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## Legal Aspects of Agreement in the Protection of Personal Data on the Withdrawal of Online Loan Borrower Information

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### Abstract

**Purpose:** This study explores the protection of personal data within the withdrawing consent for personal data processing by online loan borrowers, as regulated by the Personal Data Protection Law (Law No. 27 of 2022). It seeks to address the ambiguities in the law's provisions, particularly Article 9, that create uncertainties in its practical implementation. The research investigates the contractual perspective on personal data withdrawal and examines alternative dispute resolution mechanisms available for borrowers.

**Method:** The research adopts a normative juridical approach, focusing on the legal ambiguities in Article 9 of the Personal Data Protection Law. The study analyzes how the principles of *pacta sunt servanda* (agreements must be honored) influence the regulation of personal data withdrawal within the framework of contractual agreements.

**Findings:** The study finds that the Personal Data Protection Law serves as the fundamental legal basis for safeguarding the personal data of online loan borrowers. It highlights that personal data protection is also governed by contractual agreements between borrowers and lenders, which must comply with the principle of *pacta sunt servanda*. Furthermore, the withdrawal of personal data should be explicitly regulated in contractual terms to provide clarity. Disputes related to personal data withdrawal can be resolved either through non-litigation methods, such as deliberation, mediation, or arbitration, or through litigation via the judicial system.

**Novelty:** This research emphasizes the contractual dimension of personal data withdrawal, proposing that the mechanism for data withdrawal be clearly specified in agreements to enhance legal certainty. It also sheds light on alternative dispute resolution methods as viable options for addressing disagreements related to personal data processing, thereby contributing to the body of knowledge on personal data protection for online loans.

**Keywords:** Online loans, Personal Data Withdrawal, Agreements.

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## INTRODUCTION

The development of technology today has grown so rapidly. Our lives will not be separated from technology, with the current technology, it makes it very easy for us to interact. Currently, all community activities can be monitored using the internet network through the intermediary of smartphones that are always carried by the community. Smartphones are now like one thing that must be owned and carried by people wherever they are. One of the forms of technological development that makes it easier for people, especially in the financial sector, can be seen through online loans.

Online loans are financial products and services through the incorporation of technology platforms and innovative business models, fintech first came from Silicon Valley one of the southern parts of the San Francisco Bay Area in California, then expanded to New York, Singapore, Hong Kong, and several global countries. In Asian countries like Singapore is where technology and trust form the basis for innovative financial services. Peer to Peer lending has taken root in Singapore and is appreciated for directly connecting borrowers and loan recipients. Singapore has a cash intensive economy where much of the borrowing and lending is already done outside of Singapore, which is why Singapore is conducive to the development of alternative credit systems, especially the development of online lending platforms that aim to provide access to capital to SMEs. As for Indonesia, there are startups that have generated around US\$56 million (Septiana & Mahmudah, 2018).

The existence of online lending as a form of financial technology (fintech) is a result of technological advances that offer loans with easier and more flexible terms and conditions compared to conventional financial institutions such as banks. Online lending is also estimated to be suitable for the Indonesian market because Indonesians have a very high rate of smartphone ownership and usage. Hootsuite data shows that Internet users in Indonesia in January 2018 reached 132.7 million users with a penetration rate of 50% (Nawawi & Djatmiko, 2022).

The population of mobile device users has an even higher figure of 177.9 million users, with a penetration rate of 67%<sup>2</sup>. Based on these data, it is not surprising that online lending is growing rapidly in Indonesia. This can be seen from the data of fintech lending companies licensed and registered with the Financial Services Authority (OJK) as of August 5, 2020, as many as 158 companies. In addition, there are illegal online loan companies that are growing. In the detik finance news, it was noted that from January 2020 to March 2020 illegal fintech lending reached 508 entities, if calculated from 2018, 2406 entities have been found (Abdullah, 2019). During the current coronavirus pandemic, illegal online loan services (pinjol) have sprung up. This is related to the corona virus pandemic where this will have an impact on the economic level of the Indonesian people. Reporting from the official page of the Financial Services Authority on Fintech Lending Statistics for the Period 2018 - 2022, it was noted that the number of online loan users was increasing starting from 2018. Recorded in 2018 the number of online loan users reached 22,666,911 accounts. In 2019 there was an increase of 200,722,351 accounts, when viewed from the number of users, in 2019 there was a fairly drastic increase (Tasya, 2022). The peak of the increasing number of online loan users is in 2020, which is 1,470,831,397 accounts. The increasing number of online loan users is also caused by many factors. One of the factors causing the increase in the number of online loan users is the unstable economic level in Indonesia. Especially in 2020 where Indonesia is experiencing deflation or a drastic decline in the economy caused by the corona virus pandemic this year, related to online loan registration, of course we have an obligation to provide our personal data, but the question is how the rules for protecting personal data in Indonesia (Ziqra et al., 2021).

The use of online loans to meet short-term financial needs can add to financial stress, and ultimately weaken long-term financial resilience. The number of cases of data misuse can be a consideration for withdrawing consent to the use of personal data. The regulation of Personal Data Protection in Indonesia is regulated in Law No. 27 of 2022 on Personal Data Protection in Article 9, which states that the personal data subject has the right to withdraw the consent to

the processing of personal data about him/her that has been given to the personal data controller. Based on this regulation, it can be understood that the subject of personal data can withdraw consent to the processing of personal data, the problem that arises is that there is no clear regulation regarding the mechanism for withdrawing personal data and how the responsibility of personal data held by the personal data controller, this situation creates ambiguity in its implementation. The ambiguity of norms in Article 9 of the Personal Data Protection Law is the object of this research. The questions of this research are:

1. How is the withdrawal of personal data of online loan borrowers when viewed from the perspective of the agreement?
2. How is the alternative dispute resolution for online loan borrowers for personal data withdrawal?

## **LITERATURE REVIEW**

### **Definition of Personal Data**

Each country uses different terms regarding personal information and personal data but substantively the two terms have almost the same meaning so they are often used interchangeably. The United States, Canada and Australia use the term personal information, while EU countries, Hong Kong, Malaysia and Indonesia use the term personal data (Rosadi, 2018). Data is personal data if it relates to a person so that it can be used to identify that person, the owner of the data. Personal data is any data about a person that is either identified and/or identifiable individually or combined with other information either directly or indirectly through electronic and/or non-electronic systems (Tektona et al., 2023).

Based on Article 1 point 1 of the Regulation of the Minister of Communication and Information Technology No. 20/2016 on the Protection of Personal Data in Electronic Systems, stipulates that personal data is certain individual data that is stored, maintained, and kept correct and protected confidentiality. European Union General Data Protection Regulation (GDPR), regulates that: *“Personal data shall mean any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.”* Meanwhile, based on the Personal Data Act 1998 Section 3: *“Personal data means all kinds of information that directly or indirectly may be referring to a natural person who is alive.”* Personal data is also one part of human rights, namely personal rights. Furthermore, it is described that personal data is one part of personal rights (Privacy Rights).

### **Legal Protection Theory**

Legal protection aims to achieve justice. Justice is born from right thinking, carried out with the principles of justice, honesty, and responsibility for every action. Law enforcement and a sense of justice must be based on positive law in order to realize justice in accordance with the real conditions in society, in order to create a safe and peaceful life. Legal protection theory is an effort to protect or provide assistance to legal subjects by utilizing available legal instruments (Hadjon et al., 2005).

### **Theory of Legal Certainty**

Legal certainty is a very important concept in the legal system that refers to the extent to which the law can provide guarantees regarding the predictable and reliable outcome of a legal action (Wedha & Darma, 2018). Legal certainty depends not only on the existence of clear and consistent rules, but also on the principles that govern how the law is applied. Laws should be general, public, and applied consistently and not retroactively. In other words, the law should provide reliable guidance so that individuals can plan their actions with confidence that the law will not change suddenly or arbitrarily (Devi, 2021).

The principles of appealing to consent for the processing of personal data, these principles of legal certainty are particularly relevant. When a person gives consent to the processing of personal data, they are legally bound by that agreement. However, there is often confusion regarding the process of withdrawing such consent, especially when the regulations do not specify how this procedure should be carried out. This lack of clarity poses challenges in ensuring that individuals have certainty regarding their right to withdraw consent and how this can be done effectively. When regulations do not clearly stipulate how the process of withdrawing consent should be carried out, individuals may face uncertainty regarding their rights and the mechanisms available to protect their personal data, therefore, in order to ensure legal certainty for personal data processing, it is important that legal norms related to the withdrawal of consent are clearly established.

## **METHODS**

This research uses normative juridical legal research, which aims to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand. In this research, the approach used is to examine Article 9 of Law No. 27 of 2022 concerning Personal Data Protection, as well as efforts that can be made by online loan borrowers regarding the withdrawal of personal data provided to fintech vendors. The approach techniques used are a statutory approach, which examines legal products, a historical approach to examine the development of legal products based on periodization, and a conceptual approach to study legal concepts such as legal sources, legal functions, and legal institutions.

The sources of legal materials used in this research consist of three types, namely primary, secondary, and tertiary legal materials. Primary legal sources include Law No. 27 of 2022 on Personal Data Protection, the Civil Code, and Laws related to Electronic Information and Transactions. Secondary legal sources are materials that support research such as books, journals, and research results. Meanwhile, tertiary legal sources are dictionaries or encyclopedias that help explain the meaning of the sources discussed. The technique of collecting legal materials is done through literature study, by reviewing legal materials in the library without requiring field research. The materials that have been collected are then analyzed using descriptive, evaluation, and argumentation techniques to answer research problems using relevant legal theories and principles. This analysis technique aims to explore the relationship between legal concepts in related laws and regulations.

## **RESULTS AND DISCUSSION**

### **Withdrawal of personal data of online loan borrowers when viewed from the perspective of an agreement**

An agreement is an obligation that applies as law to the parties bound by it. Covenants in the United States are governed by several court decisions on the requirements of a legally valid agreement. If a promise is broken, the law provides remedies to the injured party, often in the form of damages. A covenant arises when an obligation arises because of a promise made by one of the parties. To be legally binding as a covenant, the parties have rights and obligations that each party is obliged to perform and if breached, the breached party is obliged to compensate (Adhiwisaksana & Allagan, 2022).

The agreement made by the parties needs to pay attention to several legal requirements in the eyes of the law which in Article 1320 of the Civil Code has explained that which is a valid condition of an agreement (Buana et al., 2020), namely:

- a) Agreement of those who bind themselves

The agreement referred to here does not occur due to mistake or coercion listed in Article 1321 of the Civil Code. The mistake in the agreement does not invalidate an agreement,

unless the mistake occurs due to the nature of the goods that are the subject of the agreement, this is stated in Article 1322 of the Civil Code.

b) Proficiency in legal action

The intended capacity is that a person can be said to be an adult or because of his position he can be called an adult. This explanation is in accordance with Article 330 of the Civil Code which explains that a person is not said to be an adult if they have not reached the age of 21 years and have previously married.

c) A certain thing

The specific thing in question is that the item being promised is clear in its existence. Article 1333 KUHPer explains that an agreement must have a subject matter of an item of at least a specified type. The article explains that an item must exist or its type can be determined, be it movable or immovable goods.

d) A lawful cause

The lawful cause means that the contents of the agreement do not conflict with the law, decency, public order. The agreement is null and void if the contents of the agreement contain non-halal causes and the agreement is deemed never to have existed, in which case the parties are brought back to their original state as before.

The explanation in agreement law in Indonesia, there are several important elements that must be met in order for the agreement to be considered valid and binding. These elements are the agreement of the parties, legal capacity, a specific object, and a lawful cause. These four elements are regulated in the Civil Code (KUHPer) and are fundamental requirements for the validity of an agreement.

First, the agreement of the parties is a crucial element in an agreement. The agreement here must not only exist, but must also be made without any mistake or coercion, as stipulated in Article 1321 of KUHPer. The mistake referred to here is the unawareness or mistake that occurs in the agreement process. However, Article 1322 of KUHPer states that mistake does not invalidate the agreement unless the mistake concerns the nature of the goods that are the subject of the agreement. This means that if the mistake touches the essence of the goods being agreed upon, then the agreement can be considered void or invalid.

Second, capacity to act legally is the next important requirement. According to Article 330 of the Civil Code, legal capacity refers to a person's ability to perform valid legal acts, i.e. those who are considered adults or have a legal position that allows them to act in a legal capacity. An individual is considered an adult when they have reached the age of 21 or have been married previously. Without this legal capacity, a person cannot legally bind themselves in an agreement, and agreements made by parties who are not legally capable can be considered invalid or null and void.

Third, the specific object in the agreement is the goods or things that are the subject of the agreement. Article 1333 of KUHPer emphasizes that the agreement must have a clear object, namely goods whose existence must be determined or have a clear type. The object of the agreement can be movable or immovable goods, but it must exist or its existence can be determined. Without a clear object, the agreement cannot be implemented and is considered invalid.

Fourth, lawful cause is the last important element. A lawful cause means that the contents of the agreement must be in accordance with the law, not contrary to decency, and not violate public order. If the agreement contains a cause that is not lawful, then the agreement is null and void, as if the agreement had never existed. In this case, the parties are returned to their original state, as before the agreement was made.

Overall, to ensure that an agreement is valid and legally binding, the four elements of agreement of the parties, legal capacity, clear object, and lawful cause must be fulfilled. The absence or uncertainty in any of these elements can result in the agreement being deemed invalid or null and void, so it is important for all parties involved in the agreement to understand and comply with these provisions so that the agreement can be executed legally and effectively.

The implementation of the agreement in accordance with these provisions must be based on the principles of the agreement, namely: The principles of agreement law are important in

relation to the occurrence, content, and consequences of the agreement as for the principles in an agreement, namely:

a) The principle of freedom of contract

The principle of freedom of contract means that the parties are free to enter into any agreement and its contents as long as it does not conflict with the law, decency, and public order.

b) The principle of consensualism

The principle of consensualism means that an agreement has been born when the parties agree on the points of the agreement. The form of consensualism is the making of an agreement with a signature at the end of the agreement as proof that both parties agree to the contents of the agreement (Sinaga & Wiryawan, 2020).

The principle of consensualism emphasizes that an agreement is considered valid and born when both parties have reached an agreement on the subject matter of the agreement. For personal data erasure, this principle requires both parties to clearly agree on the terms of erasure, including the method, timing, and impact of the erasure. The process of signing the agreement becomes an important moment that marks that all parties agree with the contents of the agreement. The signing not only serves as physical evidence of the agreement, but also as a reminder for each party to fulfill the obligations stipulated in the agreement.

Consensualism also implies the importance of clear and open communication between the parties. Misinterpretation or lack of understanding of the terms of data deletion may lead to disputes in the future. Therefore, in drafting this agreement, it is very important to use simple and easy-to-understand language and conduct in-depth discussions before reaching an agreement. In this way, the principle of consensualism can be properly implemented, creating a transparent and mutually beneficial agreement.

c) Pacta sunt servanda

This principle relates to the binding force of an agreement. Article 1338 paragraph 1 of KUHPer states that an agreement made legally and applies as a law for those who make it. A valid agreement means that the agreement has fulfilled the legal requirements of an agreement so that it is binding and applies as law (Dahlan, 2023).

The principle of pacta sunt servanda refers to the principle that agreements that have been agreed by the parties are binding and must be obeyed like laws. In Article 1338 paragraph 1 of KUHPer, it is stated that agreements made legally shall apply as laws for those who make them. For personal data deletion, this means that both parties are bound to fulfill the contents of the agreement, including data deletion procedures and related obligations.

The binding force of this agreement provides a guarantee that all parties will be responsible for their actions regarding personal data. If either party fails to fulfill their obligations in accordance with the agreement, the aggrieved party has the right to demand fulfillment of the agreement or damages. Thus, the principle of pacta sunt servanda not only protects the interests of individuals, but also creates trust between the parties in carrying out the agreement. In this case, it is important to ensure that all terms and conditions in the agreement have met the criteria for the validity of the agreement so that its binding force can be legally enforced.

d) The principle of good faith

The principle of good faith is the basis for a person to carry out an agreement which in carrying out an agreement must be based on good intentions in this case the agreement made does not harm one of the parties to the agreement (Utari & Hasna, 2020).

The principle of good faith is a fundamental principle that requires the parties to carry out the agreement with good intentions and without harming each other. For personal data erasure, this principle requires each party to commit to the principles of transparency and fairness. This means that in executing the agreement, the party managing the data must provide clear information about the erasure process and ensure that the personal data is not misused during and after the process.

For online lending, the deletion of personal data has become an increasingly important issue in line with the increasing public awareness of data protection. The agreement governing the method of personal data deletion must be viewed from the perspective of the principle of *pacta sunt servanda*, which emphasizes that every legal agreement binds the parties like a law. In this case, when the borrower and lender agree on the procedure and terms of data deletion, the agreement must be obeyed and implemented in accordance with the agreed provisions.

The relationship between the principle of *pacta sunt servanda* and the theory of legal protection outlined by (Salmond, 1966), as well as how the law serves to protect the interests of the parties in a personal data deletion agreement. The principle of *pacta sunt servanda* states that an agreement that has been agreed upon by the parties must be complied with. For personal data deletion related to online lending, this means that once both parties have signed the agreement, they are bound to follow the agreed procedures. This includes a clear explanation of how and when the personal data will be erased, as well as the possible consequences of such erasure. For example, if the agreement states that the data will be deleted upon repayment of the loan, then the lender is obligated to carry out the deletion without delay. Failure to comply with this provision may result in legal disputes against either party.

When both parties organize and agree on the method of data deletion, they are not only creating a legal document, but also creating a moral commitment to respect each other's rights. This reflects the importance of trust in online transactions, where the borrower must feel secure that their personal data will be protected once the loan obligation is fulfilled. The existence of the principle of *pacta sunt servanda* ensures that this agreement has strong legal effect and provides a sense of security for the parties.

Agreements between service providers (platforms) and users (consumers) related to the protection of borrowers' personal data, analysis based on the theory of privity of contract shows that the rights and obligations stated in the privacy policy apply as law to both parties involved. According to the understanding of the principle of *pacta sunt servanda*, an agreement only binds the parties directly involved in the agreement. In this case, the agreement drafted by the service provider (platform) and approved by the consumer, binds both parties to comply with the provisions stated in the privacy policy, including the management and withdrawal of borrowers' personal data.

The privacy policy in this agreement has a very important position, as it serves as the legal foundation that governs how personal data will be processed, used, and protected by the service provider. When consumers agree to provide their personal data, they are not only giving permission, but also acknowledging and agreeing to all the terms described in the privacy policy. In this case, the agreement becomes a means to bind the rights and obligations of both parties. For example, the service provider has the right to collect the borrower's personal data as long as the consumer has given consent based on the agreement, while the consumer has the right to have their personal data protected in accordance with the terms described in the privacy policy. It is important to understand that within the framework of the principle of *pacta sunt servanda*, the obligations stated in this privacy policy do not apply to third parties who are not directly involved in the agreement. Therefore, only service providers and consumers are bound by the terms stated in the privacy policy. For example, if a third party (such as a business partner or vendor not involved in the agreement) requests access to the consumer's personal data, then this will be a separate matter and is not bound by the agreement between the service provider and the consumer, unless agreed in an additional agreement.

Moreover, as personal data recall, this agreement provides a clear legal basis for how personal data may be used, stored, or disseminated by the service provider. The privacy policy agreed upon by the consumer governs various aspects, including the consumer's right to access, correct, or delete their personal data, as well as the service provider's obligation to keep such data confidential and secure. On the other hand, the service provider has the right to use the data in accordance with the purposes agreed in the privacy policy, such as to provide services or for marketing purposes (Ahmad Rosidi et al., 2022).

It is clear that online loans in Indonesia are usually made by making an agreement between the online loan borrower and the online loan provider. Agreement, by the parties, is regulated according to 1313 KUHP, an agreement is "an act by which one or more people bind

themselves to one or more people”. (Subekti, 2005) also provides the definition of an agreement, namely an event where one person promises to another person or where the two people promise each other to do something. The agreement that occurs will give rise to rights and obligations for the parties who bind themselves in an agreement (Utari & Hasna, 2020).

Based on the description above, it is clear that legal protection of online loan borrower data is not only regulated in applicable positive law, but also regulated in treaty law. Based on the principle of *pacta sunt servanda*, the agreement between fintech and legal subjects as debtors has been regulated in an agreement, in the agreement it is explained how the security of debtor data is the responsibility of fintech as a creditor and as well as arrangements in the agreement related to fintech's obligation to return debtor data that has completed its loan. The agreement or engagement between fintech as a creditor and the debtor must be obeyed by the parties because the agreement has rights and obligations that bind each other.

As an illustration of the agreement between the creditor and the debtor in an online-based loan, the online loan provider is Easycash and the contents of the agreement for personal data processing. The Privacy Policy and Terms & Conditions applicable in Easycash by PT Indonesia Fintopia Technology are important documents that explain how the user's personal data is collected, used and managed. Using the Easycash Platform, users are required to read and understand the terms outlined in this Privacy Policy.

Each user who registers declares that the information provided is accurate and they agree to give Easycash permission to process such data in accordance with the purposes specified. Moreover, if users do not agree with the processing of their personal data, they are requested not to provide the requested information and discontinue the use of the Platform. This policy includes details on the type of data collected, the manner in which the data is collected, as well as the legal basis of data processing, including the performance of contracts and legitimate interests. It also emphasizes the importance of transparency in the management of personal data and gives users the right to access, correct and withdraw their personal data. As such, this Privacy Policy aims to protect the rights of users and ensure that their data is managed securely and in accordance with applicable regulations.

The binding agreement between borrowers and fund providers in easycash is valid, this is in accordance with the principle of *pacta sunt servanda*. The sentence in Easycash's policy regarding the withdrawal of consent for the processing of users' personal data demonstrates the complex interaction between individual privacy rights and treaty obligations governed by the principle of *pacta sunt servanda* and the provisions of Article 1338 of the Civil Code (Utari & Hasna, 2020). The principle of *pacta sunt servanda* stipulates that agreements must be adhered to as agreed by the parties involved. Based on the Easycash's policy, this means that although users have the right to withdraw their consent for the processing of personal data, there are exceptions that relate to existing treaty obligations. Where users have active funds on the platform, the processing of their personal data is considered an integral part of the agreement commitments that must be fulfilled. Therefore, Easycash adheres to the principle that even if consent can be generally withdrawn, data processing should still be carried out to fulfill the agreed upon treaty obligations, in accordance with the principle of *pacta sunt servanda* which requires the fulfillment of valid agreements.

The provisions of Article 1338 of the Civil Code support this principle by stating that all valid agreements apply as law to the parties that make them and must be carried out in good faith. In this case, the processing of personal data carried out by Easycash to fulfill the agreement commitment can be seen as the fulfillment of legal obligations arising from the agreed agreement. This article underlines that existing agreement obligations must be fulfilled in accordance with the contents of the agreement and applicable provisions. When users with active funds cannot withdraw their consent, this reflects that Easycash is still bound by binding treaty obligations and must carry out the data processing to fulfill the existing agreement. In other words, although users have the right to change their consent, Easycash has adhered to the principle that the processing of data necessary to fulfill the agreement obligations must still continue. Easycash terms and conditions at the beginning of the sentence also makes it clear that: “If you do not agree to the processing of your personal data under this privacy policy, please do not



provide any personal data when requested by us and immediately stop using our platform and leave our platform. By continuing to use and access our platform or providing any personal data, you acknowledge and agree to the terms regarding your personal data as outlined in this privacy policy<sup>1</sup>.

This means that if you do not agree to the processing of your personal data under this Privacy Policy, please do not provide any personal data when requested by us and immediately stop using and leave our platform. By continuing to use and access our platform or providing any personal data, you acknowledge and agree to the terms regarding your personal data as described in this Privacy Policy.

The above explanation has strong relevance to Article 1338 of the Civil Code (KUHPdata) and the principle of *pacta sunt servanda*. Article 1338 of the Civil Code affirms that all legal agreements apply as law to the parties that make them and must be carried out in good faith. The agreement between users and platform providers includes a privacy policy as part of the deal. Users are expected to abide by such terms if the parties choose to continue using the platform or provide their personal data. The principle of *pacta sunt servanda* emphasizes that an agreement must be adhered to in accordance with the terms that have been agreed upon by both parties. Thus, if users continue to access or provide personal data after reading the privacy policy, they are deemed to have agreed to the terms and are, therefore, obligated to abide by them. This sentence illustrates the application of both principles: users actively bind themselves to the terms of the privacy policy as part of their agreement with the platform provider, and the platform provider is held to the obligation to comply with the agreed terms in accordance with Article 1338 and the principle of *pacta sunt servanda*.

#### **Alternative borrower dispute resolution in online lending for personal data extraction**

Law No. 30/1999 on Arbitration and Alternative Dispute Resolution Article 1 point 10 explains that alternative dispute resolution is “a way of resolving disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert judgment”. The scope of alternative dispute resolution itself is regulated in Article 66 letter b (Dewandaru et al., 2020), namely:

1. Commerce
2. Banking
3. Finance
4. Investment
5. Industry
6. Intellectual Property Rights.

The form of dispute resolution can be done by:

1) Litigation

Litigation is the settlement of disputes between the parties through the court and each party to the dispute can file a lawsuit or rebuttal. Dispute resolution through litigation is generally resolved based on the procedural law applicable in the country concerned, such as in Indonesia based on civil and criminal procedural law.

2) Non-litigation

The amount of money spent, a fairly long period of time, and there are losing parties from the implementation of dispute resolution through litigation as a factor in the emergence of alternative dispute resolution or can also be referred to as non-litigation dispute resolution. The principle held in dispute resolution through non-litigation channels is a win-win solution or no party is harmed and upholds kinship in order to maintain the parties' business relations. Examples of alternative dispute resolution are arbitration, negotiation, mediation, conciliation, consultation, and expert opinion (Wagiu et al., 2023).

A. Consultation

Consultation is an alternative dispute resolution between one person called a client and a consultant. The consultant has the authority to provide an opinion on the dispute at hand to fulfill his needs.

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<sup>1</sup> [https://www.easycash.id/webview/static-agreement/EASYCASH\\_TERMS\\_OF\\_USE](https://www.easycash.id/webview/static-agreement/EASYCASH_TERMS_OF_USE)

## B. Negotiation

Negotiation is a dispute resolution without a third party where the two parties to the dispute negotiate to resolve the dispute until they find a common ground that is impartial to one party or in this case the results of the negotiation benefit both parties. According to Garry Goodpaster, in negotiating there are 3 basic strategies that can be implemented, namely:

### a) Competing

Competing negotiations mean that in carrying out negotiations to get the maximum advantage over bargaining with other parties in order to get the victory of one party over the other.

### b) Compromise

The negotiation strategy through compromise itself means that one of the parties in this dispute must sacrifice something to the other party to get an agreement or in this case the negotiators do not accept everything they want but only part of it. Compromise requires negotiators to recognize that their interests and goals may not be fully aligned with those of the other party. For example, if two parties are negotiating over the sharing of resources, each party may have to give up some of what they consider important in order to get what they consider to be a bigger and better outcome. As such, compromise often requires each party to balance between their desires and the need to reach an agreement that is acceptable to all parties involved.

### c) Collaborative problem solving

This strategy has the aim of gaining one's own interests and of course the interests of the negotiating partner, in this case the parties must find a middle ground from the dispute that occurs so that the benefits can be received together. Commitment to this middle ground requires good understanding and negotiation skills. Negotiators need to be able to communicate effectively, listen actively and empathize with the other party's position and interests, so that they can find a solution that combines their interests with those of their negotiating partner. At times, this may mean that parties have to make adjustments to their expectations and be willing to accept outcomes that may not fully match their initial expectations, but are sufficient to reach a satisfactory agreement.

Negotiations in its implementation have several stages before finally reaching an agreement, explained by William Ury that negotiations have four stages, namely:

#### 1. Preparation stage

- i. Know the opponent, study the opponent as much as possible and do research.
- ii. Think in the opponent's way of thinking as if the opponent's interests are the same as ours.
- iii. Understand our interests and those of the opponent.
- iv. Identify the problem whether the problem is a common problem.
- v. Determine the best alternative that can be used as a negotiation agreement.

#### 2. Positioning stage

- i. Exchange information with each other.
- ii. Explain the needs and problems.
- iii. Make an initial offer.

#### 3. Bargaining stage

- i. The disputing parties submit offers to each other along with the reasons which are then used to persuade the other party.
- ii. Understanding the opponent's mind.
- iii. Identify common needs.

- iv. Discuss settlement options for the dispute.
- 4. Closing Stage
  - i. Evaluate the most rational and favorable settlement options for the parties.
  - ii. Execute the solution of the negotiation.
- C. Conciliation

Conciliation is an alternative dispute resolution used by the parties using a third party called a conciliator. The conciliator is active such as formulating and compiling the stages of resolving the parties' dispute and then the dispute resolution formula is submitted to the disputing parties. The conciliator is not authorized to make a decision of the dispute that occurs against the parties all depend on the good faith of the parties to resolve the dispute that occurred.
- D. Mediation

Mediation is a dispute resolution using a third party called a mediator by negotiating with both parties to the dispute in order to obtain a mutual agreement, this is explained in Supreme Court Regulation no. 1 of 2016 concerning Mediation Procedures in Courts precisely in Article 1 paragraph 1. The mediator here is a third party who is neutral in helping the disputing parties negotiate to obtain an agreement accepted by both parties.
- E. Arbitration

According to (Subekti, 2005), arbitration is the settlement of disputes by judges based on the agreement of the parties to submit to the decision of the judge they have previously chosen for the dispute that occurred. According to the Law which can be referred to as Law No. 30 of 1999 concerning arbitration and alternative dispute resolution in Article 1, arbitration is a dispute resolution based on a written agreement on arbitration made by the parties to the dispute. The definition of arbitration that has been explained, the author concludes that arbitration is a dispute resolution using a third party called an arbitrator where the arbitrator himself has the authority to provide opinions and decide disputes between the parties and in carrying out arbitration must be based on an arbitration agreement made by the parties in written form which can be made after the dispute occurs which can be referred to as a deed of compromise or a deed made before the dispute occurs or can also be referred to as a pactum de compromittendo (Nugroho, 2017).

Dispute resolution in terms of online loans between parties is based on an agreement that binds the parties. An example that can be seen is online loan dispute resolution on the Easycash website. The easycash terms and conditions in the governing laws and dispute settlement section stipulate that:

- a) *All interpretation implementation and all consequences arising from the Terms and Conditions, Privacy Policy, and Platform Agreements are regulated and subject to the laws in force in the Republic of Indonesia.*
- b) *If there is a dispute in the implementation of the Terms and Conditions, Privacy Policy, and Platform Agreements, a resolution will be carried out by deliberation to reach a consensus*
- c) *in the event that the deliberation fails to reach a resolution, the parties agree to resolve the dispute through the District Court Registrar's Office at the Company's legal domicile or through OJK' Alternative Dispute Resolution Institution*

The above sets out the legal provisions and dispute resolution procedures in relation to the applicable Terms and Conditions, Privacy Policy and Platform Agreement. Each element of this provision is clearly set out to ensure legal certainty and fair dispute resolution for all parties involved.

The first sentence stipulates that all interpretations and consequences of the Terms and Conditions, Privacy Policy, and Platform Agreement will be governed and subject to the applicable laws of the Republic of Indonesia. This means that while these documents may contain various rules and policies, their application must be in accordance with Indonesian law. The

establishment of the country's law as a reference provides a clear and consistent legal framework for assessing compliance and enforcement of the agreed provisions. As such, any issues arising in relation to the interpretation and implementation of these provisions must refer to national law, providing assurance that any legal resolution will be conducted in accordance with the applicable regulations of the country.

The second sentence provides for the resolution of disputes that may arise from the implementation of the Terms and Conditions, Privacy Policy, and Platform Agreement. If there is a dispute, the settlement must be carried out by deliberation for consensus. The principle of deliberation to reach a consensus is a dispute resolution method that prioritizes dialogue and mutual agreement between the parties to the dispute. This approach aims to find a solution that is acceptable to all parties without involving formal legal processes that are more complex and time-consuming. By prioritizing deliberation, it is expected that each party can reach an agreement peacefully and effectively, minimizing the possibility of prolonged conflict and reducing the burden on the judicial system (Citra, 2025).

However, if the deliberation does not succeed in reaching an agreement, the third sentence states that the parties agree to resolve the dispute through the Registrar of the District Court at the legal domicile of the Company or through the OJK Alternative Dispute Resolution Institution (LAPS). This is regulated in the Financial Services Authority Regulation Number 6/POJK.07/2022 on the Protection of Consumers and Communities in the Financial Services Sector Article 1 point 5 that the Financial Services Sector LAPS (LAPS OJK) is an institution that conducts dispute resolution in the financial services sector outside the court. This choice indicates that while deliberation is the preferred first step, not all disputes can be resolved through this means. In cases where agreement cannot be reached, the parties involved must choose between two options: through the District Court or LAPS OJK. The District Court provides an accessible formal legal avenue for dispute resolution, where the court's decision will be binding and lawful. In contrast, LAPS OJK offers an alternative method that may involve mediation or arbitration, providing the possibility of faster and possibly more flexible dispute resolution than conventional court proceedings.

The explanation is clear that if an online loan borrower uses the Easycash website to make an online loan, the borrower is bound by the agreement as if it were a law, this is in accordance with the provisions of Article 1338 of the Civil Code, namely: "All agreements made legally shall apply as laws for those who make them". This provision is in accordance with the principle of *pacta sunt servanda* that the agreement applies as a law to the parties who bind it in an agreement.

The analysis of the sentence based on the theory of legal certainty proposed by Ismail (2012), with reference to the principle of *pacta sunt servanda* and its application in dispute resolution on the Easycash platform, can be understood as an effort to create legal certainty for the parties involved in the agreement. Legal certainty, according to Ismail, contains two main dimensions: first, certainty regarding the legal norms themselves, and second, certainty regarding their application. In this case, the Terms and Conditions, Privacy Policy, and agreements made between users and fintech service providers as illustrated by fintech easy cash contain clear legal norms that bind both parties involved in the contract.

## CONCLUSION

The data withdrawal of online loan borrowers from the perspective of agreement law is an action taken based on an agreement between the online loan service provider and the borrower which is regulated in an agreement made by both parties. The agreement is a legal basis that binds both parties to carry out their respective obligations and rights. An understanding of the withdrawal of personal data in online loan agreements cannot be separated from the provisions stipulated in the law of agreements, where the parties are required to be transparent about the applicable terms and conditions, including the use of borrowers' personal data. The personal data provided by the borrower, such as name, address, and financial information, must be used

in accordance with the purposes agreed upon in the agreement and must not be misused. Therefore, the agreement must fulfill the legal principles, such as clear and uncoerced consent from the borrower, as well as adequate understanding regarding the use of personal data taken by the service provider. As a protection measure for the borrower, this agreement should also stipulate the obligation of the service provider to maintain the confidentiality and security of the personal data provided. Thus, the use of personal data in online lending is valid and lawful if it is based on a clear agreement and fulfills the requirements of a valid agreement.

Dispute resolution regarding the personal data of online loan borrowers can be done in two ways, namely through non-litigation and litigation channels. In the non-litigation route, dispute resolution can be carried out through mediation or deliberation for consensus involving the parties to the dispute, both between the borrower and the online loan service provider. In this case, if there is a dispute related to the Terms and Conditions, Privacy Policy, or Platform Agreement, the first effort taken is to try to reach an agreement amicably through discussion and negotiation. However, if the deliberation does not result in an adequate settlement, then the dispute can be brought to litigation, namely through the judicial process. Settlement through the litigation route can be done through the Registrar of the District Court that has jurisdiction in the legal location of the online loan service provider company or, alternatively, through an alternative dispute resolution institution that can offer a faster and more efficient solution compared to the judicial route. Thus, dispute resolution regarding the personal data of online loan borrowers provides flexibility in choosing a path that suits the needs of the parties to the dispute.

In order not to create norm ambiguity in Article 9 of Law 27 of 2022 on Personal Data Protection, it is important to immediately draft a clear and transparent policy regarding the withdrawal of consent for personal data processing. The policy should explicitly explain the mechanism for withdrawing personal data so that it will not be misused for different purposes. In making an online loan agreement, it is advisable for the subject of the personal data owner to explicitly and explicitly add a clause on the technical withdrawal of the data that has been provided, including the choice of law and the channel to be used if the dispute cannot be resolved amicably.

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