

**LEGAL PROTECTION FOR USER DATA IN FINTECH
PEER TO PEER LENDING RUPIAH CEPAT**

A BACHELOR DEGREE THESIS



By:

MUHAMMAD ILHAM AGUS SALIM

Student Number : 14410628

**INTERNATIONAL PROGRAM
UNDERGRADUATE STUDY
PROGRAM IN LAW
UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA**

2021

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**Presented as the Partial Fulfillment of Requirements to Obtain the
Bachelor Degree at the Faculty of Law Universitas Islam Indonesia
Yogyakarta**



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LEGAL PROTECTION FOR USER DATA IN FINTECH PEER TO PEER RUPIAH CEPAT

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Arabic : Good User

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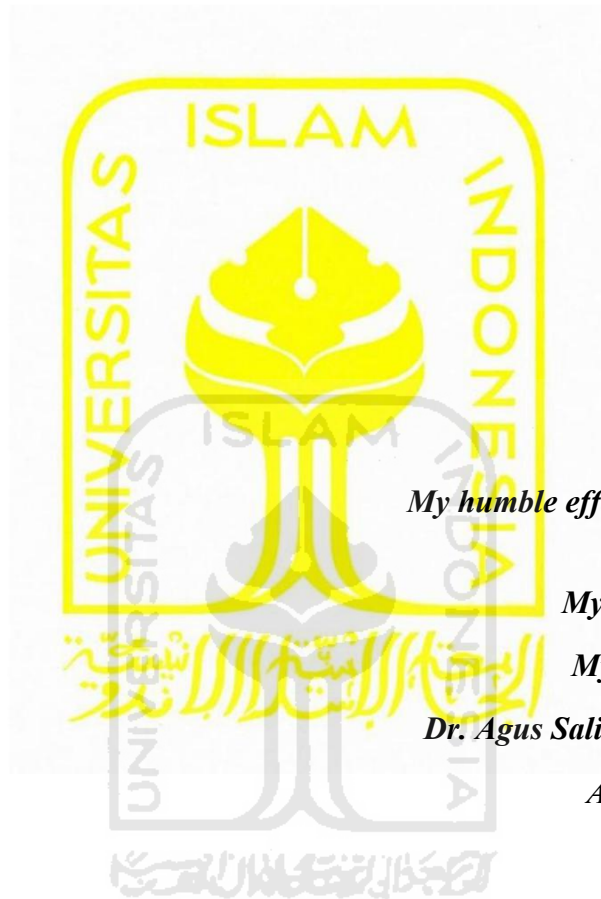
“Success is everything we dream, think, say and do consistently”- Ilham Agus Salim

“Kalau tidak bisa menjadi orang yang pintar dan cerdas, jadilah orang yang rajin dan pekerja keras.”- Firman Nofeki

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DEDICATION



My humble effort I dedicate to:

My beloved parents

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My thesis advisor who always inspired me in so many ways.

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ABSTRACT

Cases of leakage and misuse of personal data continue to increase in Indonesia along with the increasing activity of the digital economy, including in FinTech Industry. The growth of Fintech is rampant, issuing online loan products without collateral and it makes our societies are interested because they are in need of fast money. However, it tends to misuse of the personal data of their user to spread when it comes in billing the loan. The regulation that specifically places the data owners' rights is Law No. 11 of 2008 concerning Electronic Information and Transactions as amended in Law No. 19 of 2016 (UU ITE). However, the existing laws and regulations to the protection of personal data are still sectoral in nature so that they are not centralized and there are no regulations at the level of law, so that criminal sanctions are not maximally applied to criminals in this sector. The objective of this study is to analyze legal protection in FinTech Peer to Peer Lending Rupiah Cepat, PT Kredit Utama Fintech Indonesia. The research data was collected through literature study, document study and interviews. The analysis was performed using qualitative data analysis methods. The results of this study shows that legal protection for User Data can be realized preventively based on Article 29 POJK Number 77 / POJK.01 / 2016 that is the principle of transparency, fair treatment, reliability, confidentiality and data security, and User dispute resolution in a simple, fast and affordable cost. While in repressive legal protection based on Article 37 POJK Number 77 / POJK.01 / 2016 is carried out after a dispute. The aggrieved party immediately makes a complaint action. If proven true, the losses suffered by users as a consumer. The suggestion that the author gives to be able to solve problems in the future is that the role of OJK in regulating and supervising the development of Fintech in Indonesia must be more emphasized in implementing regulations and also the Government should adopt and implement GDPR (General Data Protection Regulation) as a foundation and guidance to draft a new law regarding data protection that gives more control for consumers over their personal data and gives regulators the power to impose fines of up to 4% of the violating company's revenue.

Keywords: FinTech, Peer to Peer Lending, Legal Protection, GDPR

CHAPTER 1

INRODUCTION

A. Background of Study

Indonesia is an archipelago country with the highest population in Asia, has more than 260 million citizens spread across 17,000 islands. That geographical conditions such as these pose challenges and problems related to aspects of equality development and economic improvement, including the issue of financial inclusion. Financial inclusion is believed could be supporting poverty alleviation programs and reduce the gap in people's economy.¹

The government takes serious attention to inclusive finance, as evidenced by the issuance of the Republic of Indonesia's Presidential Regulation No. 82 of 2016 concerning the National Strategy for Inclusive Finance. It was stated in the regulation that the inclusive financial system is realized through public access to financial services so that it can improve the people's economic capacity and make them to out of poverty circle. But in reality, non-bank financial services (fintech) as the manifestation of that regulation is obviously has many problems including user data leakage.

The emergence of financial companies in the field of information technology based lending and borrowing services (*Peer-to-Peer* or P2P lending) is increasingly getting the attention of the public and regulators namely the Financial Services Authority (OJK) and Bank Indonesia. This is stated in the Financial Services

¹ OJK, *The Consumer Protection in Fintech*, (Jakarta: Financial Services Sector Consumer Protection Study, 2017), p 2.

Authority Regulation Number 77 / POJK.01 / 2016 concerning Information Technology Based Lending Services. The fintech service is a breakthrough in which many Indonesian people have not been touched by banking services. It becomes one of solutions to fulfill an access of financial services in the country and to realize financial inclusion.²

The development of the Fintech industry in Indonesia has supported by the increasing number of internet and smartphone users in Indonesia. Based on the results of the 2016 Indonesian Internet User Statistics survey conducted by the Indonesian Internet Service Providers Association.³ The number of internet users in Indonesia in 2016 was 132.7 million users or around 51.5% of the total population of Indonesia. Of the total 132.7 million internet users, 63.1 million or around 47.6% of users use mobile devices (smartphones). By its convenience provided, the internet and smartphones have become important for the people of Indonesia and ultimately affect the behavior of consumers in conducting product and service transactions, including financial services. At present, the average Indonesian population aged 20-40 years has made a form of transaction products and services through online.

Based on OJK statistics as of April 2020, there are 161 fintech lending companies that have been registered and licensed in the Financial Services

² M Fajar Marta , “*P2P Lending Sebagai Wujud Baru Inklusi Keuangan*,” November 26, 2016 Accessed 02/06/2020, 10:45 WIB
<https://money.kompas.com/read/2016/11/26/060000226/.p2p.lending.sebagai.wujud.baru.inklusi.keuangan>

³ Asosiasi Penyelenggara Jasa Internet Indonesia, “*Cerita di Balik Kesuksesan Pemerintah Tarik Pajak Google*,” *Buletin APJII*, No. Edition 22, 2018, p 3.

Authority (OJK). There are still a few more companies that are still in the licensing process so that the number of fintech companies will also continue to grow.⁴

The entry of Fintech is a new breakthrough in business aspects in Indonesia to become more efficient and easier. Online credit is currently developing in Indonesia. This credit service is said to make it easier for people who are not reached by banks to get loan facilities.

So far, the provisions regarding Fintech are still few and have not been discussed thoroughly. From the point of view of legislation, there are no rules at the level of the law that specifically regulates Fintech.

Regulations and supervision are very important for the sustainability of Fintech in Indonesia. This relates to the legality of the business being carried out because in its implementation that the development of fintech has potential risks which are related to consumer protection, financial system stability, payment systems and economic stability.

The growth of Fintech is rampant, issuing online loan products without collateral, but it turns out that only a moneylender is a strangling trap. Our societies are interested because they are in need of fast money, and are attracted by their ads which offer low interest of 14% per year and a loan term of at least 61 days.

However, most of peer to peer lending fintech tends to misuse the personal data of their user to spread. That is all about data protection right. The law of

⁴ OJK, *Penyelenggara Fintech Terdaftar dan Berizin di OJK per 30 April 2020*, (Jakarta: OJK, 2020)
<https://www.ojk.go.id/id/berita-dan-kegiatan/publikasi/Pages/Penyelenggara-Fintech-Terdaftar-dan-Berizin-di-OJK-per-30-April-2020.aspx> Accessed June 03, 2020 20.00 WIB

personal data protection exists simultaneously with the development of technology itself, especially in digital age. The significant developments in data protection laws occurred when the European Union unified its data protection laws through the EU General Data Protection Regulation (EU GDPR), in 2016, and came into force on May 25, 2018. GDPR is more comprehensive and covering almost all processing personal data. As of January 2018, at least more than 100 countries have adopted data protection laws based on GDPR.

Data protection itself generally refers to the practice, protection, and binding rules that are in place to protect personal information and ensure that the subject of the data retains control of the information. Because behind the data there are humans that have the right to protect their privacy. Simply define the right to privacy as 'the right to be let alone'. This definition is based on two levels: (i) personal honor; and (ii) values such as individual dignity, autonomy and personal independence⁵ In short, the data owner must be able to decide and control whether he wants share some information or not, who has can access, for what reasons, and definitely he can modify it. According to Article 4 (1) EU GDPR states:⁶

'Personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

⁵ E. Bloustein, " Privacy as An Aspect of Human Dignity: an Answer to Dean Prosser," *New York University Law Review Vol. 39* (1964): p 23.

⁶ Article 4 (1) of The EU General Data Protection Regulation (GDPR)

In Indonesia, data protection always refers to Law No. 11 of 2008 concerning Information and Electronic Transactions and there is institution that guarantee business process of fintech based on digital platform walks smoothly. However, Fintech claim to have obtained permission from the OJK, but in reality they invoice in ways that are outrageous and detrimental to customers, among others, by disseminating customer data to everyone. In addition, people who become victims from fintech lending. They are intimidated by threats, sexual harassment, to suicide.⁷ Therefore, lending institutions with large interest and trap must be put in order.

The case happened with Iman Nugraha as a user of fintech lending at Rupiah Cepat. He had a problem paying his debts to the platform and on the fifth day of the late payment, he was suddenly contacted by CS (Customer Service) of Rupiah Cepat to force him to pay his debt. However, through WhatsApp chat he was threatened to make him viral based on personal data such as KTP & 5 photos of him, spreading to social media and all contact name on his phone to explain he is as a cheater because he didn't pay the debt at Rupiah Cepat platform.⁸

Lastly, is the case of Jane Yolanda who has the debt of Rp 678.200 at Rupiah Cepat. At the time, she actually has paid her debt on November, 15 2018 based on the due date and has confirmed to the platform. However, Rupiah Cepat still

⁷ <https://www.cnnindonesia.com/ekonomi/20190213200418-78-369043/ojk-duga-korban-bunuh-diri-pinjam-uang-dari-fintech-ilegal> , Accessed April 11, 2020

⁸ <https://mediakonsumen.com/2018/12/16/surat-pembaca/penyalahgunaan-data-kontak-oleh-pinjaman-online-rupiah-cepat> Accessed June 03, 2020

contacted her to pay the debt through WhatsApp chat by attached all her photos and personal data that directly retrieve data on her phone.⁹

Based on the background described above, the problem that can be raised that how is the legal protection on user data of financial technology startup in Indonesia? In principle, the protection of personal data is divided into two forms, namely the data protection in the form of safeguarding for the physical data, either visible data or invisible data. The second form of data protection is on regulations side that governed about the use of data by other people who are not entitled, the misuse of data for certain purposes and the destruction of the data itself.¹⁰

Regarding the protection of personal data, Indonesia does not yet have specific rules at the UU level regarding the protection of personal data. However, based on research conducted by the Institute for Community Studies and Advocacy (ELSAM), there are at least 30 (thirty) statutory provisions concerning the obligation to provide personal data protection in Indonesia. The Population Administration Law is one of the provisions that specifically regulates the classification of personal data. Initially, the scope of personal data according to Law No.23 of 2006 concerning Population Administration as amended in Law No. 24 of 2013 (Population Administration Law) are: (a) Family Card Number; (b)

⁹ <https://mediakonsumen.com/2018/11/20/surat-pembaca/pinjaman-telah-lunas-sesuai-jatuh-tempo-tapi-rupiah-cepat-tetap-menyebarkan-data-ke-kontak-hp>, Accessed June 03, 2020

¹⁰ Lia Sautunnida, Urgensi Undang-Undang Perlindungan Data Pribadi Di Indonesia; Studi Perbandingan Hukum Inggris Dan Malaysia, quoted from Rosalinda Elsin Latumahina, Legal Aspects of Personal Data Protection in the Virtual World, *Journal of Gema Aktualita*, Vol. 3 No. December 02, 2014, Page. 16. Based on Article 1 Regulation of the Minister of Communication and Information No. 20 Year of 2016 regarding The Protection of Personal Data in Electronic Systems.

Population Identification Number; (c) date / month / year / birth; (d) information about physical and / or mental disabilities; (e) the National Identity Number of the biological mother; (f) Father's National Identity Number; and (g) some contents of important event notes. Furthermore, the Population Administration Law changes the scope of personal data to: (a) information about physical and / or mental disabilities; (b) fingerprints; (c) iris; (d) signature; and (e) other data elements which constitute a person's disgrace. However, the Population Administration Law does not regulate in detail the acquisition, processing and storage of personal data.¹¹

The regulation that specifically places the data owners' rights is Law No. 11 of 2008 concerning Electronic Information and Transactions as amended in Law No. 19 of 2016 (UU ITE). It provides a basis for the protection of personal data obtained using electronic systems as stated in Article 26. The consent of the owner of the data is the key word in the use of a person's personal data as stated in Article 26 paragraph (1) of Law No. 19 of 2016 (UU ITE) where the violation of this causes the emergence of civil law rights for the party whose data is used to file a lawsuit as stated in Article 26 paragraph (2) Law No. 19 of 2016 (UU ITE). It also accommodates the concept of right to be forgotten through the provisions in Article 26 paragraph (3) which gives data owners the right to request deletion of irrelevant personal data to electronic system operators.

Although Law No. 19 of 2016 (UU ITE) regulates personal data, it does not provide a definition of personal data itself. The terminology of personal data is

¹¹ Siti Yuniarti, Perlindungan Hukum Data Pribadi di Indonesia, *Journal of BECOSS (Business Economic, Communication, and Social Sciences)*, Vol.1, No.1 September 2019, p 152.

given in the regulations under the law including Government Regulation No. 18 of 2012 concerning the Implementation of Electronic Systems and Transactions (PP 18/2012), Regulation of the Minister of Communication and Information Technology No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems (Permenkoinfo 20/2016). This includes implementing regulations that are sectoral in nature such as OJK Circular Letter No.014 / SEOJK.07 / 2014 concerning Confidentiality and Security of Consumer Data and / or Personal (SEOJK 014/2014).

In addition, the use of an information technology-based loan system is closely related to data or personal information of user.¹² The utilization of personal data in information technology-based loans is needed to enter into a loan agreement between the borrower and the lender, and between the organizer and the lender. The personal data is related to the identity of the party.¹³ According to Article 27, Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 on Information and Electronic Transactions states:¹⁴

- (1) Every person intentionally and without right distributes and / or transmits and / or makes accessible Electronic Information and / or Electronic Documents that have contents that violate decency.
- (2) Every person intentionally and without the right to distribute and / or transmit and / or make access to Electronic Information and / or Electronic Documents that have gambling contents.
- (3) Every person intentionally and without the right to distribute and / or transmit and / or make accessible Electronic Information and / or Electronic Documents that have content of defamation and / or libel.

¹² Ana Sofia Yuking, “Urgensi Peraturan Perlindungan Data Pribadi Dalam Era Bisnis Fintech”, *Journal of Law and Capital Markets, Edition of No. 16 Vol. 8*, 2018: 19.

¹³ <https://www.hukumonline.com/klinik/detail/lt5c498fb94dc87/perlindungan-data-pribadi-dalam-penyelenggaraan-fintech/> Accessed on June 02, 2020

¹⁴ Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions.

- (4) Every person intentionally and without the right to distribute and / or transmit and / or make access to Electronic Information and / or Electronic Documents that have contents of extortion and / or threats.

While according to Article 29 Law No. 11 of 2008 on Information and Electronic Transactions states:¹⁵

Any person intentionally and without the right to send Electronic Information and / or Electronic Documents containing threats of violence or intimidation intended in person.

That is why the users of fintech lending must have their personal data confidentiality protected. Especially those concerning users personal information in online-based systems, are highly prone to misuse by irresponsible parties.¹⁶ It was evidenced by two cases above that occurred between online debtors and fintech as loan providers, where the act of spreading the debtor's personal data carried out by Rupiah Cepat platform as the provider of information technology-based borrowing and lending money services is contrary to the provisions in Article 27 and Article 29 of Law Number 11 Year 2008 concerning Information and Electronic Transactions.

B. Problem Formulations

Based on the context of study described above, then the problem in this research is:

1. How are The Legal Protection of Debtor's Personal Data Security on *Peer to Peer Lending* Rupiah Cepat PT Kredit Utama Fintech Indonesia?

¹⁵ *Ibid.*

¹⁶ Ana Sofia Yukung, *Loc. Cit.*

2. How are The Limitation of Personal Data That Can Be Used by FinTech Provider in The Context of Billing?

C. Objective of Research

Based on the problem formulation above, the objective of research are as follows:

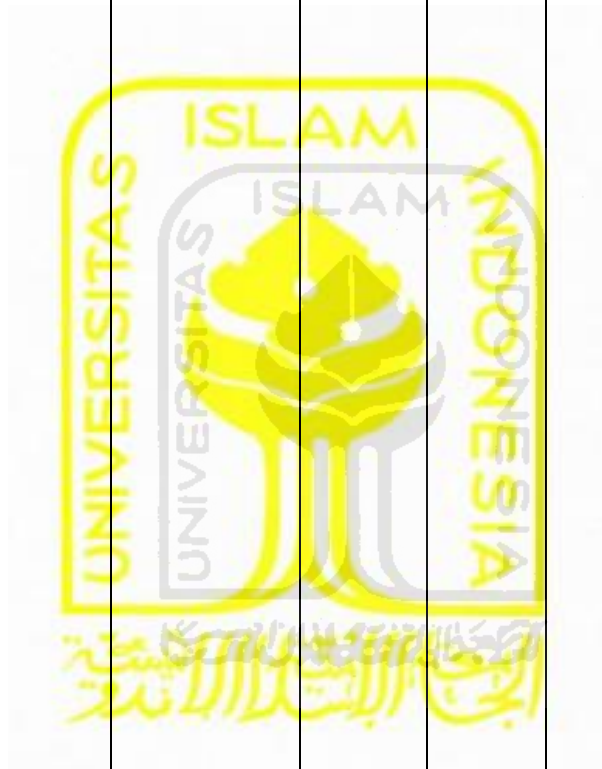
1. To analyze the legal protection of debtor's personal data security on Peer to Peer Lending Rupiah Cepat PT Kredit Utama Fintech Indonesia
2. To figure out the limitation of personal data that can be used by FinTech Provider in the context of billing.

D. Originality of Research

No	Title	Researcher Name	Univer sity	Type of Resear ch	Year	Research Differentiation
1	Legal Protection on User of Peer to Peer Lending Based On Legislations in Indonesia	Aldrian Vernan Ditto	Univer sitas Islam Indone sia	Thesis	2018	Adrian's research examined legal and administrative protections on user data whether it is valid or not based on its

						<p>online agreement.</p> <p>While my research is concerned about the legal protection of debtor's personal data security on Rupiah Cepat Platform and How the limitation of FinTech providers to utilize of its user data</p>
2	Legal Protection to Lender of	Alfhica Rezita Sari	Univer sitas Islam	Thesis	2018	Alfhica's research is discussing

	<p>Financial Technology Peer to Peer Lending in Indonesia</p>		<p>Indone sia</p>		<p>P2P Lending Fintech on how is legal protection of lender (investor) when borrower can't be return his money. While my research discusses legal protection based on fintech's user of personal data as the borrower in the context of</p>
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						Rupiah Cepat platform.
3	The Validity of a Lending and Borrowing Agreement for Information Technology-Based in the Imposition of Interest on Loans (Study on UangTeman.com)	Taufiq Ilham Azhari	Univer sitas Islam Indone sia	Thesis	2018	Taufiq's research is examine the validity of fintech agreement which charges by high interest. While my research is about data protection of fintech users when it is usually misused in the context of billing.

4	Providing Loans to PT. Digital Alpha Indonesia (www.uangteman.com) In the Perspective of Islamic Law	Putri Ayu Salamah Sipayung	Universitas Islam Indonesia	Thesis	2017	Putri's research is examines uangteman platform based on perspective of Islamic law. While my research is about the legal protection on personal data for Rupiah Cepat Platform in the perspective of Indonesian Law and EU
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Based on the description that the author has described above, the researcher states that this research plan is the result of himself, where the study discusses the

personal data of information technology-based loan recipients that are misused by financial technology (fintech) lending platform. In the essence of this research, no one has ever examined and is free from plagiarism. The research proposal entitled "LEGAL PROTECTION FOR USER DATA IN FINTECH PEER TO PEER LENDING RUPIAH CEPAT" is purely as a form of researcher curiosity to study the legal protection of user data security in the point of view of debtor based on information technology.

E. Literature Review

The Concept of data protection is basically the fair and proper use of information about people. It's part of the fundamental right to privacy – but on a more practical level, it's really about building trust between people and organizations. It's about treating people fairly and openly, recognizing their right to have control over their own identity and their interactions with others, and striking a balance with the wider interests of society.¹⁷

According to Jarry Kang, personal data describes information that is closely related to someone who can distinguish the characteristics of each person.¹⁸ On the other hand, in developed countries, another term that is often used is “privacy” as a right that must be protected, that is the person’s right not to be disturbed his personal life .¹⁹ Based on Yuwinanto, privacy is an abstract concept that contains much of

¹⁷ <https://ico.org.uk/for-organisations/guide-to-data-protection/introduction-to-data-protection/some-basic-concepts/> Accessed on Tuesday, December 01, 2020 14.33 WIB

¹⁸ Radian Adi Nugraha, “Analisis Yuridis Mengenai Perlindungan Data Pribadi dalam Cloud Computing System Ditinjau dari Undang-Undang Informasi dan Transaksi Elektronik,” Thesis, University of Indonesia, 2012, p 31

¹⁹ *Ibid.*

meanings. The describe of privacy is regarding about individual right to determine how far a person opens himself or his privacy to others. A Privacy in English term means that the ability of one or a group of individuals to defend their life and personal affairs from the public, or to control the flow of information about themselves.²⁰ This right to privacy is also contained in the Universal Declaration of Human Rights (UDHR) Article 12, which states:

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

The use of data protection term was first used in Germany and Sweden in the 1970s which regulates the protection of personal data with the imposition of regulations regarding the protection of personal data into a statutory regulation systematically.²¹ The regulation was enforced with regard to personal data because at that time the device used to store population data was a computer for the purposes of population census data collection. However, in practice there are often many abuses committed by the government and the private sector. Therefore, it is necessary to have accommodative laws and regulations that can provide assurance and security for personal data so that the use of such personal data cannot be misused.

²⁰ *Ibid.*

²¹ Shinta Dewi, quoted from Rosalinda Elsin Latumahina, *Perlindungan Hukum Bagi Nasabah yang Mengalami Kerugian dalam Transaksi Perbankan Melalui Internet*, Kanun Law Journal, Vol. 14 No. 1, 2012, p 30.

Based on several definition and terminology in terms of personal data, information, privacy so it can be understood that they are related to individual life and in line with the concept of privacy rights that must be protected by law.

If we look at to the data protection in Indonesia, however is still having a weakness that it is because regulated in several laws which is separated and only describe a concept of personal data in general and just put in the form of Ministry Regulation of Communication and Informatics of Republic of Indonesia.

Some laws that regulate data protection separately is available on Laws No. 11 Year of 2008 on Information and Electronic Transaction (ITE), Laws No. 43 Year of 2009 on records management, Laws No 8 Year of 1997 on company documents, Law No 10 Year of 1998 concerning Amendments to Law Number 7 Year of 1992 on Banking, Law No 36 Year of 2009 on Health, Law No 36 of 1999 on Telecommunications and Law No 24 Year of 2013 concerning Amendments to Law No 23 Year of 2006 on Population Administration.

Apart from the aforementioned implicit rules, the Indonesian Constitution (UUD 1945) contains norms regarding the protection of personal data. Article 28 G paragraph (1) contains "Every person has the right to protection of personal, family, honor, dignity, and property under his control, ...".²²

The rule regarding personal data protection is regulated in several Articles in the Laws No. 11 Year of 2008 on Information and Electronic Transaction (ITE). This law does not contain strict and comprehensive rules for protecting personal data.

²² Lia Sautunnida, Urgensi Undang-Undang Perlindungan Data Pribadi di Indonesia, *Kanun Journal of Legal Studies* Vol. 20, No. 2, (August, 2018), p 381.

However, it is indirectly creating a new understanding of the protection of the existence of electronic data or information, both public and private. The elucidation of personal electronic data is further mandated by the ITE Law in the Government Regulation on the Implementation of Electronic Systems and Transactions. That is the protection of personal data in an electronic system in the ITE Law includes protection from unauthorized use, protection by electronic system administrators, and protection from illegal access and interference.

Regarding the protection of personal data from unauthorized use, Article 26 of the ITE Law states that the use of any personal data in an electronic media must have the consent of the data owner concerned. Anyone who violates this provision can be sued for the losses incurred.²³ In its explanation, Article 26 of the ITE Law also states that personal data is a part of a person's personal rights. The ITE Law (11/2008 yo. 19/2016) as a generic law contains norms for protecting personal data in Article 26, which in essence, the use of any data and information in electronic platform related to a person's personal data must be done with the consent of the person concerned or based on positive law. Basically, this provision contains two legitimate bases for processing personal data, namely (a) consent; and (b) positive legal norms. These two principles are the basis of lawful data processing.

However, according to Sonny Zuhuda, from International Islamic University Malaysia said that Law Number 11 of 2008 on Electronic Information and Transactions is still very insignificant in regulating the use of personal data because the articles in the ITE Law are only general provisions and do not explain various

²³ *Ibid.*

issues that are widely discussed at the international level today.²⁴ Accordingly it can be understood based on the description above that the rules regarding the Protection of Indonesian Personal Data are still general and are separated in several statutory regulations. In addition, it is also hoped that the Indonesian government and parliament will immediately discuss the Draft Law on Personal Data Protection so that Indonesia will be better prepared to face the challenges of the digital economy as well as provide security guarantees for users' personal data and can provide strict sanctions against parties who misuse the personal data of other parties.

While Data Protection in European Union (EU) implements either Directive (DPD) in beginning or developed it to be GDPR. Both are regarded as one of the fundamental human rights in accordance to Article 8 of the European Convention of Human Rights (ECHR), where it is clearly stated that:²⁵

‘Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The word personal data itself refers to any kind of data that pertains to our personal life information. According to the Data Protection Directive (DPD), Art 2 (a) and the Council of Europe Convention 108, Art. 2 (a) ‘Personal data’ are defined

²⁴ Syarpani, *Tinjauan Yuridis Terhadap Perlindungan Data Pribadi di Media Elektronik (Berdasarkan Pasal 25 Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik*, Beraja Niti Journal, Vol 3 No. 6 2014, p 7.

²⁵ https://www.echr.coe.int/Documents/Convention_ENG.pdf Accessed on Tuesday, December 01, 2020 14:30 WIB

as information relating to an identified or identifiable natural person, that is, information about a person whose identity is either manifestly clear or can at least be established by obtaining additional information.²⁶

In addition, every country in the European Union (EU) has their own privacy legislation and companies extract more data from consumers than necessary. To protect the data of consumers, the EU parliament has come up with the General Data Protection Regulation (GDPR) which has been approved on 14 April 2016 and will be enforced from 25 May 2018 onwards. This law is designed to harmonize data privacy laws across Europe and protect the personal data of all EU citizens. There are five key changes: first, the territorial scope increased. Every company that trades with the EU has to obey the GDPR. Second, the penalties have been increased drastically: four percent of the annual global turnover or €20 million (whichever is greater). Third, consumers have to give explicit consent for the data processing through an easy and accessible form. A company cannot use illegible disclaimers anymore. At last, a consumer has the right to be forgotten. A company has to erase the data of consumers on request.

The key difference between the GDPR and the Directive 95/46/EC is that the GDPR is a regulation instead of a directive. This means that it is an enforceable law in all member states. The new privacy directive will mainly influence firms and governments, but it also gives more control for consumers. The aim of the GDPR is to protect the EU citizens from privacy and data breaches.

²⁶ Ayana Datta, Data Protection and Behavioral Analysis in Social Media, Thesis from University of Oslo, 2018, p 5.

In the practice there are many violations that happened in term of platform misuses costumer's data where the user basically has the privacy to protected his data according to "the right to privacy" conceptualize as the right of law.²⁷ Indonesia adopted UDHR through its National Act No.39 of 1999 concerning Human Rights which also reiterates the right to privacy on personal data. Article 31 and 32 of this Act state that no one shall be subjected to arbitrary interference with his home and with his correspondence.²⁸ it is evident that Indonesia seeks to protect human rights even though privacy on personal data not stated specifically but the article 21 and 29 regarding the right to personal integrity has perceived as to protect privacy.²⁹

It is clear that privacy, itself a fundamental right, is a value that the right to data protection seeks to protect.³⁰ According to Yuwinanto, privacy is an abstract concept that contains many meanings. Popular descriptions of privacy include the right of individuals to determine whether and to what extent a person is willing to disclose himself to others or privacy is the right not to be disturbed. According to the Big Indonesian Dictionary, the definition of privacy is freedom, freedom or discretion. This right to privacy is also contained in another of the Universal Declaration of Human Rights (UDHR) Article 12, which states:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor. to attacks upon his honor and reputation.

²⁷ Samuel Warren and Louis Brandeis, *The Right to Privacy*, *Harvard Law Review Vol. IV No. 5*, December 15, 1890, available at <http://faculty.uml.edu/sgallagher/Brandeisprivacy.htm>.

²⁸ Law No 39 of 1999 on Human Rights

²⁹ 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 146.

³⁰ Accessed on January 2021

<https://journals.sagepub.com/doi/full/10.1177/2053951716686994>

Everyone has the right to the protection of the law against such interference or attacks. "

Based on several definitions and terms regarding data and information as well as privacy mentioned above, it can be understood that the data and information is related to the life of an individual and is also closely related to the concept of confidentiality or the privacy rights of a person which must be protected laws and regulations.

So The FinTech company can violate the privacy of its customers if it accesses the customer's telephone number and the photo gallery on the customer's cellphone and the company sells the photo or disseminates the personal photos of the FinTech company customer where it cannot be happened if the standard interest rate on FinTech loans is not too high, so the level of default on loans from users or customers will be relatively low, because the customer does not feel burdened by the high interest on the loan.³¹

In FinTech peer to peer lending, there is several parties involved, called creditors who are banks or other financial institutions that have receivables due to agreement or law, in the other hand debtors are people who have debts to banks or other financial institutions based on an agreement or law.³² Besides, FinTech is having a role as Indonesian legal entity that provides, manages, and operates

³¹ Artie, Benny, B.K Kwok, Emergence of Fintech and cybersecurity in a global financial centre: Strategic approach by a regulator. *Journal of Financial Regulation and Compliance*, Vol. 25, Issue 4 (2017), p. 422-434

³² Riduan Tobink dan Bill Nikholaus, 2003. "Dictionary Banking Terms", Atalya Rileni Sudeco, Jakarta. Page. 118 accessed via http://repository.uma.ac.id/bitstream/123456789/1558/5/108400104_file5.pdf on Thursday, February 22, 2020 at 19.40 WIB.

information technology based lending and borrowing services.³³ The creditors in loans based on information technology are referred as the lenders, while debtors are referred as loan recipients. The legal relationship contained in information technology based loan transaction born from an agreement. Conventionally, an agreement can occur through a direct or indirect action from both parties, it has a role both to act for and on behalf of himself or act for and on behalf of a company he represents.³⁴

Information technology based loan agreements are fundamentally different from money lending and borrowing services as stipulated in Article 1754 of the Civil Code.³⁵ Where the difference is the parties do not meet directly and do not need to know each other, it is because there are organizers who will bring the parties together.³⁶ In addition, the implementation of the agreement is carried out online. The lending and borrowing money agreement begins with the submission of the loan application by the loan recipient through an online form facility provided by the organizer.

In general, the online form must be filled out by the debtor when they want to create an account to be able to carry out lending and borrowing transactions. The form includes a column asking the prospective debtor to upload private data such as a photo, a citizen card (KTP), telephone number, e-mail address, emergency

³³ Financial Services Authority Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Services.

³⁴ Ernama Santi, Budiharto, Hendro Saptono, "Supervision of the Financial Services Authority Against Financial Technology (Regulation of the Financial Services Authority Number 77 / POJK.01 / 2016) ", *Diponegoro Law Journal, Edition No. 3 Vol. 6*, 2017, p 5.

³⁵ Ratna Hartanto dan Juliyani Purnama Ramli, "Legal Relations of the Parties in Peer to Peer Lending ", *Journal of Law Ius Quia Iustum, Issue No. 2 Vol. 25*, 2018, p.322.

³⁶ *Ibid.*

contact, etc. depends on the policies that apply by lending fintech itself. In the Financial Services Authority Circular No. 18 / SEOJK. 02/2017 concerning Information Technology Governance and Risk Management in Information Technology-Based Lending and Borrowing Services in Part III concerning Data Centers and Disaster Recovery Centers states that providers of information technology-based loan services must place electronic systems in data centers and disaster recovery centers in the region Indonesia in accordance with applicable laws and regulations.³⁷ So that online forms that have been filled out by information technology-based loan debtors are electronic documents that must be kept confidential in accordance with the provisions of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions.

Article 19 paragraph (3) of the Financial Services Authority Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Services states that it can provide information about loan recipients, but only to what is stated in the electronic contract. Providing access personal data of loan recipients to providers of information technology-based loans is often abused.

The term of abuse in Indonesian law has equivalent of the term *misbruik van omstandigheden*, and undue influence³⁸ that formed on unbalanced

³⁷ Financial Services Authority Circular No. 18 / Seeojk.02/2017 concerning Information Technology Governance and Risk Management in Information Technology-Based Lending and Borrowing Services.

³⁸ Muhammad Arifin, Abuse of Circumstances as a Limiting Factor of Freedom of Contract, *Journal of Law Muhammadiyah University*, Medan, Edition No. 2, Vol. 14, p. 286.

relationship.³⁹ In the context of undue influence must be had several form of exploitations by one party on the weaker party. The party who seeks to cancel the transaction on the basis of undue influence should be proving that the transaction is dishonest, indicates that he is the innocent party who has been harmed. Others party must protect himself by proving that professional and independent advice has been given before the transaction takes place.⁴⁰ So that in online loans based on personal data from the recipient of the loan must be maintained and protected confidentiality, so it is not to be misused and not detrimental to the recipient of the loan.

Generally, data protection includes measures to protect personal data security of users and allow its use by others as long as in accordance with specific conditions.⁴¹ Article 26 letter c of the Financial Services Authority Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Services states that one of the obligations of information technology-based loan providers is to guarantee the acquisition, use, utilization and disclosure of personal data, transaction data, and financial data obtained by the organizer based on approval of the owner of personal data, transaction data, and financial data, unless otherwise stipulated by statutory provisions⁴²

The protection of personal data of users is not only regulated in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, Regulation of the Minister of Communication and

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Sinta Dewi, The Concept of Legal Protection of Privacy and Personal Data Is Associated With the Use of Cloud Computing in Indonesia, quoted from www.privacyinternational.org, accessed October 15, 2013, p. 25.

⁴² Financial Services Authority Regulation No. 77 / POJK.01 / 2016, Op. Cit, p. 21.

Information No. 20 of 2016 concerning Protection of Personal Data in the Electronic System also regulates the matter contained in Article 3 which reads:⁴³

Protection of Personal Data in an Electronic System is carried out in the process of:

- a. acquisition and collection;
- b. processing and analyzing;
- c. storage;
- d. appearance, announcement, delivery, dissemination and / or opening of access; and
- e. annihilation.

The need for protection is considered important because personal data is a person's privacy right, as well as fundamentally it has economic value to the third party who wish to use it.⁴⁴

Currently, Indonesia does not yet have special national regulations regarding privacy of personal data. Therefore, it is needed in the form of a law that specifically regulates privacy protection for personal data, whether it is done by offline or online platform.⁴⁵ In addition, the formation of an information technology legal system is very much needed to encourage coordination with other relevant laws and create harmonization based on international principles and local community value.

So the drafting of laws can accommodate several interests: first, protecting the privacy based on personal information, secondly, facilitating international trade relations especially e-commerce by following international regulatory standards by

⁴³ Minister of Communication and Information Regulation No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

⁴⁴ Ana Sofia Yuking, *Op. Cit*, p 8-9.

⁴⁵ Sinta Dewi, *Op.cit*, p 26.

adjusting to the conditions of the Indonesian people. Thirdly, harmonizing the regulation in controlling global technology company to make sure the services they manage are secured, even though it has been integrated with other local and national platform.

F. Operational Definitions

1. Legal protection

It means an activity to protect individuals by harmonizing the relationship of values or norms that manifest in attitudes and actions in creating order for the intercourse of human life.⁴⁶

2. Information Technology Lending and Borrowing Service Providers.

Technology lending and borrowing service providers information is an Indonesian legal entity that provides, manages, and operates information technology based lending and borrowing services.⁴⁷

3. The lender

Lenders are people, legal entities, and / or business entities that have receivables due to information technology loan and loan service agreements.⁴⁸

4. The borrower

The borrower are people and / or legal entities that have debts due to information technology loan and loan service agreements.⁴⁹

5. Personal data

⁴⁶ Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*, (Surakarta: Disertasi S2 Fakultas Hukum, Universitas Sebelas Maret, 2003) p. 14.

⁴⁷ Minister of Communication and Information Regulation No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

Personal Data is certain personal data that is stored, maintained, and protected by the truth and confidentiality is protected.⁵⁰

6. Debtor

Debtors and online debtors are individuals, companies or entities that obtain one or more funding facilities.⁵¹

7. Financial Technology

Financial Technology is the use of technology in a financial system that produces new products, services, technology and / or business models and can have an impact on monetary stability, financial system stability, and / or the efficiency, smoothness, security and reliability of payment systems.⁵²

8. Lending Fintech or Peer to Peer Lending

Lending or Peer to Peer Lending as part of Financial Technology (Fintech) is having similar term of terminology, it is the organization of financial services to meets between lenders and borrower in the context of entering into loan agreements through the electronic system by using an internet network.⁵³ Basically Lending or Peer to Peer Lending is the same as information technology-based loans that provides financial service between lenders and borrower of fund to make financial transactions.

⁵⁰ Article 1 Number 1 of the Regulation of the Minister of Communication and Information No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

⁵¹ Article 1 Number 7 Bank Indonesia Regulation Number: 9/14 / Pbi / 2007 concerning Debtor Information Systems.

⁵² Article 1 Number 1 Bank Indonesia Regulation Number 19/12 / Pbi / 2017 concerning Implementation of Financial Technology.

⁵³ Article 1 Number 3 of the Financial Services Authority Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Services.

G. Research Methods

To facilitate further discussion of each problem contained in this paper it is necessary to do research. In this study the authors will use the following methods:

1. Types of research

This research uses the empirical legal research method. It is a legal research method that utilize empirical facts that taken from a human behavior, both verbal behavior which obtained from interviews and real behavior carried out through direct observation.⁵⁴

2. Research Approach

The research approach that will be used by the writer is an observation approach. Where this approach is usually used by the survey method in order to evaluate various policies and decisions, and the implications of regulations on the community. The survey results can also be used to make predictions about a particular social phenomenon, including the application of positive law in the context of social and state social life.⁵⁵

3. Object of research

The object of research is the victims, fintech lending provider and OJK as the regulator relating to information technology-based loan services.

4. Source of Research Data

⁵⁴ Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Empiris & Normatif*, Pustaka Pelajar, 2010, p 280.

⁵⁵ Dyah Ochtorina Susanti, A'an Efendi, *Legal Research*, quoted from the Academic Paper on the Private Law Procedure, which was compiled by the National Legal Development Agency (BPHN) in 2011, p 115.

The data source used is secondary data, i.e. data obtained through the process of observation research consisting of:

a. Primary Data

Primary data is data obtained directly from the field based on respondents and informants. Data collection conducted from researcher by interview.⁵⁶

b. Secondary Data

Secondary legal material, which provides an explanation of the primary legal material that is taken from books regards on the issue, research and scientific papers, seminar, legal journals and literature related to this thesis writing.⁵⁷

c. Data collection technique

Secondary data collection techniques are done by random sampling. By taking samples from several communities as victims of fintech lending.

d. Data analysis

The steps undertaken in this research data analysis activity are as follows:

Data and information that collected from the results of the study by interviews with relevant agencies, fintech lending providers, and victims. Then, all of them analyzed descriptive qualitatively, which is

⁵⁶ Peter Mahmud Marzuki, Legal Research, Kencana Prenada Media Group, Jakarta, 2008, p 141.

⁵⁷ Philips Dillah Suratman, Legal Research Methods cited from Ronny Hanitijo Soemitro, Legal Research Methodology, Ghalia Indonesia, Jakarta, 1982, p 12.

a method of data analysis by grouping and selecting data obtained from research according to quality and truth. Lastly, the data is linked into theories and legislation based on document studies, so that the problems in this study are solved.

H. Systematic Writing

The writing of this thesis is presented in chapter IV. Explanation of each chapter is described as follows:

CHAPTER I: INTRODUCTION

This chapter explains the problem, urgency of research on legal protection of user data of financial technology startup that based on information technology-based fintech lending or peer to peer lending which is reviewed from the Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, formulation of problems, research objectives, literature review, research methods and systematic writing.

CHAPTER II: LITERATURE REVIEW

This chapter explains about data protection conception, data protection regulation in Indonesia as well as data protection regulation in European Union (EU) and how data protection according to Islamic law.

CHAPTER III RESEARCH RESULTS

This chapter explains the research results obtained through the study of literature and others, then will be analyzed and discussed to get answer from problem.

CHAPTER IV CLOSING

This chapter explains the conclusions that have been obtained as well as suggestions relating to the problem.

BIBLIOGRAPHY



CHAPTER II

DATA PROTECTION CONCEPTION AND DATA PROTECTION REGULATION IN INDONESIA AND EUROPEAN UNION (EU)

A. General Review About Data Protection

1. Data Protection Conception

Literally, data is the plural form of the word "datum" which in Latin means a piece of information.⁵⁸ In the Knowledge Hierarchy compiled by Russell L. Ackoff, data is defined as symbols that are properties of observables (symbols possessed by the object being observed). whereas information is defined as a description. The difference between the two is functional in that information is inferred from the data.

The digital age has sparked an explosion in the growth of personal data that is created, stored and transmitted on computers and mobile devices in the form of site and application.⁵⁹ On the other hand, the advances of technology also pose serious threats to personal privacy and information security.

In the concept of telematics law, data is a formal representation of a concept, fact, or instruction. In everyday use, data means a statement that is accepted as is. Data is the form word of datum, derived from Latin which means "something that is given".

⁵⁸ Siti Yuniarti, Perlindungan Hukum Data Pribadi di Indonesia, *Journal of BECOS (Business Economic, Communication, and Social Sciences)*, Vol.1, 2019, p 150.

⁵⁹ Cameron G. Shilling, "Privacy and Data Security: New Challenges of The Digital Age", *New Hampshire Bar Journal* (2011). p 1.

The term data protection was first used in Germany and Sweden in the 1970s to regulate the protection of personal data through law.⁶⁰ The reason for protecting them is because at that time computers began to be used as a means of storing population data, especially for population census purposes. It turns out that in practice, there have been many violations committed by both the government and the private sector. Therefore, to avoid the misuse of personal data so it has to be regulated by law.

Each country uses different terms between personal information and personal data. However, substantively the two terms have almost the same meaning so that the two terms are often used interchangeably.⁶¹ The United States, Canada and Australia use the term personal information, while the European Union countries and Indonesia themselves in the Information and Electronic Transactions Law use the term personal data.

Personal data consists of facts and opinions relating to individuals which are very personal or sensitive information so that the person or organization concerned wants to keep or restrict other people to collect, use or distribute it to other parties. Basically, the form of data protection is divided into two categories, namely the form of data protection in the form of safeguarding the physical data, both visible and invisible. Another form of data protection is the existence of a side of regulation that regulates the use of data by other people

⁶⁰ Shinta Dewi, *Perlindungan Privasi Atas Informasi Pribadi Dalam E-Commerce Menurut Hukum Internasional*, (Bandung: Widya Padjadjaran, 2009), p 37.

⁶¹ *Ibid.* p 71

who are not entitled, misuse of data for certain interests, and destruction of the data itself.

Data is a collection of rough facts that still need to be processed to become meaningful information. The basis of this is technology. According to Davis (1985) data is the raw material for producing information, while according to Arnold et.al. (1972) data is facts, pictures, letters, words, charts or symbols, which represent ideas, objects, conditions or situations. According to Toto (2006), information is the result of data processing that is stored, processed, and broadcast as a message. in a form that is more useful and meaningful to the recipient, so that it can describe real events and can be used for decision making.⁶² Data, the raw material for information, is defined as a regular group of symbols representing quantities, actions, objects, and so on. Data is formed from characters that can be in the form of alphabets, numbers, or special symbols. The data is compiled to be processed in the form of data structures, file structures and data bases.⁶³

Therefore, both data and information are very important resources for the running of the organization. In the current era, the organization in form of anything should be adapt and able to use data or information correctly, quickly, accurately and completely so that can compete with its competitors. Finally, it could be use for decision making to make those organization becoming more sustainable to survive in digital era.

⁶² Purwanto, Penelitian Tentang Perlindungan Hukum Data Digital, (Jakarta: Badan Pembinaan Hukum Nasional, 2007), p 13.

⁶³ *Ibid.* p 14

2. Data Protection Regulation in Indonesia

In Indonesia, there is no specific regulation regarding data protection, however, after conducting in-depth research, the author found that by mid-June 2020, there were more than 40 (forty) laws and regulations that regulate the protection of personal data in Indonesia.

Here are the common laws and regulations that often use by various parties such as: Law No. 7 Year of 1971 on Record Management, Law No. 8 Year of 1997 on Company Documents, Law No. 7 Year of 1992 in conjunction with Law No. 10 of 1998 on Banking, Law No. 36 of 1999 on Telecommunications, Law No. 36 Year of 2009 on Health, Law No 19 Year of 2016 concerning Amendments to Law No 11 Year of 2008 on Electronic Information and Transactions, Ministry Regulation of Communication and Informatics No 20 Year of 2016 on Data Protection in Electronic System and Government Regulation No 71 Year of 2019 on The Operation of Electronic System and Transaction.

a. Law No. 7 of 1971 on Record Management

This law basically regulates the public aspect, namely the administration of the archiving system by the government in the context of running state administration. In this filing system can also include and / or personal information of a person. In this law, there is a provision that archives can be in "any form", so in this case can also include electronic data. Regarding data security, this law includes criminal threats against anyone who has illegally and

/ or keeps and deliberately notifies the contents of the archive to third parties who do not know.⁶⁴

b. Law No. 8 of 1997 on Company Documents

Completing the provisions regarding Archive Principles which mostly regulate the public aspect, then within the scope of the company is further regulated in Law no. 8 of 1997 concerning Company Documents.⁶⁵ Law In article 1, Company Documents are defined as data, notes and or information made or received by a company in the context of carrying out its activities, whether written on paper or other means or recorded in any form that can be seen, read or heard.

c. Law No. 7 of 1992 in conjunction with Law No. 10 of 1998 on Banking

The provisions related to personal data protection in the Banking Act relating to bank confidentiality matters. Pursuant to Article 40 of Law Number 10 Year 1998, banks are required to keep confidential information regarding their depositing customers and their deposits, except in the cases referred to in Article 41, Article 41A, Article 42, Article 43, Article 44, and Article 44A. The exclusion articles are if for tax purposes, for settlement of bank receivables, for judicial purposes in criminal cases, as well as at the request, approval or power of attorney of the depositing customer, where the bank may violate the provisions regarding bank secrecy, of course with certain procedures.⁶⁶

d. Law No. 36 of 1999 on Telecommunications

⁶⁴ Edmon Makarim, Pengantar Hukum Telematika (Suatu Kompilasi Kajian), p 178

⁶⁵ *Ibid.*

⁶⁶ Edmon Makarim, Pengantar Hukum Telematika (Suatu Kompilasi Kajian), p 179

According to the Government Regulation on year of 2000 concerning Telecommunications Operations which is the implementing regulation of Law Number 36 of 1999 on Telecommunications, the internet is included as a type of multimedia service, which is identified as a telecommunications service provider that offers information technology-based services.

This shows that internet regulation is included in telecommunication law. Law Number 36 of 1999 regarding Telecommunications regulates several matters relating to confidentiality of information. Among other things, Article 22 states:⁶⁷

Every person is prohibited from committing acts without rights, illegality, or manipulation of: (a) access to telecommunications networks; and / or (b) access to telecommunications services; and or (c) access to special telecommunications networks. Violators of these provisions are subject to a maximum imprisonment of six years and / or a maximum fine of Rp. 600 million.

Furthermore, According to Article 40 states:⁶⁸

Any person is prohibited from tapping into information transmitted through the telecommunications network in any form. For those who violate these provisions, they will face a maximum imprisonment of 15 years.

This Telecommunication Law also regulates the obligation of telecommunication service providers to keep confidential information sent and or received by telecommunication service subscribers through telecommunication networks and / or telecommunication services which it provides (Article 42 paragraph (1)). Administrators who violate these

⁶⁷ See Article 22 Law Number 36 of 1999 regarding Telecommunications

⁶⁸ See Article 40 Law Number 36 of 1999 regarding Telecommunications

obligations are subject to a maximum imprisonment of two years and / or a maximum fine of 200 million rupiahs.

However, telecommunications service providers are required to record information required for the purposes of the criminal justice process at the written request of the Attorney General and / or the Chief of Police of the Republic of Indonesia for certain crimes, namely crimes punishable by imprisonment for five years or more, life or death.⁶⁹

e. Law No 19 of 2016 concerning Amendments to Law No 11 of 2008 on Electronic Information and Transactions

The Indonesian Criminal Code does not yet regulate legal jurisdiction over crimes in cyberspace so that it will have an impact on the protection of a person's privacy rights.⁷⁰ Because at this time the development of technology in the internet world has progressed very rapidly so that people can access someone's personal data without the knowledge of the party concerned.⁷¹ So that the possibility of violating someone's personal rights is very large.

One of the interesting things in this Law is that in the use of Information Technology, protection of personal data is a part of personal rights. This is stated based on Article 9 that business actors offering products through electronic systems must provide complete and correct information regarding the terms of the contract, the manufacturer, and the products offered.

⁶⁹ Edmon Makarim, Pengantar Hukum Telematika (Suatu Kompilasi Kajian), p 181

⁷⁰ Radian Adi Nugraha, Analisis Yuridis Mengenai Perlindungan Data Pribadi Dalam Cloud Computing System Dintinjau Dari Undang-Undang Informasi dan Transaksi Elektronik, Thesis from Universitas Indonesia, 2012, p 31.

⁷¹ *Ibid.*

Furthermore, Article 26 paragraph (1) states that unless otherwise stipulated by the Laws and Regulations, the use of any information through electronic media concerning a person's personal data must be made with the consent of the person concerned. Paragraph (2) then states that every person whose rights as intended in paragraph (1) are violated can file a lawsuit for the losses incurred under this Law. The explanation of Article 26 Paragraph (1) states that in the use of Information Technology, protection of personal data is one part of personal rights (privacy rights). Personal rights contain the following meaning:

- 1) personal rights are the right to enjoy a private life and be free from all kinds of disturbances.
- 2) personal rights are the right to be able to communicate with other people without spying.
- 3) personal right is the right to monitor access to information about a person's personal life and data

Data protection in Article 26 is a fundamental protection for privacy and data. In this provision, data protection contains elements regarding protection of privacy which are minimal and very broad.⁷² However, if a general disclaimer is drawn on data protection, then data protection specifically has actually been regulated in the following articles, namely in Article 30 to Article 33 and also in Article 35 which is included in CHAPTER VII concerning Prohibited Actions.

⁷² Radian Adi Nugraha, Analisis Yuridis Mengenai Perlindungan Data Pribadi Dalam Cloud Computing System Dintinjau Dari Undang-Undang Informasi dan Transaksi Elektronik, Thesis from Universitas Indonesia, 2012, p 32.

By the use of general interpretations, violations of data protection can be based on these provisions.

f. Ministry Regulation of Communication and Informatics No 20 of 2016 on Data Protection in Electronic System

The premise of this law is respect for personal data as a person's privacy. It is referred to the freedom for the owner of personal data to declare the confidentiality of his personal data or not, as long as in accordance with the provisions that specific regulated in Article 26.⁷³ So that according to this ministerial regulation, then the owner of personal data includes:

- 1) entailed to the confidentiality of his data;
- 2) has the right to file complaints in the context of resolving personal data disputes;
- 3) has the right to have access to historical personal data;
- 4) and has the right to request the destruction of his certain personal data in the electronic system.

Meanwhile, the user's obligation to his personal data is to maintain confidentiality that he has been made, collected, processed as well as user is responsible for the personal data contained in his control.

In addition, for the obligation of electronic system operator is to certify the Electronic System which it manages in accordance with the provisions of laws

⁷³ Accessed on December 13, 2020
<https://www.hukumonline.com/berita/baca/lt584cc775d00a4/ini-poin-penting-dalam-permen-kominfo-perlindungan-data-pribadi/>

and regulations; maintain the truth, validity, confidentiality, accuracy and relevance as well as conformity with the purpose of obtaining, collecting, processing, analyzing, storing, displaying, announcing, sending, disseminating and destroying personal data; notify in writing to the personal data owner if there is a failure to protect the confidentiality of personal data in the electronic system that he manages;

g. Government Regulation No 71 Year of 2019 on The Operation of Electronic System and Transaction

This Law was enacted by President Joko Widodo on October 4, 2019 in Jakarta. The presence of it also revokes Government Regulation No 82 Year of 2012 on the Implementation of Electronic Systems and Transactions in order to guarantee recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of security and public order in a democratic society.⁷⁴

Some of the provisions that have been further regulated are:

- 1) the obligation for each Electronic System Operator to delete irrelevant Electronic Information and / or Electronic Documents that are under their control at the request of the person concerned based on a court order; and
- 2) the role of the Government in facilitating the use of Information Technology and Electronic Transactions, protecting public interests from all kinds of disturbances as a result of the misuse of Electronic Information and Electronic

⁷⁴ Radian Adi Nugraha, *Op.Cit*, p 33.

Transactions that disrupt public order, and preventing the dissemination and use of Electronic Information and / or Electronic Documents that have contents that are prohibited in accordance with the provisions of the legislation.

h. Financial Services Authority Regulation No. 77 / POJK.01 / 2016 on Information Technology-Based Money Lending and Borrowing Services.

This regulation from OJK in article 25 regarding data confidentiality, point c states that there is a guarantee of the use and utilization of personal data, transaction data and financial data, but fintech operators must obtain prior approval from the owner of the personal data.

The Financial Services Authority (OJK) asks the public to be careful about providing personal data to financial technology (fintech) lending companies when applying for loans, especially emergency contact data. Usually, this emergency contact is contacted by a fintech lending company when the debtor is in defaults on debt. This is a last resort to collect overdue debt.⁷⁵

It is also regulated in the law on electronic information and transactions (ITE). So, every prospective borrower who downloads the online credit application platform, several questions will appear regarding approval to provide access to personal data. So if the prospective borrower agrees, then it is in accordance with the ITE Law and fintech organizers can legally copy personal data. Therefore, to avoid misuse of borrower funds, OJK and the Indonesian

⁷⁵ Accessed on December 15, 2020 <https://keuangan.kontan.co.id/news/ojk-masyarakat-harus-hati-hati-bagikan-data-pribadi-ke-fintech-lending>

Fintech Association (Aftech) have conducted outreach to educate the public to be more careful in making loans online.

3. Data Protection in European Union (EU)

In 1980, the Committee of Ministers from the Organization for Economic Cooperation and Development (OECD) issued a guideline namely the Guidelines on the Protection of Privacy and Trans border Flows of Personal Data. These guidelines provide basic principles regarding data protection and free flow of information between countries that have laws that comply with data protection principles.

One year later, the Council of Europe announced a convention for the protection of individuals regarding the automatic processing of personal data (Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data). This convention entered into force in 1985 which has almost the same content as the previous guidelines but focuses more on data protection to protect one's privacy.

On February 20, 1995 the Council of Ministers of the European Union approved a draft referred to as "Directive 95/46 / EC of the Parliament and The Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of such Data." This DPD (Data Protection Directive) was formally approved on October 24, 1995 and will become effective only three years later, namely in 1998. This Directive requires fifteen EU countries to enact regulations relating to the processing of

personal data.⁷⁶ However, it develops by reforming DPD to GDPR for the next decade.

a. Aims of the GDPR

The reasons behind the European data protection reform initiative was set out by the Commission in a Communication in 2010. At that time, the Commission recognizes that the DPD ‘enshrines two of the oldest and equally important ambitions of the European integration process: the protection of fundamental rights and freedoms of individuals and in particular the fundamental right to data protection, on the one hand, and the achievement of the internal market – the free flow of personal data in this case – on the other’. The Commission further acknowledges that the ‘twofold objective is still valid and the principles enshrined in the Directive remain sound’. Nevertheless, the Commission also realizes that globalization together with vast technological development and elaborate collection of data has raised questions about whether the DPD (Data Protection Directive) can cope with the new challenges.⁷⁷

The EU's data protection laws have long been regarded as a gold standard all over the world. Over the last 25 years, technology has transformed our lives in ways nobody could have imagined so a review of the rules was needed.⁷⁸

⁷⁶ Edmon Makarim, *Pengantar Hukum Telematika Suatu Kompilasi Kajian*, (Jakarta: Rajawali Pres, 2019), p 166.

⁷⁷ Janne Lindqvist, *Personal Data Protection on Internet of Things an EU Perspective*, Thesis from Faculty of Law University of Helsinki, 2018, p 35.

⁷⁸ *Ibid.*

In 2016, the EU adopted the General Data Protection Regulation (GDPR), one of its greatest achievements in recent years. It replaces the 1995 Data Protection Directive which was adopted at a time when the internet was in its infancy. The GDPR is now recognized as law across the EU. Member States have two years to ensure that it is fully implementable in their countries by May 2018.⁷⁹

b. Any Information

Any kind of information can be personal data provided that it relates to a person. The term 'personal data' includes information about an individual's private and family life *stricto sensu*, but it also covers information regarding activities, habits, and lifestyle, such as working relations or the economic or social behavior of the individual.⁸⁰ The wordings of the GDPR itself supports this interpretation. However, it must be recognized that this concept of private and family life is extremely broad.

In theory, personal data may encompass a great deal of data, which has, *prima facie*, little direct relationship to a particular person. Accordingly, information may be 'personal' even if it must be combined with other data in order to allow a person to be identified.

c. Identifiable Person

⁷⁹ *Ibid.*

⁸⁰ WP29, Opinion 4/2007 (n 141) p 6.

The definition of personal data in both the DPD and the GDPR has three main aspects: 1) it is ‘any information’; 2) it relates to a ‘natural person’; and 3) that person must be ‘identified or identifiable’.⁸¹

The possibility of identification therefore forms a threshold for determining whether information is personal data and within the scope of the GDPR (and the DPD). Thus, the mere possibility of identification can be enough for data to become personal information. Usually identification is achieved through particular pieces of information (identifiers), which are closely linked to a particular individual, like name, height, clothing or profession.

These identifiers are mentioned in Article 2 of the DPD in the definition of ‘personal data’. In the GDPR, the article relating to the definition of personal data has been modified as follows (changes in italics):

Article 2 (a) of the DPD:

‘personal data’ shall mean any information relating to an identified or identifiable natural person (‘data subject’); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

Article 4 (1) of the GDPR:

‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an *identifier such as a name*, an identification number, *location data*, an *online identifier* or to one or more factors specific to the physical, physiological, *genetic*, mental, economic, cultural or social identity *of that natural person*.

⁸¹ Article 2 of Data Protection Directive and Article 4 of GDPR

As can be seen, new examples of identifiers have been added to the definition of personal data: name, location data, online identifiers, and genetic identity. In particular, the inclusion of online identifiers and genetic factors demonstrates that technological development has been taken into account by the regulators.

Even information about physical objects can qualify as personal data if it can be linked to an individual.⁸² Identification of objects that belong to individuals can, in turn, lead to a collection of information about habits, behavior, and interests. The following is a detailed explanation of the differences between the DPD and the GDPR.

a) Personal Data Redefined

GDPR changes the definition of personal data, reflecting changes in technology and the ways that organizations collect data about people. Profiling, or developing a snapshot of an individual's preferences using browser history, purchase history, and other related activity will no longer be acceptable under the GDPR unless the individual in question has explicitly consented. Comparatively, Under the DPD, personal data was defined as data such as names, photos, email addresses, phone numbers, addresses, and personal identification numbers (social security, bank account, etc.). While under the GDPR, personal data is defined as any information that could be

⁸² Hon and others, 'The Problem of Personal Data in Cloud Computing – What Information is Regulated? The Cloud of Unknowing, part 1' (2011) Paper No. 75 Queen Mary University of London, School of Law Legal Studies Research Paper, p 14.

used, on its own or in conjunction with other data, to identify an individual. This data includes IP addresses, mobile device identifiers, and geolocation and biometric data (fingerprints, retina scans, etc.). The GDPR also covers data related to an individual's physical, psychological, genetic, mental, economic, cultural, or social identity.

b) Individual Rights

(1) Opt-in and Consent

The GDPR represents progress in privacy considerations; it requires explicit opt-in for the processing of any personal data.⁸³ Descriptions of data use must be short and straight to the point, and will eliminate one-size-fits-all agreements.

(2) Right to Access

To make the use of personal data more transparent and empower the residents of the EU, the GDPR gives data subjects the right to access their personal data. In other words, they have the right to obtain from data controllers information on how their data is being used, where, and for what purpose. Data controllers must provide this information along with a copy of the requestor's personal data in an electronic format, free of charge.⁸⁴

(3) Right to be Forgotten

Residents of the EU will also have the right to request that data be transferred from one good or service provider to another, as well as the right

⁸³ Accessed December 12, 2020 <https://gdpr.report/news/2018/03/06/data-protection-directive-versus-gdpr-understanding-key-changes/>

⁸⁴ *Ibid.*

to be forgotten. If a person submits such a request, data controllers must erase all the requestor's personal data, cease further use of that data, and if applicable, halt any third-party use of that data.⁸⁵

c. Data Controllers vs. Data Processors

(1) Liability

A key difference between the DPD and the GDPR is that data processors are now regulated under the GDPR. Both data controllers and processors will be jointly responsible for complying with the new rules, meaning if an organisation outsources data entry or analysis to a third party or processes data on behalf of another organization, both parties are required to abide by the GDPR and are liable for violations.

Under the DPD, only data controllers were held accountable for any mishandling of consumer data. While Under the GDPR, data processors are required to have a contract with data controllers to process personal data. The data processor is the entity liable for the security of personal data.

(2) Documentation

The controller or processor must appoint a data protection officer when its core activities involve “regular and systematic monitoring of data subjects on a large scale.” The data protection officer will serve as a central point of contact who knows about how the collection or processing of personal data is performed.⁸⁶

⁸⁵ *Ibid.*

⁸⁶ Lia Sautunnida, *Op. Cit*, p 387.

d. Information Governance and Security

(1) Privacy: Data Regulation

GDPR requires that organizations consider compliance with the regulation from the inception of systems and processes—that is, that they implement “privacy by design.”⁸⁷ In other words, they should consider the privacy of collected data at all steps in the development of business concepts, from the very beginning. Privacy by design also requires that controllers discard personal data when they are no longer using it.

(2) Security: Impact Assessments

For the security of personal data collected and processed by controllers and processors, the GDPR requires that organizations conduct impact assessments for automated data processing activities, large-scale processing of certain kinds of data, and systematic monitoring of publicly accessible areas on a large scale.

e. Data Breach Notification and Penalties

(1) Breach Timeline and Procedures

The GDPR requires organizations to report data breaches to the individuals whose data was compromised and to their supervisory authority within 72 hours. The authority will evaluate the data compromised and the preventative

⁸⁷ *Ibid.*

security measures in place at the time of the breach to assess repercussions and ensure future compliance.⁸⁸

Under the DPD, EU member states were free to adopt different data breach notification laws. As a result, when companies suffered data breaches in the EU, they had to research and ensure compliance with each member state. While with the adoption of the GDPR, there will be a single requirement to follow: Data controllers must notify their supervisory authority and individuals affected by a personal data.

B. General Review About Data Protection in Islamic Law Perspectives

1. Data Protection Definition According to Islamic Law

Islam is undeniably an *'alamiyah* (universal) religion. It is revealed by Allah through His messengers to all human beings, regardless of their religion, race or gender. The *Shari'ah* comes with Islam and it is revealed by Allah as a guide for all humans to ensure that they are able to fulfil their duties on this earth to Allah and to each other. Each person is accountable for all the acts done in this world and each will be accountable and receive the consequences of their deeds in the Hereafter. As such, it is obvious that in order to care for the rights of Allah (*Hablu Minallah*), each person must also take into consideration how their acts affect the lives of other individuals (*Hablu Minannas*).⁸⁹

⁸⁸ Accessed December 12, 2020 <https://britishlegalitforum.com/wp-content/uploads/2017/02/GDPR-Whitepaper-British-Legal-Technology-Forum-2017-Sponsor.pdf>

⁸⁹ Hamidah Ayob, Consumer Protection in Islam: An Overview, *Malaysian Journal of Consumer and Family Economic*, *Malaysian Journal of Consumer and Family Economics Vol. 20 (S1)*, 2017, p 2.

It is not enough for a Muslim to only care for their direct relationship with Allah s.w.t through the performance of specific acts of worship such as saying the *Shahadah*, praying five times a day, paying zakat, fasting during the month of Ramadhan and going for Hajj. Every person also needs to care for their relationship with each other, and this includes one of the most important relationships, i.e. when there exists a commercial transaction between two or more persons. Aside from that, Islam emphasizes the need to protect not only individual welfare but also the welfare of the society at large.

Although the Muslim jurists have not mentioned the term “data protection” specifically in the past, in actual fact the concept is embedded within one of the *Maqasid al-Shari’ah* or the Essential Values that the *Shari’ah* seeks to protect and preserve, i.e. *Hifz al-Nafs* which means the protection of human life and *Hifz al-Nasl* which means protection of human dignity.

2. The *Maqasid Al-Shariah* and Data Protection

The underlying purpose of the *Shari’ah* or the *Maqasid al-Shariah*, is to benefit all humankind, concerning their affairs, both in this world and hereafter.

⁹⁰ Generally, the aim of the *Shari’ah* is to secure the benefit of people and protect them from evil and harm. As Allah mentioned in Quran, He says:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ - ١٠٧

Meaning:

“And We sent thee not, but as a mercy for all creatures”. (*Surah Al-Anbiya* :107)⁹¹

⁹⁰ Hamidah Ayob, *Op. Cit*, p 6

⁹¹ Accessed on December 14, 2020 <https://quran.kemenag.go.id/sura/21>

This verse explains that Allah sent the holy Prophet with the *Shari'ah* to safeguard people's interest and preventing them from harm in this world and the hereafter. So based on the context of the verse, it clearly leads to basic human rights and to the consumer and data protection in general. Al-Quran and al-Hadith as the main of *Shari'ah* source laid down the basic structure of the consumer protection that is valid today as they were during the golden age of Prophet Muhammad SAW and the guided Caliphs.

Nevertheless, the Muslim legal philosophers have highlighted the following basic freedoms or rights in respect of each individual; they are:

- 1) Protection of religion or al- Din.

All Muslims have obligations to protect their religion at personal level and at group level. Accordingly, Allah has mentioned in Quran, the commandments to Muslims in defending their faith in Quran;

وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا^ق

إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ - ١٩٠

Meaning:

“Fight in the way of Allah those who fight you but do not transgress. Indeed.

Allah does not like transgressors”. (Surah Al-Baqarah, 190)⁹²

⁹² Accessed on December 14, 2020 <https://quran.kemenag.go.id/sura/21>

So, for Muslim consumers, religion becomes more important than anything else in their life and the protection of their belief must be included in their rights of basic necessities. Hence, when providing products and services to Muslim consumers, vendors are expected to ensure that their products and services are Halal and caters to the religious needs of Muslims and does not endanger their faith in any way. So that *Maqasid al-syariah* which leads the ultimate goal of this law is to get *mashlahah* or goodness and welfare of mankind.⁹³

2) Protection of human life and progeny.

Life is essential and valuable to everyone. It covers many things and to protect it is equally important and obligatory to every Muslim and non-Muslim.

⁹⁴Regardless of that, Quran has emphasized it *in Surah al-Isra*’;

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قُتِلَ مَظْلُومًا
فَقَدْ جَعَلْنَا لَوَلِيِّهِ سُلْطٰنًا فَلَا يُسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ
مَنْصُورًا - ٣٣

“And do not kill the soul which Allah has forbidden, except by right. And whoever is killed unjustly - We have given his heir authority, but let him not exceed limits in [the matter of] taking life. Indeed, he has been supported [by the law]”. (*Surah Al-Isra: 33*)

⁹³ Mahmud Dongoran, *Konsep Maqhosid Al-Shariah Sebagai Dasar Dalam Penetapan Hukum Islam, Yurisprudencia Vol 1 No December 2, 2015*, p 83.

⁹⁴ Hamidah Ayob, *Op. Cit*, p 7

In data protection context, it refers to the rights of safety and right to get healthy environment from any products and service that might be harmful to consumer or user. So that the provisions of this *muamalat* rules are also prohibit theft, robbery and other forms of *mafsadat*.⁹⁵

3) Protection of human honor or dignity.

This protection refers to the protection of individual's rights and not accusing others misbehavior. In this context, it can refers to the rights of consumer to choose, to be heard and to get redress which is significant in protecting human honor and respect.

﴿ وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ
مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِّمَّنْ خَلَقْنَا
تَفْضِيلًا ۝٧٠﴾

“And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference”. (Surah Al-Isra’’:70)⁹⁶

In relation to this verse, human honor is such a gift from Allah and it can differentiate men from animal and Allah has created all things beneficial for

⁹⁵ Mahmud Dongoran, *Op. Cit*, p 88

⁹⁶ Accessed on December 15, 2020 <https://quran.kemenag.go.id/sura/17/70>

humankind. Therefore, everyone has their rights including the honor of users to protect their data any activities such as in business, technology and others.

4) Protection of intellect.

The mind is a gift from Allah and it will give benefit for all of us by utilizing it in right way. The Islamic approach to education is very clear; in numerous Hadiths Prophet Muhammad SAW outlined the importance of learning and its central role in the faith,

“The search of knowledge is an obligation laid on every Muslim”.

[Narrated by Ibn Majah and Bayhaqi]⁹⁷

Also the pursuit of knowledge is linked to reward in the hereafter:

“If anyone pursues a path in search of knowledge Allah will thereby make easy for him a path to paradise”. [Narrated by Muslim]⁹⁸

By gaining knowledge, they are able to have the ability in appreciating and understanding the world around them. Several verses in the Qur'an allude to the role of knowledge played in this field. As Allah says in Quran:

“...Say: Are those who are knowledgeable equal to those who are not knowledgeable?” (Surah Az-Zumar: 9)⁹⁹

This is the right regarding education. The rights to be informed and to get knowledge about products or services, to have skills in choosing goods or services, as well as to be aware of their rights and responsibilities.

5) Protection of wealth or property.

⁹⁷ Mahmud Dongoran, *Op.Cit*, p 8

⁹⁸ Mahmud Dongoran, *Op.Cit*, p 9.

⁹⁹ Accessed on December 15, 2020 <https://quran.kemenag.go.id/sura/39>

Property or wealth is one of the necessities of human being. Everyone likes to have security for their own belongings whether in form of money or other goods. Islam has ordered that no one should transgress and acquire the property of others without legitimate reasons and proper contract. The Quran emphasizes this point, as Allah says:

“And do not kill the soul which Allah has forbidden, except by right. And whoever is killed unjustly - We have given his heir authority, but let him not exceed limits in [the matter of] taking life. Indeed, he has been supported [by the law]” (Surah Al-Baqarah:188)

It covers all basic of users data rights which objectively to prevent the rights of them from any malpractices from traders or suppliers either in goods or services. The next part of the article delves into the methods used by Muslim jurists to determine the rule of certain acts through the use of legal maxims (*Qawa'id fiqhiyah*).

3. *Qawaid Fiqhiyah* (Legal Maxims) in Determining Rules That Protect User Data

Qawaid Fiqhiyah which means legal maxims, is the general rule of *fiqh* and it is a basic guideline for Muslim jurists to determine certain new issues.¹⁰⁰ It can be applied in various cases that come under the common rulings. Basically, *Qawaid Fiqhiyah* is from the understanding of the *Qur'an* and other sources

¹⁰⁰ M.A. Laldin, *Introduction to Shari'ah & Islamic Jurisprudence*. (Kuala Lumpur, Malaysia: Mashii Publication Sdn Bhd. Second) 2008, p 130

and it has a great role in formatting Islamic Law. Therefore, below are some relevant legal maxims related to the protection of user data (costumer) right.

Among them are:

- 1) Matters are determined according to intention.

Every person is judged according to his intentions and it can be seen through their action. In relating this to the consumer context, when a trader is found guilty cheating or causing mischief to consumers, he or she can be punished according to his or the malpractices and malicious intentions.¹⁰¹ For example; gaining faster profit through cheating and misbehaving in their business against consumers. So every trader can be punished or compounded based on their faults or wrong doings. However, in order to ensure this, the role of the government is needed in order to codify such laws and allow these culprits to be taken care of legally.¹⁰²

- 2) Certainty is not dispelled by doubt.

A doubt cannot be removed if the matter has strong evidence. In this context, the legal maxim brings up the rights of consumer that should be protected by resorting to evidence tendered by both parties. When the trader is found guilty or wrong and it is proven by strong evidence, then the right of the consumer should be preserved.

- 3) Custom is arbitrary.

¹⁰¹ *Ibid.*

¹⁰² M.A. Laldin, *Op. Cit*, p 131.

In this context, if any dispute arises between a consumer and a trader in a particular transaction, the normal practice in that transaction should be the intermediary to resolve the dispute.



CHAPTER III
LEGAL PROTECTION FOR USER DATA IN FINTECH
PEER TO PEER LENDING RUPIAH CEPAT

A. The Legal Protection of Debtor's Personal Data Security on *Peer to Peer Lending Rupiah Cepat PT Kredit Utama Fintech Indonesia*

Financial Technology is the use of technology in the financial system that results in new products, services, technology and / or business models and may have an impact on monetary stability, financial system stability and / or efficiency, smoothness, security and reliability of the payment system.¹⁰³

In its development, there are several types of Financial Technology which are quite diverse, ranging from asset management, crowdfunding, e-money, Peer to Peer (P2P) Lending, payment gateways, remittances, stocks, to covering the insurance sector.¹⁰⁴ *Peer to Peer Lending* as a type of Financial Technology (Fintech) is the provision of financial services to bring together lenders and loan recipients in the context of entering into a loan and borrowing agreement in rupiah currency directly through an electronic system using the internet network.¹⁰⁵

The implementation of Peer to Peer Lending or Information Technology-Based Lending and Borrowing Services involves several parties including:

¹⁰³ Article 1 No. 1 Bank Indonesia Regulation Number 19/12 / Pbi / 2017 concerning Operation of Financial Technology.

¹⁰⁴ Ana Sofia Yuking, *Loc. Cit.*

¹⁰⁵ Article 1 No. 3 Financial Services Authority Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services.

- 1) Information technology-based lending and borrowing service providers as parties that provide, manage, and operate information technology-based lending and borrowing services.¹⁰⁶
- 2) Lenders are parties who have receivables due to information technology-based lending and borrowing service agreements.¹⁰⁷
- 3) The loan recipient is the party who has a debt based on the agreement of fintech platform agreement.¹⁰⁸
- 4) Banks have the role of limiting on prohibition of collecting and managing funds through escrow accounts and virtual accounts that are mandatory for information technology-based lending and borrowing operators.¹⁰⁹
- 5) The Financial Services Authority (OJK) as the party that makes regulations, gives approval for registration and licensing for system operation and as the party that must receive periodic reports on the operation of information technology-based lending and borrowing systems.¹¹⁰

The relationships that occur between the party's information technology-based lending are:

- 1) The relationship between the Lender and the Operator

The legal relationship between the lender and the provider is a legal relationship born from the power of attorney agreement given to the lender as

¹⁰⁶ Ratna Hartanto and Juliyani Purnama Ramli, *Op. Cit*, p 325.

¹⁰⁷ *Ibid*, p 326.

¹⁰⁸ *Ibid*, p 327.

¹⁰⁹ Accessed from <https://www.hukumonline.com/berita/baca/lt5a4e02600e517/upaya-menu-tup-celah-agar-fintech-tak-berpraktik-shadow-banking/> Saturday, November 28, 2020 09:00 am

¹¹⁰ Ratna Hartanto dan Juliyani Purnama Ramli, *Op. Cit*, p 328.

the authorizer, while a provider as recipient of power of attorney. Because basically the organizer only as a facilitator to connect lender and loan recipient which is the organizer for and on behalf of the lender agrees to a loan and borrow money agreement belonging to the lender with the loan recipient.¹¹¹

2) The relationship between the Lender and the Borrower

Lenders and loan recipients in information technology-based loans do not meet each other directly, which is only by opening fintech provider apps so they can get the fund quickly. By filling out application form through online and profiling the borrower, then it occurs relationship both.

3) The relationship between Providers and Banks

The legal relationship between the operator and the bank is based on the agreement on the use of the virtual account and the escrow account. This agreement provides convenience as well as legal certainty for the parties, namely between peer to peer lending operators and banks. The involvement of the bank in the peer to peer lending scheme as the provider of virtual accounts and escrow accounts shows that the bookkeeping system that must be run by peer to peer lending operators must be as efficient as possible and can still be accounted for.

4) The relationship between Providers and the Financial Services Authority (OJK)

¹¹¹ *Ibid*, p 332.

The legal relationship between the organizer and the OJK is based on the provisions of the laws and regulations in this case the Financial Services Authority Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services. Based on the provisions of this POJK, an operator who intends to run a peer to peer lending system must obtain a permit from the OJK and after running a peer to peer lending system must provide periodic reports to OJK.¹¹²

Financial Services Authority Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services states that there are two agreements that are the basis for information technology-based lending, namely an agreement between information technology-based lending and borrowing services providers and lenders and an agreement between lenders and loan recipients,¹¹³ of which are contained in electronic documents.¹¹⁴

Online agreements are an important factor in electronic transactions. This agreement uses digital data as a substitute for paper and serves as the medium of the online agreement. One of the advantages of online agreements is increasing the scale of efficiency, especially for companies and individuals who carry out business activities globally. Agreements made online must still meet the legal requirements of an agreement set out in Article 1320 of the Civil

¹¹² Ratna Hartanto and Juliyani Purnama Ramli, *Op. Cit*, p 336.

¹¹³ Article 18 Financial Services Authority Regulation No. 77 / POJK. 01/2016 concerning Information Technology-Based Lending and Borrowing Services.

¹¹⁴ Article 19 paragraph (1) and Article 20 paragraph (1) Financial Services Authority Regulation No. 77 / POJK. 01/2016 concerning Information Technology-Based Lending and Borrowing Services.

Code. This is based on Article 1319 of the Civil Code which states that both agreements that have a specific name and an agreement that is not known with a certain name must be subject to Books I and II of the Civil Code.¹¹⁵ This also applies to information technology-based lending and borrowing agreements.

The valid requirement of the agreement based on Article 1320 of the Civil Code are:

1) The Deal

In an online agreement, the formation of an agreement (toestemming) contains elements of an offer (offer, offense) and acceptance (acceptance, acceptatie). In principle, agreement occurs when there is an agreement between an offer and an acceptance.¹¹⁶ In online-based lending and borrowing transactions, the process of bidding and receiving is not done face to face, also the parties are not in the same place.¹¹⁷

2) The Capacity

In a loan agreement based on information technology, the capacity of a prospective loan recipient can be obtained from an electronic certificate, namely an electronic certificate containing an electronic signature and an

¹¹⁵ Mega Lois Aprilia, Endang Prasetyawati, Legal Protection of Personal Data of Gojek User Consumers, *Mimbar Keadilan Journal of Law Science*, University 17 August 1945 Surabaya, 2017

¹¹⁶ *Ibid*, p 94.

¹¹⁷ Taufiq Ilham Azhari, Keabsahan Perjanjian Pinjam Meminjam Uang Berbasis Teknologi Informasi Dalam Hal Pengenaan Bunga Pinjaman (Studi Pada Uangteman.Com), Thesis from Universitas Islam Indonesia, 2018, p 100.

identity that shows the status of the legal subject of the parties in electronic transactions issued by electronic certification providers.¹¹⁸

3) A Certain Thing

Agreement must have a certain object. The object of the information technology-based lending and borrowing agreement is the amount of money submitted by the prospective loan recipient.

4) Lawful Act

In the information technology-based lending agreement, the purpose of a lawful cause is that the reason for borrowing does not conflict with statutory regulations and morality.

If prospective loan recipients will become users of information technology-based loan services, so they will be required to fill in personal data. Where in personal data generally includes facts, communications or opinions relating to individuals which are confidential, private or sensitive information so that the person concerned wants to keep or restrict other people to collect, use or distribute it to other parties.¹¹⁹

In the Rupiah Cepat Apps when applying for a loan, prospective borrowers will be asked for personal information such as name, email, telephone number, KTP number which will then be used as User ID and prospective loan recipients are also asked to fill out forms regarding KTP information,

¹¹⁸ Article 1 No. 9, Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions.

¹¹⁹ Lia Sautunnida, *Op. Cit*, p 373.

demographic, salary, occupation, relative, Bank account and bank names as well as residential address information. Not only from the form filled out by prospective loan recipients, the Rupiah Cepat application is also asked for approval and access permissions which include calendar permissions, reading the information from the calendar, adding and changing calendar events. For permission to access on user contacts, Rupiah Cepat will scan and process the contact data of prospective loan recipients into statistical data.¹²⁰ Lastly, Rupiah Cepat get permission from user to access of storage media that it will also scan the list of applications installed on the phone, the location of files and images as well as the last date the file was changed from the prospective loan recipient.¹²¹

Article 1 number (1) Regulation of the Minister of Communication and Information Technology No. 20 of 2016 concerning Personal Data Protection in Electronic Systems states that personal data is certain individual data that is stored, maintained, and maintained for the truth and its confidentiality is protected.¹²² Another definition of "personal data" is data in the form of identity, code, symbols, letters or numbers to identify a person who is private and confidential. According to the Big Indonesian Dictionary (KBBI), personal

¹²⁰ Accessed from <https://h5.rupiahcepatweb.com/dua2/ruleSu/rule.html> Thursday, November 26, 2020, 13:00 WIB

¹²¹ *Ibid.*

¹²² Minister of Communication and Information Technology Regulation No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

data is data relating to a person's characteristics, for example name, age, gender, education, occupation, address, and position in the family.¹²³

The personal identities listed on the online form can be categorized as electronic information. Article 1 number 6 Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, states that electronic information is one or a set of electronic data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, processed letters, signs, numbers, access codes, symbols, or perforations which have meaning or can be understood by those who are able to understand them.¹²⁴

Electronic information containing the identity of a prospective borrower will be recorded in an electronic document, which is any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and / or heard through a computer or electronic system, including but not limited to writing, sound, pictures, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning.¹²⁵

While there is several comparisons between GDPR and Personal Data Protection in Indonesia, that is:

¹²³ KBBI (Kamus Besar Bahasa Indonesia) accessed from <https://kbbi.web.id/data> on Wednesday 26 June 2019 at 15.00 WIB.

¹²⁴ Government Regulation No. 82 of 2012 on the Implementation of Electronic Systems and Transactions.

¹²⁵ Article 1 Number (4) of Law No. 19 of 2016 on Amendments to Law No.11 of 2008 concerning Electronic Information and Transactions.

a. Personal Data Definition

GDPR defines personal data as "any information relating to an identified or identifiable natural person". For example, IP address, cell phone number, or location data.

Meanwhile, personal data in Indonesia is referred to in PP PSTE that is no explanation about personal data. However, only mentioned in article 58 of Law No.23 of 2006 jo. Law No.24 of 2013 on Population Administration (Population Law) is often used as a reference for defining individual data.

b. Supervising Party

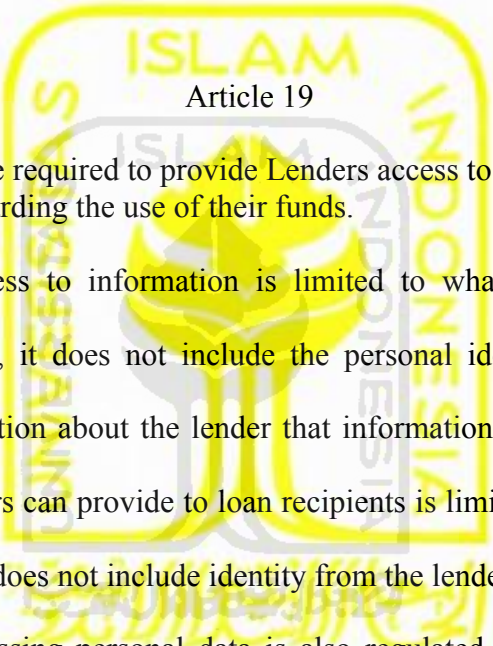
EU has The European Data Protection Board and each member state of the European Union has a special institution that supervise the implementation of the GDPR. While Indonesia does not has it, because of the data protection regulation is still sectoral.

c. Sanction

The GDPR regulates fines ranging from 4% of total worldwide revenue to 20 million Euros. This includes the right to compensation for the party who is injured. Meanwhile, This is very different from administrative sanctions and criminal sanctions for electronic system operators who do not fulfill the right to protect personal data in Indonesia. Although there are still opportunities for compensation that can be filed in a civil suit for the losses incurred.

Personal data that has been submitted will be stored in a data center provided by the information technology-based loan provider. Data that has been stored can be accessed by provider or affiliate operator. In the Rupiah Cepat

application, there is a clause regarding Chapter 3 concerning the Collection, Use and Allocation of User Information in Article 22 which states that PT KUFU (Rupiah Cepat) has the right to analyze the entire user database and can use it for commercial purposes. This is in accordance with Article 19 paragraph (3) of the Financial Services Authority Regulation No. 77 / POJK. 01/2016 on Information Technology-Based Lending and Borrowing Services, which states:¹²⁶



Article 19

(3) Operators are required to provide Lenders access to personal user information regarding the use of their funds.

The lender's access to information is limited to what is stated in the electronic document, it does not include the personal identity of the loan recipient.¹²⁷ Information about the lender that information technology-based loan service providers can provide to loan recipients is limited to the position of the loan received does not include identity from the lender.¹²⁸

Approval in accessing personal data is also regulated in Article 12 and Article 24 of Ministerial Regulation No. 20 of 2016 concerning Personal Data Protection in Electronic Systems which states that personal data can only be processed and analyzed by information technology-based loan service providers as needed, utilization of personal data displayed, announced,

¹²⁶ Financial Services Authority Regulation No. 77 / POJK. 01/2016 concerning Information Technology-Based Lending and Borrowing Services.

¹²⁷ Article 19 paragraph (4) and (5) of the Financial Services Authority Regulation No. 77 / POJK. 01/2016 concerning Information Technology-Based Lending and Borrowing Services.

¹²⁸ Article 20 paragraph (3) of the Financial Services Authority Regulation No. 77 / POJK. 01/2016 concerning Information Technology-Based Lending and Borrowing Services.

received and disseminated based on the consent.¹²⁹ The same can be found in Article 26 letter c of the Financial Services Authority Regulation No. 77 / POJK. 01/2016 concerning Information Technology-Based Lending and Borrowing Services also states:¹³⁰

Article 26

- a. ensuring that the acquisition, utilization and disclosure of personal data, transaction data and financial data obtained by the Operator is based on the consent of the owner of the personal data, transaction data and financial data, unless otherwise stipulated by the provisions of laws and regulations.

Article 31 Financial Services Authority Regulation No. 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector also said:

- (1) Financial Services Business Actors are prohibited in any way, providing data and / or information about their Consumers to third parties.
- (2) The prohibition as referred to in paragraph (1) is exempted in terms of:
 - a. The consumer gives written consent; and / or
 - b. Required by laws and regulations.

By providing access to personal data, information technology-based loan providers also have the obligation to maintain the confidentiality, integrity and availability of personal data, transaction data and financial data that they manage from the time the data is obtained until the data is destroyed. This is contained in Part VI number 1 of the Financial Services Authority Circular

¹²⁹ Article 12 and Article 24 Ministerial Regulation No. 20 of 2016 concerning Personal Data Protection in Electronic Systems.

¹³⁰ Article 26 letter (c) Financial Services Authority Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services.

Letter No. 18 / SEOJK.02 / 2017 concerning Governance and Risk Management of Information Technology in Information Technology-Based Lending and Borrowing Services.

Access to personal data that can be done by information technology-based lending and borrowing service providers must meet several criteria as mentioned in Part VI point 7 of the Financial Services Authority Circular Letter No. 18 / SEOJK. 02/2017 concerning Governance and Information Technology Risk Management in Information Technology-Based Lending and Borrowing Services which reads:¹³¹

VI Section

7. User data and information obtained and utilized by the Operator must meet the following criteria:
 - a. submitting limits on the use of data and information to users and obtaining user consent;
 - b. telling any changes to the purpose of using data and information to the user (if any); and
 - c. The platform and method to obtain the data and information of utilization that guaranteed confidentiality, security and wholeness.

It is the right of the data owner for the security of their personal data. Apart from data confidentiality, there are several other rights which belong to the owner of personal data which is regulated in Article 26 of the Regulation of the

¹³¹ Financial Services Authority Circular Letter No. 18 / SEOJK.02 / 2017 concerning Governance and Risk Management of Information Technology in Information Technology-Based Lending and Borrowing Services.

Minister of Communication and Information Technology No. 20 of 2016 concerning Personal Data Protection in Electronic Systems, namely:¹³²

- a. for the confidentiality of his personal data.
- b. filing a complaint in the context of resolving a Personal Data dispute over the failure to protect the confidentiality of his Personal Data by the Electronic System Operator to the Minister.
- c. getting access or the opportunity to change or update his Personal Data without disturbing the Personal Data management system, unless otherwise provided by the provisions of laws and regulations.
- d. acquiring access to obtain historical Personal Data that has been submitted to the Electronic System Operator as long as it is still in accordance with the provisions of laws and regulations; and
- e. requesting the destruction of certain Individual data belonging to him in the Electronic System managed by the Electronic System Operator, unless otherwise stipulated by the provisions of the laws and regulations.

In the process of implementing information technology-based loans, there are several conditions that can occur, one of which is when the loan recipient is unable to make repayments according to the agreed time period. The steps that will be taken by information technology-based loan service providers in the event of a loan delay or loan repayment failure *inter alia*:¹³³

¹³² Minister of Communication and Information Technology Regulation No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

¹³³ The Indonesian FinTech Association, Code of Conduct for Providing Responsible Information Technology-Based Borrowing and Lending Services, 2018, p 13.

1. the issuance of a warning letter.
2. requirements for scheduling or restructuring a loan.
3. correspondence with borrowers remotely (desk collection), including via telephone, email, or other forms of conversation.
4. Communicate with billing team
5. Loan write-off

In the case of loan collection by an administrator that authorized by the lender it is prohibited to collect with intimidation, physical and mental violence, or other means that offend SARA or undermine the dignity and pride of loan recipient physically or virtually (cyber bullying) toward loan recipient, his property, relative, and family.¹³⁴

However, in reality, there are some lenders who collect in an arbitrary way. The actions taken by the lender in collecting repayments that many of the objections of the loan recipients are the collection of repayment from the lender who carries out the collection by distributing photos, videos and other personal data.¹³⁵ Even though the loan recipient has given written consent in accessing personal data , but it does not mean the consumers give rights to service owners to disseminate data. Based on this, it is known that online loan service providers do not protect the personal data of the loan recipient which it is an obligation

¹³⁴ *Ibid*, p 10.

¹³⁵ Robert Sidaruk, dalam Seminar Tech In Asia, quoted from <https://www.hukumonline.com/berita/baca/lt5bd08f107d470/kenali-batasan-pemanfaatan-data-pri-badi-konsumen-agar-terhindar-dari-jerat-hukum> Accessed on Jumat, November 27, 2020, 15.00 WIB.

for them. Also, this is on the contrary to the Article 19 paragraph (5) of the Financial Services Authority Regulation No. 77 / POJK. 01/2016 concerning Information Technology-Based Lending and Borrowing Services.

Legal protection is basically the protection of dignity and the recognition toward human rights owned by the legal subject based on rule of law.¹³⁶ It is an interference form such as hacking of data and also classified as a violation of human rights if it is done without a probable cause. So that is the violation of the law and violates the principle of "the right to enjoy life and the right to be left alone" as the most basic concept of privacy protection.¹³⁷ The code of conduct for the provider of FinTech who has the service without good faith inter alia:¹³⁸

1. Requesting personal data of the user even though there is no service that can be provided to the consumer;
2. Collecting personal data that is not relevant to the services that provide to users;
3. Gathering personal data outside the data that has been agreed to be provided by the user;
4. Using personal data outside the service that has been agreed by the user;
5. Collect and store personal data even though the operator does not yet have a reliable electronic system to carry out these activities.

¹³⁶ Rizky Kurniawan, *Perlindungan Hukum Dalam Perjanjian Pinjam Meminjam Uang Secara Online Pada Aplikasi Kredit Pintar*, Thesis, Fakultas Hukum Universitas Muhammadiyah Sumatera Utara, 2019, p 10.

¹³⁷ Ana Sofia Yuking, *Loc. Cit*, p 16.

¹³⁸ Asosiasi FinTech Indonesia, *Op. Cit*.

Protection of personal data is an important aspect that information technology-based loan service providers and regulators must pay attention to. This is because the misuse of personal data (debtors) can have an impact on identity theft, abuse of debtor profiles, product offerings to debtors whose data is stolen, and have an impact on other greater risks and losses such as public distrust of FinTech providers.

Protection of personal data cannot be viewed as something absolute, in some circumstances access to personal data can be opened for the following purposes:

1. National Security
2. The interest of law enforcement process
3. The interests of the press as long as the personal data is obtained from published information.
4. The interest of scientific and statistical research.
5. For tax purposes.
6. Business of receivable bank
7. For the interests of the judiciary in criminal cases (with the authority of the police, prosecutors and judges with the permission of the management of Bank Indonesia. Or in cases between a bank and its customers.
8. In the context of exchanging information between banks.
9. Upon the approval of the request, and the power of the data owner himself, the heirs, or an authorized person.

Apart from these circumstances, access to personal data must be subject to the consent of the owner of the personal data.

Based on this, legal protection for the use of personal data in loan collection in information technology-based lending and borrowing services, both preventively and repressively, is very important. Where preventive legal protection itself is a form of protection to prevent a violation,¹³⁹ whereas repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties that are given when a dispute has occurred or an offense has been committed.¹⁴⁰

The preventive legal protection for the dissemination of personal data of loan recipients by information technology-based loan service providers without the permission of the data owners is manifested in Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions in Article 27 paragraph (3) and Article 29 which follows:

Article 27

(3) every person knowingly and without right distributes and / or transmits and / or causes to be accessible Electronic Information and / or Electronic Documents that contain defamatory and / or defamation.

Article 29

Every person knowingly and without authority sends Electronic Information and / or Electronic Documents that contain threats of violence or scare aimed at personally.

¹³⁹ Dwarajatiningrum Muninggar, "Perlindungan Hukum Bagi Wni Keturunan Tionghoa Terhadap Hak Penguasaan Atas Tanah Di Yogyakarta," Thesis, Universitas Muhammadiyah Yogyakarta, 2017, p 5.

¹⁴⁰ *Ibid.*

The violations that committed by FinTech providers on the dissemination of personal data, then resulting losses, the loan recipient can file a complaint to the Minister in accordance with Article 29 of the Regulation of the Minister of Communication and Information Technology No. 20 of 2016 concerning Personal Data Protection in Electronic Systems, where complaints are based on the following reasons:¹⁴¹

1. If it is not making written notification of the failure of confidentiality protection of Personal Data by the Electronic System Operator to the Personal Data Owner or other Electronic System Operators related to the Personal Data, whether or not that has the potential to cause loss;
2. If there has been a loss for the Personal Data Owner or other Electronic System Operator related to the failure to protect the confidentiality of the Personal Data, even though there has been written notification of the failure to protect the confidentiality of Personal Data but the notification time is late.

If the dispute resolution by deliberation or other alternative resolution has not resolved the case, the loan recipient can file a lawsuit either against FinTech provider or to the lender. This is regulated in Article 32 of the Minister of Communication and Information Technology Regulation No. 20 of 2016 concerning Personal Data Protection in Electronic Systems and Article 38 of

¹⁴¹ Article 29 paragraph (2) Regulation of the Minister of Communication and Information Technology No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions.

Based on the articles that have been mentioned, FinTech providers and lenders may be subject to sanctions in the form of imprisonment for a maximum of 6 (six) to 12 (twelve) years with a fine of IDR 1,000,000,000.00 (one billion rupiah) up to IDR 2,000,000,000.00 (two billion rupiah).¹⁴² In addition to imprisonment, administrative sanctions are also subject to the following laws and regulations:¹⁴³

1. a verbal warning;
2. written warning
3. temporary suspension
4. announcement on its website

Lastly, If the FinTech organizer has been proven to have committed a violation, it may result in imposing sanctions. For any peer to peer lending type of Fintech service provider who does not comply with the POJK (No.77 / POJK.01 / 2016) is a form of law violation committed by the organizer so that sanctions can be imposed on the organizer in the form of administrative sanctions. Administrative sanctions that can be given to the organizers have been regulated in Article 47 paragraph (1) POJK which imposes administrative

¹⁴² Article 45 of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions.

¹⁴³ Article 36 Regulation of the Minister of Communication and Information Technology No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

sanctions for violations of obligations and prohibitions in this OJK regulation, against the organizers in the form of:

- a. Written warning;
- b. Fines, namely the obligation to pay a certain amount of money;
- c. Restrictions on business activities;
- d. Revocation of license.

B. The Limitation of Personal Data That Can Be Used by FinTech Provider in The Context of Billing

Accessing personal data is basically permissible and cannot even be denied that there is a need for the use of personal data for the development of a company operating in the start-up industry, such as providing information technology-based lending and borrowing services. By utilizing the personal data of its users, a company can get to know its users, create new products, develop old products and plan marketing strategies with known customer demographics through the use of personal data.¹⁴⁴

There are at least three limitations to accessing the personal data of information technology-based loan recipients. First, it requires consumer approval. This agreement must be in writing, in Indonesian and expressly disclosed, not using abbreviations in terms and conditions that can confuse users. Second, regarding the use of personal data, users are required to obtain

¹⁴⁴ Robert Sidaruk, on the Seminar *Tech In Asia*, quoted from <https://www.hukumonline.com/berita/baca/lt5bd08f107d470/kenali-batasan-pemanfaatan-data-pri-badi-konsumen-agar-terhindar-dari-jerat-hukum> Accessed on Jumat, November 27, 2020 14.30 WIB.

electronic platform (EP) certification as stated in Article 59 of Government Regulation No. 82/2012 concerning Electronic System and Transaction Operation. Third, the intent and purpose of retrieving users' personal data must be clear from the start as well as what types of personal information they will collect, so that in the end it is clear the relevance of taking certain types of data with the purpose of collecting personal data.¹⁴⁵

At the time of approval through these terms and conditions, information technology-based loan service providers are widely used, which require loan recipients to provide access to their personal data such as phonebooks, photos and videos in order to continue using the online loan service application.

Based on Law No. 23 of 2006 concerning Population Administration Article 85 paragraph (1) states that personal data that must be protected are:

1. KK Number
2. NIK
3. date / month / year of birth;
4. information about physical and / or mental disabilities;
5. NIK of biological mother;
6. Father's NIK; and
7. some contents of important events note;

In the Financial Services Authority Circular Letter No. 18 /SEOJK.02/2017 concerning Governance and Information Technology Risk Management in

¹⁴⁵ *Ibid.*

Information Technology-Based Lending and Borrowing Services part VI number (2) states that the personal data of loan recipients can be classified into five, there are:

1. personal data

It is a name, domicile address, identity card (KTP, SIM, Passport), Taxpayer Identification Number (NPWP), date of birth and / or age, email address, IP address, telephone number, account number, biological mother's name, credit card number, digital identity (Biometrics), signature, educational history, employment history, checking account, list of assets, data and other related information.

2. corporation

It is name of corporation, address, telephone number, composition of directors and commissioners including identity documents in the form of KTP / Passport / residence permit, composition of shareholders, account numbers, current accounts, list of assets, company documents, data and other related information.

3. material non-public data and information

It is financial reports, business performance, management decisions, number of customers, data and other related information.

4. data and information related to financial transactions

5. data and information related to contracts / agreements.

Article 1 paragraph (1) and (3) of the Draft Law on Protection of Data and Personal Information divides personal data into two types. First, Sensitive

personal data is defined as personal data which includes: religion / belief, health conditions, physical and mental conditions, sexual life, personal financial data, and others. Meanwhile, second, general personal data is data related to a person's life that can be identified either automatically or based on a combination with other information such as name, passport number, photos, videos, electronic mail, fingerprints and others.¹⁴⁶

Sensitive personal data can be provided with written consent in the following cases:¹⁴⁷

- (1) The protection of the safety of data subjects.
- (2) Achieving the goal of fulfilling every right and obligation based on labor law.
- (3) Implementation of things related to medical purposes
- (4) Law enforcement process

The Financial Services Authority Regulation (OJK) No. 77 / POJK. 01/2016 concerning Information Technology-Based Lending and Borrowing Services Article 19 paragraph (5) states that the information that can be accessed by lenders is the amount of funds to be borrowed, the purpose of the loan, the amount of interest and the period of the loan, not related to personal data of loan recipients. The same applies to loan recipients stipulated in Article 20

¹⁴⁶ Anggara, Supriyadi Widodo Eddyono, Wahyudi Djafar, *Menyeimbangkan Hak: Tantangan Perlindungan Privasi dan Menjamin Akses Keterbukaan Informasi dan Data di Indonesia*, Institute of Criminal Justice Reform, Jakarta, 2015, p 15.

¹⁴⁷ *Ibid*, quoted from Article 7 paragraph (2) regarding Personal Data and Information Protection Bill.

paragraph (3), where information that can be accessed only regarding the position of the loan received does not include the identity of the lender.

Referring to Article 7 letter d number 4 Bank Indonesia Circular Letter Number 14/17 / DASP concerning Amendments to Bank Indonesia Circular Letter Number 11/10 / DASP concerning the Implementation of Card-Based Payment Instrument Activities, use of billing service companies as a third party for the purpose of billing allowed. This is also contained in the Financial Services Authority Regulation No. 29 / POJK.05 / 2014 concerning the Implementation of Business Financing Companies Article 50 paragraph (5):¹⁴⁸

(5) Employees or outsourced personnel of the financing company who handle the collection sector are required to have a professional certificate in the field of billing from an institution appointed by the association, then submitting a notification to the OJK and accompanied by the reason for the appointment.

However, billing service companies used in providing information technology-based lending and borrowing services must be registered with the Indonesian Funding Fintech Association and have a certificate to collect from borrowers which is also issued by the Indonesian Funding Fintech Association through the Billing Implementation Guidelines audit mechanism as well as Financial and Operational audits company.¹⁴⁹

Personal data used by collection service companies is only limited to what has been formulated in Part VI number (2) Copy of Financial Services Authority Circular Letter No. 18 /SEOJK.02/2017 concerning Governance and

¹⁴⁸ Financial Services Authority Regulation No. 29 / POJK.05 / 2014 on the Implementation of Business Financing Companies

¹⁴⁹ Indonesian Funding Fintech Association, *Op. Cit*, p. 9.

Risk Management of Information Technology in Information Technology-Based Lending and Borrowing Services. Access to personal data such as phonebooks, photos and videos has crossed the limit, because the data is not relevant to the services that will be provided to loan recipients even though they have received approval from the loan recipient.¹⁵⁰



¹⁵⁰ *Ibid*, p 8.

CHAPTER IV

CLOSING

A. Conclusion

Based on the research results that the authors acquire that it can be concluded as follows:

1. The form of The Legal Protection of Debtor's Personal Data Security on *Peer to Peer Lending* Rupiah Cepat PT Kredit Utama Fintech Indonesia that are:
 - a. The preventive protection carried out by the Financial Services Authority is by establishing laws and regulations regarding the implementation of information technology-based lending and borrowing services. In the case of misuse of personal data, it is not only contained in Article 26 letter a of Financial Services Authority Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Lending and Borrowing Services that is principles of transparency, fair treatment, reliability, confidentiality and data security, and User dispute resolution in a simple, fast and affordable cost.
 - b. The repressive protection, loan recipients whose personal data are disseminated and result in losses can file a lawsuit against information technology-based lending and borrowing service providers or lenders, who may be subject to criminal sanctions with fines or administrative sanctions in accordance with applicable laws and regulations. This is

based on Article 36 of the Minister of Communication and Information Technology Regulation No. 20 of 2016 concerning Personal Data Protection in Electronic Systems, Article 45 paragraph (1) and paragraph (3) of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions.

2. There are three limitations to accessing the personal data of information technology-based loan recipients. First, it requires consumer approval. This agreement must be in writing, in Indonesian and expressly disclosed, not using abbreviations in terms and conditions that can confuse users. Second, regarding the use of personal data, users are required to obtain electronic platform (EP) certification as stated in Article 59 of Government Regulation No. 82/2012 on Electronic System and Transaction Operation. Third, the intent and purpose of retrieving users' personal data must be clear from the start as well as what types of personal information they will collect, so that in the end it is clear the relevance of taking certain types of data with the purpose of collecting personal data.

B. Recommendation

1. Rupiah Cepat platform on behalf of PT Kredit Utama Fintech Indonesia should be more careful and supervise how employees collect from loan recipients. In the case of loan collection, due to the absence of regulations regarding the procedure for billing in information technology-based lending and borrowing services, loan collection can be carried out in accordance with the Code of Conduct for Providing

Responsible Information Technology-Based Borrowing and Lending Services issued by the Indonesian Funding Fintech Association.

2. The limitations on the use of personal data in FinTech *Peer to Peer Lending* also has to be strengthened through a specific regulation about financial technology service or digital platform in general which is regulates a more comprehensive protection of personal data.
3. The Government should adopt and implement GDPR (General Data Protection Regulation) as a foundation and guidance to draft a new law regarding data protection that gives more control for consumers over their personal data and gives regulators the power to impose fines of up to 4% of the violating company's revenue.
4. OJK as the institution (regulator) who responsible for implementing FinTech providers must educate the Indonesian society as a market to be more careful towards both legal and illegal FinTech that exists in Indonesia. OJK must be creating efforts to socialize it through offline and online way to avoid misuse of personal data.

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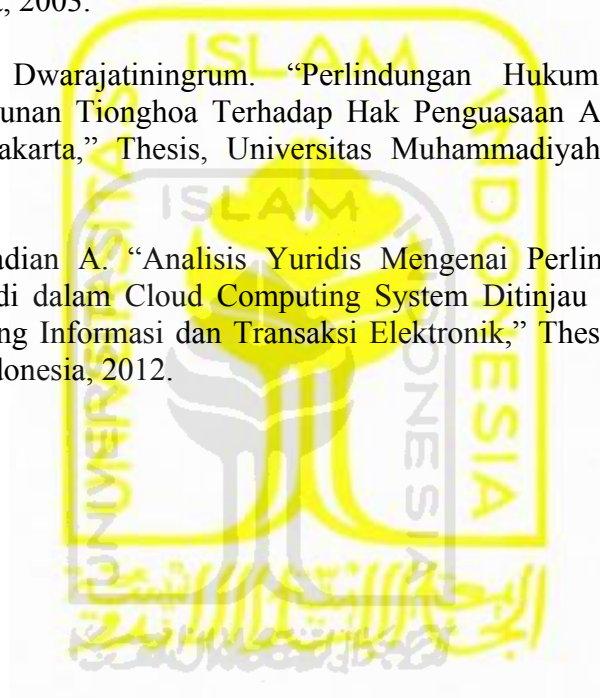
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