

A Legal Review of Default in Online Loans in Indonesia

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ABSTRACT

This study discusses the regulation and legal protection of consumers in online lending practices (pinjol) in Indonesia, especially regarding the risk of default or failure to pay. The phenomenon of online loans is increasingly widespread, along with advances in digital technology and the increasing need for people to access funds quickly and easily. However, this convenience is often accompanied by the risk of high interest rates, unethical debt collection, and legal uncertainty, especially if the debtor is in default. The study aims to analyze the legal implications of online loan defaults in Indonesia, particularly focusing on the risks faced by borrowers when using unregistered online lending platforms. This study employs a normative legal approach, utilizing primary, secondary, and tertiary legal materials as data sources, which are analyzed qualitatively. The results of the study show that regulations regarding online loans have been regulated in various regulations, such as POJK No. 10/POJK.05/2022, SE OJK No. 19/2023, as well as the ITE Law, Consumer Protection Law, and Civil Code. However, even though regulations are available against illegal online lending practices. Therefore, it is necessary to strengthen rules, enforce stricter laws, and educate the public about the law to create a fair and safe online lending ecosystem for all parties.

Keywords: Online Loans, Default, Legal Protection, Consumers, Fintech, OJK

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INTRODUCTION

In this era of globalization, where technology is something that is not easy to let go, the advancement of internet technology has brought many benefits and fulfilled various needs in society, such as finding information, buying and selling, locating places, and online loans, all of which provide convenience to the community. Therefore, there are many factors that make online loans easier to access, with requirements that are easy for the debtor to fulfill. However, there are also many negative impacts, such as high interest rates and fees that can increase the debt beyond the original amount, making it difficult for the debtor to repay (Chong et al., 2021; Kurniawan, 2020; Sari et al., 2022).

Online loans occur through relationships between creditors and debtors via indirect (online) transactions. When an online loan is desired, the requirements and disbursement process are also conducted online through online loan applications and bank accounts used to distribute loan funds to borrowers. Since the system operates virtually, online loans do not require collateral, direct meetings between lenders and debtors, and the disbursement process can be completed quickly. Online loans are an innovation in financial technology that makes it easier for people to borrow money. Legal protection in transaction activities is essential, providing certainty and safety in activities like online loans (Kurnia et al., 2020; Yu & Zhang, 2020; Sihombing et al., 2021). With the increasing needs of people's lives, the demand for

money is growing, making it necessary to provide loans for those in need (Sharma et al., 2021; Dube et al., 2022; Tan et al., 2020).

According to data from the OJK Licensed Fintech Lending Operators as of July 12, 2024, several online loan sites in Indonesia are licensed and supervised by OJK, including AdaKami, Indodana, JULO, OVO Finansial, EASYCASH, KREDITO, Danai.id, and others. Based on this data, 98 sites are licensed and supervised by OJK, making the loan process easy. In addition to licensed online loan sites, there are also unlicensed sites that are not monitored by OJK. Often, people are unaware of which sites are safe and which are not (Lee et al., 2022; Malik & Gupta, 2021; Alghamdi, 2020).

Online loans have become a popular choice due to their quick and easy process. Unlike conventional banks, which require a lot of documents and complicated procedures, online loans only require an ID card, a bank account, and a mobile phone. Online loan service providers often offer various attractive promotions, such as low interest rates, cashback, or reduced administration fees, as well as ease of access, making loans seem more affordable. However, not all online loan service providers offer low interest rates. With digital applications, people can apply for loans anytime and anywhere without needing to visit an office, which can be helpful in emergencies. While offering a wide range of conveniences, online loans also come with legal risks, especially in the event of default. The risk of legal default can occur due to various factors, such as some online loans charging high interest rates, which can become a burden if not paid on time (Malik & Gupta, 2021; Raj & Sharma, 2020; Liao & Lin, 2020). Late payments are often followed by additional fees that can worsen the borrower's financial situation. Defaulting on loans can affect a borrower's credit score, making it difficult to apply for loans in the future (Mahmood et al., 2020; Wang & Xu, 2021; Kurniawan et al., 2021). Some online loan services use aggressive and intrusive billing methods. The legal implications of default can also include lawsuits, which can affect the borrower's reputation and personal life (Huang et al., 2021; Lin & Yu, 2020; Zhang et al., 2020).

Default refers to the debtor's failure to fulfill the obligations agreed upon in the contract. A person is considered in breach of promise if they perform an action that should not have been done. The provisions on default are regulated in Article 1243 of the Civil Code (KUHPercivil), which states: "Reimbursement of costs, losses, and interest due to non-fulfillment of an agreement will begin to be mandatory if the debtor, even though they have been declared negligent, still fails to comply with the warning given, or if something must be handed over or done beyond the specified time" (Tan & Yuliana, 2021; Lee & Chang, 2020; Wulandari et al., 2021).

In general, the process of a loan agreement is conventionally carried out with a credit agreement between the creditor and the debtor, mutually agreed upon and signed by both parties, after which the debtor receives the money that was agreed upon. Default begins when the parties making the agreement include clauses outlining the rights and obligations of both parties. However, in an online loan agreement, the debtor receives the necessary money directly without signing the agreement in person. Therefore, the debtor is obligated to fulfill the terms of the agreement after completing the online loan transaction. If they fail to do so, the debtor is considered in default of the agreement (Chong et al., 2021; Huang & Lin, 2020; Zhang et al., 2022).

Previous research has explored various aspects of online loans, particularly focusing on the ease of access and the legal risks associated with borrowing through digital platforms. In their study, Mutsvairo and Greijdanus (2018) analyzed the impact of digital finance in emerging economies, highlighting how online lending platforms have simplified the borrowing process but also led to increased legal risks for consumers. Similarly, Kurniawati and Sudirman (2020) examined the rise of unregistered online lending sites in Indonesia and their potential to exploit vulnerable borrowers, resulting in financial distress. However, these studies did not delve deeply into the legal implications of default in online loans, especially in terms of how the digital nature of the transaction complicates dispute resolution.

The objective of this study is to analyze the legal implications of online loan defaults in Indonesia, particularly focusing on the risks faced by borrowers when using unregistered online lending platforms. The findings will provide practical recommendations for improving the regulation of online loans and increasing awareness about the risks associated with unregistered platforms.

METHOD

The type of research conducted is normative legal research. Normative legal research is research that studies legal regulations using literature as concepts, theories, and opinions from legal experts on the problems to be analyzed. The data sources used are primary legal materials, secondary legal materials, and tertiary legal materials. Data were obtained through a recording study in the acquisition of primary and secondary legal materials, namely by examining several reading materials such as journals, scientific books, and laws and regulations. The analysis of legal materials obtained through these sources is collected, classified, and then analyzed qualitatively. The research emphasizes understanding in obtaining answers based on the legal principles and concepts applied to regulate the sovereignty of a country and efforts to solve problems regulated in national and international legal instruments, reviewed from regulations to gain a comprehensive understanding in analyzing the issues addressed in this research.

RESULTH AND DISCUSSION

Applicable Legal Regulations Related to Online Loans in Indonesia

The current practice of borrowing and borrowing utilizes advances in technology and information to improve financial services, one of which is through the peer to peer lending method. Peer to peer lending is a financial service provider that connects lenders and lenders through an electronic system using an internet network. This is one of the innovations in fintech (financial technology) that simplifies the national development process by allowing people to obtain loans quickly without the need to visit financial service institutions directly. The process of applying for an online loan through peer to peer lending generally consists of the following steps: 1. The borrower visits the website; 2. Register and fill out the application form; 3. The platform will verify and analyze loan eligibility; 4. Approved loans will be displayed on the website, allowing the lender to provide a commitment of funds.

Online loans (pinjol) operate in an efficient and transparent way, allowing one to obtain funds quickly and without much difficulty. The online loan process generally begins with an account registration on the chosen lending platform (Permatasari Laurenza D. P. & ..., 2024;

Pradnyawati Sukandia I. N. & Arini D. G. D., 2021; Puspadini, 2025; Triasih Muryati D. T. & Nuswanto A. H., 2021; Wati & Syahfitri T., 2022). After the account is verified, you can fill out the loan application form online. This form asks for information such as the desired loan amount, the purpose of the loan, and other personal and financial data. After filling out the form, you are asked to upload the required documents, such as an ID card, pay slip, or proof of asset ownership. This process can vary depending on the policy of each online loan application. Once the documents are verified, the loan application will be processed. This process is usually quick, especially if the online lending platform uses automation technology to assess and verify the data. If the application is approved, the loan funds will be directly transferred to the registered bank account. In this case, transparency is essential. Before approving a loan, make sure to clearly understand the interest rates offered, the associated fees, the repayment schedule, and other terms. And make sure to read and understand the loan contract carefully before approving it.

Online loan applications can be downloaded from the Playstore or Appstore, as well as accessed through the website. Although online loan agreements are similar to conventional loan agreements, the difference lies in the use of online media as intermediaries (Beno Silen A. & Yanti M., 2022; Binekasri, 2024; Firman & Ghani A., 2022; Khakim & Indrawati S., 2023; Miftahuddin & Karim K., 2023). In the implementation of an online loan agreement, the interaction between the debtor and the creditor does not require physical presence, but communication can be done through electronic devices.

Online loans have a lot of negative impacts on society which leads to losses. In response, the government has made efforts to address this problem through several regulations, such as the Financial Services Authority Regulation (POJK) Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services replacing the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services. This POJK regulates various aspects, including licensing, operational, consumer protection, and governance for Information Technology-Based Joint Funding Service (LPBBTI) operators. The Financial Services Authority (SE OJK) Circular Letter Number 19 of 2023 concerning the Implementation of Information Technology-Based Joint Funding Services (LPBBTI), SE OJK provides further technical guidance regarding the implementation of POJK Number 10/POJK.05/2022 and comes into effect on January 1, 2024. In OJK SE Number 19 of 2023, it has several important points, including:

- 1) OJK limits maximum loans to 3 online loan platforms;
- 2) The Organizer is fully responsible for the collection process, including by third parties (debt collectors). The collection process is prohibited from using threats, intimidation, elements of SARA, and degrading dignity both physically and cyberly. Billing time is also limited to 20:00 local time;
- 3) Regulating the components of economic benefits that can be imposed by the organizer, including interest/margin, administrative fees, and other costs, in addition to late fines, material duties and taxes;
- 4) The Organizer is obliged to document the confirmation and consent of the owner of the emergency contact data.

Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). This ITE Law regulates

aspects of the legality of electronic transactions and the protection of personal data. Law Number 8 of 1999 concerning Consumer Protection. This law provides a general basis for the protection of the rights of consumers, including users of online loan services. Law Number 21 of 2011 concerning the Financial Services Authority. This law gives the OJK the authority to regulate and supervise all activities in the financial services sector, including fintech P2P lending. Bank Indonesia Regulation (PBI) No. 19/12/PBI/2017 concerning the Implementation of Financial Technology. This Bank Indonesia regulation also regulates the implementation of financial technology in Indonesia, including registration obligations for operators and compliance with consumer protection principles.

The provisions of the online money borrowing agreement are inseparable from the legal requirements of an agreement contained in Article 1320 of the Civil Code (Civil Code), in addition to that in its implementation the parties also adhere to Article 1338 of the Civil Code which makes the agreement the legal basis for the parties who make it. And Article 1754 of the Civil Code also regulates the provisions for borrowing and borrowing.

Even though regulations are in place, there are still many challenges faced, especially related to the rise of illegal online loans. The OJK can only take action against registered legal online loan providers. Along with the rapid development of financial technology (fintech) today, the government continues to update and strengthen the existing legal framework. However, the current law has not fully provided protection to users of online loan services. Therefore, it is necessary to carry out comprehensive prevention efforts through integrated legal counseling, with the hope that the public can understand the impact of online loans, avoid losses, and be wiser in conducting online loan transactions.

Legal Protection for Consumers in Online Loan Default

With the advancement of information technology, more and more people are utilizing technology in the financial sector, especially to conduct transactions online. Initially, this use was limited to money transfers and savings, but it has grown with the advent of online stores that help people in online payments and purchases. In this modern era, there are many ways for individuals to offer the goods they want to sell, according to the increasing needs of humans. Human consumptive nature triggers dependence on tertiary needs, which are met after primary and secondary needs. With the development of today's technology, various online activities can be accessed anytime and anywhere, consumers show high interest in online activities. This high interest opens up opportunities for online business people, better known as digital payments, provided by business people who function as financial institutions.

Financial institutions in Indonesia are increasingly advanced in line with economic growth and developments. This can be seen from the emergence of various financial institutions, such as securities, insurance, and Islamic banking, as well as the development of conventional banks and other financial institutions. In addition to conventional financial institutions, non-bank financial institutions are also known as financing institutions, which are business entities that provide funds or capital goods. This financing institution is an alternative source of financing outside of banking, which can be adjusted to the needs of the community.

The enactment of Law No. 21 of 2011 concerning the Financial Services Authority, State Institution of the Republic of Indonesia No. 11 of 2011, on November 22, 2011, which is officially explained that the authority of the government and the Minister of Finance in the

regulation of the Minister of Finance Number: 84/PMK.012/2006 concerning Finance Companies and Presidential Decree of the Republic of Indonesia No. 9 of 2009 concerning Financing, has been transferred to the Financial Services Authority (OJK) and is effective for Financing Institutions on December 31, 2012. OJK was established with the aim of ensuring that all activities in the financial services sector take place in an orderly, fair, transparent, and accountable manner. The goal is to create a stable and sustainable financial system, as well as protect the interests of consumers and society. With this goal, OJK is expected to support the interests of the national financial services sector and increase the country's competitiveness. In this study, it focuses on online loan recipients in the context of individuals as a form of consumer protection. This is due to the OJK's lack of attention to the rights of online loan recipients, especially in providing information about its role in protecting the law for borrowers.

A case of default or default in an online loan (pinjol) is a situation where the borrower (debtor) is unable to fulfill the obligation to pay installments or repayment of the loan according to the agreement that has been agreed with the online loan provider (creditor). In this situation, the consumer or borrower still has legal rights and protections. Fundamentally, the law was created to protect the interests of the community. Roscoe Pound stated that the law protects at least three types of interests, namely public interest, individual interest, and interest of personality.

In borrowing and borrowing activities through online media, all agreements between debtors and creditors are recorded in electronic contracts. Regulations regarding electronic contracts are regulated in Article 1 number 17 of the Law on Electronic Information and Transactions (ITE), which states that "Electronic Contracts are agreements made by the parties through an electronic system." The legal force of electronic contracts is explained in Article 18 paragraph (1) of the ITE Law, which states that "Electronic Transactions outlined in electronic contracts are binding on the parties." Thus, it can be concluded that transactions that are made into agreements and outlined in electronic contracts are binding on the parties, as well as agreements or contracts in general.

For the borrower (debtor), his right in the loan and borrowing agreement is to have the right to the goods that are the object of the agreement and to be free to use the goods as they wish. Meanwhile, the obligation of the borrower (debtor) is to return goods with the same amount and conditions at a predetermined time, as stipulated in Article 1763 of the Civil Code. However, if the debtor is unable to return the borrowed goods in the same amount and condition, then he must pay the price of the goods. In this case, the time and place of return of goods according to the agreement must be considered. If the time and place are not specified, the price of the goods must be taken based on the time and location where the agreement is made (Article 1764 of the Civil Code). In addition, if interest has been agreed, the interest must be paid until the time of return or deposit of principal (Article 1766 of the Civil Code).

Many cases in peer to peer lending services often harm consumers because of the agreement. There are legal and illegal platforms that apply collection methods to borrowers who fail to fulfill their obligations by intimidating and threatening the borrower and those closest to him. This shows that the lender has used the personal data of the borrower carelessly and without consent. This action clearly violates the legal provisions contained in Article 26

paragraphs (1) and (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, which states that:

- 1) Unless otherwise specified by applicable regulations, the use of information through electronic media relating to a person's personal data must be carried out with the consent of the person concerned.
- 2) Every person whose rights are violated as intended in paragraph (1) may file a lawsuit for damages arising under this law.

This means that any activity that involves electronic transactions that use personal data, there is an obligation to safeguard and protect such information. With this arrangement, everyone has the right to store, maintain, and maintain the confidentiality of their data to keep it private. Meanwhile, the protection of personal data in online loan services is also important.

Billing that is done by intimidation is an action that is prohibited by online loan service providers. This is regulated in the code of ethics of the Indonesian Fintech Association, which requires all online loan providers to act in good faith when collecting debtors. The code of ethics also requires companies to have and communicate settlement and billing procedures to customers. In the code of ethics, it is explained that there are three basic principles that are the guidelines for this behavior.

The first principle regarding product transparency and offering methods is applied by including the company's address, email, and phone number for customer complaints, so that consumers are expected to accept loans responsibly and reduce the risk of fraud and unethical practices. The second principle on the prevention of excessive lending aims to encourage fintech operators not to trap consumers in debt problems. Therefore, the organizer is prohibited from providing loans to borrowers without prior approval. In addition, they are also required to analyze and verify the financial condition of borrowers. The last principle relates to good faith in the offering, granting, and collection of debts. In this case, fintech operators are prohibited from committing physical and non-physical violence, including cyberbullying against consumers. In addition, it is forbidden to use third parties who have a bad reputation based on information from authorities and associations in the debt collection process.

In addition to the protection mentioned earlier, there are two types of legal protection that can be applied by the organizers, namely preventive protection and repressive protection. Preventive legal protection aims to prevent disputes from occurring, so that these protective measures are carried out before disputes arise. For users of fintech services based on peer to peer lending, legal protection before disputes occur can be carried out through various efforts from fintech service providers.

CONCLUSION

From the results of the above research, it can be concluded that the practice of borrowing and lending through fintech platforms, especially peer-to-peer lending, makes it easier for people to access funds. However, this convenience is also accompanied by various risks and negative impacts, such as the rise of illegal online loans and potential losses for users. The regulations implemented, such as *POJK* Number 10/*POJK.05/2022* and *OJK SE* Number 19 of 2023, aim to protect consumers and regulate the operations of online loan providers. However, challenges in law enforcement and user protection still remain. Therefore, more comprehensive efforts are needed, including legal counseling and education for the public, so that people are wiser in using online loan services and avoid adverse risks.

Legal protection for consumers in the case of online loan default is very important, given the increasing use of information technology in the financial sector. Although online loans offer easy access to funds, the risk of default remains, especially when consumers do not receive adequate information about their rights and obligations. Existing regulations, including the *Financial Services Authority Act* and regulations related to electronic contracts, provide a legal basis for such transactions. However, challenges still exist from unethical billing practices and misuse of personal data. Therefore, it is important to apply the principles of transparency, prevention of excessive debt, and good faith in every online loan transaction. Preventive and repressive legal protection measures must be strengthened to prevent disputes and protect consumer rights.

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