Jurnal IUS Kajian Hukum dan Keadilan
Volume 11, Issue 3, December 2023, E-ISSN 2477-815X, P-ISSN 2303-3827
Nationally Accredited Journal, Decree No. 158/E/KPT/2021
open access at : http://jurnalius.ac.id/

Construction of Consumer Protection Against Illegal Online Loan Transactions As a Means of IUS Constituendum in Indonesia

Iman Imanuddin[1], RR.Dewi Anggraeni[2], Fridayani[3], Susanto[4]
[1]Pamulang University, Indonesia, Email: iman.imanuddin@unpam.ac.id
[2]Pamulang University, Indonesia, Email : rrdewianggraeni@unpam.ac.id
[3]Pamulang University, Indonesia, Email : fridayaniw@gmail.com
[4]Pamulang University, Indonesia, Email : susanto@unpam.ac.id

Received: 2023-11-10; Reviewed: 2023-12-17; Accepted: 2023-12-26; Published: 2023-12-28

Abstract

The rise of illegal online loans has caused a lot of harm to consumers. Some argue that the OJK as a regulator in the field of financial services is considered incapable of protecting consumers. The research method, normative juridical approach with laws and regulations analyzed qualitatively. The conclusions obtained are, first, the regulation of consumer legal protection for online loans according to Indonesian law is carried out by applying the principles of transparency, fair treatment, reliability, confidentiality, and security of consumer data/information. Second, legal protection for online loan recipients is carried out preventively through regulation and supervision, as well as providing information and education to the public about the characteristics of illegal online loans. Repressive legal protection can be carried out by imposing administrative, civil, and criminal sanctions. Suggestions that can be conveyed are that the OJK needs to increase stricter supervision of online loan providers and that laws and regulations are needed that are higher than the existing laws and regulations.

Keywords: Legal Protection; Consumers; Loans; Online; Illegal.

1. INTRODUCTION

In general, every money lending activity that occurs in daily life involves two parties: the lender and the loan recipient. This is preceded by a direct meeting and is followed by the signing of an agreement as a sign of an agreement to create a legal relationship. This is consistent with the provisions of Article 1754 of the Civil Code (KUHPerdata), which states that an agreement between the lender and the loan recipient will result in a loan and borrowing agreement that creates a legal relationship. According to J. Satrio, "An agreement is a legal relationship between two parties, on the one hand, there are rights and on the other hand there are obligations."[1] This means that each party has rights and obligations as a result of the presence of the loan and borrowing legal relationship. As stated by J. Satrio, the existence of a money lending agreement can guarantee that the

[1] J. Satrio, *Perikatan Yang Lahir Dari Perjanjian*, Buku 1 (Indonesia: Bandung: Citra Aditya Bakti, 2012)., pp.5.

DOI: http://dx.doi.org/10.29303/ius.v11i3.1312

money lent by the lender will be returned to the recipient of the loan, as well as provide each party a guarantee of legal protection if a dispute arises later.

The transition from analog to digital systems has been one of the major effects of today's technological and informational advancements on social activities. That is to say, it created what is known as online lending (pinjol), which is done through Internet media, by leveraging information and technological advancements. According to Richardus Eko Indrajit, online media is currently utilized as a transactional medium. The global economy has entered a new phase, dubbed the "digital economy," thanks to the internet.[2] Similarly, Djoni S. Gazali and Rachmadi Usman said that the swift advancement of information technology in the current globalized period has significantly altered the way that people from all walks of life in Indonesia live. The financial system, which is essentially a significant order in a nation's economy and plays a role in the provision of services in the financial sector by financial institutions, is one example of economic progress in this era of globalization. Changes in the pattern of life are currently occurring in all fields.[3] This indicates that the process of borrowing money through Pinjol is carried out directly via an electronic system that makes use of the Internet.[4] This system is known as an electronic contract, the terms of which are governed by Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), as well as other laws and regulations about transactions involving electronic money lending.

Online loans, also known as electronic lending and borrowing transaction services, have the potential to benefit all parties involved by facilitating a more practical, safe, and effective financial transaction process.[5] Several benefits come with not using traditional lending services. To begin with, the application procedure is simple and useful. The fact that internet loans, in contrast to traditional loans, have no collateral requirements and an easy application process is one of the key reasons why they are becoming so popular with the public so quickly. Applying for a loan online involves completing the application process entirely online, without the need for an administrative survey or interview. An online loan application can be completed with a smartphone and an internet connection, and the money will be sent straight to the designated account number. Second, the loan proceeds are available for immediate disbursement—in some cases, within hours of the application being accepted. Because of this, taking out a loan is the best course of action when trying to resolve immediate financial issues. Thirdly, the terms are easy to understand and uncomplicated. Many people complain that it is difficult to fulfill the requirements for conventional loan applications, especially the

[2] Richardus Eko Indrajit, *E-Commerce: Kiat Dan Strategi Bisnis Di Dunia Maya* (Indonesia: Jakarta: Elex Media Komputindo, 2015)., pp.33.

[3] Djoni S. Gazali dan Rachmadi Usman, *Hukum Perbankan* (Indonesia: Jakarta: Sinar Grafika, 2016, 2016)., pp. 39.

[4] "Pasal 1 Angka 3 Peraturan Otoritas Jasa Keuangan Nomor 77/POJK.01/2016 Tahun 2016 Tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi," n.d.

[5] Fauziah Hadi, "Penerapan Financial Technology (Fintech) Sebagai Inovasi Pengembangan Keuangan Digital Di Indonesia, Terdapat Dalam," accessed July 5, 2023, http://temilnas16.forsebi.org/penerapanfinancial-technology-Fintechsebagai-inovasipengembangan-keuangan-digital-di-indonesia.

need to provide assets as collateral. Online loan applications can be made with just a few personal documents, such as KTP, NPWP, and salary slips.[6]

Unlicensed pinjol, also known as illegal pinjol application, was born out of the quick development of technology and information that altered community transaction patterns. While this unlicensed pinjol is highly sought after by the general public, it has resulted in numerous casualties. According to Friderica Widyasari Dewa, Executive Head of the Financial Services Business Actors Behavior Supervision, Education, and Consumer Protection of OJK, there are many victims of illegal pinjol. Teachers account for the largest percentage of victims at 42 %, followed by layoff victims at 21 %, housewives at 18 %, and others at 14 %. Meanwhile, the primary reason why people deal in illegal pinjol is to pay debts.[7] About the pinjol issue, since 2020, 44 % of consumer complaints to the Indonesian Consumers Foundation (YLKI) have been about unlawful pinjol, which is higher than the percentage of complaints about other financial services. Financial services-related consumer complaints have consistently been the greatest from year to year and in 2022, according to Rio Priambodo of YLKI Complaints and Legal Staff. In the meantime, 882 distinct customer complaints were received by YLKI in 2022, according to Executive Chairman Tulus Abadi of YLKI Daily.[8]

Senior Economic Researcher from Perkumpulan Prakarsa, Setyo Budiantoro, attributes the emergence of pinjol in society to several variables. First, because technology always advances faster than rules, there is a lax regulatory framework for online loan service providers. The second is the challenge of obtaining funding from official organizations, like banks, to address pressing societal demands. Thus, the above statements stimulate the existence of the illegal pinjol, which provides a huge, quick, and simple process along with poor financial literacy due to ignorance of the consequences.[9] Third, it is said that, in terms of safeguarding customers in the financial services industry, the financial services authority's supervisory role over online lenders is deemed inadequate.

The House of Representatives of the Republic of Indonesia (DPR RI) has previously drawn attention to the financial services authority's inadequate supervisory role concerning the growth of illegal pinjol. According to Vera Febyanthy, a member of Commission XI DPR RI, OJK's supervisory function falls short in two areas when it comes to safeguarding customers. First of all, victims tend to be illiterate; therefore they don't verify the legitimacy of internet lenders. Furthermore, OJK's oversight of financial activities is not operating at its best.[10]

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[6] CNBC Indonesia, "Sebelum Ajukan, Inilah Kelebihan & Kekurangan Pinjaman Online", 21 June 2021," accessed July 5, 2023, https://www.cnbcindonesia.com/tech/20210621145452-37-254759/sebelum-ajukan-inilah-kelebihan-kekurangan-pinjaman-online.

[7] Tim Liputan, "'Guru Dan Ibu RT Korban Pinjol Terbanyak 2023, Salah Satu Penyebabnya Untuk Bayar Utang', 09 Juni 2023," accessed July 5, 2023, https://rbtv.disway.id/read/9955/guru-dan-ibu-rt-korban-pinjol-terbanyak-2023-salah-satu-penyebabnya-untuk-bayar-utang.

[8] Fransisca Natalia, "'Minyak Goreng Dan Pinjol Paling Banyak Diadukan Ke YLKI Tahun 2022, Lagi-Lagi Soal Pengawasan', 20 Januari 2023," accessed July 5, 2023, https://www.kompas.tv/bisnis/370100/minyak-goreng-dan-pinjol-paling-banyak-diadukan-ke-ylki-tahun-2022-lagi-lagi-soal-pengawasan.

[9] "Pinjol Ilegal Bermunculan Akibat Lemahnya Sistem Hingga Perilaku Masyarakat Konsumtif Sehingga Terjerat 'Lintah Digital', 26 Oktober 2021," accessed July 5, 2023, https://www.bbc.com/indonesia/indonesia-58850599.

[10] Tsani Ariant, "'Marak Kasus Pinjol, Fungsi Pengawasan OJK Dinilai Lemah', 3 Desember 2021," accessed July 7, 2023, https://monitor.co.id/2021/12/03/marak-kasus-pinjol-fungsi-pengawasan-ojk-dinilai-lemah/.

As a regulator in the financial services industry with affiliated parties, OJK has so far issued several laws in an attempt to safeguard the public from the growth of unlawful pinjol, which has hurt numerous consumers. These regulations include Financial Services Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, Financial Services Authority Regulation Number 77 /POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services, Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority, and Law Number 19 of 2016 of the Republic of Indonesia on Amendments to Law Number 11 of 2008 concerning Electronic Transactions and Information. In addition to other technological initiatives, OJK asks the public to review the list of legitimate fintech lending (online loans) that can be found on the internet at bit.ly/daftarfintechlending and to contact OJK 157 by WhatsApp at 081-157-157-157 to avoid falling victim to unlawful pinjol. J.K. Additionally, the Investment Alert Task Force (SWI) has been successful in closing as many as 4,567 unlawful pinjol between 2018 and February 2023. In February 2023, SWI was able to locate up to 85 illegal pinjol.[11]

Further research on consumer legal protection provisions for online loans under Indonesian law and consumer protection initiatives against illicit online loan transactions is necessary in light of the aforementioned issues.

This study employs normative juridical methodology. Normative legal research is defined as “legal research conducted by examining library materials (secondary data)” by Soerjono Soekanto and Sri Mamudji.[12] The statutory approach is the problem approach that is applied. Citing Peter Mahmud Marzuki’s view, the statutory approach is implemented by looking at all relevant laws and regulations that are relevant to the legal topics under discussion or study.[13] The present study employs a qualitative analytical approach, whereby the processed legal texts are interpreted.[14]

2. DISCUSSION

2.1. Regulation of Consumer Legal Protection Against Online Loans According to Indonesian Law

“Every person who uses goods and/or services available in the community, both for the benefit of themselves, their families, other people, and other living beings and not for trade,” is how consumers are defined in Law Number 8 Year 1999 on Consumer Protection (UUPK), Article 1 Point (2). This indicates that the products or services utilized are only for personal use.

Every person mentioned in Article 1 point (2) of the GCPL above is associated with the concept of a person according to Article 1 point (21) of Law of the Republic

[11] Dina Karina, “‘Ini Daftar 85 Pinjol Ilegal Yang Ditutup OJK Selama Fenruari 2023’, 7/03/2023,” accessed July 7, 2023, https://www.kompas.tv/bisnis/385128/ini-daftar-85-pinjol-ilegal-yang-ditutup-ojk-selama-februari-2023?page=all.

[12] Muhaimin, *Metode Penelitian Hukum*, Cetakan I (Indonesia: Mataram: University Press, 2020)., pp. 47.

[13] Muhaimin., hlm.56.

[14] Muhaimin.

of Indonesia Number 19 of 2016 Concerning the Amendment to Law Number 11 of 2008 Concerning Electronic Information and Transactions (ITE Law), which is "an individual, whether an Indonesian citizen, foreign citizen, or legal entity". Meanwhile, the concept of consumers according to Article 1 point (2) of the Financial Services Authority Regulation Number: 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector is "parties who place their funds and/or utilize the services available at Financial Services Institutions, including customers in Banking, investors in the Capital Market, policyholders in insurance, and participants in Pension Funds, based on laws and regulations in the financial services sector".

There seems to be a conceptual distinction between the two regulations listed above. Nevertheless, based on the two definitions, "every person as a service user who utilizes borrowing services from financial service institutions" (henceforth referred to as consumers) can be understood as the definition of the online loan consumer used in this study.

Internet-based financial service businesses that lend money online are known as online lenders. Due to the existence of fintech, particularly the information technology-based peer-to-peer lending system, and its business model of implementing a lending and borrowing agreement that connects debtors and creditors via the Internet, the lengthy process of applying for loans can be shortened. It is possible to implement credit granting swiftly with this online loan. Furthermore, loans may be made without collateral, in contrast to banks, which have a legal declaration stating that Credit Without Collateral (KTA) is not feasible. While banks may offer credit without specific collateral, this does not imply that credit is being given without any collateral at all.[15]

According to Article 27 Paragraph 1 of the 1945 Constitution (UUD 1945), consumers who use financial service institutions' loan services as service users, citizens, and legal persons are entitled to protection from the state.

The Financial Services Authority Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector defines "consumer protection" as "the protection of consumers with the scope of the behavior of Financial Services Business Actors" in Article 1 Point 3. In the meantime, "Consumer protection is all efforts that ensure legal certainty to protect consumers," states Article 1 Point (1) of the GCPL. Using legal devices, legal protection is an activity taken to protect or aid legal subjects, according to Philipus M. Hadjon and Titiek Sri Djatmayati's opinion.[16] The concept of consumer protection as defined by Philipus M. Hadjon and Titiek Sri Djatmayati is more likely to be used by the author based on these three definitions. This definition is relevant to the research context because it states that the legal instruments in question are laws and regulations that govern the legal protection of consumers in electronic transactions or online lending and borrowing.

[15] Djoni S. Gozali dan Rachmadi Usman, *Hukum Perbankan*, Cetakan II (Indonesia: Jakarta : Sinar Grafika, 2012). Pp.286.

[16] Philipus M. Hadjon and Titiek Sri Djatmayati, *Pengantar Hukum Administrasi Indonesia* (Indonesia: Yogyakarta: Gadjah Mada University Press, 2002). Pp. 10.

As parties who benefit from online loans, consumers are also legally protected as service users. As stipulated in Article 4 of the GCPL:

"Consumers have the right to obtain comfort, security, and safety in consuming goods/services, the right to obtain goods/services as promised, and the right to obtain correct, clear, and honest information about the condition of the goods/services they receive".

Article 2 POJK No.1/POJK.07/2013 governs consumer protection in the financial services sector concerning pinjol. This regulation is similar to Article 29 POJK No. 77/POJK.01/2016 in that it applies the principles of transparency, fair treatment, reliability, confidentiality, and security of consumer data and information, as well as the handling of complaints and the swift, easy, and reasonably priced resolution of consumer disputes. In compliance with their rights as citizens, customers who get loans from illicit information technology-based money lending and borrowing service agreements also need to be legally protected. The 1945 Constitution's guarantee that "every State has the right to protection" serves as the foundation for this. This is because consumers are in a vulnerable situation due to the large number of victims of illegal pinjol operations. As stated by Satjipto Raharjo's statement "Loan recipients are in a weak position and are not yet socially, economically, and politically strong to obtain social justice".[17] Thus, Satjipto Raharjo offers the idea of the consumer as "protecting human rights that are harmed by others and the protection is given to the community so that they can enjoy all the rights granted by law or in other words, legal protection is a variety of legal efforts that must be provided by law enforcement officials to provide a sense of security, both in mind and physically from interference and various threats from any party".[18]

The fundamental principles of protection for loan recipients in information technology-based lending and borrowing services are outlined in Article 2 POJK No.1/POJK.07/2013. These principles are similar to those outlined in Article 29 POJK No. 77/POJK.01/2016 in that they pertain to the legal right of users to avoid situations that could endanger their use of technology-based lending and borrowing services. These principles include transparency, fair treatment, reliability, confidentiality, and data security, as well as easy, quick, and reasonably priced user dispute resolution. With the following justification, it appears that the fundamental legal protections for users of online lending services incorporate the consumer protection fundamentals stated in Article 31 paragraph (1) of the Consumer Protection Law:

a. Transparency

According to POJK No.1/POJK.07/2013, transparency is defined as giving customers access to information about goods and/or services in a clear, comprehensive, and understandable manner. The consumer's right to accurate, understandable, and truthful information regarding the terms, guarantees, and services of business actors listed in Article 4 Letter C of the Consumer Protection Law is intimately tied to this aspect of transparency.

[17] Satjipto Raharjo, *Ilmu Hukum, Cetakan Kedelapan* (Indonesia: Bandung: Citra Aditya Bakti, 2014). pp.54.

[18] Raharjo., pp.74.

Based on multiple cases as mentioned in the previous section, it seems that the element of transparency as a form of protection for recipients of illegal online loans is absent from these cases. This is because, generally speaking, recipients of illegal loans are lured in by enticing social media advertisements or offers that, while appealing, do not match reality. As a result, the money lending agreement that has already been made and the loan money received is more detrimental to the recipient of the money themselves, as there is uncertainty regarding the amount of the loan that has been agreed upon and what has been received, quite high deductions, abruptly charged interest. Aside from the imposition of exorbitant interest in the event of a late payment, there are also unilateral agreements (standard clauses) that place restrictions on the loan recipient's options, forcing them to accept the lender's offer out of desperation.

The OJK's statement[19] that "pinjol organizers in practice charge very large fees and fines and are not transparent and in carrying out activities without complying with regulations, both regulations issued by OJK and other applicable laws and regulations" is consistent with the explanation of the issues raised above.

The state of the issues that victims of illicit pinjol are facing demonstrates how opaque the lender's operations are. In actuality, business players need to be open and honest while engaging in loan and borrowing activities related to technology and information-based services.

b. Fair treatment

Illegal loan services do not provide the fair treatment component as a means of protecting loan recipients. The Indonesian Consumers Foundation (YLKI) has received complaints from numerous victims of illegal pinjol regarding their situations.

By citing Aristotle's view, justice is understood to have the same balance or proportion, which means that he holds that the same people must have equal rights.[20] According to Thomas Hobbes, a justice act is considered fair if it is founded on a mutually agreed-upon understanding. This remark leads one to the conclusion that agreement between the two persons who commit to doing something is necessary to accomplish justice or a sense of justice.[21]

The idea of fairness, which relates to the views expressed by Aristotle and Thomas Hobbes above regarding technology and information-based money lending agreements, should be that the loan recipient is entitled to the agreed-upon loan amount following the agreement and that the information provided to them must be accurate. However, in reality, the agreement is predicated on the lender's bad faith because it involves elements of fraud and coercion. As a result, under this arrangement, the loan recipient's rights are not equal to those of the lender, which receives a bigger percentage of the rights.

Fair treatment of customers is what is intended by *"fair treatment"* in information and technology-based money lending and borrowing service agreements as a type of

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[19] Otoritas Jasa Keuangan (OJK), "Fintech Lending Ilegal Vs Fintech Lending Terdaftar/Berizin," accessed July 10, 2023, https://ojk.go.id/id/kanal/iknb/data-dan-statistik/direktori/fintech/Documents/Fintech Lending Legal vs. Ilegal.pdf.

[20] J.H. Rapar, *Filsafat Politik Plato* (Jakarta: Rajawali Press, 2019). pp.82.

[21] Muhammad Syukri Albani Nasution, *Hukum Dalam Pendekatan Filsafat*, Cetakan Ke (Indonesia: Jakarta: Kencana, 2017). pp.217-218.

preventive protection, as explained regarding POJK No.1/POJK.07/2013. In Aristotle's view, fair treatment is following the law and granting each individual what they are entitled to under their skills and accomplishments.[22] According to the Consumer Law, "fair treatment" refers to the rights of consumers as stated in Article 4 letters b and g. These rights include the right to get services that are in line with the terms and guarantees promised, as well as the right to be treated fairly and honestly.

c. Reliability

According to the definition of POJK No.1/POJK.07/2013's legal protection of consumers, reliability is everything that can deliver accurate services through dependable infrastructure, systems, processes, and human resources. The right to have complaints and opinions about the products and/or services used heard is linked to Article 4 Letter D of the Consumer Protection Law.

There are various ways in which the concept of unlawful online lending lacks the premise of reliability. First off, the oversight of the operations of unlicensed fintech lending firms is not carried out by a separate authority. Second, firms that engage in illicit fintech loans operate beyond the purview of POJK and other relevant laws and regulations. Third, unlicensed fintech lenders are not required to meet any form of experience requirements. Fourth, unlicensed fintech lenders are not able to join the AFPI and do not have an association. Fifth, there is no training or certification needed for illicit fintech lenders, and they do not handle user concerns well.[23]

Even though the agreement is based on an agreement, it is evident from the characteristics of illegal online loans that the loan recipient does not receive legal protection from the lender. In fact, because of the provisions of Article 1321 of the Civil Code, which states that "agreement agreements containing elements of coercion and fraud have no force," it can be said that loan recipients of illegal online loans are in a weak position.

d. Data confidentiality and security

Data confidentiality and security refers to an activity that offers protection, upholds the confidentiality and security of consumer data and/or information, and only uses it for the interests and purposes approved by the consumer, unless otherwise determined by the applicable laws and regulations. This principle of legal protection of consumers is mentioned in the explanation of POJK No.1/POJK.07/2013.

The organizer is required to "maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data that it manages from the time the data is obtained until the data is destroyed," according to Article 26 (a) POJK Number 77/POJK.01/2016, which regulates the confidentiality of user data related to money loan recipients. The organizer is required to: "Ensure that the acquisition, use, utilization, and disclosure of personal data, transaction data, and financial data obtained by the Organizer is based on the consent of the owner of the personal data, transaction data, and financial data unless otherwise determined by the provisions of

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[22] Hyronimus Rhiti, "Filsafat Hukum Edisi Lengkap (Dari Klasik Ke Postmodernisme)," *Ctk. Kelima. Yogyakarta: Universitas Atma Jaya*, 2015. pp.241.

[23] Otoritas Jasa Keuangan (OJK), "Fintech Lending Ilegal Vs Fintech Lending Terdaftar/Berizin."

laws and regulations." Article 26 (c) POJK Number 77/POJK.01/2016 regulates data security in the meantime.

It is possible to conclude from the aforementioned ideas that illicit loans do not adhere to the norms of data security and confidentiality. This is demonstrated by local cases where loan recipients default and the lender, through debt collectors, collect the debt by disseminating personal information to all of the recipients' contacts and posting it on social media, then harshly collecting the debt using threats and intimidation. The terms that loan recipients of illicit online loans encounter are consistent with those stated by OJK. Firstly, illicit fintech lending applications will ask to access all personal information on the user's cellphone, which is then used for collection purposes by spreading to all of the user's contacts. Second, dishonest internet lending companies use cruel, violent, abusive, and unlawful methods of collection.[24]

2.2. Consumer Protection Efforts Against Illegal Online Loan Transactions

Preventive legal protection via already-existing legal instruments and repressive legal protection through legal action might be used in an attempt to protect loan receivers in particular against illicit internet loans.

a. Preventive Legal Protection

To preventatively safeguard users of technology- and information-based money lending and borrowing services, the following legal tools have been made available:

1). Protection through regulation and supervision

Based on Article 5 of Law Number 21 of 2011 on the Financial Services Authority (OJK Law), specifies that the OJK's role is to set up an integrated system of oversight and regulation for all financial services industry operations. Furthermore, according to Article 6, OJK is responsible for overseeing and regulating financial services operations in the following sectors: banking, capital markets, insurance, pension funds, financing institutions, and other financial services.

Referring to Articles 5 and 6 of the OJK Law that OJK is an autonomous organization that controls and oversees the expansion and development of the Fintech sector, including Fintech-based money lending services, or Fintech P2PL, which is a subset of the Non-Bank Financial Industry (IKNB) under OJK's supervision.

2). Community Education

According to Article 28 of the Law of the Republic of Indonesia Number 21 of 2011 concerning the Financial Services Authority, OJK is required to protect consumers and the public in the financial services sector and to take action to prevent losses incurred. This includes educating the public about the features of the financial services sector, its services, and its products and requesting that Financial Services Institutions cease operations if they could endanger the public.

3). Public Complaints

As a form of government concern to protect the public against illegal online lending practices, efforts that can be made by the public are to report to:

a) Police for legal action: https://patrolisiber.id/ and info@cyber.polri.go.id.

[24] Otoritas Jasa Keuangan (OJK).

b) Investment Alert Task Force for blocking: waspadainvestasi@ojk.go.id.

c) Kemenkominfo for content complaints: aduankonten.id, aduankonten@kominfo.go.id, or contact 08119224545.

It is envisaged that the right of every person to obtain legal protection from all sorts of arbitrary actions can be realized with the provision of facilities as a site of public protection against illicit internet lending operations.

b. Repressive Legal Protection

Repressive legal protection is legal protection that can be given to phytech users whose purpose is to solve problems that have already occurred, can be pursued in the following ways:

1). Grievance Action

Anyone who believes that legal fintech has damaged them can register a complaint to get the disagreement settled right away. When consumers of online lending services file complaints with business actors, the organizer is required to investigate right away. Upon receipt of a complaint from the aggrieved party, in this case, the Fintech user, the financial services actor—in this case, a business actor or online loan organizer—is required by Article 38 POJK Number 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector to conduct an internal examination of the complaint competently, correctly, and objectively, conduct an analysis to ascertain the veracity of the complaint, submit an apology, and offer compensation or the repair of goods and/or services if the consumer complaints true.

2). Sanctioning

Legal fintech is the case that this paper addresses. According to Article 47 POJK Number 77 of 2016, in light of the situations encountered by some loan recipients in legally based information technology-based money lending and borrowing service agreements, legal protection is required if Fintech P2PL organizers violate data confidentiality. This protection takes the form of administrative sanctions, which include written warnings, fines, restrictions on business activities, and license revocation.

On the other hand, from the perspective of the consumer, under Article 26 Paragraph (2) of Law Number 19 of 2016 concerning Electronic Information and Transactions, any individual whose rights are violated due to the provisions in Paragraph (1) (use of information through electronic media concerning personal data) may bring a lawsuit for losses incurred. Should it be established that there has been a breach of personal data misuse by third parties and that the breach satisfies the requirements for criminal liability and results in losses, the offender may face up to twelve years in prison and/or a fine of Rp. 12,000,000,000.00 (twelve billion rupiah).

Many points may be made based on the clauses in the laws and regulations on the legal protection of consumers (loan recipients) from unauthorized Internet loans, which can have negative effects on their finances and mental health. First, the issue raised by Article 28 of the OJK Law is that, in reality, it can be challenging to put an end to illicit business actors' operations when they are consumers (loan recipients) of loans obtained illegally online. This is because these individuals are disadvantaged by high-interest rates and an opaque interest system provided by their lenders. This is so that OJK can only, under OJK Law, prohibit registered (lawful) fintech companies from conducting business with fintech organizers.

Second, according to the Consumer Protection Law, the State may provide legal protection utilizing the Consumer Protection Agency by upholding the rights of consumers as stated in Article 4 letter an of the PK Law. In this case, the lender—an illegal online loan—collects by intimidating and intimidating, making customers feel uneasy and unsafe, and their safety is compromised as a result of using the illegal online loan facilities. Furthermore, by using illicit online lending services, customers are tricked into giving false, ambiguous, and dishonest information about their loans, putting loan recipients under unjustifiable commitments that require payment. For this reason, consumers need legal protection from the State. Then, as a legal action that can be taken, consumers can use the PK Law to make use of their rights to advocacy, protection, and efforts to appropriately settle consumer protection complaints through the Consumer Protection Agency.

Thirdly, it seems that the consumer protection laws outlined in POJK No. 1/7/2013 only apply to consumers (loan recipients) from fintech companies that are registered. This is in contrast to consumers who obtain loan facilities from illegal online lenders, who are not guaranteed to receive legal protection from OJK since these lenders are not subject to its oversight.

Fourth, as seen through the lens of the ITE Law, the billing method used by illegal online loans, which disseminated the personal information of customers who may have committed defamation, violated the provisions of Articles 26 and 27 paragraph (3) of the ITE Law. As a result, legal action was taken, both civilly and criminally, after the authorities—the police and the Consumer Protection Agency—were notified.

Justice, benefit, and legal certainty are how the legal function operates to accomplish the aim of law in Radbruch's idea, according to the analysis that has been offered thus far.[25] The legal protection of borrowers who are consumers is correlated with the three legal purposes. The OJK's fintech company monitoring system is directly linked to the consumer protection laws outlined in Law Number 8 of 1999 covering consumer protection. Considering that the degree of oversight, laws, and procedures implemented by the OJK against fintech itself are what guarantee loan beneficiaries' rights. The steps taken by the government in its implementation must be guided by the Financial Services Authority Regulation No. 77 /POJK.01/2016 concerning Information Technology Lending and Borrowing Services.

Legal protection of loan recipients in illegal information technology-based money lending and borrowing service agreements that are more principle is the

[25] Satjipto Rahardjo, *Ilmu Hukum* (Indonesia: Bandung: Citra Aditya Bakti: Bandung, 2012). pp.19.

abuse of confidentiality of personal data of loan recipients that are distributed with permission signs that result in defamation. The idea behind personal data privacy is that each person has the freedom to choose whether or not to interact with society and exchange or disclose personal information. Conditions on the use of one's data and safeguards against unauthorized access are included in data protection law.[26]

Everyone's right to protection has been accommodated by Article 28G paragraph (1) of the 1945 Constitution, which states that:

"Every person shall have the right to the protection of his or her person, family, honor, dignity, and property under his or her control, and shall have the right to security and protection from threats of fear to do or not to do something which is a human right".

Similarly, Law No. 39/1999 on Human Rights (Human Rights Law) reaffirms in Article 29 paragraph (1) that "Every person shall have the right to the protection of his/her person....".

Drawing from the language of both Article 29 paragraph (1) of the Human Rights Law and Article 28G paragraph (1) of the 1945 Constitution, it is abundantly evident that everyone has a right to the protection of their data, which the state is required to uphold. Similarly, everyone has the right to privacy, which includes the ability to conceal or keep private matters private. In response to everyone's right to have their personal information protected in agreements for online loans including information technology, this is governed by Article 26 paragraphs (1) and (2) of the ITE Law, which specify that:

(1) A person's consent is required if any information about their data is used through electronic media unless specifically authorized by laws and regulations.
(2) For losses sustained under this Act, any person whose rights are infringed upon as mentioned in paragraph (1) may bring a lawsuit.

The loan receiver has the right to retain the secrecy of his data in an information technology-based money lending arrangement for online loans, based on the provisions of Article 26 paragraphs (1) and (2) of the ITE Law. A violation of Article 26 paragraphs (1) and (2) of the ITE Law occurs when a lender intentionally spreads personal information about a loan recipient through social media for it to be known by a large number of people. This is the case in a number of the cases brought up in this research. As the owner of personal data, the loan recipient may, therefore, be granted protection in the form of a civil case that is brought before the court under applicable rules and regulations.

The aforementioned explanation relates to the legal protection afforded to the personal information of Fintech users or loan recipients generally. This means that in any activity involving electronic transactions involving the loan recipient's personal information, Fintech, as a lender, is required by law to maintain and protect the user's

[26] Sinta Dewi, "Konsep Perlindungan Hukum Atas Privasi Dan Data Pribadi Dikaitkan Dengan Penggunaan Cloud Computing Di Indonesia," *Yustisia Jurnal Hukum* 5, no. 1 (2016): 35–53, https://doi.org/10.20961/yustisia.v5i1.8712.

personal information. Everyone has the right to preserve, protect, and uphold the confidentiality of their users' data to keep the information they possess private, even though fintech is obligated to do so. Any personal information submitted in connection with the parties' agreed-upon lending and borrowing arrangement must be utilized with the loan recipient's approval, which must be kept private.

Additionally, concerning the safeguarding of personal information in information technology-based money lending services, the Financial Services Authority (OJK) has released Financial Services Authority Regulation No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services (POJK No.77/2016), which governs the safeguarding of personal information. /2016), which as stipulated in Article 26 letter of POJK No.77/2016, governs the safeguarding of borrowers' personal information to use technology-based lending and borrowing services. The Organizer is required to "maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data that it manages from the time the data is obtained until the data is destroyed". Accordingly, Article 26 letter of POJK No. 77/2016 affirms that the Lender shall maintain the confidentiality of the Borrower's data from the time the loan agreement procedure is initiated until the agreement is deemed finalized or the Lender has fulfilled all of its responsibilities. Therefore, the lender's duty must be put into practice to achieve the protection of the borrower's personal information.

Furthermore, Article 26 letter c of POJK No.77/2016 appears to regulate the legal protection of loan recipients in information technology-based money lending and borrowing service agreements. It requires the organizer to "ensure that the acquisition, use, utilization, and disclosure of personal data... obtained by the Organizer based on the consent of the owner of personal data, transaction data, and financial data unless otherwise determined by the provisions of laws and regulations." Article 26 letter c of POJK No.77/2016 implies that, without the consent of the borrower as the owner of the personal data, the lender cannot use personal data arbitrarily as a form of collection method if the borrower does not fulfill their obligations, as is done by several fintechs used as cases in this study. The use of the Borrower's data by the Lender must be based on the consent of the Borrower as the owner or otherwise specified in the provisions of laws and regulations. Therefore, without the borrower's consent or as required by law, the lender is prohibited from giving or disseminating the borrower's or user's personal information to third parties, which is typically done through social media, if the borrower is unable to fulfill his or her debt obligations, as this implies defamation.

Houwing asserts that "rights as an interest that is protected by law in a certain way" highlights the significance of the protection of rights.[27] Meanwhile, prevention (prohibited) and punishment (sanctioned) are the two features of a nation's legal protection system, according to R. La Porta in the Journal of Financial Economics.[28] As

[27] Satjipto Rahardjo, *Teori Hukum Strategi Tertib Manusia Linmas Ruang Dan General* (Indonesia: Yogyakarta: Genta Publishing, 2010). pp. 221.

[28] Rafael La Porta et al., "Investor Protection and Corporate Governance," *Journal of Financial Economics* 58, no. 1–2 (2000): 3–27., dalam Hilda Hilmiah Dimyati, "Perlindungan Hukum Bagi Investor

required by Article 28D paragraph (1) of the 1945 Constitution, the State of Indonesia has secured the right of every citizen to recognition, guarantees, protection, and certainty of a fair law and equal treatment before the law.

Drawing from the aforementioned protection idea, the legal protection of consumers who make use of online lending facilities necessitates a guarantee of protection from the State to its citizens, a guarantee of legal certainty for each citizen's rights, and legal penalties for lawbreakers.

The legal protection against loan beneficiaries in illegal information technology-based money lending and borrowing service agreements that are linked to the aforementioned protective aspects can be separated into two categories: internal legal protection and external legal protection. Regarding M. Isnaeni's opinion, it can be said that internal legal protection is essentially the intended legal protection that is packaged by the parties during the negotiation process when both parties want their interests to be taken into consideration. Similarly, every kind of danger is attempted to be avoided by filing through agreements that include clauses that package the agreement as well, allowing the parties to benefit from balanced legal protection through their permission. For each partner to have the freedom to express their will following their interests based on the principle of freedom of contract, the parties must have a relatively equal legal position for them to realize such internal legal protection. The parties assemble the terms of the agreement they are working on based on this pattern, allowing each party's legal protection to be directly fulfilled at their initiative. In the meantime, the authorities provide external legal protection for weaker parties through regulations; this is done "under the nature of laws and regulations that should not be one-sided and partial, but proportionately must also give other parties balanced legal protection as early as possible."[29]

Article 5 of Law Number 21 of 2011 concerning the Financial Services Authority (OJK Law), which states that the OJK functions to organize an integrated system of regulation and supervision of all activities in the financial services sector, appears to have regulated it from the regulatory aspect as a form of external protection. Based on the provisions of Article 5 of the OJK Law, it gives a signal that the organizers of information technology-based money lending and borrowing services (fintech) that are regulated must be registered and licensed by the OJK, and their activities are supervised by the OJK so that there are no violations that can harm consumers (loan recipients), considering Article 6 letter c of the OJK Law which assigns at the same time the authority to the OJK to regulate and supervise the activities and development of Other Financial Services Institutions, one of which is fintech, which is further regulated by OJK Regulation Number 77 / POJK.07 /2016 concerning Information Technology-Based Money Lending and Borrowing Services, where this OJK regulation covers institutions, registration, licensing, limits on lending funds, organizer information technology governance, activity limits, risk management, reports and consumer protection education.

Dalam Pasar Modal", *Jurnal Cita Hukum*, Vol. I No. 2, (2014).

[29] Moch Isnaeni, "Pengantar Hukum Jaminan Kebendaan," *Surabaya: Revka Petra Media*, 2016., pp.159-163.

2.3. Construction of Consumer Protection Against Illegal Online Loan Transactions

a. Concept of Preventive Arrangements for Consumer Protection of Illegal Online Loan Transactions

1. Addition of OJK Representative Offices in Each Regency / City

In this instance, the OJK can reach out to the public with information and education to stop losses or victims of online loan transactions. Article 28 of Law No. 21 of 2011 mandates consumer and community protection, although OJK has not been fully utilized in this regard. This is because OJK only maintains one (1) representative office in each province, even though a sizable number of people engage in loan and borrowing activities. Consequently, the issue has not been resolved by the OJK representative office, which is limited to one (1) in each province.

Every district and city needs to have more representative offices for OJK. The goal of setting up representative offices in every district and city is to maximize the OJK's responsibilities and powers, which include community and consumer protection. The public is becoming more aware of OJK's existence, and it is getting easier for them to use OJK to obtain information and safeguard consumers. Furthermore, OJK can reach a larger population by educating and informing them.

OJK's proximity to the neighborhood facilitates its ability to offer literacy programs and public education regarding the risks associated with illicit Internet loan transactions. Furthermore, OJK is more easily accessible to the general public for information regarding authorized or unauthorized online lending businesses. To better avoid illicit online loan transactions that subsequently result in victims, this is crucial.

2. Illegal Online Loan Prevention Forum

To address the issue of widespread illicit online loans in Indonesia, a regulatory framework emphasizing both general and targeted preventive measures is required. As the body mandated to oversee all companies providing financial services, the Financial Services Authority needs to be more effective in putting preventive measures in place to stop illicit online loan transactions. The Attorney General's Office, PPATK, BI, the Ministry of Communication and Information, the Police, lawful online lending companies, and the OJK must work together on prevention initiatives.

To implement effective and proactive preventive programs, OJK, the Ministry of Communication and Information, PPATK, BI, legal online loan organizations, the Police, and the Attorney General's Office work closely together to coordinate efforts in the Forum for the Prevention of Illegal Online Loans (FP2OL).

In addition to waiting for public reports, FP2OL as a prevention forum ought to be more proactive in implementing preventive measures for the larger community. Furthermore, FP2OL will aggressively work to stop the growth and introduction of illegal internet loans. To prevent these illegal online loans from entering the community, they have been stopped or restricted.

b. The Concept of Repressive Arrangements for Consumer Protection of Illegal Online Loan Transactions

- Regulation of ordinary offenses in OJK Law & PPSK Law

The financial services industry has focused on the advancement of technology and information, as the industry transitioned from manual or offline operations to online ones. Nonetheless, there are a lot of criminal offenses that happen in the financial services industry, such as the increase in illicit online loans. This is because only complaints are used in the OJK Law and the PPSK Law's mild control of illegal conduct in the financial services industry. Article 8 of the PPSK Law, which amends the OJK Law's Article 49 paragraph (3) letter a to Article 49 paragraph (7) letter a, discusses ordinary offense arrangements. It says that *"receiving a report, notification, or complaint from a person about a criminal offense in the financial service sector".*

According to this article, law enforcement officials—in this case, detectives from the financial services authority—must first wait for reports and complaints before taking any action against criminal conduct in the financial services industry. The OJK then needs to work with the police to coordinate the investigation. As a result, the Financial Services Authority's repressive legal actions are carried out in a sluggish and inactive manner. For this reason, it is essential to include common offenses in the OJK Law or the PPSK Law to maximize the effectiveness of prosecuting those who commit crimes related to the financial services industry, such as unauthorized internet loans.

3. CONCLUSION

Legal protection of loan recipient consumers in information technology-based money lending and borrowing services (online loans) is carried out by applying the basic principles of protection of loan recipient consumers stipulated in Article 2 POJK No.1/POJK.07/2013 which are similar to those stipulated in Article 29 POJK No. 77/ POJK.01/2016 which adopts the basic principles of consumer protection mentioned in Article 31 paragraph (1) of the Consumer Protection Law, namely transparency (Article 4 letter c of the GCPL), fair treatment, reliability (POJK /2016 which adopts the basic principles of consumer protection mentioned in Article 31 paragraph (1) of the Consumer Protection Law, namely transparency (Article 4 letter c of the GCPL), fair treatment, reliability (POJK No.1/POJK.07/2013), and confidentiality and data security (Article 26 (a) POJK No.77/POJK.01/2016).

Consumers of illegal online loans may be entitled to preventative and coercive legal protection. There are various approaches to implement legal protection in a preventive manner. First, as outlined in OJK Law Articles 5 and 6, legal protection is provided by regulating and supervising illicit internet lending. Second, as required by Article 28 of the OJK Law, educating and informing the public about the features of illicit online loans. Third, the public's involvement in alerting the Police to the existence of illicit loan business actors, who will then be prosecuted if found guilty, the Investment Alert Task Force for blocking, and the Ministry of Communication and Information for content complaints. Meanwhile, there are other ways to implement oppressive legal protections. First, investigating complaints from individuals who believe they have been wronged by loans that are not legal, as per Article 38 POJK Number: 1/POJK.07/2013. Second, the administrative sanctions provisions outlined in POJK Number 77 of 2016 Article 47. Thirdly, creating criminal offenses for illicit online lenders who have been found guilty of violating the ITE Law's Article 26 Paragraph (2) on the misuse of personal information by third parties.

SUGGESTION

1. Under the Criminal Procedure Code, OJK, as a regulator, must strengthen its oversight of online lenders and grant it the power of a PPNS Investigator (KUHAP).
2. For consumers to properly defend their rights when engaging in electronic transactions through online loans, the government must enact laws and regulations that are stricter than those that now exist.

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