

Tinjauan yuridis perjanjian pelaksanaan layanan pinjam meminjam uang berbasis teknologi informasi = Judicial analysis of it based lending services agreement

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Abstrak

Peer to peer lending, bagian dari financial technology fintech, di Indonesia telah melahirkan Perjanjian Pelaksanaan Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi LPMUBTI yang diatur oleh POJK tentang LPMBUTI, disamping telah hadir Perjanjian Pinjam Meminjam dan Perjanjian Kredit. Penelitian ini hendak menganalisis perbandingan Perjanjian Pinjam Meminjam, Perjanjian Kredit, dan perjanjian Pelaksanaan LPMUBTI, menganalisis mengenai Dana Proteksi yang diberikan oleh Penyelenggara LPMUBTI di Perusahaan X, dan menganalisis mengenai perlindungan hukum bagi Pengguna LPMUBTI di Perusahaan X. Penelitian skripsi ini merupakan penelitian yuridis normatif yang menghasilkan tipologi penelitian deskriptif. Penelitian ini menunjukkan bahwa terdapat sejumlah persamaan dan perbedaan diantara tiga bentuk perjanjian tersebut. Persamaan intinya adalah Perjanjian Pelaksanaan LPMUBTI dan Perjanjian Kredit merupakan perjanjian dengan syarat khusus yang diatur diluar KUHPerdatta innominat, sedangkan terhadap Perjanjian Pinjam Meminjam berlaku ketentuan KUHPerdatta nominat. Didalam Perjanjian Pelaksanaan LPMUBTI, terdapat hubungan hukum berupa perjanjian pemberian kuasa antara Penyelenggara dengan Pemberi Pinjaman serta Perjanjian Kredit antara Pemberi Pinjaman dengan Penerima Pinjaman. Terdapat hubungan Pelaku Usaha Perdagangan Melalui Sistem Elektronik berupa Penyelenggara Sarana Perantara dengan Konsumen sehingga para pihak tunduk kepada UU ITE, PP Penyelenggaraan Sistem dan Transaksi Elektronik, UU Perdagangan, dan UU Perlindungan Konsumen. Hasil analisis mengenai Dana Proteksi di Perusahaan X yang dikaitkan dengan sejumlah ketentuan yang ada, memberikan hasil bahwa Pasal 43 huruf c POJK LPMUBTI mengenai larangan Penyelenggara memberikan jaminan atas segala bentuknya atas pemenuhan kewajiban pihak lain sesungguhnya kurang memberikan perlindungan hukum bagi Pengguna LPMBUTI di Perusahaan X, terutama bagi Pendana. Di sisi lain, POJK LPMUBTI tidak mengatur bahwa klausul yang bertentangan dengan undang-undang adalah batal demi hukum.

<hr>Peer to peer lending, a part of financial technology presence in Indonesia, have made a new type of agreement called IT Based Lending Services, following the existence of Loan Agreement and Credit Agreement. This thesis analyze about the comparation between Loan Agreement, Credit Agreement, and IT Based Lending Service, also analyze about the Protection Fund given by Company X, as well as legal protections for the user of the IT Based Lending Services platform facilitated by Company X. This thesis is a library research which delivers descriptive research typology. This thesis shows that there are some similarities and differences between these three types of agreement. The main similarity between the IT Based Lending Service and Credit Agreement is both are not specifically regulated by the provisions in the Indonesia Civil Code innominat, while on the other hand Loan Agreement is specifically regulated by the provisions in the Indonesia Civil Code nominaat. In the IT Based Lending Services Agreement, there is a legal relationship of Delegation of Authority Agreement between the Business Entities and the Lender and also a credit agreement between the Lender and the Borrower. There is an e Commerce Business Entities relationship in the form of Intermediary Business Entities and Consumer in IT Based Lending Service, so

that it is regulated by Indonesia's Law of Electronic Information and Transactions, Regulation of The Government concerning Electronic System and Transaction Operation, Law of Trade, and Law of Consumer Protection. The analysis result of Protection Fund in Company X and the existing regulations, gives the conclusion that the Article 43 of Financial Authority Regulation concerning IT Based Lending Service still attributes a minimum protection for the User of the services facilitated by Company X, especially for the Lender. On the other hand, Financial Authority Regulation concerning IT Based Lending Service does not regulate whether the status of the agreements that are contradictive with the provisions of Law are void by law or not.