The Law Enforcement Against an Illegal Online Loans Platform

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ABSTRACT

Law is the regulation of norm and sanction which is created the purpose in regulating of human behavior to keep order, justice, and prevent chaos. Each country has its own ruling which different from other countries included Indonesia. Indonesia is a state of law which in accordance with Article 1 paragraph 3 of the 1945 Constitution. This research used library legal research method is a research conducted using a descriptive method that describes the symptoms in the community with a qualitative approach balanced. In the Financial Service Authority Online, even though it has been supervised by the OJK, this online loan service still has risks, namely high interest rates and what is worrying is that personal data is also still prone to leaking online. Customer data is clearly very vulnerable to leaks and spread freely. The Enforcement of Laws in the Financial Services Authority Illegal Online such as Law Enforcement and Dispute Resolution have not been fulfilled the principle of legal protection and the wisdom to loaner the monetary service online that registered in the Monetary Service Authority Regulations.

Keywords: Cybercrime, Information Technology, Loans
INTRODUCTION

Law is the regulation of norm and sanction aims to regulate the human behavior to discipline, justice, and prevent chaos. Each country has its own ruling which different from other countries, including Indonesia. Indonesia is a state of law stipulated with Article 1 paragraph 3 of 1945 Constitution. The Criminal law is a part of law that takes a role in a country to assign and set of the things related to action forbidden, accompanied by the punishment for who commits a crime.¹

The criminal offence in Information technology or known as Cybercrime, in the relationship with prevention crime and workshop about criminal underworld related to computer of United Nation General Assembly on 10th April 2000, which has claims that society are trying to harmonize laws relate to criminalization, evidence and procedures states mnreem rrrkmyutjklmyujjkyujmuneed mst request of evidence and procedures related to criminalization. Therefore, the problem is not only how to provide criminal law policies (criminal policy/ construction/ aw) in network crime prevention, but also how to harmonize criminal policies in various countries. This proves that a criminal policy for social networking is not merely a matter of national (Indonesian) police, but it is also a regional and international problem.

The police of Republic Indonesia is also expected to have a role in law enforcement through repressive means. As the one of the example the wisdoms police investigator stated in the Criminal Procedure Code Article 6 paragraph 1, in addition, investigators from Indonesian National Police have the authority under Article 7 paragraph 1 of Criminal Code to act as coordinating and monitoring special police and examining the performance of investigators officer. In this case, the roles of Republic of Indonesia’s police in preventing Cybercrime in digital information era. There are so many cybercrime modes that take various forms, one of which is fraud in Online Loan mode. There are many sites or online loan platforms that do not have legal legality or are not registered in Financial Services Authority. However, online loan platforms have the flexibility to conduct the detrimental activities and can have a risk of Cybercrime. This research aims to analyze the law enforcement and the negative effect of illegal online loans platform.

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RESEARCH METHODS

Type of Research

This research used research method in law or library legal research through descriptive method that describes the symptoms in the community with a qualitative approach balanced. This qualitative research also has the aim of finding an explanation for a phenomenon that deviates from the theoretical framework, as well as raising the ideas of experts and researchers' understanding based on their own experience. This research can be characterized as normative legal research method. Normative legal research focuses on positive legal research within the framework of legal science, with a focus on looking at the actualization (realization) of positive legal provisions in practice, social life and the use of deductive reasoning analysis. Normative legal research involves the study of law as an object and removes any non-legal material from the scope of this research. Legal research is legal research conducted by reviewing library documents or secondary data. Normative legal research is also known as doctrinal legal research. According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. This research used sociology of law method since this also applied on research that involving people who live a life relationship in associate to other people or socially. This research method of this normative legal is a combination of normative legal approaches with the addition of various elements.

Legal Data Collection

a. The Primary Data Legal Material

   Primary legal data is data containing the sources of statutory regulations, including:
   3. Law of Republic of Indonesia Number 11 of 2008 regarding Information and Electronic Transactions
   4. Law Number 8 of 1999 concerning Consumer Protection.

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5 Ronny Hanitijo Soemitro, Dualisme Penelitian Hukum (Normatif Dan Empiris), (Yogyakarta: Pustaka Pelajar, 2010).
b. The Secondary Data Legal Material: Books, Scientific works and Magazines and News

c. Legal Materials Collection Procedure
This research of Legal collected through field analysis and research literature/library with the method of reading and studying to find an analysis of main problems that being studied.

d. Analysis and Material processing of Law
The data obtained in this qualitative research is collecting data, qualify the data related to the theories, the problem and conclusions to determine the research results.

DISCUSSION

Legal Basis of Online Loans Platforms

Legal Basis of Online Loans
The rules regarding information technology-based referred as Online Loans have been fully explained and regulated in Financial Services Authority Regulation Number 77/POJK.01/2016/2016 concerning Information Technology-Based Borrowing-Lending Services (POJK 77 /2016). The Monetary service authority regulation is the form of legal entity, ownership, capital, business activities, capital loan limits, monetary service Authority (OJK) regulation and licensing, changes in ownership of lending service providers, revocation of paper operator licenses required by lending service providers, qualification of Human Resources for borrowing and loan service fees.

It can also regulate from service users, service agreements, risk reduction, management of information technology systems, user’s education and protection, digital signatures, prohibitions, periodic reports, and applicable sanctions when the customer violate the obligations and prohibitions of monetary service authority. The regulation explains that the provision of financial services is to bring together lenders and loan recipients in order to lending and agreements in rupiah currency directly through an electronic system using the internet network.

Based on this phenomena, all online loans activities applied to digital electronic from signatures until making contract agreements. The arrangements related to electronic contracts have been stipulated in Article 1 number 17 of Law Number 11 2008 concerning Information and Electronic Transactions which stated "Electronic contracts are agreements between parties that made through an electronic system". Also, in ITE Law explains the legal power of online/electronic contracts which can be seen in Article 18 paragraph (1) of ITE Law which stated "Electronic transactions that made into electronic contracts are binding on the parties".
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The Platform of loan online that are not listed on monetary as such as “illegal” in this case referring to providers who do not meet their registration and authorization requirements under Article 7 of POJK 77/2016. It must be considered that a contract of loans was only apply to parties into an agreement that created the law. The agreement can only be terminated with the consent of both parties or for reasons determined by law, and the confirmation must be done fairly.

As arranged in POJK 77/2016, the providers, lenders and borrowers are three different legal entities. The Operators are limited to platform providers that make lenders and borrowers in having an agreement in a transaction. The agreement of common law have the rights and obligations that arise outside the legal subject. This engagement can be caused by an act that is not against the law, while the engagement caused by an agreement is commonly called an agreement.

This research is based on attorney power for signing loaners in the form of an agreement with the borrower, which in this case is on behalf of loaner. Therefore, the person receiving the power of attorney must also fulfill the subjective factors as regulated in Article 1320 of Civil Code to distinguish between the state of incapacity in 2, is the loss of the ability to act (turn hands onbekwaamheid), is someone who has absolutely no behavioral capacity to conduct a legal act. These people are mentioned in Article 1330 of Civil Code and they cannot act (turn hands onbevoegheid), called those who are legally unable to carry out certain legal actions.

The result of this inability is non-fulfillment of subjective element of the agreement. Therefore, when the electronic money lending service provider is not approved, the agreement can be canceled. In this case, the organizational unit does not meet the capacity factor since it is not registered and has permission from the organizer. The Cause of Rise of Illegal Online Loans is the high consumption and low education levels that make it easy for Indonesian to trap in illegal online loans that can be used for scammer to make illegal debt. According to economy and Bhima Yudhishthira, director of Center for Economic and Legal Studies, the increase in illegal loans was caused by five factors:

1. Ratio bank credit items on gross domestic product (GDP) is too low.
   The latest data from World Bank states that Indonesia is still at 38.7%, Malaysia 134%, Thailand 38.7%, 160.3%, and Singapore 132%, it means that the population majority does not have the same access to capital from banking institutions.

2. Digital penetration
   Disproportionate is not commensurate with literacy knowledge at all levels of society to rural areas. This makes the public, especially those new to digital literacy become easy targets for marketing illicit credit. The reason is because the convenience of just clicking, filling out forms, and transferring money becomes an attractive offer for those in need.

3. Administration facilities

The easy of managing application’s loan online, those given illegal loans are encourage potential victims to choose illegal loans as an alternative to meet their financial needs quickly. In this case, one of them also joins online loans, without guarantees and making creditors satisfied.

4. Nothing pre-checking
   Usually, users are locked out of loans without verifying before an official financial authority or institution. In fact, understanding of digital finance in Indonesia is still low. Then, the people can distinguish between legal and illegal loans, Bhima urges them to check the legitimacy of loan service providers on Financial Services Authority (OJK) website. Indeed, OJK regularly publishes official fintech lists.

5. Nothing comparing Director’s interest rates
   According to Monetary Service Authority, the party has found many reason of application’s loan as illegal online, one of them is because of the easy of making applications. Tirta Segara, a member of Monetary service Authority’s Board of Commissioners for Consumer Education and Protection, said that he encourages the birth of new illegal online loans, although the Investment Alert Task Force has succeeded in closing thousands of illegal online loans. The investment task force has closed thousands of online investment loans and illegal pawn practices. Task force of investment has closed thousands of online investment loans and illegal pawn practices. However, thousands of illegal online investments and loans that appear are still in digital media, while the way is to replicate existing applications has become a driving force for the widespread practice of online lending and illegal investments. He saw that illegal offers of loans and investments were only made in the neighborhood.

   This regulation is contributing in encouraging small business actors who are tempted by promises of easy financing. Moreover, with the economic condition of small entrepreneurs who are trying to rise from the pandemic. For example, in ultra-micro scale entrepreneurs whose businesses are eligible for financing but do not meet the requirements for obtaining loans from banks. Then they tend to have online loans as an alternative to payment.

**Negative Impact of Illegal Online Loans**

   The problem often appearing in online loan debtors include illegal loan service platforms (not registered and not licensed by Financial Services Authority) that are increasing in society had claimed thousands of lives. Where after the Monetary Service Authority and ministry of communication and information technology block their site and/or platform, they will create a new platform of the same type with a different name nomenclature in the future, the cycle always repeats itself. In fact, it has a major impact on the loan implementation, thus creating a risk or vulnerability for the loan debtor which actually harms the loan.
The number of illegal online loan service platforms certainly has its own impact, which tends to be detrimental and also negative. Here are some of the negative impacts from illegal online loans:

a) In illegal lending platform services there are risks as money laundering or terrorism financing.

b) It is feared that there will be misuse of data and information of service users in this case of a public nature. People do not realize that loan companies also record various personal data contained on their smartphones during the registration process:

1. In illegal lending platform services, there are risks as a means of committing money laundering or terrorism financing.
2. It is feared that there will be misuse of data and information of service users or consumers in this case of a public nature. People do not realize that loan companies also record various personal data contained on their smartphones during the registration process.
3. Potential loss of tax revenue. The tax potential of illegal loan services is huge since the amount is much higher than that registered with monetary service Authority.
4. There are still many people who do not fully understand loan services, then when they are making credit transactions, borrowers often do not see the details of credit terms and agreements. This makes people entangled with very high interest rates. The commission or interest on illegal loans is an average of more than 40% of principal debt plus a fine of IDR 50,000 per day.
5. Non-performing loans in 2018 reached 1.45%. This means that even legitimate loan services have risks, so illegal services are definitely more risky
6. There are many reports from victims of unethical debt collection by loan service providers due to a lack of public understanding of legitimacy of loan service providers

**Personal Data Protection in Online Loans**

Personal data according to Law Number 23/2006 concerning the Administration of Occupation and Regulation of Minister of Communication and Information Number 20, 2016 explains about protection, personal data is individual data that is stored, maintained and kept its truth and confidentiality protected. While
the owner of personal data in Draft Law personal data protection is an individual as a data subject who has personal data attached to a legal subject.\textsuperscript{7}

The failure protecting in personal data requires that the electronic system operator must notify the personal data owner in writing. The failure in question is the cessation of part or all functions of electronic system which in practice can cause losses such as data leakage or privacy violations.\textsuperscript{8} The electronic system operators had required provides access or opportunities for personal data subjects to change or update personal data without disturbing the personal data management system. The personal data protection regulation directly as contained in Personal Data Protection Bill emphasizes the main thing that must conducted by personal data controllers in sending or receiving personal data transfers within Indonesian jurisdiction, such save data from personal data subjects. For this reason, the transfer of personal data must be notified to the subject of personal data.\textsuperscript{9} That must be considered regarding the transfer of personal data to personal data controllers outside Indonesia jurisdiction, namely the existence of an equal level of personal data protection with the recipient country of personal data transfer, there is an agreement between the two countries related to personal data transfer, the existence of a contract from data controller personal data in both countries, as well as obtaining the consent of personal data subject.

This thing becomes absolute requirement that must be administered by personal data controllers or online loan electronic system operators in transferring personal data owned by personal data subjects as online loan applicants. All requirements submitted by online loan providers, both at the beginning of submitting the application to transferring the applicant's personal data, must obtain approval from the data owner. The rights of data subjects that must be protected at the beginning of submitting an application are Population Identification Number (NIK), address and cellphone number as well as contact numbers, galleries, and photos on the applicant's cellphone.

However, the illegal online loans, the applicant as personal data subject does not have the opportunity to give or not give consent to the personal data transfer activities carried out by illegal online loans. Since the beginning of submitting the application, the subject of personal data does not have the ability to not give approval to all stages that will be carried out by illegal online loans. If the personal data subject does not agree to the illegal online loan terms to open access to the gallery, photos, and borrower contacts who will be used to transfer the applicant's personal data, the online loan service will not continue getting loan money. Illegal


\textsuperscript{8} Ahmad Budiman, “PELINDUNGAN DATA PRIBADI PADA TRANSFER DATA PRIBADI PINJAMAN ONLINE,” Info Singkat, Bidang Politik Dalam Negeri XIII, no. 23 (2021): 1–6.

\textsuperscript{9} Ibid.
online loans steal personal data from the applicant's smartphone contacts and misuse it for the purpose of selling personal data.

Regarding to a personal data protection in online lending and borrowing services, it has issued the Monetary Services Authority Regulation No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. This regulation regulates borrowers' in personal data protection used technology for lending and borrowing services. Article 26 letter a of this POJK stipulates that the operator is obliged to maintain the confidentiality, integrity and availability of personal data, transaction data and financial data that has been managed since it was owned. This means that the lender is obliged to keep the personal data of the borrower confidential, starting from the process of signing the loan contract until the end of the contract. This obligation must be conducted to ensure the protection of the borrower's personal data.  

Furthermore, Article 26 letter c of this Financial Services Authority Regulations states that the Operator had obliged to guarantee that the acquisition, use, utilization and personal data disclosure obtained by the operator used the personal data approved, transaction data, and financial data, unless otherwise stipulated by the provisions of laws and regulations. Based on the article, it is clear that, without the consent of the owner of the personal data (loaner), it cannot use the personal data for any activity, except with the consent of the owner or otherwise specified in the provisions of laws and regulations. Online loans providers are also prohibited from providing or disseminating data or information about users to third parties without the consent of the user or required by laws and regulations.

### Law Enforcement Against an Illegal Online Loans Platform

#### The Attempt in Handling Illegal Online Loan Platform

The state is obliged to protect its citizens according to Law Number 8, 1999 concerning Consumer Protection. The state has the obligation to create a consumer protection system that contains elements of legal certainty and openness as well as the right to access information. The closing access or blocking by Ministry of Communications and Informatics is part of an administrative action by the state, then the space for illegal online lending platforms is increasingly closed and victims are not expand.

The government through ministries and agencies are remains to make joint efforts to eradicate and take firm action against illegal online lending practices that harm the community. From 2018 to 17 August 2021, the Ministry of Communication and Information was cut off the access to 3,856 fintech-related content that violates laws and regulations, including illegal loans platforms. On

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August 20th, 2021, the monetary Service Authority, Bank Indonesia (BI), Police, the Ministry of Communication and Information and the Ministry of Cooperatives and Small and Medium Enterprises regulated a statement to strengthen the measures to eradicate illegal online loans activities.

The Statement was issued virtually and attended by Chief Commissioner’s Monetary Service Authority Wimboh Santoso, BI Governor Perry Warjiyo, National Police Chief Listyo, General Sigit Pranowo, represented by Head of Criminal Investigation Department Komjen Agus Andrianto, Minister of Communication and Information Johnny G. Plate, and Coordinating Minister for SMEs, Teten Masduki. The financial Services Authority Regulation Investment Alert Task Force has suspended around 3,365 illegal loans until July 2021. This number is the result of a study of 7,128 complaints related to illegal loans.  

The Police are moving rapidly at a time when there are many illegal online loan platforms that are very detrimental to the community. In addition to cyber patrols and blocking, the police provide integrated services/hotlines via WhatsApp 0812-1001-9202 and Instagram @satgas_pinjol_illegal.

**The Preventions and Laws Enforcement Against an Illegal Online Loans Platform**

**Preventive Application of Laws**

The Investment Alert Task Force from 2018 to February 2021, there are 3,784 illegal online loan platforms that had been closed. In line with law enforcement applied by Police, the Investment Alert Task Force remains in taking prevention through cyber patrols and immediately closes online loan applications that are indicated as illegal and actively participates in community to increase literacy and provide information regarding the dangers of illegal online loans.

To prevent the emergence of illegal online loans, financial services Authority applied different policies such the program of educations to public in choosing online loans registered or licensed at Financial Services Authority and not to use illegal online loans. The Financial Services Authority also appreciates the efforts by conducting network patrols, blocking illegal loan applications and sites, monitoring savings and loan institutions, prohibiting payments and handling the illegal loan laws.

In order to raise awareness to public for offering illegal loans and strengthening the efforts to eradicate illegal loans, the Financial Service Authority, Bank Indonesia, Police, Ministry of Communication and Information, and the Ministry of Cooperatives and Small Business took the initiative making a written joint statement containing:

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11 Ibid.
a. Strengthening the financial literacy and implement active and comprehensive communication programs to increase public awareness of illegal loan offers
b. Strengthening education programs for society to increase prudence in making online loans and safeguarding personal data
c. Strengthening cooperation between authorities and application developers to prevent the spread of illegal online loan platforms through applications and cellular phone service providers to spread public awareness of illegal online loan offers
d. Prohibit banks, non-bank Payment Service Providers, aggregators, and cooperatives from collaborating or facilitating illegal online loans and must comply with the principle of recognizing service users in accordance with applicable laws and regulations.

Repressive Application of Laws

Repressive is an effort conducted by individuals, groups, or governments in controlling the society. The purpose of repressive measures is to restore the sinergy that has been disturbed due to existing violations. The Directorate of Special Economic Criminal Investigation Department of Indonesian National Police has released another disclosure of illegal lending case by arresting the perpetrators who act as financiers and facilitators of foreign nationals to finance the illegal online loans. The National Police and Financial Services Authority synergize to remains monitor and block online loan platforms that appear, in addition to the Police whom taken an in-depth investigation of each report received through Hotline which was created specifically as a forum for reporting people who feel disadvantaged by illegal online loan platforms.

The Application of Criminal Law Against Illegal Loan Service Providers

Criminal law is often used in judicial practice for doing crime. In this case, Sudarto stated that punishment is a deliberate suffering imposed on those who commit an act that meets certain conditions.\(^\text{12}\) Legal protection is an effort to protect the community against actions that are contrary to morals and law. Apart from that, legal subjects also get legal protection in the form of preventive and repressive legal instruments, both written and unwritten.\(^\text{13}\)

Therefore, the use of criminal law becomes very important. In this case, it is not enough to stop or block illegal lending websites and applications. The Investment Alert Task Force (SWI) must submit the complaints of illegal loans to police for an investigation. After that, the police conducted an investigation and investigated the complaint. The criminal penalties are prevent perpetrators from


\(^{13}\) Hanifawati, “Urgensi Penegakan Hukum Pidana Pada Penerima Pinjaman Kegiatan Peer To Peer Lending Fintech Ilegal Dan Perlindungan Data Pribadi.”
developing illegal business practices, as businesses can be re-created simply by changing the name or changing the application.

Meanwhile, the National Police will ensure that the prosecution of loan sharks and domestic foreign investors are still remain same. The Head of Sub-Committee on Non-Bank Finance of Criminal Investigation Unit of National Police, Ma’mun, said that his party had arrested 11 suspects of domestic crimes, while the perpetrators from abroad have not been caught. The investigators found many legal entities that illegally loans money to foreign investors. Apart from that, the servers used in an online loan operation are also known to be located abroad.

The National Police Criminal Investigation has asked the Directorate General of Immigration of Ministry of Law and Human Rights to prosecute perpetrators hiding abroad. Ma’mun further explained that this year the Police have handled 250 borrowing cases that have harmed the community. In all cases, a number of people were identified as suspects and charged under Law no. November 2008 regarding Information and Electronic Transactions as amended by Law no. 19 of 2016 (UU ITE) and article 378 of Criminal Code.

The rise of online loan application platform applications that do not have a permit at OJK often collect its debts from debtors / customers when the debt is due by intimidating, threatening and spreading debtor's personal data on social media, then it can put a risk the safety and injure legal protection to debtor / consumer. Not only debtors, but also family, friends, even everyone in the debtor's cellphone contact also experiences the same thing. On the other hand, the debt interest set by illegal online loan platform is very high which is not in accordance with the rate regulations set by Bank Indonesia.

The collection method is applied to illegal online loan platforms. When the Police / investigators use the ITE Law, it can be imposed with Article 27 paragraph (4) regarding extortion and / or threats with a maximum imprisonment of 6 (six) years and / or a penalize of a maximum of IDR. 1,000,000,000.00 (one billion rupiah) or Article 29 regarding threats of violence or intimidation directed at personally with a maximum imprisonment of 4 (four) years and/or a maximum charge of IDR. 750,000,000.00 (seven hundred and fifty million rupiah). The perpetrators can also be charged with Article 368 of Criminal Code with a maximum imprisonment of 9 (nine) years.

In addition, illegal online lenders who spread the personal data may be subject to Article 32 paragraph (1) of ITE Law with a maximum imprisonment of 8 (eight) years and/or a maximum penalize of IDR. 2,000,000,000 (two billion rupiah). While related to the Criminal Code, the perpetrator can be subject to Article 368 regarding extortion with a maximum imprisonment of 9 (nine) months or Article 378 of Criminal Code regarding fraud with a threat of imprisonment of 4 (four) years. However, in reality, only a few online lenders are being processed by law as mentioned earlier in Police data.
CONCLUSION

The Platform of Financial Services Authority Online in Indonesia is increasing every year, but there are many illegal platforms of financial Services Authority which it not registered in Financial Service Authority. The rise of the Platform is caused by various factors, such as ease of making online loan service applications in Indonesia, Uneven access to financing from banks, rapid Acceleration of digitalization, especially in online loan platforms that are not matched by sufficient knowledge and literacy from the society and the Administration in online loan services easily. The Enforcement of Laws in Financial Services Authority Illegal Online such as Law Enforcement and Dispute Resolution have not been fulfilled the principle of legal protection and wisdom to loaner of monetary service online that registered in Monetary Service Authority Regulations.

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