

**PROCEEDING OF INTERNATIONAL CONFERENCE ON
THE LAW DEVELOPMENT FOR PUBLIC WELFARE**

ISSN: 2798-9313

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Analysis of The Legal Framework for Online Lending in Indonesia: A Case Study on Consumer Protection and Legal Action Against Regulation Violations

Teguh Setiawan ¹⁾, Anis Mashdurohatun ²⁾ & Bambang Tri Bawono ³⁾

¹⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: vc.teguh@yahoo.com

²⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: anism@unissula.ac.id

³⁾ Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: bambang@unissula.ac.id

Abstract. This research discusses legal analysis related to online loan regulations in Indonesia with a focus on consumer protection and legal action against regulatory violations. Online loan regulations in Indonesia are regulated by the Consumer Protection Law and Financial Services Authority (OJK) regulations. Consumer protection in online loans includes clear and transparent information regarding fees, interest and other terms. Consumers also have the right to protection against inappropriate billing practices and effective complaint handling. If there is a violation of regulations, consumers can take legal action through conventional justice channels or through the dispute resolution mechanism provided by the OJK. The case study in this research involves analysis of contract provisions, interest calculations, billing in accordance with regulations, and fair dispute resolution for consumers. It is important for online loan businesses to comply with applicable regulations to prevent legal action and provide good protection to consumers. This research is expected to provide a deeper understanding of consumer protection and legal action in the context of online loans in Indonesia.

Keywords: Consumer Protection; Regulation; Online Loans.

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1. Introduction

Essentially, borrowing is a civil act involving an agreement or contract between parties. If one party fails to fulfill the agreement, there are mechanisms that can be pursued, either through non-litigation (out-of-court) or litigation (court) settlements.

Borrowing is common in society. Given the increasing cost of living, people often face insufficient financial resources to meet all their needs. We also often experience events that lead to urgent situations, such as natural disasters, illnesses, or other pressing needs.

In the past, when someone wanted to borrow money or funds, they had to go through extraordinary efforts, such as finding relatives or family members who were willing to lend them money or pawning their valuables. Even then, the funds they needed were not always readily available. However, with the advent of online money lending applications, everything has become much easier. All you have to do is download the app, register, provide your ID and bank account number, and the funds you need will be disbursed immediately.

It is this urgent need that has led many financial companies, especially in the

field of Financial Technology, to create Peer-to-Peer Lending services, better known as Online Loans. Online loans have become a popular financial option in Indonesia, especially in this digital era. Although they provide easy access to funds, the business practices of online loan companies often raise concerns, especially regarding consumer protection. Regulations in the online lending sector in Indonesia

are constantly evolving, but they still need thorough evaluation regarding their effectiveness in protecting consumers and enforcing compliance with regulations. This research aims to analyze online loan regulations in Indonesia, focusing on consumer protection and legal actions against regulatory violations. In this context, consumer protection becomes a crucial aspect that needs to be considered to protect consumer interests and prevent harmful business practices. Effective law enforcement is also necessary to ensure compliance with applicable regulations and provide firm sanctions for violations committed by online loan companies.

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Through in-depth analysis of legal documents, literature studies, and case studies, this research is expected to contribute to a deeper understanding of the problems that occur in the online loan sector in Indonesia and provide recommendations for regulatory improvement and increased consumer protection. As such, it is hoped that this research can serve as a basis for policy improvement and more effective law enforcement to maintain fairness and security for online loan consumers in Indonesia.

2. Research Methods

The type of research used in this study is juridical-empirical. In the juridical-empirical approach, law is conceptualized as a social institution that is realistically linked to other social variables. In this case, the author uses normative legal research, which is research conducted or aimed at examining written regulations or other legal materials. The type of data used in this study is secondary data, which is data not obtained directly from the field, but obtained through literature studies, documents, and reports related to the problem being studied. This type of normative-empirical research concerns the implementation of normative legal provisions (laws) in their action on each specific legal event that occurs in society.¹

3. Results and Discussion

3.1. Legal Rules and Procedures for Online Loan Service in Indonesia

In this modern era, the complexity of needs is increasing. Along with these needs, many technology-based transaction activities have emerged considering that people now tend to do most of their activities through smartphones and online. Financial Technology (Fintech) is here as an answer to the needs and technological developments in the midst of society. Online shopping, online motorcycle taxis to online loans are part of Fintech which is currently popular.²

Online Loans (Peer to Peer Lending) are one of the fastest growing. The presence of Online Loans is expected to provide convenience to the community in economic transactions, helping people's needs who need cash in a short time, no longer have to go through lengthy procedures and with heavy requirements such as those found in conventional banks or

¹ Sari, Alfhica Rezita. Legal Protection for Lenders in the Implementation of Peer-to-Peer Lending- Based Financial Technology in Indonesia, thesis, Faculty of Law, Universitas Islam Indonesia Yogyakarta, 2018, p. 45

² Zulham, 2013. Consumer Protection Law. Kencana Prenada Media Group Jakarta: p. 43.

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cooperatives. Seeing this phenomenon, the Government then made regulations for Fintech companies that provide Online Loan services. The regulation was made by the Financial Services Authority through OJK Regulation No. 10/POJK.05/2022 Year 2022 concerning Information Technology-Based Joint Funding Services.³

In OJK Regulation No. 10/POJK.05/2022 Year 2022 concerning Information Technology- Based Joint Funding Services Article 1 paragraph (1) reads: "Information Technology-Based Money Lending and Borrowing Services are the implementation of financial services to bring together lenders with borrowers in order to make loan agreements in the currency of rupiah directly through an electronic system using the internet network" In OJK Regulation No.

10/POJK.05/2022 Year 2022 has been explained in detail about online loan services, as follows:

⁴

a. Provisions for organizers of money lending and borrowing services based on information technology

1) Legal Form, Ownership, and Capitalization

2) Business Activities

3) Loan Granting Limits

b. Registration and licensing provisions c. Provisions for Change of Ownership

d. provisions for Revocation of Permits of Own Accord e. Provisions on Human Resource Qualifications

f. Provisions for Consumers of Information Technology-Based Money Lending and
Borrowing Services

³ Utomo, Laksanto. 2011. Legal Aspects of Credit Cards and Consumer Protection. PT.Grafindo Indonesia, Jakarta p. 65.

⁴ OJK Regulation No. 10/POJK.05/2022 Year 2022 concerning Information Technology-Based Joint Funding Services.

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g. The Agreement of Both Parties which is stated in an Electronic Document must at least contain:

- 1) Agreement number
- 2) Agreement date
- 3) Identity of the parties;
- 4) Provisions concerning the rights and obligations of the parties
- 5) Loan amount
- 6) loan interest rate
- 7) Installment value
- 8) Term of time
- 9) Collateral object (if any)
- 10) Details of related costs
- 11) Provisions concerning fines (if any);
- 12) Dispute resolution mechanism.

h. Risk Mitigation Provisions

i. Data Confidentiality

- 1) Maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data that it manages from the time the data is obtained until the data is destroyed;
- 2) Ensure the availability of authentication, verification, and validation processes that

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support non-repudiation in accessing, processing, and executing personal data, transaction data, and financial data that it manages;

3) Guarantee that the acquisition, use, utilization, and disclosure of personal data, transaction data, and financial data obtained by the Organizer is based on the consent of the owner of the personal data, transaction data, and financial data, unless otherwise stipulated by the provisions of laws and regulations

4) Provide communication media other than the Information Technology-Based Money Lending and Borrowing Service Electronic System to ensure the continuity of customer services which can be in the form of electronic mail, call center, or other communication media;

5) Notify in writing the owner of the personal data, transaction data, and financial data if there is a failure to protect the confidentiality of the personal data, transaction data, and financial data that it manages. j. Provisions for User Education and Protection

3.2. Infringement of Consumer Rights and Legal Protection for Online Loan Service Users

The development of Financial Technology (Fintech) has undoubtedly brought convenience to Indonesian society. Online shopping, online transportation, and online loans are just a few examples of the increasingly popular Fintech services. However, concerns regarding consumer protection in this internet-based environment remain largely unaddressed.⁵

Driven by technological advancements, Fintech⁶ has diversified rapidly. We now see innovations in payment and transfer technologies, financial institutions, and Fintech startups leveraging new technologies to offer faster, cheaper, and more convenient services. The finance and investment sector is also witnessing intense competition, with companies adopting technological innovations to sell their financial products and services. This sector features Fintech types such as Peer-to-Peer (P2P) Lending, Crowdfunding, Supply Chain Finance, and more.⁶

Globally, other evolving Fintech types include Robo advisors, Blockchain, Information and Feeder Sites, and more. These innovations facilitate access to and utilization of financial products and services for consumers⁸ P2P lending has recently gained significant attention.

⁵ Miru, Ahmadi and Sutarman Yodo 2004, Consumer Protection Law, PT. Raja Grafindo Persada, Jakarta, p. 32.

⁶ Sidabalok, Janus 2000. Consumer Protection Law in Indonesia. Citra Aditya Bakti, Bandung: p. 65.

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These online loan applications offer easy access to loans with minimal requirements. With just an ID card, photo, and bank account number, loans are disbursed within minutes.⁷

However, this convenience comes with a dark side. P2P lending has led to numerous problems, particularly in consumer protection, even claiming lives. In February, a taxi driver named Z committed suicide after being trapped in debt from a P2P loan application for Rp500,000. This incident serves as a stark reminder of the dangers consumers face and underscores the need for government intervention.⁸

The Jakarta Legal Aid Institute (LBH Jakarta) reported receiving over 3,000 complaints related to online loans by February 2019. According to LBH Jakarta attorney Jeanny Silvia S. Sirait, these complaints revealed 14 types of violations.⁹

1. The majority of complaints focused on the lack of information provided by loan providers regarding the borrowing process, including interest rates and administrative fees. Additionally, complaints highlighted exorbitant interest and administrative fees, illegal debt collection practices involving defamation, fraud, threats, and dissemination of personal data, and even sexual harassment.¹⁰

"Our research shows that many applications charge interest rates of 350% within 90 days. Consumers find it difficult to contact debt collectors. When they try to find the company's address, they find no contact information like an office address, email, or phone number,"

Jeanny told hukumonline on Thursday (22/3) According to Jeanny, these high

⁷ Sutedi, Adrian. 2016. Product Liability in Consumer Protection Law: Ghalia Indonesia. Jakarta.p 55

⁸ Widjaja, Gunawan dan Ahmad Yani. 2003. Hukum Tentang Perlindungan Konsumen. Gramedia Pustaka Utama, Jakarta: p 67

⁹ Andini, Gita. Factors Determining Micro, Small and Medium Enterprises (MSMEs) Credit Granting Decisions at Peer-to-Peer Lending Microfinance Institutions, Thesis, Faculty of Economics and Business, State Islamic University Syarif Hidayatullah Jakarta, 2017. P 56

¹⁰ Syamsuddin, R., & Fuady, M. I. N. (2020). Efforts to Strengthen the Research and Development Agency and Regional Innovation in Palopo City. Journal of Legal Insights, 4(1), P 63-79.

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numbers expose the state's failure to fully guarantee consumer protection and human rights (HAM) in this context. The ease of access to loans ultimately transforms into disaster due to the lack of regulations governing Fintech.¹³

2. The emergence of these online loan applications necessitates specific regulations. For instance, penalties should be imposed on P2P loan applications that violate the law. Furthermore, mechanisms for consumer complaints and dispute resolution are crucial.

Prior to these cases coming to light, OJK Regulation No.

10/POJK.05/2022 was established in 2022 regarding Information Technology- based Crowdfunding Services. This regulation primarily emphasizes the registration requirement for businesses seeking to operate in the online loan sector. However, Jeanny questions the effectiveness of the OJK registration mechanism. Despite the regulation, illegal online loan applications continue to proliferate.

“The OJK registration mechanism is more of a suggestion from OJK. But I want to ask, can these businesses, particularly online loan applications, operate without registering with OJK? The reality is they can operate freely. There should be a mechanism where businesses can only operate after registering with OJK,” stated Jeanny.

She also questioned POJK 77/2016, which explicitly prohibits the collection of unnecessary personal data from consumers, particularly for loan-related processes. However, many applications, even those licensed by OJK, still require access to unrelated personal data, such as disconnecting and reconnecting wifi and controlling phone activity.

Jeanny emphasizes that the rise in online loan cases following the POJK's issuance proves that the regulation fails to adequately protect consumers using online loan services. “Today, we see these issues emerging and becoming widespread, even though the POJK was issued in 2016. The cases have increased significantly since 2021. This shows that the regulation is insufficient in protecting consumers,” she explained.

In response to the situation, Jeanny announced that LBH is developing policy recommendations to be submitted to OJK. These recommendations address various aspects, including the OJK registration mechanism, interest rate limits, personal data

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collection, debt collection, and specific issues related to legal processes in the police.¹³

Additionally, LBH is pushing for the enactment of a Personal Data Protection Law.

Online loan cases are not yet covered by the Consumer Protection Law because this is a new industry. What we need most is a Personal Data Protection Law. This is the most crucial and will be pushed for, followed by regulations specific to peer-to-peer or Fintech,” added Jeanny.

Given the numerous complaints received by LBH, Jeanny urges all Indonesians not to use online loan services until the state, specifically OJK, provides clear legal and human rights protection for consumers.

David Tobing, an advocate specializing in consumer protection cases, believes that technology-driven industries should prioritize convenience and security for consumers. If convenience is not balanced with security, conflicts like the current situation will arise.

The proliferation of loans, especially illegal or unlicensed online loan applications, amplifies the risk of conflicts. This is further exacerbated when loan applications violate regulations by imposing high interest rates, engaging in abusive debt collection practices, and disclosing consumer data.

While OJK has issued regulations regarding online loans, they only apply to registered P2P Fintechs. According to David, the majority of issues involve illegal online loan providers and consumers. In this regard, he believes the government has been slow in its oversight and enforcement. Often, blocked applications reappear under different names.

The problem is the oversight. When these illegal Fintechs mushroom, there seems to be a lack of swift oversight and enforcement. For instance, blocking apps or websites happens belatedly. Sometimes, they are just changed names and so on. However, I still appreciate that OJK and Kominfo have been working hard lately to identify illegal Fintechs. They frequently block these applications,” said David.

David highlights the importance of government oversight in the Fintech industry. The high internet usage in Indonesia increases the potential for online crimes. To minimize potential conflicts between online loan providers and consumers, David advises the public to avoid using

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online loan services for non- essential needs. If using these services is necessary, ensure the loan is for a productive purpose to facilitate planned repayment.

Additionally, he reminds consumers to carefully read the loan agreements provided by online loan providers. Once an agreement is reached and the money is transferred and used, it becomes difficult for consumers to reverse the situation. In this case, to prevent malicious individuals from harming internet users, proper oversight is crucial," he added.

Before agreeing to the terms and conditions offered by online loan providers, David reminds consumers to carefully read the agreement. Consumers should be wary of tempting offers that may contain harmful traps. If it involves physical or psychological harm, it can be reported to the authorities. If a lawsuit is filed due to losses, evidence of the specific losses incurred must be provided. If the losses result from debt collection methods or data disclosure, such as spreading photos from the phone, legal action can be taken," he concluded..

4. Conclusion

This illegal online loan problem has also attracted the attention of the Indonesian Consumers Foundation (YLKI). YLKI's Executive Chairman, Tulus Abadi, urged the OJK as the supervisory body to close or block these fintech companies so as not to further disturb the public. In addition, Tulus asked OJK to immediately regulate the practice of illegal or unlicensed fintech that is increasingly rampant in society. From the consumer side, Tulus appealed to carefully read the terms and conditions determined by the fintech company before agreeing. This is because the terror experienced by consumers could have originated from the consumer's ignorance in understanding the technical requirements determined by the fintech company."

Suggestions based on the research findings:

1. Enhanced Public Awareness: Regulators, businesses, and related institutions need to increase public awareness of online loan regulations to ensure consumers understand their rights and obligations when using online loan services.
2. Consistent Law Enforcement: Consistent and effective law enforcement is necessary against businesses violating online loan regulations to prevent practices that harm consumers.

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3. Improved Financial Literacy: Provide financial education and literacy to consumers so they are more aware of the risks and responsibilities of taking out online loans and can make more informed financial decisions.
4. Effective Dispute Resolution Mechanism: Strengthen the dispute resolution mechanism between consumers and online loan businesses so consumers can easily report complaints and receive fair treatment.
5. Regular Auditing and Monitoring: Regulators need to conduct regular audits and monitoring of online loan practices to ensure businesses comply with regulations and provide adequate consumer protection. By implementing the suggestions above, it is expected that online loan practices in Indonesia can become more transparent, fair, and provide optimal protection for consumers. Collaboration between regulators, businesses, and consumers is crucial in creating a healthy and responsible financial ecosystem for all parties involved.

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