

## MISUSE OF PERSONAL DATA BY PEER TO PEER (P2P) LENDING PROVIDERS FROM A HUMAN RIGHTS VIEWPOINT

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### Abstract:

Misuse of personal data by companies providing Peer to Peer (P2P) Lending is a problem that has quite a worrying urgency for the community. There are many victims who are trapped because this needs to be addressed immediately in law enforcement because someone's rights can be uprooted. The method used in this study uses a normative juridical method with a statutory approach (Statute Approach) and in gathering information (data) using library research. Then the results of this study found that lending service providers carried out by Peer To Peer (P2P) Lending companies had committed many violations of the personal rights of their debtors, when viewed from a human rights perspective this was a very clear violation. From the regulatory point of view, there are still many loopholes that can ensnare the perpetrators or service providers, causing various kinds of difficulties in law enforcement. Therefore it is necessary to strengthen the level of regulation and implementation by various elements to be able to resolve this problem.

**Keywords:** Misuse of Personal Data, Peer To Peer (P2P) Lending, HAM.

## I. INTRODUCTION

Based on a survey conducted by the Internet Providers Association (APJII), internet users/users in Indonesia in 2018 reached 171.17 million people or around 64.8% of the total 264.16 million people. In 2019-2020 internet users accounted for 73.7% or around 196.71 million people of the total population of 266.91 million people in Indonesia.<sup>1</sup> The growth in the use of technology and digitalization can also be seen from the emergence of many start-up companies in Indonesia. Based on statistics released by the Financial Services Authority (OJK), there are 153 fintech companies registered/licensed at OJK.<sup>2</sup>

Technological advances have encouraged the economic sector to transform and give birth to financial technology (fintech). Technological support for the financial system generates many products, technologies, services, and/or various models of new business opportunities that can have an impact on monetary stability, efficient financial stability, convenience, security/protection of the financial system, and reliability of the payment system.<sup>3</sup> Fintech currently has several functions, not only as an online financial transaction service, but there are several service industries that are included in fintech. There is a classification of the types of financial industry in fintech, Bank Indonesia divides the financial industry into four classifications, including<sup>4</sup>:

1. Crowdfunding dan Peer to Peer (P2p) Lending;
2. Market Agregator;
3. Risk and Investment Management, dan;
4. Payment, clearing dan settlement.

P2P lending is a technology that provides financial services to bring together lenders and borrowers in the process of entering into agreements to borrow and borrow using the rupiah currency directly through electronic system settings that require an internet connection.<sup>5</sup>

The attractiveness and bargaining power used by P2P lending companies is the reason why this service is increasingly in demand. This is different from the procedure and process for borrowing money at a bank, which requires a long application process that takes quite a long time. P2P lending service providers can provide borrowers who are eligible for loans without having to go through the collateral process and this P2P lending can reach almost anyone who needs financing because it uses technology in services, P2P lending can make it easier for everyone everywhere, effectively and efficiently.<sup>6</sup>

The peak during the Covid-19 period caused the paralysis of the people's economy, this condition eventually caused the P2P Lending service provider to mushroom. The situation of people who do not have jobs and loss of income makes people have to look for ways to get additional funds, including by seeking loans. According to data, it is said that in 2020 the

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<sup>1</sup> APJII, "Infografis Penetrasi Dan Perilaku Pengguna Internet Indonesia Tahun 2019-2020," 2020, <https://apjii.or.id/content/read/39/521/Hasil-Survei-Internet-APJII-2019-2020-Q2>. diakses 12 januari 2020, pukul 14.25 WIB

<sup>2</sup> OJK, "Statistik Fintech Lending Periode November 2020," accessed July 8, 2022, <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Pages/-Statistik-Fintech-Lending-Periode-November-2020.aspx>. diakses 12 januari 2020, pukul 14.30 WIB

<sup>3</sup> "Peraturan Bank Indonesia No.19/12/PBI/2017 Tentang Penyelenggaraan Teknologi Finansial," accessed July 8, 2022, [https://www.bi.go.id/id/publikasi/peraturan/Pages/pbi\\_191217.aspx](https://www.bi.go.id/id/publikasi/peraturan/Pages/pbi_191217.aspx). diakses 12 januari 2020, pukul 15.15 WIB

<sup>4</sup> Fransiska Ardela, "Sudah Resmi! Pahami Klasifikasi Fintech Menurut Bank Indonesia," accessed July 8, 2022, <https://www.finansialku.com/klasifikasi-fintech-menurut-bank-indonesia/>. Diakses pada tanggal 10 desember 2020, pukul 19.25 WIB

<sup>5</sup> "POJK Nomor 77/POJK.01/2016," accessed July 8, 2022, <https://www.ojk.go.id/id/regulasi/otoritas-jasa-keuangan/peraturan-ojk/Pages/POJK-Nomor-77-POJK.01-2016.aspx>. Diakses pada tanggal 10 desember 2020, pukul 19.25 WIB

<sup>6</sup> Regita Wijayani, "Perlindungan Hak Konsumen Selaku Debitur Dan Kreditur Pada Transaksi Peer to Peer (P2P) Lending Finacial Technology" (Universitas Gadjah Mada, 2017), 3, <http://etd.repository.ugm.ac.id/penelitian/detail/117195>. Diakses pada tanggal 10 Juli 2021, pukul 19.25 WIB

distribution of loans channeled by P2P Lending services will reach Rp. 74.1 trillion.<sup>7</sup> The large number of P2P lending companies that are illegal and not officially registered with the Financial Services Authority (OJK) has created its own problems for the community.

Often in this problem, if there are customers who are in arrears for payment, the P2P Lending service provider charges them in a coercive way and there are threats to share the details with other people. On the other hand, the customer's personal data is taken without the permission of the person concerned and then sold to other parties with the aim of making a profit from it. According to data from the OJK in January 2021, only around 149 registered P2P lending companies<sup>8</sup> and P2P lending which is not registered as many as 2558 companies.<sup>9</sup>

According to the news written on CNBC Indonesia quoted from the National Consumer Protection Agency (BPKN) there were 2,800 complaints throughout 2021 related to P2P lending, both legal and . The range of complaints starts with billing and dissemination of privacy data.<sup>10</sup> If you pay attention to the Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 Concerning Information Technology-Based Money-Lending Services, this is a regulation made because there are more and more P2P lending companies popping up in Indonesia. It is hoped that the 2016 POJK will be able to control P2P lending, so that it can be ensured that it is safe for users of these P2P lending services.

Then from the aspect of protecting human rights, personal data protection is something that must be protected, when referring to article 12 of the Universal Declaration of Human Rights it says<sup>11</sup>:

*“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”.*

Furthermore, in Indonesia itself arrangements regarding privacy rights and personal data globally are regulated in article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that:

“Everyone has the right to protection for himself/herself, family, honor, dignity and property under his control, and has the right to feel safe and protected from threats of fear to do or not do something which is a human right”.<sup>12</sup>

Protection of personal data is a freedom that is protected by everyone, when there are parties who disseminate it, this action can be interpreted as an action against the provisions of the Indonesian constitution. Then in the regulation of law number 39 of 1999 which was amended from Law Number 19 of 2016 concerning Information and Electronic Transactions (UU ITE) legal protection does not yet contain clear personal data protection rules.<sup>13</sup> However, conceptually it has been implicitly contained in articles 27 to 37 in the ITE Law.

The problem is that these actions cannot be justified and become a problem for the

<sup>7</sup> Iin Indriani, Nurhayati Nurhayati, and Sri Utaminingsih, “ANALISIS DAMPAK DAN RESIKO HUKUM TERHADAP PRAKTIK PINJAMAN ONLINE DI MASA PANDEMI,” *Rechtsregel : Jurnal Ilmu Hukum* 4, no. 1 (August 11, 2021): 7, <https://doi.org/10.32493/RJIH.V4I1.12667>.

<sup>8</sup> “Penyelenggara Fintech Lending Terdaftar Dan Berizin Di OJK per 10 Januari 2021,” accessed July 8, 2022, <https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/Penyelenggara-Fintech-Lending-Terdaftar-dan-Berizin-di-OJK-per-10-Januari-2021.aspx>.

<sup>9</sup> “Daftar Perusahaan Fintech Peer To Peer Lending Ilegal (Juli 2018 - Juli 2020) :: SIKAPI...,” accessed July 8, 2022, <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/20548>.

<sup>10</sup> “Bikin Resah, Laporan Penagihan Pinjol Paling Banyak Di 2021,” accessed July 8, 2022, <https://www.cnbcindonesia.com/tech/20220211121104-37-314689/bikin-resah-laporan-penagihan-pinjol-paling-banyak-di-2021>.

<sup>11</sup> “Universal Declaration of Human Rights; Article 12” (1948), [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf).

<sup>12</sup> “Undang-Undang Dasar Negara Republik Indonesia Tahun 1945” (1945).

<sup>13</sup> 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): 105–19, <https://doi.org/10.35586/JYUR.V7I1.1846>.

community because the people who become customers will be harmed directly. This act of undermining human rights is a crime that must be resolved by the state immediately, it is true that today there are rules governing the protection of personal data. However, this regulation cannot be applied optimally because it is waiting for several things that are still being prepared in advance.

Interesting things to be discussed in this study will focus on the protection of personal data of customers of peer to peer (P2P) lending companies in terms of human rights aspects and how to discipline them in society.

Based on the explanation above regarding the protection of personal data of peer to peer (p2p) lending customers it can be reduced to two question formulations:

1. To explain the misuse of peer to peer (p2p) lending customer personal data that is rife in society;
2. To analyze the misuse of personal data based on aspects of legal protection contained in human rights and other legal regulations in force in Indonesia.

## II. METHODS

The research method used in this research uses normative juridical to examine the phenomenon of personal data misuse of peer to peer (P2P) lending customers which is rife and then analyzed using a statutory approach (Statue approach).

The data collection is by using a literature study which is inventoried from various texts and documents which are divided into three classifications namely primary, tertiary and secondary materials.

## III. RESULTS AND DISCUSSION

Privacy is a person's right to control the use of information about personal identity either by himself or by other parties and the use of any information through electronic media that concerns a person's personal data must be done with the consent of the person concerned.<sup>14</sup> Privacy Right is a right to privacy as a claim from an individual, group, or institution to determine for themselves when and how, and to what extent information about them is communicated/published to others.

Law Number 36 of 1999 does not use the terminology of privacy rights but personal rights. The provisions explain that basically information owned by a person is a personal right that must be protected so wiretapping must be prohibited. Constitutionally, the State protects the privacy and data of the public. As stated in article 28 G Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that<sup>15</sup>:

"Everyone has the right to protection for himself/herself, family, honor, dignity and property under his control, and has the right to feel safe and protected from threats of fear to do or not do something which is a human right."

According to the Cambridge Dictionary, privacy defines privacy. The right that someone has to keep their personal life or personal information secret or know only to a small group of people. Which implies that privacy is the right that a person has to protect personal life or confidential personal information so that only a small group of people know it. Slightly different from the understanding by the Cambridge Dictionary, according to the Big Indonesian Dictionary (KBBI) defines privacy as freedom, personal freedom.

As a right inherent in the individual, the importance of protecting the right to privacy

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<sup>14</sup> *Ibid.* Pasal 26

<sup>15</sup> Pasal 28 G Ayat (1) Undang-Undang Dasar Negara Republik Indonesia 1945

encourages efforts to conceptualize the right to privacy as a legal right<sup>16</sup>. In their writings, Warren and Brandeis simply define the right to privacy as the right to be left alone. This definition is based on two levels, the first is personal honor; and secondly, values such as individual dignity, autonomy and personal independence.<sup>17</sup> This idea then received justification and recognition in the form of several lawsuits which later provided justification for the need to protect the right to privacy, especially on the basis of morality.

### **Peer to Peer (P2P) Lending**

Peer to Peer Lending (P2P) is a financial service that brings together lenders/ (lenders) with recipients/ parties who need loans (borrowers) through an online electronic system. This Peer to Peer lending service is based on information technology, so borrowers and lenders carry out all transaction processes based on information technology in an application. Fintech Lending or also known as Fintech Peer-to-Peer Lending (Lending) or Information Technology-Based Borrowing and Borrowing Services (LPMUBTI) is one of the innovations in the financial sector by utilizing technology that allows lenders and loan recipients to carry out lending and borrowing transactions without having to meet. direct. The lending and borrowing transaction mechanism is carried out through a system that has been provided by the Fintech Lending Organizer, both through applications and website pages.<sup>18</sup>

When processing transactions on P2P Lending, interest is an instrument that is used to gain profits for lenders per month or per year. Whereas the borrower will be charged interest every month from the proposed loan, the interest given also depends on the agreement (collateral, loan value and so on) made when applying for the loan. However, in the Peer to Peer Lending transaction process, both will provide benefits for each. But another thing that is of particular concern is the risk that will occur if someone fails to pay, therefore, before using this facility, of course users must be careful when running it. But this does not apply if we understand how Peer to Peer Lending works. How does P2P Lending financial technology work, the following will be briefly explained:

#### **a. As a Borrower of Funds (Borrower)**

As borrowers, we can apply for a loan through one of the platforms of your choice by uploading the required application documents online. These documents can support your loan application so that it can be accepted, some of the documents include financial statements with a certain period of time and the purpose of applying for a loan. This loan application can be accepted or rejected, many factors can make a loan application rejected. However, when the loan application is rejected, we can make improvements so that we can re-apply.

If the loan application is approved, an agreement will be made regarding the loan interest rate and tenor for the borrower. In addition, the loan will also be displayed to look for lenders so they can see your loan application. So how did this phenomenon, which is currently the problem of leakage of personal data in P2P fintech transactions, occur and why could the borrower find out the phone numbers of all the borrower's friends related to the borrower who could access the borrower's contacts? Founder of Drone Emprit and Indonesian Kornels Media Ismail Fahmi revealed that the OJK had actually required that legal loan applications could only

<sup>16</sup> Lihat: Samuel Warren dan Louis Brandeis, The Right to Privacy, dalam *Harvard Law Review* Vol. IV No. 5, 15 Desember 1890, di <http://faculty.uml.edu/sgallagher/Brandeisprivacy.htm>. Gagasan dua orang pengacara Boston ini sebenarnya berangkat dari ide yang dicetuskan oleh hakim Thomas Cooley, yang menulis *Treatise on the Law of Torts* (1880), yang memperkenalkan pertama kali mengenai istilah 'hak untuk dibiarkan sendiri'. Dalam Wahyudi Djafar, *Hukum Perlindungan Data Pribadi di Indonesia: Lanskap, Urgensi dan Kebutuhan Pembaruan*, Hal.2. Makalah disampaikan sebagai materi dalam kuliah umum "Tantangan Hukum dalam Era Analisis Big Data", Program Pasca Sarjana Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 26 Agustus 2019.

<sup>17</sup> E Bloustein, "Privacy as An Aspect of Human Dignity: An Answer to Dean Prosser" (New York, 1964), 3.

<sup>18</sup> "https://ojk.go.id/Id/Kanal/Iknb/Data-Dan Statistik/Direktori/Fintech/Documents/FAQ%20Fintech%20Lending.Pdf," accessed February 18, 2022, <https://ojk.go.id/id/kanal/iknb/data-dan-statistik/direktori/fintech/Documents/FAQ Fintech Lending.pdf>.

access Snacks (Camera, Microphone and Location) on the user's cellphone. This excess data retrieved allows the loan application to read the history of all URLs that the user has visited in the browser, read bookmarks in the browser to see the user's wifi connection. For the loan application itself, they do access user data which is worse. He gave an example of a loan application called a cash warehouse. This access allows the application to read data about the user's contacts stored on the device, including the frequency with which the user calls, sends e-mail or communicates in other ways with certain individuals.

#### **b. As Fund Providers (Lenders)**

As a lender (Lenders), you can see several opportunities that can be funded along with loan details that will be displayed on the platform. The data displayed is usually the data that we need as funders, such as the form of business, business domicile, business category, business description and some other important data. Not only that, you can also see the reasons for applying for a loan from the business. Therefore, when we have decided to choose Peer to Peer Lending as a fund development instrument, you can immediately develop funds according to our preferences and goals. In P2P Lending, you will get relatively better interest compared to several other instruments.

Advantages and Disadvantages of Peer to Peer Lending As a Borrower For borrowers, the advantage of applying for loans through P2P Lending is that interest rates are relatively lower compared to interest rates at several financial institutions such as banks. In addition, for personal loans the interest rate is lower when compared to credit card bills. What is perhaps one of the advantages most often chosen by Borrowers is the ease with which the submission process is offered, considering that the process is much faster and easier. There are relatively few requirements, but later if we have experience with problems related to loans, we can tell them so that the loan can still be approved.

Fintech services with Peer to Peer Lending products actually have the goal of making it easier for borrowers to obtain the funds they need by providing convenience in submitting loan requirements by providing flexibility in collateral. If this application has advantages, of course there are also disadvantages. Peer to Peer Lending has several drawbacks, one of which is that if the borrower is late in making a payment, a fine will be imposed for the delay. This Peer to Peer Lending type loan is a short-term loan, meaning that the longer the loan period proposed, the bill will continue. increases, there is no guarantee that all loan applications submitted can be approved. For example, if you apply for a loan worth Rp. 100 million, it may be that what is approved is not in accordance with the application, it could even be only Rp. 75 million.

Advantages and Disadvantages of Peer to Peer Lending As Funders (Lenders), there is actually no need to worry about processing transactions at Peer to Peer Lending as long as we do it with fintech that is legal and has been registered with the OJK so that everything related to this transaction is officially regulated and supervised by the Financial Services Authority (OJK) through OJK regulation Number 77/POJK.01/2016. This means that the transaction process to be carried out is safer, easier and the process is relatively fast. Then providing loans is very easy and fast, especially if you have more funds but don't know where to allocate them. the interest received is also quite high, so it is more profitable.

To reduce the risks that may occur, opportunities for diversification are also wide open, by diversifying not only risks can be reduced, but interest can also be achieved more optimally. However, besides the many advantages that can be received, Peer to Peer Lending is also not able to withdraw funds at will. Therefore, if you need funds in a relatively short time, you can also choose a shorter tenor.

After knowing what P2P Lending is and how P2P Lending works, be sure to choose a P2P Lending platform that is suitable and suitable for your needs accompanied by investment

guarantees that are officially registered with the OJK or legally registered, so that the risk of errors and losses that may occur can be legally protected.



Figure 1.  
Peer to Peer Lending Financial Technology flow

### Misuse of Customer Data by Peer To Peer (P2P) Lending Companies

Residents' personal data is vulnerable to misuse and an easy target for cybercriminals. For this reason, the government has an important role and is obliged to protect the personal data of its citizens and act decisively against criminals through regulations that are able to guarantee the protection of personal data through laws. The practice of buying and selling e-KTP is increasingly widespread in social media forums, marketplaces, and cybercrime sites (dark web). This open personal data is used by a number of individuals to apply for online loans on the fintech peer to peer (p2p) lending platform.

One Twitter user named Robby Rachman on April 2 2021 tweeted that he had received two fund transfers of IDR 804 thousand each from unknown account numbers. Then on April 5 2021, he suddenly received a WhatsApp message in the form of a debt bill from an online loan accompanied by threats. Even though he never borrowed money from any platform. He was asked to repay the loan twice, amounting to Rp 1.2 million each. According to Robby, the loan collector was on behalf of KSP Hidup Hijau. The company is known to be one of the 86 fintechs that have been blocked by the Financial Services Authority (OJK) in April 2021.

There is also a Twitter user named Zomet, who tweeted a story when he was suddenly visited by five debt collectors at his house. They collect debts while breaking flower pots. Even though he admits he never borrowed money. It is known that someone named Yendra borrowed money using her home address. Robby and Zomet are two of the many victims whose personal data was stolen and misused for this online loan. This might happen to anyone, especially in the digital era, criminals are becoming more adept and sophisticated in collecting people's personal data which is then sold for online loan applications. If analyzed, there are several reasons why buying and selling personal data for online loans often occurs:

1. It's easy to register and apply for funds on illegal loan platforms, prospective borrowers usually only need an e-KTP, bank account number, and telephone number. with such easy loan application requirements, the practice of buying and selling personal data is increasingly in demand. Below is a partial description of the misuse of personal data from online loans:

**Table. 1**  
**Misuse of Personal Data for Online Loans**

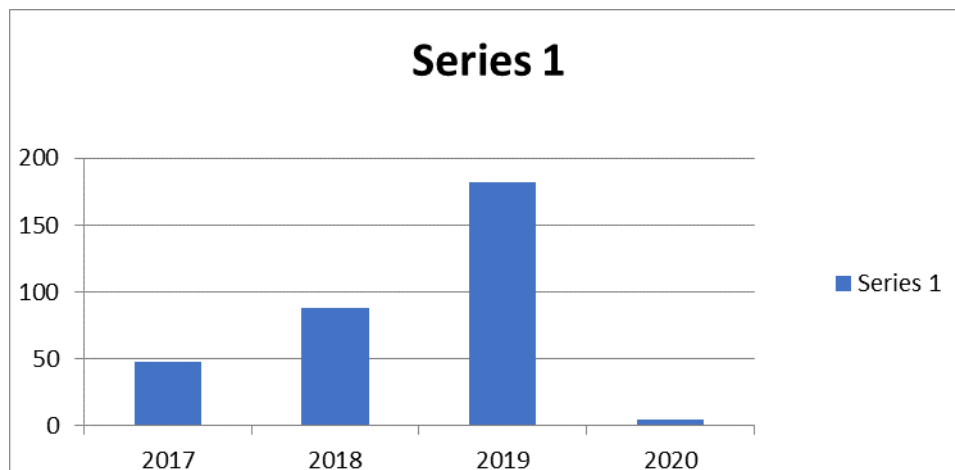
Time	Victim's initials	Case overview	Loan Amount	Total Loss	Billing Method
May 2021	KA	KTP is used for online loans without knowledge	1 time	Rp 1,7 million	Through WhatsApp messages with threats to distribute facial

					photos and ID cards
May 2021	DP	KTP borrowed by friends for online loans	1 time	Rp 2,5 million	Via WhatsApp messages
April 2021	MM	KTP borrowed by friends for online loans	3 time	Rp 5 million	Via WhatsApp messages
April 2021	RR	KTP is used for online loans without knowledge	2 time	Rp 2,4 million	Through WhatsApp messages accompanied by threats that personal data will be disseminated
April 2021	ME	KTP is used for online loans without knowledge	1 time	No nominal	By phone with threats

2. Indonesian people's personal data is very easy to spread, accessed, and even falsified. For example, e-KTP could be spread when we do a photocopy or registration. There are also netizens who openly upload their e-KTP on social media. Even though this is very dangerous because it has the potential to be misused for online loans. According to the author, even though e-KTP already has chip technology, in practice the verification process still uses physical documents as the ingredients. Verification generally still uses selfies so that it is possible to be carried out by other persons. Not to mention that a number of personal data from e-commerce platforms or sites are rife to be hacked and traded on the dark web. The personal data is then matched so that the resident number can be identified. Bareskrim Polri noted that reports of theft of personal data have increased quite a bit over the last four years. In 2017 there were 47 cases, then in 2018 it increased to 88 cases, and a spike in cases occurred from 2019 to 2020, namely up to 182 cases. Founder of Media Kernels Indonesia Ismail Fahmi said, the mode of buying and selling e-KTP is to register with several online loan platforms to get loans of up to tens of millions of rupiah. Then, those who have succeeded in their actions share their experiences in publishing regarding online loans. This convenience then makes the practice of buying and selling e-KTP more fertile. If the online loan verification is strong, then lending money online won't be that easy.<sup>19</sup>

<sup>19</sup> <https://katadata.co.id/ariayudhistira/analisisdata/609a43a46aa5c/pencurian-data-pribadi-dalam-pusaran-bisnis-fintech-ilegal>. Diakses Selasa, 7 September 2021, pukul 09.24 WIB

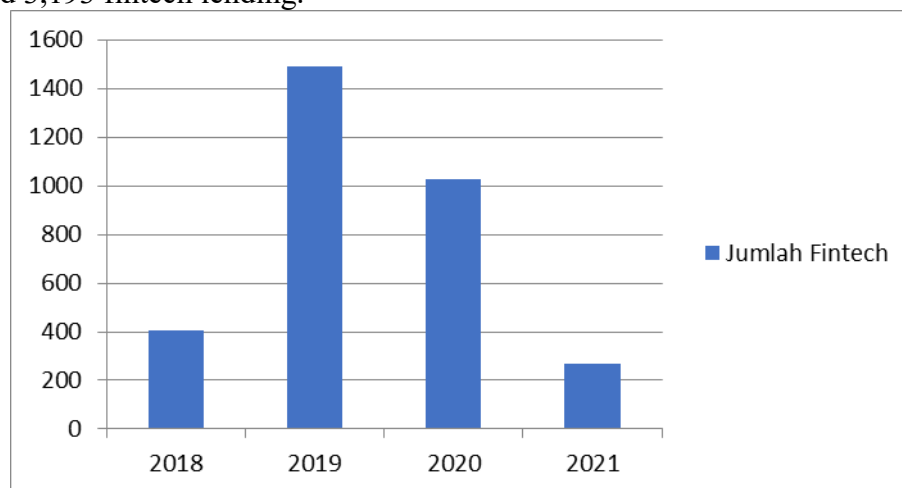




Graph 1. Personal Data Theft Table  
Source : Patroli Siber Per Mei 2020

On May 21, 2020, data on 2.3 million Indonesian citizens and voters allegedly leaked on the RapidForums forum. This was revealed by the @underthebreach account which previously revealed the sales of data for 91 million Tokopedia users. The data seller claims to have obtained the data officially from the General Elections Commission (KPU), then sells it in PDF format. Based on data from the Ministry of Home Affairs (Kemendagri) as of June 2020, there are 194.33 million people who are required to have KTPs. Of these, 192.47 people have recorded electronic KTPs. This means that there is a possibility that hundreds of millions of Indonesian citizens' data can be misused for online loans.

- The government is not strict enough to crack down on the practice of buying and selling e-KTP or online lending platforms. In fact, the business of buying and selling e-KTP can still be found in a number of Facebook groups and Instagram accounts. Online lending platforms continue to be rampant. Even though the Financial Services Authority (OJK) Investment Alert Task Force has blocked fintech lending every month, they have reappeared with a new company name. As of April 2021, the Investment Alert Task Force found 86 fintech lenders that have the potential to harm society. Meanwhile, from 2018 to April 2021 the Task Force has closed 3,193 fintech lending.



Graph 2. Number of Fintech Lending  
Source OJK Per April 2021

The rampant cases of buying and selling e-KTP have affected those who don't feel like making loans. They then received threats, intimidation, their profile photos were distributed, and the details of the loans were distributed to their families or relatives. Therefore, the public needs to be more vigilant about the use of their personal data, especially to unknown

parties. Social media platforms and marketplaces also need to be more aggressive in eradicating e-KTP trading actors on their platforms. The government must also be more assertive in taking action against cybercriminals, including sellers of personal data in online media. Apart from that, the presence of the Personal Data Protection Law (UU PDP) should be urgent considering the fact that the public needs to be protected by this regulation. However, the discussion of this draft regulation has even continued to be discussed by the government backwards. Indonesia should at least have personal data rules such as the General Data Protection Regulation (GDPR). As is done in European countries, this rule makes all EU citizens' data confidentially protected in any country, meaning that it is hoped that the PDP Law must protect data on Indonesian citizens that are collected inside and outside the homeland. Thus, if there is Indonesian citizen data that is misused by applications with servers abroad, they can make demands according to the PDP Law. The government must not just wait and see but proactively regulate it before there are cases of misuse of data on online loans on many platforms to the detriment of society and the national economy.”<sup>20</sup>

### **Analysis and Legal Protection from Misuse of Personal Data of Debtors Peer to Peer lending Financial Technology online loans from Human Rights Law**

Conceptually the protection of personal data emphasizes that everyone has the right to determine for himself whether he wants to disseminate/share his personal data or not. Then, if he does so, he himself has the right to determine whether in the process he is allowed to provide certain conditions or not. As a real consequence of the existence of human rights, it means that everyone is free to determine their right to privacy.<sup>21</sup> Article 14 paragraph (1) states that "everyone has the right to communicate and obtain information needed to develop his personality and social environment".<sup>22</sup> This means that the regulation of this article emphasizes that everyone has the right to obtain information which is a necessity in their life.

Then with regard to the regulation of personal data contained in article 29 paragraph (1) states that "every citizen has the right to protection of self, personal, family, honor, dignity and property rights".<sup>23</sup> What is stated in this article is actually the main point contained in the regulation of article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia.<sup>24</sup> Furthermore, as for exceptions to the protection of personal data, there are provisions in article 32 which states "independence and confidentiality in correspondence, including communication relations by electronic means, must not be disturbed, except on the order of a judge or other lawful authority in accordance with the provisions of the law."

If it is interpreted that the regulation regarding personal data can be interpreted as inherent ownership by everyone and its protection is guaranteed by the state. So if you want to use it by other people, you need a clear reason and a legal order from the panel of judges and so on. So if personal data is used by other parties, especially stolen or misused, let alone being threatened for it, as is done by illegal peer to peer lending services.

In this regard, according to regulations, what is done by illegal peer to peer lending which has made personal data hostage is a violation of law which causes a person's privacy rights to be violated. Moreover, in business law all matters related to consumers should be done openly

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<sup>20</sup> Artikel Aria W. Yudhistir, telah tayang di [Katadata.co.id](https://katadata.co.id) dengan judul "Pencurian Data Pribadi dalam Pusaran Bisnis Fintech Ilegal - Analisis Data Katadata", <https://katadata.co.id/ariayudhistira/analisisdata/609a43a46aa5e/pencurian-data-pribadi-dalam-pusaran-bisnis-fintech-ilegal>. Diunduh pada hari selasa, 7 September 2021 pukul 09.32 WIB

<sup>21</sup> Sekaring Ayumeida Kusnadi and Andy Usmina Wijaya, "PERLINDUNGAN HUKUM DATA PRIBADI SEBAGAI HAK PRIVASI," *AL WASATH Jurnal Ilmu Hukum* 2, no. 1 (April 21, 2021): 10, <https://doi.org/10.47776/ALWASATH.V2I1.127>.

<sup>22</sup> Pasal 14 ayat (1) Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia

<sup>23</sup> Pasal 29 ayat (1) UU Hak Asasi Manusia

<sup>24</sup> Kusnadi and Wijaya, "PERLINDUNGAN HUKUM DATA PRIBADI SEBAGAI HAK PRIVASI," 11.

and honestly. Peer to Peer Lending in this case has violated provisions and violated human rights.

Analysis and Legal Protection from Misuse of Personal Data of Debtors Peer to Peer lending Financial Technology online loans

Regulations and Risks of Business Financial Innovation Digital fintech in general can be interpreted as the use of information technology in the financial services sector that can be used in order to develop and automate the delivery and use of financial services. The emphasis here is on the development, or it could also be innovation, of the financial services themselves, so that the use of technology that does not develop or does not innovate cannot be considered Fintech (eg internet banking, digital banking, etc.).

Fintech rules that provide money-lending services refer to the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning lending and borrowing with electronic transactions. Whereas information technology-based money-lending services are the provision of financial services to bring together lenders and loan recipients in the context of entering into loan-borrowing agreements in the rupiah currency directly through an electronic system using the internet network.<sup>25</sup> Meanwhile, according to Article 3 paragraph 1 (one) letter d of Bank Indonesia Regulation Number 19/12/PBI/2017 of 2017 concerning the Implementation of Financial Technology (PBI 19/2017), one of the categories of implementing financial technology is loans, financing and provision of capital. Examples of implementing financial technology in the categories of lending (lending), financing (financing or funding) and provision of capital (capital raising) include information technology-based money lending services (peer-to-peer lending) as well as information technology-based financing or fundraising (crowd-funding).<sup>26</sup> the lending and borrowing of money is carried out based on an implementation agreement, the form of which is:<sup>27</sup>

- a. Agreement between organizer and lender; And
- b. Agreement between the lender and the borrower.

The two types of agreements above are contained in an electronic document, which at least contains:<sup>28</sup>

1) Organizer with lenders

Agreement number, date of agreement, identity of the parties, provisions regarding the rights and obligations of the parties, loan amount, loan interest rate, amount of commission, time period, details of related costs, provisions regarding fines (if any), dispute settlement mechanism and settlement mechanism in in the event that the Administrator is unable to continue its operational activities.

2) Lenders with loan recipients

Agreement number, date of agreement, identity of the parties, provisions regarding the rights and obligations of the parties, loan amount, loan interest rate, installment value, term, collateral object (if any), details of related costs, provisions regarding fines (if any), and dispute resolution mechanisms.

Regarding the inclusion of identity to enter into agreements, of course it must be done according to law, this is closely related to personal data regulated in the Minister of Communication and Information Regulation Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems (“Permenkominfo 20/2016”). Personal data is certain individual data that is stored, cared for and kept true and protected by confidentiality.<sup>29</sup> Certain individual data is any information that is true, real that is attached and can be

<sup>25</sup> Pasal 1 angka 3 POJK 77/2016

<sup>26</sup> Penjelasan Pasal 3 ayat (1) huruf d PBI 19/2017

<sup>27</sup> Pasal 18 POJK 77/2016

<sup>28</sup> Pasal 19 ayat (1) dan (2) jo. Pasal 20 ayat (1) dan (2) POJK 77/2016

<sup>29</sup> Pasal 1 angka 1 Permenkominfo 20/2016

identified, either directly or indirectly, on each individual whose use must be in accordance with the provisions of laws and regulations<sup>30</sup>, so that it can be said that the identity in entering into a loan agreement in fintech is included in personal data, which is owned by the owner of the personal data, namely the individual to whom certain personal data is attached.<sup>31</sup>

The regulation of the ITE Law regarding personal data has been described in the types of public information that cannot be provided by public bodies as explained in the provisions of article 6 paragraph (3), namely: "Public information that cannot be provided by public bodies, as referred to in paragraph (1) is:

1. Information that can harm the country;
2. Information relating to the interests of business protection from unfair business competition;
3. Information relating to personal rights;
4. Information related to job secrets, and;
5. The requested public information has not been mastered or documented.

When observed in Article 6 paragraph (3) in letter (c) it says explicitly that information relating to personal rights is something that is exempt from being given to other parties. This article can be used as one of the bases that are often used in protecting personal data.<sup>32</sup>

Mentioned in Article 26 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Unless otherwise stipulated by laws and regulations, the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned. Everyone whose rights are violated as referred to in Article 26 paragraph 1 (one) may file a lawsuit for the losses incurred.<sup>33</sup> It was explained that in the use of information technology, protection of personal data is a part of personal rights (privacy rights). Personal rights have meaning<sup>34</sup> Personal rights are the right to enjoy private life and be free from all kinds of disturbances. Personal rights are rights to be able to communicate with other people without spying. Privacy rights are rights to monitor access to information about a person's personal life and data.

Then in the regulation of sanctions as stated in article 54 of the ITE Law it says that for anyone who intentionally and without rights accesses, obtains, provides information will be punished with imprisonment for a maximum of 2 (two) years and a maximum fine of Rp. 10,000,000.- (ten million rupiah).

If traced in the contractual agreement regarding financial services, what illegal peer to peer lending service providers do, such as billing procedures that tend to be abusive and open financial information to those who are not entitled to it and share a consumer's personal data, is a clear violation. In this regard, the sanctions that have been described regarding this matter can be applied accordingly. Then in the regulation of OJK Regulation Number 1 of 2013 referring to article 2 what is done by peer to peer lending providers has violated the principles of consumer protection which include the principle of fair treatment and the principle of confidentiality and security of consumer data/information.

This means that if a person feels aggrieved because his identity is used in the misuse of personal data, then he can file a lawsuit for the loss obtained, the lawsuit in question is an Unlawful Act lawsuit regulated in Article 1365 of the Criminal Code "Every act violates the law, which brings harm to other people, obliges the person who because of his mistake to issue

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<sup>30</sup> Pasal 1 angka 2 Permenkominfo 20/2016

<sup>31</sup> Pasal 1 angka 3 Permenkominfo 20/2016

<sup>32</sup> Kusnadi and Wijaya, "PERLINDUNGAN HUKUM DATA PRIBADI SEBAGAI HAK PRIVASI," 11.

<sup>33</sup> Pasal 26 ayat (2) UU 19/2016

<sup>34</sup> Penjelasan Pasal 26 ayat (1) UU 19/2016

the loss, compensate for the loss.

In addition, for violations of personal data protection provisions according to Article 36 paragraph 1 (one) of the Minister of Communication and Information 20/2016 sanctions can be given in the form of verbal or written warnings, temporary suspension of business activities and/or announcements through online websites, which reads:

*Everyone who obtains, collects, processes, analyzes, stores, displays, announces, sends, and/or disseminates Personal Data without rights or not in accordance with the provisions of this Ministerial Regulation or other laws and regulations shall be subject to administrative sanctions in accordance with the provisions of the laws and regulations - invitation in the form of: verbal warning; written warning; temporary suspension of activities; and/or, announcements on online websites.*

If there is misuse of personal data or even the company providing the system 'fails' in protecting the user's personal data, there are two legal steps that the user can take. First, users can submit a complaint to the Ministry of Communication and Informatics of the Republic of Indonesia on the basis that the electronic information system provider has failed to protect users' personal data. In the context of legal action taken is a complaint, then the element of loss resulting in a personal data violation case that occurs does not need to be proven. As for the sanctions for violating the provisions on personal data protection, regulated in Article 36 Permenkominfo 20/2016, namely in the form of verbal and written warning sanctions, temporary suspension of business activities and/or announcements through online websites. It's just that if the user wants compensation, to be more precise, they can take the second step, namely filing a lawsuit in court.

#### IV. CONCLUSION

Misuse of debtor personal data by peer to peer (P2P) lending service providers is a violation of Human Rights because it violates a person's personal rights. Constitutionally this has violated the country's constitution which is a threat to society. Then from the perspective of law enforcement in general, this misuse of personal data cannot be implemented optimally because it is still hampered by law enforcement. Certainty in law enforcement is regulated by regulation in Law number 27 of 2022 concerning Protection of personal data, all that remains is the seriousness of the government and law enforcement in implementing it consequently.

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