

Optional problem solving in peer-to-peer lending

Putri Wardhani ^{a,1,*}, Nynda Fatmawati Octarina ^{a,2}

^a Faculty Law, Narotama Surabaya University, Indonesia

¹ ms.putriw@gmail.com *; ² nynda_f@yahoo.com

* Korespondensi Penulis

ARTICLE INFO

Article history

Received December 12, 2022

Revised December 14, 2022

Accepted December 15, 2022

Available Online December 16, 2022

Keywords

Optional

Problem Solving

Peer to Peer Lending

ABSTRACT

This study aims to find alternative solutions to peer-to-peer lending problems. This study uses a normative juridical approach. The data collection technique used is documentation technique (scientific journal articles related to peer-to-peer lending). The data analysis technique used is analytical descriptive analysis regarding default settlement options in peer-to-peer lending. The results of this study indicate that alternative solutions for solving peer-to-peer lending problems are based on Article 21 POJK No. 77/POJK.01/2016 the parties are required to mitigate risks through litigation channels, namely by going to court on the basis of default (Article 1243 Civil Code) made by the recipient of the loan; and the non-litigation route, namely through mediation because mediation efforts are included in the substance of the law (Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution).

This is an open access article under the [CC-BY-SA](#) license.



1. Introduction

In banking law, guarantees have 4 (four) types and can be mentioned, namely mortgage guarantees, fiduciary guarantees, mortgage guarantees, and mortgage guarantees that will be auctioned if the debtor or borrower violates the agreement or default and after being given a certain grace period cannot pay. installments or paying off the agreed amount, in this case the creditor or the lender has the right to auction the collateral as compensation in this agreement. Collateral is the basis for creditors to disburse credit to debtors (Kharisma, 2021; Luther, 2020). The existence of collateral can provide peace of mind to creditors in the process of credit agreements (Zhang, Zhao, Wang, Wang, & Zhao, 2022). The term collateral comes from the word *zekerheid* or *cautie*, namely the ability of the debtor to pay off his debts or obligations to the creditor, by holding certain objects that have economic value or have a sale value as dependents on loans or debts received by the debtor against the creditor (Suryono, Budi, & Purwandari, 2021).

Therefore, in agreements related to borrowing and borrowing money, it is safer to be accompanied by guaranteed conditions. With advances in technology that are increasingly sophisticated and the convenience they carry in a pocket, namely the Android feature phone (Liu, Huang, & Yeung, 2018). Not blind to that, the banking sector is trying to keep up with these changes by taking advantage of the convenience that Android features provide. Banking tries to innovate and modernize services or its application using systems in the field of technology by creating banking companies to provide money or credit lending services online or by using an application and of course with different systems including in the fintech industry (Peng, Luo, & Li, 2019). For example, banking companies that run online or fintech, namely Rupiah Plus, Friends Money, Cash Us, AkuLaku and others, we have found in the play store with guarantees of ease of withdrawal and security in transactions. To support the description of fintech, Fintech with financial services such as crowdfunding, mobile payments, and money transfer services is causing a revolution in the startup business. With crowdfunding, you can easily get funds from all over the world, even from people you have never met even though Fintech also allows money transfers globally or internationally (Luther, 2020).

So many conveniences in implementation and transactions, not a few new constraints and problems are created in this system. In its application, problems or disputes often occur between the two parties in an agreement that occurs without collateral or only guaranteeing an identity as payment for the rights of creditors that are violated by the debtor or borrower in the event of default or default in payment of installments and interest previously agreed upon. With the trigger for the dispute by the debtor and because there is no guarantee that the creditor can use to receive his rights, what often happens in dispute cases in the field is that the creditor tries to misuse the collateral in the form of the identity by tapping the debtor's cell phone and contacting parties who related or have a relationship with the debtor such as family, friends, and others as an effort to collect creditor rights on the basis of a mutual agreement (Ferretti, 2021). That makes the problem widen, because in several existing cases, the debtor does not accept the creditor's treatment on the basis that the creditor has abused his identity and taken privacy rights or is reducing the honor of the debtor as a human being (Lee, 2021).

The concept of personal data protection explains that everyone has the right to determine whether he will join the community and share/exchange personal data or not. Data protection law includes measures to protect the security of personal data, as well as conditions regarding the use of personal data of individuals. Law Number 39 of 1999 concerning Human Rights, in Article 29 paragraph (1) states that "Everyone has the right to personal protection...." So, in this statement, it can be concluded that the protection of personal data is a right (privacy rights) that everyone has that must be protected by the state, where in privacy rights everyone has the right to cover or keep things private.

Before explaining further about the legal steps in the activities described above, Suryono, Purwandari, & Budi (2019) explained that information technology-based money lending services are commonly called peer to peer lending and in her journal entitled *Legal Relations of the Parties in Peer-to-Peer Lending* she explained that "Peer to peer lending is different from money lending services as stipulated in Article 1754 of the Civil Code. In the money lending agreement as stipulated in Article 1754 of the Civil Code, the parties involved are the lender and the loan recipient where these parties have a direct legal relationship through a loan agreement. The lender is obliged to give the other party a certain amount of goods that are used up due to use on condition that the borrower will return the same amount of the same type and condition. Whereas in peer-to-peer lending services, lenders do not meet directly with loan recipients, even the parties may not know each other because in the peer-to-

peer lending system there is another party, namely the peer-to-peer platform that connects the interests of these parties.”

Based on the information previously described, the purpose of this research is specifically to find out alternative solutions in solving peer-to-peer lending problems. This assumes that there are often disputes that both demand losses, and there are often difficulties in taking steps to handle and take middle ground as a solution, because there is no clear law governing this problem and both parties demand losses from each other. Therefore, this research is expected to contribute knowledge in the form of alternative solutions in solving peer-to-peer lending problems that are rife in society.

2. Method

2.1. Types of Research

This type of research uses a normative juridical research type, which is carried out using a statute approach and a conceptual approach (Kharisma, 2021). From statutory regulations, carried out in the framework of further study of the legal basis. The law used in this research is the Regulation of the Financial Services Authority of the Republic of Indonesia Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services. While the contextual approach analyzes problems based on doctrine or opinions of legal experts through legal books, legal journals, and related legal articles. The research procedure was carried out by means of library research, namely examining written information related to legal norms originating from various sources of literature. As for written information in library materials in the form of legal books, legal journals, legal articles and so on. From the legal material that has been collected, it is then analyzed with a normative juridical research type, which aims to obtain scientific answers to the issues raised based on analysis that is tested with norms, rules and laws and regulations (Walker, 2017).

3. Results and Discussion

3.1. Systematic Settlement of Litigation and Non-Litigation

In the Civil Code, especially in the principles of Civil Procedure Law, there are two legal settlement channels (defaults), namely litigation and non-litigation. Juridically, regarding the settlement of disputes that occur in civil law relations such as disputes in the business world in the form of trade, banking, mining projects and so on. This has been regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 1 point 10 of the Law on Arbitration and Alternative Dispute Resolution, explains the meaning of Dispute Resolution, which is an institution for settling disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court settlement by way of consultation, negotiation, mediation, conciliation, or expert judgment. Whereas in Article 1 point 1 of the Law on Arbitration and Alternative Dispute Resolution, it states that Arbitration itself is a way of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute.

Consultation is an action that is “personal” between a certain party (client) and another party who is a consultant, where the consultant gives his opinion to the client according to the needs and needs of his client (Cochrane, 2014). Negotiation is an effort to resolve disputes between parties without going through a court process with the aim of reaching a mutual agreement because of more harmonious and creative cooperation (Katz, 2015). Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator (Yu & Shen, 2019). Conciliation is the mediator will act as a conciliator with the agreement of the parties by seeking an acceptable solution (Sha, 2022). Expert judgment is the opinion of experts on a matter that is technical in nature and in accordance with their field of expertise (Feng, Wang, & Chen, 2021).

However, in its development, there is also a form of settlement out of court which turns out to be one of the settlement processes carried out in court (litigation). Let's take the example of mediation. From this article we know that mediation is a settlement outside the court, but in its development, mediation has been carried out in court. Continuing the discussion above, in its development regarding mediation carried out in court, with the enactment of Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures in Courts, in lieu of Supreme Court Regulation Number 2 of 2003 concerning Mediation Procedures in Courts, it is mandatory for certain civil cases to be tried by court

judges within the general court environment and religious courts before proceeding with the mediation procedure in court (Suryono et al., 2021).

Furthermore, as quoted from an academic text prepared by the Center for Research and Development of Law and Judiciary of the Supreme Court of the Republic of Indonesia, said that the mediation institution is not part of the litigation institution, where initially the mediation institution was outside the court. But now the mediation institution has crossed into the court area. Developed countries in general, including America, Japan, Australia, Singapore has mediation institutions, both outside and inside the court with various terms including Court Integrated Mediation, Court Annexed Mediation, Court Dispute Resolution, Court Connected ADR, Court Based ADR, and others.

Thus, it becomes important to know the position of the dispute settlement institution (arbitration) in handling civil cases that occur. Particularly in the case of mediation, as has progressed, the current mediation route, which was originally outside the scope of the court, can now be carried out within the scope of the court. As the culture of the Indonesian nation has the nature of cooperation and peace, it is felt that the most suitable mediation effort is needed for efforts to resolve cases in civil matters, especially peer to peer lending so that harmonious relations are maintained between lenders and loan recipients.

3.2. Default Settlement Legal Instruments

As a rule of law, of course in activities carried out both by the government and its citizens must comply with the provisions of the applicable laws and regulations. In peer-to-peer lending activities, the risk that occurs because of a money lending agreement according to civil law rules occurs due to default, or non-fulfillment of obligations in the agreement (Lee, 2021).

The legal instruments used in cases of default refer to the provisions of the Civil Code as the codification of national civil law. Provisions for default are regulated in Article 1243 of the Civil Code which states that reimbursement of costs, losses, and interest due to non-fulfillment of an agreement, only begins to be required if the debtor, after being declared negligent in fulfilling the agreement, continues to neglect it, or if something must be given or made, it can only be given or made within the grace period that has been exceeded.

As a basis for granting rights to the aggrieved party in cases of default, this is based on the provisions of Article 1267 of the Civil Code which states Parties against whom the agreement is not fulfilled can choose; force the other party to fulfill the agreement, if this can still be done, or demand cancellation of the agreement, with reimbursement of costs, losses, and interest. Continuing the provisions of Article 1267 of the Civil Code above, Claims can be filed separately or in combination with other lawsuits, including Fulfillment (*nakoming*); Compensation (*vervangende vergoeding*); Dissolution, termination, or cancellation (*ontbinding*); Fulfillment plus complementary compensation (*nakoming en anvvullend vergoeding*); or Dissolution plus complementary compensation (*ontbinding en anvvullend vergoeding*) (Butarbutar, 2020; Ferretti, 2021).

Furthermore, regarding compensation regulated in Article 1248 of the Civil Code which states that compensation can only be given as a direct and immediate result of non-fulfillment of the agreement (Ko, Lin, Do, & Huang, 2022). In Article 1247 of the Civil Code, it states that it narrows the liability of debtors who are not deceitful by not only looking at the time of default, but their liability is also related to the question of whether the loss can be foreseen at the time a contract/agreement is closed.

3.3. Default Settlement Legal Efforts

Peer to peer lending activities a based on POJK provisions Number 77/POJK.01/2016 in terms of risks that occur, as stipulated in Article 21 POJK Number 77/POJK.01/2016 which states that organizers and users must carry out risk mitigation. Where the risk mitigation is fully borne by the lender and loan recipient and not borne by the state. Thus, if the risk of default or default occurs, the parties between the lender and the borrower can take mediation as stipulated in the Arbitration and Alternative Dispute Resolution Laws, either through litigation or non-litigation.

3.4. Legal Remedies Through Litigation

If there is a risk that occurs, namely default or default by the recipient of the loan, then the legal action taken by the guarantor as a creditor, in peer-to-peer lending activities can take litigation or through the courts. In litigation legal efforts, for the dispute resolution process in peer-to-peer lending has been described by Putri (2018), namely as follows:

- 3.4.1 The judge's decision can only be implemented if it has permanent legal force (*inkracht*). Permanent legal force means that there are no more legal remedies against it, so the defeated party must carry out the decision voluntarily. Before reaching an *inkracht* decision, Indonesian civil procedural law provides 2 kinds of legal remedies to the parties, namely, ordinary legal remedies consisting of resistance (*verzet*) to the *verstek* decision, appeals and cassation and extraordinary legal remedies consisting of review and resistance from third parties (*derden verzet*).
- 3.4.2 Resistance (*verzet*) is a legal remedy against a decision handed down outside the presence of the Defendant. The Defendant submitted the objection to the Chief Justice who decided the dispute after knowing the decision. This legal effort was given to the Defendant who was generally defeated. If in the settlement of the dispute the Plaintiff is defeated by the *verstek* decision, then he can file an appeal. Appeal is a re-examination of the District Court's decision submitted by a party who is dissatisfied with the decision handed down by the Judge on the case being examined. According to Riduan Syahrani, the appeal is based on the provisions of Article 188 to. 194 HIR (for areas of Java and Madura) and in Articles 199 to 205 RBg (for areas outside Java and Madura), but Articles 188 to. 194 The HIR was declared no longer valid based on Article 3 juncto Article 5 of Law Number 1 of 1951 (Emergency Law Number 1 of 1951) and was replaced by Law Number 20 of 1947 concerning regulations for repeat trials in Java and Madura. Possible decisions at the appeal level can strengthen, amend or annul the District Court's decision.
- 3.4.3 The cassation was filed with the Supreme Court to examine the decision of the lower court regarding whether or not the application of the law was appropriate to the case in question, the seat of the case having been determined by the lower courts. In the provisions of Article 28 paragraph (1) letter a, the Supreme Court has the duty and authority to examine and decide on cassation requests. The cassation decision can be in the form of an appeal that cannot be accepted, rejected or granted. Reconsideration legal action is an extraordinary legal effort that is carried out on a court decision both at the PN, PT, and MA levels that have been *inkracht*. According to Sudikno, the PK is a legal remedy for decisions at the final level and decisions handed down outside the presence of the defendant (*verstek*), and which are no longer open to the possibility of filing resistance.
- 3.4.4 The last extraordinary remedy is third party resistance (*Derdenverzet*). Article 1917 BW states that a decision is only binding on the parties to the dispute and does not bind third parties, but if a third party's rights are harmed by a decision, the injured party can file a challenge against the related decision (provisions in Article 378 Rv). The objection is submitted to the Judge who renders the contested decision by suing the parties concerned in the usual way (Article 379 Rv). If the resistance is granted, then the decision being challenged is corrected as long as it harms a third party (Article 382 Rv).
- 3.4.5 It is clearly stated in CHAPTER II, Article 6 numbers 1 to 9 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, if dispute resolution is carried out through non-litigation channels with alternative dispute resolution then it is resolved in a direct meeting of the parties concerned the results of which are stated in a written agreement, but if the dispute cannot be resolved, then the parties make a written agreement that the dispute is resolved through the assistance of a mediator. Settlement of disputes by arbitration can see the provisions in CHAPTER III Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In resolving disputes through arbitration, the nature of the award is final, has permanent legal force and is binding on the parties.

3.5. Legal Remedies Through Non-Litigation (Mediation)

Mediation efforts are regulated in a Supreme Court Regulation, with the issuance of Perma Number 1 of 2016 concerning Mediation Procedures in Courts, as described in the official article Hukumonlien.com, Perma Number 1 of 2016 was welcomed by the Association of Indonesian Sharia Lawyers (APSI). The manager of the APSI Education and Training Center, Thalish Noor Cahyadi, said there were several important things that made the difference between Perma No. 1 of 2016 and Perma No. 1 of 2008 concerning Mediation.

In the official lawonline.com article, continuing the discussion above, it can be described as follows. First, regarding the shorter mediation time limit from 40 days to 30 days from the date of the order to conduct Mediation. Second, there is an obligation for the parties (*inpersoon*) to attend the Mediation meeting in person with or without being accompanied by a lawyer, unless there is a valid

reason such as a health condition which makes it impossible to attend the meeting. Mediation based on a doctor's certificate; under guardianship; has a residence, domicile, or domicile abroad; or carry out state duties, professional demands or jobs that cannot be abandoned. Third, the most recent thing is the rule regarding good faith in the mediation process and the legal consequences of parties who do not have good faith in the mediation process. Article 7 states: (1) The Parties and/or their attorneys are required to take Mediation in good faith; (2) One of the parties or the parties and/or their attorney may be declared not having good faith by the Mediator in the matter in question: a bsence after being duly summoned 2 (two) times in a row at the Mediation meeting without a valid reason; attended the first Mediation meeting, but never attended the next meeting even though he had been duly summoned 2 (two) times in a row without a valid reason; repeated absences that disrupt the Mediation meeting schedule without a valid reason; attend the Mediation meeting, but do not submit and/or do not respond to the other party's Case Resume; and/or not signing the draft Peace Agreement that has been agreed upon without a valid reason (Lee, 2021).

As for the legal basis for mediation, apart from what is regulated in Perma Number 1 of 2016 above, it includes Article 130 HIR and Article 154 Rbg. Regarding efforts to resolve disputes in peer-to-peer lending legal relations activities, as stipulated in Article 21 POJK Number 77/POJK.01/2016 which provides space for freedom for the parties to resolve if a risk occurs. The legal relationship of peer-to-peer lending is borrowing and borrowing money through information technology, as the rights and obligations of the parties previously described, that before carrying out peer to peer lending activities, the parties, namely the lender and the recipient of the loan, are required to make an electronic agreement first. Based on Article 21 POJK Number 77/POJK.01/2016, the parties (lenders and loan recipients) must carry out risk mitigation. Which in terms of mitigating the risk, in the event of default or default on the part of the loan recipient, efforts can be made to resolve the risk through a channel agreed upon by both parties.

4. Conclusion

Based on Article 21 of POJK Number 77/POJK.01/2016, in the event of a risk or default occurring, the parties are required to mitigate risk, in the sense of resolving the case together. The settlement of these cases can be pursued through litigation and non-litigation. The litigation route is carried out by going to court based on default (Article 1243 of the Civil Code) by the recipient of the loan. Meanwhile, the non-litigation route can be reached through mediation. Regarding litigation and non-litigation legal remedies, based on the provisions of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, mediation efforts are included in the substance of the law.

Reference

- Butarbutar, R. (2020). Personal data protection in P2P lending: What Indonesia should learn from Malaysia? *Pertanika Journal of Social Sciences and Humanities*, 28(3), 2295–2307. Retrieved from <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85092666971&partnerID=40&md5=8b00ea6dde51c5eac2a1e0d2715a1327>
- Cochrane, J. H. (2014). Challenges for Cost-Benefit Analysis of Financial Regulation. *The Journal of Legal Studies*, 43(S2), S63–S105. <https://doi.org/10.1086/678351>
- Feng, F., Wang, X., & Chen, T. (2021). Analysis of the attributes of rights to inferred information and China's choice of legal regulation. *Computer Law & Security Review*, 41, 105565. <https://doi.org/https://doi.org/10.1016/j.clsr.2021.105565>
- Ferretti, F. (2021). Peer-to-Peer lending and EU credit laws: A creditworthiness assessment, credit-risk analysis or... neither of the two? *German Law Journal*, 22(1), 102–121. <https://doi.org/10.1017/glj.2020.100>
- Katz, V. (2015). Regulating the Sharing Economy. *Berkeley Technology Law Journal*, 30(4), 1067–1126. Retrieved from <https://www.jstor.org/stable/26377749>

- Kharisma, D. B. (2021). Urgency of financial technology (Fintech) laws in Indonesia. *International Journal of Law and Management*, 63(3), 320–331. <https://doi.org/10.1108/IJLMA-08-2020-0233>
- Ko, P.-C., Lin, P.-C., Do, H.-T., & Huang, Y.-F. (2022). P2P Lending Default Prediction Based on AI and Statistical Models. *Entropy*, 24(6). <https://doi.org/10.3390/e24060801>
- Lee, S. (2021). Determining personal credit rating through voice analysis: Case of P2P loan borrowers. *KSII Transactions on Internet and Information Systems*, 15(10), 3627–3641. <https://doi.org/10.3837/tiis.2021.10.009>
- Liu, X., Huang, F., & Yeung, H. (2018). The regulation of illegal fundraising in China. *Asia Pacific Law Review*, 26(1), 77–100. <https://doi.org/10.1080/10192557.2018.1511086>
- Luther, J. (2020). Twenty-first century financial regulation: P2P lending, fintech, and the argument for a special purpose fintech charter approach. *University of Pennsylvania Law Review*, 168(4), 1013–1059. Retrieved from <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85090913717&partnerID=40&md5=2574463a2d3c24a8bde01f817f159b3b>
- Peng, X., Luo, X., & Li, J. (2019). Meaning construction and judicial identification: Difficulties and countermeasures of criminal regulation of illegal fundraising behavior on online P2P lending platforms. *International Journal of Legal Discourse*, 4(1), 47–68. <https://doi.org/10.1515/ijld-2019-2018>
- Putri, C. R. (2018). Tanggung gugat penyelenggara peer to peer lending jika penerima pinjaman melakukan wanprestasi. *Jurist-Diction*, 1(2), 460–475.
- Sha, Y. (2022). Rating manipulation and creditworthiness for platform economy: Evidence from peer-to-peer lending. *International Review of Financial Analysis*, 84, 102393. <https://doi.org/https://doi.org/10.1016/j.irfa.2022.102393>
- Suryono, R. R., Budi, I., & Purwandari, B. (2021). Detection of fintech P2P lending issues in Indonesia. *Heliyon*, 7(4), e06782. <https://doi.org/https://doi.org/10.1016/j.heliyon.2021.e06782>
- Suryono, R. R., Purwandari, B., & Budi, I. (2019). Peer to Peer (P2P) Lending Problems and Potential Solutions: A Systematic Literature Review. *Procedia Computer Science*, 161, 204–214. <https://doi.org/https://doi.org/10.1016/j.procs.2019.11.116>
- Walker, G. (2017). INTERNATIONAL LAW: FINANCIAL TECHNOLOGY LAW: A NEW BEGINNING AND A NEW FUTURE. *GPSolo*, 34(3), 76–77. Retrieved from <http://www.jstor.org/stable/26425830>
- Yu, T., & Shen, W. (2019). Funds sharing regulation in the context of the sharing economy: Understanding the logic of China's P2P lending regulation. *Computer Law & Security Review*, 35(1), 42–58. <https://doi.org/https://doi.org/10.1016/j.clsr.2018.10.001>
- Zhang, L., Zhao, R., Wang, B., Wang, H., & Zhao, T. (2022). Bankruptcy Exemption and Peer-to-Peer Lending. *Emerging Markets Finance and Trade*, 58(3), 863–882. <https://doi.org/10.1080/1540496X.2021.1926979>