

The Law Responsibility of E-Commerce Organizers Regarding The Failure of Payment in PayLater System

Intan Mutiarawati

Email: intanmutiarawati29@gmail.com

University of Brawijaya, Indonesia

Reka Dewantara

Email: rainerhub@gmail.com

University of Brawijaya, Indonesia

Sigit Nur Rachmat

Email: notaris.sigitnr@gmail.com

University of Brawijaya, Indonesia

Abstract: In today's era, technology is increasingly developing with various provided conveniences. The disruption era presents the power of technology, information, and communication using the benefits of internet media. One of them is the needs of society and the development of payment methods which continue to evolve. PayLater makes the easier solution to meet your needs. However, with the many conveniences and the increasing number of users, there are also problems regarding the failure of payment which reached the Non-Performing Loan (NPL) ratio DPD30+ as of April 2023 in the amount of 9.7% or above the safe limit of the NPL ratio which is in the percentage of 5%. Deriving from that, protection for financial technology is needed when there are many failures of payment from PayLater payment system through e-commerce employing the preventive legal protection, risk management, and the principle of prudence by PayLater organizers, as well as the repressive legal protection using the expected compensation method.

Keywords: *PayLater, E-Commerce, Failure of Payment, Legal Protection*



INTRODUCTION

The financial system is two forms of order in a country's economy which has a main role in providing facilities and services in the financial sector for other supporting financial institutions. In principle, the financial system in Indonesia can be divided into two types, namely the banking system and the non-banking financial institution system.¹ It can also be said that the financial system is a system that is formed by institutions that have competencies related to the intricacies of the financial sector.² The current era is an era where rapid change is happening, this is felt by all countries in the world (volatility). The challenges of globalization require all countries to follow the developments without limits. The Industrial Revolution 3.0 which previously relied on semiconductors and industrial automation is still leading to the era of digitalization, now we have arrived at the Industrial Revolution 4.0 with the main characteristic is the disruptions that happened in various lines, all of which have entered the era of full and dynamic digitalization (uncertainty).³

The disruption era presents the power of technology, information, and communication based on the benefits of internet media to become a new force in providing convenience for everyone. This helps every movement without knowing the boundaries of space and time, with all forms of risk and legal liability arising from people's behavior who use technology with different intentions and goals. The rapid development of science and technology has influenced human behavior patterns in accessing various information, one of which includes electronic service features. One of the developments in electronic services that has attracted a lot of interest in today's society is Financial

¹ Fekon, 2017, Sistem Keuangan di Indonesia, <https://unida.ac.id>, diakses tanggal 13 Januari 2023.

² Hermansyah, 2011, Hukum Perbankan Nasional Indonesia, Jakarta: Kencana Prenada Media Group. p.1

³ Akhmad Sefudin, M. Darwin, Perbandingan Teori Disrupsi Pada Marketing Di Era Industri 4.0 Menurut Hermawan Kartajaya Dan Rhenald Kasali, Jurnal Ilmiah Manajemen, Vol. 1 No. 2, Oktober 2020. p.25.



Technology (hereinafter referred to as Fintech). Fintech is a digital technology application that is used to provide solutions to people's financial problems.⁴

In the 20th century, the development of the world of technology was increasingly rapid, thereby life changed to a completely digital era. Technological developments have impacts on changes in various fields such as trade, services, and the financial sector. This makes the business cycles that occur in each sector easier and more efficient. With technological growth, innovation has emerged, one of which is in the financial sector, known as Financial Technology (Fintech). Trade transactions have now increasingly developed as a result from the internet technology combination that leads to the emersion of an online trading system called e-commerce. E-commerce has a positive impact through the ease of transactions, such as time savings and consumer freedom to choose goods and or services at very competitive prices.⁵ By the provision of Article 1 paragraph 3 POJK No.77/POJK.01/2016 concerning The Technology-information based of Money Lending and Borrowing Services, it is explained that the provision of financial services uses to bring together the lenders and loan recipients carrying out loan agreements in rupiah currency directly through an electronic system via the internet network.

Trade transactions have now increasingly developed as a result of the internet technology combination that leads to the emersion of an online trading system called e-commerce. E-commerce has a positive impact through the ease of transactions, such as time savings and consumer freedom to choose goods and or services at very competitive prices.⁶ One of the crucial current issues is regarding e-commerce, where cyberspace transaction has the characteristic of being superfast and easier to use. E-commerce does not have a uniform term yet in the Indonesian language. There are several terms that are generally known, such as electronic commerce contracts, electronic commerce transactions, and

⁴ Aron, M. Rivadeneyra, F.,Sohal,S.,Fintech:Is this time different? A framework for assessing risk and opportunities for Central Banks, Bank of Canada Staff Discussion Paper, Canada:2017, p.2

⁵ Budiharto Hermana & Hendro, Pengawasan Otoritas Jasa Keuangan Terhadap Financial Technology (Peraturan Otoritas Jasa Keuangan Nomor 77/POJK.01/2016), Diponegoro Law Journal, Vol. 6, No.3, 2017, p. 1-2.

⁶ Ibid.



commerce transactions via electronic.⁷ Julian Ding, as quoted by Mariam Darus Badruzaman, defines e-commerce as a trade transaction between a seller and a buyer to provide goods and services or take over rights. This contract is carried out using electronic media (digital medium) where the parties are not physically present and this medium is available on a network with an open system, namely the internet or the world wide web. This transaction occurs regardless of territorial boundaries and national requirements.⁸

The existence of Fintech is considered to be able to help the finance of non-bank sectors of society because the ease of getting a loan is bigger than via bank. Fintech can also provide a more practical and faster financial transaction process. Fintech has several basic forms, including payments (digital wallets, P2P payments), investment (equity crowdfunding, peer-to-peer lending), financing (crowdfunding, microloans, credit facilities), insurance (risk management), cross-process (big data analysis, predictive modeling), Infrastructure (security).⁹

This current condition shows that amid the development of peer-to-peer lending services, the number of disbursed loans in Indonesia is increasing from year to year to help people obtain business capital financing. According to published data from the Financial Services Authority (OJK) as of April 22, 2022 state that there are 102 licensed Lending Fintech providers then the overview of Fintech Lending organizers for the January 2021 period from Conventional providers (96 units) is (Rp billion) 3,920.72 and for Sharia providers (7) units are (Rp billion) 69,47.¹⁰ Supervision of Financing Services Business organizers is carried out by the Financial Services Authority. In the context of supervision, Financing Services Business organizers are required to submit monthly reports,

⁷ Rudyanti Dorotea, Aspek-Aspek Hukum Bisnis, (Surabaya: Laksbang Justitia, 2015), p. 209.

⁸ Mariam Darus, Kompilasi Hukum Perikatan: Dalam rangka Menyambut Masa Purna Bakti Usia 70 Tahun, (Bandung: PT. Citra Abadi Bakti, 2001). p. 283.

⁹ Ofie Iman, Financial Technology dan Lembaga Keuangan, Gathering Mitra Linkage Bank Syariah Mandiri, (Yogyakarta: 2016). p. 6.

¹⁰ Perusahaan Fintech Lending, <https://www.ojk.go.id/>, diakses pada tanggal 20 Januari 2023.



annual financial reports, and or other reports correctly to the Financial Services Authority.¹¹

Meanwhile, Bank Indonesia's role in Financial Technology is as a facilitator. Bank Indonesia provides land for the intelligent business analyst of payment traffic. Through collaboration between international authorities and agents, Bank Indonesia becomes an analyst for business actors related to Fintech to provide views and direction on how to create a safe and orderly payment system. Bank Indonesia carries out monitoring and assessment of every business activity involving Fintech and payment systems using technology. Coordination and Communication. Bank Indonesia maintains relations with the relevant authorities to continue supporting the existence of Fintech payment systems in Indonesia. Bank Indonesia is also committed to supporting business actors in Indonesia by providing regular guidance regarding Fintech.¹² Until the end of December 2021, loan distribution from Peer-to-Peer Lending (P2PL) recorded annual growth of 95.05%. Furthermore, outstanding loans from peer-to-peer lending reached IDR 29.88 trillion in the same month. In December 2021, there were 2 new registered platforms, bringing a total of 84 Digital Financial Innovation (IKD) operators with registered status, consisting of 77 conventional platforms, and 7 sharia platforms categorized into 17 business model clusters. Crowdfunding security, an online platform that brings together investors and business owners who need funds (to start or develop their business), listed 7 registered platforms with total fundraising reaching IDR 413.18 billion as of December 2021.¹³

In its development, various e-commerce or online economic transaction sites have provided many forms of services in the financial sector. Economic transactions carried out through Fintech then create several marketing methods as well as new payment schemes that are more practical and modern, with the

¹¹ Pasal 128, Undang-undang No.4 Tahun 2023 Tentang Pengembangan dan Penguatan Sistem Keuangan.

¹² Mengenal Financial Tachnology, Departemen komunikasi, Desember 2018, www.bi.go.id, diakses pada tanggal 10 Juni 2023.

¹³ Fintech Industry Assessment, December 2021, www.ojk.go.id, diakses pada tanggal 20 Januari 2023.



aim of providing convenience and attracting consumers. The services provided include payment channel system, digital banking, online digital insurance, peer-to-peer lending, and crowd-funding service.¹⁴ To carry out payment transactions, e-commerce provides a number of payment options, including bank transfers, digital wallets owned by each e-commerce, cash on delivery (COD), and credit card payment method. Along with the development of technology in electronic transactions, there are payment options that allow consumers to shop using installment payments or loans without a credit card and without providing collateral, namely the *PayLater* payment method.

PayLater is a form of P2P lending also known as peer-to-peer lending. P2P lending is a lending and borrowing activity carried out by lenders with loan recipients through intermediaries other than banks known as peer-to-peer lending providers or platforms. 4 P2P loan providers are providers of financial services in the non-bank financial industry sector, this is in line with Article 1 number 5 POJK number 12 of 2017. Service providers of P2P loan services become facilitators to bring together loan recipients with lenders and represent the lender's actions based on granting authority as regulated in Articles 1792-1819 BW to carry out necessary actions in lending and borrowing activities such as disbursement of funds and debt collection.¹⁵ Although peer-to-peer lending has almost the same character and both are related to financial services and are often related to online transactions, *PayLater* (payment later), and peer-to-peer lending (P2P lending) is different concepts in the financial world. *Peer-to-peer lending* (P2P Lending) involves providing loans directly between borrowers and lenders without the involvement of traditional financial institutions how P2P Lending work provides a forum for meetings between borrowers and lenders. Borrowers request loans and lenders to decide whether they want to provide loans and on what terms, P2P lending involves individuals or institutional investors as lenders and borrowers who need funds. P2P platforms act as intermediaries.

¹⁴ Immanuel Adhitya, Wulanata Chrismantianto, "Analisis SWOT Implementasi Teknologi Finansial Terhadap Kualitas Layanan Perbankan di Indonesia", Jurnal Ekonomi dan Bisnis Vol.20 No.1 (2017): p. 134.

¹⁵ Nisrina Anrika, Perlindungan Hukum Bagi Para Pihak Dalam Penggunaan Fitur Paylater pada aplikasi Gojek, Media Iuris Vol. 3 No. 1, 2020, p. 4.



While *PayLater* is a payment model where consumers can buy goods or services now and *pay later* within a specified time, often in the form of installments. Consumers use *PayLater* services to make purchases and then pay their bills within a certain time, usually within a few weeks or months, consumers utilize *PayLater* services to make purchases and then pay their bills within a certain time usually a few weeks or months. Recently, BNPL (Buy Now, Pay Later) or more familiarly known as *PayLater*, is becoming an attractive payment scheme option for people who have a limited budget. BNPL is a financial facility that allows payment methods in installments without a credit card.¹⁶ *PayLater* is an online loan service without a credit card that permits consumers to pay for a transaction at a later date, either with a single payment or in installments. This loan facility is also often referred to as a credit limit.¹⁷ This new method is starting to become a digital payment option besides credit/debit cards and mobile transfer methods.

Judging from the number of *PayLater* users which has continued to grow in Indonesia over the past period, the following is data on *PayLater* which is frequently used by people in Indonesia in 2021.¹⁸ Based on data from the Financial Services Authority (OJK), the number of BNPL contract users grew 33.25% Year on Year (YoY) in May 2023. The number of contracts in May 2022 from 54.7 million contracts to 72.88 contracts in May 2023. However, along with the increasingly rapid development of Fintech in Indonesia and the convenience offered by Fintech with a payment system using the BNPL scheme to the public, some problems financing institutions (Fintech) will encounter, one of which is payment failure.

To anticipate potential risk threats, it is necessary to carry out preventive efforts to protect interested parties from various forms of problems. Examining the relationship between the parties is necessary to find out the rights and

¹⁶ Bina Nusantara University Popular Articles, Apa Itu Paylater?, Bina Nusantara University, www.sis.binus.ac.id, diakses 16 Maret 2023.

¹⁷ Cigna Health & Wellness, Waspada! Skema *Pay Later* Yang Malah Menjadi *Pain Later*, Cigna, www.cigna.co.id, diakses 16 Maret 2023.

¹⁸ Fintech Report 2021: The Convergence of (Digital) Financial Services, dailysocial.id, diakses pada tanggal 20 April 2023.



obligations of each party during the relationship as well as what efforts can be taken if in the future the parties encounter legal problems. A concrete form of preventive effort that can be done is implementing the "Know Your Customer" (KYC) principle. This is regulated by the Bank Indonesia Regulation Number 3/10/PB1/2001 regarding the Implementation of the "Know Your Customer" Principle. Through this principle, service providers can get to know their customers better by clearly knowing the customer's identity. Apart from that, service providers can also monitor customer transaction activities, including reporting suspicious transactions.¹⁹

Even though electronic-based financing institutions (Fintech) have risk management, every time they provide funds to debtors/consumers by providing interest rates that are relatively higher, up to double, from interest rates of around 1% to 3.95% flat per month offered by banking financial institutions. There are still high losses or risks that financial institutions will accept when payment failure occurs, due to losses incurred by financial institutions Fintech. This will be the responsibility of the financing company. Thus, from the problems explained above, there are still many consumer failures to pay using the PayLater payment method, it is interesting to carry out in-depth research regarding the responsibilities of e-commerce platform providers to Fintech when there is a consumer payment failure. Coming from the background that has been mentioned, the question arises about what is the legal protection for financial technology in the event of payment failure in e-commerce transactions with a PayLater system?

THEORETICAL BASIS

The theoretical framework must be formulated correctly because the theoretical framework is an analytical spearhead for researchers to solve the problems that have been formulated.²⁰ A theoretical framework is a model that explains how a theory relates to significant factors that are known in a particular

¹⁹ Kusuma Wati, KYC Sebagai Peran Perbankan dalam Pemberantasan TPPU, www.ppatk.go.id, diakses pada tanggal 16 Maret 2023.

²⁰ H. Syamsul Arifin, Metode Penulisan Karya Ilmiah dan Penelitian Hukum, (Medan : Area University Press, 2012), p.122.



problem. When writing a scientific work, theory is needed to analyze the problem being studied. These are the theories in this writing:

1. Legal Protection Theory

Legal protection is all efforts to fulfill rights and provide assistance for giving a sense of security to witnesses and or victims, legal protection for crime victims as part of community protection that can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal aid.²¹ Legal protection is divided into two types, namely preventive legal protection and repressive legal protection. In preventive legal protection, the public is given the opportunity to submit objections (*inspraak*) or a definitive form. Thus, preventive legal protection aims to prevent disputes, whereas repressive legal protection aims to resolve problems. Preventive legal protection has a very big meaning for government action which is based on freedom of action because with preventive legal protection then the government is encouraged to be careful in making decisions based on discretion.²²

2. Legal Certainty Theory

In Kelsen's opinion, the law is a system of norms. A norm is a statement that emphasizes the "should" aspect, known as *das sollen*, by including several rules about what must be done. Norms are a product and deliberative human action. Laws containing general rules serve as guidelines for individuals to behave in a social environment, both in relationships with fellow individuals and in relationships with society. These rules become limits for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty.²³

Legal Certainty means that with the existence of law, everyone knows which and how many rights and obligations they have, as well as the

²¹ Soerjono Soekanto, Pengantar Penelitian Hukum, (Jakarta, UI Press, 1984), p. 133

²² Philipus M. Hadjon, Perlindungan Hukum Bagi Rakyat di Indonesia, (Peradaban: 2007), p. 2.

²³ Hans Kelsen dalam Peter Mahmud Marzuki, Pengantar Ilmu Hukum, (Jakarta, Kencana, 2008), p. 158.



theory of legal benefit for creating order and tranquility in people's lives because of the existence of orderly law (*rechtsorde*). The theory of legal certainty contains two meanings, the existence of general rules that make individuals know what actions may or may not be carried out and legal security for individuals from government authority because with the existence of general legal rules, individuals can know what can be charged or carried out by the State against individuals.

3. Legal Development Theory

Development theory is a theory coined by Mochtar Kusumaatmaja which states that law is a tool to maintain order in social groups because the nature of law is conservative. This means that the law is nurturing and maintaining what has been achieved that is necessary for every society including developing communities, because there are results that must be maintained, protected, and secured. However in a developing society, which means a society that is changing rapidly, it is not enough for a law to have this function only, yet it must also be able to help the process of change in the society. An old-fashioned view of law which emphasizes the function of maintaining order in a static sense and the conservative nature of law, assumes that law cannot play a meaningful role in the process of reform.²⁴

The five main development theories put forward by Mochtar Kusumaatmaja are; the Function and Development of Law in National Establishment; Legal Founding in the Context of National Establishment; Renewal of Legal Education and Professional Founding; Law, Society and National Legal Founding; and "Consolidation of Legal Ideals and National Legal Principles in the Present and Future."²⁵

RESEARCH METHODS

The method in this research is included in normative legal research. This research functions to provide juridical arguments in conditions of emptiness,

²⁴ Rusidi Ali Muhammad, Lembaga Ketahanan Nasional Republik Indonesia, <http://lib.lemhannas.go.id>, 2014, p 23.

²⁵ M. Zulfa Aulia, Hukum Pembangunan dari Mochtar Kusumaatmadja : Mengarahkan Pembangunan atau Mengabdikan pada Pembangunan, Undang: Jurnal Hukum, Vol.1 No.2 (2018) : p. 363-392.



ambiguity, and conflict of norms. Furthermore, normative legal research has its study object about the study of legal rules or regulations. Normative legal research examines legal rules or regulations as a building system related to a legal event. This research was carried out with the aim of providing legal arguments as a basis for determining whether an event was right or wrong and how the event should be according to the law of research approach.²⁶ Approaches in this writing used a statute approach and a conceptual approach.

RESULT AND DISCUSSION

The presence of PayLater has answered the needs of the current generation who wants convenience while being able to fulfill their daily needs and shop online. In this case, payLayer has become a digital lifestyle that is increasingly popular with young millennials. On the other hand, it also shows how Fintech has played an economic role through payment methods that are concise, easy, and able to answer today's lifestyle needs in the era of digitalization. Fintech, like the gadgets that are widely available, really supports the digital lifestyle among millennials. However, adopting this lifestyle also has the risk. Instead of making it easier to manage someone's cash flow by using PayLater, if it is not managed properly then it can lead to the risk of overspending. This happens because PayLater is an obligation that must be paid at a later date, just like using a credit card.²⁷

When someone agrees, it will be followed by rights and obligations for the parties agreeing and the agreement will create risks, one of which is the risk of failure to pay receivables or achievements that should be paid, which then results in legal consequences when someone is late in making a payment or fails to pay.

A. Legal consequences for PayLater users in the event of late payments and the failure in payment.

Making payments using the PayLater method will indeed provide convenience, but there are risks in using it, including:

²⁶ Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Cetakan IV, (Yogyakarta, Pustaka Pelajar: 2017) p. 36.

²⁷ Ilya Avianti, Triyono, *Ekosistem Fintech Indonesia*, Jakarta: PT.Kaptain Komunikasi Indonesia, 2021.



- a. Financial arrangements are disrupted
- b. There are unnoticed costs
- c. Excessive consumer behavior
- d. Identity hacking
- e. The fines will increase if experiencing continuous arrears
- f. Data will be recorded at the Fintech Lending Data Center (PUSDAFIL) which contains information regarding problematic loans from users with problematic loans of Fintech Lending providers who are registered/licensed with the OJK
- g. Your credit rating in the OJK's SLIK (Financial Information Service System) can prevent you from getting financing from a bank or other company

B. Factors causing payment failure

1. Negligence committed by the user

If there is negligence committed by the user in the event of the failure in payment, the loss can be blamed on the user if there is an element of intent or negligence that is detrimental to the debtor and can be held accountable to him. Negligence is an event where a debtor should have known or reasonably suspected that due to the actions or attitudes taken by him or her, losses would result. About debtor negligence, it is necessary to know the obligations that are considered negligent if it is not carried out by a debtor:

- a. Obligation to provide something that has been promised
- b. Obligation to act
- c. Obligation not to carry out an act
- d. Due to force circumstance (overmatch/force majeure).

2. The failure in payment category using the PayLater payment method

When using the Buy Now Pay Later service, or in the case of xPayLater, there are some times to make repayment of the loan that has been received by the loan recipient. Each loan recipient will get a different repayment period, including:

- a. 25th: Need to be paid by the 5th of each month
- b. 1st: Need to be paid no later than the 11th of each month



c. 15th: Need to be paid by the 25th of each month

From this period, the category of late payment is one day after the specified date. Even if the loan recipient is late in making the payment by only one day from the specified date, the loan recipient must pay the fine set by the lender which is 5% of the loan amount per day. In the event of a delay in paying later installments by the loan recipient, the lender will collect it in several ways by the billing code of ethics in accordance with the provisions of the Association of Indonesian Financing Companies (APPI) and the OJK.

If the recipient of the default fund, the organizer is obliged to make a minimum collection by providing a warning letter following the terms of the funding agreement. The organizer can collaborate with other parties to carry out billing functions which must fulfill the conditions that the other parties: has a legal entity, a permit from the competent authority, and certified human resources in the field of billing from a professional certification body registered with the OJK; and is not an affiliate of the organizer or funder.

The organizer must take full responsibility for all impacts caused and carry out regular evaluations with other parties. Based on the provisions above, the debt collector's billing requirements are a third party authorized by the financial institution when the debtor is in default. Apart from that, debt collectors must be legal entities, have permits, and their human resources have received certification from authorized agencies.²⁸

Article 1238 states that a debtor is negligent, if he is declared negligent by a letter of order or a deed of that kind, in the letter or deed that the debtor is asked or warned to perform well. A statement of negligence (*ingebrekestelling*) is a warning from the creditor so that the debtor performs at the latest at a certain time. Reprimands like this are also called subpoenas (*sommatie*). For such a letter, the law provides legal

²⁸ Peraturan Otoritas Jasa Keuangan Nomor 10/POJK.05/2022 Tahun 2022 Tentang Layanan Pendanaan Bersama Berbasis Teknologi Informasi.



consequences, that failure to comply with the warning will result in the debtor being in a state of negligence and will bring further consequences as explained in the law. So (*ingebrekestelling*) which does not specify a time at which the debtor is expected to perform at the latest, does not put the debtor in a state of negligence even if the summons is given repeatedly.²⁹

Furthermore, Articles 1243 - 1252 further regulate the issue of compensation. The basic principle is that default requires compensation for losses; the reimbursement includes costs, losses, and interest. In certain events, in addition to claims for compensation, there is the possibility of claims for cancellation of the agreement, implementation of retention rights, and advertising rights. Because claims for compensation in the above incidents are recognized and regulated by law, then to enforce these claims, creditors can ask for assistance from the authority according to the methods specified in the Civil Procedure Law, namely through available means of execution and regulated there on the assets belonging to the debtor. The principle that the debtor is responsible regarding the obligations of his engagement with all his assets has been stated in Article 1131 of the Indonesian Civil Code.

One way to protect financial technology is to apply the principle of prudence in carrying out every transaction. According to Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, "In carrying out its business, Indonesian banking is guided by economic democracy which is guided by the principle of prudence."

This means that the precautionary principle is one of the principles or principles that every bank must comply with in a banking credit agreement. Explanation of Article 2 of Law Number 21 of 2008 concerning Sharia Banking states that what is meant by the prudential principle are bank management guidelines that must be adhered to create healthy, strong, and efficient banking under regulations. However, the

²⁹ J Satrio, Hukum Perikatan-Perikatan Pada Umumnya, (Bandung, Alumni:1999) p. 105.
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Banking Law does not specifically explain what the prudential principle is.³⁰

The prudential principle, the word "prudent" in Indonesia means wise. However, in the banking field, the term is used for the "prudential principle". Prudent, which means wise or the principle of prudence, is not a new term, but contains a new concept of responding firmly, in detail, and effectively to the various risks inherent in bank business. So, prudent is a concept that has elements of attitudes, principles, policy standards, and techniques in bank risk management in such a way that it can avoid the slightest consequences, which can endanger or harm stakeholders, especially depositors and creditors. The broader goal is to maintain the security, health, and stability of the banking system.³¹

In money lending and borrowing services using technology-information-based or Fintech in carrying out lending and borrowing activities, organizers must pay attention to the precautionary principle and other principles such as the "Know Your Customer Principle" to observe and know the identity of the borrower. The principle of prudence for the provision of technology-information-based or Fintech-based money lending and borrowing services has an obligation to apply the principle of prudence, this has been regulated as stated in Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology Article 8 paragraph 1 of Bank Indonesia Regulation Number 19/12/PBI/2017, which reads: "Financial Technology Providers who have registered with Bank Indonesia are required to:

- a. Applying consumer protection principles by the products, services, technology, and or business models being implemented;
- b. Maintain the confidentiality of consumer data and or information including transaction data and or information;

³⁰ Tasya Hanifah, Analisis Penerapan Prinsip Kehati-hatian Dalam Pemberian Kredit Pada Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi Dalam Fitur Pembayaran Paylater, Jurnal Hukum Adigama, Vol.4 No.2, 2021, P-ISSN:2747-0873 p. 8.

³¹ Trisadini P, Usanti, dan Abd Shomat, Hukum Perbankan, (Jakarta: Kencana, 2017) p. 122.



- c. Apply the principles of risk management and prudence;
- d. Using rupiah in every transaction carried out in the territory of the unitary state of the Republic of Indonesia under the provisions of the laws and regulations governing currency;
- e. Implement anti-money laundering and funding prevention principles
- f. Terrorism in accordance with the provisions of laws and regulations governing anti-money laundering and prevention of terrorist financing;
- g. Comply with the provisions of other laws and regulations.”

Regulation Number 77/POJK.01/2016 concerning Technology-Information-Based Money Lending and Borrowing Services, explaining regarding risk mitigation, operators and users must carry out the risk mitigation. Providers can collaborate and exchange data with providers of information technology-based supporting services to improve the quality of Information Technology-Based Money Lending and Borrowing Services. Efforts to be careful in paying loans using the PayLater system are carried out by providing payment methods from users to providers, in accordance with the provisions mentioned in Article 24 of this Law, that:

- a. The organizer is required to use an escrow account and virtual account in the context of technology-information based Money Lending and Borrowing Services.
- b. The operator is required to provide a virtual account for each lender
- c. In order to repay the loan, the loan recipient makes payments through the organizer's escrow account to be forwarded to the lender's virtual account.

To minimize the occurrence of disruption or failure to pay and losses, the organizer is obliged to do the following things, including:

- a. Operators are required to secure information technology system components by having and implementing procedures and facilities to



secure Information Technology-Based Money Lending and Borrowing Services to avoid disruption, failure, and loss

- b. The organizer is obliged to provide a security system that includes procedures, prevention systems, and countermeasures against threats and attacks that cause disruption, failure, and loss
- c. Providers are required to participate in managing information technology security gaps in supporting information security in the information technology-based financial services industry

Organizers are obliged to re-display entirely electronic documents by the format and retention period determined following statutory provisions

CONCLUSION

With the increasingly easy use of paylater services, the number of users, and the risk of payment failure, There is a Legal protection for financial technology in the event of payment failure using the paylater payment method by users is to carry out preventive measures, namely risk management :

E-commerce as a lender applies the principle of prudence by applying analysis of potential loan recipients by verifying identity and account when registering with conditions (account use for at least 3 months, active account transactions, providing loan amount according to account analysis). This can minimize the occurrence of defaults, because before the lender approves the use of paylater, they carry out a brief analysis of the health of the account and potential recipients of the funds, because e-commerce is a medium that brings together lenders and loan recipients.

Prepare various types of paylater payments that have been used (e-money/ spay/ bank transfer, super market, etc.). This is also expected to minimize payment failures due to systems that do not work properly, With the ease of repayment provided by e-commerce, it makes it easier for loan recipients to make repayment using the paylater payment method that was previously used.



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