

# CHARACTERISTIC OF ILLEGAL ONLINE LOANS IN INDONESIA

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## CHARACTERISTIC OF ILLEGAL ONLINE LOANS IN INDONESIA

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### Abstract

Financial technology is a business that provides financial services by utilizing cutting-edge software and technology. Online loan providers are financial service providers that operate online using information technology. They are well-known for having a simple process and are particularly useful in the current situation, where there is an urgent need, but no funds are available. In less than two years, dozens of financial technology companies have started lending online in Indonesia, far exceeding many people's expectations. However, when applying for credit, many consumers do not consider or care about the legality of online lending institutions. Based on the above description, this research aims to determine the main characteristics of illegal online loans in Indonesia, as well as the legal responsibility of illegal online loan providers to borrowers. The approach used in this paper is normative research which refers to legal norms, namely laws, regulations, court decisions, and societal norms. The results of the studies showed that characteristics of illegal online loans in Indonesia are often associated with the word illegal because the online loan often has not been or is not authorized by the OJK. This happens because there are requirements that the online loan provider cannot meet. This online loan uses peer-to-peer landings and financial technology (Fintech), authorized under Regulation 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services governs fintech. Illegal online loan providers can be subject to several sanctions, including: administrative sanctions, criminal sanctions, and civil sanctions.

**Keywords:** Financial Technology, Responsibility, Illegal Online Loans.

### A. Introduction

Today, technological advancements have had a positive impact on all sectors of the global economy. Indonesia is no exception, where the presence of technology has resulted in a shift in

people's behavior from traditional to modern. Although the internet's presence has not been felt equally in all regions, its presence is sufficient to change the system, particularly in transactions. Products and services in business can now be easily found using smartphones.<sup>1</sup> The rapid development of Financial Technology has a positive impact, as well as issues that arise, particularly from Financial Technology-based money lending services or Fintech Peer To Peer Lending.<sup>2</sup> The public treasures online credit loans because the process is easy and instrumental in the current situation, where there is an urgent need and funds do not yet exist. Financial technology (fintech) is a form of business that aims to provide financial services using modern software and technology. Financial technology companies usually carry out online loans, often used as public loans to buy daily necessities.<sup>3</sup> The goal is clear, namely, to make financial products more accessible to the public and simplify the transaction process. However, many consider fintech a competitor to the banking industry because, overall, this industry is almost similar to banking. What makes online loans attractive in the short term is implicit discrimination that can remain hidden from the bank. Assume someone applies for a loan on a bank's website. The bank decides on such requests using an algorithmic system. If a bank automatically denies a loan to a customer on its website, the customer is unaware of the reason for the denial. Furthermore, the customer cannot see whether the bank's algorithmic system denies loans to a disproportionate percentage of the population.<sup>4</sup> Although often viewed as a competitor, the fintech platform can be an essential strategy for improving and accelerating the banking industry through collaboration and partnerships.

Fintech and digital platforms provide alternative business models and solutions to help governments and other financial institutions expand the scope of providing appropriate financial services. The rapid development of technology also impacts financial technology, or fintech for short, which has recently begun to emerge and develop as an innovation for non-bank financial institutions. The concept of fintech itself is an adjustment to technological advances. In the financial sector, especially the banking industry, financial technology is expected to provide convenience in everyday financial transactions, making them more practical and secure. Financial technology can be defined as a service transformation sector in financial services in which consumers can be contacted, and information technology is used as an intermediary.

The advancement of financial technology makes OJK provides a regulatory framework that allows for flexibility in the innovation space. Therefore, OJK issued POJK Number 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services industry as a legal umbrella for the financial technology industry, while upholding the principles of transparency, accountability, responsibility, independence and fairness, financial innovation, and product supervision for financial innovation services, digital services, banking services,

<sup>1</sup> Zilda Khilmatus Shokhikhah, Desi Arianing Arrum, and Adhyaqza Utama, "Legal Analysis of Unguaranteed Loans and Agreements ( Case Study : Illegal Online Loans )," *Indapest International Research and Critics Institute (BIRCI-Journal): Humanities* 4, no. 4 (2020): 13759–63, <https://doi.org/10.33258/birci.v4i4.3460>.

<sup>2</sup> Annie Myranika, "Legal Protection of Online Loan Recipients Based on Financial Services Authority," *Linguistics and Culture Review* 5, no. S4 (2021): 2390–2322, <https://doi.org/10.21744/lingcure.v5ns4.1986>.

<sup>3</sup> Tantri Dewayani and Ner Maya Rosmala Dewi, "Menyikapi Pinjaman Online, Anugerah Atau Musibah," Kanwil DJKN Jawa Barat, 2021, <https://www.djkn.kemenkeu.go.id/kanwil-jabar/baca-artikel/14040/Menyikapi-Pinjaman-Online-Anugerah-atau-Musibah.html>.

<sup>4</sup> Frederik J. Zuiderveen Borgesius, "Strengthening Legal Protection against Discrimination Algorithms and Artificial Intelligence," *International Journal of Human Rights* 24, no. 10 (2020): 1572–93, <https://doi.org/10.1080/13642987.2020.1743976>.

digital, P2P lending, and equity crowdfunding. Because this is a new hall in Indonesian laws and regulations, this is done to provide convenience for consumers.<sup>5</sup>

Online loans in Indonesia are increasing to the extent that illegal online loan collection has appeared in almost all cities in Indonesia. An online loan is a type of loan that can be submitted online through a mobile application without having to meet face to face. This method provides convenience and speed in the credit application process. The convenience and speed provided are the main attraction tips for the community. As we all know, applying for credit requires a long and complicated process, and with online loans, it can now be completed quickly, efficiently, online, and without the need to do it face-to-face. So, people are easily tempted by the ease of borrowing money online. The psychological and physical effects of billing on this platform can be felt. Because of their frustration, some victims took their own lives. As a result, victims have the right to legal protection as outlined in Law Number 13 of 2006, as amended by Law Number 31 of 2014 concerning Witness and Victim Protection.

Human rights must protect the rights of users of online loan services who have had their rights violated by the threat of online loan companies and terrorist factors. These threats and horrors have instilled fear, shame, and discomfort in family members, friends, and people known to use online loan services. Article 19 (2) of Human Rights Law No. 39/1999 states that "no one is sentenced to imprisonment or confinement by the court for failing to carry out the obligations stipulated in the debt and credit agreement." This article means that the inability to repay the loan cannot be considered a user of online loan services as the cause of the crime. This is also seen in various information technology regulations designed to protect its users. One example is the Financial Services Authority Regulation Number 77/POJK.011/2016 on Information Technology-Based Lending and Borrowing Services.

Consumers' inability to act when dealing with commercial actors is highly detrimental to the community's interests. In general, business actors conceal themselves behind standard contracts or standard agreements signed by both parties (between business actors and consumers) or behind various "false" information provided by business actors to consumers. This standard agreement system is formulated unilaterally, which is advantageous to the owner or application company because it is easier and the interest is "relatively expensive," so people are sometimes confused about their rights to the application obligations. The standard agreement with consumer business actors is that they "have a legal relationship." As a result, this agreement must be implemented through various forms of supervision to achieve justice and in the best interests of both parties.

Cases that occur frequently are caused by a general lack of understanding of fees, interest, loan terms, fines, and the risk of borrowing from these online loan companies; especially if people borrow from online companies, a simple interest process is required. People who owe a lot and are unable to pay on time will feel as if their debt burden is increasing due to the unlimited interest and penalties. Fines for gaining access to borrowers' mobile phones are severe, if not unlimited. For example, the daily interest rate can reach 0.8 percent, and the accumulated fine can reach 100% of the principal. Customers who do not pay on time will be feared, insulted, slandered, and threatened when collections are made, according to all data on the internet. This illegal corporation does not follow the OJK's rules.<sup>6</sup> Based on the description above, the problem formulation concerns the main characteristics of illegal online loans in Indonesia and the legal responsibility of illegal online loan providers to borrowers.

<sup>5</sup> Ryan Randy Suryono, "FINANCIAL TECHNOLOGY (FINTECH) DALAM PERSPEKTIF AKSIOLOGI," *Masyarakat Telematika Dan Informasi : Jurnal Penelitian Teknologi Informasi Dan Komunikasi* 10, no. 1 (2019): 51–66, <http://doi.org/10.17933/mti.v10i1.138>.

<sup>6</sup> Hommy Dorothy Ellyany Sinaga, Novica Irawati, and Edi Kurniawan, "Financial Technology: Pinjaman Online, Ya Atau Tidak," *Jtunas* 1, no. 1 (2019): 14, <https://doi.org/10.30645/jtunas.v1i1.6>.

Based on this background, the author tries to analyze the characteristics of illegal online loans in Indonesia. The author examines the characteristics of illegal online loans in Indonesia and compares them with law enforcement efforts or legal responsibilities of illegal online loan providers. This research is expected to provide relevant contributions and significant changes to determine the characteristics, consumer legal protection and legal responsibilities of illegal online lenders. The novelty of this research will make a significant contribution to determining the advice, responsibility, and comparison of the differences between illegal online loans and ordinary loans through prescriptive analysis.

## B. Discussion

### 1. The Main Characteristics Of Illegal Online Loans In Indonesia

The understanding of an agreement in general can be seen in Article 1313 of the Civil Code, which is an act by which one or more people bind themselves to one or more other people. An agreement is a relationship on the legal basis of wealth (*vermogensrechtelijk betrekking*) between two parties, where one party is obliged to provide an achievement on behalf of the other party has the right to that achievement.<sup>7</sup> Covenant law in the development of business that developing in the era of globalization has now become a necessity for business transactions. Book III of the Civil Code regulates the provisions that must be made by the parties who enter into an engagement or agreement in business practice, where with this written regulation it is hoped that it will avoid endless conflicts in the future. This regulation contains good and correct engagement procedures.

Article 1338 of the Civil Code regulates the principle of freedom of promise or agreement. In the Civil Code, it is clearly regulated how the agreement is formed and must be agreed upon by those who will go through the lending and borrowing process. However, in terms of the validity of the agreement, it must fulfill the commitments made at the beginning where it is used to avoid things that are not desirable. The agreement made must be legally certain and apply fairly and also upheld with the principle of honesty.<sup>8</sup>

A loan agreement can provide interest on a loan of money or goods that will mature, based on the provisions of Article 1765 of the Civil Code. states that it is permissible to agree on interest on borrowing money or other goods which expire due to use. The determination of the amount of interest can be determined on the basis of the agreement of the parties in the agreement or on the basis of legal provisions relating to the interest on the loan. Whereas conventional lending and borrowing activities are through bank credit, interest rate arrangements are clearly regulated by the institution namely, Bank Indonesia, which Bank Indonesia issued Bank Indonesia Regulation No. 17/2/PBI/2015 concerning Interbank Offering Interest Rates. Meanwhile, in the process of implementing online-based lending and borrowing, arrangements regarding standardization of bungalows must be clarified again. This refers to the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology Lending and Borrowing Services in Article 17 paragraph (1) which states that: "the provider provides input on the interest rates offered by the lender and the loan recipient taking into account the fairness and national economy."

Mostly, the interest rates from online loans have various conditions, different applications, different interest rates. And the interest is calculated with the first installment, the next installment, until the credit period expires. The average for the interest is calculated every month, so the interest from the beginning of applying for a loan until the term expires, the interest remains the same for the percentage. And at the beginning of the application before the

<sup>7</sup> Moch. Chidir Ali, H. Achmad Samsudin, and Mashudi, *Pengertian-Pengertian Elementer Hukum Perjanjian Pinjam-Meminjam* (Bandung: Mandar Maju, 1993).

<sup>8</sup> Ni Made Ayu Pratiwi, I Nyoman Putu Budiarta, and Ni Komang Arini Styawati, "Akibat Hukum Perjanjian Pinjam-Meminjam Uang Yang Dinyatakan Batal Demi Hukum," *Jurnal Konstruksi Hukum* 2, no. 2 (2021): 367-72, <https://doi.org/10.22225/jkh.2.2.3257.367-372>.

disbursement of funds, there is an admin fee, which is a deduction at the beginning of the disbursement of money that is used to pay administrative fees. The requirements for admin fees are relatively different, of course, each application, the credit nominal, and the installment period also determine the percentage of admin fees, and the interest that the prospective borrower will pay later.

The parties in the agreement are referred to as legal subjects. The agreement only binds the parties who entered the agreement themselves or did not bind other parties. An agreement only lays down the rights and obligations between the parties who made it. The party obligated to carry out the achievement is known as the debtor, while the party entitled to the achievement is known as the creditor. As an involved party, creditors can act against passive debtors who do not want to fulfill their obligations or are in default. The creditor's actions can be in the form of giving warnings, suing in court, etc.<sup>9</sup>

The need for business capital is mandatory; at this time, many people need money to set up a company, especially Micro, Small, and Medium Enterprises (MSMEs). The ease of obtaining business capital will accelerate the development of MSMEs so that the wheels of the economy will continue to spin. MSMEs play a significant role in the Indonesian economy, accounting for approximately 64.2 million units in the country and employing 97 percent of the companies. Seeing this vast potential, many parties see that the possibility of obtaining a loan for business capital is relatively high. Thus, different entities compete for convenience in the application and disbursement process in this lending and borrowing process.<sup>10</sup> As a result, many people, particularly in Indonesia, are obsessed with borrowing money due to their limited capital or the numerous needs that must be met. There is still no money to support it, so many people choose to borrow money in Indonesia from a bank or a place that offers lending and borrowing services.

Given the evolution of Fintech and the social demand for financial credit, this is considered an innovation. Specifically, via Peer toll, peer-to-peer lending is a marketplace that connects people who want to lend money with those who want to lend. P2P lending is a financing model based on financial technology that provides an effective financing solution. One well-known Fintech in Indonesia is Information Technology-Based Lending and Borrowing Services. Lending and borrowing in Fintech are governed by Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. Whereas Article 1 Number 3 of POJK 77/POJK.01/2016 states that Information Technology-Based Borrowing and Borrowing Services are financial services that bring lenders and borrowers together to enter into direct lending and borrowing agreements in the rupiah currency.<sup>11</sup>

In implementing online loans, online loan agreements do not bring together the parties carrying out the agreement. Still, the online loan provider connects the parties from the lender to the loan recipient. The evidence and guarantees used to apply for the loan are provided online via electronic means. Based on this, the potential for online loan agreements has a greater risk of causing problems. Agreements reached through online media are known to be riskier than formal agreements. Parties who fail to comply with the terms of the agreement face sanctions. As a result, both parties to the agreement must follow the applicable regulations. With this technological advancement, lending and borrowing activities at this time already have progress to make it easier for people in Indonesia, of course. However, many risks arise with borrowing and borrowing through online media. Therefore, it is hoped that people will be more intelligent

<sup>9</sup> Purwahid Parik, *Dasar-Dasar Hukum Perikatan* (Bandung: Mandar Maju, 1994).

<sup>10</sup> Pratiwi, Budiarta, and Styawati, "Akibat Hukum Perjanjian Pinjam-Meminjam Uang Yang Dinyatakan Batal Ditinjau dari Hukum."

<sup>11</sup> Agus Priyonggojati, "Perlindungan Hukum Terhadap Penerima Pinjaman Dalam Penyelenggaraan Financial Technology Berbasis Peer To Peer Lending," *Jurnal Usm Law Review* 2, no. 2 (2019): 162, <https://doi.org/10.26623/julr.v2i2.2268>.

and more observant if they want to borrow money online so that there are no terrible risks that will come in the future.

#### a. Illegal Online Money Loans

The rising value of online loan funding demonstrates the public's high level of trust in companies that provide online loan services. The majority of borrowers served by online loans are workers, farmers, fishermen, artisans, and Micro, Small, and Medium Enterprises (MSMEs).<sup>12</sup> But the rise of online loan companies operating in Indonesia that are not yet registered or are operating illegally with the OJK will result in many victims. This occurs because illegal online loans are not regulated or governed by laws. In practice, there are peer-to-peer lending operators who are not registered with the Financial Services Authority and are commonly referred to as illegal peer-to-peer lending. The Financial Services Authority recorded 1230 illegal peer-to-peer transactions between 2018 and August 2019.<sup>13</sup> Furthermore, the risk of violations such as high loan interest and theft of personal data to intimidating collections is very high. It may impact the general public as consumers of these online loans. This will be exacerbated if people lack knowledge and understanding of online loans. As a result, people will be easily tempted by the ease of borrowing money and become careless, failing to consider the benefits and the risks that will be obtained in the future.<sup>8</sup>

Fintech implementation in Indonesia is governed by the Financial Services Authority (OJK). Because OJK is an independent institution with the highest authority, it delegated regulatory and supervisory functions to all Indonesian financial institutions and businesses. To carry out fintech supervision in Indonesia, OJK issued regulations regarding fintech peer-to-peer lending via POJK Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. However, this OJK does not have special authority in handling illegal fintech P2P lending. Due to the limitations, the Investment Alert Task Force was formed under the supervision of the OJK. Investment Alert Task Force was formed to prevent and deal with alleged unlawful acts in fundraising and investment management, including fundraising and investment management through digital platforms or fintech. Investment Alert Task Force is the result of the collaboration of several government agencies. It is hoped that the OJK's efforts to minimize the development of illegal P2P lending can be optimized by collaboration between these parallel agencies.

This problem exists because illegal P2P fintech lending is not within the purview of the OJK. The problem has not been handled optimally because several Task Force tasks whose implementation is not under the authority of the OJK regarding handling illegal P2P lending. Due to these constraints, OJK, through SWI, can only address issues relating to illegal P2P lending fintech through collaboration with several agencies, including the Ministry of Communication and Information and the Police Criminal Investigation Department. OJK is still attempting to handle illegal P2P lending in Indonesia. The OJK made this effort to reduce the growth of illegal P2P lending in Indonesia.<sup>14</sup>

The potential of the Indonesian community, which is a large enough market for online loan services, has also contributed to the rapid growth of illegal online loan services. Many Indonesians are still unbankable, so many turn to illegal online loan services, where the process is simpler and faster. Furthermore, following existing online lending regulations, the company continues to provide the option of not registering with the OJK. Companies do not register with

<sup>12</sup> Raden Ani Eko Wahyuni, "Strategy Of Illegal Technology Financial Management In Form Of Online Loans," *Jurnal Hukum Prasada* 7, no. 1 (2020): 27–33, <https://doi.org/10.22225/jhp.7.1.1324.27-33>.

<sup>13</sup> Siti Yuniarti and Abdul Rasyid, "Consumer Protection in Lending Fintech Transaction in Indonesia: Opportunities and Challenges," *Journal of Physics: Conference Series* 1477, no. 5 (2020), <https://doi.org/10.1088/1742-6596/1477/5/052016>.

<sup>14</sup> Rahel Octora, "Aspek Hukum Pidana Dan Hukum Kontrak Terkait Tindakan Akses Daftar Kontak Debitur Oleh Perusahaan P2P Lending Dalam Rangka Penagihan Utang," *Recital Review* 2, no. 2 (2020): 112–25, <https://doi.org/10.22437/rr.v2i2.9121>.

OJK for various reasons, including a failure to meet existing requirements and a refusal to follow OJK regulations deemed challenging to comply with or overly stringent.

The existence of a new application that provides this loan makes it an easy option for the community to obtain a loan, but the application must also be a good solution for the community. When there is a problem with illegal loans, most people become more passive and accepting of unfair treatment. Even if they should find a way to escape and defend themselves if they are mistreated, let alone harmed, as in the case of illegal online loans. Legal certainty is guaranteed by the source of legality, namely justice, for realizing the legal spirit itself, for which adequate legal protection is required for users already experiencing difficulties with illegal loans. The case of the online loan application user who can use multiple loan applications unnaturally demonstrates that many online loan companies do not pay attention to the borrower's background, eligibility, and ability, also known as credit scoring (credit assessment), which is a method used by a financial institution/bank in determining whether or not it is appropriate to receive a loan from that institution.<sup>15</sup>

The online loan company must clearly state whether or not the prospective borrower is eligible; lending to a prospective borrower who is not eligible has the potential to exacerbate the prospective borrower's debt problem; this is in accordance with the values in the OJK provisions as follows:

- 1) Online loan companies must provide prospective borrowers with information and reasons for application acceptance, postponement, or rejection.
- 2) Loan companies must use simple Indonesian lists, phrases, and/or sentences that prospective borrowers can read and understand.
- 3) The lending company must consider the compatibility of the prospective borrower's needs and abilities.

As a result, the government should focus on preventive measures such as more education and outreach to the public about how to choose a suitable online loan and the disastrous consequences of online lending itself. This is done in the hope that if more people understand how to choose a competent loan service and the risks that may occur when using a loan service, the community, particularly in Indonesia, will be less likely to experience problems with online loans.

#### **b. Differences Of Illegal Online Loans and Ordinary Loans**

Online loans provide opportunities for financial service providers who operate online. Loans are made through online media or online intermediaries in the field of online loans. Thus, an online loan agreement is similar to a formal loan agreement but differs from intermediary media via the internet or online media. There is no room for direct interaction between debtors and lenders in online loan agreements. However, these interactions can take place via electronic devices.

Online Fintech Loan Agreements in Indonesia have a legal basis, namely the Financial Services Authority Regulation. However, no law regulates the mechanism and term of the online loan agreement based on Financial technology (Fintech). The implementation of the contract is considered final under this clause, but due to the nature of the clause, it only regulates the mechanism. In contrast, violations and negligence of the parties who submit the contract will be brutal to be legally corrected because no legal umbrella regulates sanctions against people who violate and default.

The laws of online agreements are the same as in-person agreements. A statement means that the terms of the direct agreement govern the online agreement. Because in essence, the content and mechanism of the agreement are not different, but the only difference is the media used so that there is the same legal force between internet agreements and direct agreements. A

<sup>15</sup> Rayyan Sugangga and Erwin Hari Sentoso, "Perlindungan Hukum Terhadap Pengguna Pinjaman Online (Pinjol) Illegal," *Justice Journal Of Law* 01 (2020): 47–61.



general agreement, also known as an online agreement, is an agreement made with evidence in the form of a letter of approval signed by both parties who made the promise. The provisions of the agreement refer to Article 1320 of the Civil Code, which states that there are four conditions for the validity of an ordinary contract, namely that it is made by an authorized legal entity, for specific reasons, and cannot conflict with the law.

The factor that distinguishes ordinary loan agreements from online loan agreements is only by using in the media if, in a regular agreement, the parties must be seen directly on the spot to reach an agreement, which will be agreed upon and as a refund mechanism for signing the agreement as evidence. Suppose in an online loan agreement; the collection process is carried out through online media. In that case, the application process is through online media, completes the requirements online, and even disburses using online media. Thus, the contract implementation process will occur without direct meetings with the parties involved. An electronic document must be considered valid if the competent authority signs it. The signature used in an electronic contract is also in the form of an electronic signature and is considered valid if it meets the requirements in Article 11 of the ITE Law. Once implemented, the online loan agreement does not connect the implementing party, but an online loan provider connects the lender and lender.

Accordingly, the evidence and warranties used are provided electronically. Based on this, the potential for online loan agreements is more likely to be controversial as it is known that online media contracts have a greater risk than conventional contracts. Parties who violate the contract that has been made will be subject to sanctions; therefore, both parties to the contract must comply with the applicable regulations. Thus, legally, contracts made with online internet media are valid under the conditions stipulated in the Civil Code, especially in articles 1320 and 1338 concerning Agreements.

The validity of the evidence used refers to Law Number 11 of 2008 concerning ITE Article 5 concerning information, documents, and electronic signatures. Regarding the mechanism for implementing loan agreements and the parties involved, it is regulated through OJK Regulation Number 77/POJK/2016 concerning the service of a loan in the form of information technology-based money. Illegal online loans did not explain the interest provisions at the beginning. Only after the prospective borrower determines the nominal and chooses to continue in the fund disbursement process is the interest immediately determined at what percentage and, at the same time, the admin fee. However, if the prospective borrower disagrees with the relatively high-interest conditions, the prospective borrower cannot cancel the online loan process.

The collection method of illegal online loans is very inhumane, where they access data from the borrower's cellphone, then the data from the cellphone is used to threaten the borrower if he cannot pay his debt. They spread photos and videos of borrowers to all contacts on their cellphones and then use harsh words to collect; even three days before the due date, the illegal online loan providers have terrorized borrowers with different numbers.

Therefore, the purpose of the existence of Fintech is to simplify the transaction process and make it easier for people to access financial products. Fintech development offers many benefits for the national economy as corporate actors or consumers. Fund loan providers in Fintech can be obtained with more accessible, faster, and more flexible conditions to be used as an alternative source of public financing. On the other hand, Fintech also disrupts various risks, such as the financial system, if it is not balanced with a sound reduction. That way, the public is expected to be more firm and careful in choosing loans to meet their daily needs, business capital, or others.

### c. The Main Characteristics Of Illegal Online Loans

The provisions for borrowing and borrowing are regulated in Article 1754 of the Civil Code which states that: borrowing and borrowing is an agreement in which one party gives to the other a certain amount of goods that are exhausted due to use, provided that the latter party will

return the same amount of the same kind and state too. In Law Number 8 of 1999, the issue of consumer protection is related to the expansion of the global business world. The increasingly open national market due to economic globalization must continue to ensure the improvement of people's welfare, as well as certainty and security.

In order to improve welfare, it is necessary to increase awareness, knowledge, attention, ability and independence to protect and foster the attitude of responsible business actors. OJKI strictly prohibits the public from submitting illegal fintech because consumers are at risk of getting online loans from unauthorized institutions.

The growth of loans or online loans in Indonesia is extraordinary. As many would expect, in less than two years, dozens of financial technology companies started lending online. Online lending provides many features that allow consumers to benefit from banking services. Therefore, in the last two years, financial technology has experienced extraordinary developments, and the public response has been extraordinary. Investments The Financial Services Authority (OJKI) has closed 172 peer-to-peer fintechs by the Investment Alert Task Force in July 2021. Currently, many online lending financial technologies are emerging in society. However, only 124 companies have obtained OJK permits. Problems that often arise in the illegal online loan business are unregistered companies, unclear loan interest rates, unclear loan addresses and name changes.

The Information and Electronic Transactions Law (UU IT) or Law Number 11 Year 2008 is a law that regulates information and electronic transactions or general information technology. The jurisdiction of this law applies to any person who commits a legal act in Indonesia and outside the jurisdiction of Indonesia, the act has legal consequences within the Indonesian jurisdiction and/or outside the Indonesian jurisdiction and harms the interests of Indonesia.

Technology-based loan services are also regulated in the Financial Services Authority Regulation (OJK) No. 1. Permendikbud Number 77 of 2016 concerning Information Technology-Based Lending and Borrowing Services regulates legal entities, capital, maximum lending limits, and forms of agreements used to regulate borrowers and lenders from individuals to legal entities. The focus is to provide an umbrella for sound business operations and to protect consumers and businesses. According to OJK data, as of 27 July 2021, the total number of fintech peer-to-peer lending or fintech lending providers registered and licensed at OJK is 124 companies. The provision of P2PL-based fintech or fintech lending services cannot be separated from the Financial Services Authority Regulation (POJK) No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, followed by POJK No.:1/POJK.07/2013 Regarding Consumer Protection in the Financial Services industry. Law Number 11 Year 2008 concerning Information, Transactions, and Electronics as amended by Law Number 19 Year 2016, OJK Circular Letter (SEOJK) Number 18/SEOJK.02/2017 concerning Governance and Risk Management of Information Technology Loan Services, and Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems.<sup>16</sup>

Regarding the validity of the evidence used, such is the case with Law Number 11 of 2008 concerning Article 5 of ITE concerning information, documents and electronic signature.<sup>10</sup> Regarding the mechanism for implementing the loan agreement, the parties involved are regulated in OJK Regulation No. 77/POJK/2016 concerning Information Technology-Based Lending and Borrowing Services. By analogy, these illegal loans have very similar characteristics to lenders. the term moneylenders has a negative connotation, in the Big Indonesian Dictionary it means moneylenders.

<sup>10</sup>

<sup>16</sup> Financial Services Authority, "Registered and Licensed Fintech Lending Operator at OJK as of 27 July 2021," *Otoritas Jasa Keuangan*, 2021.

In this case, the public has the awareness and choice to take a loan through a lender or an official institution. Like illegal loans, prospective borrowers are also aware of taking loans through illegal loans or loans registered with the OJK. The ease and speed of getting money is the reason why online loan services or P2P loans are growing rapidly in Indonesia. Many people use this Fintech-based service to help them manage their finances. There are dual types of P2P Lending that are developing in Indonesia. The first are productive P2P loans and consumer P2P loans.

Productive P2P lending is an online loan service provider based on business needs, while consumer loan P2P is more based on individual needs such as buying basic needs, buying electronics, etc. In particular, in the practice of P2P consumer lending, the interest and penalties charged in most cases exceed the basic cost of the loan. Provisions regarding lending and borrowing are regulated by Article 1754 of the Civil Code.

## 2. Legal Responsibility Of Illegal Online Loan Providers To Borrowers

### a. Legal Responsibilities of Illegal Online Loan Providers To Borrowers From the Administrative Side

The issue of online lending or peer-to-peer financial technology (P2P Fintech) lending is now increasingly in the public spotlight. Various cases of violations of fintech companies are currently starting to appear in the mass media. The types of violations committed by this FinTech company also vary, ranging from billing intimidation (Article 368 of the Criminal Code and Article 29 of the Criminal Code joel 45 of the ITE Law, dissemination of personal data (Article 32 of the KUHP joel 48 of the ITE Law), fraud (Article 378 of the KUHP) to sexual harassment electronically. (Article 27 paragraph 1 in conjunction with 45 paragraph 1 of the ITE Law) which will occur in one of the various alleged violations due to public complaints received by various Legal Aid Institutes (LBH) since last year. Lastly, this fintech issue is also took the life of a client who chose to commit suicide due to depression due to the collection of the loan. Unfortunately, the legal solution to this issue is still minimal, so similar cases keep popping up.<sup>17</sup>

Furthermore, Article 47 paragraphs (2) and (3) of the POJK stipulates that administrative sanctions in the form of fines, restrictions on business activities, and revocation of permits may be imposed with or without being preceded by the imposition of administrative sanctions in the form of written sanctions. then administrative sanctions in the form of fines can be imposed separately or jointly with the imposition of administrative sanctions in the form of restrictions on business activities and revocation of permits. Written warning, written warning is a warning in the form of writing given by OJK to online loan providers so that the organizers no longer repeat the violations committed and harm other parties. Fines are an obligation given by OJK to online loan providers to pay a certain amount of money, thus providing a deterrent effect to providers for violating and harming other parties.

Restrictions on business activities are limitations on the capacity to accept money lenders by the online loan provider within a certain period of time. This effort is made so that the prospective customer is not harmed due to the breach of personal data by the provider. Revocation of business licenses is the toughest sanction imposed on online loan providers.

This sanction can cause the operator to be unable to carry out his business activities legally. The administrative sanctions are given by the OJK as the supervisor of activities in the field of financial services, including online loans. Sanctions are given to online loan providers after OJK receives reports from several parties who have been harmed, then further investigation is carried out, if the organizers are proven to have violated laws and regulations and harmed several parties, sanctions will be imposed.<sup>18</sup>

<sup>17</sup> Rizka Noor Hasela, "LEMAHNYA PERLINDUNGAN HUKUM BAGI NASABAH PINJAMAN ONLINE," Bagian Hukum Sekretariat Daerah Kabupaten Tanah Laut, 2020.

<sup>18</sup> *Ibid.*

In addition, these online loans can also be subject to sanctions due to business actors who do not apply the principles contained in the Financial Services Authority Regulations, where many borrowers are subjected to harsh treatment, defamation, and dissemination of personal data. Therefore, the online loan provider may be subject to sanctions based on Article 60 of Law Number 8 of 1999 concerning Consumer Protection stating that the Consumer Dispute Resolution Agency has the authority to impose administrative sanctions on business actors who violate the provisions stipulated in Article 60 paragraph 2 of the Law. Number 8 of 1999 concerning Consumer Protection. The administrative sanction is in the form of determining compensation for a maximum of Rp. 200,000,000.00 (two hundred million rupiah).

#### **b. Legal Responsibility of Illegal Online Loan Providers To Borrowers From The Criminal Side**

The online loan provider company simply ignores the loan history of the prospective borrower, even though when applying for a legal or conventional online loan at a banking institution, the status of the previous loan history is very much calculated for the loan whether or not the loan can be disbursed. Then, the next mode of fraud is that the company asks for money in advance from prospective borrowers which is used for one of the requirements for disbursing loan funds and administrative costs. In fact, mostly when we borrow money, the administrative costs will be explained after we have approved the requirements that we submit and the administrative costs will be deducted from the funds to be disbursed.

These things should be suspected by prospective borrowers who will apply for a loan safe online. Because this is not a natural thing, this is a feature of fraud under the guise of online loans and the public must also be more observant if they want to borrow and borrow online. Article 378 of the Criminal Code ("KUHP") already regulates the crime of fraud, and the text of the article is as follows: "Anyone with the intent to benefit himself or others unlawfully by using a false name or dignity (hoedaningheid) false; by deceit, or a series of lies, inducing another person to hand over something to him, or to give a debt or write off a debt, is threatened, for fraud, with a maximum imprisonment of four years."

Then, the online loan case also leads to personal data that is accessed using online media. Where this is also a component of data privacy, where in privacy it is the right of a person to cover or keep things private (personal information) confidential. Article 26 of Law Number 11 of 2008 concerning Information and Electronic Transactions requires that the use of any personal data in an electronic media must obtain the approval of the owner of the data concerned.

Any person who violates this provision can be sued for the resulting loss. According to Article 1 of Government Regulation No. 82 of 2012 concerning System Implementation and Electronic Transactions "Personal data is certain individual data that is stored, maintained, and kept true and kept confidential". Personal data protection is an important thing for consumers themselves in conducting online transactions. Because, the personal data is related to the consumer's security itself. Because the consumer's position is weak, then he must be protected by law.<sup>19</sup>

And also explained, in Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 (UU ITE) and Minister of Communication and Information Technology Regulation No. 20 of 2016 concerning the Protection of Personal Data in Electronic Systems (Ministerial Regulation 20/2016) contains sanctions for those who violate.

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<sup>19</sup> I Dewa Gede Adi Wiranjaya and I Gede Putra Ariana, "PERLINDUNGAN HUKUM TERHADAP PELANGGARAN PRIVASI KONSUMEN DALAM BERTRANSAKSI ONLINE," *Kertha Semaya: Journal Ilmu Hukum*, 6, no. 1 (2008): 1–5.

<sup>3</sup> It is stated in the ITE Law in <sup>6</sup> Article 26 Paragraph 1 that unless stipulated otherwise by laws and regulations, the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned. Minister of Communication and Informatics Regulation No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems (PM 20/2016) which has been in effect since December 2016, the protection of personal data includes protection against the acquisition, collection, processing, analysis, storage, appearance, announcement, transmission, dissemination, and destruction of data personal.<sup>20</sup>

And with the case of online loans that use the threat of disseminating personal data that has been carried out by the online loan provider, this can be categorized as defamation, which is as regulated in Article 27 paragraph (3) UU No. 11 of 2008 concerning Information and Electronic Transactions which states that, "Every Person knowingly and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insulting and/or defamatory content", Therefore, the sanctions imposed are regulated in the criminal provisions of the UUI ITE, namely Article 45 which states that, "Every person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) will be sentenced to with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000. 000,000.00 (one billion rupiah)".<sup>21</sup>

However, people also often complain about this online loan collection method that uses violence to the community so that people become restless. This does not want to help the community in overcoming problems regarding money, it is even burdensome for the community because they charge a fairly high interest rate. In addition to using violence, the company also threatened to report the levy to the police on criminal charges. With this threat, the legal community will certainly be worried about the handling of the lawsuit. However, whether borrowers can legally face criminal penalties if they fail to repay loans to FinTech companies. Debt and Human Rights Regarding the possibility of someone reporting another person to the authorities (police) for not paying a debt, basically there are no provisions that prohibit it. UU no.39 of 1999 concerning Human Rights ("Human Rights Law"), stipulates as follows: "No one can be sentenced to prison by a court for reasons of inability to fulfill "obligations under a debt contract". Courts cannot convict someone for their inability to pay their debts. Related to this, law enforcement cannot trap debtors who are unable to repay loans. Indeed, this problem is included in the category of debt contract so it is not a criminal area but a civil one.<sup>22</sup>

The presence of this online loan also creates problems in terms of consumer legal protection, where consumers or loan recipients feel that there is a lack of information provided related to the borrowing and borrowing process, the amount of interest, and the collection process which usually involve unlawful acts, even leading to criminal acts such as threats, personal data collection, to sexual harassment. So, many people are surprised after using these online loans because of the relatively large loan interest and also the inhumane collection system for maturing money. Therefore, many people feel restless, afraid, to the point that someone commits suicide. Because they can't find a way out and feel ashamed of their relatives

<sup>20</sup> "Fintech Lending Langgar Aturan Lakukan Persekusi Digital," IndoTelko, 2022, <http://www.indotelko.com/read/1532239943/fintech-lending-persekusi-digital>.

<sup>21</sup> Ni Nyoman Ari Diah Nurmantari and Nyoman A. Martana, "Perlindungan Hukum Terhadap Data Pribadi Peminjam Dalam Layanan Aplikasi Pinjaman Online," *Kertha Wicara : Journal Ilmu Hukum* 8, no. 12 (2019): 1–14.

<sup>22</sup> Nurmantari and Martana.

or the environment because of the billing system that involves family members, relatives, and people who are in the surrounding environment.<sup>23</sup>

### c. Legal Responsibility of Illegal Online Loan Providers To Borrowers From The Civil Side

In online loans, the legal relationship arises from the agreement. Conventionally, an agreement can occur through direct action or indirect action from both parties where the first party takes sides such as the one who submits an offer that is accepted by the recipient with clear legal conditions and aims to create a legal relationship. The conditions referred to are agreements, powers, certain objects and legal actions.

In online lending and borrowing activities, the provider must be able to properly manage and operate the platform, including the accountability of the profiling system to obtain qualified prospective loan recipients. The profile system displayed must also be honest and transparent so that lenders can review carefully before giving loans to potential loan recipients. If, when conducting a profiling system or selecting prospective loan recipients, the operator manipulates data such as increasing the credibility of the borrower to make it look beautiful or not transparent in a way that will mislead and harm the lender, the loss is also the responsibility of the operator. OJK is responsible for supervising the implementation of these online lending and borrowing activities.

In particular, the protection of borrowers' personal data in online loan services is regulated in POJK No. 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services, which is emphasized in Article 26 that the organizers are obliged and responsible for maintaining the confidentiality, integrity and availability of users' personal data and in their use must obtain approval from the owner of personal data unless otherwise specified by the provisions of laws and regulations. Furthermore, Article 26 paragraph (1) of the ITE Law also states "Unless otherwise stipulated by laws and regulations, the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned". If there is misuse of someone's personal data without the permission of the person concerned, then the person whose rights have been violated may file a claim for liability for the loss caused.

Meanwhile, matters relating to the elaboration of personal electronic data, UUI ITE mandates it again in Government Regulation Number 71 of 2019 concerning System Operation and Electronic Transactions ("PP 17/STEL"). The definition of personal data is contained in Article 1 point 29 of PP PSTE: "Personal Data is any data about an individual that is either identifiable and/or can be identified individually or in combination with other information, either directly or indirectly through Electronic and/or Non-electronic Systems."

This is mostly done by cracking. Cracking is the activity of breaking into a computer system with malicious or criminal purposes. While people who do cracking are called crackers. Crackers usually try to get into a computer system without permission (authorization), these individuals are usually malicious / bad as opposed to 'hackers', and usually seek profit in entering a system. Apart from being destructive, cracking is a hijacking of someone's personal data or personal account, resulting in it being lost or changed and used without the owner's consent. Therefore, the use of personal data by cracker for the purposes referred to above can be categorized as a form of violation of Article 26 paragraph (1) UU 19/2016.

It should be noted that the resident's personal data must be stored and protected by the state. Furthermore, the cracking action can be said to be included in Article 30 paragraph (3) of the ITE Law, which states that every person intentionally and without rights or unlawfully accesses

<sup>23</sup> Pratiwi, Dita Tania, and Sri Bakti Yunari, "Perlindungan Hukum Terhadap Konsumen (Penerima Pinjaman) Financial Technology Yang Berbasis Peer To Peer Lending Di Indonesia," *Jurnal Hukum Adigama* 3, no. 1 (2020): 472-93, <https://doi.org/10.24912/adigama.v3i1.8911>.

a computer and/or electronic system in any way by violating, breaking through, exceeding, or breaking into the security system.

In an unlawful act, there is responsibility due to a loss that befalls the party affected by the unlawful act. These losses can be in the form of losses that can be calculated with money or those that cannot be calculated with leisure. In the event that a person commits an unlawful act, then he is obligated to atone for his actions, in contrast to the claim for compensation for default, in the case of being against the law there is no clear regulation for compensation, but as regulated by article 1371 paragraph 2 of the Civil Code implies that this compensation assessed according to the situation and capacity of both parties, depending on the circumstances. Legal action and the right solution to this problem is a loan that is accumulated based on an agreed agreement, the debtor must be responsible, namely trying to pay off the debt.<sup>24</sup>

The act of misuse of personal data by online url creditors, thus, even though the online credit url application party argues that when an application is to be installed by a prospective debtor, there must be a question that is essentially asking for permission from the prospective debtor to access important data from a smartphone, but this is still not justifiable if the application party (credit url) uses the personal data of the user (debtor) to harm, defame, slander or terrorize the person concerned or by abusing the contact list on the debtor's cell phone. Therefore, the action of the creditor who abuses the personal data of the debtor without the consent of the debtor can also be categorized as an act against the law, so that if it refers to the provisions stipulated in Article 1365 of the Civil Code, then: "Every act against the law (*onrechtmatige daad*), which brings harm to people Otherwise, it obliges the person who, because of his fault, issued the loss, to compensate for the loss". So that for the actions of the creditor who abuses personal data, the debtor as the party who is harmed is entitled to legal protection as appropriate, namely to get compensation for the loss he suffered, because it was the result of the creditor's actions.

Therefore, it would be better if people were more careful in choosing online loans. It's better if you want to borrow and think about it first. So that later things don't happen.

### C. Conclusion

Preferably, it is better if a legal regulation regulates the procedure for billing a stuck peer-to-peer landing. Looking at the reality, Indonesia currently does not have rules regarding the procedure for collecting lousy credit. The prohibition on billing is contained in the Code of Conduct for the Responsible Provision of Information and Technology-based Lending and Borrowing Services, which is considered ineffective due to the code's legal force. So, at the very least, the government has established a policy for collecting bad credit peer-to-peer landings. Illegal online loan companies should apply for registration and licensing to the Financial Services Authority. Illegal online loans that apply for registration and licensing will be facilitated by the state, based on law and obtaining legal status. So that their business activities become safer, more reliable, and more profitable, of course, because there will be more people who become prospective online loan borrowers.

The OJK must educate and socialize the public about illegal online loan companies, since there are still many cases of illegal online loans because it is easy to create websites and applications, and the literacy level of people with financial difficulties that borrowing funds is still low. So there is a need for more specific regulations regarding dispute resolution and handling of illegal online loan companies because, this paper argued, legal remedies from OJK through OJK regulation and the code of conduct from the Indonesian Joint Funding Fintech Association are not enough.

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<sup>24</sup> *Ibid.*

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