

JURIDICAL APPROACH TO LEGAL PROTECTION FOR THE PUBLIC OF ILLEGAL PEER TO PEER LENDING USERS

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ABSTRAK

Technology that is developing quickly is utilized in all fields to provide convenience including financial transactions. But, there are also illegal financial transactions called peer – to peer (P2P) lending that do not have a license. The illegal loan operators have access to personal data owned by victims as application users. It is not uncommon to find some illegal loan operators who create conflicts against application users. This research aims to review the legal protection for people who use illegal peer to peer lending in Indonesia. This research uses normative law research method, while the research approach uses normative juridical approach. This data of research is secondary data analyzed with a qualitative approach. This research resulted in the existence of criminal law policies that used to punish illegal peer – to peer lending for their actions are using Law Number 8 of 1999 because of the position of the public as users of online loans as consumers and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE because transactions are carried out using electronic media.

Keywords: Illegal loan, Protection, Criminal Law

A. INTRODUCTION

Technological advances have an impact on the development of all fields, including financial services. As a result, human life can't be separated from economic activities to meet their needs which are always related to financial transactions. This developing technology is a human advantage to utilize information, with the existence of peer-to-peer (P2P) finance technology (fintech), which is a financial technology-based financing model that becomes a financing solution effectively and efficiently way. (Supriyanto & Ismawati, 2019). OJK

(The Financial Services Authority) explained, P2P is implementation of financial services to bring together lenders with loaners in order to make agreements in rupiah currency directly through an electronic system using the internet network. (Dewi & Gorda, 2021)

The use of IT developments to improve industrial services in the financial sector. The use of computer technology and information encourages the development of transactions electronic through the internet for companies in the world and in Indonesia in utilizing internet facilities as a medium of transaction

.(Guntur Fauzi et al., 2022). (Hartiningrum & Wijayanti, 2022) informed that the development of information technology advances, namely the increasingly sophisticated internet, gave rise to various types of online loans that are increasingly mushrooming in Indonesia. The loan process is relatively easy and fast when compared to cooperative loans, savings and loans or banks, making public demand for financial loans high. (Pratama Sinaga & Alhakim, 2022) explained that this condition is used by illegal lenders by offering many digital platforms to the public and being able to use it where the target is people who have low financial literacy and also knowledge. According to (Wahyuni & Turisno, 2019), the crisis due to Covid-19 made the public does not know whether the lenders had been registered with the Financial Services Authority (OJK) or not.

Illegal loans made problems to public because illegal lenders operators have access to personal data owned by victims as application users. It is not uncommon to find some illegal loan operators who create conflicts against application users. Online loan collectors also often intimidate users in order to immediately make payments for debts made by users in the form of threats to users, as well as to companies where online loan application

users work. (Sastradinata, 2020). This happens because of the ignorance of loaners in understanding the platform or loan applications they use. Illegal online loans are very attractive in terms of providing offers to users so that users get money that is the user's own need. By simply verifying the account data collection and then applying for a loan process, funds (including repayment) can be handed over to the loaners and the method offered is simple.

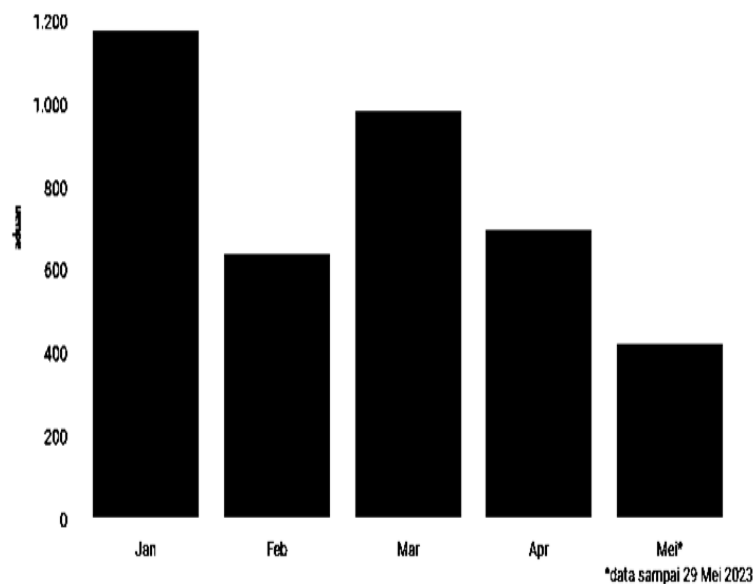
In Indonesia, so many cases related peer – to peer lending loan. The online media Detik reported the publication of news carried out by the (*No Title*, n.d.) regarding the percentage of victims of illegal online loans, namely: (1) Teachers (42%), (2) Victims of termination of employment/layoffs (21%), (3) Housewives (18%), (4) Employees (9%), (5) Traders (4%), (6) Students (3%), (7) Students (3%), (8) Barbers (2%) and (9) Online motorcycle drivers (1%).

However, many cases can't be prosecuted because lending and borrowing is done in an unauthorized way to commit fraud. Transactions aren't carried out in person or face to face, but by electronically. In addition, the borrower did not read and pay attention to the narrative of the agreement made with a very long description, then in terms of law enforcement it's difficult to resolve and

seek defense against loaners. The OJK (2023) revealed that from 2017 to July 31, 2023, it had stopped 6894 illegal financial entities consisting of 1193 illegal investment entities, 5450 illegal online lending entities, and 251 illegal pawn entities. Not only this, the OJK noted, there were 3,903 public complaints related to illegal online loans from January 1 to May 29, 2023. The highest number of complaints entered in January 2023 is 1,173.

legal protection of loaners. In addition, (Otoritas Jasa Keuangan, 2016) Number 77/POJK.01/2016 concerning IT-based money Lending and Loan Services, does not show the government's efforts in the context of eradicating online loan problems because it continues to be in the public spotlight day by day. Many cases of violations have emerged in the mass media with various types, ranging from intimidating billing (Article 368 of the (Kitab Undang Undang Hukum Pidana,

Figure 1. Number of Public Complaints Related to Illegal Online Loans



(Figure Source : Annur, 2023)

(Indonesia, 2016) concerning Amendments to (Republik Indonesia, 2008) concerning ITE and (Undang-Undang Nomor 8 Tahun 1999, 1999) concerning UUPK (Consumer Protection) apparently does not fully guarantee the

2021) and Article 29 jo 45 of the (Republik Indonesia, 2008)), dissemination of personal data (Article 32 jo Article 48 of the (Republik Indonesia, 2008), fraud (Article 378 of the (Kitab Undang Undang Hukum Pidana, 2021)) to

sexual harassment through electronic media (Article 27 Paragraph 1 jo 45 Paragraph 1 of the (Republik Indonesia, 2008) which allegedly also occurred. Referring to the description above, the formulation of the problem set out in this research is “how to review the law on the community of illegal online loan users in Indonesia?” . The research method used here is normative law. (Marzuki, P., 2008) defines normative law research as a method of research on laws and regulations both in terms of the hierarchy of laws and regulations (vertical), as well as the relationship of legislative harmony (horizontal). This research approach uses a normative juridical approach. (Sunggono, 2003) defines the normative juridical approach as an approach that refers to applicable laws and regulations. Thus, the source of the data type used is primary legal materials (authoritative legal sources carried out by authorized institutions) and secondary legal materials (legal sources that can providing an explanation of the primary legal material). Data collection conducted through literature studies and analysis is conducted through qualitative approach.

B. FINDINGS AND DISCUSSION

The rights of the community as loaners, which is a priority aspect need to be considered in illegal loan transactions

so that lenders do not forget these rights with the position of loaners as consumers. POJK regulation shows the use of loan services regulates. But, in this case no regulation spesifically regulates the rights of loan service users. Some rights that must be owned by loaners (public) include right to get information related to lenders services. Then the loaner also has the right to get information related to the postponement, rejection, and acceptance of applications submitted by loaners. Loaners also have the right to get all of information related to electronic documents transactions, so they are easy to understand. Indonesian language is very necessary for loaners to easily understand in making transactions with lenders. Loaners, also have the right to get protection from all attempts to transfer obligations or responsibility that carried out by loaners. This protection is a must and obligation as a form of submission of lenders to applicable laws and regulations. Article 4 of (Undang-Undang Nomor 8 Tahun 1999, 1999) regulates the rights owned by loaners where these rights include the right to safety, security and comfort using loan services. In this case, the provisions of loaners are domiciled as consumers, then loaners have protection related to transactions made with loans to be invalid if the lender commits actions prohibited by this article.

The online loaners (public) have the right to be heard and complained about service provider lenders. Loaners in terms of legal protection are entitled to protection-related dispute resolution efforts that are carried out correctly. Loaners have the right to be provided with a good service, not discriminatory and receive compensation if there are losses they experience. Then, the contract is also regulated in the provisions of other laws and regulations are not referred to in this provision. When reviewing these provisions, of course, loaners have rights that must be considered by lenders companies in making transactions.

But, many online lenders do act contrary to applicable regulations, so it is very detrimental to users. Often user rights are ignored by online loan companies, such as good treatment that must be given by the lender. Many online lender services do not follow the regulations. In their implementation, there is a threat. There is terror from billing users, as well as the method used by online lenders, namely by sending pictures or writing to parties known to users directly which has an impact on threats to loaners. If we review the case in its implementation, it violates the provisions of Article 29 Paragraph 1 and Article 30 of (Pemerintah Republik Indonesia, 1999) and the provisions contained in Article 4 of (Undang-Undang

Nomor 8 Tahun 1999, 1999). A very detrimental condition received by loaners is very disruptive to privileges.

The applicable provisions reviewed in law enforcement, namely in the criminal in Article 32 jo Article 48 of the (Republik Indonesia, 2008) are online lenders who harm users can be charged with criminal acts due to sharing personal data, fraud, billing, threats, to sexual work carried out through electronic media in Article 27 Paragraph 1 jo 45 Paragraph 1 of the (Republik Indonesia, 2008). As is known, prosecution of these law can only be carried out if the aggrieved party submits a complaint to the Police for law enforcement and a complaint reported by affected people. In the case of complaints, they are distinguished by their nature, namely absolute complaint offenses contained in Articles 284, 310, and 332 of the (Kitab Undang Undang Hukum Pidana, 2021) which can only be carried out based on complaints and relative complaint offenses in Article 367 of the (Kitab Undang Undang Hukum Pidana, 2021) regarding theft where in this offense there's a special relationship between the perpetrator and the victim. So that based on cases that occur by loaners, it can't be processed by it's law because loaners do not make complaints about a violation of rights that they then receive.

The protection rights of loaners must be guaranteed by the government through a law that specifically regulates matters related to violations of the rights of due to violations that occur that result in loaners experiencing immaterial and material losses. Threats or terror carried out by online lenders due to negligence in making payments are actually considered by online lenders to be the fault of loaners without having to pay attention to the rights inherent in loaners who must be given legal protection because loaners experience losses of fear, shame and discomfort due to terror and threats by online lenders.

Article 19 paragraph 2 of (Pemerintah Republik Indonesia, 1999) also clearly states "no one on a court decision may be sentenced to confinement or imprisonment based on the reason of inability to fulfill an obligation in a debt agreement". This means that the inability of loaners to make payments can not be used as a reason for online lenders to give penalties against the online loaners. However, in its implementation, online lenders provide threats, namely reporting loaners if there's is negligence in making payments. The law enforcement process in this case has difficulties because the use of online loans is domiciled as a debtor with online loan services that are domiciled as creditors. This includes in

the category of accounts on receivable agreements that must be solved through civil and not. Therefore, if the law enforcement imposes criminal sanctions, then this is a violation of applicable regulations and laws. (Sundari, 2021). Therefore, (Undang-Undang Nomor 8 Tahun 1999, 1999) can be implemented against this criminal act as in Article 45 Paragraph 3 "out of court settlement based on paragraph 2 does not eliminate criminal responsibility as stipulated in law" because POJK regulation explains that loaners must obtain protection principles which include fair, confidentiality transparency, and non-discriminatory treatment, guarantees data security and dispute resolution can be done simply, affordable costs and quickly.

Some related cases experienced by loaners begin with loan agreements that are allegedly carried out unilaterally and are not understood by loaners, namely consumers. Not only that, related to threats that are often carried out, loaners have legal protection contained in Article 45 point B of the (Republik Indonesia, 2008) as its function is to protect loaners in the event of threats received that aim to scare. This article is an explanation of Article 29 of the previous (Republik Indonesia, 2008) which contains protection against violence or fear directed personally. Legal settlements can

be made referring to criminal regulations for violations of online loaner privileges that only provide unilateral benefits to online lenders. However, the use of one's personal data should be more detailed guidelines because personal data must be protected by law. All over, information security is considered fundamental. Data protection as a constitutional right is a person's right to obtain security for his data and for justification when errors are found against his data (habeas data). The government needs to form a law related to personal data protection, review online loan cases that occur so that they can be useful to be applied in these cases.

Based on the urgency of regulations that must be formed regarding personal data protection, (Fitra, 2021) revealed the importance of the Government's role in forming laws related to personal data protection by looking at borrowing cases that occur because they can be useful to implement. With a clear law, it can provide certainty and create order and prevent personal data from being misused.

C. CONCLUSION

In addition to regulations and guidelines that provide sanctions for lender operators, it is important for the Government through socialization efforts organized by OJK in collaboration with KOMINFO to

provide information to the public in order to assist the public to know the consequences of using online loans accompanied by cases that have occurred related to businesses that lead to legal consequences when users don't make payments. Furthermore, if the online loan doesn't have permission from the OJK, then repressive action must be carried out with closure actions. (Simangunsong, 2020). Thus, coordination between KOMINFO and OJK has relevance.

One of the practices that causes the spread of illegal online lending in the midst of society, our Government actually has significant choices, one of which is through administrative control of fintech companies. The government can create specific rules directing various fintechs including start-up services or crowdfunding that also includes the burden of approval of legal sanctions toward service providers who use illegal entities. This is important as a legal protection for law enforcement so that online loan services have the legality of companies that explain registered, then the protection of online loan service users can be ensured by law enforcement because if a lender isn't registered and doesn't have legality in running its business, it has a difficult impact on the law enforcement process. For this

situation, fintech companies are required to provide virtual accounts and escrow accounts in lieu of loan repayment so that loaners do not pay directly to

lenders but through the flow provided by fintech companies.[]

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