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ONLINE LENDING CONTRACTS AS A VARIANT OF UNDUE INFLUENCE: A CRITICAL EXAMINATION OF THE PRINCIPLE OF FREEDOM OF CONTRACT

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Abstract. *The rapid growth of digital financial technology has expanded online lending as an accessible financing source. However, it is often linked to high interest rates, aggressive debt collection, and misuse of personal data, placing borrowers in vulnerable positions and raising significant legal concerns regarding fairness and imbalance in contractual relationships. The purpose of this study is to analyze online lending agreements as a new variant of undue influence and to reassess the application of the principle of freedom of contract in the context of digital lending practices. This research employs a normative legal research method with conceptual and statutory approaches, drawing upon statutory regulations, contract law doctrines, academic literature, and relevant judicial decisions related to online lending practices. The findings demonstrate that undue influence does not arise solely from traditional interpersonal relations but also manifests structurally within online lending through digital information asymmetry and unequal bargaining power. This study shows that the classical conception of freedom of contract, which emphasizes formal consent, is insufficient to address such digital inequality. Accordingly, the research offers a reinterpretation of freedom of contract that prioritizes substantive justice through the principles of good faith, morality, and public order in digital contracts.*

Keywords: *Contractual Fairness; Digital Contract; Freedom of Contract; Information Asymmetry; Online Lending; Undue Influence.*

1. Introduction

The development of financial technology has brought about a profound transformation in financial transaction practices in Indonesia. One of the most prominent manifestations of this transformation is the proliferation of online lending services, which offer fast, practical, and relatively accessible financing to the public. Data released by the Financial Services Authority (*Otoritas Jasa Keuangan*/OJK) indicates that as of December 2024, the total outstanding loans disbursed through information technology-based peer-to-peer lending platforms exceeded IDR 59 trillion, distributed to millions of borrowers across Indonesia (OJK, 2025). Among the factors driving the use of online lending are short-term financial needs, lifestyle considerations, and user convenience. This figure confirms that online lending has become a significant component of the contemporary public financing system. Nevertheless, the speed, convenience, and accessibility promised by online lending are directly proportional to the emergence of various legal problems. In this respect, the advancement of financial technology may be likened to a double-edged sword, although it offers undeniable convenience, it simultaneously generates a range of legal challenges (Kurniawati & Yunanto, 2022).

One of the most salient issues concerns online lending contracts that are drafted in the form of standard clauses and implemented through clickwrap agreements. A clickwrap agreement is a form of contract in which a set of terms and conditions is presented to the user, and at the end of the contractual provisions the user is required to indicate consent by selecting a checkbox accompanied by the statement "I agree", operating within a pronounced asymmetry of information between lenders and borrowers (Fuady, 2007). When examined more closely, such practices are frequently associated with excessively high interest rates, borrowers' emergency conditions that compel involuntary consent, aggressive debt collection methods, and excessive exploitation of personal data (Hanifah, 2022). Borrowers in these circumstances are often not situated in an equal position to give genuine consent; rather, they are trapped in coercive and detrimental conditions.

These problems are not confined to illegal online lending platforms but are also prevalent among licensed and formally registered providers. Empirical data from the Jakarta Legal Aid Institute demonstrates that the formal legality of financial technology providers does not automatically ensure consumer protection from harmful contractual practices. LBH Jakarta recorded that as of November 2018, there were 1,330 public complaints across 25 provinces concerning online lending services. Notably, 25 out of 89 reported providers were financial technology companies registered with the OJK. The reported issues included the imposition of high daily interest rates (1,145 complaints), debt collection practices involving access to emergency contacts (1,100 complaints), dissemination of private information and photographs (903 complaints), threats, defamation, and harassment (781 complaints), as well as changes in the corporate name of financial technology providers without notification while interest rates continued to increase (645 complaints) (Sari, 2025).

This situation raises a fundamental legal question regarding the implementation of the principle of freedom of contract in the context of online lending agreements. Theoretically, the principle of freedom of contract is constructed upon the foundations of equality and the autonomy of the parties' will (Arifin, 2017; Hasibuan, 2020). However, in the practice of online lending, this principle frequently undergoes distortion due to the dominance of the stronger party. When contractual clauses are unilaterally determined by the platform provider and borrowers are placed in urgent or desperate circumstances, freedom of contract no longer reflects the manifestation of free will, but rather a form of coercion legitimized through legal instruments (Rusli, 2015). This phenomenon illustrates how digital contracts generate new patterns of dependency and vulnerability that differ from classical forms of undue influence.

Several prior studies have examined online lending from various perspectives, including consumer protection, OJK supervision and practical issues such as high interest rates, privacy violations, and illegal debt collection (Kurniawati & Yunanto, 2022; Fauziah, et.al., 2025). However, these studies generally concentrate on sectoral regulation and consumer protection mechanisms, rather than on the normative dimensions of contract law itself. Similarly, contract law scholarship in Indonesia continues to position the principle of freedom of contract as a dominant doctrine. Although numerous studies have proposed limitations on this principle, such limitations have not yet addressed the specific context of digital contracts (Azam et al., 2020; Nabila & Djayaputra, 2023). In other words, existing literature remains limited insofar as it has not explicitly connected the distinctive characteristics of online lending contracts with the doctrine of undue influence (*misbruik van omstandigheden*) within Indonesian civil law (Kusmiati, 2016; Khalid, 2025).

The novelty of this research lies in the absence of studies that specifically dissect the characteristics of online lending contracts through the lens of the doctrine of undue influence, while simultaneously reassessing the relevance of the principle of freedom of contract in the context of digital contracts, particularly online lending. This study seeks to fill that gap by offering an analysis that situates online lending contracts as a new variant of the doctrine of undue influence in contract law. The research contributes theoretically by re-examining the principle of freedom of contract within a digital contractual environment marked by significant disparities in bargaining positions, thereby rendering its reinterpretation more responsive to the dynamics of digital contracts, especially in online lending. From a practical standpoint, this study is also relevant in strengthening legal arguments for policy formulation and judicial decision-making in online lending disputes, with the aim of preventing harmful and exploitative contractual practices by dominant parties.

Based on the foregoing discussion, this research undertakes a critical examination of the principle of freedom of contract by positioning online lending practices as its primary object of analysis. The study aims to elucidate the characteristics of online lending contracts that represent a new variant of undue influence in Indonesian civil law practice and to propose a reinterpretation of the principle of freedom of contract that is more adaptive to the evolution of digital contracts.

Building upon the foregoing discussion, the following research questions are formulated to guide the analysis of online lending practices within the framework of contract law:

1. How can the characteristics of online lending contracts be qualified as a form of undue influence under Indonesian civil law?

2. How is the principle of freedom of contract applied in online lending amid unequal bargaining positions between the parties?

3. How should the principle of freedom of contract be reinterpreted in the context of digital online lending contracts?

2. Research Methods

This study employs a normative legal research method, as the analysis is centered on legal norms governing online lending practices. The research uses a statutory approach and a conceptual approach to examine positive law, principles of contract law, and relevant legal doctrines, particularly the doctrine of undue influence and the principle of freedom of contract.

The legal materials examined include primary sources such as the Indonesian Civil Code, the Consumer Protection Law, the Electronic Information and Transactions Law, and regulations issued by the Financial Services Authority related to financial technology lending. Secondary legal materials are drawn from academic literature, scholarly journals, and expert opinions, while tertiary legal materials include legal dictionaries, encyclopedias, and official reports published by the Financial Services Authority and legal aid institutions.

The collection of legal materials is carried out through documentation and library research methods. The analysis is conducted qualitatively by interpreting legal norms, reviewing doctrinal viewpoints, and comparing regulatory provisions with the actual implementation of online lending agreements This qualitative analysis is used to assess whether online lending agreements may be classified as a form of undue influence and to evaluate the adequacy of existing legal instruments in providing legal protection to the parties involved.

3. Results and Discussion

3.1. Characteristics of Online Lending Contracts as a Variant of Undue Influence

The term "*penyalahgunaan keadaan*" in Indonesian law constitutes the equivalent of the concepts of *misbruik van omstandigheden* and undue influence. In common law systems, the notion of unconscionability is also recognized; although distinct from undue influence, both doctrines share a common foundation, namely the existence of an imbalance in the parties' bargaining positions (Wicaksono, 2023). Where a contract is formed on the basis of impropriety or injustice arising from an unequal relationship between the parties, such a situation is classified as undue influence (a one-sided relationship). By contrast, where injustice arises from the circumstances themselves, it is referred to as unconscionability (an unjust condition) (Putra, 2015).

In Dutch law, undue influence is expressly regulated under Article 3:44 paragraph (1) of the *Nieuw Burgerlijk Wetboek* (NBW), which provides that a contract may be annulled if it is proven to have been concluded in a situation where one party exploits the emergency or vulnerability of the other party (Panggabean, 1992). This line of thought has subsequently influenced the development of doctrine in Indonesian civil law, notwithstanding the fact that the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*/KUHPer) does not explicitly employ the term *penyalahgunaan keadaan*. Indonesian jurisprudence, in a number of cases, has begun to recognize analogous concepts by invoking the principles of propriety, morality, and good faith as grounds for annulling contracts deemed exploitative. This demonstrates that, although not directly codified, the doctrine of undue influence has nonetheless acquired a recognized place within Indonesian civil law practice.

Van Dunne distinguishes the causes of undue influence into two categories, namely economic superiority and psychological superiority. Both categories must satisfy specific requirements to be classified as undue influence, as follows (Panggabean, 1992). The requirements for the abuse of economic superiority are that one party must possess economic superiority over the other, and the other party is compelled to enter into the contract. The requirements for the abuse of psychological superiority are that one party exploits a relationship of relative dependence, such as a special relationship of trust between parent and child, husband and wife, doctor and patient, or clergy and congregant, and that one party exploits the other party's particular psychological condition, such as mental disorder, inexperience, recklessness, lack of knowledge, poor physical condition, and similar circumstances.

Based on these two forms of undue influence, several factors may be identified as characteristic indicators, as noted by Satrio (1992). These include situations where, at the time of concluding the contract, one party is in a distressed or constrained condition, often accompanied by pressing economic circumstances or acute financial hardship. Indicators may also arise from hierarchical relationships, such as superior–subordinate dynamics, economic dominance of one party, employer–employee relations, or relationships between parents or guardians and minor children. In addition, undue influence may be reflected in conditions of situational dependence, for instance when a patient is in urgent need of assistance from a medical specialist. Another important indicator is the presence of contractual arrangements that exhibit an imbalance in reciprocal obligations between the parties (disproportionate performances), including circumstances where an employer is exempted from risk while such risk is shifted onto the worker. Finally, undue influence may also be inferred from the occurrence of substantial loss suffered by one party.

Undue influence (*misbruik van omstandigheden*) constitutes a significant doctrine in contract law, functioning to uphold justice at the pre-contractual stage by protecting parties who occupy a weak or vulnerable position (Putri & Taupiqqurrahman, 2023; Khalid, 2025). This doctrine is fundamentally grounded in the premise that freedom of contract must not be employed as a means to exploit special circumstances affecting another party, such as emergency conditions, dependence, ignorance, or weak bargaining power. In other words, contracts formed under conditions of structural imbalance do not genuinely reflect free will, thereby rendering their legitimacy open to question (Hasibuan, 2020; Jatmiko, 2025).

Article 1338 of the Indonesian Civil Code indeed grants parties the freedom to enter into contracts; however, such freedom is not absolute. Limitations in the form of statutory provisions, morality, propriety, and the principle of good faith function as normative safeguards to prevent freedom of contract from becoming an instrument of oppression. Within this framework, the doctrine of undue influence emerges as an essential concept to ensure that the principle of freedom of contract operates in balance with the protection of weaker parties (Hasibuan, 2020; Fidhayanti, 2023).

The legal relationship in online lending based on peer-to-peer lending fundamentally involves three principal legal subjects, namely the lender, the borrower, and the platform operator (peer-to-peer lending provider). The interaction among these three legal subjects gives rise to two distinct types of legal relationships, namely the legal relationship between the lender and the borrower, which constitutes a loan agreement governed by Article 1754 of the Indonesian Civil Code (*Kitab Undang Undang hukum Perdata*/KUHPerdata), and the legal relationship between the platform operator and the lender, which takes the form of a power of attorney agreement as regulated under Article 1792 of the Indonesian Civil Code (Rahadiyan & Hawin, 2020).

Within this conceptual framework, the peer-to-peer lending operator (hereinafter referred to as P2PL) merely provides a facility that brings together lenders and borrowers. Based on the authority granted by the lender, the operator, for and on behalf of the lender, enters into a loan agreement involving the lender's funds with the borrower. In return for these services, the P2PL operator is entitled to receive a fee or remuneration (Hartanto & Ramli, 2018; Oemardi & Sudiro, 2024).

In practice, however, P2PL operators act far beyond the role of a mere facilitator. The operator designs the contractual format, determines standard clauses, regulates collection methods, and defines information-related risks, including access to personal data and emergency contacts. Lenders never interact directly with borrowers but instead merely access standardized contractual products prepared by the operator. Consequently, although the lender is formally the party providing the funds, the P2PL operator possesses the greatest potential to engage in undue influence through unilateral contractual structures and exploitative operational design.

Normatively, online lending contracts are constructed upon the principle of freedom of contract, under which borrowers are deemed to have voluntarily agreed to the terms and conditions proposed by the operator (Sinaga, 2018; Atmoko, 2022; Tantaru & Soplantila, 2025). However, upon closer examination, online lending contracts exhibit characteristics that may be categorized as a new variant of undue influence. These characteristics can be elaborated as follows.

First, the mechanism for the formation of digital contracts in online lending is based on a clickwrap agreement system, whereby borrowers are only given the option to accept or reject the entirety of the contractual terms without any opportunity for negotiation. This standard-form contract model effectively disregards the autonomy of the borrower's will, as the consent given is more a matter of formality than the outcome of balanced bargaining. Moreover, lengthy, technical, and difficult-to-understand contractual terms exacerbate informational asymmetry between the P2PL operator and the borrower.

Second, there exists a dominance of information. P2PL operators exercise full control over the operation of creditworthiness assessment algorithms, interest rate determination, and penalty mechanisms. Borrowers merely receive the final outcome of such decisions without any ability to assess the transparency of the underlying processes.

Third, online lending contracts generally arise from the borrower's pressing economic circumstances. Many borrowers are compelled to resort to online loans due to urgent needs, such as medical expenses, educational costs, or daily subsistence requirements (Ramadhan & Saksono, 2019; Agustini et al., 2025; Hardyansah et al., 2025). This state of economic emergency places borrowers in a vulnerable position that is easily exploited. The unequal power relationship further strengthens the dominant position of the operator, enabling the imposition of high interest rates and contractual clauses that tend to burden the borrower.

Fourth, online lending practices are also marked by aggressive debt collection models and the exploitation of personal data. Numerous reports indicate collection practices involving intimidation, including social threats through the dissemination of borrowers' personal data to third parties. The use of personal data as an instrument of pressure clearly adds a new dimension to undue influence in the digital context. In such circumstances, freedom of contract loses its substantive meaning, as borrowers are bound by agreements that are not only financially detrimental but also inflict psychological and social suffering (Zamroni, 2019).

Whereas in classical doctrine, undue influence arises from factors such as coercion, dependency, or economic inequality, the digital sphere has given rise to a new variant that may be described as digital undue influence. This occurs because it is not merely the personal condition of the borrower that is exploited, but also the technological structure systematically employed by online lending providers to reinforce their dominant position. Accordingly, online lending contracts may be regarded as a concrete manifestation of modernized undue influence, thereby necessitating a reinterpretation of the limits of the principle of freedom of contract within Indonesian private law (Kusmiati, 2016; Mahendar & Budhayati, 2019).

3.2. The Principle of Freedom of Contract in Indonesian Private Law

The principle of freedom of contract occupies a central position in contract law. Although this principle is not explicitly codified as a legal rule, it exerts a profound influence on contractual relations between parties. This is because freedom constitutes an expression of free will and a manifestation of fundamental human rights (Badrulzaman, 2011).

The principle is rooted in individualist philosophy, which embryonically emerged in ancient Greek thought, was later developed by the Epicureans, and experienced significant growth during the Renaissance. Further intensified during the Enlightenment, though, the teachings of Hugo Grotius, Thomas Hobbes, John Locke, and Rousseau (Badrulzaman, 2011; Adonara, 2014). This intellectual development coincided with the drafting of the *Burgerlijk Wetboek* (BW) in the Netherlands, and the liberal spirit underpinning it was also influenced by the slogan of the French Revolution, *liberté, égalité et fraternité*, meaning freedom, equality, and fraternity. According to individualist thought, every person is free to pursue what they desire; within contract law, this philosophy finds expression in the principle of freedom of contract (Fuad et al., 2025).

Within the civil law tradition, the principle of freedom of contract encompasses five dimensions, namely the freedom to decide whether to enter into a contract or not, the freedom to choose the party with whom to contract, the freedom to determine the content of the contract, the freedom to determine the form of the contract, and the freedom to determine the manner in which the contract is concluded (Gunawan & Waluyo, 2021; Hardyansah et al., 2025).

Continental European legal thought positions freedom of contract as a consequence of two other fundamental principles of contract law, namely the principle of consensualism and the principle of the binding force of contracts, commonly referred to as pacta sunt servanda. Consensualism relates to the formation of a contract, pacta sunt servanda concerns the legal consequences of a contract, specifically the binding effect upon the parties, whereas freedom of contract pertains to the substantive content of the agreement (Hernoko, 2010).

Genuine freedom of contract can only exist when the parties to a contract enjoy economic and social balance. In other words, the realization of the objectives of freedom of contract presupposes that the contracting parties possess relatively equal bargaining power. Justice Pitney, in Coppage v. Kansas, 236 U.S. 1, 17 (1915), asserted that it is impossible to uphold freedom of contract without, at the same time, recognizing the necessity of balanced bargaining positions between the parties. In reality, however, such balance does not always exist, often resulting in disadvantage to the party with weaker bargaining power (Khairandy, 2017).

Many contracts are formed not through a process of balanced negotiation but through mechanisms whereby one party unilaterally prepares standard terms in a pre-printed contractual form and presents them to the other party for acceptance (Sjahdeini, 1993). Where economic and social imbalance exists, only the party with stronger bargaining power is truly free to determine the content and form of the contract. The stronger party may exert pressure on the weaker party, thereby imposing or dictating contractual terms in accordance with its own interests. Such circumstances are manifestly detrimental to the party occupying the weaker bargaining position (Khairandy, 2017).

Classical contract law doctrine paid minimal attention to inequalities of bargaining power between contracting parties. Within this doctrinal framework, freedom of contract was understood to mean that individuals could choose what they desired through mutual agreement. This perspective was grounded in the assumption that the bargaining positions of the contracting parties were inherently equal (Khairandy, 2017). Over time, however, freedom of contract has ceased to be regarded as absolute, due to its inherent weaknesses that generate injustice. The twentieth century marked the beginning of a retreat from the apex of freedom of contract that had been achieved in the nineteenth century. The limitations on freedom of contract traditionally recognized in contract law have been supplemented by new forms of restriction previously unknown to the law of obligations. These include limitations imposed by courts in the exercise of their law-making function, by legislatures, particularly governmental regulation, and by the emergence and enforcement of adhesion contracts or standard-form agreements driven by business needs (Sjahdeini, 1993; Malohing, 2017).

A similar phenomenon is evident in online lending agreements, which are uniformly structured as clickwrap agreements or standardized electronic contracts offering only a "consent" option without any room for negotiation. Borrowers are positioned merely as parties who accept terms unilaterally determined by the platform operator. This contractual model demonstrates the extent to which freedom of contract is restricted to the freedom to accept or reject (take it or leave it), rather than freedom in determining the substance of the contract (freedom in contract) (Sjahdeini, 1993; Zamroni, 2019).

According to Agus Yudha, this phenomenon represents a logical consequence of a misguided understanding of the principle of freedom of contract. As a result, contracting parties seek to maximize self-protection and self-interest when confronting their contractual counterparts. Each party attempts to shield itself by drafting contracts that primarily serve its own interests, with little regard for the opposing party, and, where possible, by ensnaring the other party through oppressive or even destructive clauses. The perception that contracting involves confronting an adversary implies that each party comes prepared with its own "weapons," ready to be deployed at any moment. Consequently, mutual suspicion arises from the outset, and in an effort to avoid loss or disadvantage, parties consciously or unconsciously strive to undermine and overpower one another (Maulana et al., 2026).

The phenomenon of online lending provides concrete evidence that freedom of contract, when understood in absolute terms, gives rise to new forms of undue influence. Accordingly, a reinterpretation of the principle of freedom of contract is imperative, incorporating considerations of justice, propriety, and consumer protection as inherent limitations within every modern digital contract.

3.3. Reinterpreting the Principle of Freedom of Contract in Online Lending Agreements

Changes in social, economic, and regulatory dynamics have introduced new limitations on the freedom of contracting parties in determining the content of agreements. According to Setiawan (1992), the principle of freedom of contract can no longer be understood as operating in an absolute sense for several reasons. First, this limitation arises from the influence of the doctrine of good faith, which is no longer confined to the stage of contract performance as stipulated in Article 1338 paragraph (3) of the Indonesian Civil Code, but must already be present at the moment the contract is concluded and even prior to its formation, in what is now referred to as the pre-contractual phase (pre-contractuele fase). Second, the principle is constrained by the doctrine of undue influence (*misbruik van omstandigheden*), which acknowledges that contractual consent may be invalidated where it results from the exploitation of another party's vulnerable condition. Third, there has been a significant increase in the use of standard-form contracts, which are typically offered by creditors on a take-it-or-leave-it basis, leaving debtors without any meaningful opportunity to negotiate or determine the contractual terms, thereby concentrating bargaining power entirely in the hands of the creditor. Finally, the proliferation of regulations in the field of economic law, particularly those of a mandatory public law character, has further restricted freedom of contract, as such rules may impose nullity even in the absence of coercion, mistake, or fraud as traditionally recognized in contract law doctrine.

Articles 1337, 1338 paragraph (3), and 1339 of the Indonesian Civil Code collectively affirm that freedom of contract is not absolute. Together, these provisions function as normative safeguards to ensure that freedom of contract operates in harmony with broader legal values and to prevent the emergence of agreements that serve solely the interests of one party. Article 1337 limits contractual content by prohibiting agreements that contravene law, morality, or public order. Article 1338 paragraph (3) emphasizes the obligation to perform contracts in good faith, thereby placing freedom of contract within a framework of honesty and reasonableness. Article 1339 further extends the binding force of contracts beyond expressly agreed terms to include obligations arising from law, custom, and propriety (Santoso & Ali, 1983; Nugroho, 2022; Hassanah & Wahyudi, 2025).

Based on the foregoing, limitations on freedom of contract in Indonesia may be classified into two forms. First, normative limitations, namely prohibitions against contracts that conflict with law, morality, or public order, as well as the requirement of good faith (goede trouw) in contract performance, including the pre-contractual stage, as emphasized in Article 1338 paragraph (3) (Khairandy, 2017; Asnawi, 2017). Second, socio-economic limitations, which implicitly emerge in jurisprudence when judges assess the balance of bargaining power between the parties.

When these limitations are applied to the context of digital contracts, it becomes evident that they remain insufficient to address the problem of digital undue influence, or what may also be described as digital structural inequality. This insufficiency arises for several reasons. First, the normative limitations contained in the Civil Code and sectoral legislation tend to be general in nature, making them difficult to apply in addressing non-transparent algorithmic practices or unilateral digital clauses. Second, the principle of good faith is still frequently understood in a narrow sense as a moral obligation limited to contract performance, rather than as a structural obligation that prohibits exploitation through technological design. Third, jurisprudential approaches to the protection of weaker parties have not yet explicitly engaged with the digital dimension, resulting in many online lending cases being treated merely as issues of breach of contract rather than as manifestations of structural injustice.

Efforts to realize an adequate conception of freedom of contract in online lending agreements therefore require a reinterpretation of the principle itself, with emphasis on two aspects: good faith in the digital context, and morality and public order in the digital context.

The principle of good faith, as regulated in Article 1338 paragraph (3) of the Indonesian Civil Code, was initially understood as a moral obligation to behave honestly in the performance of contracts. Over time, however, good faith has also been recognized as operating at the stage of contract formation (the pre-contractual phase), requiring transparency of information and prohibiting the concealment of relevant material facts. This understanding is essential to ensure that contracts genuinely arise from free will rather than from consent obtained through misleading practices (Khairandy, 2017; Maulana et al., 2026). A renewed emphasis is therefore necessary so that good faith is understood as an obligation of digital transparency. This means that online lending providers (P2PL operators) must present information clearly, comprehensively, and in a manner accessible to ordinary users, such that the consent given genuinely reflects an informed choice. Agus Yudha Hernoko (2010) characterizes this principle as corrective in nature, addressing contractual imbalance and demanding honesty from the pre-contractual stage onward.

This obligation of transparency also extends to technological aspects. Algorithms used to determine creditworthiness or interest rates may produce biased or discriminatory outcomes if left unmonitored. De Castro Vieira et al. (2025) propose mechanisms of algorithmic auditing and transparency to ensure that such practices do not conflict with the principle of fairness. Similarly, the protection of personal data in debt collection practices, particularly those involving access to and dissemination of borrowers' data to third parties, cannot be justified merely because such practices are formally consented to through contractual clauses, as they contravene the principles of morality and propriety embodied in Article 1337 of the Indonesian Civil Code.

From the foregoing discussion, it can be concluded that the principle of good faith in digital contracts requires reinterpretation. Good faith should no longer be understood merely as a moral duty of honesty, but rather as a legal principle that mandates the prevention of digital exploitation, the obligation of algorithmic transparency, clarity in the calculation of interest and penalties, and robust protection of borrowers' personal data. Such a reinterpretation positions good faith as a corrective instrument capable of restoring contractual balance in online lending practices in Indonesia.

Morality and public order, as stipulated in Article 1337 of the Indonesian Civil Code, have long been positioned as limitations on freedom of contract. These norms function to prevent the formation of agreements that, although formally valid, conflict with fundamental societal values and the public sense of justice. Mariam Darus Badrulzaman (2001) emphasizes that the concept of morality in contract law is closely linked to prevailing notions of justice and propriety within society. Morality and public order thus operate as dynamic value filters, evolving in response to social and technological developments.

Practices such as disseminating information about a borrower's debt to family members or workplace contacts exemplify how technology may be used to exert pressure on weaker parties. Agreements containing such clauses may be formally valid due to consent through clickwrap mechanisms, yet substantively they conflict with principles of contractual morality. Agus Yudha Hernoko (2010) underscores that morality should not be interpreted merely as individual ethics, but as a social value that safeguards human dignity within contractual relationships.

Based on this analysis, contract law has evolved toward a more public-oriented character, transforming private interests into matters of societal concern. A tangible consequence of this development is the reduction of individual freedom (Herlien, 2015). Formally, freedom of contract remains in force; however, the substance and scope of contractual relations must be determined through a combination of propriety, morality, and public order.

Discourse on morality and public order in digital contracts has also developed in other jurisdictions. Aitken et al. (2020) argue that financial technology practices exploiting personal data without ethical standards undermine the social legitimacy of the digital financial industry and are therefore incompatible with principles of justice. Meanwhile, Kharisma et al. contend that electronic contracts containing onerous clauses, such as disproportionate penalties or unrestricted authorization for personal data use should be deemed contrary to the principle of fairness that lies at the core of public order in modern contract law (Chusnida, 2025; Kharisma, et.al., 2025).

Accordingly, morality and public order in Indonesian contract law must be rearticulated within the digital context. These norms should encompass prohibitions against intimidatory debt collection practices, the use of personal data in ways that undermine human dignity, and standard clauses that exceed the bounds of reasonableness. Such reinterpretation not only expands the scope of Article 1337 of the Indonesian Civil Code but also reinforces the role of private law in protecting the substantive interests of weaker parties in the technological era.

This reinterpretation is essential to ensure that Indonesian private law remains adaptive and capable of preventing digital contracts (particularly online lending agreements) from becoming instruments that legitimize technologically institutionalized undue influence. Freedom of contract can no longer be understood as an absolute right constrained solely by classical norms; rather, it must be conceived as a dynamic principle that interacts with digital realities. Consequently, the expanded meanings of good faith, morality, and public order become indispensable. Digital contracts formed under conditions of digital structural inequality, where providers exercise full control over technology, algorithms, and information, must be examined through the lens of the doctrine of undue influence. In such circumstances, consent does not automatically signify freedom but may instead constitute a form of concealed coercion warranting annulment or judicial adjustment.

Law Number 8 of 1999 on Consumer Protection (*Undang-Undang Perlindungan Konsumen*/ UUPK) has, in principle, introduced more specific consumer protection instruments, particularly through the prohibition of standard clauses that are detrimental to consumers (Article 18). Nevertheless, the implementation of the UUPK remains largely confined to conventional business relationships, whereas the online lending model presents far more complex problems, including compound interest schemes, access to personal data, and digitally mediated collection practices that are often intimidatory in nature. The practical weakness of the UUPK lies in the lack of effective sanctioning mechanisms and the limited access available to consumers to litigate online lending disputes before the Consumer Dispute Settlement Agency (*Badan Penyelesaian Sengketa Konsumen*/BPSK).

Law Number 11 of 2008 on Electronic Information and Transactions (*Informasi dan Transaksi Elektronik*/ITE) Law, as amended by Law Number 19 of 2016, is likewise insufficient to address the complexity of online lending practices. This statute primarily emphasizes the validity of electronic transactions, data security, and the prohibition of harmful information dissemination. In practice, however, the ITE Law has not proven effective in protecting consumers from digitally based contractual exploitation. For instance, unlawful access to consumers' personal data or the misuse of consent within lending applications is rarely processed under ITE Law, as this instrument is more frequently applied to cases of defamation or cybercrime in the narrow sense.

More specific regulation is found in the relatively recent Financial Services Authority Regulation (*Peraturan Otoritas Jasa Keuangan*/POJK) Number 10/POJK.05/2022 on Information Technology–Based Joint Funding Services. This regulation mandates cost transparency, interest rate limitations, dispute resolution mechanisms, and personal data protection requirements. Nonetheless, several normative weaknesses remain apparent. First, OJK supervision relies heavily on self-assessment by financial technology providers, rendering it vulnerable to manipulation. Second, the regulation lacks sufficient repressive force to effectively anticipate and address violent or digitally intimidatory debt collection practices. Third, consumer education remains inadequate, allowing disparities in bargaining power to persist.

Viewed from the perspective of contract theory, these conditions reveal a structural imbalance between borrowers and Peer-To-Peer Lending platforms (P2PL). According to Fried (1981), contracts should not be understood merely as expressions of individual freedom, but also as social instruments that must be subject to principles of distributive justice within societ. When the principle of freedom of contract is detached from considerations of justice and propriety, contracts risk transforming into instruments of domination. A similar view is advanced by Atiyah (1979), who emphasizes the regulatory function of contract law in preventing exploitative practices. Accordingly, it may be concluded that the instruments of positive law in Indonesia, although normatively encompassing consumer protection, contract law, and digital transactions, remain insufficient to comprehensively address practices of undue influence in online lending contracts.

4. Conclusion

This study concludes that online lending contracts, characterized by clickwrap mechanisms, structural information asymmetry, borrowers' emergency conditions, aggressive collection practices, and excessive exploitation of personal data, constitute a new variant of undue influence within Indonesian contract law. These digital contractual arrangements demonstrate that undue influence no longer arises solely from traditional interpersonal dominance, but also from systemic digital structures that distort genuine consent. Consequently, the principle of freedom of contract under Article 1338 of the Indonesian Civil Code cannot be maintained as an absolute doctrine, as borrowers' autonomy of will is substantively constrained by unequal bargaining power embedded in digital platforms. This research makes a novel contribution by reframing online lending contracts as a manifestation of digital undue influence and by proposing a reinterpretation of the principle of freedom of contract based on good faith, morality, and public order, thereby restoring its role as a mechanism for maintaining contractual balance and legitimacy in the digital era.

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