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The Legal Consequences for Victims in Illegal Online Loan Agreements

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Abstract. *Technological developments touch the financial sector to produce a new innovative product called illegal online loans. Behind the convenience and practicality of illegal online loans, there are negative impacts that arise. The large growth of illegal online loans in Indonesia makes this a serious problem. The reason is because illegal online loans cause losses to victims and commit crimes in their operations. Illegal online loans have no legality in operation. So this creates new legal consequences in this matter. The purpose of this research is to look at the legal consequences of illegal online loan agreements. The method used in this research is a qualitative research method. The results of this study are that illegal online loans do not fulfill the legal terms of the agreement in accordance with the provisions contained in article 1320 of the Civil Code. So the agreement is considered invalid and never existed. However, victims of illegal online loans still have the obligation to pay their debts to illegal online lenders as a form of responsibility.*

Keywords: *Agreements; Illegal; Loan; Online; Victim.*

1. INTRODUCTION

The technological transformation in the financial sector presents Financial Technology (Fintech) or what is known as financial technology. Financial technology is an innovation in the financial sector that uses modern technology, so that all financial transactions become more practical, safe and modern.[1] Fintech has many varieties, one of which is Fintech Peer to Peer Lending or commonly known as online lending. An online loan is a loan that can be submitted through an online application.[2] Online loans through peer to peer lending make it easier for people who need funds to get loans without the need to apply for credit from a bank.[3] Online loans provide facilities and procedures that make it easier for people to apply for loans more efficiently. The large number of public requests for online loans has increased the growth of online loan

[1] Alifia Salvasani & Munawar Kholil. (2020). Penanganan Terhadap Financial Technology Peer-To-Peer Lending Ilegal Melalui Otoritas Jasa Keuangan (Studi Pada OJK Jakarta Pusat). *Jurnal Privat Law:* Vol. VIII No. 2

[2] Muhammad Andi Gustiar & Dian Alan Setiawan. (2022). Pertanggungjawaban Pidana Bagi Pelaku Pengancaman Kekerasan Oleh Desk Collection Pinjaman Online Ditinjau dari Undang-Undang Nomor 19 Tahun 206 tentang Perubahan Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik. *Bandung Conference Series: Law Studies.* Vol.2 No.2

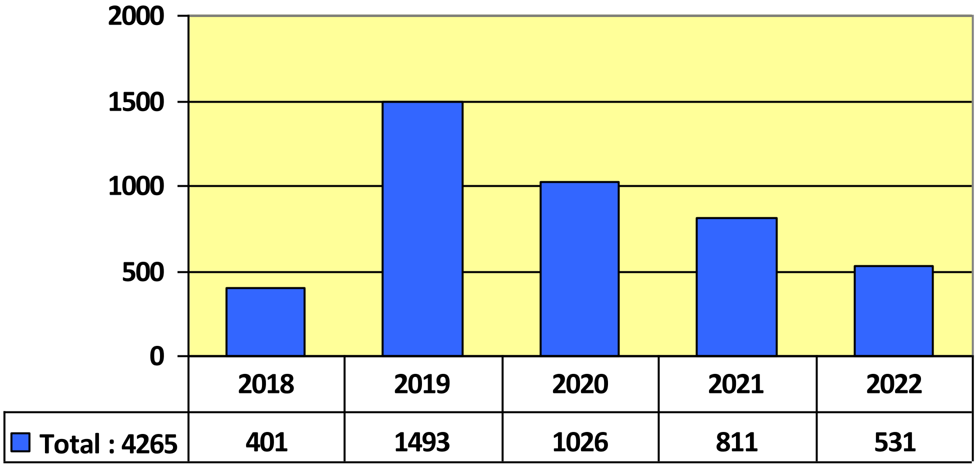
[3] Dewa Ayu Trisna Dewi & Ni Ketut Supasti Darmawan. (2021). Perlindungan Hukum Bagi Pengguna Pinjaman Online Terkait Bunga Pinjaman Dan Hak-Hak Pribadi Pengguna. *Acta Comitas; Jurnal Hukum Kenotariatan.* Vol.06 No. 2

companies in Indonesia.

The presence of online lending companies was accompanied by the issuance of Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing and Borrowing Services. The presence of Financial Services Authority regulations is expected to minimize the occurrence of irregularities related to online loans. However, online loans are very vulnerable to being affected by predatory lending practices, especially illegal online loans that do not have permits and are registered with the Financial Services Authority. The growth of illegal online loans has spread in Indonesia. The rise of illegal online lending practices is due to difficult financial conditions and consumptive public behavior and weak regulations from the monitoring system to law enforcement against illegal online loan.[4]

Public demand and these weaknesses have made the practice of illegal online loans increasingly widespread. So that becomes a motivation to take action by taking advantage of economic difficulties and low levels of financial literacy.[5] Illegal online loans operate companies without permission from the Financial Services Authority (OJK). The Financial Services Authority (OJK) has blocked illegal online loans since 2018, but illegal online loans are still growing, this is due to technological sophistication that makes it easy to operate again.

Picture 1. Details of Online Loans Blocked by the Financial Services Authority (OJK)



Source: Financial Services Authority's website

Based on the data above, it can be concluded that the growth of illegal online loans

[4] Jeremy Zefanya Yaka Arvante. (2022). Dampak Permasalahan Pinjaman Online dan Perlindungan Hukum Bagi Konsumen Pinjaman Online *The Impact of Online Loan Problems and Legal Protection for Online Loan Consumers. Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal.* Vol. 2 No.1

[5] Poppy Amanda Putri & Kasmanto Rinaldi. (2022). The Problems of Illegal Online Loans Based on The Victim's Perspective: A Case Study. *International Journal of Advances in Social and Economics.* Vol. 4 No.3

has fluctuated from year to year. Based on data presented by the Financial Services Authority (OJK), illegal online loans commit various types of violations to their victims. Reporting from the Financial Services Authority (OJK) website in 2021, the number of complaints against serious violations reached 9,270 and complaints against minor violations reached 10,441. This indicates that illegal online loans are a serious problem. It is evident from the data received by YLKI that there were 39.5% of complaints related to the way debt collection was carried out by lenders not in accordance with the rules. [6]

Illegal online loans offer easy, fast and practical terms, so when the victim gets the trap, the victim will continue to receive offers to borrow on illegal online loans repeatedly. Illegal online loans are very detrimental because these loans are carried out by providing unreasonable interest charges, billing methods that are not in accordance with the provisions, and even the dissemination of user personal data information. [7] The financial services authority (OJK) through *finance.detik.com*, explained the potential for material losses resulting from fraudulent investments and online loans in Indonesia, the loss is estimated at IDR 139 trillion. [8]

Financial digitalization is indeed beneficial to society. One of the various crimes that have occurred as a result of technological advances is the rampant manipulation of loans with various approaches and maintenance of the promised conveniences. But actually under the guise of a loan shark. Behind it all that makes the emergence of new victims from the suffering experienced before. However, the potential for new types of crimes will continue to emerge, for example terror due to illegal online loans experienced by victims. Cases caused by illegal online loans have a large dark number that is not recorded in police statistics. Low financial literacy is an opportunity for illegal online loans to offer loans. Many illegal online loans violate the law against their victims. Victims who do not pay their debts past the time limit given according to the agreement will receive bad consequences from illegal online loans.

Online loans is a business activity engaged in borrowing money, binding two or more parties (online loan companies and the public as consumers), so that the legal relationship applies to the provisions of the legal agreement.[9] Basically, in online loans, the agreement or contract between the debtor and the creditor is contained in the electronic contract contained in Article 1 number 17 of the Electronic Information and Transaction Law (ITE), which states that "Electronic Contracts are agreements between parties made through an Electronic System".

This also applies to illegal online loans that have contracts or agreements between debtors and creditors. However, in illegal online loans, the validity of the agreement or contract is questionable. This is because illegal online loans are not registered and

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[6] Ni Made Eka Pradnyawati, I Nyoman Sukandia, & Desak Gde Dwi Arini. (2021). Perjanjian Pinjaman Online Berbasis Financial Technology (FINTECH). *Jurnal Konstruksi Hukum.* Vol 2 No.2

[7] Fitriani HS, Ma'ruf Hafidz, & Zainuddin. (2022). Analisis Hukum Terhadap Pinjaman Online Ilegal Perspektif Hukum Perdata dan Hukum Islam. *Journal of Lex Generalis (JLS).* Vol. 3 No. 3

[8] Herdi Alif Al Hikam. 2023. Waduh! Kerugian Investasi Bodong dan Pinjaman Online di RI Rp 138 T. https://finance.detik.com/fintech/d-6889740/waduh-kerugian-investasi-bodong-dan-pinjaman-online-di-ri-rp-139-t

[9] Ralang Hartati & Syafrida. (2022). Perlindungan Hukum Konsumen Nasabah Pinjaman Online Ilegal (PINJOL ILEGAL). *Otentik's: Jurnal Hukum Kenotariatan.* Vol.4 No.2

licensed at the Financial Service Authority (OJK), so they do not fulfill the legal terms of the agreement in accordance with applicable law.

The main objective of this research is to identify and analyze the legal impacts faced by individuals or groups who become victims of illegal online lending practices. This kind of research aims to provide a better understanding of the legal consequences that arise from engaging in illegal online loan transactions, as well as provide insight into how the legal system can protect and provide justice to victims.

The subjects of this research include victims of online loans or people who have taken loans from illegal online lenders and are facing difficulties in repaying the loans due to unreasonable or hidden conditions in the agreement, the Riau Provincial Financial Authority, and illegal lenders.

Based on the description of the background above, the researcher is interested in researching, because the consequence lies not only in illegal online loans and debtors, but also in law. So this study aims to find out more regarding illegal online loan legal agreements through research entitled: Legal Consequences of Illegal Online Loan Agreements.

2. RESEARCH METHODS

The method used in this study is the empirical normative method. This method combines normative analysis, which focuses on examining relevant legal regulations and principles, with an empirical element that involves gathering data from the field. This method is suitable for studying legal aspects and the real impact on individuals or groups regarding illegal online loan agreements.

With primary data sources, this study will involve in-depth interviews with the subjects of this research, namely victims of illegal online loan agreements from the Financial Authority of Riau Province, and illegal lenders. This interview will provide first-hand insight into the victim's experience, the challenges faced, and the efforts made to address the impact of the law.

Secondary data sources in this study include various relevant legal documents, such as online loan agreements, related court decisions, banking regulations and consumer protection, as well as legal literature related to illegal online loans. These documents will form the basis of normative analysis to identify the legal aspects involved in these illegal practices. Empirical normative methods make it possible to gain a comprehensive understanding of the legal implications of illegal online loan agreements, both from the perspective of legal regulation and the real impacts experienced by the individuals or groups involved.

3. RESULTS AND DISCUSSION

3.1 Illegal Online Loans's Problem in Indonesia

Online loans based on the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing and Borrowing Services defines online loans, namely the provision of financial services to bring lenders together with loan recipients in the context of entering into loan agreements in the rupiah currency directly through an electronic system using the internet network.[10] In terms of operating online loans, they already have legal instruments regulated by the Financial Services Authority (OJK) in the Financial Services Authority Regulations and an Investment Alert Task Force (SWI) has even been formed which consists of several institutions. The legal basis for online loans is the Financial Services Authority Regulation (OJK) Number 77/POJK.01/2016.

Every online loan company is required to register and license with the Financial Services Authority (OJK) as stipulated in Article 7 of the Financial Services Authority Regulation No. 77/POJK.01/2016. Even though regulations require licensing based on these regulations, they are still ineffective in minimizing the existence of illegal online loans in Indonesia. There are still many illegal online loans that do not register their companies with the OJK for various reasons. Illegal online loans are information technology-based lending and borrowing activities that are carried out without permission from the authorities, namely the OJK as stipulated in the Financial Services Authority Regulations.[11]

Based on interviews conducted by researchers with the Financial Services Authority (OJK) of Riau Province stated that *"Many of our logos are used to mislead the public. They also follow that they have been registered with the Financial Services Authority as if using the signature of the board of commissioners of the Financial Services Authority. This means that various efforts are made to make it look legal".* Based on the interview, it can be seen that illegal online loans use the Financial Services Authority logo to make the company appear licensed and legal.

Inability and being late to pay debts has made illegal online loans feel disadvantaged.[12] Illegal online loans also cause victims of crime. Crime is any behavior that is detrimental and immoral, which causes such great shocks in a particular society that the community has the right to put up resistance to the perpetrators.[13] Victims are identified with those who have experiences related to crime.[14] Victims of illegal online loans experience terror and threats in billing as well as the potential for personal data that is vulnerable to misuse.

The Financial Services Authority (OJK) received many complaints from the public regarding unethical billing, high interest and large fines. The contrast between the

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[10] Peraturan Otorutas Jasa Keuangan Nomor 77/POJK.01/2016 Tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi.

[11] Wening Novridasati, Ridwan, & Aliyth Prakarsa. (2020). Pertanggungjawaban Pidana Desk Collector Fintech Ilegal Serta Perlindungan Terhadap Korban. Jurnal Litigasi. Vol.21 No.2

[12] Poppy Amanda Putri & Kasmanto Rinaldi. (2022). The Problems of Illegal Online Loans Based on The Victim's Perspective: A Case Study. International Journal of Advances in Social and Economics. Vol. 4 No.3

[13] Kasmanto Rinaldi. (2022). Sistem Peradilan Pidana Dalam Kriminologi. Ahlimedia Press. Malang Made Eka Pradnyawati, I Nyoman Sukandia, & Desak Gde Dwi Arini. (2021). Perjanjian Pinjaman Online Berbasis Financial Technology (FINTECH). Jurnal Konstruksi Hukum. Vol 2 No.2

[14] Kasmanto Rinaldi. (2022) The Election Conflict of Mandailing Tribe Leader: An Analysis on Victimology. *International Journal of Social Science (IJSS).* Vol.1 (5)Aditia Warmadewa & I Made Udiana. (2017). Akibat Hukum Wanprestasi Dalam Perjanjian Baku. *Kertha Semaya: Journal Ilmu Hukum.* Vol. 5 No.2

number of legal and illegal online loans is a concern. People who use illegal online loans are not only due to economic factors but also lifestyle factors. The Financial Services Authority (OJK) in a research interview stated that the loss was in the aspect of the level of public trust. The cycle of supply and demand for illegal online loans will continue as long as the demand is there.

3.2. Legal Consequences of Illegal Online Loan Agreements

All activities carried out in online lending must be accompanied by a legal umbrella and agreement that binds both parties that are fair, so as to create comfort for creditors and debtors in lending and borrowing activities. The agreement aims to provide guarantees and guarantees to the debtor regarding the guarantee of the confidentiality of his personal data which is at risk of being misused. Likewise with online lenders as creditors to get guarantees in running their business. This guarantee is the basis for online lenders to provide loans to debtors.

An agreement or contract is a series of agreements made by the parties to bind themselves to each other. In every agreement there will be a legal consequence. Legal consequences are actions taken with the aim of obtaining an effect desired by the perpetrator and regulated by law. The legality of online loan companies certainly has an impact on the operation of their business and the validity of the agreement between the debtor and creditor. Like legal online loans in general, illegal online loans also have electronic contracts or agreements with debtors when providing loans. The contract becomes the rules that must be followed and agreed by both parties. Online lenders are third parties in a transaction, lenders authorize administrators to manage their finances. Based on this, the organizers are asked for and on behalf of the lender to agree to a loan agreement with the recipient of the loan (debtor).[15]

The party drafting the agreement (creditor) with its conditions has a stronger position compared to other parties who are generally in a weak position (debtor). The debtor's position in the agreement tends to be weak because the debtor does not have the opportunity to negotiate. There are many cases of illegal online loans that threaten debtors who do not or experience delays in paying their debts. These threats include spreading slander, misusing personal data, verbal violence, psychological disturbances that cause stress and anxiety, and others. The threat is carried out by using the debtor's personal data as a weakness so that the debtor immediately pays his debts that have passed the provisions in accordance with the agreement of the two parties.

Violations committed by both parties between debtors and creditors of illegal online loans have violated the agreement. Basically, the agreement must refer to Article 1320 of the Indonesian Civil Code. In online loans, the agreement between the debtor and the creditor is contained in an electronic contract that is binding on both parties. The legal basis used in the process of lending and borrowing on online loans is Financial Services Authority Regulation 77 of 2016. This basis is a reference that can be used to show evidence of the legitimacy of credit activities through online media. According to Article 18 of the Financial Services Authority Regulation 77/2016 the agreement on the implementation of Information Technology-Based Borrowing-Lending Services includes:

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[15] I Made Aditia Warmadewa & I Made Udiana. (2017). Akibat Hukum Wanprestasi Dalam Perjanjian Baku. *Kertha Semaya: Journal Ilmu Hukum.* Vol. 5 No.2

1. Agreement between organizers and lenders; and
2. The agreement between the lender and the loan recipient

Borrowing activities carried out by online loan companies are legal or not reviewed and based on the validity of an agreement. The validity of an agreement according to the Civil Code must fulfill all elements in Article 1320 of the Civil Code. In Article 1320 of the Civil Code, several subject and object conditions have been determined. In determining the validity of an agreement, four conditions must be met, namely: Civil Code Article 1320 :

1. Agree those who bind themselves
2. The ability to make an engagement
3. A certain thing
4. A lawful cause

In this context, agreement is defined as conformity between one or more people and another party. Statements of agreement are made expressly orally, in writing, or with signs/gestures. Parties who carry out lending and borrowing in the context of illegal online loans are lenders and recipients of loans made through applications or websites that have been provided by providers of illegal online loan services. Agreements are not made face to face, but via the internet and cellphones. In this process the online lender has determined the terms, conditions and obligations of the loan recipient. So that the recipient only has two options, namely accepting all the terms or rejecting the terms and agreements provided by illegal online lenders. In this case there is no negotiation process between the two parties. So that the provisions contained in the agreement must be fulfilled as long as the recipient of the loan agrees, therefore the terms of the agreement have been fulfilled.

In making an agreement, one must have the ability to take legal action for those who are declared as legal subjects. The legal subject consists of two components, namely people and legal entities. Those who enter into an agreement must be in accordance with the provisions of the law, namely those who are adults aged 21 years. In the context of illegal online loans, the recipient party makes an agreement through an application provided by the organizer of the illegal online loan who is also the recipient of the power of attorney and the lender, the illegal online loan party must adjust and fulfill the elements of proficiency in the engagement. Meanwhile, illegal online loan parties do not have permits or legality, so they are considered incompetent because they do not have authority even though the agreement has fulfilled competence.

The existence of the object of the agreement to clarify is aims to make the object of the agreement clear and precise. The online loan agreement must be open and clearly regulate the terms and conditions that must be met by the parties involved. In the agreement, the lender must transparently explain the loan amount, loan interest rate, term, fines, and so on.

In this context, halal means that the agreement is not against the law, contrary to decency, and contrary to public order. As a result, illegal online loans do not have legality and licenses registered with the Financial Services Authority, so these transactions do not meet the elements of legal causes because loans are made through illegal online lenders.

Based on this analysis, it can be concluded that lending and borrowing agreements made with illegal online loans are invalid agreements because they do not meet the terms of agreement prowess and the requirements of a lawful cause. The problem of illegal online loans lies in legality or licensing in carrying out business activities.[16] If it is associated with the legal requirements of an agreement as stated in Article 1320 of the Civil Code, illegal online loan agreements do not fulfill subjective requirements from the start. Subjective requirements that are not met are due to illegal online loans being illegally recognized by law because they are not licensed by the Financial Services Authority.

Non-fulfillment of the legal requirements in the agreement listed in Article 1320 will result in different legal consequences. If it does not meet the terms of the agreement which includes agreement and competence, then the agreement is invalid, the legal consequence is that the agreement can be canceled. If the objective conditions of the agreement which include a certain matter and a lawful cause are also not met, then the agreement from the beginning is deemed to have never existed, then the legal consequence is that the agreement is null and void.[17] In the phenomenon of illegal online loans, organizers do not comply with the provisions contained in Article 7 of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing and Borrowing Services which reads "Organizers are required to submit registration and licensing to Financial Service Authority (OJK)". [18]

Illegal online loan parties in their agreements do not meet the skill requirements and requirements for a lawful cause. Even though the status of the agreement is null and void, it does not erase the victim's obligation as the recipient of the loan to repay the debt to illegal online lenders. The victim is obliged to return the funds that have been borrowed without the need to pay interest as a form of responsibility.

Overall, the results of this study reveal the complexity of the legal challenges faced by victims of illegal online loan agreements, as well as the need for further action in the analysis and development of stronger laws or regulations to protect consumers. An analysis of relevant laws or regulations in the context of this research shows several key findings as this research identifies deficiencies in specific regulations to deal with illegal online loan agreements. There are legal loopholes that allow these harmful practices to continue without significant legal consequences. Analysis of consumer protection laws shows that many current regulations do not adequately address the specific characteristics of illegal online loan agreements. Some aspects such as high interest rates and misleading marketing practices may not be fully regulated.

Additionally this study reveals that legal action against illegal online loan agreements is often complicated due to unclear jurisdiction, especially due to the online nature of the transactions. This complicates law enforcement efforts and protection for victims. The results of the analysis indicate the need for consideration to develop new laws or amend existing regulations to address specific problems that arise in illegal online loan

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[16] Inri Januar, Radisman Saragih, & Anton Naiggolan. (2022). Kewajiban Debitur Mengembalikan Prestasi Dari Pinjaman Online (Pinjol) Yang Ilegal. *Honeste Vivere Journal.* Vol. 32 (2)

[17] Fitriani HS, Ma'ruf Hafidz, & Zainuddin. (2022). Analisis Hukum Terhadap Pinjaman Online Ilegal Perspektif Hukum Perdata dan Hukum Islam. *Journal of Lex Generalis (JLS).* Vol.3 No.3

[18] *Opcit,* hlm 7

agreements. These laws could include provisions on interest rates, fee transparency, and stricter legal sanctions. This study also highlights the importance of education and legal awareness for the public regarding illegal online loan agreements. This education can help people recognize risks and their rights, and make smarter financial decisions.

In general, the findings of this study highlight the necessity for more robust legal and regulatory changes in tackling illegal online loan agreements. Within this context, a thorough examination of laws and regulations becomes essential for formulating a legal structure capable of safeguarding victims and deterring this detrimental practice.

4. CONCLUSION

Illegal online loans in operation cause many victims and losses both from borrowers and from authorized institutions such as the Financial Services Authority (OJK). Through a comprehensive examination of relevant laws, case studies, and real-world scenarios, this study has highlighted the often devastating impact of illegal online loan agreements on individuals and their financial well-being. Victims of such agreements not only face significant financial burdens but also experience emotional stress and psychological challenges. The legal consequences of illegal online loans based on the Civil Code must fulfill the terms of the agreement regulated in Article 1320. However, illegal online loans do not fulfill these requirements. The legal status of illegal online loans is illegal because they are not registered with the Financial Services Authority (OJK). So that the requirements are invalid and are considered to have never existed. However, victims of illegal online loans are still required to pay the principal debt according to the nominal amount they borrowed. The absence of clear jurisdiction and effective enforcement mechanisms in the digital realm has allowed unethical lenders to take advantage of susceptible individuals. This study strongly emphasizes the significance of governments, financial institutions, and online platforms working together collaboratively to devise successful strategies for preventing, identifying, and rectifying illicit lending practices.

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