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## Illegal Online Loans in Indonesia: Between the Law Enforcement and Protection of Victim

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**Abstract** *The phenomenon of online loans in Indonesia is becoming increasingly prevalent, accompanied by the proliferation of online loan provider services. However, this growth has also led to numerous instances of fraudulent practices within the online lending sector. This study aims to analyze the effectiveness of law enforcement and victim protection in cases of illegal online lending in Indonesia by comparing relevant laws and regulations. The findings of this study reveal that illegal online loans have severe consequences, resulting in victims suffering from material loss, psychological distress, physical harm, and social ramifications.*

*Unfortunately, the current state of law enforcement falls short of delivering justice to the victims, as evidenced by the leniency of sentences imposed on offenders.*

**Keywords** Illegal Online Loans, Cybercrime, Victim Protection, Law Enforcement

## 1. Introduction

Illegal online loans have emerged as a significant concern in Indonesia, driven by the rapid growth of online lending platforms. These platforms offer convenient access to financial services but have also provided a breeding ground for fraudulent schemes. This phenomenon has raised serious issues related to law enforcement and victim protection. This introduction aims to provide a concise overview of the problem of illegal online loans in Indonesia, highlighting the need for a comprehensive analysis of existing laws and regulations to address this issue effectively. By examining the impacts on victims and the shortcomings in law enforcement, this study endeavors to shed light on the gravity of this problem and the urgent need for improved measures to combat illegal online lending activities in Indonesia.

The issue of illegal online lending in Indonesia has garnered significant attention, not only from the general public but also from top government officials, including President Joko Widodo and Minister of Communication and Informatics. Recognizing the urgency of the situation, key figures such as Governor of Bank Indonesia, Chairman of the Board of Commissioners of the Financial Services Authority, and Chief of National Police, have been instructed

to intensify efforts in cracking down on the increasingly prevalent illegal online lending practices.

This sentiment was further reinforced by Coordinating Minister for Political Legal and Security Affairs, during a virtual seminar titled “*Legal or Illegal Online Loans: Community Needs and Law Enforcement*” held on February 11, 2022.<sup>1</sup> During the event, the Minister expressed President Joko Widodo’s frustration with the prevalence of lending activities in the community. In response to these concerns and the President's call for stricter enforcement against illegal loans, the Metro

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<sup>1</sup> KOMINFO, “Ini Upaya Pemerintah Lindungi Masyarakat dari Pinjaman Online Ilegal”, *KOMINFO*, October 15 (2021). Retrieved online from <<https://www.kominfo.go.id/content/detail/37541/ini-upaya-pemerintah-lindungi-masyarakat-dari-pinjaman-online-ilegal/0/berita>>. It is also highlighted that Indonesia has taken significant steps to protect society from the risks of illegal online lending. The government has prioritized law enforcement actions against illegal lenders, conducting investigations, raids, and arrests to dismantle their operations. Regulatory frameworks implemented by the Financial Services Authority (OJK) have established guidelines for online lending platforms, ensuring transparency, fair practices, and customer protection. Licensing requirements, interest rate limitations, and borrower assessment guidelines are among the measures in place. Additionally, public awareness campaigns have been initiated to educate individuals about the dangers of borrowing from unlicensed lenders. These efforts aim to empower the public to make informed financial decisions and encourage the use of regulated lending services. Collaboration between government agencies, law enforcement, and financial institutions is crucial for effective implementation. By sharing information and coordinating efforts, Indonesia strives to identify and apprehend illegal lenders, safeguarding vulnerable individuals and fostering a safer financial environment. Through these comprehensive initiatives, the country is working towards protecting society from the perils associated with illegal online lending. *See also* Dwi Tatak Subagiyo, Lorensia Resda Gestora, and Sulistiyo Sulistiyo. "Characteristic of Illegal Online Loans in Indonesia." *Indonesia Private Law Review* 3, No. 1 (2022): 69-84; Lida Ariany, "Legal Protection for Users Of Illegal Online Loan Services In Indonesia Reviewed From A Jurisdictional Aspect." *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 16, No.6 (2022): 2249-2260; Ifan Eldin Khaq, and Ahmad Hidayat. "The Law Enforcement Against an Illegal Online Loans Platform." *Ius Positum Journal of Law Theory and Law Enforcement* 1, No. 3 (2022): 85-98; Abdul Aziz, and Iis Nur'aisyah. "Role of The Financial Services Authority (OJK) to Protect The Community on Illegal Fintech Online Loan Platforms." *Journal of Research in Business and Management* 9, No. 8 (2021): 14-19; Febri Dolis Herdiani, "Analysis of Abuse and Fraud in the Legal and Illegal Online Loan Fintech Application Using the Hybrid Method." *Enrichment: Journal of Management* 11, No. 2 (2021): 486-490.

Jaya Regional Police conducted a raid on an illegal online lending office in Pantai Indah Kapuk, Jakarta, on January 26, 2022. The raid resulted in the apprehension of 99 employees, including the manager of the illegal lending operation, as well as marketers and debt collectors. These actions demonstrate the seriousness with which the authorities are addressing the issue of illegal online lending in Indonesia.<sup>2</sup>

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<sup>2</sup> Eqqi Syahputra, "Mahfud MD Ungkap Jokowi Marah Besar Gara-gara Pinjol Ilegal", *CNBC Indonesia Online*, February 11 (2022). Retrieved from <<https://www.cnbcindonesia.com/tech/20220211100041-37-314631/mahfud-md-ungkap-jokowi-marah-besar-gara-gara-pinjol-ilegal>>; Adi Wikanto, "Pinjol Ilegal Digerebek Lagi, Ini Daftar 103 Fintech Legal & Terdaftar Tahun 2022", *KONTAN*, January 11 (2022). Retrieved from <<https://keuangan.kontan.co.id/news/pinjol-ilegal-digerebek-lagi-ini-daftar-103-fintech-legal-terdaftar-tahun-2022>> It is also further highlighted that there have been numerous cases of illegal online loans that have caused significant harm to borrowers and raised concerns about consumer protection. These cases involve unlicensed online lending platforms that engage in fraudulent practices, targeting vulnerable individuals in need of quick financial assistance. One notable case involved the arrest of individuals operating an illegal online lending scheme in Jakarta. The organizers of the scheme would offer loans with exorbitant interest rates and hidden fees, trapping borrowers in a cycle of debt. The borrowers were subjected to aggressive debt collection tactics, including harassment and threats. Another prominent case highlighted the exploitation of personal data by illegal online lenders. In this instance, borrowers' personal information, including identification documents and photographs, were used to blackmail and intimidate them into repaying their loans. The lenders would threaten to expose the borrowers' personal information to their contacts or spread defamatory content unless payment was made. See also Rayyan Sugangga, and Erwin Hari Sentoso. "Perlindungan Hukum Terhadap Pengguna Pinjaman Online (Pinjol) Ilegal." *Pakuan Justice Journal of Law (PAJOUJL)* 1, No. 1 (2020): 47-61; Abdurrazaq Triansyah, et al. "Peran Otoritas Jasa Keuangan dalam Perlindungan Hukum Bagi Pengguna Pinjaman Online Ilegal (Studi Kasus Pinjol Ilegal di Yogyakarta)." *Cross-border* 5, No. 2 (2022): 1090-1104; Suwinto Johan, "Financial Technology Company's Debt Collection Method: A Legal Aspect." *Unnes Law Journal* 8, No. 1 (2022): 1-20; Nurharsya Khaer Hanafie, Andika A. Gani, and Virmansyah Virmansyah. "Illegal Financial Technology Loans Amid the Covid-19 Pandemic Problem." *Unnes Law Journal* 8, No. 2 (2022): 313-330; Rika Oktaviany, "Legal Protection Against Victims of Illegal Online Loan Users." *Journal of Creativity Student* 6, No. 1 (2021): 43-64; Jeremy Zefanya Yaka Arvante, "Dampak Permasalahan Pinjaman Online dan Perlindungan Hukum Bagi Konsumen Pinjaman Online." *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, No. 1 (2022): 73-87; Meliyana Auliya, Vilha Ester T. Makanuay, and Dian Latifiani. "Illegal Pawn Practices Amid the Covid-19 Pandemic to Survive." *Journal of Private and Commercial Law* 5, No. 1 (2021): 78-94. <https://doi.org/10.15294/jpcl.v5i1.30028>

The President's call for action, coupled with the proactive response from the Republic of Indonesia's law enforcement agencies, was prompted by the distressing experiences faced by users of illegal loan services. These individuals have been subjected to extremely harmful treatment and severe consequences at the hands of unscrupulous loan providers. Disturbingly, some illegal lenders have resorted to acts of terror against their customers, resorting to various tactics such as sharing personal photos and identification documents of borrowers with their contacts. Furthermore, these illicit loan operators have also engaged in sharing defamatory content containing the full names and cellphone numbers of individuals, suggesting the availability of sexual services. These deeply concerning incidents have played a pivotal role in motivating the President and law enforcement officials to take swift and resolute action against illegal lending practices.<sup>3</sup>

In the further context, also emphasized that online loans are financial products offered by non-bank financial institutions that continue to serve communities. They provide a convenient money lending facility integrated with information technology, allowing the entire process from application to fund disbursement to be conducted online or through SMS and/or telephone confirmation. In essence, online loans act as intermediaries, connecting lenders with borrowers.<sup>4</sup> These loans represent a financial service accessible to the

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<sup>3</sup> Anonym, "Sebar Foto & Kontak, Begini Jahatnya Pinjol Ilegal", *CNBC Indonesia*, June 8 (2021). Retrieved online from <<https://www.cnbcindonesia.com/tech/20210608093202-37-251323/sebar-foto-kontak-begini-jahatnya-pinjol-ilegal>>.

<sup>4</sup> Asmah Savitri, et al. "Pinjaman Online di Masa Pandemi Covid-19 bagi Masyarakat Aceh." *E-Mabis: Jurnal Ekonomi Manajemen dan Bisnis* 22, No. 2 (2021): 116-124. See also Raden Ani Eko Wahyuni, "Strategy of Illegal Technology Financial Management in Form of Online Loans." *Jurnal Hukum Prasada* 7, No. 1 (2020): 27-33; Febri Dolis Herdiani, "Analysis of Abuse and Fraud in the Legal and Illegal Online Loan Fintech Application Using the Hybrid Method." *Enrichment: Journal of Management* 11, No. 2 (2021): 486-490; Abdul Bashir, et al. "Raising Awareness and Knowledge of Rural Communities against

public, a testament to the advancements in technology and a financial innovation that adapts to the changing times. Online lending, including peer-to-peer lending (P2P lending), falls under the broader umbrella of financial technology (fintech), representing a noteworthy development in the financial sector.<sup>5</sup>

In the P2P lending business model itself, prospective borrowers register on the platform and submit loan applications. The platform verifies the borrower's data and displays the loan request on its marketplace. Lenders, on the other hand, register on the platform and have the opportunity to choose the loans they wish to fund. Once approved, the borrower receives the loan from the lender, adhering to the agreed-upon amount and term. This model facilitates direct lending between individuals, providing borrowers with access to financing and allowing lenders to diversify their investment portfolios.<sup>6</sup>

According to PBI (Bank Indonesia Regulation) No.19/12/PBI/2017 concerning the Implementation of Financial Technology (PBI *Fintech*) in Article 1 paragraph (1) specifies, that "*Financial Technology is the use of technology in the financial system that produces new products, services, technologies, and/or business models and may have an impact on monetary stability, financial system stability, and/or the efficiency, smoothness, security, and reliability of the payment system.*"<sup>7</sup>

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Lottery Fraud and Illegal Online Loans through Telephone and Short Message Services." *Sricommerce: Journal of Sriwijaya Community Services* 3, No. 2 (2022): 89-96.

<sup>5</sup> Arvante, "Dampak Permasalahan Pinjaman Online dan Perlindungan Hukum Bagi Konsumen Pinjaman Online."

<sup>6</sup> Windy Sonya Novita, and Moch Najib Imanullah. "Aspek Hukum Peer to Peer Lending (Identifikasi Permasalahan Hukum dan Mekanisme Penyelesaian)." *Jurnal Privat Law* 8, No. 1 (2020): 151-157. *See also* Khaq and Hidayat. "The Law Enforcement Against an Illegal Online Loans Platform."

<sup>7</sup> This regulation addresses the requirements and procedures related to the implementation of the Indonesian electronic money system. It sets guidelines for electronic money issuers, transaction limits, customer protection measures, and risk management protocols. PBI No. 19/12/PBI/2017 aims to promote the development of a

Fintech is the application and concentration of technology to improve banking and financial services, which are usually handled by startups using technology in the form of software, internet, communication, and the latest computerization with the aim of saving time on the payment process and allowing consumers to carry out financial activities.<sup>8</sup>

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secure and efficient electronic money ecosystem in Indonesia, fostering financial inclusion and supporting the growth of digital transactions in the country. The regulation provides a framework for the operation and oversight of electronic money services, ensuring their integrity and stability in the financial system. *For further discussion, also see* Raden Ajeng Astari Sekarwati, "Impelementasi Peer to Peer Lending Dikaitkan dengan Peraturan Bank Indonesia Nomor 19/12/PBI/2017 tentang Penyelenggaraan Teknologi Finansial dan Peraturan Otoritas Jasa Keuangan Nomor 77/Pojk. 01/2016 Tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi", *Thesis*. (Bandung: Universitas Pasundan, 2019); Diana Fitriana, and Dwi Seno Wijanarko. "Legal Urgence for Registration and Establishment of Legal Fintech Companies Based on Information Technology Authority Regulation Number 77/POJK. 01/2016 Concerning Money-Base Loan Services and Bank Indonesia Regulation Number 19/12/PBI/2017 Concerning the." *Journal of Law, Politic and Humanities* 3, No. 1 (2022): 214-226; Ari Rahmad Hakim BF, I. Gusti Agung Wisudawan, and Yudi Setiawan. "Pengaturan Bisnis Pinjaman Secara Online atau Fintech Menurut Hukum Positif di Indonesia." *Ganec Swara* 14, No. 1 (2020): 464-475.

- <sup>8</sup> Dewa Ayu Trisna Dewi, and Ni Ketut Supasti Darmawan. "Perlindungan Hukum Bagi Pengguna Pinjaman Online Terkait Bunga Pinjaman dan Hak-Hak Pribadi Pengguna." *Acta Comitatus* 6, No. 2 (2021): 259-274. In the further context, it is also highlighted that Fintech in Indonesia refers to the growing sector of financial technology companies operating in the country. It encompasses various digital platforms and services that leverage technology to offer innovative financial solutions. Fintech in Indonesia has experienced significant growth in recent years, driven by factors such as increasing smartphone penetration, a large unbanked population, and supportive regulatory reforms. These fintech companies provide services like digital payments, peer-to-peer lending, crowdfunding, remittances, and investment platforms. They play a crucial role in promoting financial inclusion, expanding access to financial services, and driving economic growth in Indonesia by offering convenient and affordable financial solutions to individuals and businesses. *See also* Nofie Iman, "Assessing the dynamics of fintech in Indonesia." *Investment Management and Financial Innovations* 15, No. 4 (2018): 296-303; Dona Budi Kharisma, "Urgency of Financial Technology (Fintech) Laws in Indonesia." *International Journal of Law and Management* 63, No. 3 (2020): 320-331; Ryan Randy Suryono, Indra Budi, and Betty Purwandari. "Detection of fintech P2P lending issues in Indonesia." *Heliyon* 7, No. 4 (2021): e06782; Hari Sutra Disemadi, Mochammad Abizar Yusro, and Wizna Gania Balqis. "The Problems of Consumer Protection in Fintech

Online loans are a financial product that has emerged as a result of digital technological advancements and the impact of globalization in the digital era 4.0. They serve as a financial service innovation that provides much-needed support, especially during the Covid-19 pandemic. The rapid growth of online loans in Indonesia can be attributed to the country's large population and the challenging economic conditions caused by the pandemic. Online loans offer convenience to users, including easy access to services, favorable terms, and quick processing times. They provide a swift and accessible solution for individuals seeking funds for various purposes without the need to engage with traditional financial institutions that often require stringent conditions and collateral. According to data released by the OJK, the value of online loan disbursements in Indonesia reached IDR 19.21 trillion in August 2022.<sup>9</sup> This substantial amount was disbursed to approximately 14.32 million borrowers. The distribution of loan funds is prominent in West Java, with 3.95 million entities accounting for 27.58% of the total national loan customers. DKI Jakarta follows with 3.07 million online loan customers, while East Java, Banten, and Central Java have 1.61 million, 1.33 million, and 1.16 million entities, respectively. Other regions with significant customer numbers include North Sumatra, South Sumatra, DI Yogyakarta, Lampung, and South Sulawesi. While online loans offer convenience and accessibility, borrowers should exercise caution and ensure they fully understand the terms and conditions. It is essential to borrow responsibly and consider one's financial capabilities before entering into any loan agreements. Regulatory bodies continue to

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Peer to Peer Lending Business Activities in Indonesia." *Sociological Jurisprudence Journal* 3, No. 2 (2020): 91-97.

<sup>9</sup> Savitri, et al. "Pinjaman Online di Masa Pandemi Covid-19 bagi Masyarakat Aceh."



monitor the online lending industry to protect consumer interests and promote responsible lending practices.<sup>10</sup>

If properly managed and implemented, online loans have the potential to enhance the welfare of individuals, particularly during economic recoveries.<sup>11</sup> However, as previously mentioned, illegal loans have become a significant concern for various stakeholders, including government officials at ministerial levels and the President. These illegal lending practices have inflicted significant harm on borrowers through systematic acts of intimidation and harassment, particularly targeting those who are unable to repay on time or default on their loans. In response to this issue, the Indonesian government, along with relevant parties, has introduced policies and implemented law enforcement measures to address the problems arising from illegal lending activities. These efforts aim to protect borrowers and mitigate the adverse effects caused by such practices. By taking these actions, the government intends to ensure a safe and regulated lending environment while safeguarding the interests and well-being of borrowers in the country.<sup>12</sup>

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<sup>10</sup> Cindy Mutia Annur, "Ini 10 Provinsi dengan Nasabah Pinjol Terbanyak pada Agustus 2022", *Katadata Media Networks*, October 3 (2022). Retrieved online from <<https://databoks.katadata.co.id/datapublish/2022/10/03/ini-10-provinsi-dengan-nasabah-pinjol-terbanyak-pada-agustus-2022>>. See also and compare with Poppy Amanda Putri, and Kasmanto Rinaldi. "The problems of Illegal Online Loans based on the Victim's Perspective: A Case Study." *International Journal of Advances in Social and Economics* 4, No. 3 (2022): 102-106.

<sup>11</sup> Ichwan Ichwan, and Rachmatina A. Kasri. "Why are youth intent on investing through peer to peer lending? Evidence from Indonesia." *Journal of Islamic Monetary Economics and Finance* 5, No. 4 (2019): 741-762; Stephanie Priscilla Darmawan, and Yuwono Prianto. "Fenomena Pinjol Sebagai Tambahan Modal Usaha di Lingkungan UMKM Solo." *Prosiding SERINA* 1, No. 1 (2021): 505-512; Taufika Hidayati, et al. "Sosialisasi Peran dan Risiko Pinjaman Online." *J-LAS (Journal Liaison Academia and Society)* 2, No. 4 (2022): 107-113.

<sup>12</sup> In the same context, it is also emphasized that the Indonesian government has recognized the detrimental impact of illegal lending activities on borrowers and the need to address these problems. As a result, various policies and law enforcement measures have been introduced to combat illegal lending and protect the interests of borrowers. One of the

Based on the aforementioned background, the study focuses on four key areas. Firstly, it examines the prevalence of illegal borrowing practices in Indonesia. Secondly, it investigates the impact on victims, encompassing their losses, suffering, and legal protection. Thirdly, it explores the factors that contribute to individuals becoming victims of illegal online loans. Finally, it delves into the role of law

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key objectives of these efforts is to create a safe and regulated lending environment. This involves establishing stricter regulations and guidelines for online lending platforms and providers. The government has imposed licensing requirements and enhanced supervision to ensure that these platforms operate within legal boundaries and adhere to fair lending practices. Law enforcement agencies, such as the police and financial regulatory bodies, actively investigate and prosecute illegal lending operations. Raids and crackdowns are conducted to identify and apprehend individuals or organizations involved in unlawful lending activities. By enforcing the law, the government aims to deter illegal lenders and send a strong message that such practices will not be tolerated. These actions are taken to safeguard the interests and well-being of borrowers. Illegal lending often leads to predatory practices, including exorbitant interest rates, hidden fees, and aggressive collection methods. By cracking down on illegal lenders, the government aims to protect borrowers from these unfair practices and provide them with a more secure borrowing environment. Furthermore, these measures seek to mitigate the adverse effects caused by illegal lending. Borrowers who fall victim to illegal lending schemes often experience financial distress, harassment, and other negative consequences. The government's efforts are aimed at providing legal protection and support for these borrowers, including avenues for reporting and seeking redress for any harm they have endured. In summary, the Indonesian government's policies and law enforcement measures are designed to establish a safe and regulated lending environment, protect borrowers from predatory practices, and mitigate the adverse effects caused by illegal lending activities. These actions demonstrate the government's commitment to ensuring the well-being and interests of borrowers in the country. *See also* Ralang Hartati, "Perlindungan Hukum Konsumen Nasabah Pinjaman Online Ilegal (Pinjol Ilegal)." *Otentik's: Jurnal Hukum Kenotariatan* 4, No. 2 (2022): 167-185; Raissa Aprilita Limbong, and Mohammad Fajri Mekka Putra. "Peran Notaris Pembuat Akta Koperasi dalam Pencegahan Praktik Pinjaman Online Ilegal." *The Juris* 6, No. 2 (2022): 389-396; Hani Suriyani, et al. "Perlindungan Hukum Terhadap Konsumen atas Penyalahgunaan Data Pribadi Pada Aplikasi Financial Technology Peer to Peer Lending Ilegal di Indonesia." *Padjadjaran Law Review* 9, No. 2 (2021); Angela Veronica, Tarsisius Murwadji, and Sudaryat Permana. "Peran Otoritas Jasa Keuangan dalam Penerapan Customer Due Diligence Pada Peer-To-Peer Lending." *Mimbar Keadilan* 15, No. 1 (2022): 50-67; Ratih Damayanti, "Pengaruh Asas Kerahasiaan Data dan Informasi Wajib Pajak Pada Pengampunan Pajak (Tax Amnesty) Terhadap Penegak Hukum di Indonesia". *Indonesian State Law Review (ISLRev)* 2, No. 1 (2019): 291-306. <https://doi.org/10.15294/islrev.v2i1.38446>.

enforcement and the development of systems aimed at minimizing the losses and suffering endured by victims of illegal lending practices. These four aspects align with the victimological perspective and the objectives of victimology as defined by Zvonimir-Paul Separovic, which include analyzing various aspects of the victim's problem, explaining the causes of victimization, and developing measures to alleviate human suffering. By examining these dimensions, the study aims to shed light on the phenomenon of illegal online lending, provide insights into the experiences of victims, identify contributing factors, and propose strategies to mitigate the adverse impacts of illegal lending. This research contributes to the field of victimology and supports the overarching goal of reducing human suffering.<sup>13</sup>

## 2. Method

This research takes a comprehensive approach, combining legal science and victimology, to analyze law enforcement and legal protection concerning victims of illegal online loans. The research utilizes both primary and secondary data sources. The primary data is derived from interviews conducted with law enforcement officers within the Indonesian criminal justice system, as well as victims of illegal online loans within the jurisdiction of Indonesia, who were purposively selected. Secondary data, comprising relevant literature, also contributes to the analysis. The qualitative research analysis is based on legal theory and victimology. It involves an in-depth examination and interpretation of the collected data, aiming to provide a comprehensive understanding of the phenomenon. The

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<sup>13</sup> Zvonimir Paul Separovic, *Victimology: Studies of Victims*. (Zagreb: Pravni Fakultet, 1985), p. 24.

literature study and interviews with various informants contribute to the richness and depth of the data, enabling a holistic analysis of the subject matter.

By employing a legal science and victimological approach, this study aims to shed light on the intricacies of law enforcement and legal protection surrounding victims of illegal online loans. The combination of theoretical frameworks, empirical data, and qualitative analysis offers valuable insights into the topic, paving the way for informed discussions and potential improvements in addressing the challenges posed by illegal online lending practices.

### **3. Result & Discussion**

#### **A. Online Loans Practices in Indonesia**

The existence of lending practices in Indonesia is very real and large, this is inseparable from the large potential of the business, which is driven by various factors, including the need for people to have loan funds for daily needs or used to help local micro, small, medium enterprises (MSMEs) which can be obtained with light requirements and fast processes. The practice of borrowing in Indonesia has existed since 2016 and is increasingly prevalent in 2018. The existence of lending practices in Indonesia in 2016 was marked by legal norms in the form of Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Online Lending and Borrowing. These legal norms have the intention that there is certainty, expediency, expediency as well as justice and legal protection for the community. For the basis of the legality of lending practices, Article 7 in that provision states that operators are required to apply for registration and licensing to the Financial Services Authority (OJK). The growth of loans in Indonesia until 2022 is 102. However, in the course since its existence in 2016, the Investment

Alert Task Force under the auspices of the OJK from 2018 to August 2022 has received 8,000 complaints from direct victims and from the general public and the follow-up has been recorded to have blocked illegal online lending platforms as many as 4,160 entities.<sup>1415</sup> The blocking carried out by the OJK is inseparable from the complaints of the community victims of illegal borrowing. Referred to as illegal borrowing is a financing service that provides loans online or online and is not registered with the OJK as stipulated in Article 7 of the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Online Lending and Borrowing. This illegal lending practice is very detrimental to the community because it has violated many requirements determined by the government for online lending activities.

Illegal lending exhibits several distinct characteristics, such as operating without proper registration or licensing from the OJK, utilizing SMS or WhatsApp to make loan offers, providing excessively easy loan approvals, imposing unclear and intimidating threats of terror, intimidation, and harassment against borrowers who struggle to repay, lacking complaint services, withholding administrator identities and having ambiguous office addresses, demanding access

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<sup>14</sup> OJK, "Penyelenggara Fintech Lending Berizin di OJK per 20 Januari 2023", *Data OJK*, January 31 (2023). Retrieved online from <<https://www.ojk.go.id/id/kanal/iknb/financial-technology/Pages/Penyelenggara-Fintech-Lending-Berizin-di-OJK-per-20-Januari-2023.aspx>>

<sup>15</sup> OJK, "Satgas Waspada Investasi Kembali Temukan 13 Entitas Investasi Tanpa Izin dan 71 Pinjaman Online Ilegal", *Press Release OJK*, August 25 (2022). Retrieved online from <<https://ojk.go.id/waspada-investasi/id/siaran-pers/Pages/Satgas-Waspada-Investasi-Kembali-Temukan-13-Entitas-Investasi-Tanpa-Izin-dan-71-Pinjaman-Online-Ilegal.aspx>> In the further, according to Taruli, the Sub-coordinator of The Public Complaints Service and the Communication and Information Technology Institution, there have been 21,000 complaints regarding illegal loans reported to the Communication and Information Technology sector. See KOMINFO, "Satgas Sudah Blokir 3.631 Pinjol Ilegal per 12 November 2021", *Online*, November 30 (2021). Retrieved from <<https://aptika.kominfo.go.id/2021/11/satgas-sudah-blokir-3-631-pinjol-ilegal-per-12-november-2021/>>

to extensive personal data on borrowers' devices, and failing to possess the billing certification issued by the Indonesian Joint Funding Fintech Association (AFPI).<sup>16</sup> The practice of illegal lending in Indonesia has significant adverse consequences for the community, particularly for individuals who fall victim to such practices. The distinct characteristics associated with illegal borrowing lead to customers experiencing various forms of loss and suffering, including financial losses as well as psychological and physical distress. These detrimental effects highlight the detrimental impact of engaging in illegal borrowing, emphasizing the urgent need for measures to address and prevent such practices.

Some of the major cases of illegal borrowing include those carried out by the Joint Flagship Solution (SAB) savings and loan cooperative (KSP), the Joint Owned Innovation Savings and Loan Cooperative (KSP), PT TIL, and PT Jie Chu Technology. The Cooperative of Savings and Loans (KSP) Solusi Andalan Bersama (SAB), which is located in the jurisdiction of the West Jakarta Metro Police, has 34 illegal applications, the suspects in this case are JS, DN, and SR. Suspect JS has made another 95 fictitious KSPs. One of the victims of this case is a mother who committed suicide due to not being able to pay debts to 23 illegal applications run by KSP SAB. The Jointly Owned Innovation Savings and Loans Cooperative (KSP) (IMB) involving 13 suspects, of which 10 are Indonesian citizens and the rest are foreigners. A number of evidence was secured in the form of hundreds of modem units, 17 CPUs, 8 laptop units, dozens of cellphones, to deposits of money in 7 accounts with a total value of

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<sup>16</sup> See Taofik Hidajat, "Unethical practices peer-to-peer lending in Indonesia." *Journal of Financial Crime* 27, No. 1 (2020): 274-282; Annie Myranika, "Legal protection of online loan recipients based on financial services authority." *Linguistics and Culture Review* 5, No. S4 (2021): 2390-2402; Rina Arum Prastyanti, and Arief Budiyo. "Legal Reformulation and Ethics of Fintech Lending Companies in Indonesia." *International Journal of Global Community* 6, No. 1 (2023): 53-64.

more than IDR 217 billion. PT. TII, which is domiciled in the jurisdiction of the Sleman Police, has 23 illegal loan applications and one legal application and employs 83 employees. Of the 23 illegal applications, on average, lending ranging from two million to ten million, debt collectors in this company pressure customers to pay off their loans by threatening, creating pornographic content, and disseminating customer data to those closest to them. PT. Jie Chu Technology, which is located in the jurisdiction of the North Jakarta Metro Police, based on a report with the initials M, the perpetrator made a collection before maturity and threatened with inappropriate sentences and spread personal data.<sup>17</sup>

## B. Various Aspects of the Problem of Victims of Illegal Online Loans

Victims of illegal online loans in Indonesia experience various aspects of the problem including loss and/or suffering as well as legal protection. Various aspects of the victim problem studied can be used as a basis for creating a system to reduce victim suffering. This is partly based on the opinion expressed by Shapland that to be able

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<sup>17</sup> Some cases of illegal online loans in Indonesia, *please see* Sholahuddin Al Ayubbi, "Pinjol Ilegal, Koperasi Simpan Pinjam Pun Dijadikan Kedok", *Bisnis Indonesia*, October 25 (2021). Retrieved from <<https://bisnisindonesia.id/article/pinjol-ilegal-koperasi-simpan-pinjam-pun-dijadikan-kedok>>; Arigato Dimitri Batistuta, and Chontina Siahaan. "Pemberitaan Kasus Pinjaman Online Ilegal di Media Berita Elektronik." *Jurnal Ekonomi, Sosial & Humaniora* 3, No. 4 (2021): 23-32; Intoniswan, "Kasus Pinjol Ilegal KSP IMB, Polisi Tetapkan 3 WNA dan 10 WNI Tersangka", *Niaga Asia: Media Ekonomi dan Bisnis*, November 17 (2021). Retrieved from <<https://www.niaga.asia/kasus-pinjol-ilegal-ksp-imb-polisi-tetapkan-3-wna-dan-10-wni-tersangka/>>; Ari Syahril Ramadhan, "Begini Cara Pinjol Ilegal yang Ditangkap di Yogyakarta Kelabui OJK", *Suara Jabar*, October 21 (2021). Retrieved from <<https://jabar.suara.com/read/2021/10/21/133005/begini-cara-pinjol-ilegal-yang-ditangkap-di-yogyakarta-kelabui-ojk>>; Yakub Pryatama Wijayaatmaja, "Gerebek Pinjol Ilegal Bernama Jie Chu Technology, Polisi Tetapkan 3 Tersangka", *Media Indonesia*, January 31 (2022). Retrieved from <<https://mediaindonesia.com/megapolitan/468212/gerebek-pinjol-ilegal-bernama-jie-chu-technology-polisi-tetapkan-3-tersangka>>.

to help victims well, they must be well known about the effects of victimization felt by victims.<sup>18</sup> Users of illegal lending practices are qualified as victims, because the person concerned experiences losses and/or suffering caused by an act that violates the law. Two important elements of the victim in Stanciu's view are suffering and injustice. Stanciu gives the following restrictions on casualties. "*The victim, in the broad sense, is he who suffer unjustly (from the Latin Victima, which signifies the creature offered in sacrifice to the gods). Thus, the two characteristic traits of the victim are: suffering and injustice. Suffering must be unjust and not necessary illegal*".<sup>19</sup>

As victims of criminal acts, individuals can face multiple consequences, including financial losses, psychological impact resulting from physical harm, and social repercussions. These consequences encompass the financial burdens incurred due to the crime, the psychological trauma stemming from physical injuries or harm, and the potential disruption to one's social relationships and standing in the community. It is crucial to acknowledge and address these consequences, providing support and resources to assist victims in their recovery and restoration.<sup>20</sup> Similarly, the victims of illegal loans mostly experience all three types of impacts.

Illegal borrowers face significant financial losses, primarily due to exorbitant interest rates imposed on their loans. These illegal loan interest rates can soar as high as 10 percent per day, which directly contradicts the policy set by the Financial Services Authority (OJK). The OJK mandates a maximum daily interest rate of 0.4 percent for official online loans in Indonesia, specifically for short-term loans

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<sup>18</sup> Joanna Shapland, *Victim Assistance and the Criminal Justice System: The Victim's Perspective: from Crime Policy to Victim Policy*. (London: The Macmillan Press Ltd., 1986), pp. 218-219.

<sup>19</sup> V.V. Stanciu, "Victim-Producing Civilizations and Situations", in E. Viano, *Victim and Society Part I* (Washington. D.C: Visage.Inc., 1976), p. 29.

<sup>20</sup> Joanna Shapland, Jon Willmore, and Peter Duff. *Victims in the Criminal Justice System*. (Aldershot: Gower, 1985).



lasting less than 30 days. Disturbing cases, such as one investigated by the West Java Regional Police, have unveiled instances where customers borrowed Rp. 5 million but were compelled to repay an astounding Rp. 80 million. According to data released by the Investment Alert Task Force (SWI), public losses resulting from illegal lending practices have amounted to a staggering IDR 117.5 trillion over the past ten years, including figures from 2022. These numbers highlight the severe financial impact inflicted upon individuals as a result of engaging with illegal lending.<sup>21</sup>

The psychological impact of illegal lending practices is deeply experienced by the majority of victims, stemming from the tactics employed by illegal lenders to coerce payment from customers. Disturbingly, there have been cases where the distress caused by installment collectors has led victims to take their own lives. One tragic incident occurred in Cinere at Depok City, where a 44-year-old woman, JB, who had two children, hung herself in her bathroom due to the overwhelming stress caused by outstanding bills. Police investigations revealed chat histories on her cellphone indicating multiple debts totaling Rp.12 million, while JB was unemployed. Another case in South Jakarta involved a taxi driver who hanged himself under the pressure of loan repayment obligations and persistent harassment from debt collectors affiliated with online lending platforms. The victim's suicide was preceded by a discovered suicide note. LBH Jakarta has recorded that, within a span of three years, seven individuals have tragically taken their own lives due to

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<sup>21</sup> David Oliver Purba, "Bunga Fantastis Pinjol Ilegal, Pinjam Rp 5 Juta, Sebulan Wajib Kembalikan Rp 80 Juta", *KOMPAS*, October 21 (2021). Retrieved from <<https://bandung.kompas.com/read/2021/10/21/154857178/bunga-fantastis-pinjol-ilegal-pinjam-rp-5-juta-sebulan-wajib-kembalikan-rp?page=al>>; Sulaeman, "Kerugian Masyarakat Akibat Pinjol Ilegal Tembus Rp117 Triliun", *MERDEKA*, September 16 (2022). Retrieved from <<https://www.merdeka.com/uang/kerugian-masyarakat-akibat-pinjol-ilegal-tembus-rp117-triliun.html>>

complications arising from online loans. These heartbreaking instances demonstrate the profound psychological toll inflicted on victims of illegal lending practices.<sup>22</sup>

The social ramifications of borrowing are far-reaching, as demonstrated by the case of a woman who faced unilateral dismissal from her company. She was terminated because the borrower indiscriminately charged her loan installments to all contacts, including her superiors, namely the directors of the company where she was employed. Similar circumstances were encountered by Dona, another worker who lost their job due to the actions of debt collectors associated with a loan platform. They had provided their phone number as collateral, leading to the collectors reaching out to the company's leadership. In fact, Dona, as a victim of these loans, even filed a lawsuit against President Joko Widodo along with 19 other individuals at the Central Jakarta District Court, claiming that the President failed to adequately regulate online loan companies. These instances highlight the detrimental social consequences borrowers can face, including strained professional relationships, loss of employment, and resorting to legal action against higher authorities.<sup>23</sup>

The physical repercussions are another distressing aspect experienced by victims of online lending, exemplified by TM's case.

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<sup>22</sup> See CNN Indonesia, "Ibu di Depok Bunuh Diri, Polisi Temuan Chat Tagihan Pinjol Rp12 Juta", *CNN Indonesia*, Nivember 2 (2021). Retrieved from <<https://www.cnnindonesia.com/nasional/20211102134141-12-715498/ibu-di-depok-bunuh-diri-polisi-temukan-chat-tagihan-pinjol-rp12-juta>>; Idham Nur Indrajaya, "Sejumlah Kasus Bunuh Diri Gara-gara Gagal Bayar Pinjol Ilegal di Indonesia", *Tren Asia*, September 14 (2022). Retrieved from <<https://www.trenasia.com/sejumlah-kasus-bunuh-diri-gara-gara-gagal-bayar-pinjol-ilegal-di-indonesia>>; Ihsanuddin, "Dipecat gara-gara Pinjol, Donna Gugat Jokowi ke Pengadilan", *KOMPAS*, November 16 (2021). Retrieved from <<https://megapolitan.kompas.com/read/2021/11/16/11005341/dipecat-gara-gara-pinjol-donna-gugat-jokowi-ke-pengadilan?page=all>>.

<sup>23</sup> Ezra Sihite and Vicky Fajri, "Perempuan Ini Dipecat Usai Pinjol Menagih Atasan dan Teman Kantor", *VIVA*, October 22 (2021). Retrieved from <<https://www.viva.co.id/berita/metro/1415782-perempuan-ini-dipecat-usai-pinjol-menagih-atasan-dan-teman-kantor>>.

TM found themselves trapped in the clutches of the particular online lending platform, subjected to relentless acts of intimidation that took a toll on their health. Alongside the emotional burden of facing continuous acts of terror, TM frequently experienced debilitating cramps in their hands and feet, ultimately necessitating urgent medical attention at Kawalayaan Hospital in Kota Baru Parahyangan, West Bandung Regency. These physical symptoms further highlight the detrimental impact that illegal lending practices can have on the well-being of individuals, exacerbating their already challenging circumstances and requiring medical intervention to address the resulting health decline.<sup>24</sup>

### **C. Factors Driving the Occurrence of Victims of Illegal Online Loan Practices**

The emergence of illegal lending practices in Indonesia has coincided with the growth of legal lending practices, which are established based on government regulations such as Financial Services Authority Regulation Number 77/POJK.01/2016 regarding Information Technology-Based Money Lending and Borrowing Services. According to Article 7 of this regulation, providers of such services are required to obtain registration and licensing from the Financial Services Authority (OJK). This distinction between legal and illegal lending practices lies in the fact that legal lenders are registered and licensed, while illegal lenders operate without proper authorization. Compared to traditional banking, online loans offer various consumer-friendly features, making the borrowing process more accessible and convenient. Individuals seeking a loan can

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<sup>24</sup> Agung Bakti Sarasa, "Kisah Korban Pinjol Ilegal: Dijebak SMS, Diteror hingga Masuk Rumah Sakit", *OKE News*, October 17 (2021). Retrieved from <<https://news.okezone.com/read/2021/10/17/525/2487458/kisah-korban-pinjol-ilegal-dijebak-sms-diteror-hingga-masuk-rumah-sakit>>

simply download an application or access the website of a loan service provider, provide the necessary information and documents, and within a short period, the loan amount is directly transferred to the borrower's account. This streamlined process contributes to the popularity of online loans among borrowers.<sup>25</sup>

In practice, customers tend to choose illegal loans as their preferred lending option for several reasons. One of the main considerations is the ease of obtaining these loans, despite the fact that some service providers charge exorbitant interest rates, reaching up to 10 percent per day, which is significantly higher than the maximum interest rate of 0.8 percent per day set by the Indonesian Joint Funding Fintech Association (AFPI). From a victimology perspective, illegal borrowers can be classified under Mendelsohn's typology of victims, specifically falling into the second typology, which involves victims with minor guilt and victimization resulting from their lack of awareness or knowledge. This categorization recognizes that these borrowers may have unknowingly placed themselves in a vulnerable position due to their limited understanding of the risks associated with illegal lending practices.<sup>26</sup>

In the perspective of victimology, incorporating Hans von Hentig's typology, the 10th typology known as "*The Wanton*" can be applied to individuals who become victims due to their own carelessness or lack of caution, specifically in the context of not fully understanding the risks associated with engaging with illegal lending platforms.<sup>27</sup> This typology helps us comprehend the phenomenon of victimization by highlighting the varying degrees of guilt and risk

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<sup>25</sup> Dewi and Darmawan, "Perlindungan Hukum Bagi Pengguna Pinjaman Online Terkait Bunga Pinjaman dan Hak-Hak Pribadi Pengguna", 2021.

<sup>26</sup> Benjamin Mendelsohn, "Victimology and Contemporary Society's Trends". *Journal of Victimology* 1, No. 1 (1976): 8-28

<sup>27</sup> Ann Wolbert Burgess and Cheryl Regehr, *Victimology Concepts and Theories*, (Massachusetts: Jones and Barlett Publishers, 2012), pp. 41-42.

that victims may bear. The typology of victims, as conceptualized by victimologists, serves the purpose of describing the level of culpability and vulnerability of victims in instances of victimization. It aids in categorizing and analyzing different types of victims, shedding light on the factors that contribute to their victimization.

The preference for illegal online loans goes beyond convenience and speed of access. It is driven by the intensified economic needs resulting from the Covid-19 pandemic.<sup>28</sup> Exploiting the vulnerabilities of individuals affected by the pandemic, illegal lenders take advantage of the pressing economic hardships. Additionally, aside from the vulnerable conditions of those utilizing illegal loan services, the persistence of this issue is influenced by various factors related to the legal system. According to Lawrence Meir Friedman's perspective on the legal system, the three key components of structure, substance, and culture contribute to the ineffectiveness of government policies aimed at addressing the problem of illegal loans.

These components encompass the organization and framework of the legal system, the laws and regulations in place, and the societal attitudes and beliefs surrounding lending practices. The interplay of these factors hampers the efficacy of government interventions, hindering their ability to effectively combat the prevalence of illegal lending practices. Addressing this issue requires a comprehensive approach that addresses both the economic vulnerabilities of individuals and the systemic factors within the legal framework. It involves implementing robust policies, enhancing legal structures, and fostering a culture that discourages and penalizes illegal lending, ultimately ensuring the protection of individuals and the integrity of the financial system.

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<sup>28</sup> Sugangga and Sentoso. "Perlindungan Hukum Terhadap Pengguna Pinjaman Online (Pinjol) Ilegal," 2020.

## **D. Legal Protection for Customers of Illegal Online Loans Practices**

Legal protection encompasses the rights granted and possessed by individuals as recognized by relevant laws and regulations. This extends to people who utilize both legal and illegal loans, with their entitlement to legal protection governed by the prevailing laws and regulations in Indonesia, which form part of the country's positive law. Legal protection ensures that individuals engaging in loan activities, irrespective of the legality of the loans, have certain rights and safeguards in place. These rights are established to uphold their interests, provide recourse in case of disputes or violations, and ensure fair treatment under the law. The legal framework in Indonesia serves as a basis for defining and safeguarding these rights, establishing guidelines for responsible lending practices, and offering avenues for redress in case of misconduct or breaches. It is crucial for borrowers to be aware of their legal rights and seek appropriate legal assistance when necessary to ensure their protection and seek resolution in accordance with the established legal framework.

The legal landscape surrounding lending practices in Indonesia encompasses a range of legal norms. These include fundamental laws such as the 1945 Constitution and key legislation such as the Criminal Code (KUHP) and the Civil Code. Specific laws address important aspects of lending, such as consumer protection (Law No. 8/1999) and human rights (Law No. 39/1999). The regulation of electronic transactions is covered by the Law on Electronic Information and Transactions (Law No. 11/2008, amended by Law No. 19/2016) and supported by regulations like Government Regulation No. 71/2019. Financial technology implementation is governed by Bank Indonesia Regulation No. 19/12/PBI/2017. Consumer protection in the financial services sector is ensured by Regulation No. 1/POJK.07/2013, while online lending and borrowing activities are regulated by Financial

Services Authority Regulation No. 77/POJK.01/2016. Dispute resolution mechanisms are outlined in Financial Services Authority Regulation No. 61/POJK.07/2020. Governance and risk management of technology-based lending services are addressed in Circular Letter No. 18/SEOJK.02/2017. Digital financial innovation falls under Financial Services Authority Regulation No. 13/POJK.02/2018. Electronic money is regulated by Bank Indonesia Regulation No. 18/17/PBI/2016. Lastly, Government Regulation No. 5 of 2023 focuses on criminal investigations in the financial services sector. Together, these legal norms form a comprehensive framework to govern lending practices, protect consumers, regulate electronic transactions, and ensure the effective functioning of the financial services sector in Indonesia.

The 1945 Constitution provides comprehensive legal protection for each person formulated in Article 28G paragraph (1) which formulates that "Everyone has the right to the protection of personal self, family, honor, dignity, and property under his control, as well as the right to a sense of security and protection from the threat of fear to do or not do something that is a human right".

In the criminal law, legal protection is contained in the Criminal Code (KUHP) Article 335 Paragraph (1). In its formulation, it states that: Threatened with imprisonment for a maximum of one year or a maximum fine of four thousand five hundred rupiah; 1. whoever unlawfully compels others to do, not do or allow something, by using violence, any other act or unpleasant treatment, or by using threats of violence, any other act or unpleasant treatment, either against the person himself or others; 2. whoever compels others to do, does not do or allow something with the threat of pollution or defamation is written.

The provisions formulated in this Criminal Code reflect the right for everyone not to be treated in various ways that result in the person

experiencing unpleasant conditions. Furthermore, article 368 paragraph (1) of the Criminal Code formulates "Whoever with the intention to benefit himself or others unlawfully, forces a person by force or threat of violence to give something, which is wholly or partly the property of that person or another person, or in order to make debts or write off receivables, is threatened with criminal extortion. imprisonment for at most nine years. In this case it reflects the right for a person not to become a victim of blackmail. This is in practice done by illegal borrowers against customers who have defaulted.

The realm of civil law also provides legal protection as enshrined in the Civil Code. Article 1131 of the Civil Code is: All movable and immovable goods belonging to the debtor, both existing and future, become collateral for the debtor's individual engagements. Article 1320 of the Civil Code, in order for a valid agreement to occur, it is necessary to fulfill four conditions: 1. their binding agreement; 2. the ability to make an engagement; 3. a particular subject matter; 4. a cause that is not forbidden. Article 1338 of the Civil Code formulates that all consents made in accordance with the law apply as laws to those who make them. The agreement is irrevocable other than by agreement of both parties, or for reasons prescribed by law. Consent must be executed in good faith.

Law Number 8 of 1999 concerning Consumer Protection (Law No.8/1999) provides legal protection through formulation Article 1 paragraph (1). These provisions formulate Consumer protection is any effort that guarantees legal certainty to provide protection to consumers. Followed by Article 4 which formulates consumer rights. Consumer things include:

1. The right to comfort, security, and safety in consuming goods and / or services;



2. The right to choose goods and/or services and obtain such goods and/or services in accordance with the exchange rate and the conditions and guarantees promised;
3. The right to true, clear, and honest information regarding the condition and guarantee of goods and / or services;
4. The right to be heard and complained about the goods and/or services used;
5. The right to appropriate advocacy, protection, and resolution of consumer protection disputes;
6. The right to receive coaching and consumer education;
7. The right to be treated or served properly and honestly and non-discriminatory;
8. The right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or are not as they should be;
9. Rights stipulated in the provisions of other laws and regulations.

In addition to the provisions of Article 1 paragraph (1) mentioned above, it is also formulated in Article 29 paragraphs (1 to 4).

- 1) Article 29 paragraph (1) formulates the Government responsible for fostering the implementation of consumer protection which guarantees the acquisition of consumer and business actors' rights and the implementation of consumer and business actors' obligations;
- 2) Article 29 paragraph (2) Guidance by the government on the implementation of consumer protection as referred to in paragraph (1) is carried out n by the relevant Minister and/or technical minister;
- 3) Article 29 paragraph (3) The Minister as referred to in paragraph (2) coordinates the implementation of consumer protection;

- 4) Article 29 paragraph (4) Guidance on the implementation of consumer protection as referred to in paragraph (2) includes efforts to create a business climate and the growth of a healthy relationship between business actors and consumers; the development of self-help consumer protection agencies; improving the quality of human resources and increasing research and development activities in the field of consumer protection.
- 5) Article 29 paragraph (5) formulates the existence of a Government Regulation for further criticism of the existence of Law Number 8 of 1999 concerning Consumer Protection.

Legal protection for consumers is also regulated in the provisions of Article 45 paragraph (1) which states that "Any consumer who is harmed can sue the business actor through the Institution in charge of resolving disputes between consumers and business actors or through justice in the general judicial environment.

Furthermore, Article 45 Paragraph (3) provides that "The settlement of disputes outside the court as referred to in paragraph (2) does not eliminate criminal liability as stipulated in the Law. Consumers who are harmed or can be categorized as victims can get compensation from business actors at most Rp. 200,000,000.00 (two hundred million rupiah) as stipulated in Article 60 paragraph (2).

Law Number 39 of 1999 concerning Human Rights also provides legal protection as contained in the formulation of Article 29 paragraph (1) which states that "Everyone has the right to the protection of personal self, family, honor, dignity, and property rights. In some cases of illegal borrowing, many victims get terror and humiliation from the borrower organizers not only to the borrower but also to his family and friends and co-workers and even the leaders of the places where they work.

Article 30 stated that "Everyone has the right to a sense of security and tranquility and protection against the threat of fear of

doing or not doing something". *Pinjol* (online loan) victims experience a severe disruption to their sense of security and peace, to the extent that they live in constant fear due to the widespread threats perpetrated by the lenders.

In the further context, Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (Law No. 19/2016) provides very much legal protection for victims from criminal acts committed by borrowers.

The articles in question are Article 26 paragraph (1), Article 26 Paragraph (2), Article 27, Article 29, Article 32 paragraph (2) and paragraph (3), Article 38 paragraph (1), Article 43 paragraph (1), Article 45. The aforementioned articles give rise to the right of the public to obtain security about their personal data, the right to a sense of security and comfort against threats of violence, the right to security over ownership of Electronic Information and/or Electronic Documents that are confidential, the right for victims to file a lawsuit for losses and the right to make complaints about violations of rights committed by certain parties. However, in the threat of criminal sanctions, it has not been in favor of the victim, because there is no such sanction as restitution and/or restitution, there is imprisonment and fines only. This can be observed in the formulation of Article 45.

Article 45 paragraph (3): "Any Person who intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have the content of contempt and/or defamation as referred to in Article 27 paragraph (3) shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp750,000,000, 00 (seven hundred and fifty million rupiah)."

Article 45B: "Any Person who intentionally and without the right to transmit Electronic Information and/or Electronic Documents containing threats of violence or frightening personally directed as referred to in Article 29 shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp750,000,000.00 (seven hundred and fifty million rupiah)."

Government Regulation Number 71 of 2019 Amendments to Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (PP No.71/2019) also provides the right for the public to get protection for the security of personal data. Related to online lending practices, the user community must be protected by their personal data that has been given to online loan platforms. This is as contained in Article 14 paragraphs (3) and (4). Article 14 paragraph (3) formulates that the Processing of Personal Data must comply with the provision of valid consent from the owner of the Personal Data for 1 (one) or several specific purposes that have been conveyed to the owner of the Personal Data. Furthermore, in paragraph (4) it is stated that in addition to the consent referred to in paragraph (3), the processing of Personal Data must comply with the necessary conditions to:

- a) fulfillment of the obligations of the agreement in the event that the owner of the Personal Data is a party or to fulfill the request of the owner of the Personal Data at the time of entering into the agreement;
- b) fulfillment of the legal obligations of the controller of Personal Data in accordance with the provisions of laws and regulations;
- c) fulfillment of the protection of the legitimate interests of the owner of the Personal Data;
- d) the exercise of the controlling authority of Personal Data based on the provisions of laws and regulations;

- e) fulfillment of the obligations of the controller of Personal Data in public services in the public interest; and/or
- f) fulfillment of other legitimate interests of the controller of the Personal Data and/or the owner of the Personal Data.

Based on the formulation of the article mentioned above, the recipient of personal data from online loan service users (customers) must not freely use customer personal data for outside interests as formulated.

Protection of personal data as stipulated in Government Regulation Number 71 of 2019 Amendments to Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions in more detail regulates the guarantee of privacy and/or protection of personal data as stipulated in Article 29. The article states that the operator of the electronic system is obliged to convey information to the user of the electronic system at least regarding: the identity of the Electronic System Operator; transacted objects; the airworthiness or security of the Electronic System; procedures for using the device; terms of the contract; the procedure of reaching an agreement; privacy guarantees and/or protection of Personal Data; and the complaint center phone number.

These provisions are further strengthened as stipulated in Article 39 paragraph (1), among which for electronic agent operators, they must carry out consumer protection in accordance with the provisions of laws and regulations. Other legal protections are regulated in Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Financial Technology Implementation. Among other things, it is formulated in Article 8 paragraph (1) which states that financial technology operators that have been registered with Bank Indonesia are required to apply consumer protection principles in accordance with the products, services, technology, and/or business models carried out

and maintain the confidentiality of consumer data and/or information including transaction data and/or information.<sup>29</sup>

Furthermore, there are other legal norms as legal protection for online loan service users in the form of, POJK No.77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. Several articles indicate the existence of rights for service users which can also be interpreted as legal protection. These articles include Article 29 specifies, that: "*The Operator shall apply the basic principles of User protection, namely: transparency; fair treatment; Reliability; confidentiality and security of data; and User dispute resolution in a simple, fast, and affordable manner.*" Article 30 Paragraph (1): "*The Operator shall provide and/or convey the latest information regarding Information Technology-Based Money Lending and Borrowing Services that is accurate, honest, clear, and not misleading.*" Article 31 Paragraph (1): "The Operator shall submit information to the User about the receipt, delay, or rejection of the application for Information Technology-Based Money Lending and Borrowing Services." Article 32 Paragraph (1): "The Organizer shall use simple terms, phrases, and/or sentences in Indonesian that are easy to read and understand by the User in each Electronic Document." Article 36 Paragraph (1): "In the event that the Organizer uses the standard agreement, the standard agreement must be drawn up in accordance with the provisions of the laws and regulations."

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<sup>29</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. Concerning to the consumer protection on online loans, *please also see and compare with* Xiaolun Wang, et al. "Why do borrowers default on online loans? An inquiry of their psychology mechanism." *Internet Research* 30, No. 4 (2020): 1203-1228; Edy Santoso, "Consumer Protection for Online Banking Scams Via E-Mail in Malaysia". *UUM Journal of Legal Studies* 3 (December 1, 2012): 1-22. <https://e-journal.uum.edu.my/index.php/uumjls/article/view/4547>; Fithriatus Shalihah, and Roos Niza Mohd Shariff. "Identifying Barriers to Data Protection and Investor Privacy in Equity Crowdfunding: Experiences from Indonesia and Malaysia". *UUM Journal of Legal Studies* 13, No. 2 (2022): 215-42. <https://doi.org/10.32890/uumjls2022.13.2.9>.

Article 36 Paragraph (2): "The standard agreement as referred to in paragraph (1) used by the Operator is prohibited from: stating the transfer of responsibility or obligation of the Operator to the User; and declare that the User is subject to new, additional, advanced and/or changes regulations made unilaterally by the Operator within the period the User avails the service." Article 37 "The Organizer shall be responsible for user losses arising from errors and/or omissions, the Board of Directors, and/or employees of the Operator." Article 39 paragraph (1) and (2): "The Operator is prohibited in any way, from providing data and/or information about the User to third parties, unless the User gives consent electronically; and/or required by the provisions of laws and regulations.

Legal protection is also regulated in Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector (POJK Consumer Protection) which in Article 2 formulates that Consumer Protection applies the principles of: transparency, fair treatment, reliability, confidentiality and security of consumer data/information, and handling complaints and resolving consumer disputes in a simple, fast, and affordable manner.

## **E. Law Enforcement against Illegal Online Loans Practices**

The emergence of illegal online loans has resulted in a significant number of victims suffering various consequences. One notable form of loss and suffering experienced by victims is the exorbitant interest rates, which can reach up to 10 percent per day, surpassing the maximum limit of 0.4 percent per day set by Indonesian laws and regulations for multipurpose and short-term loans. Furthermore, victims also endure psychological and physical distress. This situation has compelled the Indonesian government to demonstrate a strong

commitment in addressing the issue, leading the President and related Ministers to take concrete steps towards resolution.

Several institutions are involved in addressing the issue of illegal borrowing in Indonesia, including the Indonesian National Police, the Consumer Dispute Resolution Agency (BPSK), the Financial Services Authority (OJK), the Investment Alert Task Force (SWI), and the Indonesian Joint Funding Fintech Association (AFPI). As stipulated in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, particularly in Article 13, the Indonesian National Police is entrusted with the responsibility of maintaining public security and order, enforcing the law, and providing protection and services to the community. In response to the presence of illegal loans, concrete measures have been implemented by the Indonesian National Police in alignment with their core mandate of law enforcement.

The Criminal Investigation Agency of the Police Headquarters, operating under the National Police, plays an active role in addressing the issue of illegal loans, which pose significant troubles and harm to the community. In June 2021, the Head of the Police CID took a concrete step by issuing a telegram instructing all regional police across the country to take action against illegal loans. As of October 2021, the National Police has received 370 police reports related to illegal borrowing crimes. Out of these cases, 91 have been successfully resolved, while 278 are currently under investigation at various stages.

Apart from the Indonesian National Police, there is another institution competent in handling borrowing issues within specific limits, known as the Consumer Dispute Resolution Agency (BPSK). The authority of BPSK is defined in Article 1 number 11 of the Consumer Protection Law (UUPK), which designates BPSK as the body responsible for addressing and resolving disputes between business actors and consumers. BPSK aims to resolve consumer



disputes through consensual deliberation, promoting alternative dispute resolution outside the court system. Normatively, consumers possess the authority to impose administrative sanctions, including the determination of compensation up to Rp. 200,000,000. The procedures for providing compensation are regulated by applicable laws and regulations. Additionally, business licenses can be revoked from those business actors who have caused proven losses to consumers during their business operations.

In the context of handling online loan cases, the Consumer Dispute Resolution Agency (BPSK) receives complaints from the community, which can be resolved amicably, while some cases escalate to the court stage. This situation is evident in BPSK West Java, where they have received 863 complaints, with online loan cases dominating the statistics. However, the effectiveness of BPSK in dealing with problematic lending practices is limited, as the decisions made are predominantly conciliation, mediation, and arbitration decisions. From a juridical perspective, the regulations concerning BPSK can be considered inadequate, resulting in the ineffective role of BPSK in resolving consumer disputes in Indonesia. While the Consumer Protection Law (UUPK) declares BPSK's decisions to have final and binding legal force, Permerindag Number 06/MDAG/PER/2017 states that BPSK's decisions can be subject to legal remedies through the court of first instance. This situation creates legal uncertainty and ambiguity.<sup>30</sup>

Another institution that is authorized to handle legal and illegal loans is the Financial Services Authority (OJK). The legal basis of OJK is Law Number 21 of 2011 concerning Financial Services Authority. The authority of the OJK in handling loans is formulated in the

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<sup>30</sup> Rida Ista Sitepu, and Hana Muhamad. "Efektifitas Badan Penyelesaian Sengketa Konsumen (BPSK) Sebagai Lembaga Penyelesaian Sengketa Konsumen di Indonesia." *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 3, No. 2 (2021): 7-14.

provisions of Article 6 of the OJK Law. This authority is further clarified through the formulation of Article 9 letter c, among others, stating the supervision, examination, investigation, consumer protection, and other actions against Financial Service Institutions, actors, and/or supporting financial services activities as referred to in laws and regulations in the financial services sector.

With this authority to face illegal lending practices, OJK formed an Investment Alert Task Force through the Decree of the OJK Board of Commissioners Number 2 / KDK.02 / 2020 dated March 3, 2020 concerning the Establishment of a Task Force for Handling Alleged Unlawful Actions in the Field of Community Fund Collection and Investment Management (Investment Alert Task Force). Until now, OJK's performance in overcoming illegal loans has concrete steps in the form of closing as many as 4,160 illegal loans until December 2022 based on Information Technology-Based Joint Funding Service Statistics, there are 102 borrowers registered with the OJK with details of 95 Conventional Organizers and 7 Sharia Organizers.<sup>31</sup>

In accordance with the authority of the Investment Alert Task Force (SWI) also plays a role in regulating Legal Platforms that violate the rules and illegal loans. SWI was formed based on the Decree of the OJK Board of Commissioners Number 2 / KDK.02 / 2020 dated March 3, 2020 concerning the Establishment of a Task Force for Handling Alleged Unlawful Actions in the Field of Community Fund Collection and Investment Management (Investment Alert Task Force). The Investment Alert Task Force is a coordination forum between regulators, supervisory agencies, law enforcement agencies and other related parties in terms of handling alleged unlawful acts in the field of collecting public funds and managing investments. This

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<sup>31</sup> OJK. "Statistik Fintech Lending Periode Desember 2022", *Statistic Fintech Lending December 2022*. Retrieved from < <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Pages/Statistik-Fintech-Lending-Periode-Desember-2022.aspx>>

task force was formed by the OJK with the aim of improving coordination between ministries/agencies in the context of preventing and handling alleged unlawful acts in the field of collecting public funds and managing investments.

The Investment Alert Task Force (SWI) consists of 12 Ministries/Institutions, with the Financial Services Authority (OJK) serving as the Chairman and Secretariat. The other participating agencies include the Indonesian National Police, Indonesian Prosecutor's Office, Ministry of Trade, Ministry of Cooperatives and SMEs, Ministry of Communication and Informatics, Ministry of Religion, Ministry of Education, Culture, Research and Technology, Ministry of Home Affairs, Bank Indonesia, Center for Financial Transaction Reporting and Analysis, and the Ministry of Investment/Investment Coordinating Board.

In terms of addressing illegal loans, the SWI has achieved notable performance between 2018 and October 2021. During this period, the Investment Alert Task Force successfully closed 3,631 illegal loan cases. In 2021 alone, they closed down 116 illegal lending entities. This number increased in 2022, with 698 illegal loans being halted to prevent potential harm to the community. The SWI promptly blocked the websites, applications, and platforms associated with these illegal entities. The SWI reports the outcomes of these actions to the Police CID for further action in accordance with relevant regulations.<sup>32</sup>

The Indonesian Joint Funding Fintech Association (AFPI) is an organization that represents Fintech Peer to Peer (P2P) Lending and Online Fintech Funding business actors in Indonesia. AFPI has been officially appointed by the Financial Services Authority (OJK) as the

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<sup>32</sup> Abdul Malik, "SWI Stop 895 Investasi, Pinjol dan Gadai Ilegal di 2022, Ini Modus Barunya", *Bareksa*, January 2 (2023). Retrieved online from <<https://www.bareksa.com/berita/reksa-dana/2023-01-02/swi-stop-895-investasi-pinjol-dan-gadai-ilegal-di-2022-ini-modus-barunya>>

association responsible for information technology-based money lending and borrowing service providers in Indonesia, as stated in letter No. S-5/D.05/2019.

In terms of countering illegal loans, AFPI primarily focuses on protecting its members, who are Online Funding Fintech organizers in Indonesia, from illegal activities conducted by unauthorized loan operators. These criminal acts often involve the replication of legal loan operators. Perpetrators create fake applications, websites, Whatsapp accounts, and social media accounts (such as Instagram and Facebook) by using the names, logos, and brands of licensed online loan platform operators. They make false offers to the public, pretending to be licensed online lenders, using forged documents and/or attributes.

Regarding the replication crimes, AFPI has reported 28 cases of alleged replication by illegal loan operators to the Police Headquarters. The report was filed based on Article 35 in conjunction with Article 51 paragraph (1) of the Law Number 19 of 2016 concerning Amendments to the Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 29 in conjunction with Article 45B paragraph 2 of the ITE Law, and/or Article 100 of Law Number 20 of 2016 concerning Brands and Geographical Indications. The perpetrators of these crimes face a maximum imprisonment of 12 years and/or a fine of up to twelve billion Rupiah.<sup>33</sup>

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<sup>33</sup> APFI, "AFPI Laporkan Pinjol Ilegal ke Mabes Polri Atas Dugaan Replikasi 28 Fintech Lending Berizin", *Online*, September 26 (2022). Retrieved from <<https://afpi.or.id/articles/detail/afpi-laporkan-pinjol-ilegal-ke-mabes-polri-atas-dugaan-replikasi-28-fintech-lending-berizin>>

## F. Enforcement of Illegal Online Loans through the Criminal Justice System in Indonesia and Legal Protection for Victims

The criminal justice system is closely related to the criminal legislation itself, both substantive criminal law and criminal procedural law enforcement. It says so because the criminal legislation is essentially an in *abstracto* law enforcement that will be embodied in the enforcement of the criminal law in *concreto*. The Criminal System in Indonesia consists of the Police Sub-System, the Prosecutor's Office, the Courts and the Penitentiary.<sup>34</sup>

The police as a spearhead of the Criminal Justice System in Indonesia in their function of enforcing the law against illegal loans begins with the process of investigation, investigator an. The Criminal Procedure Code formulates the definition of an investigator which states, an investigator is an official of the state police of the Republic of Indonesia or a certain civil servant official who is given special authority by law to conduct an investigation. Meanwhile, investigation means a series of actions carried out by investigating officials in accordance with the manner provided for in the law to search and collect evidence, and with that evidence makes or becomes clear of the criminal act that occurred while finding the perpetrator of the criminal act.

On the basis of the main duties of the National Police as formulated in Article 13 of Law No. 2 of 2002 concerning the Indonesian National Police in terms of law enforcement, it has various authorities as contained in Article 16 paragraph (1), including making arrests, detentions, searches, and seizures to submit case files to the

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<sup>34</sup> Edi Setiadi, *Sistem Peradilan Pidana Terpadu dan Sistem Penegakan Hukum di Indonesia*. (Jakarta: Prenada Media, 2017).

public prosecutor and holding other acts according to responsible law.

In response to the suspects involved in criminal acts associated with the practice of illegal online lending, the National Police has implemented several policies and actions that fall within the quasi-framework of law enforcement. According to data from the National Police as of October 15, 2021, a total of 371 reports related to illegal loans were received from various locations across Indonesia. Among these reports, 91 cases have been investigated and revealed, while approximately 8 cases are currently under examination in the prosecutor's office and awaiting trial.<sup>35</sup>

To address the suspects involved in criminal acts related to illegal lending practices, the National Police has invoked specific articles and laws and regulations. One such provision is Article 27, paragraph (4) of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). This particular article states that "Anyone who intentionally, without right, distributes, transmits, and/or makes accessible electronic information and/or electronic documents containing extortion and/or defamation shall be liable." The threat of punishment as formulated in Article 45 paragraph (1) is to be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah). Another article that is imposed for criminal acts that contain elements of disseminating personal data is Article 32 of the ITE Law which contains 3 (three) paragraphs. Subsection (1). Any Person intentionally and without rights or against the law in any way alters, adds, subtracts, transmits, damages, removes, transfers, hides any

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<sup>35</sup> Pusiknas Bareskrim Polri, "Polri Ungkap Ratusan Laporan Penagih Pinjol Ancam Masyarakat", *Online*, October 15 (2021). Retrieved from <[https://pusiknas.polri.go.id/detail\\_artikel/polri\\_ungkap\\_ratusan\\_laporan\\_penagih\\_pinjol\\_ancam\\_masyarakat](https://pusiknas.polri.go.id/detail_artikel/polri_ungkap_ratusan_laporan_penagih_pinjol_ancam_masyarakat)>

Electronic Information and/or Electronic Document belonging to another Person or public property; Paragraph (2) "Any Person intentionally and without rights or against the law in any way transfers or transfers Electronic Information and/or Electronic Documents to the Electronic System of another Person who is not entitled" and Paragraph (3) Against actions as referred to in paragraph (1) that result in the disclosure of an Electronic Information and/or Electronic Document that is confidential becoming accessible to the public by the integrity of the data is not as it should be. In addition, it is also stipulated by Article 48 of Law No.11 of 2008 jo Law No.19 of 2016 concerning Electronic Information and Transactions related to the threat of criminal sanctions. The article contains three (3) paragraphs with details of paragraph (1): Everyone who fulfills the elements as referred to in Article 32 paragraph (1) shall be sentenced to a maximum imprisonment of 8 (eight) years and/or a maximum fine of Rp2,000,000,000.00 (two billion rupiah); paragraph (2). "Everyone who fulfills the elements as referred to in Article 32 paragraph (2) shall be sentenced to a maximum imprisonment of 9 (nine) years and/or a maximum fine of Rp3,000,000,000.00 (three billion rupiah)", and paragraph (3). " Everyone who fulfills the elements as referred to in Article 32 paragraph (3) shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp5,000,000,000.00 (five billion rupiah)".

The provisions in the Criminal Code are also applied, namely Article 368 concerning extortion and Article 335 paragraph (1) concerning unpleasant acts. Some cases have used Article 62 paragraph (1) Jo Article 8 paragraph (1) letter f of R.I. Law No.8 of 1999 concerning The Protection of Consumers. Article 8 (1) letter F formulates that business actors are prohibited from producing and/or trading goods and/or services that are not in accordance with the promises stated in the label, etiquette, advertisement or sales

promotion of these goods and/or services. Its article 62 relates to the threat of its criminal sanctions.

In addition, Article 115 Jo Article 65 paragraph (2) of R.I. Law No.7 of 2014 concerning Trade is also used. Article 115 of the Trade Law formulates that "Any Business Actor who trades Goods and/or Services using an electronic system that is not in accordance with data and/or information as referred to in Article 65 paragraph (2) shall be punished with a maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp. 12,000,000,000.00 (twelve billion rupiah)." Article 65 paragraph (1) formulates Article 65 (1) Every Business Actor who trades Goods and/or Services using an electronic system is required to provide complete and correct data and/or information. Article 65 Paragraph (2) formulates that "Every Business Actor is prohibited from trading Goods and/or Services using electronic systems that are not in accordance with the data and/or information as referred to in paragraph (1).

The sub-system of prosecutors in the series of criminal justice systems the public prosecutor in accordance with the provisions of the Criminal Procedure Code has the task of "Prosecuting anyone charged with a criminal act within his or her jurisdiction by transferring cases to a court authorized to prosecute". The criminal offences committed by illegal loans based on two district court rulings seem to have charged them not with existing articles UUIITE, but with the Consumer Protection Law and R.I. Law No.7 of 2014 concerning Trade as well as articles collected in Book I of the Criminal Code. This can be observed in case No. 525/Pid. sus/2020/PN Jkt.Utr on behalf of defendant Li Zhaoyang and Judgment No. 526/Pid. Sus/2020/PN Jkt.Utr on behalf of defendant Feng Qian alias Olivia.

Prosecutor's indictment The prosecutor's indictment in case Number 525/Pid.Sus/2020/PN Jkt.Utr on behalf of defendant Li Zhao includes Article 62 paragraph (1) Jo Article 8 paragraph (1) letter f of



R.I. Law No.8 of 1999 Concerning Consumer Protection Jo Article 55 paragraph (1) 1 of the Criminal Code ; Porigin 115 Jo Article 65 paragraph (2) of R.I. Law No.7 of 2014 concerning Jo Trade Article 55 paragraph (1) 1 of the Criminal Code; Article 106 Jo Article 24 paragraph (1) of R.I. Law No.7 of 2014 concerning Jo Trade Article 55 paragraph (1) 1 of the Criminal Code.

In case No. 525/Pid.sus/2020/PN Jkt.Utr on behalf of the accused Li Zhaoyang , on the basis of the prosecution and indictment of the prosecutor after going through the process of prosecution in the sid a ng court by hearing the testimony of the witnesses-action and the Defendant and paying attention to the evidence of letters and evidence submitted at the trial, the judge made a decision in the form of imprisonment for with imprisonment for 9 (nine) months and 15 (fifteen) days. The legal basis contained in the judge's decision and used as the basis for the decision is Article 62 paragraph (1) Jo Article 8 paragraph (1) letter f of R.I. Law No.8 of 1999 concerning Consumer Protection Jo Article 55 paragraph (1) 1 of the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Code and other regulations related to the case. For the verdict of PN North Jakarta Number 526/Pid.Sus/2020/PN Jkt.Utr, Feng Qian in the same case the defendant was also sentenced to 9 months and 15 days in prison. As for the legal basis used by the judge, it has similarities with case No. 525/Pid.sus/2020/PN Jkt.Utr on behalf of the defendant Li Zhaoyang, namely Article 62 paragraph (1) Jo Article 8 paragraph (1) letter f of R.I. Law No.8 of 1999 concerning Consumer Protection Jo Article 55 paragraph (1) 1 of the Criminal Code.

Based on the two rulings mentioned above, it does not reflect the existence of legal protection for the victims, even though the victims of illegal loans have experienced four impacts at once in the form of financial loos, psychological effects due to physical effects, and social effects. Legal protection here is intended as all rights owned and/or

granted by/to victims based on a law. In the judgment the type and duration of the sentence imposed is far from the maximum provision. In the provisions of Article 8 of the Law No.8 of 1999 concerning Consumer Protection, it is punishable by a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). This is indeed inseparable from the indictments and demands of the public prosecutor who only demanded imprisonment for 1 year.

In addition, the public prosecutor also does not use UUIITE, in fact, through the provisions of Article 29 of the ITE Law, it is used for the basis of indictments and charges. The article formulates "Any Person intentionally and without the right to transmit Electronic Information and/or Electronic Documents containing personally directed threats of violence or frightening. The sanctions that are possible for this article are imprisonment for a maximum of 4 years and/or a maximum fine of Rp750,000,000.00 (seven hundred and fifty million rupiah).

The lightness of the judge's ruling also does not reflect a sense of justice for the victim and the wider community. In the perspective of theory, the purpose of deterrence does not fulfill the function of punishment, namely *special prevention* or *general prevention*. This can be a factor in the emergence of other illegal loans because of the lightness of the criminal sentence imposed if exposed to criminal law enforcement.

In the perspective of Lawrence Meir Friedman's legal system theory, legal substances that can be used as the basis for criminal law enforcement, especially the types of sanctions, there are no types of sanctions that significantly reduce suffering for victims in the form of restitution and/or compensation.

Restitution, as defined in Webster's World University Dictionary, refers to the act of restoring something to its original

owner, making up for a loss, or providing indemnification. It involves reparation or returning something to its original shape, particularly applicable to elastic bodies. Synonyms for restitution include compensation, damages, reparation, and return.<sup>36</sup> In the context of victim compensation, Austern's opinion highlights that restitution can involve direct monetary awards to victims. When a person is convicted of a crime, they may be required to compensate the victim in order to restore them to their pre-crime condition or make them whole. Restitution can take various forms, encompassing both monetary compensation and provision of services to the victim.<sup>37</sup>

Furthermore, it is also emphasized that victims have 12 rights, namely: (1) *Right to Due Process, Fairness, Dignity, Respect, and Privacy*; (2) *Right to Notice*; (3) *Right to be Present*; (4) *Right to be Heard*; (5) *Right to Reasonable Protection*; (6) *Right to Restitution*; (7) *Right to Information and Referral*; (8) *Right to Apply for Victim Compensation*; (9) *Right to Proceedings Free From Unreasonable Delay*; (10) *Right to Confer*; (11) *Right to a Copy of the Presentence Report and Transcripts*; (12) *Right to Standing and Remedies*.<sup>38</sup> These rights aim to ensure that victims are treated with fairness, respect, and dignity throughout the criminal justice process. They include access to information, participation in proceedings, protection, and the ability to seek compensation and remedies for the harm they have suffered.

This restitution is actually very beneficial for victims as stated by Doerner & Lab that: "In general, restitution has enjoyed a warm reception from victims, offenders, the general public and personal

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<sup>36</sup> Webster, *World University Dictionary*, (Washington D. C: Publishers Company Inc. 1985), pp. 841.

<sup>37</sup> David Oysters, *The Crime Victim's Handbook Your Right and Role in the Criminal Justice System*, (Canada: Viking Penguin Inc, 1987.), p. 155.

<sup>38</sup> Mag Garvin, et.al., "Fundamentals of Victims' Rights: An Overview of the Legal Definition of Crime "Victim" in the United States", *Victim Law Bulletin*, November (2021): 1-14. <https://law.lclark.edu/live/files/11824-fundamentals-of-victims-rights-an-overview-of-the>

system.<sup>39</sup> This is reinforced by Barnet and Mc. Donald's contention that restitution can be a means of helping victims on the grounds that so far victims have only been aggrieved when the criminal justice system is operated.<sup>40</sup>

Indeed, in positive law in Indonesia, restitution sanctions have been applied in several laws and regulations which are normalized in several laws and government regulations, in this case there are 6 laws and 4 government regulations. Law No. 26/2000 on Human Rights Courts in Article 35, Law No. 15 of 2003 on Terrorist Crimes in Articles 36-42, Law No. 13 of 2003 on Witness and Victim Protection Institutions *jo.* Law No. 31/2014 on the revision of Law No. 13 of 2006 stated in Article 48-50, Law No. 21/2007 on the Elimination of Trafficking in Persons under Article 7A, Law No. 35 of 2014 on the Revision of the Child Protection Law (Law No. 23/2002) in Article 71 D, Law No. 11/2012 on the Juvenile Criminal Justice System, in Article 10. Apart from being in the form of law, there is PP No. 3/2002 restitution and compensation for victims of human rights violations. Then there is also PP No. 44/2008 and PP No. 7/2018 which are restitution and compensation regulations as a manifestation of the Witness and Victim Protection Law. And PP 43/2017 for restitution for children as victims.

In addition to restitution, compensation also deserves to be one of the alternatives given to victims of illegal loans in need in order to reduce the suffering of victims. *Black's Law Dictionary* formulates: "*Compensation means payment of damages, or any other act that court orders to be done by a person who has caused injury to another and must*

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<sup>39</sup> William G. Doerner and Steven P. Lab, *Victimology* (Massachusetts, USA: Anderson Publishing, 2012).

<sup>40</sup> Andrew Karmen, *Crime Victims*. (Pacific Grove, CA: Brooks/Cole Publishing Company, 1984); Andrew Karmen, *Crime Victims: An Introduction to Victimology*. (Boston: MA: Cengage Learning, 2015).

*therefore make the other whole.*"<sup>41</sup> Doerner & Lab, says about compensation to victims as follows: Victim compensation takes place when the state, rather than the perpetrator, reimburses the victim for losses sustained at the hands of the criminal.<sup>42</sup>

Compensation is very beneficial for victims, but in addition to victims, there are other parties who receive benefits. The compensation received by the victim can be a fulfillment of the victim's expectations in the form of support from the government in the form of financial compensation, providing information and emotional improvement. Compensation for victims is very useful because as Doerner & Lab argues,<sup>43</sup> that compensation in the form of

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<sup>41</sup> Bryan A. Garner, *Black's Law Dictionary 7th Ed.* (St. Paul, Minn: Thomsen Reuters West, 1999)

<sup>42</sup> Doerner and Lab, 2012, pp. 83-84. Compensation is not a new concept, it has existed since the days of Ancient Rome, Greece, Israel, Germany and England. For some times the compensation program was not used during the middle-age). Furthermore, in ancient history and law, compensation referred to the practice of providing monetary or material restitution to individuals who suffered harm, loss, or injury. Compensation served as a means to restore the injured party to their original state or provide them with equivalent value for the harm they had endured. The concept of compensation can be found in various ancient legal systems and cultures. In ancient Mesopotamia, for example, the Code of Hammurabi (c. 1754 BCE) outlined a comprehensive set of laws that included provisions for compensation. The code prescribed specific amounts of compensation for various offenses, such as property damage, personal injuries, and even loss of life. These compensatory measures aimed to restore social order and resolve conflicts within the community. Similarly, in ancient Roman law, compensation was an essential aspect of the legal system. The concept of "*damnum iniuria datum*" (harm wrongfully inflicted) governed the compensation for harm caused by one person to another. The injured party could seek restitution in the form of monetary payment, known as "damages," to compensate for the losses suffered. In ancient societies, compensation was often determined based on a system of values and norms prevalent within the community. The severity of the harm, the status of the individuals involved, and the prevailing customs influenced the amount and nature of the compensation awarded. *See also* Gary S. Becker, and George J. Stigler. "Law enforcement, malfeasance, and compensation of enforcers." *The Journal of Legal Studies* 3, No. 1 (1974): 1-18; Martin Wasik, "The place of compensation in the penal system." *Criminal Law Review* October (1978): 599-611; Alan T. Harland, "Compensating the victims of crime." *Criminal Law Bulletin* 14, No. 3 (1978): 203-224; Marijke Malsch, "Compensation of Non-Material Damage in Civil and Criminal Law in the Netherlands." *International Review of Victimology* 9, No. 1 (2002): 31-42.

<sup>43</sup> Shapland, Willmore, and Duff. 1985.

giving a certain amount of money (*monetary*) can be perceived as a cure for all diseases (*panacea*).<sup>44</sup> Said by Shapland et.al. that compensation is not a policy that can destroy the criminal justice system. But as a reorientation step towards a retributive ideology that still sees the need for a sense of affection and effort to help victims.<sup>45</sup>

Compensation is also a fundamental right as stated in *Fundamentals of Victims' Rights: An Overview of the Legal Definition of Crime "Victim" in the United States*, NCVLI Victim Law Bulletin is contained in points (8) *Right to Apply for Victim Compensation*.

The definition of compensation is specifically regulated in Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims formulated in Article 1 number 10, as well as Government Regulation Number 44 of 2008 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims. Article 1 number 4 emphasized that compensation is compensation provided by the state because the perpetrator is unable to provide full compensation for which he is responsible. However, as in the formulation of Article 7 paragraph (1) compensation is only intended for victims of gross violations of human rights and victims of criminal acts of terrorism.

The compensation received by the victim can be a fulfillment of the victim's expectations in the form of support from the government in the form of financial compensation, providing information and emotional improvement. Therefore, for victims of illegal loans, compensation in the form of emotional improvement needs to be done considering that victims tend to experience very severe stress due to the systematic treatment of terror by perpetrators of illegal

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<sup>44</sup> Doerner and Lab, 2012

<sup>45</sup> Shapland, Willmore, and Duff, 1985.

borrowing crimes when charging their customers.<sup>46</sup> The availability of medical personnel who are competent to handle such matters and almost all over the territory of Indonesia has become possible to implement.

#### **4. Conclusion**

This study has revealed the profoundly detrimental nature of illegal online loans, resulting in victims enduring simultaneous and devastating impacts, including material loss, psychological distress, physical harm, and social repercussions. Unfortunately, the existing law enforcement measures have proven inadequate in delivering a sense of justice to the victims, evident from the lenient sentences imposed on offenders. Consequently, this research not only provides a strategic contribution to the field of victimology but also serves as a critical appraisal of the shortcomings in law enforcement practices. Moving forward, it is crucial to further develop this research by incorporating the perspectives and aspirations of the victims themselves, aiming to establish more comprehensive and fulfilling penal sanctions that truly uphold the principles of justice.

#### **5. Declaration of Conflicting Interests**

None

#### **6. Funding Information**

None

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<sup>46</sup> Shapland, Willmore, and Duff, 1985. p. 185.

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