

PROTECTION OF LEGAL RIGHTS OF BORROWERS WHO ARE HARMED DUE TO ILLEGAL INFORMATION TECHNOLOGYBASED LOANS

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PROTECTION OF LEGAL RIGHTS OF BORROWERS WHO ARE HARMED DUE TO ILLEGAL INFORMATION TECHNOLOGY-BASED LOANS

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Abstract

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Technology-based loans, known as online loans, are increasingly in demand by the public. The easy and fast process of disbursing loan funds is one of the reasons people are interested in using online loan services. The party authorized to oversee the implementation of online loans is the Financial Services Authority (OJK). The presence of online loans still leaves legal problems, namely there are still many service providers who are not licensed or who are known to be illegal. This makes legal protection for debtors as loan recipients very important to provide in order to protect against losses due to illegal online loans. To answer these problems, the type of research used is normative juridical by examining various laws and literature that are relevant to the theme discussed. So this study came to the conclusion that online loans made by illegal service providers do not fulfill the subjective element in the terms of a valid agreement, so the agreement can be canceled.

Keywords: Legal Protection, Debtors, Information Technology-Based Loan

1. INTRODUCTION

The development of information technology systems nowadays continues to experience rapid growth and keeps up with the times (Munir & Djaelani, 2022). One of the significant developments is in the financial sector, marked by the increasing availability of various financial instruments. The development of these financial instruments is characterized by the emergence of financial institutions, such as insurance institutions, securities, Islamic banking institutions, and so on.

Along with the advancement and development of the digital era, activities in the financial sector are increasingly growing with the help of information technology (Khan, Weili, & Khan, 2022). This development is marked by the emergence of financial institutions that apply online-based lending. The progress in the financial field is known as Fintech Technology. Based on The National Digital Research Centre (NDRC), Fintech is an innovation in the financial sector. Of course, this financial innovation receives a touch of modern technology. The existence of Fintech can bring about more practical and secure financial transaction processes.

The presence of financial companies in technology-based lending is gaining more interest and attention from the wider community (Harjono, 2022). This technology-based lending is known as peer lending (P2P lending) or commonly known as online lending. The authorized party as a regulator in P2P lending is the Financial Services Authority (OJK) and Bank Indonesia. This can be seen in Financial Services Regulation Number 77 / POJK.01.2016 regarding Information Technology-Based Lending Services. Based on the explanation of the regulation, peer-to-peer lending is a breakthrough for people in Indonesia who do not know banking services (unbanked people) but already understand technology. Fintech services based on P2P Lending are one of the solutions to the limited access to financial services in Indonesia and realize financial inclusion through good synergy between financial institutions and technology companies. In principle, Fintech activities based on P2P lending must be accompanied by regulations that govern them because Fintech is included in microprudential, so its activities and supervision must be well carried out by the Financial Services Authority (OJK).



One of the problems that arise in technology-based lending is the rampant illegal online lending (Fitri, Priyono, & Turisno, 2022). This can be seen from the increasing number of cases of suicide committed by people trapped in online lending debt. One case found was a mother in Wonogiri Regency, Central Java, who committed suicide by hanging herself on her terrace. In the testament left by the victim, she admitted to having debt on 27 online lending platforms. This is interesting to be further examined in relation to the legal protection given to debtors related to technology-based lending, especially those that are still illegal. This is in line with the spirit of the Financial Services Authority (OJK) in Financial Services Regulation Number 77 / POJK.01.2016 regarding Information Technology-Based Lending Services, which requires fintech lending providers/platforms to prioritize openness of information to potential lenders and borrowers to assess the borrower's risk level and map out the interest rates to be applied.

2. METHOD

Legal research is a process of solving a legal problem that is accompanied by a way of resolving the problem by applying the law in accordance with the facts that occur (Fauzia, Octavia, & Hamdani, 2022). The legal research used by the author in this journal is normative juridical research, which involves searching and researching literature or secondary data (Soerjono Soekanto and Sri Mamudji, 2004). The use of normative legal research is aimed at explaining various regulations regarding online lending agreements.

The approach used in this study is the legislative and conceptual approach. The legislative approach is an approach by examining various laws and regulations that are related to the legal issues being discussed (Kholiq, Puspanita, & Thalib, 2022). In relation to the relationship between the legislative approach and the legal issues discussed in this journal, it is to assess or examine the laws and regulations related to lending agreements. The second approach used in this study is the conceptual approach, which is an approach where the researcher does not depart from existing regulations, as there are no rules or regulations to solve the problem at hand (Dyah Ochtorina Susanti, 2014). When using this approach, the researcher does not depart from relevant principles related to the issue being discussed.

Furthermore, the legal materials used in this paper are first, primary legal materials, namely the Civil Code. The second legal material used here is tertiary legal materials, such as books, legal dictionaries, and Indonesian dictionaries (Saragih et al., 2022).

3. RESULTS AND DISCUSSION

Today, technology-based lending businesses or commonly known as online loans are very popular among the public. Online loans, also known as financial technology (fintech), are digital technology applications created to facilitate borrowers and lenders with financial matters online or often referred to as financial intermediation. Another definition of fintech is an industry consisting of companies that use information technology to make financial systems more efficient (Akhmedova, Amat-Lefort, Barravecchia, & Mastrogiacomo, n.d.).

The ease and speed of obtaining loans encourage people to use online loan providers en masse. The legal basis for online loans in Indonesia is regulated in Financial Services Authority Regulation No. 77/PJOK.01/2016 of 2016 concerning Information Technology-Based Lending and Borrowing Services (hereinafter referred to as PJOK 77/2016). Article 1 number 3 of PJOK 77/2016 provides the understanding of information technology-based lending and borrowing services as:

"The provision of financial services to bring lenders and borrowers together to enter into loan agreements in Indonesian rupiah directly through electronic systems using the internet network."

The provider of the lending and borrowing services is further regulated in Article 1 number 6 of PJOK 77/2016 which states:

"Indonesian legal entities that provide, manage, and operate technology-based lending and borrowing services."

There are two important legal subjects in technology-based lending and borrowing activities, namely lenders who are individuals, legal entities, and/or business entities who have receivables due



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to information technology-based lending and borrowing agreements (Subagiyo, Gestora, & Sulistiyo, 2022). Meanwhile, borrowers are individuals and/or legal entities who have debts due to information technology-based lending and borrowing agreements.

Furthermore, Article 18 of PJOK 77/16 explains that the agreement for the implementation of information technology-based lending and borrowing services is divided into two items, namely:

"a. Agreement between the provider and the lender, b. Agreement between the lender and the borrower."

The essential aspect in the operation of online lending is that every online lending provider is required to register and obtain permits from the Financial Services Authority (OJK) (Subagiyo et al., 2022). If there is a violation of this requirement, the online lending provider may be subject to administrative sanctions as stipulated in Article 47 paragraph (1) PJOK 77/2016. These administrative sanctions may include:

- a. Written warning;
- b. Fine, which is an obligation to pay a certain amount of money;
- c. Restriction of business activities, and
- d. Revocation of permits.
- e. Administrative sanctions in the form of fines, restrictions on business activities, and revocation of permits may be imposed with or without prior written warnings. Administrative sanctions in the form of fines may be imposed separately or together with other administrative sanctions.

Online lending providers who do not register and obtain permits from the Financial Services Authority (OJK) can be categorized as illegal (Kharisma, Nurmandi, Muallidin, Kurniawan, & Loilatu, 2022). There are various legal issues in society, as to date, many people have fallen into illegal online lending practices. The easy loan application process and quick disbursement of loan funds attract people to obtain illegal online loans.

The existence of many illegal online lending activities causing concern among the public needs attention from all of us. From August 2018 to early 2020, there were already 4020 cases of illegal Financial Technology, including illegal online loans, that were blocked by the Investment Alert Task Force of the Ministry of Communication and Information (Kominfo). However, the number of new illegal online lending cases is still quite high. (Mabsuti and Nurtresna, 2022). In addition, there are various problems that arise from illegal online lending, which have an impact on borrowers, such as debt collection practices that involve threats and intimidation, as well as consumer data privacy that is not guaranteed.

In essence, an online lending agreement cannot be separated from the meaning of a general agreement, which applies to all parties who have agreed to it. Article 1338 of the Civil Code states that any form of agreement made in accordance with the law applies as the law to those who have jointly made it. The agreement cannot be revoked except by the agreement of both parties or for reasons specified by the law, and the agreement must be executed in good faith.

In addition to the agreement being binding as the law for those who made it, online lending must also comply with the legitimate requirements of the agreement as regulated in Article 1320 of the Civil Code (Siregar et al., 2022). These legitimate requirements include the presence of mutual agreement between the parties, the competence of the parties in making a contract, the existence of a certain subject matter, and a legal cause. These requirements are related to both the subject and object of the agreement. The first and second requirements are subjective requirements, while the third and fourth requirements are objective requirements. Both classifications of requirements also have different legal implications. If the objective requirements of the agreement cannot be fulfilled, the agreement will be void or considered never to have existed according to the law. Whereas, if the subjective requirements are not met, the agreement can be challenged for cancellation in court.

If substantial aspects of an agreement are related to online loans, there are three main elements involved: the service provider, the lender (creditor), and the borrower (debtor) (Satino & Putri, 2022). The service provider acts as a bridge between the lender and the borrower. Based on Article 18 of the PJOK, it can be determined that in an online loan agreement, the legal relationship that arises is



between the lender (creditor) and the borrower (debtor). Despite this, there is a power of attorney from the lender (creditor) to the collateral provider to provide loans to the borrower.

Civil law, through Article 1792 of the Civil Code, provides an explanation of power of attorney, namely:

"Power of attorney is an agreement that contains the granting of authority to another person who accepts it to carry out something on behalf of the person giving the power of attorney."

Based on this, it can be understood that the service provider acts as an agent of the lender (creditor) to the borrower (debtor), so that in the implementation of the loan, it must still comply with and fulfill the subjective elements as determined in Article 1320 of the Civil Code. Civil law regulates two types of incapacity, namely:

1. Handling onbervogheid (incompetence to act, that is, a person who cannot make a certain legal act that is valid).
2. Handling onbekwaamheid (incapacity to act), that is, people who cannot make any valid legal acts at all.

⁵ Regarding the agreement between the lender and the borrower, if the borrower is unlicensed or not registered with the Financial Services Authority (OJK), then one of the subjective requirements cannot be fulfilled, namely competence. Therefore, the agreement can be canceled. This is in line with the provisions of Article 1451 of the Civil Code, which states that:

"The declaration of the nullity of an agreement due to the incapacity of those persons in accordance with the provisions of Article 1330, results in the restoration of the goods and persons concerned in the condition they were in before the agreement was made, with the understanding that everything that has been given or paid to an unauthorized person as a result of the agreement can only be claimed back if the property in question is still in the hands of the unauthorized person, or if it is found that this person has obtained a benefit and what has been given or paid for it, or if what has been enjoyed has been used for his interests."

Based on the explanation of this article, it can be understood that the condition returns to its original state, meaning that the party receiving the loan is obliged to return the loan money to its original condition and the agreement cannot be continued.

Parties who feel aggrieved by illegal online loan providers can take several ways to report the service provider, namely:

1. Make a complaint to the Financial Services Authority (OJK).
2. Make a complaint to the Ministry of Communication and Information Technology (Kominfo).
3. Make a complaint to the police.
4. Make a complaint to the Investment Alert Task Force for blocking.

4. CONCLUSION

Information Technology-Based Loans, known in society as Online Loans, are legally required to be registered with the Financial Services Authority (OJK) in accordance with PJOK 77/2016. Failure to register will result in the illegal status of online loan providers. The parties involved in online loans include service providers, lenders (creditors), and borrowers. All parties involved in online loans must comply with the legal requirements of the agreement, as stipulated in Article 1320 of the Civil Code. One of the requirements that must be fulfilled in an online loan agreement is the subjective requirement (capability). If the agreement between the lender and borrower is made using an unregistered loan service provider, it may not fulfill the capability requirement. As a result, the agreement may be legally invalidated and returned to its original condition. The borrower must return the money received, and the agreement can be terminated.

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