Legal Protection For Online Loan Companies For Debitors Risk of Default: Case Study of PT. Mitrausaha Indonesia Group (Modalku)

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Abstract

In Indonesia, the development of fintech has emerged since 2006. In September 2015 fintech companies in Indonesia only gained public trust since the establishment of the Indonesian Fintech Association (AFI). At that time, people had looked at one of the Fintech-based loans, namely Peer-To-Peer Lending (P2PL) because it had its own advantages compared to banks, this was because not many people could meet the collateral requirements in applying for loans. Then, the Otoritas Jasa Keuangan (OJK) issued a special regulation, namely the POJK No.77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. The legal relationship between the parties in Peer To Peer Lending arises because of an agreement that has been agreed upon by both parties that is binding and creates rights and obligations for each party. The Peer To Peer Lending service system requires clear authorization from the lender to the provider to channel the funds to the Debtor (loan recipient). However, it is possible that with all the conveniences obtained there will be no legal problems. Considering that it is very risky because the parties do not directly carry out the agreement or transact. So that legal protection both preventively and repressively is needed for legal certainty for the parties in the event of default and/or default from both the loan recipient and the organizer. In this regard, this research further aims to find out and analyze how the concept of legal protection for the parties, especially the organizers, is related to the risk of default and/or default in Peer To Peer Lending-based loan services.

Keywords

Financial Technology, Peer to Peer Lending, Default, Agreement, Regulation

1. Introduction

Financial Technology or often called fintech is an innovation in the financial services industry that utilizes the use of technology developed by startup companies by utilizing software. The presence of fintech is expected to facilitate the process of financial transactions such as loans or financing, namely providing loans without collateral and the financing process is fast, easy and does not need to meet in person. In principle, fintech operates only between lenders (investors / creditors) and borrowers (debtors) so that credit execution and money loan contracts are completed electronically using an application owned by an online loan company.

The development and existence of fintech began around 2015. This was marked by the establishment of the Indonesian Fintech Association (AFI) with the initial goal of providing quality business partners. Based on Fintech Lending providers that have been registered and licensed at OJK as many as 106 companies as of October 6, 2021. To regulate

the implementation of these commercial activities, the Financial Services Authority (OJK) issued Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 regarding Information Technology-Based Borrowing-Lending Services (LPMUBTI). This is to protect the borrower of funds for the use of funds that have been lent. Therefore, the development of fintech certainly requires the role of the government and regulators in Indonesia to regulate it, especially related to institutional aspects, business activities and risk mitigation. The purpose of OJK regulation and supervision is to address risks and support stable and sustainable economic growth.

This online-based lending and borrowing activity is marked by an agreement between the creditor (creditor) and credit recipient (debtor) and online credit providers. In making an agreement, it can refer to Article 1320 of the Civil Code which generally explains the conditions for the validity of an agreement. First is the subjective terms of the agreement and the wishes of the parties, this is not achieved then the agreement can be canceled. The second is the objective requirement, namely the existence of a clear object and a lawful cause, this also has consequences if it is not fulfilled, namely the agreement will be null and void by law. Then, it is emphasized in the provisions of Article 1265 of the Civil Code that money received by the borrower (debtor) must be returned to the lender (creditor) according to the receivables agreement.

In the development of fintech in Indonesia, OJK recorded the distribution of fintech lending loans as follows:

Table 1. Fintech Loan Distribution

No.	Fintech Lending	Year	Total
1.	Fintech Lending	September 2020	Rp. 6,82 triliun
		August 2021	Rp. 14,95 triliun
		September 2021	Rp. 14,26 triliun
2.	Non-performing loans are not paid for more than 90 days	August 2021	Rp. 426 miliar

As the table above shows that the loan disbursement reached Rp. 14.26 trillion in September 2021. This value by 109.10% compared to the same period the previous year. In September 2020, the distribution of fintech lending was recorded at only Rp. 6.82 trillion. Meanwhile, non-performing loans in fintech that were not paid for more than 90 days in the August 2021 period reached Rp. 462 billion.

In people's lives in this digital era, it is hoped that digital loan companies can meet the need to develop a financial industry and efficiency in lending and borrowing financial services, to be able to fulfill as expected so that it needs to be monitored and regulated so as not to harm various parties and is required to meet the requirements. in providing loans to each debtor. Both the giver, the recipient and the company. However, POJK itself has not specifically regulated protection for legal online loan providers or companies. According to one online platform in Indonesia, POJK is currently also considered to be too much to accommodate or protect the interests of loan recipients. So that in the news it becomes one-sided, as if online loans are bad in the eyes of the public even though they are not, then clear rules and protection are needed, especially for legal loans because many people need them because not all can borrow money from banks. This is a special concern because in other countries fintech is developing even almost the same as banking.

Modalku is a digital funding platform for financial technology-based MSMEs in Indonesia in the form of P2P Lending which was founded in January 2016 by Reynold Wijaya as Co-founder and CEO of Modalku. Modalku is not only in Indonesia, but also in 3 (three) other countries, namely Singapore, Malaysia and Thailand. The total amount of loans that have been disbursed until the third quarter of 2021, Modalku Group continues to grow and is able to disburse loans of Rp. 26 trillion of the 4 million MSME loan transactions in Southeast Asia, including Indonesia, Singapore, Malaysia and Thailand.

Especially in Indonesia, Modalku loans have reached Rp4.81 trillion to 64,468 borrowers as of October 31, 2021, with a total accumulated loan throughout the year with a portion of Rp926.97 billion. Meanwhile, the total outstanding from the platform, which is identical to the loan recipient in the segment of e-commerce players or online buying and selling activists, reached Rp. 175.71 billion to 18,872 active borrowers. Meanwhile, the success rate for repaying TKB90 loans is 95.21 percent.

Modalku activities include investment activities to conduct business in the territory of the Republic of Indonesia carried out by domestic investors using domestic capital (PMDN). Given that Modalku's business is in the form of fintech P2P lending, debtors (potential SMEs) can get an unsecured business capital loan of up to Rp. 2 billion. These funds are obtained from platform lenders, either individuals or institutions seeking alternative investments through the digital market. Modalku consistently applies the GCG principle which is conceptually called the Tariff (Transparency, Accountability, Responsibility, Independence, Fairness). Regarding AFPI's policy to cut fintech loan interest rates by 50%, Co-Founder & CEO of PT Mitrausaha Indonesia Group (Modalku) Reynold Wijaya responded that the decrease in loan interest rates would not have a significant impact because Modalku was more focused on providing loans to the productive MSME segment. , with loan interest rates ranging from a flat rate of 1% to 3% per month. In other words, the flat rate per day only increased by 0.1%.

In recent years, as we know the online loan company PT. Mitrausaha Indonesia Group (Modalku) is facing a high level of default by the borrower. Just a note, PT. Mitrausaha Indonesia Group (Modalku) is a digital funding platform for financial technology-based MSMEs in Indonesia which also operates in Singapore & Malaysia under the name Funding Societies. The loan default rate is Rp. 217 billion is the total NPL (basic financial ratio) for 5 years in these 3 countries. Interestingly, from that number, it does not only focus on credit risk assessment but Modalku strengthens its analysis and evaluates eligibility for borrowers. According to the management of the Modalku company, based on the principles carried out by the company, the company has shown a fairly good performance, which has succeeded in reducing the default rate for the last 1 year from 1.6% to 0.8%. The principle used in providing loans is the principle of responsible lending. This principle assesses MSME borrowers and their financial ability to repay loans because the organizer has a responsibility to the lender who lends the funds through Modalku.

2. Literature Review

Financial Technology (Fintech) according to The National Digital Research Center (NDRC) is an innovation in the financial sector as a service innovation in non-bank financial institutions that utilizes information technology as a tool to reach consumers. If freely translated, financial technology (fintech) is an innovation in the field of financial services that uses technology to provide convenience in finding funds. The concept of fintech is to adapt technology developments that are integrated with the financial sector. The scope of fintech includes investment management, collection and distribution of funds, insurance, market support, other digital financial support and other financial service activities.

Fintech services that are currently developing are as follows: a) Peer to Peer (P2P) Lending which is a type of company that focuses on the use of technology to earn income that brings together the lender (lender) and the borrower (borrower) whose transactions are carried out online. online through an application from the company organizer. b) Microfinancing is micro-loans that are offered to low-income people without any collateral. In other words, it is a financial institution to help micro-scale businesses through credit in a not-too-large amount. c) Digital Payment System is an electronic payment made from one account to another using technology. d) Risk and Investment Management is in the form of financial planning and investment planning digitally and projecting how much profit you will get. e) Equity Crowdfunding is funding with a capital of less than Rp. 30 billion for small businesses, SMEs and PT by means of joint ventures by the wider community in the form of share ownership. This type of fintech involves 3 (three) parties, namely funding, platform providers and investors. In peer-to-peer lending platform services, the lender aims to benefit from loan interest, while the borrower aims to get a loan without collateral and the goal is

to avoid financial institutions (banks). Online loan companies with peer-to-peer lending services are in charge of managing lender funds and conducting credit analysis of borrowers.

3. Methods

The research objectives are as follows to determine, describe, analyze the legal protection of PT. Mitrausaha Indonesia Group (Modalku) for debtors who default is associated with the Financial Services Authority Regulation (POJK) on standard contracts between the parties. The nature of this research is descriptive analysis, namely in the form of research that describes the phenomenon of a particular problem and basically can provide data that is as accurate as humans, circumstances or other symptoms. The type of method used in this research is a normative legal research method. Normative legal research method is research based on literature study or document study taken from literature study or secondary data that contains supporting materials with interview data in primary law.

This research was carried out with primary data, secondary data and none other than several legal regulations or norms that are currently in force in Indonesia, international and national journals and articles that have the same topic of discussion related to the title of writing. This study will also use a statute approach where the researcher will examine all laws and regulations related to the legal issues being handled and with a case approach where researchers will examine problematic cases.

4. Data Collection

In legal research, secondary data includes primary legal materials, secondary legal materials including:
Primary legal materials:

1. Code of Civil law;
2. Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 regarding Information Technology-Based Lending and Borrowing Services (LPMUBTI).

Secondary legal materials:

1. Textbooks written by legal experts;
2. The results of scientific works that are relevant and related to this research;
3. Relevant research results related to research;
4. Journals, articles and papers related to legal issues that are the subject of the problem;
5. Internet.

5. Results and Discussion

A. Default

The existence of a transaction relationship in online loans makes the emergence of the basis of a legal relationship that causes rights and obligations between the parties to arise. This problem certainly wants the best solution in order to achieve a win-win solution contract. Basically, contracts and/or agreements are used to protect transactions. This arises because there are goals in the contract and/or agreement that the parties want to achieve. Based on Article 1313 of the Civil Code explains that an agreement is an act by which one or more people bind themselves to one or more other people. According to Subekti, an agreement is an event where a person promises to another person or where the two people promise each other to carry out something. So, upon the agreement of the parties in the form of an agreement, it is essentially binding as regulated in Article 1338 Paragraph (1) of the Civil Code states that *"This agreement has binding power as law for the parties who make it."*

In the Civil Code, there are provisions for the legal terms in an agreement which consists of 4 (four) legal conditions as regulated in Article 1320 which consists of subjective and objective conditions as follows:

Subjective requirements include:

a. Agree on those who bind him;
b. The ability to make an engagement.

Objective requirements include:

a. A particular issue;
b. A forbidden cause.

As we know, the parties directly involved in online loan transactions are service providers, lenders (creditors) and loan recipients (debtors). As regulated in Article 18 POJK No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, states that the agreement for the implementation of lending and borrowing services includes:

a. Agreement between the operator and the lender;
b. Agreement between the lender and the borrower.

The agreement for providing information technology-based lending and borrowing services with lenders is regulated in Article 19 of the POJK that the agreement is contained in an electronic document and the operator is required to provide access to information to creditors on the use of their funds and information to debtors on the position of loans received. Electronic documents must at least contain the following:

a. Agreement number;
b. Agreement date;
c. Identity of the parties;
d. Provisions regarding the rights and obligations of the parties;
e. Loan Amount;
f. Loan interest rates;
g. Amount of Commission;
h. Time period;
i. Details of related costs;
j. Provisions regarding fines (if any);
k. Dispute resolution mechanisms; and
l. The settlement mechanism in the event that the Operator is unable to continue its operational activities.

Furthermore, the agreement with the lender (creditor) with the loan recipient (debtor) is stated in an electronic document that must at least contain the following:

a. Agreement number;
b. Agreement date;
c. Identity of the parties;
d. Provisions regarding the rights and obligations of the parties;
e. Loan amount;
f. Loan interest rates;
g. Installment value;
h. Time period;
i. Guarantee object (if any);
j. Details of related costs;
k. Provisions regarding fines (if any); and
l. Dispute resolution mechanism.

In this case there is an agreement between the parties such as "terms" and "conditions" as stated in the contract and/or agreement, there are achievements to be carried out, there is a standard contract, there are certain conditions as the contents of the agreement and there are goals to be achieved. As a loan recipient, you also pay more attention to the terms and conditions as well as the articles of the loan agreement. In addition, prospective borrowers need to understand the amount of loan fees (interest) that must be paid, as well as the transaction mechanism from the beginning to repayment and other requirements. In addition, there are several things that need to be done by online loan companies, namely ensuring that debtors are eligible to apply for loans, managing the flow of money between borrowers and lenders and implementing the collection process in case of arrears. So that the creditor in this case can demand the fulfillment of the performance of the debtor and the debtor is obliged to carry out his achievements in good faith.

Of course, the agreement that has been agreed by the parties is expected to go well, but fintech lending activities that provide convenience, speed, and practicality of lending and borrowing in practice cannot be denied that the exchange of achievements does not always run as it should so that a legal problem arises called default. In this case, the credit

risk will be borne by the organizer and lender. This risk is even higher if the online loan company does not have material guarantees in lending. According to Yahya Harahap, giving the meaning of default as the implementation of an agreement that is not timely or carried out inappropriately or not implemented at all. According to the KBBI, default is defined as a condition where one of the parties (usually the agreement) performs poorly due to negligence. It can be concluded that a default is a condition where a person who borrows (the debtor) does not fulfill or carry out his achievements intentionally or unintentionally as stated in the agreement as made between the organizer and the debtor. Default can also occur due to forced circumstances (overmacht), which is beyond the ability of the debtor.

If in such a situation, lenders and online loan companies need to be vigilant because it is very likely that the debtor will not fully pay his obligations. As regulated in POJK No. 77/POJK.01/2016 stipulates that registered and licensed companies must meet several criteria such as regulation in supervision, interest and fines, compliance with regulations, collection process, loan requirements, customer complaint service, credit risk assessment process. However, what needs to be considered in the P2P Lending fintech loan process in the absence of collateral results in a legal vacuum that can arise in the event of a default. This happens because there are no special regulations governing dispute resolution in the event of a default in P2P Lending. Until now, Indonesia only has regulations that regulate in general terms regarding Fintech P2P Lending dispute resolution activities. OJK Regulation No. 77/POJK.01/2016 does not explain specifically regarding the settlement in the event of a dispute. As in Article 21 POJK only states that operators and users must reduce risk. This means that the organizer must be able to ensure efforts to reduce the possibility of occurrence or risk impact of default.

The elements of default include the existence of a valid agreement (as stipulated in Article 1320 of the Civil Code), the existence of errors (negligence and intentional), the existence of losses, the existence of sanctions in the form of compensation, resulting in the cancellation of the agreement, transfer of risk and paying court fees (if up to brought to court). Default or breaking a promise can also occur in a contractual agreement or agreement in an agreement that has been determined because it does not carry out the rights and obligations of a debtor that has been agreed between the two parties, such as:

1. Didn't do what it was supposed to do.
2. Carry out what was promised, but not as promised.
3. Did what was promised but was late and there was bad faith.
4. Doing something that according to the agreement is not allowed.

Basically, defaults on Fintech P2P Lending services are the same as defaults in general. Failure to fulfill the promised achievements will harm the creditor. In the P2P Lending-based Fintech service mechanism, the role of the organizer is very important to support the sustainability of the Fintech platform. Apart from being the party that provides access to online lending and borrowing activities between debtors and creditors, the organizers are authorized to channel funds from creditors to debtors.

In civil law, a debtor can be declared in default when it occurs in the following 2 (two) cases, namely that the creditor has been declared negligent through a warrant or subpoena. Usually, the creditor will make a subpoena to warn the debtor to fulfill his commitment. If the warning is not heeded or ignored and the debtor is still negligent, then, to fulfill the engagement, the creditor can declare that the debtor has defaulted by means of a letter to the debtor. Second, if a period of time from the initial agreement has passed, it means that the debtor is considered to have defaulted. However, it is not only whether the agreement has agreed a certain period of time but also from the nature of the agreement. This is as regulated in Article 1238 of the Civil Code which states that "The debtor is declared negligent by a warrant, or by a similar deed, or based on the strength of the engagement itself, i.e. if this engagement results in the debtor being deemed negligent by the passage of the specified time."

The occurrence of default actions certainly brings consequences to the aggrieved party, so this can be prosecuted by giving it in the form of compensation, fines or interest. So by law it is hoped that no one will be harmed by the default. As regulated in Article 1239 of the Civil Code states that "Every engagement to do something, or not to do something, is resolved by providing reimbursement of costs, losses and interest, if the debtor does not fulfill his obligations." It is further regulated in Article 1267 of the Civil Code which stipulates that “The party to whom the engagement is not fulfilled, may choose; force the other party to comply with the agreement, if it can still be done, or demand the cancellation of the agreement, with reimbursement of costs, losses and interest.”

- The right to demand fulfillment of the engagement

- Right to claim compensation
- The right to demand fulfillment of the engagement with compensation
- Right to demand termination of engagement
- The right to demand termination of the engagement with compensation.

However, the negligence statement here does not only serve to determine the debtor in a state of default, but also for the benefit of the creditor in demanding the rights of the creditor. As the provisions of Article 1243 of the Civil Code states that "Reimbursement of costs, losses and interest due to non-fulfillment of an engagement begins to be required, if the debtor, even though it has been declared negligent, still fails to fulfill the engagement, or if something that must be given or done can only be given or done. in a time that exceeds the allotted time." Thus, a statement of negligence is needed only to ask for compensation or to terminate the engagement by proving a breach of promise. However, if the creditor only demands that the debtor fulfills the agreement, a statement of negligence is not required.

Unlike the case with the creditor only demanding the fulfillment of the agreement without canceling the agreement or claiming damages, the creditor cannot ask through the court. As decided by the Supreme Court decision No. 1079 K/Sip/1973, dated March 8, 1979 which states that:

"Because the Defendant has brought himself in a state of being unable to surrender his object in accordance with the contents of the agreement with the Plaintiff, based on Article 1263 of the Civil Code, the Defendant is obliged to provide compensation to the Plaintiff. However, because in this case the Plaintiff only asks that the Defendant be punished to fulfill the contents of the agreement, without asking the court to cancel the agreement to punish the Defendant to pay compensation to him, then the Plaintiff's claim is not accepted."

Losses that can be claimed by creditors only include costs, losses and interest. Prof. Subekti provides an explanation of each of the compensation, namely:

1. Costs (constant) are costs that have been incurred;
2. Loss (schaden) is a loss that actually afflicts the creditor's property due to the negligence of the debtor;
3. Interest (interest) is the profit that will be obtained if the debtor is not negligent (winstdervening). Administrative sanctions can be imposed with or without a written warning. Fines can be given either.

simultaneously or not with sanctions for limiting business activities and revocation of permits. In this case, creditors can also resolve default disputes through litigation and non-litigation. However, before going through the litigation and non-litigation channels, the creditor can file a complaint first to the platform regarding the default by the debtor. The complaint process is regulated in detail in the Financial Services Authority Regulation Number 18/POJK.07/2018 concerning Consumer Complaint Services in the Financial Services Sector.

In the event that the creditor suffers a loss due to an error or negligence on the part of the board of directors or employees of the Peer-to-peer lending platform, the platform must be responsible for the loss received by the creditor. This is in accordance with the provisions of article 37 of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. The form of errors or omissions made by the board of directors or platform employees occurs when analyzing, selecting and approving prospective debtors who are deemed worthy to be further offered to creditors. If this happens, the creditor can be held accountable to the platform.

A. Legal Protection

According to the Big Indonesian Dictionary (KBBI) the meaning of the word "protection" is protection which is defined as 1) a place of refuge; 2) things (deeds and so on) protect. What is meant by protection according to the KBBI is the method, process and act of protecting. Meanwhile, the law itself, when interpreted freely, is defined as a regulation made by a state agency that applies to all people. According to Satjipto Rahardjo, legal protection is to provide protection for human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law. According to Maria Theresia Gemes, she provides a definition of legal protection as something related to state actions to do something by applying state law exclusively with the aim of providing guarantees in the form of the rights of a person or group of people.

Basically, Peer To Peer Lending only acts as an intermediary between creditors and debtors. That the loan recipients and related lenders do not meet in person and do not know each other but that the P2P Lending platform organizer only connects the two parties. Then came the legal umbrella to strengthen Fintech services in Indonesia, namely the Financial Services Authority through OJK Regulation No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services and Bank Indonesia Number 18/40/PBI/2016 concerning Payment Transaction Processing. The purpose of this regulation was issued to develop fintech business in Indonesia and increase the role of society. In addition, the issuance of these regulations is to protect the rights of the parties. As the provisions in Article 1 Paragraph 3 explain that "Information Technology-Based Money Lending Services is a financial service provider to bring together lenders and loan recipients in order to enter into lending and borrowing agreements in rupiah currency directly through an electronic system using the internet network."

In carrying out P2P Lending business activities, the organizer must ensure the continuity of these activities as regulated in Article 5 Paragraph (1) POJK No. 77/POJK.01/2016 states that "The Provider provides, manages and operates Information Technology-Based Borrowing-Lending Services from the Lender to the Borrower whose source of funds comes from the Lender." If a P2P Lending transaction is carried out, the organizer will take advantage of the lender and borrower in the form of a service charge.

In addition to the legal relationship based on the agreement, in the POJK no. 77/POJK.01/2016 in Article 7 also expressly stipulates that in order to have a legal position, the conditions that must be met by the online loan provider/company are the obligation to be registered and obtain permission from the OJK. As a consequence of not fulfilling the requirements for the implementation of registration obligations and the absence of a permit from the OJK, there is no legal validity for its business activities. Weak legality towards lenders means that they do not have the authority to act as online loan providers in Indonesia. So that the impact is not fulfilling the conditions for the validity of the agreement.

In response to this, there are also important principles in an agreement, namely the principle of freedom of contract, the principle of consensuality, the principle of Pacta Sunt Servanda, the principle of good faith, the principle of personality, the principle of force majeure and the principle of exceptio non adimpleti contractus. Prosecution of obligations in this case to pay debts must be based on a legal engagement. As emphasized in Article 1233 of the Civil Code that the engagement is born because of an agreement or agreement. The principle of proportionality means "the principle that underlies or underlies the exchange of rights and obligations of the parties according to their proportion or share in the entire contractual process". The principle of proportionality assumes that the distribution of rights and obligations occurs throughout the contract process, both in the pre-contract stage, in the termination of the contract and in the execution of the contract. In other words, showing that there is a binding contract is only limited to the parties who make it. This principle is more directed at the context of the relationship and the interests of the parties to maintain the continuity of the relationship in a conducive and fair manner.

If the agreement made by the debtor and creditor is a standard agreement. A standard agreement is a valid agreement and requires accuracy before signing the agreement, seen from the agreement clause, nominal value, interest rate, legal settlement and must be based on the agreement of the parties. As the provisions in Article 1337 of the Civil Code states that "a cause is prohibited, if it is prohibited by law, or if it is contrary to good decency or public order," meaning, basically all agreements can be made and held by anyone. When referring to Article 32 and Article 36 of POJK No. 77 of 2016 that the organizer is obliged to make a standard agreement in accordance with the prevailing laws and regulations in Indonesia and must use simple terms, phrases, and/or sentences in Indonesian that are easy to read and understand by Users in every Electronic Document.

As the concept of legal protection is divided into 2 (two) namely preventive legal protection which is preventing and repressive legal protection which is providing a deterrent effect. Preventive protection is intended to include the rules and consequences for the existence of a breached agreement. That the debtor is required to make installment payments, so that if there is a delay in payment, there will be consequences from the company that has been included in the standard contract. So that the organizers' efforts prior to the occurrence of a dispute are to apply the basic principles of user protection as regulated in Article 29, namely: a) transparency; b) fair treatment; c) reliability; d) data confidentiality and security; and e) simple, fast, and affordable resolution of user disputes. The form of preventive legal protection issued by OJK is POJK No. 77 of 2016 that legal protection and certainty are given to legal subjects, including P2PL users and operators.

In contrast, the form of repressive legal protection is in the form of sanctions such as interest, fines, compensation or other additional penalties after a dispute occurs. Disputes in this case can occur between users and other users or between users and Peer To Peer Lending service providers. Based on the provisions of Article 18 POJK No. 77/POJK.01/2016 regulates the agreement for the implementation of information technology-based lending and borrowing services including:

a. Agreement between the Operator and the Lender; and
b. Agreement between the Lender and the Borrower.

So that the platform has a legal relationship with the creditor due to an agreement to grant power of attorney from the creditor to the organizer as the beneficiary acting for and on behalf of the creditor to distribute money loans from creditors to debtors. Further regulated in Article 37 POJK No. 77 of 2016 states that "The Operator must be responsible for User losses arising from errors and/or negligence of the Board of Directors, and/or employees of the Operator." This means that the company as the organizer is limited to efforts to seek and assist collection. Errors and/or omissions by the organizers are only limited to errors caused by them and the organizers will be responsible if the organizers make mistakes in the evaluation of loan applications and debtor data. In addition to the obligation of the operator to evaluate the identity data of the debtor for the loan application, the operator should provide preventive conditions such as the form of guarantee provided to minimize the risk of default experienced by the debtor.

6. Conclusion

As explained above, the agreement made by the parties based on Article 1320 of the Civil Code applies as law for the parties in accordance with the provisions of Article 1338 Paragraph (1) of the Civil Code. In this case, there is a legal relationship between the parties, namely the existence of rights and obligations, but it cannot be denied that things such as default by the debtor can occur. Default can be done intentionally or unintentionally. The occurrence of default results in other parties being harmed, especially for creditors and the organizers.

The principle of legal protection is one of the very basic principles in contract law. The concept of legal protection is divided into 2 (two) namely preventive legal protection which is preventive in nature and repressive legal protection which has a deterrent effect. So the form of protection for creditors and providers is that the debtor bears the consequences of not carrying out obligations which can be in the form of cancellation of the agreement or fulfillment of the agreement accompanied by demands for compensation, or only demanding compensation. In addition, another form of protection is to give the debtor an opportunity due to overmacht (forced circumstances).

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