

Legal Capcity in online loan transactions

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LEGAL CAPACITY IN ONLINE LOAN TRANSACTIONS (LEGAL PERSONAL LIABILITY THEORY STUDY)

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Abstract

Online lending is one of the financing business models organised using applications on the internet, a very crucial and decisive advantage in this online loan transaction is that transactions can be carried out by anyone by simply using a smartphone, in this position the debtor needs funds quickly with the desired amount and the creditor makes it easy to get a loan, but behind this convenience there are many¹⁴ cases, one of the reasons is that the debtor's capacity to perform legal acts is not considered. The purpose of this study is to determine how the law views the aspect of legal capacity in conducting online loan transactions and how exactly the aspect of legal capacity in the context of Leg¹³ Personal Liability theory. The type of research used in this research is a blended aspect by using a statutory approach, case approach and theoretical approach. The results show that the understanding of legal capacity in the legal aspect that measures in terms of age and status is incorrect, and legal capacity must be interpreted not only measured in terms of age or status but legal capacity must be interpreted more broadly, namely the ability of the parties to make decisions and the ability of the parties to carry out what has been decided by prioritising legal personal liability.

Keywords: legal capacity, fintech, personal liability

1. Introduction

Economically it is believed that the proliferation of online loan services will be able to boost the community's economy if the funds obtained are actually used to open or develop their business, the online loan business is the choice of the community because it is considered to have advantages compared to loan transactions through banks and other conventional financial institutions, including the first online loan transactions can be done anywhere with conventional loan services, transactions must be made at the¹⁵ address of the bank / financial institution and cannot be done outside the¹⁷ address of the bank / financial institution, for certain people there is a sense of reluctance to visit banks / financial institutions due to the distance that is far enough so that it will be more tiring and require more funds. Second, online loan transactions can be done at any time regardless of the time limit because it serves 24-hour loans, from these advantages, a

very crucial and decisive advantage is that this online loan transaction can be done by anyone by simply using a smartphone, in this position the debtor needs funds quickly with the desired amount and the creditor makes it easy to get a loan in contrast to service hours at banks / financial institutions can only be done at certain hours and are very limited plus if the bank is in a queue it will result in the transaction cannot be carried out and must be done the next day, this is certainly very inefficient and only spends and disrupts other activity time for prospective customers. Third, online loan transactions are carried out using easy and fast applications in contrast to transactions carried out through conventional banks / financial institutions complicated procedures and conditions so that prospective customers do not read in detail and thoroughly the application relating to the terms and conditions of borrowing money, this is certainly not a good thing in a lending and borrowing transaction because it will pose a risk to both parties. Fintech opens opportunities but comes with potential risks (Johannes Ehrentraud et.al, 2020). And indirect meetings between lenders and loan recipients create opportunities for risks for lenders and loan recipients (Laurentia Ayu Kartika Putri (2022)).

In principle, digital financial institutions that operate must obtain legality or izi from the Financial Services Authority (OJK) to provide comfort and legal certainty for the community. According to data from the Financial Services Authority (OJK) as of August 2022 there are 102 legal Online Loan applications, while Illegal Online Loans are 105 applications, while the characteristics of Illegal Online Loans include not being registered / licensed from the Financial Services Authority (OJK), Yoke Wang Tok and Dyna Heng (2022) shows predatory lending practices that have a negative impact on vulnerable groups. Offers using SMS/WhatsApp, very high interest and penalties, borrowers are charged additional fees, the repayment period is too short or not according to the agreement, requesting access to personal data, coercing, intimidating, threatening in making collections, and not providing complaint services, unclear office identity and cases of personal data theft. These are some of the problems and cause some risks that will be borne by the parties involved in this fintech lending business. BIS Papers (2021) shows the ³ digital transformation of finance also introduces-or heightens-cyber risk. Cybersecurity is an issue for all sectors and for traditional financial services providers as well as fintechs and big techs. Richar Bates (2017) shows in the same cases, such as with irresponsibility and predatory lending.

On the other hand, there are still many practices carried out by customers and fintech lending providers that are not in accordance with the basic joints of the agreement, namely the validity of the agreement, namely there must be agreement between the two parties, the parties must be capable of acting legally, the object must be clear and the cause is allowed. Of the four conditions, one of the most important conditions is the capacity of the parties, in some cases of online loans it turns out that the perpetrators are immature people, immature people are people who do not have the ability to act legally in transactions, many parties ignore this aspect even though in any transaction one of the conditions for the validity of the agreement is the capacity of the parties, especially online loan transactions are very specific agreements because they are related to debts and receivables, in this case the principle of prudence is still ruled out by fintech lending providers in Indonesia. So far, capacity is defined only in terms of age, whereas the capacity to act legally cannot only be measured by age but must be measured by the debtor's ability to pay. Definition ("Fintech Global," 2022) shows contract intelligence plays an important role across this trend; powering, protecting, and accelerating business.

Therefore, this research will study and analyse how the ability to act legally in online loan transactions and their legal consequences using the theory of Legal Personal Liability. Some previous studies that have the same scope but different focus of discussion can be put forward by the author as follows; research conducted by Muhammad Rahmadhani, Suratman and Diyan Isnaeni (2021) published in the *Dinamika Journal* entitled *Juridical Analysis of the Validity of Online Loan Agreements Based on the Civil Code*, focusing on seeing whether or not online loans are valid from a legal perspective. Research conducted by Jeremy Zefanya Yaka Arvante (2022) published in the *Indonesia Law Journal* entitled *The Impact of Online Loan Problems and Legal Protection for Online Loan Consumers*, focuses on the problems that occur in online loans and how legal protection for consumers. Research conducted by Ni Made Eka Pradnyawati (2021), entitled *Financial Technology (Fintech) Based Online Loan Agreement* and published in the *Legal Construction journal* focuses on a study of the legal protection of creditors who provide online loans based on Financial technology. Research conducted by Abdul Latif Mahfuz (2021) entitled *Legal Risk Analysis of the Existence of Online Loan Businesses in Indonesia* published in the *Doctrinal Law journal* focuses on discussing the legal basis for online loans in Indonesia and the legal risks that occur from online loans. Research conducted by Dharu Triasih, Dewi Tuti Mauryati and A Heru Nuswanto (2021) presented at the Semarang State University

national seminar focused on legal protection for consumers in fintech online loan agreements. Research conducted by Georgios A. Panos and John O.S. Wilson entitled *Financial Literacy and Responsible Finance in the Fintech era: capabilities and challenges* focus on the importance of financial literacy and responsibility in the financial technology era. Diyan Lestari and basuki Toto Rahmanto's research entitled *Fintech and Challenge for Bank Sector* aims to analyse the fintech strategy to enter the financial service sector and how banks response to the financial technology movement in the digital era since the fierce competition required banks and fintech to become more innovative. Research Lu Sudirman and Hari Sutra Disemadi, in *Legal Protection for Borrower and Business Dispute Resolution in Fintech Lending Service* focuses on studying how important the legal protection for Borrower who use fintech service and taken to resolve business disputes Research Merlin Swantamalo Magna in *Is the agreement with Fintech Service Valid? Focuses on studying about the validity of the agreement with Fintech Service*. Research Rizkyka Virgionandy, Lalu Husni, Muhaimin (2021) focus on studying *the Legal Liability of Fintech Companies for Accessing Telephone Contact Lists and Photo Galleries in the Online Loan Process*.

The above research on average only discusses legal protection for the parties, the validity of online loan agreements and legal risks and no one has examined legal capacity in online loan transactions, the novelty of this research is that juridical and empirical facts are analysed using the theory of Legal Personal Liability.

2. Methodology

In this study, researchers used a type of blended aspect research, namely combining juridical aspects with empirical aspects, namely by placing the two specs in a balanced and mutually reinforcing manner by examining social phenomena that occur in society directly related to applicable legal rules, the research approach uses a statute approach and a theory approach. Legal cases in the online lending business (fintech) and relevant legal rules are developed and analysed in such a way as to use the theory of Legal Personal Theory from primary legal sources and secondary sources, with such analysis it can be obtained inductive conclusions and in general will provide understanding in structuring online loans in Indonesia towards a better direction.

3. Result and Discussion

3.1. Capable in the legal context

An important aspect in an agreement is the validity of the agreement, whether or not a transaction is valid will have legal consequences for both parties in fulfilling their obligations, so that the agreement made by the parties can be used as a law for the parties based on Article 1338 of the Civil Code, it must fulfil the elements as regulated in Article 1320 of the Civil Code, namely: 1). Agreement of those who bind themselves; 2). Capacity to enter into an agreement; 3). A certain subject matter; 4). A cause that is not prohibited.

According to Article 1329 of the Civil Code states that basically everyone is considered capable of making an agreement unless the law determines otherwise. Agreement is a legal act that is commonly carried out in society both in the context of a simple promise that has a small impact and a complex promise that has a big impact, therefore the law places everyone capable of making an agreement in terms of basic human rights. Unless the law determines otherwise is a phrase that confirms that "capable" must be determined by criteria, a certain measure or limitation. Therefore, according to Article 1330 of the Civil Code, those who are declared incapable of making agreements are minors, persons placed under guardianship and women who have married in matters determined by law and in general all persons who are prohibited by law from making certain agreements. These are the criteria for people who are declared incapable of making agreements, so it can be interpreted that the status of people outside the above criteria is "legally capable of making agreements". Ability in law contains two meanings, namely competent to do legal action and have the power to make agreements (Merlin Swantamalo Magna, 2021).

It should be understood that the regulation has not fully touched on people who are "incapable", firstly the law should include the criteria for "incapacity" for people who are elderly (elderly and senile) who are in a position of incapacity to act legally because they are unable to digest information from other parties properly, even in the context of religious law people in this condition include people who are "forgiven" if they make mistakes because they no longer have the ability to distinguish between right and wrong things. Both laws must state that an insane person fulfils the criteria of "incapacity" because there has been a dysfunction of the mind so that it is "forgiven" by the law even though "insane people" can be categorised as people under guardianship.

Article 330 of the Civil Code states that a person is an adult if he/she has reached the age of 21 years, or has been married before reaching that age. However, a minor who is not yet 21

years old can perform all legal acts if he/she is 20 years old and has received a declaration of adulthood (venia aetatis) from the President after hearing the advice of the Supreme Court, as stated in Articles 419 and 420 of the Civil Code²). Furthermore, Article 426 of the Civil Code stipulates that a child who is 18 years old can perform certain legal acts after obtaining a declaration of adulthood from the court and a person who is 18 years old can make a will (Article 897 of the Civil Code). Furthermore, Article 29 of the Civil Code regulates that men who have not reached the age of 18 full years and women who have not reached the age of 15 full years are not allowed to marry, but if there is an important reason the President can remove the prohibition by granting dispensation, this is different from Law Number 1 Year 1974 concerning Marriage which regulates that men and women who may marry are 19 years old, another provision is that children who are 15 years old can become witnesses (Article 1912 of the Civil Code).⁵

According to SEMA No. 7/2012, an adult is capable of acting in law, namely a person who has reached the age of 18 years or has been married, the determination of adulthood is also found in various laws and regulations such as in the Criminal Code, which is 16 years old, the Law on the Juvenile Justice System, the Labour Law, the Corrections Law, the Human Rights Law, the Child Protection Law, the Law on Pornography, the Citizenship Law, the Law on Eradication of Human Trafficking Crime, which limits the age of 18 years as an "adult".⁵

Determining the limit of a person's maturity according to the law based solely on age is not appropriate because the level of maturity of a person is not so influenced by the level of age, for example someone who is not yet 18 years old is capable and capable of performing certain legal acts, on the other hand there are those who are more than 18 years old but are not yet capable and capable of performing legal acts. A person's capability must be measured from various aspects, including emotional aspects, psychological aspects, biological aspects, educational aspects, experience aspects, economic aspects and so on, therefore the determination of "capable" must be followed by the phrase "by considering other aspects that affect a person's maturity".

Capable means "able", a person is declared capable of performing a legal act if consciously based on the above aspects is able to perform a legal act, consciously knows the consequences of the legal act he performs.

3. 2. Legal Capacity in Online Loan Transactions from the Aspect of Legal Personal Liability Theory

The agreement is required to be carried out by a person who has the ability to perform legal acts. Online loan transactions between one person and a fintech provider are a legal act in the field of lending or borrowing law, fintech is not done face-to-face, prospective borrowers only need to send proof of identity such as an Identity Card (KTP) or other identity, an Identity Card (KTP) or other identity can be used as proof of a person's identity, with only the ID card identity, the debt engagement will be processed immediately. The problem is whether the prospective borrower is a person who has the capacity to carry out legal acts, whether the debtor can truly understand the agreed agreement, whether the debtor is able to carry out the contents of the agreement, whether the debtor realises the consequences if he is unable to carry out the agreed agreement.

In such conditions cannot be ascertained by the fintech provider, who can measure these conditions directly is the debtor himself, so that the fintech provider knows that before the parties agree on the agreement, an in-depth exchange of information must be carried out, there needs to be a question and answer process to measure the level of the debtor's ability. The meeting between prospective creditors and prospective debtors in one place / assembly in every transaction should be done to provide legal certainty of who is the legal subject in the agreement, thus fostering confidence for the parties to agree or not the agreement. In the concept of financial technology, this aspect is ignored, the agreement in financial technology transactions prioritises the principle of trust alone without being accompanied by certainty and strong confidence, tending to act hastily and recklessly. This is evident in several cases of ID cards being used for online loan transactions by other people, daily interest rates that change and so on. According to data from the Financial Services Authority, outstanding bad loans as of January 2022 reached Rp. 785.94 billion, increasing to Rp. 1.21 trillion in July 2022, when viewed in terms of dominant age, 19-34 years old recorded bad loans (dailysocial.id, 2022). This figure shows that there is no direct correlation between capability and age to fulfil obligations. The Financial Services Authority (OJK) also recorded losses of financial technology or fintech companies of Rp.114.08 billion in the first semester of 2022 (Republika.co.id, 2022).

The trust should be obtained after obtaining definite information about who someone is dealing with, and how the contents of the standard clause offered by the fintech lending provider to the debtor, so that each party obtains certainty and confidence including in terms of legal capacity. If the online loan application provider is an unclear party and the company is a legal

entity in order to become a legal subject, it is still questionable whether the agreement violates the subjective requirements of Article 1320 KHPerdata (Surya Dewangga Putra, 2021). In this context, prospective debtors must be able to ensure that the online loan provider company is an organiser that is registered and licensed by the Financial Services Authority (OJK), and has a good reputation in running its business.

In the context of online loan agreements, this theory should be used as a guide and guideline for the parties before and in carrying out the agreed agreement, the theory of Legal Personal Liability, according to Van Hammel, the ability to be responsible is a situation where a factor in the form of a person's psychological factors and the level of his intelligence affects 3 (three) basic human abilities, namely; first, being able to understand the consequences of his own actions; second, being able to realize that his actions according to the perception of society are not allowed; third, being able to determine his own will for his actions. The measure of a person's "capability" to be held accountable for his/her own actions is his/her mental or psychological attitude. This mental or psychological attitude will be seen in what is said and what is done.

Thus, in the context of this online loan transaction associated with the theory of legal personal liability, the benchmark for "capable" is that the parties already know the contents of the agreement, understand the legal consequences that will be accepted as a result of not carrying out what has been agreed, the parties must be aware that what is done is of their own free will without coercion or because of the wishes of others, not as a tool or order of others because the responsibility is imposed only on themselves not imposed on the person who forces or orders, must realise that not carrying out the transaction is an act that is despicable, disgraceful, wrong and sinful.

In the context of civil law, a person is said to be "at fault" and can be held legally responsible if the elements of fault are fulfilled. Article 1365 of the Civil Code, commonly referred to as the tort article, requires the fulfilment of the element of fault to declare that a person has committed a mistake and therefore can be held liable, namely the existence of an act, the existence of an element of fault, for the fault to cause loss and the existence of a causal relationship between the fault and the loss experienced by someone. Error in this case is an act that is contrary to the law, the law in this context is not only the law but also decency and morality. In the legal relationship of the online loan business, a bond is established which aims to

obtain benefits for both parties, when the expected benefits are not obtained and even harm one of the parties due to a mistake made intentionally, the injured party has the right to claim rights to the party who has harmed him.

Legal reform is not only by forming or changing laws and regulations, a more fundamental legal reform is to change the way people think about the law and make the correct interpretation of a rule of law or a legal concept. So that the way of thinking of the community and fintech lending actors is not imprisoned by the limitations of "capable" only limited to age and status of a person, then with the analysis of legal personal liability theory, cases in the online loan business can be avoided and realised by the parties, legal changes enable new developments and allocate gains and risks from innovation, but also repress new conduct that produces negative effects (Jose Garrindo, et.al, 2022).

4. Conclusion

4.1. Coclussion

Capable in the legal aspect that measures only in terms of age and status is not appropriate, the ability to do law must be interpreted not only measured in terms of age and status but legal capacity must be interpreted more broadly, capable means "capable", a person is declared capable of performing a legal act if he is consciously able to make decisions independently, is able to perform a legal act and consciously knows the consequences of his legal actions.

The Legal Personal Liability is a theory of personal ability to be responsible for legal acts committed by the parties in online loan transactions studied using the theory of Legal Personal Liability including the ability to be responsible is a state of a person's psychological factors and the level of intellectuality affects 3 (three) basic human abilities, namely; being able to understand the consequences of his own actions, being able to realise that his actions according to the perception of society are not allowed and being able to determine his own will for his actions.

4.2. Limitation

This research is limited to 2 (two) research scopes, namely to examine the limits of capacity according to Indonesian laws and regulations and to analyse the limits and understanding of "capacity" using the theory of Legal Personal Liability.

4.3. Suggestion

In order for the public to understand the limits of "capable" and provide a correct understanding of the concept of "capable", it is necessary to deepen the concept in educational forums on campus, seminars, conferences and other forums, so that online loan transactions carried out really consider the aspect of "capable" as an absolute requirement so that legal problems that are feared to occur can be avoided by both parties.

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