

Type: **Research Article**

Unveiling the Dark Side of Fintech: Challenges and Breaches in Protecting User Data in Indonesia's Online Loan Service

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Abstract *The rapid evolution of information and communication technology has driven diverse business and financial practices. Indonesia is at the forefront with high engagement in fintech online lending services, presenting challenges in safeguarding user data despite these platforms' convenience. This research aims to analyze the intricacies of protecting the personal data of users of online lending services in Indonesia and highlight the obstacles faced in this process. Using a normative legal approach combined with descriptive data analysis, this research examines the protection mechanism from the perspectives of users and online loan service providers. The research concluded that users should verify the legitimacy of online loan service*

providers by ensuring proper registration with the Financial Services Authority (OJK) of the Republic of Indonesia. In addition, users should carefully scrutinize and understand the terms and conditions of personal data protection before agreeing to an online loan agreement. Second, the main problems qualified as obstacles in this research related to the effectiveness of personal data protection in the context of online lending are at least influenced by three main elements that influence each other, especially those related to legal substance, legal structure, and legal culture. Based on this doctrine, it is found that in addition to legal uncertainty related to the guarantee of personal data protection rights on the one hand, on the other hand, the absence of specialized institutions related to personal data protection is one of the factors that affect the ineffectiveness of personal data protection in Indonesia related to online loans.

Keywords *Online Loan, Data Protection, Indonesian, Legal Challenges*

1. Introduction

The advancement of information and communication technology has developed very rapidly¹. This has continued since the invention of the computer, followed by the emergence of the internet, which is the key to this rapid development. People's lives have also changed because of this, where conventional approaches have begun to be abandoned and people have switched to digital approaches. This shift is due to the many conveniences that support community interaction in various fields, not only in the social field but also in the economic field, including in business and financial practices so that

¹ Admiral Admiral, "Kebebasan Berkontrak Yang Berorientasi Pada Penyelesaian Sengketa Diluar Pengadilan," *Kodifikasi 1*, no. 1 (2019): 128–40.

they become more effective and efficient, one of which can be seen from the availability of online loan services².

Online loans are basically the same type of loan as conventional loans by banks and non-bank financial institutions that are authorized to do so³. The main difference is that the loan service is based on information technology by a service provider known as financial technology (fintech). The advantage of this online loan when compared to conventional loans is that the distribution of loans is very fast and much easier. Users of online loan services can obtain online loans immediately, anywhere and anytime by using telecommunications devices that support service users to first enter the application or web to apply and obtain loans with terms and conditions that are also much easier⁴.

Indonesia is a country with a very large number of people using online loan services, especially when the spread of Covid-19 is still rampant, which has a huge impact on the economy and finance⁵. The very large number of users even tends to increase to this day, also due

² Intan Audia Priskarini, Pranoto, and Kukuh Tejomurti, "The Role of The Financial Services Authority in The Legal Protection of Privacy Rights in Connection with Personal Data of Fintech Lending Debtor in Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 6, no. 3 (2019): 556–75.

³ Rosyidi Hamzah and Fadhel Arjuna Adinda, "The Existence of A Norm Regarding The Execution of Fiduciary Guarantees After The Issuance of The Constitutional Court Decision Number 18/PUU/XVII/2019," *Jurnal Penelitian Hukum De Jure* 22, no. 1 (March 2022): 81–92.

⁴ Rizqi Mulyani Slamet, "Indonesian Personal Data Protection Concept: A Book Review Kebebasan Informasi Versus Hak Atas Privasi: Tanggung Jawab Negara Dalam Perlindungan Data Pribadi," *Lex Scientia Law Review* 5, no. 1 (May 29, 2021): 179–84.

⁵ Anugrah Muhtarom Pratama and Umi Khaerah Pati, "Analysis Principles of Personal Data Protection on COVID-19 Digital Contact Tracing Application: PeduliLindungi Case Study," *Lex Scientia Law Review* 5, no. 2 (November 29, 2021): 65–88.

to the characteristics of online loan services that are very fast and much easier, including the terms and conditions that apply.

The business and financial entities that provide online lending services that are considered relatively safe in Indonesia are those that are registered with the Financial Services Authority (OJK) of the Republic of Indonesia, while many are not registered or even illegal. This registered or unregistered or even illegal status also has a significant influence on whether or not the protection of service users' personal data by online loan service providers is guaranteed⁶.

Despite the many conveniences in its use, online lending services still have their own challenges in relation to personal data protection, namely from the potential leakage of personal data and irresponsible misuse of personal data⁷. The personal data of users of online lending services is important data to be protected and maintained with care and confidentiality by the owner of the personal data itself and by those who use the personal data.

2. Method

This legal research is a type of doctrinal or normative legal research that aims to find certain legal statements or legal analysis with more complex logic and depth related to Protecting User Data in Indonesia's Online Loan Service⁸. Where, the legal analysis carried out on the problems studied will later be supported also with primary data which is a characteristic in empirical legal research (non-doctrinal), but the use of primary data is only limited as a

⁶ Sri Astutik and Irawan Soerodjo, "The Role of The Financial Services Authority in Setting the Interest Rate For Financial Technology Loans As Consumer Protection of Financial Services," *Yuridika* 38, no. 2 (May 1, 2023): 431–42.

⁷ Astutik and Soerodjo.

⁸ Salim Ibrahim Ali et al., "Legal Research of Doctrinal and Non-Doctrinal," *International Journal of Trend in Research and Development* 4, no. 1 (2017): 2394–9333.

reinforcement of the argument, not changing the type of research in this study because the primary data used does not refer directly or specifically to one of the objects studied⁹.

Within the realm of legal research methodologies, the outlined procedural stages exhibit universal relevance, extending their applicability to diverse research pursuits within the field of law. The progression unfolds methodically, commencing with a comprehensive elucidation of the rationale underpinning the chosen research methodology. Subsequently, attention is directed towards defining the specific data sought, articulating the research approach, and detailing the methodological nuances governing data collection. The culminating phase involves the meticulous analysis of legal materials, enabling the derivation of conclusive findings. It is imperative to underscore the normative nature of this research, wherein the primary focus is on the exploration and analysis of secondary data sources.¹⁰

Within the framework of this academic inquiry, the secondary data under scrutiny encompasses a comprehensive array of legal materials, notably classified as *primary legal materials*, *secondary legal materials*, and *tertiary legal materials*.¹¹ These materials undergo

⁹ Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*, VIII (Yogyakarta: Cahaya Atma Pustaka, 2014).

¹⁰ Maria SW. Suwardjono, *Bahan Kuliah: Metode Penelitian Ilmu Hukum* (Yogyakarta: Universitas Gadjah Mada, 2014).

¹¹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT. Rajawali Press, 2014). Furthermore, it is highlighted that in the realm of legal research methodology, scholars and practitioners rely on a tripartite categorization of sources known as primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials constitute the bedrock of legal authority, encompassing original sources such as statutes, regulations, case law, constitutions, and treaties. These sources directly inform legal analysis and argumentation. Secondary legal materials, on the other hand, offer scholarly interpretations and critiques of primary sources. This category includes law review articles, legal textbooks, commentaries, and treatises,

meticulous examination through a range of methodological lenses, including the statutory approach, conceptual approach, case approach, and historical approach.¹²

To elucidate further, the statutory approach involves a rigorous scrutiny of pertinent laws and regulations, while the conceptual approach entails a nuanced exploration of foundational legal concepts. The case approach necessitates an in-depth analysis of legal precedents and judicial decisions, and the historical approach delves into the chronological evolution of legal principles and norms.

Conversely, the primary data employed in this research emanates from the author's direct involvement in legal proceedings. In the capacity of an expert, the author conducted firsthand investigations during cases pertaining to the safeguarding of user data in Indonesia's online loan service. This approach ensures a granular understanding of the practical implications and intricacies of legal challenges, specifically within the context of protecting user data.

3. Result & Discussion

The Latin adage *Ad Recte docendum oportet primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet* underscores

providing valuable context and insights. Lastly, tertiary legal materials serve as practical tools for researchers, organizing and summarizing legal information. Legal dictionaries, citators, indexes, and research guides fall into this category, offering quick references and aiding in the efficient navigation of the legal landscape. A thorough exploration of these three categories is integral to a comprehensive and nuanced understanding of legal issues in the context of academic and professional legal research. *See also* Philip M., Langbroek, et al. "Methodology of legal research: Challenges and opportunities." *Utrecht Law Review* 13, no. 3 (2017): 1-8; Mike McConville, ed. *Research Methods for Law*. (Edinburgh: Edinburgh University Press, 2017).

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, Revisi (Surabaya: Kencana : Prenadamedia grup, 2021).

the principle that genuine knowledge begins with the understanding of names or terms associated with the subject matter.¹³ In practical terms, this implies that a comprehensive understanding of a concept is intricately tied to a mastery of its nomenclature. In the context of this study, the application of this principle is evident in the thorough examination of two key issues: Personal Data Protection of Online Loan Service Users and the Obstacles to Personal Data Protection in Indonesia.

Addressing the first issue, the study delves into three sub-chapters: the Legality of Personal Data Protection in Indonesia, the Practice of Online Loans as a Component of Fintech in Indonesia, and the Relationship Between Personal Data Protection and Online Loans in Indonesia. The second issue is equally dissected through three sub-chapters, exploring the Obstacles to Personal Data Protection in Online Loan Practices in Indonesia from the perspectives of Legal Substance Factors, Legal Social and Cultural Factors, and Legal Structure Factors. The analytical findings of this study illuminate the intricate position of Personal Data Protection in Indonesia, shedding light on the multifaceted obstacles encountered in the realm of online lending.

¹³ *Ad Recte docendum oportet primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet*, this adage emphasizes the fundamental importance of terminology and nomenclature in the process of education and knowledge acquisition. It suggests that in order to convey knowledge effectively, especially in a scholarly or educational context, it is crucial to begin by acquiring a clear understanding of the names or terms associated with the subject matter. The adage asserts that a deep comprehension of concepts and phenomena is intricately linked to a mastery of their corresponding names or labels. In essence, it underscores the significance of a solid linguistic foundation for accurate and meaningful communication of ideas.

A. Personal Data Protection of Online Loan Service Users in Indonesia

1) Legality of Personal Data Protection in Indonesia

The protection of personal data finds its origins in the 1945 Constitution, specifically articulated in Article 28G, Paragraph (1), which asserts that "*everyone has the right to protection of self, family, honor, dignity, and property under their control.*" Consequently, the protection of Personal Data owned by each citizen emerges as a tangible manifestation of the inherent human rights vested in every individual. In essence, personal data protection serves as a concrete expression of the broader commitment to safeguarding the fundamental rights and intrinsic dignity of each citizen.¹⁴

¹⁴ Daniar Supriyadi, "Data Pribadi dan Dua Dasar Legalitas Pemanfaatannya," *Hukum Online*, September 27, 2017. Furthermore, it is emphasized that, the data protection landscape in Indonesia has been marked by ongoing developments. Indonesia introduced its first comprehensive data protection law, the Personal Data Protection Law (UU PDP), in 2016, which aims to regulate the processing of personal data and enhance individual privacy. The law requires organizations to obtain consent for data processing, establishes obligations for data controllers and processors, and introduces rights for data subjects. However, full enforcement and implementation have faced challenges, and there has been a call for increased awareness and compliance among businesses and individuals. Challenges in the Indonesian data protection policy include the need for more robust enforcement mechanisms, enhanced public awareness, and continued adaptation to the evolving technological landscape. Ensuring compliance across diverse sectors and industries poses a considerable challenge, and there is a growing recognition of the importance of aligning local regulations with international standards to facilitate secure data flows. Additionally, addressing issues related to cross-border data transfers and harmonizing the regulatory framework with emerging technologies, such as artificial intelligence and the Internet of Things, remains a focal point for further policy development and refinement in Indonesia. *See also* Dewa Gede Sudika Mangku, et al. "The Personal Data Protection of Internet Users in Indonesia." *Journal of Southwest Jiaotong University* 56, no. 1 (2021); Andriyanto Adhi Nugroho, Atik Winanti, and Surahmad Surahmad. "Personal Data Protection in Indonesia: Legal Perspective." *International Journal of Multicultural*

In addition, The Constitutional Court of Republic of Indonesia, with Decision Number 5/PUU-VIII/2011 explicitly affirms the Right to privacy as an integral component of human rights, recognizing it as a derogable right. This right encompasses the domain of information, commonly referred to as data privacy or data protection. In a decisive move to fortify the status of personal data protection as an inherent human right, the Government has enacted Law Number 27 of 2022 concerning Personal Data Protection. This legislation serves as a constitutional guarantee, acknowledging the indispensable nature of safeguarding the constitutional rights of individuals regarding their personal data. The enactment of this law is a responsive measure to the profound impact of the Fourth Industrial Revolution, symbolizing an era of digitalization, and underscores the imperative to adapt legal frameworks to the challenges posed by evolving technological landscapes.¹⁵

and Multireligious Understanding 7, no. 7 (2020): 183-189. Also see some cases concerning to data protection in Indonesia, *see* Dinda Dinanti, et al. "Politics of Law for the Protection of Debtors as Consumers in Fintech based Loaning Services." *Unnes Law Journal* 6, no. 2 (2020): 427-444; Nurharsya Khaer Hanafie, Andika A. Gani, and Virmansyah Virmansyah. "Illegal Financial Technology Loans Amid the Covid-19 Pandemic Problem." *Unnes Law Journal* 8, no. 2 (2022): 313-330; Ayon Diniyanto, and Heris Suhendar. "How Law Responds to Technological Development?." *Unnes Law Journal* 6, no. 2 (2020): 405-426; Raphael Haganta, "Legal Protection of Personal Data as Privacy Rights of E-Commerce Consumers Amid the Covid-19 Pandemic." *Lex Scientia Law Review* 4, no. 2 (2020): 77-90.

- ¹⁵ Rosihan Luthfi, "Perlindungan Data Pribadi sebagai Perwujudan Perlindungan Hak Asasi Manusia." *Jurnal Sosial dan Teknologi* 2, no. 5 (2022): 431-436; Hanifan Niffari, "Perlindungan Data Pribadi Sebagai Bagian Dari Hak Asasi Manusia Atas Perlindungan Diri Pribadi (Suatu Tinjauan Komparatif Dengan Peraturan Perundang-Undangan Di Negara Lain)." *Jurnal Yuridis* 7, no. 1 (2020): 105-119; Upik Mutiara, and Romi Maulana. "Perlindungan Data Pribadi Sebagai Bagian Dari Hak Asasi Manusia Atas Perlindungan Diri Pribadi." *Indonesian Journal of Law and Policy Studies* 1, no. 1 (2020): 42-54; Muhammad Firman Al Ghani, "Urgensi Pengaturan Perlindungan Data Pribadi Pada Penyelenggaraan Layanan Pinjaman Online." *The Digest: Journal of Jurisprudence and*

The crafting of legislation involves the establishment of foundational principles that serve as a philosophical basis, providing clear parameters for its implementation. In the pertinent legislation, such as the one in question, several key principles guide its provisions. These encompass the principles of protection, legal certainty, legal interests, prudence, and confidentiality. These principles collectively embody the essence of Personal Data Protection, representing a tangible manifestation of Human Rights that demands safeguarding. The imperative for caution in handling such data is inherent, emphasizing the need for confidentiality since not all legal entities are authorized to collect and process it, particularly in specific cases and circumstances. This intricate balance seeks to ensure that the implementation of the law aligns with ethical considerations and the overarching protection of individual rights.¹⁶

The Personal Data Protection Law provides balanced rights and obligations between personal data controllers and personal data subjects. This balance is a form of data processing as stated in Article 16 of the Law, which explains that personal data controllers who process data, whether acquiring, collecting, processing, analyzing personal data on personal data subjects, must guarantee the rights of personal data subjects, legally obtained and secured in accordance with the purposes and activities of data processing.

The enactment of the Law a quo is partly due to the development of technology and information in the financial world which has been

Legisprudence 3, no. 1 (2022): 38-58; Cindy Thia Lamdayoung, "Legal Protection for Account Owners on Marketplace as an Effort to Prevent Loss Due to Data Leaks." *Jurnal Scientia Indonesia* 6, no. 1 (2020): 19-36; Cindy Thia Lamdayoung, "Loss Due to Data Leaks: How is the Legal Protection for Account Owners on Marketplace?." *Journal of Creativity Student* 5, no. 1 (2020): 25-42.

¹⁶ Awaludin Marwan, Diana Odier Contreras Garduno, and Fiammetta Bonfigli, "Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia," *Bestuur* 10, no. 1 (August 1, 2022): 22-32.

in the conventional era and has shifted to the digital world, such as Online Loans (*Financial Technology*). Because the needs of the community over time are increasing, causing the presence of Online Loans to become one of the relatively easy and efficient options to meet these needs.¹⁷

This prevalent scenario is frequently manipulated by unscrupulous entities and individuals who exploit the vulnerabilities within the regulatory landscape. Exploitation takes the form of establishing technology-driven funding services that operate without clear legal legitimacy. These entities, acting irresponsibly, illicitly harness the consumptive needs of the community for their own gain. The lack of transparent legal grounding not only exposes community members to potential harm but also poses a broader risk to the integrity of financial systems and the well-being of the affected individuals.

This situation underscores the critical need for robust legal frameworks that can effectively address and prevent the unauthorized establishment of technology-based funding services. Clear regulations are imperative to curb irresponsible practices, protect the rights of the community, and ensure that financial services align with ethical standards. Strengthening legal safeguards becomes crucial to safeguarding the community from exploitation and establishing a secure and accountable environment for financial transactions.¹⁸

In addition to the existence of irresponsible parties and individuals in taking advantage of the community through digital-

¹⁷ Mckay Cunningham, "Complying with International Data Protection Law," *Cincinnati Law Review* 84, no. 2 (2018): 421–50.

¹⁸ Fadhel Arjuna Adinda, "Penerapan Asas Keseimbangan Dalam Klausula Baku Pada Perjanjian Pembiayaan Dilembaga Pembiayaan Kota Pekanbaru", *Thesis*. (Pekanbaru: Universitas Islam Riau, 2020).

based funding services, there are also our people who seem indifferent about the legality of these funding services, even though the legality of funding services will provide protection to prospective customers both protection of the services provided and also of the personal data of prospective customers that can be accessed by the funding service provider¹⁹.

With this phenomenon, the Financial Services Authority (OJK) as an institution that has the authority to supervise and regulate the financial services sector²⁰, issued Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services. The existence of this POJK replaces the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services which is no longer relevant to the development and progress of the times.²¹

Financial Services Authority Regulation Number 10/POJK.05/2022 was born as a follow-up to the enactment of Law Number 27 of 2022 concerning Personal Data Protection so that supervision in the financial sector can be carried out

¹⁹ Dwi Prastiyo Hadi et al., "The Impact of the Omnibus Law Cipta Kerja on the Sustainability of MSMEs and Economic Growth by Applying the Canvas Model Business Method and the Use of Financial Technology, Especially Crowdfunding and Microfinance," *International Journal of Sustainable Development and Planning* 18, no. 2 (February 1, 2023): 505–13.

²⁰ Astutik and Soerodjo, "The Role of The Financial Services Authority in Setting the Interest Rate For Financial Technology Loans As Consumer Protection of Financial Services."

²¹ See Ubaidillah Kamal, and Ayup Suran Ningsih. "The Urgency of Revising the Finance Services Authority Regulation Number 77/POJK. 01/2016 As an Umbrella Law in Practicing Peer to Peer Lending Based on Financial Technology in Indonesia." *Pandecta Research Law Journal* 16, no. 1 (2021): 186-194; Ayup Suran Ningsih, "Legal Review of Financial Technology Peer To Peer Lending Based on Indonesian Collateral Law Perspective." *Substantive Justice International Journal of Law* 3, no. 2 (2020): 109-124.

comprehensively. The presence of this POJK provides an explanation of what financial service provider institutions make their rights and obligations.

The regulation requires that Information Technology-Based Joint Funding Service Providers (LPBBTI) must have a business license granted by the Financial Services Authority. The license granted by OJK is an absolute requirement that must be fulfilled, so that the funder and recipient of funds get legal protection in transactions carried out due to a meeting of the wills of the parties²².

To establish a service provider, not only operational permits must be considered, but also must meet certain qualifications and competencies. In addition to administrative permits that must be fulfilled by service providers, also pay attention to the Human Resources of service providers, so that the services provided are carried out in accordance with qualifications and competencies²³.

The Financial Services Authority Regulation requires that Members of the Board of Directors, Members of the Board of Commissioners, and Officers 1 (one) level below the board of directors have gone through a professional certification stage in the field of financial technology that has been registered with the Financial Services Authority. This certification aims to prove that the official has expertise in the field of the service provider in question.

Especially for workers who have expertise in the fields of programmers, databases, cyber security, and networks, they must have a minimum work experience of 3 (three) years. The 3 (three) years of work experience required by POJK is related to a system that

²² Ni Putu Maha dewi Pramitha asti, "Upaya Hukum Otoritas Jasa Keuangan (OJK) Dalam Mengatasi Layanan Pinjaman Online Ilegal," *Acta Comitas* 5, no. 1 (2020): 111.

²³ Daniar Supriyadi, "The Regulation of Personal and Non-Personal Data in the Context of Big Data," *Journal of Human Rights, Culture and Legal System* 3, no. 1 (2023): 33–69.

not everyone can operate, change and delete electronic systems used by service providers, because the field of information technology requires certain qualifications and competencies to be able to run it. This also shows that services provided digitally that collect personal data of fund recipients must be treated with special treatment to avoid data leakage, both by other parties and service providers²⁴.

The development of information technology, especially in the financial sector, cannot be denied that there are opportunities for other parties to carry out digital attacks (cybercrime) to obtain certain benefits from data taken illegally, so that the program provided by the service must be a program that can anticipate data theft, data leakage and misuse of personal data of fund recipients from service providers²⁵. The presence of Law Number 27 of 2022 concerning Personal Data Protection and Financial Services Authority Regulation Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services in relation to this research is very important as a legal basis for the implementation of User Data Protection on Online Loans so that Personal Data obtained from fund recipients can be managed properly so that Legal Protection of fund providers and recipients is guaranteed in accordance with the principles that form the basis for the formation of laws and regulations.

²⁴ Fajrin Putri Carolin and Rani Apriani, "Analisis Pengaturan Perlindungan Data Pribadi Pengguna Fintech Lending Dalam OJK Nomor 06/Pojk.07/2022," *Jurnal Ilmiah Wahana Pendidikan* 8, no. 8 (2022): 88–96.

²⁵ Slamet, "Indonesian Personal Data Protection Concept: A Book Review Kebebasan Informasi Versus Hak Atas Privasi: Tanggung Jawab Negara Dalam Perlindungan Data Pribadi."

2) *Online Lending Practices as Part of Fintech in Indonesia*

The potential of the online loan business is a futuristic digital transformation. The digital transformation offered to prospective customers is an efficiency of both time, energy, and mind. Loans that are carried out conventionally, require prospective customers to attend directly to the office of the financing institution, which is certain that prospective customers must spend a relatively long time, require more effort to get to the office of the financing institution and spend relatively little money. With digital transformation in the financial sector, all of the above can be maximally

streamlined²⁶. Agreements or contracts cannot be separated from online loans, this is because the lender and the recipient of funds must be subject to the agreement which is in accordance with the principle of *pacta sunt servanda*, which makes the agreement the law of the parties who must be obeyed and subject to the agreed agreement²⁷. The agreement or contract used in online lending is an agreement made electronically (electronic document) and the agreement is affixed with a digital signature.

In addition to the principle of *pacta sunt servanda* which makes the agreement a law between the parties, the principle of good faith

²⁶ Ratna Hartanto and Juliyani Purnama Ramli, "Hubungan Hukum Para Pihak dalam Peer to Peer Lending," *Jurnal Hukum Ius Quia Iustum* 25, no. 2 (May 2018): 320-38. See also Suwinto Johan, and Sugiarto Sugiarto. "Who Should Regulate The Industry of Financial Technology?." *Pandecta Research Law Journal* 17, no. 1 (2022): 70-77; Suwinto Johan, "Financial Technology Company's Debt Collection Method: A Legal Aspect." *Unnes Law Journal* 8, no. 1 (2022): 1-20; Prita Fiorentina, and Dewi Sulistianingsih. "Legal Protection of Consumer Personal Data in Indonesia Fintech Peer-To-Peer Lending Pioneers." *Pandecta Research Law Journal* 17, no. 2 (2022): 307-312.

²⁷ Admiral Admiral, "Iktikad Baik dalam Pelaksanaan Re-Strukturisasi Kredit," *JKIH: Jurnal Kajian Ilmu Hukum* 1, no. 1 (2022): 26.

in agreements that do not bring together the funder and the recipient of the funds directly must be adhered to. This principle of good faith shows the mental attitude of a person who will subject himself to an agreement²⁸.

In the practice of online lending in Indonesia, the agreement used is an agreement that is written in an electronic document²⁹. The agreement explains the rights and obligations of the lender and the recipient of the funds, in the case of online loans described in the agreement, namely the amount of loan received, the agreed tenor, how many installments must be paid, the amount of interest and how much penalty must be paid by the recipient of funds if the payment is not made when it is due.

Online loans can start from 2 (two) sources, first by advertising in certain applications that there are online loan services, second by broadcasting via short message service (SMS) randomly to anyone who receives the SMS. Application-based online loans offer ease of transactions between lenders and recipients. A person who wants to make an online loan, only takes a few moments to install an online loan application that suits that person's wishes³⁰.

By downloading the online loan application through the App Store or Play Store, the prospective recipient of funds after opening the selected application will be faced with approving access to media, contacts, microphones and cameras, so that if one of these requests is

²⁸ Suparto Suparto and Admiral Admiral, "The Existence of Party Court in Completing the Internal Disputes of Political Parties in Indonesia (A Case Study of Persatuan Pembangunan Party)," *Jurnal Dinamika Hukum* 19, no. 1 (2019): 152.

²⁹ Ade Putri Lestari and Laksanto Utomo, "Kepastian Perlindungan Hukum Pada Klausula Baku dalam Pinjaman Online di Indonesia," *Supremasi Jurnal Hukum* 2, no. 2 (2020): 174–93,

³⁰ Madeline Mamesah, Abdurrahman Konoras, and Presly Prayogo, "Sistem Transaksi Elektronik Dalam Perjanjian Jual Beli Melalui Media Online," *Lex Privatum* 10, no. 1 (2022): 69–78.

rejected, the application will not be able to be used properly. For this reason, prospective fund recipients must approve the application access request to be able to proceed to the next stage.

When all access has been approved, the prospective recipient of funds will be asked to first enter the prospective recipient's email account, after which the prospective recipient of funds is asked to fill in their identity according to their Identity Card³¹ and enter the prospective recipient's phone number, an emergency phone number that aims to be a backup contact if the main contact of the prospective recipient of funds cannot be contacted.

After filling in the identity and contact number of the prospective recipient of funds, it will be directed to fill in the nominal amount of the loan that will be submitted by the prospective recipient of funds. The nominal amount filled in by the prospective recipient of funds is not immediately approved by the funder. The funder will analyze whether the profile concerned has ever had problems with the financial services sector, as well as the ability of the prospective recipient of funds to make payments if the proposed loan is approved by the funder.

If the nominal submitted is approved by the funder, then the prospective recipient of the funds will be directed to upload a photo of themselves accompanied by an Identity Card that is held so that the photo uploaded in the position of the prospective recipient of the funds is a photo holding an ID card. After that, it is required to upload a Family Card. If this document upload has been carried out, then the prospective recipient of the funds will be directed to fill in the Account Number to which the loan will be transferred by the funder. The approved loan funds will be sent from the lender's account to the

³¹ Ade Yuliany Siahaan, "Sanksi Pidana Terhadap Pelaku Perbuatan Penyalahgunaan KTP Orang Lain Untuk Pinjaman Online," *Nanggroe: Jurnal Pengabdian Cendikia* 84, no. 4 (2023): 2986–7002.

recipient, but the amount sent will no longer match the nominal loan application, because the money to be transferred is still deducted by admin fees and administrative fees at the discretion of the Funding Provider Service.

The second method, as explained above through SMS broadcasts, is only for starters before prospective fund recipients are directed to download the online loan application. The registration and loan disbursement activities carried out by prospective fund recipients are no different from the direct download mechanism through the App Store or Play Store.

Good lending practices are those that pay attention to the legality of the Funding Service Provider, if the funding service provider does not have an operational permit from the Financial Services Authority (OJK) then the funding service provider is certainly illegal and will certainly harm the prospective recipient of funds, starting from rules and conditions that are not in accordance with legal and applicable laws and the threat of personal data that can be misused by certain individuals or parties. For this reason, the public must wisely determine the choice of funding service providers that have legality in accordance with statutory provisions.

3) Relationship Between Personal Data Protection & Online Lending in Indonesia

In the realm of business, the demand for swift and seamless transactions constitutes a fundamental market requirement. The expeditious and effective functioning of the market greatly benefits business participants, fostering increased economic activity. Nevertheless, the pace of legal advancements in the realm of digital services lags behind the rapid progress in information technology. While legal frameworks strive to align with contemporary needs, the reality is that legal adaptations tend to lag, resulting in a scenario

where numerous current legal developments lack a solid legal foundation. This situation, characterized by a lack of legal certainty, underscores the pressing need for more agile and proactive legal frameworks that can keep pace with the dynamic landscape of digital business transactions.³²

The rise of financial technology activities in Indonesia has provoked people's desire to borrow money from these institutions because the process is fast, cheap and easy. For the business world, the provision of fresh funds is needed to develop and maintain their business. People who borrow money from financial technology institutions are required to fill in personal data and financial technology institutions are given access to access customers' personal data such as customer contacts, customer pictures and access to other personal data³³.

In practice, many people's personal data is misused by financial technology institutions. Financial technology institutions utilize this personal data to share it with third parties and then misuse it by third parties³⁴. Sometimes this data is used by financial technologists to collect bad loan installments. Many of these violations against the misuse of personal data have not been touched by the law because Law No. 27 of 2022 on Personal Data Protection is still new and has not been effective in its application.

³² Samuel Adiprasetya Isaputra and Sumaryono, "P2P Lending: Moderation of Desirability of Control on Risk-Taking Decisions of Indonesian Borrowers," *Humanities and Social Sciences Communications* 10, no. 1 (2023).

³³ Chris Jay Hoofnagle, Bart van der Sloot, and Frederik Zuiderveen Borgesius, "The European Union General Data Protection Regulation: What It Is and What It Means," *Information and Communications Technology Law* 28, no. 1 (2019): 65–98.

³⁴ Angkasa Angkasa et al., "Illegal Online Loans in Indonesia: Between the Law Enforcement and Protection of Victim," *Lex Scientia Law Review* 7, no. 1 (2023): 119–78.

Another form of personal data breach is the submission of public data to third parties for marketing third-party products and services. The data is handed over to third parties without asking permission from the original data provider. In addition, a form of personal data breach is by breaking into the accounts belonging to the data provider by certain parties.

Weak public literacy in the field of the importance of personal data protection is a contributor to the number of personal data breaches. Many people just give their personal data to financial technology without thinking about the security aspects in the future if it is misused. Personal data is a right that must be protected. Personal data protection must receive comprehensive protection. Personal data protection must be protected both in substance and law enforcement³⁵.

In general, personal data protection is included in consumer protection. The purpose of consumer protection is consumer security and safety. In the Consumer Protection Law Number 18 of 1999 only focuses on real business actors while special protection for consumers in the digital field has not been created in the form of laws, only rules under partial laws such as the rules of the Financial Services Authority and so on.

Financial technology is a non-bank financial institution. This non-bank financial institution is under the supervision of the Financial Services Authority. In the Financial Services Regulation of the Republic of Indonesia Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector in Article 2 it is stated that consumer and community protection in the

³⁵ Hanif Adinugroho Widyanto et al., "Intention to Use Peer-to-Peer (P2P) Lending: The Roles of Perceived Structural Assurance and Perceived Critical Mass," *Organizations and Markets in Emerging Economies* 31, no. 1 (2022): 183–208.

financial services sector applies the principles of asset protection, privacy and consumer data. In Article 6 paragraph (3) financial institutions must have a mechanism for using data and / or consumer personal information.

The Financial Services Authority functions to regulate and supervise in an integrated manner the overall activities in the financial services sector. The existence of the Financial Services Authority in overseeing Financial Technology has not been maximized. The proliferation of illegal financial technology whose activities disturb the public needs to get firm action from the government. Supervision of financial technology carried out by the Financial Services Authority is not only focused on legal financial technology but also includes illegal ones³⁶.

In principle, consumer protection does not only stand on the activities of business actors but also requires consumers to become smart consumers. Likewise, protection of personal data must also be born from the community itself, which must be critical of the data provided to financial institutions. In practice, people when applying for online loans to financial technology institutions do not think long. In the mind of the community is how the loan can be disbursed quickly and easily. Therefore, the state must be present in protecting the community when the community accesses loans to financial technology³⁷. The presence of the state not only creates the legality of protection but also provides adequate literacy to the public about their rights and obligations in providing data to third parties.

³⁶ Rahmi Ayunda, "Personal Data Protection to E-Commerce Consumer: What Are the Legal Challenges and Certainties?," *Law Reform* 18, no. 2 (2022): 144–63.

³⁷ Mariska Zena Wilona, Emmy Latifah, and Hari Purwadi, "Privacy Policy on Smart Contracts in E-Commerce Transactions," *Law Reform* 17, no. 1 (2021): 47–60.

Sociologically and economically, the position of financial technologists and people who need loans is not balanced. Sociologically, financial technology companies are economically stronger because they have funding, human resources and great technology. Politically, financial technologists can pressure people who need loans by asking for requirements that have been determined unilaterally by financial technologists. This includes the loan agreement that has been made with a standard clause, where the community as a debtor cannot change and tamper with the contents of the agreement. The public's need for loans encourages people to provide personal data and access to other personal data so that there is a lot of misuse of personal data by third parties³⁸.

No matter how good the law is made but it is not driven by community literacy in the field of law itself, it will affect law enforcement. According to Lawrence M Friedman, the substance and culture of law affect law enforcement. The substance of the law must be in line with the needs and conditions of society. The formation of a community legal culture can be influenced by the high literacy of the community about the law itself. Laws created by the government must be socialized consistently to all levels of society. Personal data protection is the right of all elements of society such as the upper class, middle class and even the lower class. every citizen has personal data that must be protected by the state through legislation³⁹.

Personal data protection is part of human rights. The right to protection is a basic human right. The enactment of Law No. 27 of 2022 on Personal Data Protection is a manifestation of the state in

³⁸ Citi Rahmati Serfiyani et al., "Developers' Data Protection in the Open-Source Application with the Copyleft License," *Lentera Hukum* 8, no. 1 (2021): 23–48.

³⁹ I. Made Wirya Darma and Putu Gede Andre Putra Jadnya, "Legal Protection of Parties in Online Credit Agreement (Peer to Peer Lending) A Case Study of PT Vcard Technology Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 6, no. 3 (2019): 511–32.

protecting the human rights of citizens. With the advancement of technology, the exchange and circulation of personal data is very rapid to support and facilitate transnational trade, industry, and investment activities.

In the banking sector, almost all countries have rules regarding bank secrets. The purpose of this bank secret regulation is a form of bank responsibility to maintain customer data⁴⁰. The banking world was born and developed because of public trust. When people believe in the banking world, it will have a significant influence on economic development. Likewise, financial technology as a non-bank financial institution was established and developed due to public trust. Therefore, public trust in financial technology institutions must be maintained by financial technology institutions by maintaining the personal data of their customers.

One of the legal cases involving illegal online loans, and spreading customer personal data is Decision Number 438/Pid.Sus/2020/Jkt.Utr.⁴¹ In this case involving PT Barracuda Fintech Indonesia with a consumer on behalf of Mahdi Ibrahim. The funding provider provides false information to customers, that the organizer has a permit from the Financial Services Authority (OJK), and the data taken by the organizer is in accordance with applicable regulations. When the customer does not make payments in accordance with the agreement that has been outlined in the agreement, the organizer will make every effort to collect debts from customers in any way, either in a good way according to the

⁴⁰ Zulham Zulham, "A Critical Review of Consumer Protection Online Shopping, False Advertising, and Legal Protection," *Journal of Law and Sustainable Development* 11, no. 5 (2023).

⁴¹ Pengadilan Negeri Jakarta Utara, Putusan_438_Pid.Sus_2020_PN_Jkt.Utr-20231225184731 (June 9, 2020).

guidelines made by the customer, or by throwing inappropriate words.

When these efforts do not give results, the organizer will contact all contacts of customers who have been given access, and send messages that seem to terrorize customers, of course this provides social punishment to customers that have debts on online loans, and disseminates customer personal data, such as disseminating photos of ID cards and customer photos.

B. Obstacles to Personal Data Protection of Online Loan Service User's in Indonesia

In the implementation of Personal Data Protection (PDP) in Indonesia, especially in relation to users of online loan services as part of financial technology (Fintech), as previously stated, it is known that at the practical level it still raises several legal problems, especially in the context of the implementation of personal data protection, including those related to the effectiveness of law enforcement against personal data controllers, which in some cases are found that the personal data controllers are not subject to the provisions of Law Number 27 of 2022 concerning Personal Data Protection (hereinafter referred to as Law 27 of 2022)⁴². With the existence of legal problems as stated earlier, of course, it raises further questions related to what obstacles are the main factors that have an impact on the implementation of Personal Data Protection (PDP) in Indonesia, especially those related to users of online lending services as part of financial technology (Fintech) not running effectively. Moving on to the legal problem, the study in this sub-chapter will specifically

⁴² Sinta Dewi Rosadi et al., "Indonesia's Personal Data Protection Bill, 2020: Does It Meet the Needs of the New Digital Economy?," *International Review of Law, Computers and Technology* 37, no. 1 (2023): 78–90.

discuss what are the main obstacles that are a factor in the birth of the legal problem in question.

Scope and coverage in this sub-chapter which will specifically discuss the ineffective implementation and enforcement of the Personal Data Protection (PDP) law in Indonesia, especially those related to users of online loan services as part of financial technology (Fintech), will use an approach by referring to the legal system doctrine as the main base theory as proposed by Lawrence M. Friedman, in his book *American Law: An Introduction*, which expressively *verbis* states that the Legal System theory is:

A legal system in actual operation is a complex organism in which structure, *substance*, and culture interact. A legal system is the union of "primary rules" and "secondary rules." Primary rules are norms of behavior, secondary rules are norms about those norms- how to decide whether they are valid, how to enforce them, etc.⁴³

Referring to Friedman's view, it is known that the legal system doctrine which in this research is intended as the main basis in assessing the effectiveness of Personal Data Protection (PDP) in Indonesia, especially those related to users of online loan services as part of financial technology (Fintech), specifically the assessment will be aimed at the main elements in the legal system doctrine in the form of elements of legal structure (legal structure), elements of legal substance (legal substance), and elements of legal culture (legal culture)⁴⁴. Furthermore, Friedman's view related to the legal system doctrine which also states that "the legal system is a unity between

⁴³ Lawrence M Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975).

⁴⁴ Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, no. 2 (2018): 148–63.

primary regulations in the form of customary norms and secondary regulations in the form of norms that will determine whether the norm of habit is valid and applicable or not", in this research, Friedman's further explanation will also be used in order to assess the effectiveness of Personal Data Protection (PDP) in Indonesia, especially those related to users of online loan services as part of financial technology (Fintech).

Furthermore, the elements of the legal system as mentioned above are related to the standards or parameters in determining the effectiveness of Personal Data Protection (PDP) in Indonesia, especially those related to users of online loan services as part of financial technology (Fintech), as the Legal System doctrine of Lawrence M. Friedman, can be simply described as follows. First, related to the Legal Structure element. Lawrence M. Friedman states that:

The structure of a system body of the system, the tough, rigid bones that keep the process flowing within bounds. We describe the structure of judicial system when we talk about the number of judges, the jurisdiction of courts, how higher courts are stacked on top of lower courts, what persons are attached to various courts, and what their roles consist of.⁴⁵

Further explanation of the elements of legal structure can be interpreted as legal institutions that support the establishment of the legal system. This section relates to the legal order, legal institutions, law enforcement officials and their authority, legal instruments, and their processes and performance in implementing and enforcing the law. Ansori states that a legal structure that cannot drive the legal

⁴⁵ Lawrence M Friedman, *The Legal System: A Social Science Perspective*.

system will lead to non-compliance with the law. This has an influence on the legal culture of society.⁴⁶

Second, related to the legal substance element, Lawrence M. Friedman states that:

The substance is composed of substantive rules and rules about how institutions should behave. Structure and substance are real components of a legal system, but they are at best a blueprint or design, not a working machine.⁴⁷

Further explanation of the legal substance element is the overall legal rules, both written and unwritten, including legal principles and norms as well as court decisions that are used as guidelines by the community and government resulting from the legal system. Legal substance and structure are the real components of the legal system, but these two things only act as a blueprint or design, not as a working tool.

Third, related to the element of legal culture, Lawrence M. Friedman states that disturbances in the structure and substance of law occur because they are static. The factor that provides input is the social world from outside. The legal system is not isolated and isolated, but is very dependent on input from outside. Sustainable social forces, remodeling the legal order, updating, sorting out which parts of the law will be applied and which will not, and which parts

⁴⁶ Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif." *Jurnal yuridis* 4, no. 2 (2017): 148-163.

⁴⁷ Faizal Amrul Muttaqin, and Wahyu Saputra. "Budaya Hukum Malu Sebagai Nilai Vital Terwujudnya Kesadaran Hukum Masyarakat." *Al-Syakhsiyah: Journal of Law & Family Studies* 1, no. 2 (2019): 187-207; Syafri Hariansah, "Analisis Implementasi Nilai-Nilai Budaya Hukum dalam Kehidupan Berbangsa dan Bernegara: Studi Kritis Pendekatan Masyarakat, Budaya dan Hukum." *Krtha Bhayangkara* 16, no. 1 (2022): 121-130; Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif."

must change. This is what is called legal culture. Freidman defines it as follows:

It is the element of social attitude and value. The phrase “social forces” is itself an abstraction; in any event have needs and make demands; these sometimes do and sometimes do not invoke legal process, depending on the culture.⁴⁸

Further explanation of the elements of legal culture is the ideas, values, thoughts, opinions, and behavior of community members in the application of law. This is related to the community's awareness, understanding and acceptance of the law applied to them. Legal culture as part of the legal system requires that the law is not only seen as a formulation of rules on paper, but also understood as a social reality that occurs in society. This means that the law is strongly influenced by non-legal factors such as the values, attitudes, and views of the community towards the laws that are enforced⁴⁹. Furthermore, the study and discussion of the relationship between the legal system doctrine and all elements of its division in relation to obstacles in fulfilling the effectiveness of Personal Data Protection (PDP) in Indonesia, especially those related to users of online loan services as part of financial technology (Fintech), will be more comprehensively described as follows.

⁴⁸ Lawrence M Friedman, *The Legal System: A Social Science Perspective*.

⁴⁹ Farida Sekti Pahlevi, “Pemberantasan Korupsi di Indonesia: Perspektif Legal System Lawrence M. Freidman,” *El-Dusturie: Jurnal Hukum dan Perundang-undangan* 1, no. 1 (2022): 23-42.

1) *Constraints on Personal Data Protection (PDP) in Online Lending Practices in Indonesia (Legal Substance Element)*

This section concentrates on examining the influence of existing legal provisions on the efficacy of Personal Data Protection (PDP) in Indonesia, specifically within the context of users engaging with online loan services as an integral component of financial technology (Fintech). The primary objective is to evaluate the extent to which the prevailing legal framework contributes to ensuring the fulfillment of personal data protection. Additionally, the study endeavors to assess whether the current regulations governing Personal Data Protection (PDP) in Indonesia have successfully established legal certainty concerning the safeguarding of personal data in the realm of online lending services within the ambit of financial technology (Fintech) for its users.

Dimensions in the context of legal principles, recognizing the principle that expressively *verbis* states that "*ubi jus incertum, ibi jus nullum*" which means that "*there is no legal certainty, then there is no law*"⁵⁰. The principle provides an overview that in the optic of law,

⁵⁰ In the further context, it is emphasized that "*Ubi jus incertum, ibi jus nullum*" is a Latin legal maxim that translates to "Where the law is uncertain, there is no law" in English. This maxim reflects the principle that legal rules and provisions must be clear and unambiguous to be effective and enforceable. If the law is vague, unclear, or uncertain, it becomes difficult for individuals to understand their rights and obligations, and for authorities to apply and enforce the law consistently. In essence, the maxim underscores the importance of legal certainty in maintaining a just and orderly legal system. It implies that legal principles must provide clarity and predictability, ensuring that individuals can rely on a stable legal framework. When the law is uncertain, it creates room for arbitrary interpretations, inconsistent application, and challenges in resolving legal disputes. Therefore, the maxim emphasizes the fundamental connection between clarity in legal rules and the proper functioning of the legal system. *See also* Jason Stone, "Ubi Jus Incertum, Ibi Jus Nullum: Where the Right Is Uncertain, There Is No Right: *United States v. Navajo Nation*." *Public Land &*

"legal certainty"⁵¹ as one of the objectives of law has an important role in addition to "legal justice"⁵² and "legal benefits"⁵³ as other legal objectives. Given, it does not rule out the possibility that the absence of legal certainty as part of the legal objectives, can have implications for not achieving other legal objectives in the form of justice and expediency. In the context of personal data protection (PDP) in Indonesia related to the elements of legal substance as part of the legal system doctrine and legal certainty as one of the objectives of law, since 2022 it seems that both of these things (substance and legal certainty) have been pursued by Indonesia, which is specifically marked by the birth of personal data protection regulations (PDP) through Law 27 of 2022. Where, the birth of the regulation of Law 27 of 2022 in terms of legal certainty has several main objectives including⁵⁴:

- a) Protect human rights, especially those mandated by Article 28 G of the 1945 Constitution;
- b) Guarantee recognition and respect for the importance of personal data protection;
- c) Provide the effectiveness of personal data protection which has been scattered in various sectoral laws.

The objectives of the regulation of Law 27 of 2022 are materially contained in several articles with the main purpose of providing

Resources Law Review 27, no. 1 (2006): 149-168; John Braithwaite, "Rules and principles: A theory of legal certainty." *Australasian Journal of Legal Philosophy* 27, no. 2002 (2002): 47-82; Robert Alexy, "Legal certainty and correctness." *Ratio Juris* 28, no. 4 (2015): 441-451; Stefano Berteau, "Towards a new paradigm of legal certainty." *Legisprudence* 2, no. 1 (2008): 25-46.

⁵¹ Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*.

⁵² Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, V (Yogyakarta: Liberty, 2006).

⁵³ Sudikno Mertokusumo.

⁵⁴ Undang-Undang Nomor 27 Tahun 2022 tentang Perlindungan Data Pribadi.

guarantees that "personal data subjects" have rights that must be protected, including⁵⁵:

- a) The right to complete, update, and/or correct errors and/or inaccuracies in Personal Data about him/her in accordance with the purposes of Personal Data processing;
- b) The right to gain access to and obtain copies of Personal Data about him/her in accordance with the provisions of laws and regulations;
- c) The right to end processing, erase, and/or destroy Personal Data about him/her in accordance with the provisions of laws and regulations;
- d) The right to withdraw the consent to the processing of Personal Data about him/her that has been given to the Controller of Personal Data;
- e) The right to object to decision-making measures based solely on automated processing, including profiling, which give rise to legal consequences or have a significant impact on the Personal Data Subject;
- f) The right to suspend or restrict processing of Personal Data in proportion to the purposes for which the Personal Data is processed;
- g) The right to claim and receive compensation for infringement of processing of Personal Data concerning him/her in accordance with the provisions of laws and regulations;
- h) The right to obtain and/or use Personal Data about him/her from the Controller of Personal Data in a form that is consistent with the structure and/or format commonly used or readable by electronic systems; and
- i) The right to use and transmit Personal Data about him/her to other Personal Data Controllers, as long as the systems used can

⁵⁵ Undang-Undang Nomor 27 Tahun 2022 tentang Perlindungan Data Pribadi.

communicate with each other securely in accordance with the principles of Personal Data Protection under this Law.

From all of the above-mentioned rights related to personal data protection (PDP), it is at least known that the parties involved consist of "personal data subjects"⁵⁶ and "personal data controllers"⁵⁷. Whereas, if the parties involved in the context of personal data protection are connected to online lending services as part of financial technology (Fintech) in Indonesia, it is known that the users of online lending services are "personal data subjects", while online lending service providers are "personal data controllers". Thus, with such a position of the parties, it can be emphasized at the outset that in the event of online lending activities involving service users (personal data subjects) and service providers (personal data controllers), with reference to Law 27 of 2022, even if there is an agreement between the two parties in terms of the use of personal data from online loan service users by online loan service providers, in the case of the use of personal data by online loan service providers, they must still be subject to and follow the concept of recognizing the rights of online loan service users as contained in the provisions of Law 27 of 2022.

The assertion referred to above is important, given that in some empirical practices that occur, online loan service providers (personal data controllers) tend to use the personal data of service users (personal data subjects) freely and without consensus from the owners of the personal data. In fact, in some cases encountered, online loan service providers (personal data controllers) use the personal data of service users (personal data subjects) for the purpose of profiling, which has a negative impact on this⁵⁸. Although, in some of the cases cited above, the use of personal data for profiling purposes by online loan service providers (personal data controllers) was based

⁵⁶ Undang-Undang Nomor 27 Tahun 2022 tentang Perlindungan Data Pribadi.

⁵⁷ Undang-Undang Nomor 27 Tahun 2022 tentang Perlindungan Data Pribadi.

⁵⁸ Undang-Undang Nomor 27 Tahun 2022 tentang Perlindungan Data Pribadi.

on contracts and the consent of online loan service users (personal data subjects), such contracts cannot fully provide legal guarantees for online loan service providers (personal data controllers) in order to conduct data profiling of online loan service users (personal data subjects)⁵⁹.

Considering that the contract, which is part of the legal regime of engagement in Book 3 Article 1320 of the Civil Code (KUHPer)⁶⁰, expressly regulates the validity of an agreement, especially regarding objective conditions, one of which is a lawful cause, which requires that the agreement/contract made does not conflict with decency, propriety, and the law⁶¹. This means that although it is known that online loan service providers (personal data controllers) have agreements/contracts related to the use of data to conduct profiling of service users (personal data subjects) on the one hand, on the other hand, referring to the provisions in Law 27 of 2022, it is known that the use of personal data for the purpose of profiling the subject of data users is a prohibited act considering that such actions are a form of violation of the protected rights of personal data subjects. Or it can be emphasized, that the agreement/contract of the personal data controller, in this case an online loan service provider, to conduct profiling of personal data subjects as users of online loan services is a contract/agreement that is contrary to the objective requirements of Article 1320 and has implications for the agreement to be null and void or not considered to exist from the beginning.⁶²

⁵⁹ Samuel Adiprasetya Isaputra and Sumaryono, "P2P Lending: Moderation of Desirability of Control on Risk-Taking Decisions of Indonesian Borrowers," *Humanities and Social Sciences Communications* 10, no. 1 (2023).

⁶⁰ Wardah Yuspin et al., "Personal Data Protection Law in Digital Banking Governance in Indonesia," *Studia Iuridica Lublinensia* 32, no. 1 (2023): 99–130.

⁶¹ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*.

⁶² See Evelyn Angelita Pinondang Manurung, "The Right to Privacy Based on the Law of the Republic of Indonesia Number 27 of 2022." *Journal of Digital Law and*

Upon initial examination and considering the aforementioned elucidation, it seems that Law 27 of 2022 holds the potential to significantly furnish legal certainty and protection against the improper use of personal data belonging to users of online loan services (referred to as personal data subjects) by the providers of these services (referred to as personal data controllers). However, this expectation is met with a contrasting perspective when turning attention to the stipulations in Article 14 of Law 27 of 2022, which explicitly and unequivocally states that:

The exercise of the rights of the Personal Data Subject as referred to in Article 6 through Article 11 shall be submitted through a registered request submitted electronically or non-electronically to the Controller of Personal Data.⁶³

That is, by referring to the argumentation method of "*argumentum a contrario*"⁶⁴, the rights owned by the subject of personal

Policy 2, no. 3 (2023): 103-110; Al Sentot Sudarwanto, and Dona Budi Budi Kharisma. "Comparative study of personal data protection regulations in Indonesia, Hong Kong and Malaysia." *Journal of Financial Crime* 29, no. 4 (2022): 1443-1457; Edmon Makarim, "Privacy and personal data protection in indonesia: the hybrid paradigm of the subjective and objective approach." *Data Protection Around the World: Privacy Laws in Action* (2021): 127-164.

⁶³ Undang-Undang Nomor 27 Tahun 2022 tentang Perlindungan Data Pribadi.

⁶⁴ *Argumentum a contrario* is a Latin term that translates to "argument from the contrary" in English. It is a legal reasoning or argumentation technique where a legal principle or rule is applied by drawing an inference from the opposite or contrary situation. In other words, it involves using the absence of a specific legal provision or the negation of a particular situation to support a legal conclusion. In legal contexts, "*argumentum a contrario*" is often employed when interpreting statutes or legal texts. If a statute explicitly addresses one situation but remains silent or omits mention of another situation, the inference can be drawn that the legislature intended a different legal consequence for the omitted situation. This technique relies on the assumption that the legislature's

data users can only be given protection when a registered request is submitted electronically or non-electronically to the personal data controller. Strictly speaking, the rights stipulated in Law 27 of 2022 with the aim of preventing the misuse of personal data belonging to Personal Data Subjects as users of online loan services as referred to in Articles 6 to 11 are not misused by online loan service providers (personal data controllers), then this must be submitted through a registered request submitted electronically or non-electronically to the Personal Data Controller. Thus, when such a request is not submitted by the Personal Data Subject as a user of an online loan service, the protection which is a right cannot be exercised. Thus, it can be concluded that substantially referring to Friedman's legal system doctrine, it is known that personal data protection in Indonesia, including that applied to Personal Data Subjects as users of online loan services, has been regulated and recognized in the regulation of Law 27 of 2009.

silence or omission signifies a deliberate choice rather than an oversight. For example, if a law explicitly states that a certain action is prohibited but does not mention a similar but distinct action, "argumentum a contrario" would suggest that the legislature did not intend to prohibit the latter action. It's a form of legal reasoning that draws implications from what is explicitly stated by considering the absence of contrary provisions. See Hendrik Kaptein, "Legal progress through pragma-dialectics? Prospects beyond analogy and e contrario." *Argumentation* 19, no. 4 (2005): 497-507; Henrike Jansen, "In view of an express regulation: Considering the scope and soundness of a contrario reasoning." *Informal Logic* 28, no. 1 (2008): 44-59; Damiano Canale, and Giovanni Tuzet. "On the contrary: Inferential analysis and ontological assumptions of the a contrario argument." *Bocconi Legal Studies Research Paper* 2007-03 (2007); Fabrizio Macagno, Douglas Walton, and Giovanni Sartor. "Argumentation schemes for statutory interpretation." *Argumentation* (2012): 63-75. See also Sitti Mawar, "Metode Penemuan Hukum (Interpretasi Dan Konstruksi) Dalam Rangka Harmonisasi Hukum." *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan dan Pranata Sosial* 1, no. 1 (2020): 22-38; Enju Juanda, "Penalaran Hukum (Legal Reasoning)." *Jurnal Ilmiah Galuh Justisi* 5, no. 1 (2017): 157-167.

However, in terms of legal certainty, the provision (Law 27 of 2022) has not fully reflected the purpose of the law. This is because the rights stipulated in the provision still require other legal means in the form of a submission request, which opens up opportunities for legal uncertainty considering that the form of request for the rights in question is the submission of a request to the controller of personal data, in this case an online loan service provider, which of course opens up opportunities for the request to be carried out or not carried out by the online loan service provider as the controller of personal data.

2) Constraints on Personal Data Protection (PDP) in Online Lending Practices in Indonesia (Legal Structure Element)

This section undertakes a comprehensive examination of the current legal framework's effectiveness in upholding Personal Data Protection (PDP) in Indonesia, particularly within the context of users engaged in online loan services within the financial technology (Fintech) landscape. The central focus of this inquiry is dedicated to scrutinizing the legal structure, with a specific emphasis on the potential influence of a specialized institution established for the implementation of personal data protection.⁶⁵ This line of argumentation is intricately linked to the doctrinal principles of the specific legal system, highlighting the integral role of legal institutions in shaping compliance with the law. The existence of such dedicated institutions is posited to yield direct implications for engendering legal adherence, subsequently exerting an impact on the broader legal

⁶⁵ Hanif Adinugroho Widyanto et al., "Intention to Use Peer-to-Peer (P2P) Lending: The Roles of Perceived Structural Assurance and Perceived Critical Mass," *Organizations and Markets in Emerging Economies* 31, no. 1 (2022): 183–208.

culture within society—a nuanced facet that will be thoroughly examined in the ensuing section of this study.

Referring to the provisions of the legal substance in the protection of personal data, especially those contained in Chapter IX on Institutions Article 58 of Law 27 of 2022, it is known that the implementation of personal data protection is carried out by an institution stipulated and established by the President, whose main purpose and responsibility are issues related to the protection of personal data⁶⁶. This provision is the basis for the establishment of a legal structure in the form of a special institution for the protection of personal data, which is essentially a form of "subjective law" with the aim of providing protection for both personal data subjects and personal data controllers in terms of law enforcement on the one hand, on the other hand, it is also intended as a form of legality and legitimacy related to the authority in the implementation of legal protection of personal data protection by the special institution for personal data protection as referred to in Law 27 of 2022. Thus, it can be asserted that in terms of personal data protection, which in the context of this research is specifically aimed at online lending services as part of fintech, the effectiveness in preventing and overcoming the misuse of personal data of online lending service users (personal data subjects) by online lending service providers (personal data controllers), can be implemented and is highly dependent on the existence of a specialized institution for personal data protection⁶⁷.

⁶⁶ Priskarini, Pranoto, and Tejomurti, "The Role of The Financial Services Authority in The Legal Protection of Privacy Rights in Connection with Personal Data of Fintech Lending Debtor in Indonesia."

⁶⁷ I. Made Wirya Darma and Putu Gede Andre Putra Jadnya, "Legal Protection of Parties in Online Credit Agreement (Peer to Peer Lending) A Case Study of PT Vcard Technology Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 6, no. 3 (2019): 511–32.

However, if you pay attention to the current empirical facts, even with the existence of Article 58 of Law 27 of 2022, it is known that a special institution specifically aimed at protecting personal data has not yet existed or in other words, a special institution for personal data protection has not been established. Thus, the absence of this special institution, based on the legal system doctrine, especially on the elements of legal structure, will directly have an impact on the ineffectiveness of protection and law enforcement of personal data protection, especially in this study related to the misuse of personal data of online loan service users (personal data subjects) by online loan service providers (personal data controllers). Thus, it can be concluded that the protection and law enforcement of personal data in the absence of a special institution intended for the function of protecting personal data. Given, the absence of a special institution for the protection of personal data has further implications in the form of the absence of an institution that can provide coercion in terms of influencing legal compliance with the protection of personal data.

3) Obstacles to Personal Data Protection (PDP) in Online Lending Practices in Indonesia (Legal Culture Element)

In this section, the primary focus is a nuanced exploration of the interplay between legal substance and legal structure, building upon the groundwork laid in the preceding sub-chapter. The central inquiry revolves around the impact of these legal elements on character development and community adherence, specifically concerning the realization of effective Personal Data Protection (PDP) measures in Indonesia. This comprehensive study is categorized into two principal dimensions. Firstly, it delves into the influence of legal substance on legal culture, particularly in shaping character and fostering community compliance in the context of fulfilling Personal

Data Protection (PDP) requirements. Secondly, it scrutinizes the impact of legal structure on legal culture, emphasizing its role in character development and community adherence in the pursuit of effective Personal Data Protection (PDP) practices, especially among users of online lending services within the financial technology (Fintech) domain.

The focus of the study as stated above, is based on the argument that legal culture is related to the awareness, understanding, and acceptance of the community towards the laws that apply to them. In addition, legal culture as part of the legal system requires that the law is not only seen as a formulation of rules on paper, but also understood as a social reality that occurs in society⁶⁸. This means that the law is strongly influenced by non-legal factors such as the values, attitudes, and views of the community towards the laws that are enforced. From the explanation of these arguments and their relationship with the study in this sub-study, it can be more comprehensively explained further as follows.

First, the influence of legal substance on legal culture, especially regarding character building and community compliance in providing fulfillment related to the effectiveness of Personal Data Protection (PDP) in Indonesia, especially related to users of online loan services as part of financial technology (Fintech). As explained in the previous sub-chapters, it is known that substantially referring to the doctrine of legal system by Friedman, it is known that personal data protection in Indonesia, including that applied to Personal Data Subjects as users of online loan services, has been regulated and recognized in the regulation of Law 27 of 2009. However, in terms of legal certainty, the provision (Law 27 of 2022) has not fully reflected the purpose of the law. This is because the rights stipulated in the

⁶⁸ Khudzaifah Dimiyati et al., "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (2021).

provision still require other legal means in the form of a submission request, which opens up opportunities for legal uncertainty considering that the form of request for the rights in question is the submission of a request to the controller of personal data, in this case an online loan service provider, which of course opens up opportunities for the request to be carried out or not carried out by the online loan service provider as the controller of personal data⁶⁹.

With the aforementioned description, which still leaves a legal problem of personal data protection related to legal certainty in which the granting of personal data protection rights in the form of a prior request by the subject of personal data is required, has implications for the "indication" of the birth of a legal culture in the form of negation related to legal awareness and understanding by personal data controllers, in this case online loan providers. Given that the current provisions in Law 27 of 2022 (legal substance) open up a very strong opportunity to be used as an alternative in circumventing the rights of personal data subjects (online loan users), especially at this time the legal awareness of online loan service users (personal data subjects) who are people with a low economic base and unfamiliar with the law are reluctant to know holistically the rights they have and are protected by legal regulations, especially in the context of personal data protection as regulated in Law 27 of 2022.

Second, the influence of legal structure on legal culture, especially regarding character building and community compliance in providing fulfillment related to the effectiveness of Personal Data Protection (PDP) in Indonesia, especially those related to users of online lending services as part of financial technology (Fintech)⁷⁰. As

⁶⁹ Lawrence M Friedman, *The Legal System: A Social Science Perspective*.

⁷⁰ Hadi Ismanto, Purwo Adi Wibowo, and Tsalsa Dyna Shofwatin, "Bank Stability and Fintech Impact on MSMEs' Credit Performance and Credit Accessibility," *Banks and Bank Systems* 18, no. 4 (2023): 105–15.

explained in the previous sub-chapter, it is known that based on the specific legal system doctrine on the legal structure element, the absence of a special institution for personal data protection as mandated in Article 58 of Law 27 of 2022, has further implications in the form of the absence of a means or institution that is used as a means of coercion to provide legal compliance with the protection of personal data. The absence of a means intended as coercion in legal compliance with personal data protection, in turn, also has implications in terms of the ineffectiveness of Personal Data Protection (PDP) in Indonesia, especially in relation to users of online lending services as part of financial technology (Fintech).

From the two study points above, it can be concluded that the legal culture influenced by legal substance and legal structure towards character building and community compliance in providing fulfillment related to the effectiveness of Personal Data Protection (PDP) in Indonesia⁷¹, especially those related to online loan service users as part of financial technology (Fintech), is not fulfilled. Affirmation of the unfulfilled effectiveness in terms of character building and community compliance in terms of personal data protection, especially those related to users of online loan services as part of financial technology (Fintech)⁷², is influenced by at least 2 (two) main factors, namely: *First*, the current provisions in Law 27 of 2022 (legal substance) open up a very strong opportunity to be used as an alternative in deviating from the rights of personal data subjects (online loan users), especially at this time the legal awareness of online loan service users (personal data subjects) who are people with

⁷¹ Rinitami Njatrijani and Rahandy Rizki Prananda, "Risk and Performance in Technology Service Platform of Online Peer-To-Peer (P2P) Mode" *International Journal of Scientific & Technology Research* 9, no. 3 (2020): 5404-5406.

⁷² Budiharto, Sartika Nanda Lestari, and Gusto Hartanto, "The Legal Protection of Lenders in Peer To Peer Lending System," *Law Reform* 15, no. 2 (2019): 275–89.

a low economic base and unfamiliar with the law are reluctant to know holistically the rights they have and are protected by legal regulations, especially in the context of personal data protection as regulated in Law 27 of 2022. *Second*, the absence of a special institution for the protection of personal data as mandated in Article 58 of Law 27 of 2022, has further implications in the form of the absence of a means or institution that serves as a means of coercion to provide legal compliance with the protection of personal data. With the absence of means intended as coercion in legal compliance with the protection of personal data, in turn, it also has implications in terms of the ineffectiveness of Personal Data Protection (PDP) in Indonesia, especially those related to users of online loan services as part of financial technology (Fintech).

4. Conclusion

Based on the findings and discussions presented in this study, two principal conclusions emerge. Firstly, achieving robust personal data protection necessitates proactive engagement from users of online loan services. This involves a careful verification of the legitimacy of online loan service providers, ensuring their proper registration with the Financial Services Authority (OJK) of the Republic of Indonesia. Users are further encouraged to meticulously examine and comprehend the terms and conditions governing personal data protection before consenting to online loan agreements. A noteworthy concern arises from instances where individuals interact with online loan service providers operating beyond the regulatory oversight of the Financial Services Authority (OJK) or identified as unauthorized entities. These unscrupulous providers exploit personal data in bad faith, failing to fulfill promised obligations and leading to potential data breaches.

Secondly, the impediments encountered in safeguarding the personal data of online loan service users in Indonesia, as viewed through the lens of the legal system doctrine, are significantly influenced by three interrelated elements, particularly those associated with legal substance, legal structure, and legal culture. Despite the rights delineated in the provisions of Law 27 of 2022 within the realm of personal data protection, these rights necessitate additional legal recourse, such as a submission request to the personal data controller, which introduces a potential avenue for legal uncertainty. Moreover, the absence of a specialized institution mandated by Article 58 of Law 27 of 2022 has implications for the lack of a coercive mechanism or institution to ensure legal compliance in personal data protection. This absence of coercion, in turn, contributes to the ineffectiveness of Personal Data Protection (PDP) in Indonesia, particularly concerning users of online lending services within the domain of financial technology (Fintech).

5. Declaration of Conflicting Interests

The authors state that there is no conflict of interest in the publication of this article.

6. Funding Information

None

7. Acknowledgment

We express our sincere gratitude to the faculty member of Faculty of Law, Universitas Islam Riau (Pekanbaru, Indonesia), and Fachhochschule Dortmund, University of Applied Sciences and Arts (Dortmund, Germany), for their invaluable support in facilitating and contributing to this research. Our appreciation extends to the

Anonymous Reviewers of Lex Scientia Law Review for their constructive comments, which have significantly enriched the quality of this work. Special thanks are also due to our esteemed colleagues: Rosyidi Hamzah, Fadhel Arjuna Adinda, and David Hardiago (Faculty of Law, Universitas Islam Riau), for their unwavering assistance during the earlier stages of the paper. Their contributions have been instrumental in shaping and refining the content of this research.

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How to cite (Chicago style)

Admiral, Admiral, and Mega Ardina Pauck. "Unveiling the Dark Side of Fintech: Challenges and Breaches in Protecting User Data in Indonesia's Online Loan Services". *Lex Scientia Law Review* 7, no. 2 (2023): 995-1048. <https://doi.org/10.15294/lesrev.v7i2.77881>.

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History of Article

Submitted: August 7, 2023

Revised: August 27, 2023; September 15, 2023; October 28, 2023

Accepted: November 27, 2023

Available Online: November 30, 2023