

DEVELOPMENT AND CONTROL OF USE OF PAYMENT TRANSACTION WITH FINANCIAL TECHNOLOGY (CASE STUDY OF PAYMENT USING OVO)

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ABSTRACT

The writing to find out how the development of financial technology in Indonesia, to find out what legal constraints faced by payment transactions using OVO, and to find out how legal certainty about payment transactions using OVO. The research in this thesis uses type of normative juridical and empirical juridical research. The approach is carried out by analyzing and interpreting theoretical matters concerning principles, conceptions, doctrines and legal norms relating to adjusting the rule of law with a matter, especially related to financial technology. Research is also carried out by conducting a sociological approach by direct research in the field by relating it to community habits. The development of Financial Technology in Indonesia by looking at the case studies from OVO can be seen from various factors that influence its development such as how to understand and introduce Financial Technology to ordinary people, the licensing process that must be completed by Financial Technology companies, the ease of service that can be provided by Fintech company towards the general public, protecting privacy for all consumers who will later use Fintech so that security can be obtained by the community when used later, and the regulations that underlie Fintech throughout Indonesia. Constraints from using Fintech by ordinary people, among others, where there are still violations of privacy or irresponsible use of personal data so that there are still many people who do not want to use Fintech, and many people still use Fintech but do not read the terms and conditions of using Fintech, so that abuse can occur from it, so that the community will be harmed by problems that may occur and cannot claim their rights. Legal certainty from the widespread use of Fintech is still being questioned because of the legal bluntness of matters relating to Fintech, there are still many irregularities and gaps that can be exploited by people who are not responsible but the law cannot adjudicate the problems that might occur, so that those who create regulation should be able to create regulations as quickly as possible to fill these gaps. Other things related to Fintech will then be discussed in this thesis.

Keywords: Financial Technology, Legal Certainty, Transactions, Developments, Constraints.

INTRODUCTION

Advances in technology and science very rapidly from a variety of fields, where the man has been unable to escape from this technology, because the technology is easier for a lot of things in the everyday life of society, then the majority of Internet users in Indonesia is aged 15 to 35 years, and approximately 56.4% of people including bargain hunters such as the people who can access the Internet to search for information and everything else for the needs of himself in quite a long time¹, It is proved that life 20 years ago as compared with life now is very different, in a very short period of time.

Authors take the topic of financial technology, because the authors saw that already saw a shift from the public who rely on everything manually into a society that does everything automatically.

This makes the community needed something very fast in all respects, and can facilitate their activities. One is in economic activity, people find a way for their economic activity can walk more easily, especially in the payment system. The payment system is cash economy have started to switch to an electronic payment system, where people do not need to carry large amounts of money to buy their needs. Electronic payment system at the moment is very much brings advantages for its users in the era of globalization.

In 2006, Bank Indonesia has started the action for the use of electronic money, the action of the program called "Less Cash Society", which Bank Indonesia believes that the use of cash in the payment system daily, it is not effective, and can hinder the efficiency of payment², The forecast is that the use of electronic money may not be inevitable has become a reality that can not be denied today.

This technology development is of course financial find many obstacles, one of them in the way the regulations are still not thoroughly protect financial consumers using this technology.

FORMULATION OF THE PROBLEM

- a. How is the development of financial technology in Indonesia?
- b. What legal constraints facing towards payment transactions using OVO?
- c. How legal certainty in payment transactions using OVO?

¹ ibid

² https://www.bi.go.id/id/ruang-media/siaran-pers/Pages/sp_82606.aspx accessed on January 29, 2019 22:45 hours GMT

RESEARCH PURPOSES

- a. To find out how the development of financial technology in Indonesia.
- b. To find out what legal constraints faced against payment transactions using OVO.
- c. To find out how legal certainty in payment transactions using OVO.

BENEFITS OF RESEARCH

1. Theoretical benefits
 - a. From the results of the study are expected to provide utility in developing the law, especially civil law, the Law on the ITE (Information and Electronic Transactions), Act on Financial Technology or Electronic Money and Bank Indonesia Regulation on Financial Technology.
 - b. Can be used as guidance in other studies in areas of research that I researched.
2. Practical benefits
 - a. For society, the presence of this study are expected to be used as useful information for people to be able to use financial technology or e-money wisely.
 - b. For society, with research conducted by the author, the community is expected to provide an input and may raise an awareness of the importance of the use of financial technology or e-money in the current economic activity.
 - c. For society, with research conducted by the author, it is expected that the public can understand the laws that apply to the use of financial technology or e-money, so that people can understand overall how to use it in accordance with the applicable procedures and in accordance with legal regulations.
 - d. For the Government, the presence of this study are expected presence of a development and the development of ideas on financial technology or e-money better and to improve efficiency in the implementation of economic activities by the community.

The benefits of the use of Financial Technology

The benefits of the use of financial technology associated with e-commerce³ is as follows:

- a. Walking in the Internet world does not recognize holidays and large, all transactions can be done anytime and anywhere
- b. Without frontiers and time so as to provide extensive marketing reach and timeless
- c. Lowering operating costs (operating cost). The use of Internet technology allows us to conduct trading activities 24 hours a day, 7 hours a week because it uses software technology to facilitate.

Types of Financial Technology

- a. Credit Card Transactions
Credit Card is a payment instrument that uses a card where the cardholder payment obligations met first by the acquirer or the card issuer and card holder is obligated to make payments at the agreed time with the repayment in a lump sum or by installment payments⁴,
- b. E-Wallets
E-wallet or electronic wallet is an alternative to all traditional payment methods. Electronic wallet is a tool that can be used in online transactions using a technology called Electronic Commerce Modeling Language (ECML)⁵,
- c. *Peer to Peer Payment*
This payment model allows consumers to conduct transactions between money transfer digital cash by using e-mail with the provisions of consumers⁶,
- d. *Payment, clearing and settlement*
Fintech which provides payment system services both held by the banking industry as well as by Bank Indonesia such as Bank Indonesia Real Time Gross Settlement (BI-RTGS), National Clearing System BI (SKNBI) to BI scripless Securities Settlement System (BI-SSSS). For example, Kartuku, Doku, iPaymu, Finnet and Xendit⁷,
- e. Smart Cards
Smart card is an electronic card that uses a computer chip that can store data or more information than a regular credit card.
- f. E-Billing

³Nugroho Adi Sulisty. 2016. E-Commerce; Theory and Implementation. Yogyakarta: equilibria. P. 13

⁴Nugroho Adi Sulisty. 2016. E-Commerce; Theory and Implementation. Yogyakarta: equilibria. P. 44

⁵Sarwono, Jonathan and Tutty Martadiredja. 2008. Theory of E-Commerce: The Key to Successful Trading on the Internet. Yogyakarta: Gava Media. Hlm.90

⁶Ibid. hlm.91

⁷ Accessed from <https://www.cnbcindonesia.com/fintech/20180110145800-37-1126/ini-dia-empat-jenis-fintech-di-indonesia> dated February 15, 2019 14:25 hours GMT

E-Billing, which stands for Electronic Bill Presentment and Payment (EBPP), offers the ability to perform billing and payments in a variety of platforms. The payment can be done electronically transfer from the customer's account. Process payments made through the Automated Clearing House (ACH), which is now recognized as a legitimate method of electronic transfer⁸,

- g. Risk management
Financial planning in digital form. With fintech this type, you will be helped to know the circumstances, your financial situation and make financial planning easier and faster.

Financial transaction mechanism using Technology

Execution of transactions using e-money according to Bank Indonesia Regulation Number 11/12 / PBI / 2009 on Electronic Money (Electronic Money) (hereinafter referred to as PBI No.11 / 12 / PBI / 2009) there are parties who act as:

- a) Principal is Bank or Building Society Bank is responsible for the management of the system and / or network among its members, both of which act as the issuer and / or acquirer, in cooperation Electronic Money transactions with members based on a written agreement⁹,
- b) Publisher is a Bank or Bank Institutions that issue Electronic Money¹⁰,
- c) Acquirer is Bank or Building Society Bank are working with merchants, which can process data Electronic Money issued by other parties¹¹,
- d) Holders are parties using Electronic Money¹²,
- e) Clearing is a Bank or Building Society Bank who calculate financial rights and obligations of each of the Issuer and / or the Acquirer in the framework of the Electronic Money transaction.
- f) Final Settlement Operator is Bank or Building Society Bank are committed and are responsible to the settlement of financial rights and obligations of each Issuer and / or the Acquirer in the framework of the Electronic Money transaction based on the calculation of Clearing.

Legal Aspects of the Financial Technology

The actual legal aspects must be considered in the financial technology is a matter of contract, witnesses and conducted trade mechanism (Ford, 1997)¹³, Basic use e-money in e-commerce transactions are transactions sale and purchase agreement between the two parties (seller and buyer). Judging from Article 1313 of the Civil Code: "A treaty is an act by which one or more persons bind himself to one or more other people"¹⁴, E-commerce agreement in Indonesia has not been set explicitly. Has no treaty in force at the sites on-line are engaged in on-line trading made by Indonesian businessman but nonetheless the agreement still follow agreements in general, so the transaction by using e-money is still following the agreements in general, the common law is civil law Indonesia with an open system, in terms of freedom of contract does not contradict the norms of morality and public order, and does not conflict with applicable law in Indonesia. That is, an agreement such as the agreement between the issuer and the merchant in the use of e-money as a means of payment transactions are also still embrace of Indonesian civil law,

OVO

OVO history

- a. PT. Multipolar Tbk
Established in 1975 as an electronics retailer, the Company has developed into a strategic investment company with a business focus on retail and technology, multimedia and telecommunications (TMT) segment.
- b. PT. VisioNet International
Starting in 2006 saw the development of the banking industry in Indonesia are rapidly that banks require the support of no small amount of EDC, PT Visionet International was formed by PT Multipolar Tbk to meet the needs of EDC Lippo Bank.

⁸Sarwono, Jonathan and Tutty Martadiredja. 2008. Theory of E-Commerce: The Key to Successful Trading on the Internet. Yogyakarta: Gava Media. Hlm.94

⁹ Article 1 paragraph 5 of PBI No.11 / 12 / PBI / 2009 on Electronic Money (Electronic Money)

¹⁰ Article 1 point 6 PBI No.11 / 12 / PBI / 2009 on Electronic Money (Electronic Money)

¹¹ Article 1 point 7 PBI No.11 / 12 / PBI / 2009 on Electronic Money (Electronic Money)

¹² Article 1 point 8 PBI No.11 / 12 / PBI / 2009 on Electronic Money (Electronic Money)

¹³Indrajit, Richardus Eko. 2016. Electronic Commerce; Standards-Based Learning Module Competency and Job Qualifications Edition 2. Yogyakarta: Preinexus. Hlm.158

¹⁴ Article 1313 of the Civil Code

RESULTS AND ANALYSIS RESEARCH

A. TECNOLOGY FINANCIAL DEVELOPMENTS IN INDONESIA

A. Factors affecting the development of Fintech

Factors affecting the development of Fintech in Indonesia is very diverse. These factors there are internal and external, of course, to be able to learn how to make progress Fintech can run smoothly, this factor must be understood. These factors are the following:

1. The introduction and understanding to the community Fintech

Recognition and understanding of the Fintech in society is still lacking, as is evident from a study conducted by the researchers. This factor is very important, because many people, especially the elderly aged 40 years and over who do not understand the usefulness of Financial Technology process payment transactions, and Peer to Peer Lending. The results of the study that researchers do, it can be said that there are still some people who are indifferent indifferent to the advancement of technology today.

This of course provides its own challenge to the government, especially the Institute of Financial Services and the Fintech company, so that from it is necessary to increase financial literacy in the community. Financial Literacy (financial literacy) is a series of processes or activities to improve the knowledge, confidence, and skills of consumers and the public at large so that they are able to manage your finances well. Their financial literacy, it will be able to provide some significant benefits, namely:

- a. Support financial system stability
- b. Improving economic efficiency
- c. Reducing illegal Fintech
- d. Support the expansion of financial markets
- e. Improving the Human Development Index (HDI) Indonesia
- f. Contribute positively terfacing the local and national economic growth

One's knowledge of the usefulness of saving and investment is certainly very necessary explored, this is the duty of the government to continue to provide educational activities to the public on this matter.

2. Licensing

Licensing of a Fintech can be said is still very complicated, especially Fintech Sharia. Fintech Sharia is very complicated in the licensing, because the licensing process for the Islamic finance fintech not only through the Directorate of Non-Bank Financial Industry (IKNB) The Financial Services Authority (FSA) but also by the Indonesian Ulema Council (MUI) for the filing of a fatwa. Fintech must have Fatwa Islamic Sharia, will be run in Indonesia.

3. Ease of Service

Services of a Fintech be an important factor on the interest of a person to use the Fintech. Services are expected to become increasingly easier, where more easily service provided Fintech, then people will be more interested in using it. Care should be done in a simple and efficient, where people are not complicated to use, and can understand how Standard of Procedure of the product. Problems experienced by consumers can be served quickly and given an easy solution.

4. Consumer Privacy Protection

A company Fintech must ensure that consumer data contained in the application Fintech can be accounted for and not published intentionally. This has become one of the main factors, which the public trust in an application Fintech priority. Fintech company should be able to do the transparency of consumer data. Parents aged 40 years and over, there are still many who do not believe in the Fintech applications, because they do not understand the working system of the technology, and lack of transparency significantly to the consumer. Communication between companies Fintech, such as OVO, there is still a lack of communication, and society still lack the necessary information to be able to increase the trust. Increase public confidence,

5. Regulation

Regulations to create a balance between the Company Fintech with the community is needed. The regulations need to be created in which the Company Fintech not having problems and given the ease of registration and licensing, the regulation would have to be able to define the rights and obligations in more detail in order to avoid the abuse of power. The regulation should also be useful for the society in which many of these regulations are still detrimental to society, especially in terms of privacy protection.

Regulation should also continue to be developed and researched more seriously, so there is no confusion in the community. Good regulation can also create legal certainty, especially regarding Fintech. Regulation can now be said to be made pretty good, but too long been discussed, but Fintech stage when it's included stage is quite important, and the laws governing it should have been completed by all. Regulation that is too long can cause legal certainty be crippled.

B. OBSTACLES FACED BY FINTECH

No process is perfect, there are still a lot of abuse of technology for its own sake can be detrimental to the community. Such constraints not only of the misuse of technology, but there are also derived from internal fault of the government or the financial institution Fintech Company. The following are the constraints faced and may face in the future:

1. The permissibility of the use of personal data

Why do researchers say that? Because, on the people who use the product Fintech harmed. Things that caused the damages, because using a product Financial Technology, society indirectly forced to provide personal data, if the people do not want to provide these data which can not use the product Fintech it, and the company Fintech should be permitted to use such data in law. OVO as media studies researcher also examines consumer protection OVO. OVO stressed that any user who wants to use the OVO product must approve the provisions that have been determined.

Community harmed more indirectly by the use of personal data, as in the Terms and Conditions OVO that guarantees the confidentiality of personal data consumers are also asking the community to maintain its own access to the personal data has been given to OVO, and if one day happen access by parties the third is not responsible, then the OVO can be argued that users do not keep personal information secret and give it to someone else, and then do not want to be responsible for it. OVO mentioned in the Terms and Conditions that: "You hereby agree and bind themselves to liberate Us from any and all claims of any kind, from any party, anywhere proposed, arise or occur in connection with or as a result of:

- a. Data usage by us based on these Terms and Conditions or by approval, recognition, authority, power and / or rights that you provide, either directly or indirectly to Us in these Terms and Conditions;
- b. provision of data either directly or indirectly by You to Us or into or through the application is that you do (i) violate or against the law or regulations in force, (ii) infringes the rights (including intellectual property rights) on or belonging to any person or party, or (iii) breach of the contract, cooperation, agreement, deed, declaration, determination, decision and / or any documents where you are or where your party or your assets are tied up; "

Another problem that may occur in the community in the use of OVO is about the privacy policy changes undertaken by OVO. Users who have given consent to the privacy policy before, also be deemed to have agreed to the privacy policy changes that may occur, but it is very detrimental to the consumer, where the consumer should be informed again whether to agree with the privacy changes were made, and should not be considered immediately agreed. The consumer's position was again weakened on this issue, with the agreement made by the consumer, then the consumer will inevitably still have to obey.

2. Still susceptible to Cyber Crime

Technology increasingly complex, will be an opportunity for Cracker to break into the technology system. Fintech Technology no one can guarantee 100% security, because there are always security gaps or weaknesses that might not be detected. Complex technology also makes Cracker to break into the security system becomes difficult to detect, because the Cracker certainly has to know how to get away from it, or certainly do Cyber Crime advance and profit before known.

Cyber Crime is not only just about Cracker who use personal data from the system that has been compromised technology for its own sake, but also can occur Cyber Terrorism. The government through the Financial Services Authority has issued regulations relating to anti-terrorism are emphasized to the whole company Fintech registered to work optimally to prevent the system can be compromised by terrorists to be used for the benefit of terrorists and can continue to improve the security of the technology.

3. Money Laundering Measures

Fintech technology also has other problems that occur in the community, which is still vulnerable to the Money Laundering Measures. This is the risk caused by the cashback or discount given to the public. Many of the actions that break the rules, such as the person who opened his shop in an online store, then at that point the product Fintech (for example, OVO with Tokopedia) is holding the cashback on all products online store, so that he at that time send goods to their own friends or the family itself and making transactions as usual, at the end of the fictitious goods received by friends or family that have participated in cooperation, and then these people have benefited from their cashback or discount held by Fintech products (for example, OVO). This is often a serious thing to review, because it can cause harm to the company Fintech.

4. There is no regulation concerning the failure of the transaction

Why do researchers say such things? Because, in most products Fintech (such as, OVO and Go-Pay) mentioned in the Terms and Conditions that they are not responsible for the failure of the transaction that might occur when a system error occurs inadvertently. Cases like this, someone shopping at one Merchant and then do want to perform payment transactions using OVO, but when it happened to be a coincidence, EDC was having problems, and customers only have a balance of OVO and do not carry cash, forced him not can bring the goods already would be purchased because she did not have legal power to demand pay using OVO.

Terms and Conditions OVO, stated that: "You have to know that the services, applications, accounts and / or system may or may experience, there are or there are restrictions, delays, and / or other problems, including that caused by or in connection with (a)

unavailability or limited network (including the internet) and / or the use of, or (b) unavailability, disruption or malfunction of certain features on the device you are using. We are not responsible for any delays, delays, unsuccessful, disruption or failure of a transaction due to the above "and" You have to know that there is the possibility of (a) System or Application (or any part of the system or application) unstable, disturbed, stopped, did not go well, do not run perfectly and / or have a few bugs, and / or (b) Services (or any features futur or certain parts) can be changed, are not available, and upon the occurrence that you agree not to claim to Us ". Points described above that OVO is in a strong position, where the OVO users cannot sue them for the failure of the transaction or system that can harm them, this should be considered by the government's financial services institutions such as the FSA.

5. Fintech many products may cause confusion in the community

It does not apply to products Fintech Peer to Peer Lending, but applies to products Fintech that serves as an electronic wallet (e-wallet) and payment gateway. Fintech based products as a means of payment transactions, should be limited in number, because if the product has a very large number can cause confusion in the community.

Government to be able to run the industrial innovation Fintech, then it should be able to seriously carry out activities to educate people to use Fintech as one means of payment, and the enacting of products Fintech as one means of payment are required in addition to using cash, so there are no longer restrictions on the use of products Fintech against certain Merchant.

6. There are still many people who do not understand the Fintech

It really is a fact that occurred in Indonesia, although the number of users Fintech has included quite a lot, but in fact more than half the population of Indonesia has not used Fintech to carry out their economic activities, such as in the case of lending (borrowing) and conduct payment transactions. Using Fintech to borrow money can certainly ease lending, but there are still many people who do not understand the how. The government also helped by the people who use Fintech in spending cash manufacturing cost, so that when people use Fintech many gains, although there are still risks that can occur in use.

The government is still not so serious response to this case, and should Fintech can be a top priority for development in the community. Education regarding consumer protection to the community are needed, but a previous regulation of consumer protection and personal data of consumers in particular, should be completed first. Most users Fintech is the millennial generation, but that does not mean parents are not a priority to develop Fintech.

7. Still many Fintech Illegal

FSA has received the 1,330 complaints from various circles of society related to some of the things at the end of 2018, but most are from troubled or P2P lending can be said of cases of illegal Fintech.

The government in this case is also thinking about a limited number of companies Fintech to perform surveillance and monitoring tasks optimally, so data security is maintained.

8. Violation of privacy in everyday life

Many privacy violations that occur in everyday life, for example, is a case in Grab. Grab is one platform that is widely used in a variety of matters relating to transport. The use of personal data should be done carefully so as not to be misused, although the case of small cases, but can continue to spread, should the phone number and user name Fintech product can be disguised so that privacy protection is maintained.

Legal certainty regarding Fintech

Legal certainty regarding Fintech still require a lot of additions, especially regarding personal data protection section, prevention of money laundering and anti-terrorist program, especially in the case of cyber-terrorism. POJK No. 13 / POJK.02 / 2018 digital About Financial Innovation in Financial Services Sector, stated that:

Article 30

(1) The Operator shall maintain the confidentiality, integrity, and availability of personal data, transaction data, and manages financial data since the data obtained until the data is destroyed.

(2) The use of data and information obtained by the Operator must meet the following requirements:

- a. obtaining approval from the user;
- b. articulate the use of data and information to users;
- c. submit any changes to the purpose of use of data and information to users in the event of changes in the utilization purpose of data and information; and
- d. media and methods used in obtaining the data and information guaranteed confidentiality, security, and integrity.

Regulation that addresses money laundering, states that:

Article 42

Regulation of the Financial Services Authority No. 77 / POJK.01 / 2016 About Borrowing Money Services Information Technology:

Organizers are required to apply anti-money laundering and financing of terrorism in the financial services sector to the User in accordance with the provisions of the legislation regarding the implementation of anti-money laundering and combating the financing of terrorism.

Article 22 letter f

Bank Indonesia Regulation Number 18/40 / PBI / 2016 on the Implementation of the Payment Transaction Processing:

f. implement anti-money laundering and financing of terrorism in accordance with the provisions of the legislation.

It cannot be used as a guide to prevent money laundering and combating the financing of terrorism. People were not able to interpret how the anti-money laundering act was committed, whether it can be detrimental to the public or not.

This is worsened by the consumer has given its approval, can not sue in cases of violation of privacy which may be experienced, and there are no legal regulations governing the protection of personal data and data management of a company Fintech, ultimately harmed society. Regulators are still acting slow on the development Fintech thus, legal certainty in Fintech still lame. The emphasis of the Terms and Conditions that are made must also be monitored and set a standard in the making so as not to harm the public and also the company Fintech to create a balanced condition (balance).

CONCLUSIONS AND RECOMMENDATIONS

1. Conclusion

- a. The results of the analysis conducted, it can be mentioned that the development of Fintech in Indonesia, growing quite rapidly, but not in line with the establishment of regulations not in line with the development of the Fintech. Factors in the Fintech developments there have not been met and more research is still needed serious. These factors include the introduction and understanding of the financial technology, licensing should be run by a company Fintech, ease of service received by the public, the protection of consumer privacy made by the company Fintech, and regulations regarding Fintech.
- b. Constraints faced in Fintech development at present and the future are: Permissibility use of personal data, it is still susceptible to Cyber Crime, Money Laundering act, no regulation concerning corporate responsibility Fintech against the failure of the transaction, the number of products Fintech can cause confusion in society, there are still many people who do not understand the Fintech, still many illegal Fintech, and infringement of privacy in everyday life.
- c. Legal certainty regarding Fintech in Indonesia, is still unable to provide effective legal certainty. The number of legal loopholes that happened and is still not discussed, and regulations made exclusively by financial services institutions or regulators, such as the use of personal data, anti-money laundering and combating the financing of terrorism. Regulators should be able to make regulations to cover the gaps, so that the law can be implemented with fair conditions for both the consumer or the public and companies Fintech.

2. Suggestion

Suggestions for the company, the research conducted by the researchers, the researchers gave suggestions for the company to be able to verify directly on the use of personal data to prospective users, so that there will not be misunderstandings. Companies also should be a higher priority in terms of customer service and the protection of personal data.

For further research, it is vital to develop research on the Development and Use of Payment Transactions Constraints Using Financial Technology, using the same research object or different. This research was conducted with the limited and companies that are not large, because it is expected to be able to investigate this in more depth research, and can use more detailed research on more persons and companies with a greater influence.

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