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llegal Financial Technology Loans Amid the Covid-19 Pandemic Problem

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ABSTRACT. This study aims to identify and analyze illegal online lending practices in the midst of the Covid-19 problems. The research method used in this research is normative juridical research, namely the method of doctrinal legal research by reviewing the applicable regulatory provisions as a basis for analyzing the problems that occur and providing a paradigm as an effort to mitigate those problems. This qualitative research uses a descriptive analysis from primary and secondary legal materials through the study of documents and related literature. Based on the results of the study, the pandemic situation has resulted in growing illegal online loan services. Many individuals and micro, small and medium enterprises UMKM) are entangled in lending and borrowing due to the capital needs as a result of the Emergency Public Activity Restrictions (PPKM) policy. Based on the findings, the authors suggested that the improvement of public literacy related to lending needs to be encouraged, including efforts to ratify the personal data protection law and the drafting of the Fintech law.

KEYWORDS. Financial Technology, Covid-19, Illegal Online Loans

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Introduction

In recent years, business actors have begun to be disturbed by the COVID-19 pandemic. Indonesia, which is dominated by micro, small and medium enterprises (UMKM) need special attention, because the contribution of UMKM to the national economy is very significant. Moreover, the number of UMKM in Indonesia reaches 64.19 million, with the composition of Micro and Small Enterprises (UMK) very dominant, namely 64.13 million (99.92%) of the entire business sector.[1]

The COVID-19 pandemic has had a major impact on the business sustainability of Micro, Small and Medium Enterprises (UMKM). Based on the survey results, as many as 96% of business actors claimed to have experienced the negative impact of COVID-19 on their business ecosystem (as many as 1,785 cooperatives and 163,713 micros, small and medium enterprises). As many as 75% of them experienced a significant decline in sales. The only that, 51% of business actors believe that it is very likely that

[1] Rais Agil Bahtiar, 2021, *Impact of the Covid-19 Pandemic on the Micro, Small and Medium Enterprises Sector and Its Solutions*, Research Center of the Indonesian House of Representatives Expertise Board, Vol XIII, No. 10, p. 19.

the business they run will only last one month to the next three months. 67% of business actors experience uncertainty in obtaining access to emergency funds, and 75% feel they do not understand how to make policies during a crisis.[2]

Capital is the fundamental basis for UMKM to continue to survive in the midst of a pandemic, as previously stated that 67% of business actors need capital injections. Where business capital is one aspect that must exist in entrepreneurship, in addition to other aspects that are no less important such as human resources, technology, economics, as well as organization and legality.[3]

The decline in income even some UMKM business actors have gone out of business after the government issued an official policy for people to work from home, close public services, and require people to use social distancing, to be precise, in mid-May 2020, PSBB (Large-Scale Social Restrictions) was implemented. which then makes the condition of MSMEs and micro and small business actors in various regions and remote areas paralyzed due to PSBB, and fines and criminal sanctions for those who violate.

Consequently, MSMEs that are in a crisis condition will try to survive even though they are faced with very unfavorable situations and choices. The need for capital as the basis for re-moving the wheels of the economy is a determinant of whether a business can run or not, capital and cash flow play an important role for business growth and sustainability, especially in the midst of a pandemic, the existence of capital is a breather for businesspeople, cash flow movements MSMEs slowed down both in terms of production, distribution, and sales. In a state of urgency, many business actors, both individuals and SMEs, use online loan services to be able to survive in the midst of the pandemic. This study aims to identify and analyze illegal online lending practices in the midst of the Covid-19 that may present challenges for UMKM.

Technology-based lending and borrowing services

Technology-based lending and borrowing services have been regulated in the Financial Services Authority (OJK) regulation No. 77/2016 regarding

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2 Noer Soetjipto, 2020, *East Java MSME Resilience Through the COVID-19 Pandemic*, Yogyakarta, K-media, p. 6.

3 Sari Juliasti, 2009, Smart to Get and Manage Business Capital, Jakarta, PT. Persero, p. 4.

technology-based lending and borrowing, since the regulation was published on December 28, 2016 the number of P2P Lending companies has been increasing. The development of fintech P2P lending over the past few years has been very significant, the interest and service users from both lenders and loan seekers are very large.[4]

The existence of fintech lending in providing wider and affordable, fast, easy financing, especially without significant collateral such as banks or other financial institutions, is an alternative for UMKM to make capital loans. In the midst of a pandemic that hit many UMKM experiencing an economic crisis including a lack of capital, forcing business actors to find solutions to their problems, one of which is through online loans. With the convenience offered and the disbursement process that only takes a short time, online lending practices are used as an alternative to solving economic problems during the pandemic. However, with the ease of access offered, business actors do not consider the impact of online loans and what the legal risks are. Ironically, during a pandemic like today, illegal online loans are getting more massive, like a pandemic (financial pandemic).

The financial difficulties experienced by UMKM have become targets for illegal online loans to provide offers easily, where business actors are interested in the offer and are considered capable of providing a way out, because of the urgent need so that the majority do not consider the rationality and legality of online lending institutions. the. The crisis has become a momentum for illegal online loans to reap profits due to the economic difficulties suffered by the people.

Based on data from the Ministry of Communication and Information, from January to 18 June 2021, 447 illegal online loans have been handled or blocked, 191 of which are file sharing, followed by 105 applications, 76 social media, and 75 websites. -people who take advantage of the current pandemic situation. In line with reports from the account complaint site owned by the Ministry of Communication and Information, namely Cekrekening.id in the Cekrekening.id statistics it is stated that in June 2020 the number of account complaint reports only amounted to 194 accounts, but

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4 Dhiya Tsuroyya and Muzayyanah, 2019, Analysis of Musyarakah Implementation in Sharia Financial Technology Peer To Peer Lending Services in Indonesia (Study of PT Syarfi Financial Technology), No.2, p. 34.

in May 2021 it increased dramatically to 2,403 accounts.[5] Based on the data above, it shows that after a year of the pandemic, people are increasingly in need of loan funds, and online loans are a solution option for the community.

Referring to the data above, the increase in the use of online loan services is getting higher, like a snowball getting bigger and bigger. The urgent need for capital breeds illegal online loans to continue working. The humanitarian side that began to be eroded during the pandemic due to illegal online loans which turned into an online loan pandemic like COVID-19 for people who at any time could infect people, both individuals and MSMEs who were slumped by the ferocity of COVID-19.

Method

This research uses normative juridical research as a method. The method is doctrinal legal research by reviewing and analysing the applicable regulatory provisions as a basis for analyzing the problems that occur and providing a paradigm as an effort to mitigate the problems. This research is descriptive analysis using secondary data consisting of primary, secondary and tertiary legal materials. The primary legal material is binding legal material such as the Laws and Regulation. The secondary legal material is legal materials that provide an explanation of primary legal material obtained from literature studies related to research. The tertiary legal material such as the internet, legal dictionaries, newspapers and online media is to provide instructions and explanations for primary and secondary legal materials. The analysis used in this study is a qualitative analysis in order to answer the problems studied.

The existence of Fintech (peer to peer lending)

The development of technology is currently growing very rapidly and has entered various aspects of the line of life and the field of knowledge. This is marked by the presence of the industrial revolution 4.0 which is supported by the creation of Artificial Intelligence (AI). Interestingly, technology does not only focus on the machine aspect, but more than that, the financial or banking industry is one of the fields that has experienced significant changes

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[5] Plt. Director of Information Application Control of the Ministry of Communication and Informatics, Teguh Arifyadi During a Webinar *Combating Illegal Online Loans and Strengthening the Reputation of Fintech Lending*, 2021.

due to the development of digital technology. Thanks to the development of digital technology, various activities in financial traffic can be carried out practically so that time and energy efficiency is more optimal.

One of these changes is the emergence of Financial Technology. Financial technology is an abbreviation of fintech, which has recently begun to be widely discussed. The definition of fintech itself has not been described directly in the big Indonesian dictionary. However, this term is often used in the world of technology and startups. [6] According to the International Organization of Securities Commissions (IOSCO), the term fintech is applied as a description of various innovative business forms in utilizing technological sophistication to transform the financial services industry.[7]

Bank Indonesia defines financial technology as a combination of financial services and technology that ultimately changes the business model from conventional to moderate, which initially had to pay face-to-face and carry a certain amount of cash. just a matter of seconds.[8]

Fintech emerged along with changes in people's lifestyles, which are currently dominated by users of information technology as demands for fast-paced life. Fintech has a massive influence on the community by providing access to financial products so that transactions become more practical and effective such as transacting via smartphones, paying with e-Money, even making investments, problems in buying and selling transactions and payments such as not having time to look for goods anywhere. shopping, to the bank/ATM to transfer and now everything can be done easily. So, what at first had to make transactions by meeting face to face or face to face, now it can be done even remotely in a matter of seconds. In other words, fintech helps buying and selling transactions and payment systems to be efficient and economical but still effective.[9]

According to data from the financial services authority, the use of fintech is growing, the OJK noted, the outstanding P2P lending fintech loan until June 2021 was recorded at Rp. 23.38 trillion. This number is up 98.8% from

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6 Wahyuni, 2020, *Strategy Of Illegal Technology Financial Management In Form Of Online Loans*, Prasada Law Journal, Vol. 7, No. 1, p. 27-33.

7 Fajria, 2019, *Potential Synergy of Fintech with Islamic Banks in Improving Performance of Islamic Banking in Indonesia*, Malia: Journal Of Islamic Banking And Finance, Vol. 3, No. 1, p. 174-181.

8 Indonesia, 2019, financial technology education. https://www.bi.go.id/id/edukasi-konsumen protection/edukasi-konsumen protection/edukasi/produk dan-jasa-sp/fintech/Pages/default.aspx

9 Hommy Dotthy Ellyany Sinaga, 2019, *Financial Technology: Online Loans, Yes Or No, Tunas Journal: Journal of Community Service*, Vol 1 No 1, p. 15.

year to year or almost double from June 2020 which was only Rp. 11.76 trillion. Fintech lending has continued to increase since the beginning of the year. As an illustration, the outstanding value in January-May 2021 is Rp 16.07 trillion, Rp 16.95 trillion, Rp 19.03 trillion, Rp 20.61 trillion, and Rp 21.74 trillion.[10]

Bambang W Budiman as Head of the OJK 2B Non-Bank Financial Industry Supervision Department (IKNB) said several factors were driving the increase in outstanding P2P lending fintech loans. Among other things, the public and MSMEs are increasingly aware of the benefits of P2PL so that they take advantage of the impact of educational activities carried out by the OJK, associations, and P2P lending providers. In addition, ease of transactions, product variants and business models, as well as optimal ecosystem cooperation such as with banks, finance companies and others.[11]

The growth of fintech start-ups is a trigger for OJK to formulate regulations to regulate the legal standing, mechanism, and transaction process of fintech itself. Therefore, the OJK issued OJK regulation no. 77/POJK.01/2016 as the basis for regulation in conducting transactions through fintech. The regulation regulates information technology-based lending and borrowing services or also known as peer-to-peer lending (P2PL). while the terms and types of online loans themselves are provided by fintech companies ranging from market aggregators to peer-to-peer lending. Where one of the articles regulated is related to the obligations of fintech operators for submissions and licensing to the Financial Services Authority.

The existence of fintech peer to peer lending services or more familiar in the community as online loan services (online loans) is directly supervised by the official body of the financial services authority. However, during the corona virus pandemic, there are many online loan service providers who do not register themselves with the official OJK agency so that they escape the supervision of the authorities. OJK when explaining to the public uses the official online loan fintech term for online loan providers who have registered with the OJK accompanied by licensing, on the other hand online loans that do not register with the OJK are said to be illegal online loan fintechs.[12]

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[10] https://keuangan.kontan,co.id, as of June 2021, outstanding online loans reached Rp 23.38 trillion, accessed on 20 September 2021.
[11] https://keuangan.kontan,co.id, accessed on 20 September 2021.
[12] Laksana and Harja, 2020, *Comparison of Financial Technology Regulations Regarding Customer Data Protection in Indonesia and Other Countries*, Rechtidee, Vol. 15, No. 2, p. 293.

Currently online loans are one of the financial alternatives for people who need cash in times of urgency where only using applications that can be downloaded from mobile phones, people can easily get loans. Online loan applications usually do not require collateral in the application. it is enough to prepare a personal data document and fill out an online form, then the user can apply for a loan whose value varies from Rp. 500,000 to Rp. 3,000,000. the verification process is also very fast, on average less than 48 hours the verification process is completed, and the loan is also immediately disbursed.[13]

With the various features and easy access offered by online loans, it creates a positive response in the community, where the increase in users is increasing rapidly along with the presence of online loan companies. Peer to peer lending companies that are increasingly popping up present a new discourse, because not only are legal companies at the same time illegal companies are also appearing, this is because the type of online loan business is very potential in terms of profit. Meanwhile, based on OJK statistical data, there are around 124 companies officially registered and licensed in Indonesia as of June 29, 2021. Meanwhile, online loans are illegal, based on data from the Investment Alert Task Force (SWI) which received 7,128 public complaints regarding illegal online loans during the pandemic. That's about 3,365 illegal online loan entities that have been discontinued by SWI.

llegal Online Loan Pandemic During the COVID-19 Pandemic

Online loan services or online loans are starting to bloom, because they are considered as one of the solutions during the pandemic, in addition to meeting daily needs, it is also an injection of capital for businesses affected by the pandemic. However, the current crisis has become a momentum for irresponsible people to take advantage of conditions with an online loan service mode but is full of exploitation for profit. Based on the Kominfo report, during the January to June 2021 range, at least 447 online loan services were detected as illegal and blocked. The Kominfo website

[13] Hommy Dotthy Ellyany Sinaga, 2019, *Financial Technology: Online Loans*, Yes Or No, Vol 1, No 1, p. 15.

Cekrekening.id reported that there were 2,403 complaint accounts as of May 2021, whereas previously in June 2021, only 194 reports were received.[14]

The Minister of Cooperatives and UKM (Menkop UKM) Teten Masduki explained that there are several things that have caused the increase in illegal online loan platforms and the high demand for public loans, including: *First*, it is easy to make an online loan application, where server placements are located abroad, making it difficult for perpetrators to be tracked. *Second*, the low level of public literacy in using online loan services, making it difficult to distinguish between legal online loans and illegal online loans, and *third*, the current high trend of online lending, due to the declining economic conditions of the community in the midst of the COVID-19 pandemic.

Covid-19 is the main factor why illegal online loan services are increasing, because the impact caused by COVID-19 greatly affects the community's economic sector, this is caused by several things:

a. Due to the large number of workers experiencing Termination of Employment (PHK), the pandemic has resulted in companies having to reduce workers due to drastic declines in income. The difficulty in fulfilling workers' rights in this case is wages due to unstable financial turnover, and uncertain market demands, while companies are required to continue to provide workers' rights.
b. People who fall into the category of underprivileged including online loan consumers, the need to survive forces them to use online loan services, even though they only fulfill their daily needs, they are desperate to use online loan services.
c. UMKM that need emergency funds to maintain their business in the midst of a pandemic wave. Online loans are an alternative for UMKM who are pressed to add capital injections so that business turnover can continue.
d. Weak regulations and law enforcement that result in illegal online loans are still free to operate.

Juridical Consequences of Using Illegal Online Loans

It is important for the public to understand about illegal online loans, because all forms of legal action will provide the slightest risk, as well as the

[14] https://bisnis.tempo.co, Illegal online loans are on the rise during the pandemic, accessed on September 21, 2021.

risk of illegal online loans. Illegal online loans are not registered with the OJK and are not legal entities, so the work process carried out by illegal online loans does not follow the procedures set by the OJK and is not in accordance with the rules of the financial system in force in Indonesia. Therefore, the potential for abuse and fraud is very high

Based on the potential risks above, the public needs to know that the risks posed are greater than the benefits, some of the problems that arise are the misuse of data belonging to borrowers without permission by the platform by accessing data on cellular phone devices as a way to collect debts from debtors. Violations that occur to borrowers for misuse of personal data on cellular networks by platform provider companies include intimidating billing, distribution of personal data on contacts on the borrower's contact list to narratives of sexual harassment.[15]

The various alleged violations, one of which comes from the results of public complaints received by the Jakarta Legal Aid Institute since last year. LBH Jakarta recorded as many as 14 violations of law and human rights experienced by victims of online loan applications. These violations are as follows:[16]

a. Very high and unlimited interest;
b. Invoices that are not only made to the borrower or emergency contacts included by the borrower;
c. Threats, slander, fraud and sexual harassment;
d. Dissemination of personal data;
e. Dissemination of photos and loan information to contacts on the borrower's device, while loan interest continues to grow;
f. The borrower has paid the loan, but the loan is not written off on the grounds that it is not entered in the system;
g. The application cannot be opened and even disappears from the appstore/playstore when the loan is due;
h. Billing is done by different people;
i. ID card data is used by online loan application providers to apply for loans in other applications;

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[15] Raden Ani Eko Wahyuni, 2019, *Illegal Technology Financial Practices in the Form of Online Loans Judging from Business Ethics*, Faculty of Law, Diponegoro University, Indonesian Legal Development Journal, Vol 1, No 3, p. 383.

[16] Raden Ani Eko Wahyuni, 2019, *Illegal Technology Financial Practices in the Form of Online Loans Judging from Business Ethics*, Faculty of Law, Diponegoro University, Indonesian Legal Development Journal, p. 384.

j. Virtual account refunds go wrong, so interest continues to grow and intimidating billing continues.

The existence of illegal online loan business companies has a negative impact on several aspects, including the following impacts:[17]

a. Illegal online loan businesses can be used as a means to commit money laundering or terrorism financing;
b. Misuse of data and information of service users or consumers in this society, people do not realize that financial technology business companies also record various personal data contained in smartphones owned at the time of registration;
c. Loss of potential tax revenue. Of course, the tax potential of illegal financial technology businesses is very large, considering that the amount is much higher than that registered with the OJK;
d. There are still many people who do not know about the financial technology business, so when making credit transactions, people as borrowers often do not see in detail the contents of the terms or credit agreements. This causes the community to be entangled with very high interest rates. The commission or interest from illegal online loans reaches an average of more than 40% of the principal debt plus 50 thousand per day;
e. The NPL of online loans in 2018 reached 1.45%, meaning that even legal financial technology businesses already have risks, so illegal ones will certainly be riskier.
f. Many reports have emerged from the public as victims of unethical debt collection by financial technology business companies. This happens because of the lack of public knowledge about the legality of financial technology business companies.

Regulatory Aspects in Using Online Loan Services

The author feels the need to provide enlightenment to the public in the legal aspect, in connection with the regulations governing online loan activities so that if the increase in the quality of public literacy can be directly proportional to the decline in victims of illegal online loans. In this case, there are several rules that serve as references and legal umbrellas in carrying out

[17] E. Budiyanti, 2019, *Efforts to Overcome Illegal Technology Financial Business,* Brief Info Journal, Vol XI, No. 04/II/Puspit, p. 20.

online lending activities in Indonesia, including the Financial Services Authority Regulation Number 77/POJK.01//2016 concerning information and communication technology-based lending and borrowing (POJK NO.77/ 2016), Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the implementation of financial technology (PBI NO.19/2017), and Circular Letter of the Financial Services Authority Number 18/SEOJK.02/17 concerning governance and risk of information technology in services information technology-based lending and borrowing.[18]

Regarding the legal protection aspect of consumer rights as service users, it is contained in Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) and Law Number 8 of 1999 concerning Consumer Protection (UUPK). However, the legal umbrella governing the implementation of online loan-based fintech activities is still limited to the regulations of the financial services authority. With the absence of regulations in the form of special laws that can comprehensively manage the implementation of fintech activities in Indonesia at this time, this has led to the widespread circulation of illegal online fintech loans.[19]

The Urgency of Strengthening Regulations in Eradicating Illegal Online Loans

Some legal sources that are used as references in the implementation of online loan fintech operations tend to be weak, because the reality is that the OJK cannot take measurable action against online loans that have not been registered with the OJK. The authority to take action only applies to online loans that have been registered with the OJK, in the form of administrative sanctions such as fines, written warnings, restrictions on business licenses, to revocation of operating licenses, which aim is to protect consumers based on the provisions of Article 47 of the POJK.

In order to provide legal certainty and protection for consumer rights, if there is a need for a regulation that is rigid and more binding in nature in the form of a special law that regulates comprehensively and there are criminal sanctions in order to realize guarantees of justice and reduce the emergence

[18] Hari Sutra Disemadi, 2021, *Urgency of a Comprehensive Regulation on Online Loan-Based Fintech as an Effort for Consumer Protection in Indonesia*, Journal of Legal Communication, Vol. 7, No. 2, p. 608.
[19] *Ibid*.

of other illegal online loans. Meanwhile, POJK is still very limited if it is expected to be a fundamental instrument in eradicating illegal online loans.

China can be a reference for Indonesia, in enacting special laws governing the implementation of online loans. Regulations for the implementation of online fintech loans were successfully drawn up thanks to the collaboration between the China Banking Regulatory Commission (CBRC), together with the People Bank of China (PBOC), as well as with the China Insurance Regulatory Commission (CIRC) and then issued a law called The 2016 Interim Measures. On Online Lending which consists of 5 Chapters and 47 Articles. This rule completely regulates technical matters in the implementation of online loan activities to include sanctions that are only limited to administrative sanctions but also the application of criminal sanctions.

The prosecution of illegal online loan entities can be carried out optimally if the regulatory instruments are adequate. For example with the passing of the personal data protection law. Enforcement in the form of blocking online loan applications is still very weak because the illegal online loan applications can operate again only by changing names, while the system and business mechanisms remain the same so that they have the potential to ensnare victims.

Therefore, it is important that special laws governing online loans and other supporting laws such as the Personal Data Protection Act are immediately ratified so that people who feel disturbed by these online loans can report and be processed legally, considering the victims of illegal online loans. increasing every year, not only borrowers who become victims but contacts on the victim's device also become victims of illegal online loan terror.

Regulations that are always lagging behind the development of society often occur in countries that adhere to the Civil Law legal system, whose positivistic character justifies the classic adage in the law "het recht hink anter de feiten an" that the law will always be one step behind the events to be regulated. So legal breakthroughs need to be made in order to maintain the stability of social relations.

Conclusion

Based on the discussion, the conclusion that can be drawn is that the COVID-19 pandemic has become a momentum for illegal online loans to make money by borrowing and borrowing money online. The high number of online loan users is due to the low level of public literacy regarding their knowledge to identify illegal online loans and the urgent need for funds and capital due to the pandemic. The consequences experienced are greater than the perceived benefits. This article highlights the urgency for UMKM and relevant institutions to understand the regulations and policies the government has issued to prevent illegal online loans. As well as the urgent need for regulations to be immediately formed and ratified so that the government can take measured and comprehensive actions in tackling the growth of illegal online loans. Based on the findings of this research, we recommend the following:

a. The government and the community must work together to reduce the growth of illegal online loans, especially to the community both individually and in groups to increase awareness of the legal consequences of using illegal online loan services.
b. The government and the House of Representatives will immediately form a specific Fintech law so that law enforcers have legal instruments to take preventive action.
c. To immediately ratify the personal data protection law as a supporting instrument in taking action against online loans that abuse personal contacts in intimidating ways.
d. Awareness for all elements, both the community, related institutions, and MSMEs contributes to creating awareness to create a good and progressive legal, economic and social ecosystem along with technological developments.

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Plt. Director of Information Application Control of the Ministry of Communication and Informatics, Teguh Arifyadi During a Webinar Combating Illegal Online Loans and Strengthening the Reputation of Fintech Lending, 2021.

Banks can partner with fintech to build an ecosystem where the size of the pie grows for the banks and third parties.

Mike Henry, Scotiabank