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Legal Protection Of Emergency Contact Victims In Online Loan Agreements

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Abstrak

Emergency contact is an emergency telephone number given by the debtor (money borrower) to the creditor (money lender through the application) if one day the debtor cannot or is not smooth in making payments, the emergency contact number will be contacted by the application service . This study aims to find out and explain the legal rules regarding online loan agreements in Indonesia and to find out and explain legal protection for emergency contact victims in cases of giving phone numbers without the victim's knowledge in online loan agreements. In handling this case regarding the interests of the victim, it is time for special attention to be given, it is necessary to add a clear regulation regarding legal protection for emergency contact victims in the online loan agreement into the law that should be, considering the development of financial technology is very fast and is the main need of the community. And so that the victims can calmly and freely obtain their rights that have been harmed. The state must also provide access for victims to be able to claim their rights. The type of research used to answer these problems is normative legal research using legislation and conceptual approaches. Data collection is done through literature study. The data analysis used is qualitative analysis.

KeyWords

Emergency Contact, Legal Protection, Victims, Online Loans

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1. Introduction

During the development of increasingly sophisticated technology, the economic and financial sectors turned to digitalization, one of which was marked by the number of applications that offered loans online. Online loans are lending and borrowing services carried out by financial service providers with the entire process online. In Regulation of the Financial Services Authority Number 77/POJK.01/2016 Year 2016 concerning Information Technology-Based Borrowing-Lending Services Article 1 number 3, Information Technology-Based Money-Lending Services is the provision of financial services or facilities to connect creditors and debtors whose purpose is to implement a loan agreement with a certain amount of money directly using an electronic network or the internet.

Article 1320 of the Civil Code states that a valid agreement in the eyes of the law includes agreement, skill, a certain thing and a lawful cause. In general, the requirements for applying for an online loan are not complicated, only with a National Identity Card, telephone number, account book, payslip and online loan application providing requirements for prospective debtors to register two or more emergency contact

numbers. Emergency Contact or emergency number is a number that will be notified if a debtor is late in making a payment, difficult to contact, and is in arrears in payment.

The relief obtained from online loans triggers a number of problems, such as the problem of disturbing people who are emergency numbers or emergency contacts. Emergency Contact is an emergency telephone number given by the debtor to the creditor if at one time the debtor is unable or not fluent in making payments. The emergency contact number registered by the debtor in the online loan application is at least 2 or 3 numbers and the owner of the number does not know that the phone number has been used as an emergency number. And the problem of payment obligations that are not fulfilled by the debtor makes the online application contact the emergency contact, the party from the online application calls a number that is not even registered as an emergency contact. The number is obtained from personal data that can be accessed from the debtor's phone number and without the knowledge of the debtor.

This is very burdensome for emergency contacts because it interferes with their rights, so researchers are interested in discussing this about legal protection for emergency contact victims who are listed unilaterally for online loans, and the need for clear legal regulations so that all parties feel safe.

2. Metode

The research method that researchers use is normative juridical. This study relates to the legal rules contained in statutory regulations and court decisions, as well as rules that have previously existed and developed in community life. This type of normative research is also known as library research or document study. The statutory approach is carried out by studying, analyzing, and understanding all laws and regulations that are in accordance with the case studied by the researcher, namely the legal protection of victims of emergency contact in online loan agreements. This research focuses on the protection of victims who are registered as emergency contact numbers in online loans. The statutory approach can see the law as a private procedure.

This research is descriptive, where descriptive research is research conducted on a form of research designated to provide a description of existing events, both events described in the nature of an individual, condition, symptom or other event and certain relationships, and seeks to find a comprehensive picture of legal protection of emergency contact victims in online loan agreements. The type of legal material used is primary legal material, which is related to the laws that researchers use in this study, secondary legal material is library legal material obtained from the results of literature review or review of various literature or library materials related to the problem or research material which is often called legal material, as well as tertiary legal material obtained from the internet, news, newspapers, and other media.

The technique of collecting legal data in normative legal research is by conducting a literature review on primary, secondary, tertiary legal data and / or non-law data has been collected. Legal data collection is carried out by researchers by searching for legal materials in the media or internet sites. The analysis used is a qualitative analysis method, namely a method by interpreting (interpretation) of legal data that has been processed. The use of this interpretation method is aimed at legal interpretation.

3. Results and discussion

3.1. Legal Rules Regarding Onlineloan Agreements In Indonesia

Online lending is a financial service for the community, the result of technological advances in the national economy. Online lending is part of the development of financial technology (fintech) which is part of the use of technology in the financial system that produces products, services and technology and or new business models that can have an impact on the monetary stability system, financial system stability, efficiency, smoothness, security and reliability of the payment system. Loans can be submitted through online applications.

According to the Civil Code, online loans are classified in lending and borrowing agreements as stipulated in Article 1754 of the Civil Code. The definition of a loan and borrowing agreement according to Article 1754 of the Civil Code reads, "Lending and borrowing is an agreement by which one party gives to the other party a certain amount of goods that are consumed due to use, on the condition that the latter party will return the same amount of the same kind and condition."

Online lending refers to the rules regarding application-based or electronic money lending services contained in the Financial Services Authority Regulation Number 77/POJK.01/2016 of 2016 concerning Information Technology-Based Money Lending and Borrowing Services. According to Article 1 point 3 of the Financial Services Authority Regulation Number 77 of 2016, information technology-based money lending and borrowing services are the implementation of financial services to bring together lenders and loan recipients in order to conduct lending and borrowing agreements in rupiah currency directly through an electronic system using the internet network and further explain the agreement.

The distinguishing factor between conventional loan agreements and online loan agreements is only in the media used, if in a conventional agreement a party should be seen directly in a place to make an agreement on what will be agreed upon and how the repayment mechanism is and sign an agreement letter as physical evidence. Whereas in an online loan agreement, the agreement process is carried out through online media. So that the process of implementing the agreement will be carried out without a direct meeting of the parties involved.

Although different in physical form from conventional contracts, electronic contracts are still subject to the same contract law / agreement law / binding law, which is regulated in the Civil Code. Both types of contracts must fulfill the legal requirements of the agreement and the principles of the agreement. An electronic document should be declared valid if it is signed by the relevant parties. The signature used in an electronic agreement is also an electronic signature, and is declared legally valid if it meets the requirements under Article 11 of the Electronic Information and Transaction Law. In its implementation, the online loan agreement does not bring together the parties implementing the agreement, but the parties from the lender and the loan recipient are connected by the online loan organizer. So the evidence and collateral used are given electronically.

So if reviewed legally, the online agreement is valid because the conditions used are the conditions for the validity of the agreement as in the Civil Code, especially in Articles 1320 and 1338 of the Civil Code regarding agreements. As for the validity of the evidence used, it refers to Law Number 11 of 2008 concerning ITE Article 5 concerning information, documents and electronic signatures. Regarding the mechanism of the implementation of the loan agreement and the parties involved, it is regulated by OJK Regulation Number 77

/ POJK / 2016 concerning the Service of a Loan in the form of Money Based on an Information Technology.

From the explanation above regarding the validity of online loan agreements, it can be concluded that an agreement, whether made conventionally (in writing) or electronically through online media, is valid if it fulfills all the main elements of the valid requirements for an agreement in Article 1320 to Article 1338 of the Civil Code and also those regulated in Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (PP PSTE) Article 47 paragraph (2), where these conditions are subjective and objective conditions for an agreement. If these conditions are not met, it can have legal consequences, namely if the subjective conditions are not met, the agreement can be canceled by the party who feels disadvantaged. Meanwhile, if the objective conditions are not met, the agreement is null and void.

3.2. Legal Protection For Victims Of Emergency Contact In Online Loan Agreements In Indonesia

Emergency contact is one or more phone numbers that can be contacted in an emergency by relatives or family. Emergency contact in the case of loans on online applications can also have the meaning of a person who can be contacted if something happens, for example the borrower/applicant is difficult to contact. In making loans on the fintech lending platform, fintech business actors provide requirements for prospective borrowers to provide contact numbers, social media accounts, and also emergency contact numbers (emergency contact) to Fintech business actors. This is done so that if the prospective borrower cannot pay off his debt at the specified tempo, the fintech business actor can contact the prospective borrower's emergency contact number so that he can immediately pay off his debt based on this, there is a legal relationship that occurs. However, in this case emergency contact is not a guarantor who is bound in the agreement between the online lender and the prospective borrower, but only as a party that can be contacted if the loan recipient defaults.

Based on Article 26 paragraph (2) of the ITE Law, it provides answers for parties who feel their rights have been violated and can file a lawsuit for such actions. Therefore, in this case, the party listed as an emergency contact feels very disadvantaged by the inclusion of their personal identity as an emergency contact without permission or consent can file a lawsuit against the party who listed the identity. Although not a minimum element in the online lending agreement or risk mitigation. Loan providers are required to provide a guarantee that the acquisition, use, utilization, and disclosure of exclusive personal data, transaction data, and financial data obtained by the organizer are in accordance with the consent of the data owner unless otherwise influenced by statutory provisions.

In terms of providing personal guarantees, an insuring agreement is required first between the debtor, in this case the borrower, and the insurer. This is based on the provisions of Article 1820 and Article 1822 of the Civil Code. This means that when the emergency contact for the loan binds itself, it is only limited to binding some of the responsibilities owned by the borrower or debtor. However, the problem is that there is no guarantee agreement for the debtor's debt with the emergency contact. So, when online loans contact emergency contact. The guarantee agreement is considered invalid, because it does not meet the applicable requirements.

This personal guarantee does not give the right to precedence to certain objects, because emergency contact's property is only a guarantee for the implementation of an engagement such as borgtocht. Based on the theory of the guarantee agreement, that in this case emergency contact cannot be categorized as a guarantor as mentioned in Article 1821 of the Civil Code. This is because it does not fulfill several conditions, namely:

- 1) There is no special agreement formed and made between emergency contact and the Loan Recipient.
- 2) There is no voluntary emergency contact for all the debts of the Guarantor at the Online Loan Provider.
- 3) The emergency contact tends not to be informed that his number is used and used as an emergency contact.

In this concept, emergency contact is only a requirement for electronic documents in the agreement on the implementation of information technology-based money lending and borrowing services between the organizer and the lender which is then set out in an electronic document. Therefore, emergency contact has no responsibility for risks or disputes between the parties to the online loan agreement. The parties to the online loan agreement are between the lender and the recipient of the loan and also the organizer of the information technology-based money lending and borrowing service.

According to Article 5 paragraph (1) of the Financial Services Authority Regulation Number 77/POJK.01/2016 of 2016 concerning Information Technology-Based Money Lending and Borrowing Services, the organizer of an information technology-based money lending and borrowing agreement is a limited liability company that provides, manages, and operates information technology-based money lending and borrowing services from the lender to the loan recipient whose source of funds comes from the lender.

As a result, the organizer may be subject to administrative sanctions in Article 47 paragraph (1) Number 77/POJK.01/2016 in the form of written warnings, namely fines, restrictions on business activities, and license revocation. Not only that, the guarantor as an emergency contact if he feels aggrieved by the misuse of his data, can file a lawsuit for compensation according to Article 26 paragraph (2) of the ITE Law. Not only that, if in contacting the guarantor as emergency contact, the organizer indicates that the debt is paid by the guarantor, this cannot be justified. Because, in online lending there are only 2 agreements listed in Article 18 Number 77 / POJK.01 / 2016, namely the agreement between the organizer and the lender and the agreement between the lender and the loan recipient, therefore, there is no known position of the guarantor as an emergency contact who should be charged with repaying the debt of the loan recipient.

Regarding terror threats through whatsapp messages and telephone calls, the perpetrators of threats through electronic media can be subject to criminal charges under Law Number 11 of 2008 concerning Electronic Information and Transactions as regulated in Article 29 of the ITE Law jo. Article 45B of the ITE Law. The contents of Article 29 of the ITE Law "Every person intentionally and without the right to send Electronic Information and / or Electronic Documents containing threats of violence or personal fear." And the contents of Article 45B of the ITE Law "Every person who intentionally and without the right to send Electronic Information and / or Electronic Documents containing threats of violence or fear aimed personally as referred to in Article 29 shall be punished with a

maximum imprisonment of 4 (four) years and / or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah).

According to Article 47 Paragraphs (1) to (3) of the Financial Services Authority Regulation the sanctions received are as follows:

- 1) For violation of obligations and prohibitions in this OJK regulation, OJK is authorized to impose administrative sanctions on the Organizer in the form of:
 - a. Written warning.
 - b. Fine, which is an obligation to pay a certain amount of money.
 - c. Limitation of business activities.
 - d. Revocation of license.
- 2) Administrative sanctions as referred to in paragraph (1) letter b through letter d, may be imposed with or without preceding the imposition of administrative sanctions in the form of a written warning as referred to in paragraph (1) letter a.
- 3) Administrative sanctions in the form of fines as referred to in paragraph (1) letter b may be imposed separately or jointly with the imposition of administrative sanctions as referred to in paragraph (1) letter c and letter d.

4. Conclusions

Based on the results of this research, several things can be concluded that the legal protection against victims of emergency contact in online loan agreements has not been clearly regulated in the law. The online loan agreements can be said to be valid if they meet the requirements in Article 1230 and Article 1338 of the Civil Code, as well as protecting the Financial Services Authority Regulation No. 77 of 2016 and Law No. 11 of 2008 concerning Electronic Information and Transactions.

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