

Analysis of Debt Settlement in Fintech Lending Services Through Bankruptcy

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Abstract

The resolution of debts in Fintech Lending Services has been regulated under POJK 10/2022. In addition to dispute resolution through district courts or alternative dispute resolution mechanisms, the Bankruptcy mechanism is also available for addressing debt-related issues in Fintech Lending services. This study analyzes debt resolution in Fintech Lending services through the Bankruptcy framework as a fairer, faster, and more effective alternative. The research employs normative legal methods using secondary data such as legislation and relevant legal literature. Data collection is conducted through documentation and literature studies. The findings indicate that debt resolution in Fintech Lending services can be carried out through a Bankruptcy Petition, as the debts of Fintech Lending customers fall within the definition outlined in Law No. 37/2004. However, challenges exist in applying the debt collection principle under Law No. 37/2004, such as the requirement for a bankruptcy petition to be filed by an advocate and the condition of having a minimum of two creditors, which may create difficulties. Moreover, Law No. 37/2004 has not fully protected debtors, as debt forgiveness or cancellation still requires creditors' approval.

Keywords: Bankruptcy; Debt; Fintech

INTRODUCTION

Information technology-based money lending services, or Fintech Lending (P2P Lending), allow online transactions that are easily accessible anytime and anywhere. Unlike conventional financial services, P2P Lending offers a fast process and simple requirements and is supported by technology such as artificial intelligence. Among the community, Fintech Lending (P2P Lending) is referred to as an online loan service or Pindar and is often also called Online Loans or Pinjol.

As of October 2023, OJK recorded 101 registered and supervised Fintech Lending companies. In August 2023, loan distribution reached IDR 20.53 trillion with 19.1 million active users. The majority of loans (74.29%) were distributed on the island of Jawa, and 99.97% of borrowers were individuals, with 92.93% being of productive age (19-54 years). This data shows the high utilization of Fintech Lending by the community, especially individuals (Financial Services Authority. 2023).

Fintech Lending has succeeded in increasing financial inclusion to 85.10% in 2022, but financial literacy is still low at 49.68%. Financial inclusion means access to financial services, while financial literacy is the knowledge and skills to manage finances. This inequality causes problems in society.

There was a case of 1 (one) consumer borrowing from dozens of Fintech Lending in a week, hundreds of students had problems due to alleged fraud, and hundreds of illegal Fintech Lending platforms have been reported. The reasons for using Fintech Lending vary, such as paying off debts, lifestyle, urgent needs, consumer behavior, economic pressure, and buying gadgets. OJK recorded 13.6 million problematic accounts as of August 2023, with 35.29% of complaints related to debt settlement, especially the behavior of debt collection officers who often terrorize debtors and their families, even encouraging actions that endanger life.

OJK has regulated the collection mechanism for Fintech Lending services in the Financial Services Authority Regulation Number: 10/POJK.05/2022 Concerning Information Technology-Based Joint Funding Services ("POJK 10/2022"). The organizer is required to collect in accordance with applicable norms and laws. If the debtor remains in default, the organizer must resolve the dispute through a civil lawsuit or alternative mechanism in accordance with the funding agreement. In addition to these mechanisms, Bankruptcy can be a fair, fast, open, and effective solution in resolving debts in Fintech Lending. This institution provides certainty for creditors and protection for debtors from arbitrary actions. In connection with this background, this study will analyze the settlement of debts in Fintech Lending services through Bankruptcy institutions. This study will focus on the mechanisms and obstacles to resolving debts in Fintech Lending services through Bankruptcy institutions. This study aims to analyze both aspects and provide benefits as a reference for various related parties, including Fintech Lending organizers, consumers, academics, researchers, and legal practitioners. In addition, this research is expected to enrich the substance of the Bankruptcy and Legal Law courses and the Banking and Financing Institutions courses.

RESEARCH METHODS

This research is normative legal research (Kadarudin, 2021:173), which focuses on the study using legal materials such as laws and regulations, legal principles, and doctrines. This research aims to examine the law as a norm that regulates human behavior and provide legal arguments when there is a vacuum, ambiguity, or conflict of norms (Irwansyah. 2020:98-100). Normative legal research uses primary legal materials (laws and regulations, treatises, judges' decisions), secondary (legal textbooks, legal dictionaries, legal journals, legal scholar comments), and tertiary (encyclopedias, indexes) as data sources (Kadarudin, 2020:201). In addition, relevant non-legal materials can also be used. Data collection techniques are carried out through documentation studies or literature studies (Peter Mahmud Marzuki, 2013:29-31).

RESULT AND DISCUSSION

Describes the outcome can be an increase in knowledge, skill or product. The results also reveal the level of achievement of the target activity. If in the form of objects, there needs to be an explanation of product specification, its advantages and disadvantages. Output writing should include photos, charts, graphs, drawings, and more. The discussion is sequential in the order in which the objectives are, and it has been described first. The discussion is accompanied by a logical argument linking the results with theories, other results and/or research results.

Previous studies have discussed several aspects of Fintech Lending activities, including i) the need for strict regulations and consumer protection (Baiq Fitri Arianti et al. 2022); ii) ease of loan processes that attract consumers (Raka Fauzan Hatamia et al. 2019); iii) consumer behavior that is not balanced with knowledge, iv) weak regulation and law enforcement (Jeremy Zefanya Yaka Arvante. 2022); and v) the importance of supervision of the implementation of OJK regulations and innovations to support industry development and protect consumers (Arrely Syamsa Kartika & Dewa Gde Rudy. 2022).

These studies focus on Fintech Lending regulations in order to realize consumer protection, while this study will analyze the debt settlement mechanism in Fintech Lending, especially through the Bankruptcy institution. Previously, the theoretical aspects of money lending agreements and the regulation of information technology-based joint funding services will be discussed.

1. Money Lending Agreement

Subekti defines an agreement as an event in which one or two people promise each other to do something (Subekti. 1987: 6). Setiawan states that an agreement is an agreement, namely a legal act in which one or more people bind themselves to one or more people (Setiawan. 1994: 49). Article 1313 of the Civil Code also explains an agreement as an act in which one or more people bind themselves to one or more people.

An agreement is considered valid if it meets 4 (four) requirements according to Article 1320 of the Civil Code: agreement, capacity, certain subject matter, and a cause that is not prohibited. The first two requirements relate to the subject of the agreement, while the last two relate to the agreement's object and purpose (Mariam Darus. 2015: 107-108). A valid agreement binds the parties like a law (Article 1338 of the Civil Code).

Borrowing and lending is a reciprocal agreement in civil law, where one party provides consumable goods on condition that the other party returns the same amount and type (Article 1754 of the Civil Code). Both parties have rights and obligations: the lender has the right to demand repayment, the borrower is obliged to return, and has the right to demand the provision of a loan.

Subekti distinguishes two types of borrowing and lending agreements (Subekti. 2001: 168-169):

1. Borrowing and lending of goods that cannot be replaced (*bruiklening*): For example, borrowing a car or bicycle. Ownership of the goods remains with the lender. The borrower must maintain the goods and return them in their original condition.
2. Borrowing and lending of goods that can be replaced (*verbruiklening*): For example, borrowing money. Ownership of the goods is transferred to the borrower. The lender has the right to collect (receivables) for the return of goods with the same amount and quality. Usually, this agreement also involves the payment of interest.

Borrowing and lending money has become necessary for society to support economic activities and improve the standard of living. This practice can be done in writing or not, either through banking (credit) or other financial institutions (financing). Bank credit is the provision of money with the obligation to return it within a certain period of time and interest. In Islamic banking, the term financing with a reward of *ujrah*, without a reward, or profit-sharing is known. Financing institutions also provide various types of financing, such as investment,

working capital, multipurpose, and others.

The money lending agreement involves the creditor as the lender and the debtor as the recipient. The purpose of this agreement is to obtain an achievement, which in this case is in the form of providing and returning the loan. If the recipient of the loan or debtor does not fulfill his obligations, the lender or creditor has several choices of demands, including (Subekti. 2001: 147-148):

1. Request that the agreement be implemented, even if it is late;
2. Demand compensation for losses incurred due to the agreement not being implemented, being late, or not in accordance;
3. Demand the implementation of the agreement as well as compensation for the delay;
4. In a reciprocal agreement, request cancellation of the agreement and compensation if one party is negligent.

2. Provision of Information Technology-Based Joint Funding Services

In the digital economy era, the development of innovation is manifested in the form of providing information technology-based money lending services. POJK 10/2022 no longer uses the term "Information Technology-Based Money Lending Services" but rather the term "Information Technology-Based Joint Funding Services" or LPBBTI. This service increases public access to online financial service products, meets cash needs quickly, easily, and efficiently, and increases competitiveness. In addition, this service also helps MSMEs in gaining access to funding.

LPBBTI, or Fintech P2P Lending, is an online loan service popularly called Pinjol. This business model dominates the Fintech ecosystem in Indonesia with a market share of 40%, followed by Fintech Payment at 34% (Financial Services Authority. 2021: 12). Fintech is a broad term that encompasses various technological innovations in the financial industry, such as payments, insurance, investment, securities transaction settlement, and alternative funding platforms (including Fintech Lending/P2P Lending). All of this is supported by technologies such as data analysis, blockchain, and cybersecurity (Jelena Madir. 2021: 5). POJK 10/2022 defines LPBBTI as a financial service that brings together fund providers and fund recipients online, both conventional and sharia. The parties involved include the Organizer (legal entity that provides the platform), Fund Recipient (individual/business entity that receives funds), and Fund Provider (individual/business entity that provides funds). LPBBTI Organizers must be a limited liability company, licensed by the OJK, and registered as an Electronic System Organizer. Business activities include productive and/or multipurpose funding, with Fund Providers and Fund Recipients who can be individuals/legal entities, Indonesian/Foreign Nationals (specifically Fund Providers).

In LPBBTI, the agreement between the Organizer, Fund Provider, and Fund Recipient must be stated in an Electronic Document. Organizers must protect consumers with the principles of transparency, fairness, reliability, data confidentiality, and easy and affordable complaint handling. The funding process includes registration, application, provision, and repayment of loans. Organizers must pay attention to the suitability of the Fund Recipient's needs and capabilities in risk management.

If the Fund Recipient defaults, the LPBBTI Organizer must collect it, at least with a warning letter according to the agreement. Organizers can work with other parties for collection, with the Organizer fully responsible for all impacts. Collection must be in accordance with community norms, laws, and regulations.

3. Bankruptcy

Bankruptcy is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations ("Law 37/2004"). Bankruptcy is defined as a general seizure of all assets of a bankrupt debtor whose management and settlement are carried out by

a curator under the supervision of a Supervisory Judge as regulated in Law 37/2004. This definition shows that bankruptcy law is a regulation that aims to distribute the debtor's assets to his creditors by using a general seizure mechanism against all of the debtor's assets to be distributed to creditors in accordance with their proportional rights (Titi S. Slamet. 2015: 22-23).

Bankruptcy itself, according to legal expert Fred B.G. Tumbuan, as quoted by Titik S. Slamet stated that bankruptcy results in a general seizure covering all of the debtor's assets for the benefit of the creditors (Titi S. Slamet. 2015: 25). Meanwhile, according to R. Subekti and R Tjitrosudibio, bankruptcy is a condition of a debtor when he has stopped paying his debts. A condition that requires the intervention of a panel of judges to guarantee the common interests of his creditors (Victor Situmorang & Soekarso. 1994: 18). In addition to Bankruptcy, Law 37/2004 also regulates the mechanism of Suspension of Debt Payment Obligations ("PKPU"). Rachmadi Usman explains several differences between Bankruptcy and PKPU, as follows (Rachmadi Usman. 2004:103):

a. Pending Position

A person declared bankrupt will lose the ability to act on his/her property, while a person who receives a PKPU does not lose the right to his/her property.

b. Maintenance Institution

In a PKPU, a person in a debt PKPU can still act on his/her property, only that every action concerning his/her property must ask permission from one or more persons called "custodians" or "managers" appointed by the judge.

c. Curator or Estate Management Office

The Curator or Estate Management Office does not interfere in PKPU matters, as is the case in bankruptcy. Instead, the judge appoints one or more caretakers or managers who are tasked with supervising and managing every action of the person who receives a PKPU regarding his/her property.

d. Completion period

e. The time given for the PKPU process may not exceed 270 days after the Temporary PKPU decision is pronounced in accordance with Article 288 paragraph (6) of Law 37/2004. Meanwhile, the time given for the bankruptcy process does not have a specific time for the completion of the entire bankruptcy process after the commercial court decides the bankruptcy. This depends on the role of the curator in completing and settling the bankruptcy of the estate.

f. Procedure

In PKPU, the first step is to submit a PKPU application and then a Temporary PKPU decision. After the PKPU is decided, it must be recorded in the state gazette and announced in two national and local newspapers. Then the first creditor meeting is continued, where the peace proposal or Permanent PKPU is discussed. The peace proposal submitted by the debtor is approved or rejected by the creditors. If approved, there is peace (homologation) and if rejected, it will be declared bankrupt and continue to the bankruptcy process.

Meanwhile, in Bankruptcy, the first step is to submit a bankruptcy application, and then there is a bankruptcy declaration decision. After being decided bankrupt, it must be recorded in the state gazette and announced in two newspapers, one national and one local, then the creditor meeting is continued, then pre-verification and verification. In this verification, it determines the peace or insolvency plan. If the peace plan is approved, there will be peace (homologation). If it is not approved, it will continue with the settlement of the bankrupt estate, then the distribution of the bankrupt estate, and termination.

g. Legal consequences

After the PKPU decision, there are no more legal remedies, whereas in bankruptcy, after being decided, a cassation and judicial review can be filed.

In the context of Bankruptcy, debt is an obligation that can be expressed in money, either rupiah or foreign currency, which arises from an agreement or law. If not fulfilled, the creditor has the right to collect the debt from the debtor's assets. The debtor is the party who has the debt, while the creditor is the party who has the receivables (right to collect).

In bankruptcy cases, applications can be submitted by the Debtor, Creditor, Prosecutor's Office, OJK, and Minister of Finance, with the condition of having two or more creditors and not paying off one debt due (Article 2 paragraph 1 of Law 37/2004). The application will be granted if the conditions are proven simply in the Commercial Court (Article 8, paragraph 4 of Law 37/2004).

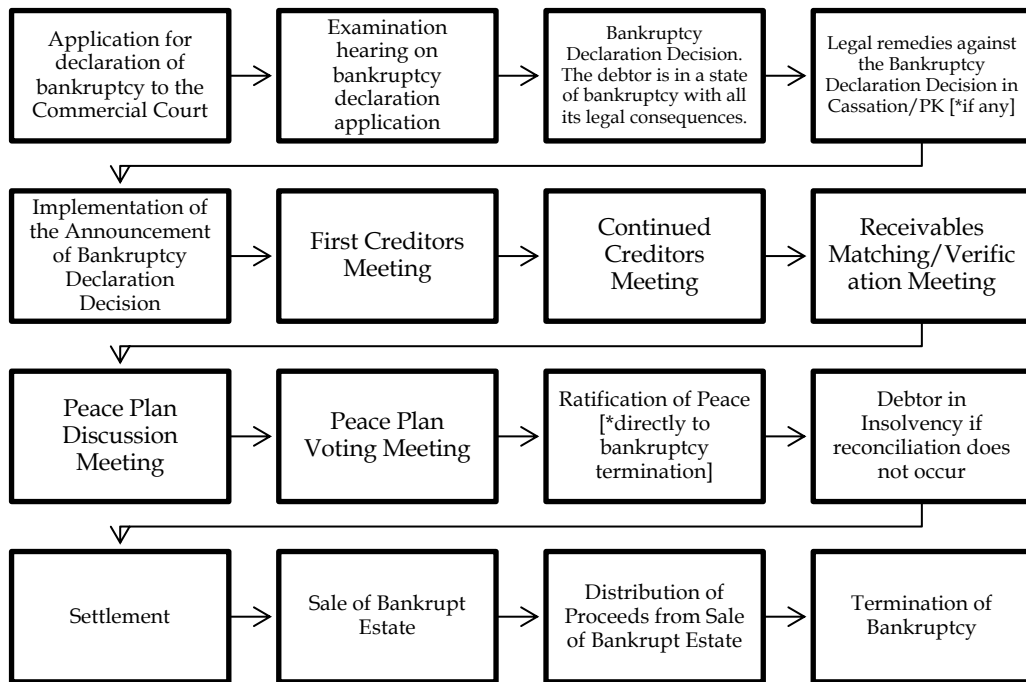
According to Hadi Subhan, there are differences in the conceptual limits of the simple proof regarding facts or circumstances that are proven. The explanation of Article 8 paragraph (4) of Law 37/2004 only mentions the fact of two or more creditors and the fact of debt that is due and collectible. Meanwhile, the difference in the amount of debt argued by the applicant and the respondent for Bankruptcy and PKPU does not prevent the issuance of a bankruptcy declaration decision (Hadi Subhan. 2008: 120).

In bankruptcy, there is also 1 (one) provision that excludes the debtor's assets in the bankruptcy process. Article 22 of Law 37/2004 stipulates that the provisions on bankruptcy covering all of the Debtor's assets do not apply to:

- a. objects, including animals that the Debtor truly needs in connection with his work, his equipment, medical devices used for health, beds, and equipment used by the Debtor and his family, and food for 30 (thirty) days for the Debtor and his family, which are located at that place;
- b. everything obtained by the Debtor from his own work as salary from a position or service, as wages, pension, waiting money or allowances, to the extent determined by the Supervisory Judge; or
- c. Money is given to the debtor to fulfill an obligation to provide a living according to the law.

Referring to the provisions of Law 37/2004 and the Decree of the Chief Justice of the Supreme Court Number: 109/KMA/SK/IV/2020 Concerning the Implementation of the Bankruptcy and PKPU Case Settlement Guidelines, the debt settlement mechanism for Fintech Lending services through the Bankruptcy institution can be described in the diagram below:

Diagram 1. Bankruptcy Process



Based on the description above, it can be concluded that the settlement of debts in Fintech Lending services can be carried out through the Bankruptcy institution mechanism on the grounds that:

- a. Debts arising from information technology-based joint funding service transactions are included in the definition of debt as referred to in Law 37/2004 and
- b. Fintech companies such as LPBBTI Organizers are creditors, and recipients of funds are debtors, where each can submit a Bankruptcy Statement Application to the Commercial Court.

4. Constraints in the settlement of debts in Fintech Lending services through Bankruptcy institutions

Although normatively the settlement of debts in Fintech Lending services can be carried out through the Bankruptcy institution mechanism, the application of Law 37/2007 for the settlement of debts in Fintech Lending services also has several obstacles due to Law 37/2004 still combining Bankruptcy regulations for both business entities and individuals. The first issue is that the application for a bankruptcy statement must be submitted and signed by an Advocate as regulated in Article 7 paragraph (1) and Article 224 paragraph (1) of Law 37/2004. Considering that the average loan for Fintech Lending service users ranges from IDR 2.6 million to IDR 5.1 million, submitting an application for a bankruptcy statement that must use the services of an advocate makes this process inefficient from a cost aspect. The second issue is related to the requirements for granting an application for a bankruptcy statement as regulated in Article 2 paragraph (1) of Law 37/2004, namely that the debtor must have more than 1 (one) creditor. For debtors who borrow funds from more than 1 (one) Fintech Lending service, the Fintech Company as the LPBBTI Organizer should find it easy to prove that the debtor has more than 1 (one) creditor, for example, by requesting information from fellow LPBBTI Organizers. In the event that the debtor only borrows from 1 (one) Fintech Lending service, then the bankruptcy statement application cannot meet the requirements stipulated in Law 37/2004.

Both issues have provided an illustration that the application of the debt collection principle in Law 37/2004, which emphasizes that debts from debtors must be paid with assets

owned by the debtor as soon as possible, is difficult to realize. Another issue is whether Law 37/2004 regulates the principle of debt forgiveness. M Hadi Subhan argued that Law 37/2004 still adheres to the principle of debt forgiveness which is realized in the restructuring process in PKPU. However, debt relief or debt forgiveness still requires the approval of its creditors. This condition creates the possibility that creditors will not agree to the peace in Bankruptcy, and ultimately, the bankrupt debtor's assets are settled where the debtor's assets (especially individual debtors) are insufficient to pay off all debts to creditors.

CONCLUSION

Settlement of debts in Fintech Lending services can be carried out through the Bankruptcy institution mechanism on the grounds that debts arising from information technology-based money lending transactions are debts as referred to in Law 37/2004 and Fintech Companies as LPBBI Organizers are creditors and recipients of funds are debtors, where each can file a bankruptcy application to the Commercial Court.

The requirement that a bankruptcy statement application must be submitted and signed by an Advocate and the requirement that the debtor must have more than 1 (one) creditor make the application of the debt collection principle in Law 37/2004 difficult to realize in the context of debt settlement in Fintech Lending services. The provisions of Law 37/2004 do not provide sufficient protection for individual debtors because debt relief for debtors still requires creditor approval.

The Government of the Republic of Indonesia needs to consider drafting a special Bankruptcy Law for individuals, considering the characteristics of individual debt transactions differ from business entities, to address issues that occur in lending transactions on Fintech Lending services, especially by individual customers. The special Bankruptcy Law for individuals must include the principle of debt forgiveness based on a judge's decision without requiring creditor approval.

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