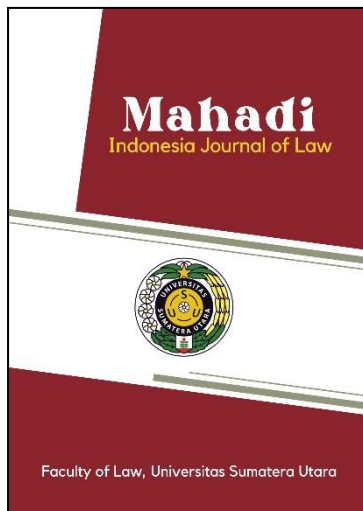




Implementation of The Principle Of Balance Between Lenders and Peer To Peer (P2P) Lending Companies: Contract Analysis of Electronic Loan Distribution at PT. Pintar Inovasi Digital (Asetku)

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Abstract

Peer To Peer (P2P) Lending is the result of the development of digital technology which is a solution for people who need funds quickly without having to go through complex procedures such as banking institutions. In P2P lending activities, there are several parties, namely Lenders, Organizing Companies, and Borrowers who are related to law. Based on POJK Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing and Borrowing Services, in P2P Lending there are two kinds of legal relationships, one of which is the legal relationship between the Lender and the P2P Lending Company as outlined in the Electronic Loan Distribution Contract. In making the contract, the application of the principle of balance is important in order to create balance for the parties to the contract. This research uses a descriptive normative legal research method. Secondary data in the form of primary, secondary and tertiary legal materials were collected using library research techniques. Data analysis was performed using qualitative data analysis methods. The study results shows that the Electronic Loan Distribution Contract Number PPP/PID/2021/07/Lending Transaction TD29585580030360 between Lenders and P2P lending companies does not fulfill the overall balance principle.

It was found after looking at the three aspects used as test factors for the application of the principle of balance in the form of the actions of the parties, the contents of the contract, and the execution of the contract. The principle of balance is met in the first (actions of the parties) and third (execution of the contract) aspects. Regarding the second aspect, namely the contents of the contract, the author finds that the principle of balance has not been fully implemented, because the contract is in a standard form made unilaterally by a P2P lending company for Lenders. Failure to apply the principle of balance in a contract can result in the contract becoming null and voidable or null and void.

Keywords : Peer to Peer (P2P) Lending, Balance Principle, Contracts, Electronic Lending

INTRODUCTION

Financial technology or in short fintech is a combination of technology and financial features or can also be interpreted as innovation in the financial sector with a touch of modern technology. One of the financial technologies is Peer to Peer (P2P) Lending. This technology brings lenders and loan recipients (borrowers) together in a platform created by the organizing company. One company that embraces this technology is Asetku.

In Indonesia, Peer to Peer (P2P) Lending is also known as Information Technology-Based Borrowing and Borrowing Services. As regulated in Article 1 Number 3 of POJK 77/POJK.01/2016, it is stated that Information Technology-Based Borrowing and Borrowing Services is the provision of financial services to bring together lenders and loan recipients in

the context of entering into loan agreements in the rupiah currency directly through the electronic system using the internet network.

Peer to Peer Lending is usually organized by an organizing company (usually a start-up) that provides an online lending platform. Start-ups in this field exist due to the urgency of capital, especially to help provide capital to Micro, Small and Medium Enterprises (MSMEs). The existence of P2P lending is expected to help people who need capital to develop their businesses [1].

In Peer to Peer (P2P) Lending, there are several parties that will have a legal relationship with one another. The main parties involved in implementing Peer to Peer (P2P) Lending are Lenders, Organizing Companies, and Loan Recipients. Of the three parties, this will generally result in two types of legal relationship, the legal relationship between the Lender and the Organizing Company and the legal relationship between the Loan Recipient and the Organizing Company. The implementing company will bring together lenders with loan recipients through a platform provided by the organizing company. It can be said that the platform functions as a marketplace to bring together lenders with loan recipients [2]. The author will discuss the legal relationship between the Lender and the Organizing Company in this study.

The legal relationship between the lender and the Organizing Company is that the lender hands over a sum of money to the escrow account (temporary holding account) of the Peer to Peer (P2P) Lending company, then the organizing company will channel the funds to the loan recipient. When the debt is due, the recipient of the loan will return the money, as well as, the interest to the lender through the escrow account of the organizing company. This legal relationship is usually set forth in an electronic contract called the Electronic Lending Contract.

Based on Article 1313 of the Indonesian Civil Code contract agreement is an act in which one or more people bind themselves to one or more other people. The formulation given in Article 1313 of the Indonesian Civil Code reaffirms that an agreement causes a person to bind himself to another person. In other words, in an agreement, an obligation or achievement is born from one party to another party who is entitled to the achievement which is an agreement that must be fulfilled by the person or legal subject.

Bringing this further, several principles must be applied to ensure that the contract fulfills the legal objectives as stated by Gustav Radbruch, namely justice, certainty, and benefit. One of the very important principles in business contract law is the principle of balance.

As interpreted in everyday language, the word "balanced" (*evenwicht*) refers to the notion of a "state of burden distribution on both sides in a balanced state." In contract law, balanced means the equality of the parties in the contract making process and the equality of the parties in the substance of the contract. This means that the contract must be negotiated and made jointly by the parties and the substance of the contract must also be balanced¹.

However, in electronic Peer to Peer (P2P) Lending contracts, the majority of implementing companies use standard form of contracts (templates) whose substance contains standard clauses that have been prepared unilaterally by Peer to Peer (P2P) Lending organizing companies which cannot be negotiated or changed by the lender. They can only sign or not sign a standard contract that has been prepared by the organizing company. This is of course feared to create an imbalance phenomenon in the agreement and can harm the rights of the lender in the contract.

¹ H. Budiono, *Asas Keseimbangan bagi Hukum Perjanjian Indonesia: Hukum Perjanjian berdasarkan Asas-asas Wigati Indonesia*, (Bandung: Citra Aditya Bakti, 2015), Page. 304

THEORIES

Law of Agreement (Contract) in Indonesia

Sources of Agreement (Contract) Law in Indonesia

Sources of law in Indonesia are divided into two types, Source of Material Law and Source of Formal Law [3], as described below ²:

1. Source of Material Law, the origin of where the substance of the law is taken. This source of material law is actually an aspect that play a role in assisting the formation of law. Examples of this source of law are social relations, political power relations, socio-economic situations, traditions, results of scientific research, international developments, and geographical conditions³;
2. Source of Formal Law, the place or source from which a regulation obtains legal force. This source of law is related to the form or method that causes the legal regulation to be formally enforced. Examples of formal sources of law are statutes, international treaties, jurisprudence and custom⁴.

Based on the two types of legal sources above, a common thread can be drawn, that the source of contract law also comes from the same source of law, both from material sources of law, as well as formal sources of law in the form of laws, jurisprudence, international agreements, and customs. The legal source of agreements (contracts) originating from the law itself, is essentially a legal source of products produced by the President together with the House of Representatives.

Principles in the Law of Agreements (Contracts) in Indonesia

In the law of agreements (contracts) in Indonesia, several principles are substantial and important [4], such as⁵:

1. The Principle of Freedom of Contract (*Contractsvrijheid/ Freedom of Contract*). The parties to the contract according to their free will can make agreements and each person is free to bind himself to whoever he wants. The parties can also freely determine the scope of the contents and requirements of an agreement provided that the agreement may not conflict with coercive laws and regulations, both public order and decency. In short, this principle relates to the content or scope of the agreement.
2. The Principle of Consensualism. It is contained in Article 1320 paragraph (1) of the Indonesian Civil Code which states that one of the conditions for a valid agreement is the existence of an agreement between the parties. The principle of Consensualism is a principle that states that agreements are generally not made formally, but are sufficient with the agreement of both parties. The agreement is an agreement between the will and the statement made by both parties. This principle relates to the form of the agreement.
3. The principle of *Pacta Sunt Servanda*. The meaning of this principle can be found in Article 1338 paragraph (1) of the Indonesian Civil Code which reads "Agreements made legally apply as laws". This principle means that anyone, both parties, and judges, must respect the contents of the contract like a law. They may not intervene in the substance of the contract made by the parties.
4. The Principle of good faith (*Good Will/Goede Trouw*). It can be found in Article 1338 of the Indonesian Civil Code which reads: "Agreements must be implemented in good faith". The principle of faith is the principle that the parties, namely creditors and

² Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, (Yogyakarta: Liberty, 2005), Page. 82-83

³ *Ibid.*

⁴ *Ibid.*

⁵ Salim HS, *Hukum Kontrak: Teori & Teknik Penyusunan Kontrak*, (Jakarta: Sinar Grafika, 2019), Page. 15-17

debtors, must carry out the substance of the contract based on firm trust or belief or the goodwill of the parties.

5. The Principle of Personality (Personality). The legal basis for this principle is Articles 1315 and 1340 of the Indonesian Civil Code. Article 1315 of the Indonesian Civil Code reads: "In general, a person cannot agree with other than for himself. Article 1340 of the Indonesian Civil Code reads: "Agreements only apply between parties who make them". The two clauses mean that the agreement can only apply to the parties listed in the contract. This is what is called the principle of personality. However, there are special provisions in Article 1317 of the Indonesian Civil Code which allow making agreements for the benefit of third parties. In addition, there is also a provision in Article 1318 of the Indonesian Civil Code which allows a person to agree for the benefit of himself, his heirs, and those who obtain rights from him.

Conditions for the Validity of the Agreement and its Legal Consequences

Article 1320 of the Indonesian Civil Code states a valid agreement must satisfy the following four conditions [5], such as:

1. There must be consent of the individuals who are bound thereby;
2. There must be capacity to enter into an obligation;
3. There must be a specific matter;
4. There must be an admissible cause.

The first and second requirements are referred to as subjective requirements because it relates to the subjects or parties in an agreement. Meanwhile, the third and fourth requirements are referred to as objective requirements because it relates to the objects of the agreement itself [4].

If the four requirements above are fulfilled in making the agreement (contract), the agreement will have legal consequences, namely binding on the parties, applies as law for the parties, and cannot be withdrawn unilaterally [4].

Cancellation of an Agreement (Contract) and its Legal Consequences

The legal condition of the first agreement, namely consensualism, is very important in the agreement. Violation of the first requirement in legal language is also known as a defect of will (*wilsgebreken*)⁶. A deficiency of will is a deficiency in the will of the person or persons who commit acts that hinder the conformity of the will of the parties to the agreement. Defects of will are divided into 3 (three) types, such as oversight, coercion, and fraud. The parties/subjects in the agreement must agree, agree, or agree on the main points of the agreement entered into without being followed by defects of will. What is desired by one party is also desired by the other party. They want the same thing in return⁷.

Regarding the second requirement, such as legal capacity, according to Article 1330 of the Indonesian Civil Code [6], people who are incapable of agreeing have the following criteria:

1. Immature persons;
2. Those who are placed under guardianship;
3. Women (married women) in matters stipulated by law, and all persons to whom the law has made certain agreements.

The third requirement from legal incapacity, where married women are not allowed to enter into agreements (contracts) was declared no longer valid, after the issuance of the

⁶ Subekti, *Hukum Perjanjian*, (Jakarta: Intermassa, 2014), Page. 17

⁷ *Ibid.*

Supreme Court Circular Number 3/1963, and also the promulgation of Law Number 1 of 1974 concerning Marriage.

If the first and second conditions (subjective conditions) in Article 1320 of the Indonesian Civil Code are violated, then the agreement (contract) can be canceled (in English: Voidable and in Dutch: Vernietigbaar). The agreement can be canceled if there are parties who request cancellation. If neither party objects, then the agreement (contract) remains binding.

The third condition states that an agreement must be about a certain matter. An agreement must be about a certain matter, meaning that what is promised must be clear. In other words, the rights and obligations must be explicitly stated in the agreement [4].

The fourth requirement is a lawful causa/cause. A lawful cause means that the substance of the agreement must not breach the existing laws and regulations [4].

If the third and fourth conditions (objective conditions) are violated, then the agreement (contract) can be null and void (in English: Null and Void and in Dutch: Nietigheid). Null and void means that the agreement (contract) is deemed to have never existed from the beginning of the making of the agreement (contract)⁸.

In addition to that, based on Law Number 8 of 1999 on Consumer Protection and Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services, criminal and administrative sanctions could be imposed along with the termination of the contract.

Contract Dispute and its Settlement

In essence, the parties are obliged to obey or comply with the agreement (contract) that has been determined. However, it cannot be denied that in every existing agreement (contract), there is a possibility for a condition to arise where one party does not fulfill its obligations to the other party so that the other party's rights are harmed. This is what is referred to as a contract dispute, where one party (the debtor) does not fulfill the achievements contained in the contract to the detriment of the recipient of the achievement (creditor)⁹. The creditor, in defending his rights, may not act arbitrarily and may not judge himself (arbitrary action), instead he must act based on the legal regulations stipulated in the law to seek a settlement of the contract dispute [7].

Standard Form of Contracts

Standard Form of Contracts in Indonesia

The standard form of contracts in Indonesia is ruled by Law Number 8 of 1999 on Indonesian Consumer Protection. According to Article 1 Section 10 of the Indonesian Consumer Protection Law, a standard clause is every regulations or provisions and requirements prepared and stipulated earlier unilaterally by a business agent and set forth in a document and/or an agreement which shall be binding to a consumer and which he shall be obligated to fulfill. In addition, some of the standard clauses, namely exoneration clauses in Article 18 of the Indonesian Consumer Protection Law, are prohibited.

Standard Form of Contracts in the United States of America

According to Black's Law Dictionary, the standard form contract is defined as a contract prepared by one party, to be signed by the party in a weaker position, usually a consumer, who has little choice about the terms. Also termed contract of adhesion, adhesory contract; adhesory contract; take it or leave it contract; leonire contract.

The standard form of contracts did not enter the American jurisprudence until 1919 when the Harvard Law Review published an influential article by Patterson¹⁰. Standard form contracts are popular

⁸ M. Darus, *Kompilasi Hukum Perikatan*, (Bandung: Citra Aditya Bakti, 2016), Page. 82

⁹ Abdulkadir Muhammad, *Hukum Acara Perdata Indonesia*, (Bandung: Citra Aditya Bakti, 2017), Page.

10

¹⁰ Patterson, "The Delivery of a Life-Insurance Policy", *Harvard Law Review*, vol. 33, page. 33, 1919

afterward. In the United States of America, the standard form of contracts are specifically governed on Uniform Commercial Code (UCC) Article II regarding Sales [8], including short title, general construction, subject matter, form of contract, formation of contract, readjustment of contract, general obligation, construction of contract, title, creditors, good faith purchases, performance, breach, repudiation, excuse, and remedies.

The Principle of Balance

In general, there are two types of principles in the science of law, namely universal legal principles and particular legal principles. Universal legal principles are legal principles that can apply to any existing field of law, while particular legal principles are legal principles that only apply to certain areas of law. The principle of balance itself is one of the many universal legal principles. The principle of balance is called universal because it can be used and found in all fields of law [9].

According to the Indonesian Language Dictionary (In Indonesian: Kamus Besar Bahasa Indonesia/KBBI), balance means a state of balance or a state that occurs when all existing styles and tendencies are balanced or neutralized by the same but opposite styles and tendencies.

The same opinion was expressed by Herlien Budiono. According to Herlien Budiono, the word "balanced" (evenwicht) refers to the notion of a situation where the burden is distributed on both sides in a state of balance¹¹. In other words, balance is understood as a state of stillness or harmony because of the various forces acting, none dominates the other, or because no one element dominates the other [10].

In the law of agreements (contracts), the principle of balance means that the position of creditor and debtor in a contract is equally strong. When the positions of creditors and debtors are equally strong, the principle of balance is fulfilled [11].

According to Herlien, the principle of balance is a construction of decency, good faith, decency, misuse of circumstances, and *iustum pretium* (decency). The principle of balance through hermeneutic interpretation is related to the classical principles of an agreement¹².

METHODOLOGY

Mechanism of Peer to Peer (P2P) Lending

Loan recipients usually register on a peer to peer (P2P) lending platform created by the organizer by uploading all the documents needed to apply for a loan, for example an Identity Card (KTP), financial reports within a certain period, and the purpose of borrowing funds. Loan applications can be accepted or rejected by the organizer. If the necessary requirements are met, then the loan application along with the interest rate application will be entered into the peer to peer (P2P) lending marketplace application/platform made by the organizer [2]. On the other hand, if rejected, the loan recipient usually has to correct matters relating to the reason for the refusal, for example due to blurry National Identity Cards (KTP) or incomplete documents.

Lenders or Lenders (lenders) who intend to lend money in the context of investment, can browse data regarding the amount of the loan offered, the interest rate, the tenor (term) of the loan, the borrower's profession and the purpose of the loan uploaded by the loan recipient on the platform marketplace peer to peer (P2P) lending created by organizers to serve as a consideration for lenders to lend money. If the lender (lender) finds a prospective loan recipient with good criteria, the lender (lender) can choose to lend funds to the loan recipient. Please note, that lenders (lenders) should only lend money to loan recipients who have a high credit score[12].

¹¹ H. Budiono, *Loc. Cit.*

¹² Ilhami Bisri, *Sistem Hukum Indonesia: Prinsip-Prinsip dan Implementasi Hukum di Indonesia*, (Jakarta: Raja Grafindo Persada, 2014), Page. 124-134

In practice, organizers usually use one platform or application to bring lenders and borrowers together, for example, Investree, Koinworks, and so on. However, there are several companies, for example, PT Pintar Inovasi Digital, which makes two different platforms/applications, both for lenders and borrowers. In this unique case, the lender has its own application, and so does the borrower. Lenders can register themselves on a special platform, for example, Asetku. On the other hand, borrowers can register themselves at the other platform that is still in the same holding company as the lender's application, for example, Akulaku.

The two applications, both Asetku and Akulaku, are integrated. The lender's application will screen potential lenders who meet the requirements, as well as the lender's application will screen lenders who meet the requirements. Then the lender and borrower will be brought together (virtually) based on the integrated system of the two applications. This is different from conventional peer to peer (p2p) lending where lenders (lenders) choose their own loan recipients, Asetku and Akulaku have an automated system to help lenders (lenders) choose their loan recipients.

Electronic Lending Contracts as Electronic Standard Form of Contracts

The rapid development of information and communication technology has led to the formation of a new "world" called the cyber world. In this world, every human being can interact with one another based on their respective rights and obligations without the limitations of space, place, and time.

Technology is an extension of the human body. With the help of both information and communication technology, technical convenience is obtained. Instead of writing articles in handwriting, we can use laptops/computers with printers. The more sophisticated, the more efficient, writing can be recorded on diskettes, flash disks and others, easily edited, and reprinted, with fewer errors. For communication, technology is an extension of the mouth and hands. Furthermore, instead of coming all the way to talk about something, electrical signals (telegraphs), telephones, and finally fax machines were made to communicate ideas orally and in writing in the shortest possible time. Even now, while talking on the phone, we can look at each other through the camera connected to the phone. This technology is an extension of our mouths, ears, hands and eyes. The further our bodies can be extended through technology the more enjoyable our lives appear to be.

Likewise in the field of law, especially in the world of contracts. Making contracts today, many have switched from making contracts that are manual (typed using a typewriter, or computer, then printed), to electronic contracts, where the contract can be sent via the internet network across cities, provinces, and countries to be mutually agreed upon.

Most of the electronic contracts nowadays are standard form contracts which were only made by one party. According to Slawson¹³, Standard form contracts probably account for more than ninety-nine percent of all the contracts now made. Most people have difficulty remembering the last time they contracted other than by standard form [13].

RESULT AND DISCUSSION

Legal Consequences of Violating the Principle of Balance in Contract Law

Violation of the principle of balance on the pre-contractual, contractual, and post-contractual stage could lead to some legal consequences. The Electronic Lending Contract Number PPP/PID/2021/07/Lending Transaction TD295855880030360 has no problems at the pre-contractual and post-contractual stages. Instead of those, there is a problem in the contractual

¹³ Slawson, "Standard Form Contracts and Democratic Control of Lawmaking Power," *Harvard Law Review* 84, no. 3 (1971), Page. 529

phase because a standard contract was used in the creation of the contract. The use of standard agreements (contracts) reflects the non-fulfillment of the principle of balance.

The legal consequences of not fulfilling the principle of balance in a standard contract are in the form of losses which include:

1. Potential lawsuits against standard contract recipients who suffer losses. If it turns out that at the contract execution stage, it turns out that the standard contract recipient suffers a loss, then there is a chance that the standard contract recipient will file a lawsuit regarding the clauses that are considered detrimental.
2. Imposition of criminal sanctions and/or administrative sanctions as well as moral sanctions. Criminal sanctions can also be imposed on companies that use standard contracts containing an exoneration clause, namely imprisonment for a maximum of 5 (five) years or a fine of up to Rp. 2,000,000,000.- (two billion rupiahs) as stated in Article 18 jo 62 of Law Number 8 of 1999 on Consumer Protection. Companies may also be subject to administrative sanctions, as referred to in Article 47 of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services in the form of written warnings, fines, restrictions on business activities, and revocation of licenses. In addition to the two sanctions above, social sanctions can also be imposed on the community.
3. Losses both moral and material. The standard contract recipient who has a lower position than the standard contract giver has a great potential to experience both moral and material losses.
4. Contracts lead to situations of unconscionability (injustice). Contracts made unilaterally can trigger the creation of an unfair (one-sided) contract containing clauses that only benefit the contract maker which may lead to the cancellation of the contract.
5. Opens up opportunities for abuse. A standard contract made unilaterally also triggers an abuse of authority on the part of the standard contract maker because the standard contract maker usually has more authority and knowledge than the standard contract recipient.
6. The potential to be canceled or canceled by law. According to Herlien Budiono, in an agreement, if there is a balance between the parties in such a way that it exceeds the limits of the law it provides protection that the agreement can be canceled either at the request of the aggrieved party or by a judge because of his position. Based on Herlien's opinion, an agreement that violates the principle of balance can be voidable or null and void, either the cancellation of certain clauses that contain exoneration clauses, or the cancellation of the entire agreement.

Remedies for Breach of Contract

Disputes/Breach of contract is a very common thing that happens in the world of contracts. Disputes begin with conflicts as a form of interaction between the parties in a very complex contract, causing one party to feel disadvantaged by the other party. According to Article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, if one of the parties is harmed either due to default or unlawful acts in a contract, both litigation and non-litigation channels can be used to resolve the dispute. The use of the two dispute resolution channels is usually mutually agreed upon by the parties to the contract in the clause on selecting the place of dispute resolution (choice of forum). In addition, the choice of law which is used (choice of law) is also determined in the contract based on the agreement of the parties.

In the Electronic Loan Distribution Contract Number PPP/PID/2021/07/ Lending Transaction TD295855880030360, the issue of choice of forum and choice of law is spelled out in Article 11.

In Article 11 paragraph (1) of the Contract, it is stated that the choice of law used is the Law of the Unitary State of the Republic of Indonesia. This means that if there is a dispute between the parties, both the lender and the organizing company, Indonesian law will be used as the law that governs the contract.

Furthermore, as contained in Article 11 paragraph (2) of the Contract, the parties to the contract agree to settle disputes that arise by deliberation to reach a consensus within 30 days from the date of written notification from one of the parties regarding the emergence of the dispute has been accepted by the other party. If within 30 (thirty) days no consensus is reached, then as referred to in Article 11 paragraph (3) of the Contract, the parties agree to resolve the dispute in a non-litigation manner at the Indonesian National Arbitration Board (BANI).

Dispute settlement will be carried out by three arbitrators, where each party may appoint 1 (one) arbitrator and the Chairman of the Arbitral Tribunal will be selected by 2 (two) arbitrators appointed by the Parties and held in Jakarta in the Indonesian language.

Article 3 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that "The District Court shall have no jurisdiction to try disputes between parties bound by an arbitration agreement". Therefore, the dispute resolution will become the absolute authority of the Arbitration forum, especially the Indonesian National Arbitration Board (BANI) which is chosen by the party.

In other words, the district court is not authorized to adjudicate disputes between the parties. According to Article 61 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the court only has the authority to grant or not grant a request to enforce an arbitral award. The court has no authority to decide the case on the merits. If the parties submit a dispute settlement to the court regarding the subject matter, the judge will declare that the claim is unacceptable (*Niet Ontvankelijke Verklaard/NO*).

Legal Remedies for Lenders Against Peer To Peer (P2P) Lending Companies for Unapplying the Principle of Balance

The purpose of the contract is to achieve a balance between individual and individual interests, as well as individual and public interests. In determining whether there is an imbalance at the time of making a contract, the principle of freedom of contract must be considered and respected. Because even if the contents of the agreement are unbalanced and burdensome to one of the parties, the parties still agree to carry out the agreement, in essence the agreement cannot be contested, as long as the agreement (contract) does not violate the public interest¹⁴.

In the opinion of the author, the Electronic Loan Distribution Contract Number PPP/PID/2021/07/Lending Transaction TD295855880030360 does not interfere with the public interest, so that the objective conditions of the agreement have been fulfilled and a balance has been created between individual interests and public interests. On the other hand, according to the author's opinion, the balance between individual interests and other individuals in the contract has not been created. Because the making of this standard agreement only involves one party, without the other party, so this violates the subjective requirements regarding consensualism which must be realized in negotiations in making contracts.

The party receiving the contract, in this case, is the Lender (lender) can make several legal efforts to restore the balance in the contract, such as:

1. Re-negotiation with the Peer to Peer (P2P) Lending Company as the party making the standard contract;
2. Resolving this imbalance at the National Arbitration Board as referred to in Article 11 of the Electronic Loan Distribution Contract Number PPP/PID/2021/07/Lending Transaction TD295855880030360.

¹⁴ Herlien Budiono, *Op. Cit.*, Page. 487

Settlement of imbalances at the National Arbitration Board will usually lead to cancellation of the contract (if it is proven to be unbalanced) for both part of the clause and the contract as a whole.

CONCLUSION

The principle of balance is a universal legal principle contained in contract law in Indonesia. It requires a balance between the parties in the contract regarding the actions of the parties, the contents of the contract, and the agreement implementation. The principle of balance is essential because it functions as the foundation of positive law and the critical test tool for the positive law system. The Electronic Lending Contract Number PPP/PID/2021/07/Lending Transaction TD 29585580030360 has not fully implemented the principle of balance because the contract is a standard contract made unilaterally by a peer to peer (P2P) lending company. Standard contract is generally enforceable in both civil law country (Indonesia) and common law country (USA), although some standard/exoneration clauses are prohibited by the Indonesian Law Number 8 of 1999 on Consumer Protection. It is prohibited because it might bring parties into an unfair position in the contract.

Failing to apply the principle of balance in a contract can lead to several legal consequences, such as the potential for claims by lenders who suffer losses and the imposition of sanctions. Besides that, the imbalanced contract could lead to an unconscionability situation which opens opportunities for abuse of authority. Last but not least, the imbalanced contract, clearly has the potential to be canceled by law. Lenders can take legal action against peer to peer (P2P) lending companies that do not apply the principle of balance in Electronic Lending Contracts. The legal remedy is in the form of renegotiating the contract with a peer to peer (P2P) lending company, as well as resolving the contract dispute at the Indonesian National Arbitration Board (BANI) which is the choice of forum for the parties listed in the contract.

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