Government Regulation Number 80 of 2019 concerning Electronic Commerce (PP PMSE) and Regulation of the Minister of Communication and Informatics Number 5 of 2020 concerning Private Electronic System Providers, Article 1 paragraph 4 states, "An Electronic System Provider is any person, state administrator, business entity, or community that provides, manages, and/or operates an Electronic System, either individually or jointly, to Electronic System Users for their own needs and/or the needs of other parties." Based on Regulation of the Minister of Communication and Informatics Number 5 of 2020 concerning Private Electronic System Providers (PSE Kominfo), every digital platform must be registered in the Online Single Submission-Risk Based Approach (OSS-RBA) system. Failure to do so will result in the platform's services being deemed illegal, and access to the platform will be blocked by Kominfo. Online loans are financial assistance issued by financial institutions online. Online loans serve as a meeting place for lenders and borrowers to execute loan agreements using rupiah directly through electronic media.

## METHOD

The type of research method carried out by the author is normative juridical research, namely legal research that examines law from various aspects, namely theoretical, historical, philosophical, comparative, structure and composition, scope and material, consistency, general explanation and article by article, formality and binding force of a law and the legal language used but does not examine the applied or implementation aspects.<sup>3</sup> In addition, this research is compiled using a qualitative method with a focus on data collection using library research, namely "a research conducted by examining library materials by reading, studying, and analyzing systematically".<sup>4</sup>

<sup>3</sup> Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum*, Citra Aditya Bakti, Bandung 2002, hlm, 62.

<sup>4</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Surabaya, 2005, hlm. 142

## **RESULTS AND DISCUSSION**

### **A. Obligations of Electronic System Providers (PSE) to Maintain the Confidentiality of Online Loan Debtor Data**

The concept of personal data protection emphasizes that every person has the right to determine their own destiny, such as whether they will share data or not, and if data sharing is carried out, they also have the right to determine the conditions that must be met in a community.<sup>5</sup> Currently, Indonesia itself has specific regulations regarding personal data protection through Law Number 27 of 2022 concerning Personal Data Protection, commonly known as the PDP Law, which was enacted on October 17, 2022. However, generally in Indonesia, every law that has been enacted can take effect three years later. Therefore, for reference regarding personal data protection, it still refers to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, especially Article 31 paragraphs (1) and (2), which reads:

(1) Any person who intentionally and without authority or unlawfully intercepts or intercepts Electronic Information and/or Electronic Documents in a Computer and/or Electronic System belonging to another person.

(2) Any person who intentionally and without authority or against the law intercepts the transmission of Electronic Information and/or Electronic Documents of a public nature from, to and within a particular Computer and/or Electronic System belonging to another person, whether this does not cause any changes or causes changes, removal and/or termination of Electronic Information and/or Electronic Documents being transmitted.

Therefore, additional guidelines appropriate to digital conditions are needed to implement them in the context of remote services. In Financial Services Authority Regulation Number 77/POJK.01/2016 concerning information technology-based money lending services, Article 37 states that, "The Organizer is responsible for user losses arising from errors and/or negligence by the organizer's directors and/or employees." Article 38 states that the Organizer must have standard operational procedures for serving users as contained in electronic documents. Article 39 also states that:

1. The Organizer is prohibited in any way from providing data and/or information regarding users to third parties.
2. The prohibition as referred to in paragraph (1) is exempted if the user provides consent electronically and/or is required by statutory provisions.
3. Revocation or partial changes to consent to the disclosure of data and/or information as referred to in paragraph (2) letter a must be made electronically by the user in the form of an electronic document.

Furthermore, Financial Services Authority Regulation 77/POJK.1/2016 concerning Information Technology-Based Money Lending Services is explained in several articles, including:

Article 26 states that service providers are obliged to:

- a. Maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data they manage from the time they obtain the data until it is destroyed.
- b. Ensure the availability of authentication, verification, and validation processes that support non-repudiation in accessing, processing, and managing the financial data they manage.
- c. Ensure that the acquisition, use, utilization, and disclosure of personal data, transaction data, and financial data obtained by service providers are based on the owner of the personal data, transaction data, and financial data, unless otherwise stipulated by law.
- d. Provide communication media other than the electronic system for information technology-based money lending services to ensure continuity of customer service, which may include email, call centers, or other communication media; and
- e. Notify the owner of personal data, transaction data and financial data in writing if there is a failure in protecting the confidentiality of personal data, transaction data and financial data that they manage.

Article 28 Paragraph (1) states that providers are required to secure information technology system components by establishing and implementing procedures and facilities to secure IT-Based Money Lending Services to prevent disruptions, failures, and losses.

Article 28 Paragraph (3) states that providers are required to participate in managing IT security gaps to support information security within the IT-based financial services industry.

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<sup>5</sup> Fanny, P, "Perlindungan Privasi data Pribadi Perspektif Perbandingan Hukum", Jatiswara, Vol.34 No. 3, 2019, Hal. 239-249.

Article 28 Paragraph (4) states that providers are required to re-display Electronic Documents in their entirety in accordance with the format and retention period established by law. The obligation to maintain data confidentiality, previously regulated in Article 44 Paragraph (1) of POJK Number 10 of 2022, is now reaffirmed in Article 161 of POJK Number 40 of 2024, which prohibits providers from disseminating consumer personal, transaction, or financial data to other parties without consent. The legal relationship between LPBBTI providers and consumers is based on electronic loan agreements. The basis of this legal relationship, previously regulated in Article 30 of POJK Number 10/POJK.05/2022, is now regulated in Article 143 of POJK 40/2024. This regulation requires an agreement consisting of at least: (a) an agreement between the Organizer and the Fund Provider, and (b) an agreement between the Fund Provider and the Fund Recipient.<sup>6</sup>

### **B. Legal Responsibilities of Medical Personnel and Electronic System Providers in Maintaining the Confidentiality of Medical Record Data in Telemedicine Services**

This study emphasizes the health and personal data contained in electronic medical records. Health data is specific, while personal data is general. Health development aims to increase awareness, comfort, and the ability of each person to live a healthy life so that it can support optimal health as an element of general welfare in accordance with the Preamble to the 1945 Constitution. In addition, to support good health development, health workers are responsible for maintaining patient medical records in telemedicine practices in health settings. Medical records are records or files containing notes or documents about patient identity, examinations, treatments, activities, and other services provided to patients. Article 19 of Law Number 27 of 2022 concerning Protection of Personal Data.<sup>7</sup> Due to its digital nature, telemedicine requires different data security policies than conventional healthcare, according to Alex Q. Goodby's book, *Clinical Data as the Basic Staple of Health Learning: Creating and Protecting a Public Good*. The book explains that data transmission between devices and data accessibility by third parties, including technology platform providers, are key issues. Schaar suggests the use of end-to-end encryption as a crucial step to maintaining data security in telemedicine communications, as well as dual authentication policies to ensure that data is only accessible to authorized parties.<sup>8</sup>

Based on the legal protections stipulated in the Personal Data Protection Act, healthcare facilities, as controllers of patient data, have policies that align with these regulations. The policy of healthcare facilities providing telemedicine services includes legal protection for patient data, including personal data and medical records. The principle is that in online healthcare services, patient rights must be respected, meaning they are protected by the service application owner. Patient rights are personal rights that every human being possesses as a patient and must be protected. Patients, as consumers in the healthcare sector, have the right to protect themselves from all possibilities of irresponsible healthcare services, such as neglect. Patients also have the right to safety, comfort, and data security regarding the healthcare services they receive. With these rights, consumers feel protected from professional practices that could threaten their health or safety. In terms of medical data protection, Law Number 27 of 2022 concerning Personal Data Protection regulates data controllers and data processors, but in the context of online health consultations, it is unclear whether doctors are "data controllers" or "data processors" while in the case of third parties receiving the data." Meanwhile, Law Number 17 of 2023 concerning Health states that every health service provider is responsible, but it is unclear how this responsibility is divided.

### **CONCLUSION**

Electronic System Providers are obligated to safeguard and not retrieve data from debtors' devices, such as contacts, gallery, or call logs, without explicit consent. Under OJK regulations, legal providers are only permitted to access CAMEL (Camera, Microphone, & Location). Furthermore, Electronic System Providers are obligated to maintain confidentiality and security by implementing a robust security system (encryption) to prevent data breaches. Ultimately, customer data may only be used for the purposes for which it was collected. Electronic System Providers may not sell or disclose data to third parties for marketing purposes without permission.

<sup>6</sup> M. M. Ma'muroh, Y. Yulia dan L. Qomariyah, Efektivitas Psikoreligi terhadap Penurunan Depresi, Gangguan Mental, dan Pencegahan Bunuh Diri pada Korban Pinjaman Online di Tangerang Selatan, *Edu Masda Journal*, Vol.9, No.2 (September 2025), Hlm.168.

<sup>7</sup> Nurul Khatimah Ismatullah, dkk., *Rekam Medis Widina Media Utama 2023*, Hlm.2.

<sup>8</sup> Alex W. Goodby, LeighAnne Olsen, and Michael McGinnis, *Clinical Data as the Basic Staple of Health Learning: Creating and Protecting a Public Good: Workshop Summary* (Washington: National Academies Press, 2011).

Misuse of personal data by online lenders is an act that is not agreed to and is not included in the electronic agreement between the consumer and the provider. Therefore, any action taken outside of the agreement of each party constitutes a breach of promise and can also be declared an unlawful act.

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