








LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

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**EXONERATION CLAUSES IN INFORMATION TECHNOLOGY-BASED
(ONLINE) MONEY LOAN CONTRACTS**

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ABSTRACT

This research aims to examine the characteristics of standard clauses containing exoneration clauses in information technology-based loan contracts (fintech lending) and analyze their legal consequences for consumer protection. The research method used is normative with a statutory approach, conceptual approach, and case approach. Online lending services are growing rapidly in the financial technology ecosystem, but the practice of drafting standard contracts often does not involve a negotiation process, resulting in an imbalanced position between service providers and users. The exoneration clause in the contract tends to absolve the provider from responsibility for user losses, which in principle contradicts the principles of justice and legal protection. The results show that exoneration clauses in standard fintech lending contracts have the potential to harm consumers and violate the provisions of the Consumer Protection Law. Therefore, it is necessary to strengthen regulations, more effective supervision, and increase legal literacy among the public so that consumers better understand the risks and their rights in digital transactions.

Keywords: Exoneration Clause, Standard Contract, Fintech Lending, Consumer Protection, Online Loans

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1. INTRODUCTION

The development of information technology has brought major changes in various aspects of life, including in money lending services. Previously, money lending services could only be done through traditional financial institutions such as banks and cooperatives, which often had long procedures, strict requirements, and limitations in reaching people in remote areas. However, with the advancement of technology, various digital platforms have now emerged to facilitate *online* lending and borrowing transactions. The development of technology and information in the financial industry sector is characterized by the presence of *financial technology (fintech)* (Santi, Budiharto, & Saptono, 2017).

Fintech is an innovation in the financial sector that integrates the development of information technology with financial services, thus changing the business model from conventional to more modern. If previously financial transactions, such as payments, required face-to-face meetings and the use of cash, now transactions can be done remotely quickly and practically in just seconds.

The rapid growth of fintech lending also brings its own challenges, such as regulation, personal data protection, and potential misuse of services by irresponsible parties. The rapid development of technology in changing the pattern of business transactions in society encourages Bank Indonesia, as the central bank of the Republic of Indonesia, to play an active role in ensuring that the flow of transactions supported by technology continues to take place in an orderly and safe manner.

As a pro-active step in maintaining order in business transactions and the digital economy ecosystem, Bank Indonesia established regulations related to fintech through Regulation of Bank Indonesia Number 19/12/PBI/2017 on the Implementation of Financial Technology (hereinafter referred to as PBI FinTech). In Article 3 of the regulation, *fintech* covers various fields, including payment systems, market support,

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investment and risk management, lending and financing, equity participation, and other financial services.

One type of *fintech* that is in great demand by business people to encourage innovation and business development is the type of *fintech* lending, financing, and capitalization because it is considered more efficient than applying for loans, financing and equity participation in conventional financial institutions such as banks. Therefore, in its development many non-bank financial industry companies have emerged, in this case marked by the large number of companies organizing information technology-based money lending and borrowing services that are licensed and registered with the financial services authority (OJK).

Seeing the development of information technology-based money lending and borrowing services, OJK shows its role as a regulator of *Financial Technology 2.0 Digital Financial Services Institutions Digital Banking* which covers three industrial sector domains including banking, capital markets, and non-bank financial industries such as E-Gadai, E-LKM, E-Borrowing, and E-Insurance, as well as *Financial Technology 3.0-3.5 Startup Companies Non-Financial Services Institutions* with business domains to be regulated are cooperatives, futures exchanges, and loan-based crowdfunding including information technology-based money lending and borrowing services, with the issuance of Financial Services Authority regulation Number 77/POJK.01/2016 concerning Information *Technology-based* money lending services./2016 concerning Information Technology-based money lending and borrowing services.

Basically, the business concept of information technology-based money lending and borrowing services is very similar to the concept of *an online marketplace*, which provides time as a meeting place between buyers and sellers (Candrika & Putri, 2018). In lending activities in information technology-based money lending services involves three parties such as lenders, loan recipients, and companies that organize information technology-based money lending services as intermediaries that bring together lenders

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and loan recipients through the platform that has been provided (Candrika & Putri, 2018).

Exoneration clauses in digital loan contracts not only raise legal issues at the consumer protection level, but also open up ethical debates on transparency and contractual fairness. In practice, users of fintech services often agree to contracts in a hurry, without fully understanding the provisions contained therein. This information gap puts consumers in a weaker position, requiring stronger legal protection to prevent harmful contractual practices.

In addition, technological security is an issue that cannot be separated from this discussion. The use of algorithms, big data, and artificial intelligence systems in *credit scoring* and user data processing presents new risks in the form of privacy violations and misuse of personal data. Therefore, the regulation of exoneration clauses must also consider the dimensions of *cybersecurity* and ethical use of data in information technology-based financial services.

The implementation of information technology-based money lending services generally aims to provide, manage, and operate information technology-based money lending services through a reciprocal system between lenders and loan recipients. The purpose and role of information technology-based money lending services in the financial sector have significant implications. The presence of information technology-based money lending and borrowing services is able to provide a stimulus or encourage the export capability of MSME players which was previously low, increase the equitable distribution of the level of community welfare, help meet domestic financing needs, increase national financial inclusion, and encourage the distribution of national financing which is still uneven.

The transaction process in information technology-based money *lending* services involves several stages that are monitored and recorded in the *fintech lending* data center (PUSDAFIL). Before using the platform, each user is required to ensure that the

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company organizing information technology-based money lending and borrowing services has gone through a thorough verification, analysis, and evaluation process. In addition, the company must also meet the criteria set by the Financial Services Authority (OJK) to be registered or obtain an official license as a provider of such services.

The Transaction Mechanism in Technology-Based Money Lending Services consists of Four Stages, namely:

- a. Membership Registration Every user, both lenders and loan recipients, register online on the platform of information technology-based money lending and borrowing service providers via computer or *smartphone*.
- b. Loan Application The loan recipient applies for a loan through the platform of an information technology-based money lending service provider by completing personal data such as identity card, bank account number, and Taxpayer Identification Number (NPWP) online. meet the conditions that apply to the company that organizes technology-based money lending services The business of the loan recipient has been running for more than 1 year and is located in the territory of Indonesia. If the business location is outside the Jabotabek, Bandung, and Banten areas, it can use information technology-based money lending and borrowing services as long as the loan amount is more than 200 million; Has made a net profit in the last year; Has a financial report (at least a profit and loss statement) which will be cross-checked with the last 3 months bank statements; Make a proposal for the required supporting documents.

The company that organizes information technology-based money lending and borrowing services conducts scoring or analysis related to the feasibility of providing loans to prospective loan recipients in accordance with the term and interest of the loan and the ability to repay payments by the borrower. After the scoring process is

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carried out, it will be informed to the prospective loan recipient whether the loan application is approved or rejected.

- c. **Loan Implementation** Once the information is received and analyzed by the lender, the lender will then decide whether to approve or reject the loan application. Each lender has the right to choose who will be given a loan listed on the application system. If the lender approves the loan, the next step is the execution of the loan. The lender enters into an agreement with the information technology-based money lending service provider company and authorizes it to manage the provision of loans until the implementation of the loan settlement/collection process.
- d. **Loan Payment** The loan recipient pays the loan to the lender through the lender's account at a bank that has been appointed and cooperates with the organizer. The information technology-based money lending service provider company acts as a medium to bring together lenders and loan recipients with the provision that the information technology-based money lending service provider company gets a commission.

The existence of information technology-based *fintech* lending services raises various legal issues, especially regarding the contracts used. One of the issues that arise is the existence of exoneration clauses in information technology-based loan contracts, where organizers often include provisions that release them from liability in the event of default or default by the borrower. This issue raises the question of whether the exoneration clause in the contract is valid according to the law, as well as what the legal consequences are for the parties involved.

The emergence of this legal issue is caused by the imperfection of the regulation in POJK 77/POJK.01/2016. Therefore, this research will conduct an analysis by examining various laws and regulations related to information technology-based money lending and borrowing services. Some of the regulations that will be reviewed include Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008

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concerning Electronic Information and Transactions (hereinafter referred to as ITE Law), Financial Services Authority Regulation Number 1 POJK/07/2013 concerning Consumer Protection in the Financial Services Sector, and Financial Services Authority Regulation Number 18/POJK.07/2018 concerning Consumer Complaint Services in the Financial Services Sector.

2. RESEARCH METHODS

The type of legal research used in this research is normative legal research, namely research that examines laws and regulations in a coherent legal system and unwritten legal values that live in society. Peter Mahmud Marzuki argues that legal research is a process for finding laws, legal principles, and legal doctrines in order to answer the legal issues at hand (Marzuki, 2010).

3. DISCUSSION

Standard Clauses Containing Exoneration in Information Technology-Based Money Lending Agreements (Online)

The inclusion of standard clauses will be very detrimental to consumers so that they have a weaker position when compared to business actors, because the burden that should be borne by business actors will immediately shift to the burden on consumers. The provisions regarding the inclusion of standard clauses based on the Consumer Protection Law listed in Article 18, outline that "business actors in offering goods / services intended for trade are prohibited from making or including standard clauses in every document and/or agreement if it states the transfer of responsibility of the business actor; states that consumers are subject to regulations in the form of new rules, additions, continuation and / or further changes made unilaterally by business actors during the period when consumers utilize the services they buy."

Article 18 paragraph 2 of the Consumer Protection Law, namely: "prohibits business actors from including standard clauses that are late or in a form that is difficult to see, cannot be read clearly or the disclosure is difficult to understand." The provisions of Article 18 are very important to protect consumers or debtor customers, given that there are still many banks that stipulate standard clauses that state that customers are subject to new, additional, continued and/or further changes made unilaterally by the bank to customers who utilize credit facilities (Brahmanta, *et.al.*, 2016).

In addition, the provisions contained in Article 18 are intended to prevent the existence of standard clauses whose location and form are difficult or cannot be clearly read by the customer, while the clauses may be very burdensome for debtor customers. According to Article 1320 of the Civil Code (Burgerlijk Wetboek) there are four conditions that must be met for the validity of an agreement, namely "agreement of the parties binding themselves, capacity to make an agreement, regarding a certain matter, and a halal cause."

Of the four conditions, the fourth condition is most closely related to the problem concerning the consequences of bank credit agreements that are not in accordance with the provisions of the Consumer Protection Law. Based on these requirements, it is said that "the contents of an agreement must contain a permissible or legal causa (*gedorloof de dorzaak*). The object or content and purpose of the performance contained in the agreement must be a legal causa, so that the agreement becomes a valid or legal and binding agreement (Ety, 2016).

If an agreement that has complied with the requirements specified by the law, namely "complies with the three conditions (agreement, capability, certain object), but the agreement is related to an impermissible cause, then such an agreement becomes *illegal*, and has no legal effect". This means that the agreement cannot be implemented because it is not protected by law, the agreement has no legal force (Priharta, Hardi, & Yusa, n.d).

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If you look at Law Number 10 of 1998 concerning Banking explicitly does not regulate customer protection at all, for debtor customers, several articles of the banking law only regulate the position of banks and the position of depositors of funds, the protection of debtor customers is entirely left to the debtor customers concerned by being careful (prudential principles) in conducting contractual relationships properly, but in this way it is considered not functional considering the process and form of the contract itself is standardized and the exception is the bargaining position of the customer in influencing very small (Pranita, Puspa, & Suardana, n.d).

After the establishment of the Financial Services Authority, the protection of bank customers is mandated to the Financial Services Authority. then followed up with the issuance of Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector (POJK Number 1 of 2013). The Consumer Protection Law clearly prohibits standard clauses related to online loan agreements, but the Financial Services Authority provisions do not explicitly regulate the legal consequences of standard clauses. This violates the provisions of consumer rights.

According to Article 4 of the Consumer Protection Law, consumer rights are:

- a. Entitled to comfort, security, and safety in consuming goods and/or services;
- b. The right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the conditions and guarantees promised;
- c. The right to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services;
- d. The right to have their opinions and complaints about the goods and/or services used heard."

Legal Consequences of Standard Agreements that contain Exoneration in Information Technology-Based Money Lending Agreements (Online)

Based on the Consumer Protection Law, which protects consumer rights. The law also provides hope that business actors are no longer arbitrary, which always harms

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consumer rights. With the existence of consumer protection laws and other legal instruments, consumers have balanced rights and positions, and they can also sue or sue if it turns out that their rights have been harmed or violated by business actors.

The consumer protection guaranteed by this law is "the existence of legal certainty which includes all efforts based on the law to empower consumers to obtain or determine their choices of goods and / or services they need and defend or defend their rights if they are harmed by business actors providing consumer needs." The Consumer Protection Law itself has regulated the rights of consumers , namely in Article 4, "the right to obtain advocacy, protection and efforts to resolve consumer protection disputes properly."

This right is intended because business actors are in a stronger position both economically and in terms of power compared to consumers. Consumers should know the definition of consumer law and consumer protection law contained in Article 64 of the Consumer Protection Law, which states that: "All provisions of laws and regulations aimed at protecting consumers that already exist at the time this law is enacted shall remain in force."

As Article 18 paragraph (1) of the Consumer Protection Law states, "business actors are prohibited from including standard clauses that state the transfer of responsibility of business actors, in the form of a maximum imprisonment of 5 (five) years or a maximum fine of Rp2,000,000,000.00 rupiah (two billion rupiah) as regulated in Article 62 of the GCPL" (Anjani, Chintya, & Purwanto, n.d). The Consumer Protection Law has provided protection to consumers for the existence of standard clauses in online loans.

"Article 62 Paragraph (1) of the Consumer Protection Law stipulates the penalties for business actors who violate the provisions on the inclusion of clauses." As well as in the provisions of Article 63 of the Consumer Protection Law "may be threatened with additional penalties such as revocation of business licenses, forced removal of certain

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goods, compensation, removal of goods from market production, announcement of a judge's decision, and cessation of certain activities that cause consumers to be unprofitable" (Miru, 2013).

In addition to the sanctions regulated by the Consumer Protection Law, consumers get an alternative route to make complaints and dispute resolution against the existence of standard clauses carried out by business organizers in an institution. The institution in question is the Consumer Dispute Resolution Agency (BPSK). BPSK is regulated in Article 49 of the Consumer Protection Law According to Article 1 Point 11, the Consumer Dispute Resolution Agency is "a dispute resolution body between business operators and consumers and is in Level II outside the court (Sari, Permata, & Artha, n.d).

In the Consumer Protection Law, provisions that explicitly contain legal consequences for standard agreements whose provisions are violated, in the form of null and void standard clauses, the provisions of the Financial Services Authority do not explicitly regulate the legal consequences of the standard agreement. The Financial Services Authority sanctions are more emphasized on the compliance of P2PL organizers with the provisions of the Financial Services Authority with the threat of administrative sanctions.

In Indonesian treaty law, it does not prohibit the making of standard agreements or standard clauses, but there are standard clauses that are exonerated (exoneration clauses), which means that there is a transfer of responsibility or exemption from the responsibility of business actors to consumers (Kurniawan, 2016). Currently, in every *peer to peer lending* website or application, there is a disclaimer for users, here are some of the *disclaimers*:

- a. Information Technology-Based Lending and Borrowing Services is a civil agreement between the Lender and the Borrower, so that all risks arising from the agreement are fully borne by each party.

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b. Credit risk or default is borne entirely by the lender, no state agency or authority is responsible for this default risk unless the peer to peer lending fintech organizer is proven to be negligent in running the business caused by employees, management or third parties serving for the benefit of the company then the peer to peer lending fintech organizer is responsible for the risk.

From the statement of clauses both a and b, it can be concluded that if there is a default by the borrower, then this is outside the responsibility of the organizer, unless the organizer is proven negligent and guilty. Of course, this is a form of transfer of responsibility because the organizer should have the duty to select prospective borrowers who are committed to paying, whether it is assessed from their work whether it is rational and able to return with such interest and so on. But in the field, this clause appears as if the organizer does not want to take part in the case if there is a default by the borrower to the lender.

This of course contradicts Article 18 Paragraph 1 of Law No. 8 of 1999 concerning Consumer Protection. Article 18 Paragraph 1 reads as follows: "Business actors in offering goods and/or services intended for trading are prohibited from making or including standard clauses in every document and/or agreement if: a. states the transfer of responsibility of the business actor". Munir Fuady explains that the field of one-sided clauses in standard contracts usually has the characteristics of being printed or made in small letters, language that is unclear about its meaning, writing that is unclear and difficult to read, very complex sentences, there are standard contracts that are not tangible like contracts (disguised contracts), such as parking tickets, cinema tickets, receipts for making photos, and others.

4. CLOSING

The characteristics of standard clauses in information technology-based money loan contracts are unilaterally determined by business actors, do not involve consumers

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in the process of making them, are urgent so that it is difficult to avoid by the borrower, and are compiled in a standardized written form. In the context of fintech services, exoneration clauses are included as part of standard clauses with the aim of limiting or eliminating the responsibility of service providers for the risk of losses arising during contract implementation. This creates an imbalance between the organizer and the service user.

As a legal consequence, the inclusion of exoneration clauses in information technology-based money lending contracts is contrary to applicable legal provisions, particularly Article 18 of Law No. 8/1999 on Consumer Protection, which states that clauses that exempt business actors from liability are null and void. As a result, this kind of clause cannot be enforced and business actors can still be held liable in the event of consumer harm. In addition, the existence of exoneration clauses also weakens the position of consumers and has the potential to hinder the achievement of the principles of justice and legal protection in digital transactions.

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