



Analysis and Assessment of Legal Protection of The Community and Online Loan Debtors During The Covid 19 Pandemic

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Abstract

Online loans during the Covid 19 pandemic have caused serious problems because of the many threats, extortion and even leakage of personal data by illegal online loan companies. However, that doesn't mean that legal online loans don't have their own problems. The author then conducts research to understand the causes of this phenomenon from the point of view of normative juridical analysis. The results of the study show that the legal system in Indonesia does not provide adequate legal protection so that people are not encouraged or forced to apply for online loans. In addition, the legal protection system from the government to the community and online loan debtors has not been properly systemized.



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1. Introduction

Online Loans have become an option for many people during the covid 19 pandemic. This happens because people are confused about finding sources of funding for both daily needs and installment payments that have already been taken (Kurnia et al., 2021) (Budiyanti, 2019). Many of them have experienced salary adjustments and unilateral deductions by companies. Even though this is not in accordance with the Employment Law no. 13 of 2003. The position of workers is very weak in this regard, if they do not accept the deal, they can lose their jobs and the legal protection for them is very weak (Sari et al., 2021). Even though many of their salaries are only to meet the minimum wage standards. If their already small income is cut by only 20% -30%, they are forced to find other alternatives to meet their needs.

This is what makes people trapped in illegal online loans (Kurnia et al., 2021). Online loans provide many conveniences. For example, there is no need for convoluted processes such as filling out documents and personal data. For some people, the convoluted administrative system makes them reluctant to apply for loans to conventional banks (N. Daniati, 2018) (Huda et al., 2019) (Lestari, 2021). In addition, online loans also ask for other easy conditions such as a photo ID card only. This is obviously very different from conventional banks that tend to be formal and have a

credit approval process that for some is too difficult. In fact, in fact, the problem of conventional loans is not just a convoluted document process.

In addition to the convoluted issue of documents, there are many disadvantages of conventional banks. For example, conventional banks have images that are difficult to penetrate. For prospective debtors, this conventional bank has already caused uncomfortable feelings. The prudential principle of conventional banks turns out to make debtors reluctant to apply for credit there. In addition, the application of this prudential principle is applied so rigidly that when the age of the prospective debtor is not suitable, it can make credit not accepted.

In online lending, the prudential principle is not applied rigidly because illegal online loans are not bound by the rules of the financial services authority. This flexibility is then utilized by online loans. Even for the limit, it is extraordinarily large. For comparison, some banks use systems such as the analytic hierarchy process (AHP) to determine the amount of credit card limits (Alwi, Yulianti, & Nuraeni, 2019). This is a complex process that takes into account mathematical as well as psychological factors. This means that even banks do not want their NPLs (Non Performing Loans) to be high and the NPLs of these credit cards have a considerable potential risk because the use of credit cards is often not suitable for needs and is not logical. The prudential principle of conventional banks is indeed very structured to avoid unwanted risks. Meanwhile, the online loan limit seems to come out without careful calculation. Many online loans can immediately give a limit of 15 million Rupiah without even assessing what the debtor's financial condition is like. Of course, this kind of thing is very interesting from the perspective of ordinary people.

But the threat of online loans, especially illegal ones, is very dangerous. Illegal online lending is a modern form of extortion as well as theft of personal data. Many people are negligent because they are tempted by the convenience offered by these illegal online loans. Actually, even legal online loans cannot necessarily be considered safe. The main problem is the unilateral determination of limits and also other conveniences that are contrary to the prudential principle of high risk.

In this regard, the author decided to conduct juridical research on the dynamics of legal protection in the community against online loans, especially when online loans were used as a solution during the Covid-19 pandemic. The law that is in the spotlight in this case is Law no. 2 of 2020 which is specifically devoted to overcoming public and national financial problems during the Covid-19 pandemic.

2. Materials and Methods

The purpose of this study is to conduct an assessment and qualitative analysis of legal protection for prospective debtors / people who use online loan services during the pandemic. The primary data sources used in this study are Law no. 2 of 2020 which is the Law on Economic Acceleration during the corona period, OJK Regulation no. 7 of 2016 and various other government regulations at the level and under the Law related to online loans. For secondary data, the authors use a variety of literature and news reports that discuss the impact of online loans and their analysis.

In this study, the author emphasizes qualitative analysis methods to answer the main question of this study, namely whether our legal system is sufficient to protect people, especially those who are prospective online debtors, from the risk of online loans that are harmful to our society's financial system. This research also analyzes whether the government has designed a legal system that allows our society to avoid high-risk online loans.

The limitations of this study are the Law related to online loans and the Law on Financial Policy Control which was inaugurated during the Covid-19 pandemic. The impact studied is the result of legal products emerging from 2020-2022 related to the covid 19 pandemic.

3. Results and Discussions

The law is a tool of engineering the behavior of society. This theory is a theory developed by Roosevelt and widely applied by governments around the world. When a law is applied, the community will take certain actions that are in accordance with the law (Djasmani, 2011). The application of this theory, for example, can be seen in the odd-even regional regulation applied by the DKI Jakarta Government. Of course, the purpose of this rule is not to complicate the life of car owners, but so that people are increasingly reluctant to use cars and switch to public transportation. Therefore, when a new legal product is launched, there must be a goal of creating a change in people's behavior. But we must also admit that expectations are often not the same as reality. For example, in Jakarta, a 3 in 1 rule was applied where a car must be filled with at least three people on the protocol road. The result of this rule

actually caused a new social problem, namely the emergence of a new job called a 3 in 1 jockey. Similarly, the odd-even rule actually encourages people to buy second and third cars and forge car license plate numbers.

In this logical sense, we can see that the increase in online loans during the pandemic is also due to the rules made by the government. Although the government certainly does not want to make people more intense in applying for online loans, the rules made by the government contribute to encouraging changes in people's behavior.

For example, legal factors that make people switch to online loans are due to the PPKM (Enforcement of Restrictions on Community Activities) policy. This PPKM policy turned out to have a massive negative impact, especially economic problems (Mawar et al., 2021). Many community activities have stopped so that many people lose their income and the number of poor people increases (Poverty Situation During the Pandemic | The SMERU Research Institute, n.d.). Meanwhile, it can be said that this government did not set up a cash direct assistance scheme like for example in the United States which provides a certain amount of money for some households. What happened was that the distribution of cash assistance was carried out through the pre-employment card system. This is a form of policy that between its design and function does not work well. Because, when direct assistance with this pre-employment card system, the budget that should be focused on handling the pandemic instead goes to training app providers such as Ruang Guru. In fact, there is corrupted financial assistance. This raises concerns, even though the community is really in need, but the distribution of this assistance has many problems ranging from procurement to distribution (Noerkaisar, 2021).

In terms of this unfocused assistance problem, an urgent economic issue arises for the lower middle class. This lower middle class is so vulnerable to economic turmoil that it inevitably has to find shortcuts to just meet the needs of daily life.

When we look at Law no. 2 of 2020, we can see that there is no scheme to back up the salaries of employees affected by PPKM. Article 4, for example, talks about tax relief and also dispensation on tax liabilities. But this is not so necessary when in reality the remaining income that goes to the community lives below the range of 20-30 percent only. Then related to direct cash assistance in Article 5 is also difficult because there is a category of poor people. What about the middle-class population, which of course cannot be included in the poor category, but is greatly affected by its inclusion because of the PPKM and similar policies?

The problem of the absence of salary back-up from the government has made people see alternative options. Usually, consumer behavior will choose the type of loan that he knows well because it causes a sense of security and comfort. In several studies, for example, research conducted by Widjaja Gunawan related to public understanding of online loans (Widjaja, 2022) turned out to be one of the best. People feel that they know online loans deeply. Ironically, this public understanding exceeds the public's understanding of the existence of loans in conventional banks. Conventional banks themselves always talk more about the guarantee factor and the principle of prudential principles. In a precarious situation such as the covid 19 pandemic, people in general do not like this. That's why they choose to apply for an online loan.

Another argument arises, why don't conventional banks try to answer people's needs and create their loan package packages like fintech? This problem has prompted the author to discuss specifically and based on the judicial studies that the author conducted, there is still a lack of fairness in competition between fintech and conventional banks so that conventional banks are indeed difficult to compete with the packages offered by fintech. This is what ordinary people do not pay attention to because consumer behavior is looking for convenience and comfort so that we cannot blame this problem on prospective online loan debtors.

The position of the bank itself is actually quite complex. Banks are in a dilemma as the covid 19 pandemic has also impacted their NPL risks which are also increasing. When they choose to relax prudential principles, the risks that exist also follow (Ospina & Uhlig, 2018). That's why we actually openly have to admit that conventional banks have difficulty competing with online loans, especially illegal ones, especially if for example it is right to rely on ID cards and mobile phone numbers as a verification medium.

Banks are not trying to compete. We can see that this bank has tried to innovate to be able to compete with online loans. Unsecured loans are actually trying to be done by banks with super micro loans or providing credit card limits that are relatively easy. But in reality, it is still difficult with online loans because even applying for a credit card limit at a bank requires a process that is in accordance with the precautionary principle. Meanwhile, in online loans, the precautionary principle was not fully implemented and many simplifications were carried out to pursue credit distribution targets.

For example, there is an argument that the OJK regulation regarding online loans in 2016 has made a strict arrangement. It is said that there has been an online loan arrangement strictly in article 19-22. However, how the existing principle is applied, its enforcement is not yet clear. There are still many loopholes for fintech companies to be irresponsible. For example, there is a rule that fellow fintech companies must communicate regarding credit scores. But what happens in practice, the basis for determining the credit score is only the history of loan repayments which is also calculated not a good score calculation system; In contrast to the system used by conventional banks for example. Conventional banks, for example, calculate the number of assets, the amount of savings, the frequency of transactions and so on.

The protection of personal data in fintech also in the OJK regulations is also not detailed. How will a fintech be considered safe if the standardization is so flexible? Therefore, we turn to the PDP (Personal Data Protection) Law. However, neither the PDP Law nor some of the articles of the ITE Law (Article 26 paragraph 1) provide a detailed explanation of how personal data should be protected.

Based on this discussion and comparison, we can see that conventional banks and online loans are not in fair competition and that is why fintech will be more in demand by the public with the legal system that exists now.

Then if indeed the public is more interested in fintech and online loans, should the state ban online loans completely? This is a solution that has the nuances of simplification of problems because technological advances are inevitable. In fact, conventional banks have seen fintech as a way of lending. Some conventional banks have set up their own digital banks.

In addition, in principle the public has the right to apply for a loan in any form. This is stated in article 1313 of the Civil Code. So in principle, the government should not prohibit online loans just to prevent their adverse effects. What has to change is the focus and paradigm of the country.

The priority that is more important here from the state is how to create a healthy and safe online loan system. In the case of the COVID-19 pandemic, what is interesting is that the country is focused on macroeconomics, but not micro. In fact, this microeconomics is the most affected by the COVID-19 pandemic.

Direct assistance to MSMEs and collaboration are widely used in other countries, especially developing countries as an effort to prevent microeconomic collapse (Baker & Judge, 2020). The government's salary back-up is unfortunately not carried out by the Indonesian government and the government is more focused on saving the macroeconomics, one of which is the policy of Law no. 2 of 2020 which tends to save systemic banks. This systemic bank rescue is actually a policy that cannot be blamed because it helps keep people from worrying about their deposits being unsafe. In the event of a large draw, the risk of a monetary crisis is considerable. However, on top of the systemic bank rescue is an effort to keep MSMEs from being dragged down by the negative impact of covid 19.

We must understand that, MSMEs are the teachers of the Indonesian economy. Almost 80 percent of Indonesia's economy is supported by MSMEs. The contribution of MSMEs from GDP reaches 60 percent with the degree of employment at 90.6 percent (The Development of MSMEs as a Critical Engine of the National Economy Continues to Get Government Support - Coordinating Ministry for Economic Affairs of the Republic of Indonesia, n.d.). However, in Law no. 2 of 2022, direct assistance from MSMEs and the non-informal sector is not discussed. That's why the impact is that in 2020, there were around 3.6 million people who lost their jobs based on data from the Ministry of Manpower (Number of layoffs in Indonesia, 2014-2020 - Lokadata, n.d.). In fact, in the previous year, the number of layoffs never reached above 100 thousand per year. The rise is very remarkable. Apart from the pandemic, it is proven that government policies through Law no. 2 of 2020 do not help reduce the impact of the Covid-19 pandemic, especially in terms of job security.

Of course, with these layoffs and economic instability that tends to be fragile, government regulations that are not directly to the affected communities end up in increasing interest in online loans. The reason for this reason has been stated, because this online loan is closer and the public is indeed reluctant to the convoluted system. The tendency of people to approach online loans cannot be separated from the government's own legal policies in the end.

That's why the author draws the conclusion that the rule of law that emerged during the Covid-19 pandemic holistically encourages people to make online loans. It is proven that during this pandemic, the regulation of online loans has become one of the focuses of the government's work after the emergence of adverse impacts due to online loans.

Based on existing data, it is proven that there is an interest in making online loans massively (Kurnia et al., 2021). Not surprising then there are many incidents of stoning and also leaking personal data due to the rampant online loans, especially illegal ones.

For example, in January 2022 there was a raid on illegal online loans at Pantai Indah Kapuk 2. This law enforcement problem is not supported by the unequivocal consequences on online lending business actors (Illegal Loan Office Raids In PIK 2 Started From Victims Reported Being Threatened When Collecting Debts Page All - Kompas.Com, n.d.). Law enforcement in the form of aggravation is only limited to case-by-case action, not systemic prevention.

The author identifies that there are several negative impacts of online loans. There are at least two issues that need attention:

1. Protection of Personal Data

It becomes a question whether the personal data collected in this online loan system is safe or not. Although in OJK regulations there is protection of personal data in the online loan system, the enforcement is still returned to the Indonesian National Police or OJK with unclear sanctions. In OJK regulations related to online loans, Article 19 describes OJK's orders to maintain and manage personal data. But it is not clear what sanctions will be imposed if personal data is leaked, what penalties will be given is not yet clear.

2. Excessive debt collection

There is often excessive debt collection both with threats of violence and also threats of other threats. This is unfortunately not regulated by the OJK but is regulated in the ITE Law Article 27 paragraph 4 of the Criminal Code and the Criminal Code, namely article 368 paragraph 2 which discusses the punishment for violence and article 365 paragraph 4, which is a punishment for criminals with severe persecution.

When we discuss prevention of extortion and violence, there is a wedge with criminal law enforcement and the police can get involved here. That is, this protection is actually quite strong. The legal basis is there, too. But when we talk about Personal Data Protection, this is a fairly complex issue. Both legal and illegal online loans, equally have the opportunity to misuse this personal data because they get a photo ID card which can be used variously. Not to mention other personal data information that makes us 'forced' to enter that information.

We should note that there is a violation of the right-to-be-let-alone or RTBLA principle. This RTBLA is a principle on the internet that humans have the right to privacy and he should not experience privacy intrusions such as for example getting advertising advertisements that he does not want, being contacted directly by telemarketing without his wishes and also even his ID card is used for the benefit of interests that should not be (Kuhlmann, 2011)(Griswold, 1960). During this pandemic, this particular form of protection does not yet exist. There is in the ITE Law a form of personal data protection but it talks about principles not technical. We can see that in the article of the ITE Law, namely article 26 paragraph 1 which instructs a person or legal entity not to use data data without the consent of the data owner. But how the sanctions and protections are are not yet listed technically.

Only then there was the Personal Data Protection Law that was passed last year but the impact of the leakage of personal data due to online loans has been large. This means that the systematic legal protection of personal data in the occurrence of online loans during the 2020-2022 pandemic period is almost non-existent. This is a legal loophole that is exploited by both legal and non-legal online loans to reap profits.

There is no systemic prevention. This is a pretty big problem. Even in the discovery made by Asep Syafruddin Hidayat et. All. (Hidayat, Alam, & Helmi, 2020). Actually further arrangements in this law should even be made at the rule level for over the top. There are several reasons, but the most important thing is that over the top is the main access for online loans to offer their services, be it in the form of applications in the apps store or from chat services such as Whatsapp or email. However, even from this side of the government, the over the top arrangements only talk about tax fairness. The issue is obviously much bigger than taxes but the security of internet users. Not to mention that when we talk over the top who provide these illegal loans, we are also talking about the sovereignty of the country and our freedom in the international legal arena. However, there is no protection in this regard. From this description, we can see the need for a thorough evaluation of how the function of the law protects the interests of the community.

4. Conclusion

From this study the authors found two conclusions. The first is that the government has created conditions—both intentional and unintentional—through a series of policies and regulations that encourage people to apply for online loans. People feel that this online loan is the simplest and most practical way to get funding and is a coping mechanism for them to survive in a difficult situation. Two, the author identifies that there is no adequate legal protection system for the public or prospective debtors who apply for online loans. That's why they are still at risk of being exposed to the threat of extortion, unfair debt, and leakage and leakage of personal data that may have a negative impact on them.

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