

LEGAL ANALYSIS OF THE IMPOSITION OF INTEREST RATE PROBLEM ON ONLINE LOANS

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Abstract:

The development of the digital economy has provided various services that make it easier for the community, one of which is the presence of information technology-based lending and borrowing services or online loans through Fintech. However, the issue of online lending or financial technology peer-to-peer lending (P2P fintech) is increasingly in the public spotlight. For example, the most recent case of a Kindergarten teacher in Malang entangled in a loan of Rp. 40 million in 24 online loan service providers due to ongoing defaults. This paper will examine the problems with online loans from the point of view of interest rates in this case related to the credit agreement and how or suggestions to overcome these problems. The research method used in this research is normative juridical research using a statutory approach and a case approach. The results of this study indicate that the problem of imposing interest rates on online loans occurs because Article 17 Paragraph (1) of POJK Number 77 of 2016 creates uncertainty in the practice of determining interest rates and the regulation regarding the limits on the imposition of interest rates is only regulated through the association's code of ethics.

Keywords: Interest Rates, Legal Analysis, Online Loans

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INTRODUCTION

The era of globalization has brought many changes in all sectors of human life, including technology and information. Technology and information have an important role in supporting all activities of human life. One of the activities that utilize technology and information is the business and economic activities and the financial industry. It is indicated by the use of the internet as a medium for transactions when conducting banking activities. The internet has brought the world economy into a new phase which is more popularly known as the digital economy (Indrajit, 2001).

The development of the digital economy has provided various services that make it easier for the community, one of which is the presence of information technology-based lending and borrowing services or online loans through Fintech. According to The National Digital Research Center (NDRC), Fintech is an innovation in the financial sector. Of course, this financial innovation gets a touch of modern technology. The existence of Fintech can bring a more practical and secure financial transaction process (Chrismastianto, 2017). Information Technology-Based Borrowing and Borrowing Services provides financial services to bring together lenders and loan recipients to enter into lending and borrowing agreements in rupiah currency directly through an electronic system using the internet network.

The use of information technology or online loans is considered beneficial for consumers because the process is considered easy without collateral. It only requires a cellphone and the internet as a medium in the online loan process. It is also beneficial for consumers because consumers do not need to come directly to the place. Online loans have their own character in the banking world, where it is like a wide space between creditors and debtors; they do not have to meet to make transactions, and use internet media that is easily accessible anytime and anywhere. The character possessed by these online loans can make it easier for both parties to take loans and

borrow money (Aditia & Udiana, 2016). Along with the large potential of the online loan business (P2P Lending), many business actors are interested in running a fintech business with this platform. In Indonesia. Many investors are investing in the online loan business practice (P2P Lending) sector with a very high growth rate at this time. To overcome this, OJK, as an independent supervisory agency for financial services in Indonesia, issued OJK Regulation (POJK) No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, which requires financial technology business companies to register their companies with OJK.

Data from the Financial Services Authority (OJK) taken from the ojk.go.id page until May 8, 2021, the number of official loans is 107 organizers with details of 85 licensed loans and 22 OJK registered loans (Bramasta, 2021). In addition, there are also illegal online loan companies that are increasing in number. In the news of people's thoughts, it was stated that the latest data as of May 2021, illegal fintech lending found reached 122 entities (Marga, 2021).

The problem of online lending or financial technology peer-to-peer lending (P2P fintech) is increasingly in the public spotlight. The latest case is that a kindergarten teacher in Malang was caught in a loan of Rp. 40 million from 24 online loan service providers. Of the 24 online loans accessed by these teachers, only 5 of them are legal online loan applications, and the rest are illegal. The Indonesian Consumers Foundation (YLKI) Tulus Abadi said that the highest problem in online loans reported by consumers was the collection method, which reached 39.5 percent. Then, the transfer of contacts is 14.5 percent, the rescheduling request is 14.5 percent, the interest rate is 13.5 percent. Administration 11.4 percent and third-party billing 6.2 percent. Therefore, based on the description above, the author will examine the problems in online loans from the point of view of interest rates in this case related to the credit agreement and how to find solutions to these problems (Budhijanto, 2019).

METHODS

This research uses normative legal research, namely legal research, to find the rule of law, legal principles, and legal doctrines to answer and find solutions to problems related to legal issues faced. This normative legal research uses a statute approach and a case approach. The statutory approach is carried out by examining all laws and regulations related to legal issues and the philosophical content of a legislation and to study whether there is consistency and conformity with the provisions in a law between a law and other laws. The statutory approach is carried out with the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services with legal issues being investigated, namely the Problems of imposing Online Loan Interest Rates (Pinjol). As for the case approach in this study, it comes from the case of a kindergarten teacher in Malang City who was in debt on an online loan of up to tens of millions due to default due to high loan interest rates, which then became a support for researchers in building arguments to solve legal issues researched.

RESULT AND DISCUSSION

Validity of Information Technology-Based Borrowing-Lending Agreements in the Case of Imposition of Loan Interest

The development of the online loan business or (P2P Lending) is unavoidable, one of which is due to the potential of the Indonesian people themselves, which is a large enough market opportunity for the online loan business or (P2P Lending), but due to the assumption that borrowing money is usually done at the bank. It has been considered too long, so many have turned to the online loan business or (P2P Lending), whose process is easier and faster. With the rapid development of financial technology, clear rules are indeed needed to regulate it. It is manifested in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services (POJK LPMUBTI) and Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Financial Technology Implementation (PBI PTF).

All agreements made between debtors and creditors in credit activities through online media are contained in an electronic contract (e-contract).

The agreement process is carried out through online media in an online loan agreement. So that the process of implementing the agreement will be carried out without a direct meeting, but the parties from the lender and the loan recipient are connected by the loan provider online. So the evidence and guarantees used are provided electronically. An electronic document should be declared valid if the relevant party signs it. The signature used in the electronic agreement is also in the form of an electronic signature and is declared legally valid if it meets the requirements under Article 11 of the ITE Law.

Like other types of agreements, online credit agreements are required to meet the legal requirements of the agreement as stated in Article 1320 of the Civil Code, which consists of the following 4 (four) points: (1) There is an agreement between those who bind themselves; (2) the legal capacity of the parties to enter into an engagement; (3) The existence of a particular subject or matter; and (4) There is a cause (*causa*) that is lawful or legal. Online loans offer easy terms with fast disbursement. Usually, these conditions use an ID card, family card, NPWP, SIM, telephone number and have a bank account. Then the file is just enough to be photographed and then uploaded. Likewise, the payment method is so easy, by transfer between banks or through the nearest Indomaret/Alfamart. But, from, however, from all these conveniences, emerges a weakness of electronic contracts as a standard or standard form of contract. Standard clauses are always determined by business actors, which are then offered to consumers, and consumers only have two choices: to agree to all of the clauses or not at all (take it or leave it) (Sukarmi, 2008). The presence of a standard agreement causes an imbalance in the position between business actors and consumers.

Basically, the contract law regulatory system in Indonesia uses an open system. It means that everyone is free to enter into agreements, both those that have been regulated and those that have not been regulated by law. It is known in legal science as the principle of freedom of contract. However, in its development, contract law in Indonesia limits the freedom of contract with the provisions of laws and regulations, public order, and morality. This restriction is related to Article 1320 of the Civil Code, especially a lawful cause in the contract (Khairandy, 2014). Based on Article 1337 of the Civil Code, a cause can be prohibited if it is prohibited by law, morality and public order. Article 1339 of the Civil Code stipulates that an agreement is binding on what is stated solely in the agreement and on what by its nature the agreement is required by justice, custom, or the law. From what is stipulated in Article 1339 of the Law, it can be seen that although in a law book that is so complete as the Civil Code, the "custom" factor still has a very important role in the past.

The determination of the amount of interest and loan penalties is left to the agreement between the loan provider and the consumer, which varies in nature. This position has provided space for the loan provider, as the superior party, to determine the amount of interest and fines according to his will. Currently, a formulation has been made to address the polemic, namely the determination of the loan interest rate of 0.8 percent per day in the form of an association code of ethics by the Indonesian Joint Funding Fintech Association (AFPI). However, the interest rate of 0.8 percent is still considered too high, so it still needs to be lowered. In the case of a Kindergarten Teacher in Malang, AFPI stated that the 5 fintech companies under her auspices had complied with these regulations. At the same time, the other 19 illegal ones are known to impose interest rates of more than 0.8 percent. Of course, it becomes a problem because of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Public Services still provides an opportunity for companies to choose not to register with the OJK. Some of the reasons companies do not register with OJK are because the company does not meet the existing requirements. The company does not want to follow OJK regulations that are considered difficult to fulfill or too strict (Budiyanti, 2014).

Furthermore, related to the imposition of interest, there is a limitation on interest that is exceeded or known in the form of Woeker-ordonnance 1938, which was contained in the Staatsblad of 1938 No. 524, which stipulates that, if between the reciprocal obligations of both parties from the beginning there is an extraordinary imbalance, while one party acts out of ignorance and a state of compulsion, which the other party has abused, the debtor may request the judge to reduce the interest that has been agreed upon or to cancel the agreement (Subekti, 2014).

Insufficient Legal Instruments

The main factor causing these non-performing or non-performing loans is the high interest and fines set by the information technology-based money-lending service providers to debtors or loan recipients, generally people with lower-middle financial ability, as in the case of a Kindergarten teacher in Malang who borrowed money through an online loan application to continue her undergraduate education. The interest offered by information technology-based lending and borrowing services generally uses a flat interest mechanism of 0.8%, even up to 10% per day with varying tenors and installments. The variety of interest rates offered is because, legally, it is fully the authority of the information technology-based lending and borrowing service providers, as mandated by Article 17 Paragraph (1) of the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Borrowing Services. Borrowing Money Based on Information Technology. Based on these provisions, the interest rate set by the information technology-based lending and borrowing service provider should be rationally accepted and with minimal risk of default (non-performing loan). However, in the implementation of existing information technology-based lending and borrowing services, there are still many determinations of unreasonable interest rates and often have implications for default or non-performing loans (Budiyanti, 2019).

The main problem in the legal construction of determining interest rates in information technology-based lending and borrowing services that currently exists is that AFPI limits the direct determination of interest rates through the Code of Conduct, which is an association of technology-based money lending and borrowing service providers. Information technology is managed by information technology-based lending and borrowing service providers and has the aim of overshadowing the information technology-based lending and borrowing service providers who are its members. In addition to creating a conflict of interest, it also creates a dominant position by determining the interest rate threshold, which is the reference for information technology-based lending and borrowing service providers.

The association's code of ethics is basically an elaboration of the basic principles of norms and noble values that are the guidelines in carrying out the professional activities of its members. The code of ethics will serve as a guide for the association members concerned in carrying out their professional duties in providing information technology-based lending and borrowing services in various situations and conditions. Violation of the association's code of ethics will result in sanctions being imposed by the association concerned. The Indonesian Joint Funding Fintech Association (AFPI) sets the loan interest rate of 0.8 percent per day in the form of a Code of Conduct. However, the formulation is published in the form of an association code of ethics and is not a legally binding statutory regulation. Moreover, the Code of Conduct regulated by AFPI is limited to only regulating its members, all registered information technology-based lending and borrowing service providers. Thus, the construction of determining interest rates in information technology-based lending and borrowing services that currently exist is normatively out of sync between the objectives of the laws and regulations at higher hierarchies and the objectives of the AFPI Code of Conduct. Another problem is that the role of SWI members (Investment Alert Task Force), which consists of OJK, Bank Indonesia, Police and COMMUNICATION AND INFORMATION SERVICES, is not yet optimal, which in the process of carrying out law enforcement, lacks coordination and has not optimally carried out their respective main tasks and

functions to the urgency of the need for legislation. Therefore, invite fintech in the long term to be able to take action against online loan service providers.

CONCLUSION

The problem of imposing interest rates on online loans that occurs due to high interest and fines set by information technology-based money lending service providers to debtors or loan recipients, in this case, Article 17 Paragraph (1) POJK Number 77 of 2016 in addition to creating uncertainty in practice determination of interest rates in the provision of information technology-based lending and borrowing services also creates an unbalanced position in the agreement between debtors and creditors. Thus, prospective debtors of information technology-based lending and borrowing services have no other choice but to unilaterally accept the interest rate from the information technology-based lending and borrowing service providers if they agree to use the information technology-based money-borrowing services. Which regulates the limitations on the imposition of interest rates are only regulated through the association's code of ethics which does not have a binding legal force like law. Researchers hope, the Financial Services Authority, the Indonesian Joint Funding Fintech Association so that members of the Investment Alert Task Force can immediately find a solution to the imposition of high-interest rates by coordinating between stakeholders involved in information technology-based lending and borrowing services (OJK, Bank Indonesia, Police, KOMINFO), and it is hoped that in the future there will be a Law on Fintech as a legal umbrella for online lending activities to provide guarantees and legal certainty for capital owners, service providers and consumers, in this case, customers.

REFERENCES

- Budhijanto, Hukum Ekonomi Digital. Logoz Publishing, Bandung, 2019.
- Budiyanti, Upaya Mengatasi Layanan Pinjaman Online Ilegal. Jurnal Info Singkat, Volume 11, Nomer 4, DPR RI, Jakarta, 2019
- Chrismastianto, Analisis Swot Implementasi Teknologi Finansial Terhadap Kualitas Layanan Perbankan di Indonesia. Jurnal Ekonomi dan Bisnis: Fakultas Ilmu Pendidikan, Volume 20, Nomer 1, Universitas Pelita Harapan, Tangerang, 2017.
- I. Made Aditia & I. Made Udiana. Akibat Hukum Wanprestasi Dalam Perjanjian Baku. Jurnal Kertha Semaya, Volume 4, Nomer 3, Fakultas Hukum, Universitas Udayana, Bali, 2016.
- J. Satrio, Hukum Perjanjian-Perjanjian pada Umumnya, Citra Aditya Bakti, Bandung, 1992.
- Lintang Cahyani Andira, Keabsahan Kontrak Elektronik Dalam Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi, Jurnal Ilmu Kenotariatan, Volume 1, Nomer 2, Fakultas Hukum, Universitas Jember, Jember, 2020.
- Richardus Eko Indrajit, E-Commerce: Kiat dan Strategi Bisnis di Dunia Maya, PT. Elex Media Komputindo, Jakarta, 2001
- Ridwan Khairandy, Hukum Kontrak Indonesia, FH UII Press, Yogyakarta, 2014
- Subekti, Aneka Perjanjian, Ctk Keenam, Citra Aditya Bakti, Bandung, 2014
- Subekti, Pokok-Pokok Hukum Perdata, Intermedia, Jakarta, 1995
- Sukarmi, Kontrak Elektronik Dalam Bayang-bayang Pelaku Usaha, Pustaka Sutra, Bandung, 2008
- Sofwan Rizko Ramadoni dkk, Konvergensi Hukum Penentuan Suku Bunga dalam Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi, Jurnal Magister Hukum Udayana, Volume 9, Nomer 4, Universitas Udayana, Bali, 2020.