

Legal Analysis of Unguaranteed Loans and Agreements (Case Study: Illegal Online Loans)

Zilda Khilmatus Shokhikhah¹, Nurhamid², Desi Arianing Arrum³, Adhyaqza Utama⁴

^{1,2,3}Faculty of Law, Universitas Airlangga, Indonesia

⁴Faculty of Law, Universitas Narotama, Indonesia

zildakhilmatus80@gmail.com, hamidmadhani09@gmail.com, desi.arianing.arrum-2015@fh.unair.ac.id,

adhyaqzautama@gmail.com

Abstract

The existence of technology has streamlined human life today, even in carrying out transactions can also be done easily. Such as borrowing funds quickly and easily through online loan services. However, the unsecured credit business carried out online actually causes many problems, both through mechanisms such as the absence of guarantees and letters of agreement to billing by terrorizing customers. This study uses a descriptive method with a qualitative approach which aims to find out how the law applies to unsecured loans. The result is that in Articles 1131 and 1132 of the Criminal Code, unsecured credit can be made when both people know each other and it is poured into an agreement to binding each other. Meanwhile, credit without a letter of agreement will cause problems in the billing mechanism that will not be following applicable legal procedures regulated in the Act and POJK.

Keywords

online loans; criminal code;
credit, law



I. Introduction

Today, technological developments have had a positive impact on all sectors in the world. Indonesia is no exception, where the presence of technology has succeeded in changing people's behavior from traditional to modern. Although the presence of the internet has not been fully felt in all regions, its presence is sufficient to change the system, especially in transactions. In the business sector, products and services can now be found easily through smartphones. Likewise, with the payment system where the presence of e-payment and e-wallet makes it easier to carry out long-distance (non-cash) transactions. As the times evolve, information and communication technology makes all human activities easier both in the economic and social fields. In current technological developments new innovations are needed so that all human activities become more efficient, safe, fast and comfortable, especially in the world economy. The National Digital Research Center (NDRC) states that financial technology is a new innovation combined between financial services and modern technology. The financial technology (fintech) industry is one of the methods of financial services that is gaining in popularity in the current digital era. The technology-based payment system is one of the sectors in the most developed FinTech industry in Indonesia. This sector is then most expected by the government and the community to encourage an increase in the number of people who have access to financial services (Tumanggor, 2020).

Another convenience offered is for people who want a capital loan easily and quickly. The presence of online loans has accommodated the wishes of the community. The presence of fintech today makes it easier for people to get money, either for capital to open a business,

to buy the desired item, or to fulfill needs. This online loan system is certainly different from the loan system offered by both state and private financial institutions, but the goal remains the same, namely providing loans with interest conditions.

In general, financial institutions usually the creditor will ask for something of value to be used as collateral, and in it, there are also documents such as a valid and legally binding agreement, so that the foundation in this lending and borrowing system can be officially enforced and obtain protection from the law. Invite. The existence of the agreement letter has also been regulated in Article 1866 of the Criminal Code (Civil Punishment Law). When the debtor defaults or is unable to pay in installments, the creditor will carry out procedural actions as regulated in Article 1238 of the Criminal Code and Article 3 of POJK (Financial Services Authority Regulation - Republic of Indonesia) Number 14/POJK.03/2018 Regarding Asset Quality Assessment for Commercial Banks. Encouraging the Growth of the Housing Sector and Increasing Foreign Exchange.

Next, online loans that are often found in online applications and social media usually offer these loan services without collateral. That's their way to attract customers. In the acquisition, prospective customers will not be directed to submit guarantees, but only provide a photo of their Identity Card (KTP) and account number to transfer the money. No agreement letter must be signed, but some agreements must be fulfilled such as timely payment (before maturity), a certain amount of interest, and payment method. After that, the customer will receive a direct transfer of funds but the amount of the agreed loan does not match the one received.

In addition, the interest that must be paid remains with a high nominal. This is where problems begin to arise, the absence of a legally binding agreement and the unclear location of the loan has made it difficult for customers to file a protest. On the way, when a customer defaults, instead of taking legal action, the victim will be terrorized by spreading his data or bringing in a debt collector. Of course, this makes customers feel under pressure and not a few have to become victims of this action. However, this returns to the public's awareness that loans that are considered easy without collateral should be appreciated, this is intended to avoid losses from customers and not obtain legal protection due to the absence of a strong agreement.

This journal will examine how the law can protect customers who have already used online loan services without a letter of agreement and how illegal fintech activities can be minimized. The key to remaining competitive and surviving in the market is the firm's ability to provide products and service tailored to meet the needs of its customers (Kusumadewi, 2019). Satisfaction. Satisfaction becomes an expectation after a purchase and becomes the basis for fulfillment before reaching customer participation. (Fadhillah, A. et al. 2021).

II. Research Methods

The study contained in this journal uses descriptive research methods with a qualitative approach. According to Sugiyono (2010: 9), research is placed as a key instrument with data collection techniques carried out by combining and analyzing inductive data. This research is also supported by the method proposed by Kirk Miller (Moleong, L.J., 2002: 3) which mentions qualitative research as a way to make observations directly on individuals or those associated with these people to obtain data to be explored. The sources used by the author come from books, journals, and credible media that report on problems between customers and illegal online loans in Indonesia.

III. Discussion

Many media report about cases of online loans and most of the victims are unable to pay the installments along with the interest which is considered too high and not following their abilities. Customers are known to continue to receive terror in the form of threats, sharing photos or personal data, or picking up balls from debt collectors, thereby making themselves depressed. However, the police have accommodated the borrowing victims to report their cases to officers authorized by the government, namely the Illegal Pinjol Task Force (Online Loan Officer Unit) whose purpose was formed to receive complaints via Whats App or social media which were then forwarded to the Public Information Bureau of the Public Relations Division. or the WI Task Force (Investment Alert Unit) so that legal proceedings can be carried out and provide peace and security to the community.

However, finding the offices of this illegal fintech is quite difficult considering that they operate via the internet. So, it is impossible to carry out a complete eradication of these online lenders, unless the public is given the education to make them aware of the dangers of borrowing capital illegally or not following the legal mechanism following the mandate of the Act and the POJK. Unsecured loans and the facilities offered are very suspicious, but this does not apply if the people involved already know each other and have strong trust in each other.

This illegal online loan is included in the realm of crime considering that it has caused unrest in the community. Especially for victims whose personal data has been spread. However, in law to provide protection for personal data it is still in the form of Regulation of the Minister of Communication and Information of the Republic of Indonesia (Permen Kominfo RI) Number 20 of 2020 concerning Personal Data Protection. Meanwhile, currently, the need for personal data protection is very much needed so that regulation with permanent legal force or law is needed in its implementation. The Law is currently in the drafting stage (Personal Data Protection Bill), considering that many obstacles and obstacles must be resolved by interested parties.

Next, many people question whether making loans without collateral or a letter of agreement can be trusted and safe. The provision of loans (credit) without collateral has been regulated in Articles 1131 and 1132 of the Criminal Code. In Article 1131 it is stated that all objects in debt, both movable and immovable, whether existing or new in the future, become dependents for all individual engagements. Then, in Article 1132 it is stated that these objects are a mutual guarantee for all those who benefit from them, the income from the sale of these objects is then distributed according to the balance of the size or based on the previous agreement.

So, it can be understood if the creditor does not have collateral in the form of securities or goods of value to be guaranteed in the installment process, then the property will be used as collateral (assets) which if the debtor is unable to pay his obligations, then the goods will be sold for used to cover the shortfall and the rest will be given to the debtor. Thus, referring to Articles 1131 and 1132, before obtaining loan funds, the two parties will negotiate on what agreement can be used as the basis for collateral. So if the creditor does not heed the agreement, then the creditor can execute it based on the previously agreed agreement.

In the execution later, it may not be following the mechanism regulated in the Law and POJK considering that there is no black and white (agreement with permanent legal force) so this is wherein the execution process it will often violate the rules such as forced confiscation and no prior notification (verbal threats only). This is why illegal online lenders can act arbitrarily (terror) in billing without paying attention to applicable legal mechanisms. The absence of basics such as letters of agreement and guarantees will make

them free to suppress the psyche and mentality of the borrowers.

A letter of agreement, especially relating to loans (Surat Agreement Debt - SPH) is an official document or file that functions as a reference in lending activities between the owner and the recipient. This letter contains the agreement and various information that states the rules for the activity of borrowing money. Meanwhile, the basis for the issuance of this Agreement is Article 1313 of the Criminal Code which states that "an agreement is an act in which the name of one person or more reminds himself of one other person". Specifically, regarding agreements in debt and receivable activities, it is also regulated in Article 1754 of the Criminal Code. The agreement in the form of an SPH must meet 4 cumulative conditions so that it can be considered legally valid as stated in Article 1320 of the Criminal Code, including:

1. The agreement of both parties to be mutually bound;
2. Proficiency in making engagements;
3. A certain thing;
4. A lawful cause.

In connection with this problem, if the online lender does not have a guarantee from the creditor or does not issue an SPH, can the illegal fintech report the creditor when it has defaulted? In general, problems related to this are considered to violate Human Rights (HAM). This is also emphasized in Law Number 39 of 1999 (Human Rights Law) concerning Human Rights, which stipulates that "no one upon a court decision may be sentenced to imprisonment or confinement based on reasons of inability to fulfill an obligation in a debt agreement". So, even if there are reports of criminalizing people who fail to pay debts, then the court has no right to impose a sentence on someone because of their inability to pay debts. However, in the field, the integrity of the apparatus in enforcing the Human Rights Law is expected to be carried out so as not to damage the existing judicial system or by criminalizing a civil law act.

However, in particular, this illegal fintech is not possible and will never report to law enforcement officials considering that their position is not registered with the OJK and will backfire where their existence will be hunted down and then their operations will be closed. Thus, the consequences of this illegal business are far greater and have a long-lasting impact than the money they get and then play it back with the risk of the customer failing to pay. However, using the services of online loans, especially those that are not officially registered with the OJK, is considered dangerous and is not recommended for use. The government can certainly provide education and socialization to the public about the dangers of transacting in illegal fintech and direct the public to use official financial institutions, both state-owned (such as banking, pawnshops, and so on) and private (finance).

IV. Conclusion

The presence of Online Loans does provide convenience for the public to get money instantly and without collateral, but some risks must be borne, such as the axis of terror or collection that violates the rules of the mechanism according to the Law and POJK. Unsecured credit or a letter of the agreement is indeed worthy of respect when each party does not know each other, but it can be done if both have a relationship by following the mechanisms of Articles 1131 and 1132 of the Criminal Code. The most appropriate action to take is not to be tempted by the promotions offered by these illegal fintech considering that apart from being not registered with the OJK, they are also acting illegally (against the law) so that their existence deserves to be eradicated.

References

- Anugrah, D., Tendiyo, T., & Akhmaddhian, S. (2021). Sosialisasi Bahaya Produk Pinjaman Online Ilegal bagi Masyarakat. *Empowerment: Jurnal Pengabdian Masyarakat*, 4(03).
- Bisakah Orang Yang Tidak Membayar utang Dipidana? - klinik ... (n.d.). Retrieved December 16, 2021, from <https://www.hukumonline.com/klinik/detail/ulasan/lt57da49a2bfb95/bisakah-orang-yang-tidak-membayar-utang-dipidana>
- Cowandy, C. N. (2021). Kedudukan Hukum Perjanjian Utang-Piutang di Balik Perjanjian Pengikatan Jual Beli. *Jurnal Education and Development*, 9(4), 1-4.
- Disemadi, H. S., & Regent, R. (2021). Urgensi Suatu Regulasi yang Komprehensif Tentang Fintech Berbasis Pinjaman Online Sebagai Upaya Perlindungan Konsumen di Indonesia. *Jurnal Komunikasi Hukum (JKH)*, 7(2), 605-618.
- Fadhillah, A. et al. (2021). Analysis of Information Quality, Trust and Satisfaction on Customer Participation (Case Study on Customer Online Shop Shopee in Rantauprapat). *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*. P. 3039-3051.
- Kusumadewi, R.N., and Karyono, O. (2019). Impact of Service Quality and Service Innovations on Competitive Advantage in Retailing. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* Vol 2 (2): 366-374.
- Olifiansyah, M. (2021). Perlindungan Hukum Pencurian Data Pribadi dan Bahaya Penggunaan Aplikasi Pinjaman Online. *Jurnal Hukum De Rechtsstaat*, 7(2), 199-205.
- Pangemanan, F. W. S. (2019). Implementasi Pasal 1238 Kuh Perdata terhadap Penentuan Debitur yang Cidera Janji Dalam Perjanjian Kredit. *Lex Et Societatis*, 7(4).
- Penilaian-Kualitas-aset-bank-umum-untuk-mendorong-pertumbuhan-sektor-perumahan-dan-Peningkatan-Devisa. Regulasi. (n.d.). Retrieved December 16, 2021, from <http://www.ojk.go.id/id/regulasi/Pages/Penilaian-Kualitas-Aset-Bank-Umum-untuk-Mendorong-Pertumbuhan-Sektor-Perumahan-dan-Peningkatan-Devisa.aspx>
- Siswandi, L. (2019). Kreditur Dan Debitur Dengan Hak Perlindungan Hukum Dalam Perjanjian Kredit Tanpa Agunan. *DiH: Jurnal Ilmu Hukum*, 15(1), 87-94.
- Sugiyanto, S., & Sumantri, I. I. (2019). Peran Audit Internal Dan Sistem Pengendalian Internal Atas Pengajuan Kredit Tanpa Agunan Pada Perusahaan Perbankan Di Indonesia. *Jurnal Akuntansi*, 13(2), 196-224.
- Tim JDIH Biro Hukum Kementerian Komunikasi dan Informatika RI. (n.d.). Peraturan menteri Komunikasi Dan Informatika nomor 20 Tahun 2016 Tanggal 1 Desember 2016. *JDIH KEMKOMINFO*. Retrieved December 16, 2021, from https://adminjdih.kominfo.go.id/produk_hukum/view/id/553/t/peraturan+menteri+komunikasi+dan+informatika+nomor+20+tahun+2016+tanggal+1+desember+2016
- Tumanggor, B., and Tarigan, V. (2020). The Factors Affecting Consumers Pay with Go-Pay on Go-Jek. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* Vol 3 (3): 1704-1717.
- Widyantari, P., & Sulistiyono, A. Pelaksanaan Harmonisasi Rancangan Undang-Undang Perlindungan Data Pribadi (RUU PDP). *Jurnal Privat Law*, 8(1), 117-123.
- Yonani, Y. (2019). Pembuktian Unsur Kecakapan dan Kewenangan Para Pihak dalam Transaksi Bisnis E-Commerce. *Jurnal Hukum Tri Pantang*, 5(1), 9-20.
- Yusandy, T. (2019). Kedudukan dan Kekuatan Pembuktian Alat Bukti Elektronik dalam Hukum Acara Perdata Indonesia. *Jurnal Serambi Akademika*, 7(5), 645-656.