

REVITALIZING THE ROLE OF CONSUMERS AND OJK IN OVERCOMING ILLEGAL ONLINE LOAN

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Abstract

The Covid-19 pandemic has at least two impacts on society; firstly, the increasing use of information technology applications in all aspects of human life. Secondly, restrictions on business activities caused many companies to be closed and finally increased the numbers of unemployment by 281% while the number of formal workers decreased by around 39.5%. Consequently, consumers' purchasing power is reduced even though the basic needs of life still have to be paid. This condition brings online lending companies to utilize information technology to market their products using the community's financial difficulties. This opportunity is also exploited by illegal lending and borrowing companies, which made the Financial Services Authority (OJK)'s hard to protect the public from becoming victims of illegal online loans. This research applies normative juridical research methods utilizing library research. Data and facts are gathered from scientific articles, journals, books and other sources obtained through internet searches. Afterwards, it is processed and analyzed to find problems, conclusions and suggestions to solve. This research discovered that there is still a lack of public literacy on their rights as independent consumers and the non-optimal performance of the OJK as the agency that holds the authority for licensing and monitoring online loans. The researcher concludes that the problem of illegal online loans can be overcome by increasing the literacy of the rights and obligations of consumers and business actors namely, fintech companies, as well as increasing coordination between stakeholders to deal with the problem of illegal online loans.

Keywords: Pandemic, Consumers, Illegal Online Loans, OJK, Fintech

1. INTRODUCTION

The Covid-19 pandemic, which has occurred since the beginning of 2020, has endangered public health, caused many deaths, and disrupted national economic activities. Even the impact of the pandemic can be experienced globally to this day. In Indonesia, the Large-Scale Social Restriction (PSBB) policy is not only applied for business efficiency, closing companies, especially the manufacturing, trade, hotel and restaurant sectors, transportation and communication sectors, but also to prevent the spread of the virus. The sluggish Indonesian economy has resulted in difficulties for many companies running their business. Some companies have decided to reduce or lay off their employees and even stop the business. This condition impacts the increase of unemployment and reduces people's income and purchasing power while there is a need to fulfil living needs, treatment/health, education and other expenses. In 2020, Indonesia's economic growth grew negatively while unemployment and poverty rates increased. The policy prioritizing to overcome the Covid-19 pandemic brings impacts credit disbursement to decline since most companies could not reinvest while waiting for recovery conditions. On the other hand, banks have recorded an increase in third-party fund savings indicating the public's prudence in consumption. The reduction in industrial business activities and the bankruptcy of many companies impacted the employment sector, where 29.12

million Indonesian citizens, or 14.28% of the total working-age population, were affected by the Covid-19 pandemic. The unemployment rate increased by 281% from 2.56 million to 9.77 million. Additionally, the number of formal workers also decreased by around 39.5%, from 128.45 million to 50.77 million citizens (Antonius Purwanto, 2021)

Meanwhile, the banking sector and other financial institutions, including consumer financing, also suffered losses as credit disbursement declined, caused by decreasing in consumer purchasing power. Therefore, to survive and improve the company's condition, they expand credit through various credit distribution facilities, both conventionally and through online media. The distribution of media credit facilities requires a special permit which differs from the conventional method. Many permits must be managed and owned by the credit facility provider company and submitted to the Financial Services Authority (OJK).

Before issuing the permits, OJK will go through an assessment stage of the applicant's ability to manage credit distribution online. The approval will be issued to companies and the obligations for a routine report. These business licensing requirements must be met by the applicant, either a bank or a finance company, before extending credit to the public. Thus, it is expected that financing companies will carry out all systems and procedures in lending to get companies profit while providing benefits for the borrower. The role of OJK is required to make this social imbalance not harm the public who do not understand the provisions of borrowing money directly or online. The reduced income of the community gives the burden to maintain the routine and urgent costs which cannot be predicted in advance, such as medical expenses, children's education, self-development costs and other unpredictable high costs.

Financing companies also utilize a more effortless procedure for the community to get funds rather than a complex procedure by commercial banks. However, this online loan is an opportunity used by illegal online lenders to increase income by offering loans with tremendous interest and fines that exceed applicable regulations. Many illegal lender companies directly channel funds/credit to the public with all the lure of gifts or other facilities without providing a sufficient explanation that it negatively impacts the community who cannot repay the debt.

Researchers are interested in conducting this research to protect the rights of consumers who have good intentions from illegal lender companies that are very detrimental to society. From the various conditions and backgrounds described above, the researcher sees and will analyze the legal problems that arise namely, how to increase the role of online financing consumers with stakeholders to handle and resolve the impacts and problems caused by illegal fintech companies. The impact of the presence of illegal lender companies has become the material for writing various articles, journals and writings. After all, it causes many losses for people in a tight position because they need urgent funds/costs and are forced to borrow from illegal lender companies because they can provide funds for consumer needs more efficiently than borrowing from the bank. Previous studies have generally focused their analysis on legal protection for illegal online loan consumers in Indonesia and what are the barriers to law enforcement in dealing with loan cases in Indonesia (Pratama Sinaga & Alhakim, 2022). Another study also discusses legal protection for users and the validity of loans through illegal lending (Sugangga & Sentoso, 2020). There is also research that discusses the perspective of

human rights (Pardosi & Primawardani, 2020) Many studies have focused on legal protection for online loans, especially illegal ones, since it is detrimental to consumers/online loan users. Consumptive tendencies (society) backfire for borrowers who are quickly dazzled with money in hand. A straightforward system of requirements, especially illegal loan applications, is for people who need instant funds, but it is not accompanied by good financial knowledge. With an ID card, in a short time, a person can immediately receive cash funds in his account (Arief Maulana, 2021) This research was conducted to provide a new perspective on overcoming the problem of illegal online loans, burdening stakeholders and providing additional literacy to online borrower consumers to further empower consumers as an essential factor in overcoming online loan problems.

This research proves that the existence of online loans is inevitable since it has become a solution to fulfil the community's funding needs. The public well-known online loans because of the straightforward simple agreement for borrowing money, in contrast to loans provided by commercial banks. However, the ease of providing online loans is then widely misused by illegal lender companies to deceive the public as if they have received official permission from the government. Non-compliance with these licensing requirements causes many illegal lender companies to have a detrimental impact on the community because they channel funds on terms and conditions that are not following with official government regulations, causing many victims to fall victim to good-intentioned consumers. Therefore, joint efforts are essential from all stakeholders: OJK, the Ministry of Communication and Information Technology (Kominfo), the Police Department, Associations and consumers.

2. LITERATURE REVIEW

Online Lending

Online lending is financial assistance issued by companies or financial institutions online. Usually, loan applications are made through an application belonging to the financial company (a Fintech Company). This loan makes the borrowing process more practical, fast, and effortless. It becomes evidence of financial technology (fintech) progress. Initially, the prospective borrower will fill out the online form and complete the verification process. Afterwards, they will apply for credit according to the funds needed. Finally, the borrower will receive the loan funds after the disbursement or approval. In addition to official online (fintech) loans (licensed by OJK), other providers remain unregistered by OJK or illegal fintech lending. Some of the illegal providers are found to include the OJK logo bravely. They often do not provide a general online loan agreement, so the innocent borrower will be more interested in borrowing, becoming the victim of illegal online loans (Darwin, 2022).

Online Lending Arrangements within the framework of Financial Technology (Fintech)

According to Article 1 point 1 of Bank Indonesia Regulation (PBI) No. 19/12/PBI/2017 concerning the Implementation of Information Technology, Financial Technology is defined as the use of technology in the financial system that produces new products, services, technology, and/or business models. Moreover, it can impact monetary stability, financial

system stability, and/or efficiency, smoothness, security, and reliability of the payment system. Based on the PBI, fintech operations are divided into five categories namely, 1) payment systems; 2) market support; 3) investment and risk management; 4) loans, financing, and provision of capital; and 5) other financial services. Thus, online loans have justified their existence with PBI in category 4 (PBI, 2017). Online lending is further regulated in the Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services. This POJK regulates the business activities of the organizers in providing, managing, and operating loan services to borrow money from the lender (which in this study is called Fintech Company) to loan recipients (or Online Loan consumers) whose source of funds comes from the lender (Regulation) (POJK, 2016). OJK issued the implementation provisions regarding Governance and Risk Management of Information Technology in Technology-Based Borrowing-Lending Services (Financial Services Authority Circular Letter, 2017).

Another institution that oversees lending and borrowing services is the Ministry of Communication and Information (Kominfo), through the Ministry of Kominfo Regulation (Permenkominfo) Number 36 of 2014 concerning Procedures for Registration of Electronic System Operators. This regulation provides guidelines for electronic system operators in registering electronic systems (Permenkominfo, 2014). In addition, the Indonesian government issued Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE), which provides law enforcers with powerful legal instruments to take action against violations/IT crimes.

Moreover, OJK protects consumers through Financial Services Authority Regulation (POJK) Number 6 /POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector to regulate online lending governance. In this POJK, Financial Services Businesses are required to have good intentions in carrying out their business activities and are prohibited from giving discriminatory treatment to consumers (Financial Services Authority Regulation, 2022). Additionally, Law No. 8/1999 on consumer protection is used as consumer legal protection.

The legal basis for punishing illegal fintech lenders

The number of regulations on fintech lending illustrates that all the stakeholders, Bank Indonesia, OJK, Kominfo, the Indonesian Police, the Indonesian Attorney General's Office, associations and others, have a robust legal basis in implementing the governance of money lending through financial technology facilities. Hence, fintech lending violations must receive appropriate sanctions. To make the sanction well-imposed, law enforcers do not merely rely on the Information and Electronic Transaction Law but also the statutory provisions issued by other stakeholders.

Legal Purpose Theory

The use of legal instruments in online lending transactions is intended to achieve legal objectives as stated by Gustav Radbruch, covering three fundamental values namely, 1) justice/Gerechtigkeit (philosophical aspect); 2) legal certainty/Rechtssicherheit (juridical

aspect) and 3) the community's benefit/Zweckmassigkeit (sociological aspect). The three principles come from the teachings of Jeremy Bentham's utility theory which views the law's purpose from the aspect of benefiting the large community.

3. METHODS

This research utilizes normative legal research methods. It is a scientific procedure to find the truth on the basis of legal scholarship logic from the normative side (Johnny Ibrahim, 2007). The scientific logic used in normative legal research is built on scientific disciplines and the workings of normative legal science namely, the science of law using the law as an object. In this study, research was conducted on aspects of online lending violations, especially for illegal practices, to determine how to protect consumers with good intentions based on applicable legal provisions. In answering the research question, this study will describe the law of good-intentioned buyers to consider the problem from the point of view of its nature. This research is classified as descriptive research, writing that provides an overview of a situation or a symptom. Moreover, from its form, this research is classified as prescriptive research, a study aimed at obtaining suggestions on what to do to overcome specific problems. From the source and analysis point of view, this writing is classified as a document or doctrinal research namely, based on literature, which means that the materials used by the author can be found in libraries, document archives and other data storage places through library research.

This research uses a conceptual approach; it departs from the views and doctrines that develop in the science of law. By studying the views and doctrines in legal science, researchers will find ideas that give birth to legal understandings, legal concepts, and legal principles relevant to the issues. Therefore, understanding these views and doctrines is becoming the basis for researchers to build a legal argument to solve the issues.

4. RESULT

The actions of illegal fintech loans are disconcerting people who need loan facilities to meet their daily urgent needs. Adequate information offers many people in a trap, and they eventually receive bad attitudes from debt collection officers. This company acts as a legal company registered by OJK. Hence, borrowers have questioned the OJK's role and urged them to enforce the law against illegal companies and supervise legal lending companies (Ronald, Wilfridus Setu Embu, et al., 2021). The existence of online loans is indeed helping the community due to an easy process compared to a loan given by commercial banks, which is considered complicated and requires a large number of documents and guarantees. Fintech lending (pinjol) is an alternative for many people to get funds instantly. However, when people do not have good financial literacy, they will easily get caught in illegals lending scams (Arief Maulana, 2021) The high demand for fintech lending is the insufficient collateral required for banks' lending facilities, as well as the difficult procedure for ordinary people. Afterwards, fintech companies used these opportunities to reactivate company operations demolished by the pandemic. Moreover, other parties also take part to generate the maximum profit in the shortest possible time illegally to distribute loans to the community.

OJK noted that within 10 years, from 2011 to 2021, the total accumulated public losses due to illegal lending reached Rp. 117.4 trillion, and more than 3,800 illegal loans have been successfully closed (Asep M Saefulloh, 2022). The data are supported by Tongam Lumban Tobing, chairman of the Investment Alert Task Force, noting that when the public is accessing illegal fintech lending, they lose both material and immaterial in the form of intimidation, terror and the theft of personal data (Novita Intan, 2022). To minimize the abuse or criminal acts in online loans, the Ministry of Communication and Information has a moratorium on issuing permits for electronic system operators for new fintech lending companies (Shalmont & Dominica, 2022) OJK, the authority to issue operational permits, is expected to work hard to overcome the negative impact of the existence of online loan companies, especially for illegal lending. For this reason, this condition requires cooperation between law enforcement institutions, the Criminal Investigation Agency (Bareskrim) of the Indonesian Police Department, Kominfo and other relevant agencies. (Kurniawan et al., 2021).

Illegal lender companies are detrimental to society and the state considering their cunning operation mode using information technology facilities and are classified as fraudulent crimes. Borrowers are resigned to following all the requirements imposed by Illegal Fintech and tend to believe them as official lenders without assuring the status. The company's compliance does not follow public trust in Fintech companies to get a business license by OJK. Consequently, many legal issues lead to criminal acts of fraud. Online borrowers risk sharing personal data, paying high loan interest, using abusive credit collection procedures, and sometimes applying physical and psychological violence (Shalmont & Dominica, 2022). Therefore, legal action is required for illegal lender companies that carry out their operational activities as if they already have official permission from the OJK.

National Seminar on Research Results and Community Service Development of the Nation's Economy Through Digital Innovation Research Results and Community Service in Jakarta, on October 21, 2021, provided data on 9 (nine) OJK-verified Fintech Platforms namely; Danamas, Investree, Amarthia, Dompot Kilat, Cloud Tunai, Tunai Kita, Fast Rupiah, Liquid and Kredivo. Besides, it has revealed 9 (nine) illegal platforms namely, Dokuku, Tunai Saku, Joycash, Quick Credit, Dana Kita, Real Cash, Secured Loans, Rupiah Credit and Car Wallet (Kurniawan et al., 2021) Therefore, a criminal approach with the ultimatum remedium principle must be carried out to overcome illegal lending scams. This option is chosen considering that this type of company's existence is difficult to track due to the uses of a digital platform. This principle provides a deterrent effect to protect the interests of the borrower. Law enforcers have various legal instruments that can be used to take action against perpetrators individually and as a corporation. Several legal bases, such as Articles of fraud regulated in the Criminal Code, criminal provisions regulated in the Information and Financial Transaction Law, licensing norms as regulated in the Financial Services Authority Regulation, provisions regarding online transactions as regulated in the Kominfo regulations and various other laws and regulations, can be used to ensnare the perpetrators of this illegal online loan fraud.

5. DISCUSSION

Everyone has found that online loans are very popular with the public due to their simple and accessible lending mechanism to all levels of society. In addition to providing benefits to the community, illegal online loans are disturbing and detrimental to the community. It makes people suffer because of burdening high-interest rates and intimidating debt-collector who attack them physically and mentally. The enormous value of losses caused by Illegal lender companies that are not accompanied by firm action by the authorities and law enforcers has resulted in their remaining activities. It gives rise to a wrong perception in the community that the government does not carry out the function of legal protection for the community by good. Therefore, a genuine legal breakthrough is needed to overcome the rampant losses due to the actions of illegal fintech lending scams. President Jokowi, on the 20th anniversary of the Anti-Money Laundering and Prevention of Terrorism Financing at the State Palace on April 18, 2022, asserted that currently, forms of economic crime are increasingly massive, complicated and complex. To overcome this, President Jokowi calls for attention to make breakthroughs through a digital transformation that adopts regulatory technology continuously and makes legal breakthroughs on various fundamental issues (Dian Erika Nugraheny, 2022).

Misperceptions of society are caused by a lack of public knowledge of their rights as consumers. Consumer rights are the obligation of business actors to fulfil them as regulated in Law Number 8 of 1999 concerning consumer protection:

Consumers' Right	Business Actor Obligation
Right to correct, transparent and honest information regarding the condition and guarantee of goods and/or services (Article 4 letter c)	<ol style="list-style-type: none"> 1. Have good intentions in carrying out maintenance business activities (Article 7 letter a) 2. Provide correct, transparent, and honest information regarding the condition and guarantee of goods and/or services, as well as explain the use, repair and maintenance (Article 7 letter b) 3. Treat or serve consumers correctly and honestly and non-discriminatory (Article 7 letter c) 4. Business actors are prohibited from producing and/or trading goods and/or services that do not meet or do not comply with the required standards and provisions of laws and regulations (Article 8 letter a). 5. Business actors who violate the provisions in Article 8 shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah) (Article 62 paragraph (1))

The actions of illegal lender companies are challenging to control since the operators are tech-savvy and supported by great financial strength categorized as "white collar crimes". Consequently, handling this case requires extraordinary effort, as mentioned by President Jokowi that legal and regulatory breakthroughs are needed to overcome this crime. The Ministry of Communication and Information of the Republic of Indonesia (Kominfo) has the authority to inspect digital platform transactions. Therefore, the sanction will not deter only by revoking the illegal fintech lender operations, because they can easily change the company's name and reoffer illegal online loan services to the public. Kominfo must conduct legal enforcement due diligence on all companies that offer their products online.

The Financial Services Authority (OJK), the holder authority for providing online loan permits, is expected to have a role in law enforcement against illegal Fintech actors/companies by coordinating and synergizing with relevant stakeholders in legal action such as the Police, Prosecutor Office, Ministry of Communication and Information, Reporting Centers and Financial Transaction Analysts (PPATK), the Indonesian Joint Funding Fintech Association (AFPI), and others. In addition to law enforcement, OJK is also expected to strengthen the literacy of Indonesian consumers to become independent, intelligent and critical consumers when conducting online transactions.

Law enforcement is carried out with the principle of *ultimur remedium*, where they cannot merely rely on the Information and Electronic Transactions (ITE) law, which contains less substance. The Indonesian Police may use the criminal provisions regulated in Law Number 8 of 1999 concerning Consumer Protection. Moreover, law enforcers can also take advantage of several regulations, including Law no. 3 of 2014 concerning Industry, Law no. 7 Regarding Trade, and the Personal Data Protection Bill (which was ratified by the DPR RI when this paper was written). The criminal provisions in Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax can also be used to ensnare illegal fintech lenders. Thus, the perpetrators can be charged with various criminal sanctions, and it is hoped that later the judge will impose maximum penalties on the criminals considering that economic crimes harm both consumers and the country's economy.

Gustav Radbruch, a German jurist and legal philosopher, put forward three fundamental values as the goals of the law (Constitutional Advocate, 2022) namely, justice (philosophical), legal certainty (juridical) and benefit to society (sociological). The utility theory was put forward by Jeremy Bentham namely, the greatest happiness for the greatest number (Discourse Corner, 2022). The legal purpose must be implemented for online loan borrowers as a manifestation of legal protection for consumer rights that fintech lenders violate. Thus, it is necessary to have suitable punishment and criminal imposition for illegal lenders, which will have a deterrent effect on criminals. At the same time, it will educate other business actors continually to obey the applicable laws and regulations to avoid criminal sanctions from law enforcers.

Hence, to improve legal protection for the online borrowers, introduction and education must be provided to law enforcers and all stakeholders on an ongoing basis, considering the increasingly rapid and sophisticated development of information technology and science, which was initially only to improve human life. It is also carried by criminals who use technological advances to commit crimes. Stakeholders must anticipate this by contributing to increasing knowledge related to information technology and the ability of law enforcement of stakeholders.

6. CONCLUSION

From this study, researchers can identify that increasing consumer literacy is an essential factor in overcoming problems arising from the presence of fintech companies, both official (registered and supervised by OJK) and illegal companies. Science and information technology will constantly develop to an increasingly sophisticated level. Moreover, advances in science

and technology, besides providing positive benefits for humans, have negative impacts, including the emergence of many new types of crimes that take advantage of the gaps opened by technology, both from the technical and legal aspects. Therefore, this condition causes difficulties for law enforcers when dealing with these white-collar criminals. This research proves that the participation of the public in general, particularly online borrowers, is essential to prevent and stop the practice of fintech lending crimes. The presence of illegal lenders is due to the broad open market impact of the COVID-19 pandemic, which has caused a decline in the community's economic capacity and requires financing assistance/funds for the daily needs of the community's households.

This law of supply and demand market should run under the legal corridor if business actors and consumers obey the law so that the law will function properly, as mentioned by Gustav Radbruch. However, the situation and conditions are not running as they should, resulting in a negative impact that is very detrimental to the community. One way to solve the problem is to increase public literacy so that the community/consumer of illegal fintech lending becomes independent, critical and has the ability and intelligence to choose and decide which online lending suits consumers' abilities.

This scientific paper was created to open a new perspective regarding legal protection for online loan consumers in dealing with unfavourable situations for consumers who have received online loans through illegal fintech companies. This paper simultaneously educates consumers to pay attention to their fundamental rights as consumers and reminds stakeholders to increase literacy in the fintech field, considering the rapid progress of science and technology today. Research in scientific writing is still within the limits of library research. Hence, it still focuses on a conceptual approach from the legal aspect following the author's competence in consumer protection. In line with this research, further research is necessary to accommodate field research directly interacting with consumers and business actors engaged in consumer financing.

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