

## The Protection of Consumer Rights against Illegal Online Loans

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**Abstract.** *This research is intended to examine the form of protection provided by the government for rights violations committed by illegal online loan companies. This research also intends to provide input for the government regarding its role in dealing with the problem of illegal online loans. This research uses normative juridical research methods. The problem approach in this research uses a statutory approach. The results of this study indicate that POJK Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services (LPMUBTI) and the Consumer Protection Law have not specifically regulated the legal rules related to illegal online loans. In addition, the government must immediately form a law that can provide a deterrent effect for illegal online loan companies.*

**Keywords:** *Consumer; Illegal; Loans; Protection.*

### 1. Introduction

Modern technology has made it easier for people to fulfill their daily needs. For example, basic needs such as ordering takeaway food online or buying groceries to eat every day are very helpful. Even for needs that are classified as secondary or tertiary needs can also be obtained online. In addition, Indonesia's financial sector has also been affected by technological advancements. Technology and financial services working together to change traditional/conventional business models into modern ones are what gave rise to financial technology, or fintech as it is more widely known. Online lending, also referred to as peer-to-peer (P2P) lending, is one of the most well-liked fintechs in Indonesia.

The Financial Services Authority (OJK) reported in a research published by Katadata Media Network that the value of P2P or online lending in January 2023 was IDR 18.73 trillion, up 35.72% from the same month the year before. Java accounted for

78.71% of the total number of debtors.<sup>1</sup> Meanwhile, by 2022, online loans would total IDR 225.55 trillion, according to OJK data. The majority of these debtors, who owe IDR 55.88 trillion in total, come from West Java.<sup>2</sup>

From these statistics, we can see that most Indonesians use online lending services. Online loans are a great option for those with low income as the requirements are quick and easy to fulfill. However, unlawful lending is still possible with these online loans, especially with those that have not been officially registered with OJK. These consumers will receive various promotions to entice them to use online loans to solve their financial problems. The rights and obligations of potential borrowers are not explicitly explained in the offers provided by these illegal online lenders.

Consumer rights are not expressly regulated under Indonesia's POJK Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services (LPMUBTI), which serves as the legal foundation for the use of online lending services. This rule only covers the requirements and limitations of using online loans in Indonesia. Law Number 8 Year 1999 on Consumer Protection (henceforth referred to as UUPK) has previously been enacted in Indonesia to regulate consumer rights. There are other interconnected rules in these two statutes, such as the right to get current, accurate information about the online lending organization, the right to damages if the service provider is at fault for any mistakes or omissions.

By referring to these two regulations, internet lenders acknowledge that they have rights that need to be taken into account. On the other hand, the reverse occurs, whereby online lenders may violate the borrower's rights under certain circumstances if the borrower disobeys their requests. For instance, the borrower may experience unpleasant behavior from the lender, which may include threats and intimidation, as well as harsh collection tactics using debt collectors. The intention behind these threats and abusive actions is to instill a sense of fear, shame, and intimidation in the borrowers.

This incident took place in the North Sulawesi region when a member of the public complained to the chief of the police force there that he was being threatened and

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<sup>1</sup> Cindy Mutia Annur, Awal 2023, Penyaluran Pinjaman Online Capai Rp18,7 Triliun, *Katadata Media Network*, <https://databoks.katadata.co.id/datapublish/2023/02/28/awal-2023-penyalaran-pinjaman-online-capai-rp187-triliun>, accessed on September 23, 2023 at 17.00 WIB.

<sup>2</sup> Monavia Ayu Rizaty, Penyaluran Pinjaman Online Capai Rp225,6 Triliun pada 2022, *Katadata Media Network*, <https://dataindonesia.id/bursa-keuangan/detail/penyaluran-pinjaman-online-capai-rp2256-triliun-pada-2022>, accessed on September 23, 2023 at 17.10. WIB.

intimidated via WhatsApp by an unidentified number posing as an online loan collector named Aku Kaya. The offender to have the victim pay the amount right away, or else it would be publicized on Facebook, and even worse, the victim's place of employment would be targeted for collection.<sup>3</sup> There's also an incident that happened to the author personally. whereby the author's cousin illegally borrowed money using the author's phone number as collateral without the author's knowledge. If the author's cousin failed to make the required payments promptly, the internet lender threatened to visit the author's home.

Customers or users of these online loans are at risk when threats or acts of terror occur. according to the terms of the Consumer Protection Law's Article 4 letter a, which essentially says that a customer has the right to comfort, security, and safety when utilizing services. Even though this is written, consumers who utilize online loan services are not assured of legal protection or feel that they are protected. Since numerous criminal acts are still conducted by businesses or online lending service providers, it is believed that POJK Number 77/2016 and PK Law do not offer complete protection.

To conduct this research and write this scientific work, the author needs to refer to previous research or related references. Among them is research by Dewa Ayu Trisna Dewi and Ni Ketut Supasti Darmawan (2021).<sup>4</sup> The research discusses intimidation and threats that occur after the debtor defaults are a violation of every value contained in the Universal Declaration of Human Rights (UDHR). The second related research is that of Rodes Ober Adi Guna Pardosi and Yuliana Primawardani (2020).<sup>5</sup> The research discusses that the existence of illegal online loans will cause many problems that can end up harming service users. The third related research is Jeremy Zefanya Yaka Arvante's research (2022).<sup>6</sup> The research discusses the problems that will arise due to consumers/users experiencing default or being late

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<sup>3</sup> Manado Bacirita, "Teror Pinjol Ilegal, Polda Tetapkan Satu Orang Jadi Tersangka ITE", <https://kumparan.com/manadobacirita/teror-pinjol-ilegal-polda-tetapkan-satu-orang-jadi-tersangka-ite-1zZwMGQMRxf/full>, accessed on February 22, 2024 at 19.36 WIB.

<sup>4</sup> Dewi, D. A. T., & Darmawan, N. K. S. (2021). Perlindungan Hukum Bagi Pengguna Pinjaman Online Terkait Bunga Pinjaman Dan Hak-Hak Pribadi Pengguna. *Acta Comitatus*, 6(02), 259. Doi: 10.24843/AC.2021.v06.i02.p04, accessed from <https://ojs.unud.ac.id/index.php/ActaComitatus>

<sup>5</sup> Pardosi, R. O. A. G., and Yuliana Primawardani. "Perlindungan Hak Pengguna Layanan Pinjaman Online Dalam Perspektif Hak Asasi Manusia (Protection of the Rights of Online Loan Customers from a Human Rights Perspective)." *Jurnal Ham* 11, no. 3 (2020): 353-367.

<sup>6</sup> Arvante, Jeremy Zefanya Yaka. (2023). Dampak Permasalahan Pinjaman Online dan Perlindungan Hukum Bagi Konsumen Pinjaman Online. *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, 1 (2022): 73-87. Doi: <https://doi.org/10.15294/ipmhi.v2i1.53736>, accessed from <https://journal.unnes.ac.id/sju/ipmhi/article/view/53736>

in paying their obligations, so that collection will be carried out by a third party or debt collector. Debt collectors often carry out unnatural terrors to intimidate their victims and even have access to their victims' data. The next related research is that of Lenny Sriwijaya, Khanifa Fauziah, Lisentia Putri, and Jeane Neltje Saly (2023).<sup>7</sup> The research discusses that to provide a safe and fair atmosphere for consumers/users of online loans, the government must play a significant role. In addition, adequate socialization is also needed to develop the level of public knowledge and understanding of the dangers of online loans. This research is different from previous studies. This research focuses on the rights owned by consumers in consumer protection law, namely the right to comfort, security, and safety in using online loan services. Previous research focused more on the protection of rights in the declaration of human rights and the protection of personal data owned by consumers. In addition, the role of the government in protecting consumers is not only to socialize with the public but more than that.

Based on the background, the main problems are: (1) How is the protection of consumer rights in the case of illegal online loans based on the Consumer Protection Law? (2) What is the role of the government in protecting consumers of illegal online loans?.

The purpose of this research is to know the applicable legal regulations related to online loans in Indonesia and knowing the role of the government in providing consumer protection against online loans in Indonesia.

## **2. Research Methods**

This research is supported by the normative juridical research method, which is a research approach carried out by examining secondary legal materials or library materials. This research will also examine additional sources, such as theses and journals. In addition, this research will use a statute approach, which is an approach based on an analysis of the legal issues raised in a study of applicable regulations. POJK No. 77/2016 does not contain articles that protect consumer rights from threats and terror, and the sanctions given still have the potential to ensnare illegal online loan companies. Then, even though there are regulations that protect consumer rights, in reality there are still acts of threats and terror carried out by illegal online loan companies. Therefore, the research uses the PK Law and POJK No. 77/2016 as secondary data in this study. The library research method was used in

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<sup>7</sup> Sriwijaya, L., Fauziah, K., Putri, L., & Saly, J. N. (2023). Peran Pemerintah Dan Sosialisasi Dalam Memperkuat Perlindungan Konsumen Di Industri Pinjaman Online. *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, 10(5), 2504-2517. Doi: <http://dx.doi.org/10.31604/jips.v10i5.2023.2504-2517>, accessed from <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/11726>

this study to collect data, which involved making an inventory of books and laws and regulations that were pertinent to the research problem. This data was then supplemented by a documentation study, which involved making records of files or documents (which could be books, documents, or regulations) that were pertinent to the research problem.

### **3. Research and Discussion**

#### **3.1 Forms of Protection of Consumer Rights in Illegal Online Loan Case**

Today's technological breakthroughs, such as those in the financial industry, are extremely beneficial to all aspects of communal life. One example is the emergence of financial technology (fintech). Fintech is the consequence of combining technology and technological services to form a more current payment mechanism. Payments were once conducted with cash, but with today's improved technology, transactions may now be completed remotely and in seconds.<sup>8</sup> Peer-to-peer lending (P2P), sometimes known as online lending, is a rapidly emerging fintech industry in Indonesia.

Indonesia has issued a regulation through OJK, namely POJK Number 77/2016, which states in Article 1 paragraph 3 that information technology-based money lending services are defined as a method of providing financial services that connect lenders and borrowers so that borrowing and lending activities can be carried out in real-time through an electronic system and in rupiah currency. POJK Number 77/2016 establishes the requirements and regulations for the usage of online loans in Indonesia.<sup>9</sup> Fintech companies offer P2P lending services with relatively lenient terms compared to traditional lending services owned by cooperatives or conventional banks. As a result, fintech companies have witnessed an increase in the number of online loan users. However, when compared to traditional loans, online loans have a high interest rate, and borrowers who take out online loans are also subject to penalties for late payments.

The Indonesian Joint Funding Fintech Association (AFPI) has provided provisions regarding the maximum interest rate and service fees for this P2P, which is 0.8

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<sup>8</sup> Naution, Doly Anwar, Ria Reni Armayani Hasibuan, & Robi Prayoga. (2021). Tingkat Perkembangan Fintech (Financial Technology), Pemahaman Fintech (Financial Technology) dan Minat Mahasiswa UIN Sumatera Utara. *Jurnal Pendidikan Tambusai*, Vol. 5, No. 3, p. 9080-9090. DOI: 10.31004/jptam.v5i3.2423, accessed from <https://download.garuda.kemdikbud.go.id/article.php?article=2461773&val=13365&title=Tingkat%20Perkembangan%20Fintech%20Financial%20Technology%20Pemahaman%20Fintech%20Financial%20Technology%20dan%20Minat%20Mahasiswa%20UIN%20Sumatera%20Utara>

<sup>9</sup> POJK Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services (LPMUBTI)

percent per day. AFPI itself is an organization that oversees fintech P2P lending business actors in Indonesia.<sup>10</sup> However, even though the daily interest rate for online loans has been set, there are often still many companies that violate it, especially since these online loan companies are illegal or unregistered. Illegal online lending companies can readily take advantage of clients' lack of financial knowledge to give cash that can be delivered quickly and without a stringent application process. The submission of the consumer's photo and identity is the only requirement for loan disbursement. As a result, users of online loan providers face exorbitant interest rates and servicing fees. For example, suppose a client takes out a 10-million-rupiah loan with a seven-day repayment period and an interest rate of up to 12 million rupiah.

These illegal online loans frequently engage debt collectors to make payments to their consumers even when the payment date has not yet passed. If the payment deadline has passed, the user will be charged a very large fine. They do not even hesitate to spread the user's data to emergency contacts or other contacts contained in the user's cell phone because their company has access to the user's contacts and telephone. This is what happened to the author, where the author received 2 (two) WhatsApp messages containing threats along with personal data from the author's brother who conducted illegal lending.

Consumers have the right to file a lawsuit, so those who feel harmed by unlawful online lending businesses should seek legal assistance. Protecting consumer rights is essential to prevent losses that may arise from service providers who violate the Consumer Protection Act. To protect the rights of consumers from dishonest service providers and be on the right track in certain situations, legal certainty must be established in law. The Consumer Protection Law is one of the laws and regulations that encourage efforts to enforce consumer and service user protection and corporate ethics.<sup>11</sup>

Consumer Protection Act regulates the rights of consumers. The law comes to

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<sup>10</sup> Disemadi, Hari Sutra. (2021). Fenomena Predatory Lending: Suatu Kajian Penyelenggaraan Bisnis Fintech P2P Lending selama Pandemi COVID-19 di Indonesia. *Pandecta Research Law Journal*, Vol. 16, No. 1, p. 55-67.

Doi: <https://doi.org/10.15294/pandecta.v16i1.26860>, accessed from <https://journal.unnes.ac.id/nju/pandecta/article/view/26860>

<sup>11</sup> Laiskodat, V. T. A., & Suherman, S. (2021). PROBLEMATIKA UNDANG-UNDANG PERLINDUNGAN KONSUMEN TERKAIT KEPASTIAN HUKUM TERHADAP KEPUTUSAN BADAN PENYELESAIAN SENGKETA KONSUMEN. *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora*, 8(6), 1429-1439. Doi: <http://dx.doi.org/10.31604/justitia.v8i6.1429-1439>, accessed from <http://jurnal.um-tapsel.ac.id/index.php/Justitia/article/view/4770>

improve the quality of life of consumers, business actors must avoid various actions that can have a detrimental impact on the products or services they use. Article 4 of Consumer Protection Act itself outlines each right that is the authority of the consumer/user. The rights in question include, among others, the right to comfort, security, and safety when using services, the right to choose and obtain services, the right to obtain clear and honest information directly related to the services to be used, the right to have their opinions and complaints about the services used heard, the right to obtain advocacy, protection, and proper settlement of PK disputes; (6) the right to obtain guidance and consumer education; (7) the right to be treated correctly (non-discriminatory); and (8) the right to compensation if the services obtained are not in line with the contents of the agreement.<sup>12</sup>

The unlawful online loan business in question has breached the rights of customers and users who should be able to utilize their services safely and securely when it has employed threats and even physical assault in the collection process. Fundamentally, the goal of these rights is to safeguard consumers' security and safety when utilizing products or services, thereby averting any potential losses—either physical or psychological—that can result from using a product.<sup>13</sup>

Therefore, when consumers/users have received such threats and terror, consumers/users also have the right to obtain compensation, which can be resolved through litigation or non-litigation. If litigation is conducted (through the court), then consumers/users also have the authority to obtain legal settlements with appropriate efforts. Apart from this, proper resolution of legal issues can also be carried out through alternative dispute resolution institutions that are effective so that problems can be resolved quickly.<sup>14</sup> However, this alternative dispute resolution institution cannot handle cases between consumers/users and loan companies that are not registered with OJK, so if they experience problems, they can make a report to the police.

According to a quote from the Indonesian Joint Funding Fintech Association (AFPI) website, when you have already taken out a loan from an illegal online loan and received unpleasant events such as being terrorized, threatened, and so on. Then, we should report to the following parties, namely OJK, AFPI, The police, or the report site. This site is a place to make complaints specifically created by the Presidential Working Unit, so all people can access <https://www.lapor.go.id/> to

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<sup>12</sup> Article 4 of Law Number 8 of 1999 on Consumer Protection

<sup>13</sup> Atikah, Ika. (2020). *Perlindungan hak-hak konsumen dalam Hukum Negara*. Banten: Media Madani.

<sup>14</sup> Arvante, Jeremy Zefanya Yaka, op. cit. pages 84.

make a report.<sup>15</sup>

OJK's power to order online loan providers to stop operations if they are discovered to be breaking the law and creating losses is just one of the many protections it offers. In addition, OJK will sue parties directly responsible for the damages suffered by users or customers to defend the interests of the general public, particularly those of consumers. Businesses that are judged atypical will also receive warnings from OJK, urging them to promptly implement the required modifications. Therefore, consumers/users who are victims of threats or terrorizing by illegal loan companies can make a report to the previously mentioned institutions.

### **3.2 The Government's Role in the Protection of Illegal Online Loan Consumer**

The presence of P2P lending can have a positive impact on consumers/users, allowing those who have excess money to invest it and provide a form of loan online for others who need money. In addition, P2P lending also makes it easier for consumers/users to apply for loans. However, this condition can backfire if consumers do not know how to follow the SOP, recognize which corporate institutions are legitimate or not, and understand the procedures.<sup>16</sup> Apart from this, the fintech sector itself has become the responsibility of OJK in its implementation.

Based on information from the OJK website, in the period February-March 2024, 537 illegal online loan entities were found, 48 information on personal loan offers, and 17 models of illegal investment activity offers, all of which have the potential to cause harm to the public and violate the provisions on the dissemination of personal data on several websites and applications.<sup>17</sup> Even with OJK's best efforts, illicit online loans activities continue to be widespread. The government must intervene to safeguard consumers and users in the online loan sector to uphold consumer and user safety and equity. The government's first objective is to draft laws and policies that regulate online businesses.<sup>18</sup> It is anticipated that POJK Number 77/2016 will offer legal protection; nevertheless, the public must also be able to determine which

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<sup>15</sup> AFPI, Jika Mengalami Penagihan Pinjaman Online Seperti Ini, Segera Laporkan!, <https://afpi.or.id/articles/detail/laporkan-penagihan-pinjaman-online>, accessed on May 13, 2024 at 22.38 WIB.

<sup>16</sup> Sari, N., Solihati, K.D. and Rizki, M., 2023. Peran Pemerintah Dalam Meningkatkan Literasi Keuangan Sebagai Upaya Memberantas Pinjaman Online Ilegal. *Lentera Pengabdian*, 1(04), pp.462-469. Doi: <https://doi.org/10.59422/lp.v1i04.232>, accessed from <https://jurnal.lenteranusa.id/index.php/lp/article/view/232>

<sup>17</sup> Otoritas Jasa Keuangan, "Satgas Pasti Blokir 585 Pinjol Ilegal dan Pinpri serta 17 Investasi Ilegal", <https://ojk.go.id/id/berita-dan-kegiatan/info-terkini/Pages/Satgas-Pasti-Blokir-585-Pinjol-Ilegal-dan-Pinpri-serta-17-Investasi-Ilegal.aspx>, diakses pada 15 Mei 2024 pukul 22.54 WIB.

<sup>18</sup> Sriwijaya, Lenny, Khanifa Fauziah, Lisentia Putri, and Jeane Neltje Saly, *Op. Cit*, hlm. 2509



online loan firms have registered with OJK. In the event of a disagreement, both lenders and loan beneficiaries may attempt to create new legal certainties since companies that do not possess OJK licenses or who illegally issue online loans do not function within a defined legal framework.

Apart from making clear regulations, the government also plays an important role in informing and educating the public about their rights, the dangers of online loans, and how to use these services wisely. By collaborating with various parties and enforcing laws relating to online loan, consumer/user protection agencies have decisively done their job. However, this does not necessarily make all companies carry out their business activities in line with applicable regulations. Given that online loans companies that are not registered with OJK cannot be supervised, the Investment Alert Task Force (hereinafter SWI) was formed which has the intention to supervise companies involved in illegal online loans and also facilitate coordination between supervisory bodies, law enforcement agencies, other parties who have an interest in handling activities that violate positive law, especially those related to public fund pooling activities and investment activities.<sup>19</sup>

According to Kompas.com, according to President Joko Widodo (Jokowi), several fraudulent crimes that harmed the wider community occurred along with the rapid development of the loan-sharing market in Indonesia. Many poor people continue to be deceived and ensnared by the very high interest rates of online loans, with pressure to immediately pay off their obligations. Therefore, to facilitate the growth of the digital financial services industry, President Jokowi asked OJK to build a more committed lending environment that can be reflected by the establishment of strong risk mitigation methods. President Jokowi believes that Indonesia has a high chance of becoming the third largest digitalized country after China and India if managed well. Furthermore, Jokowi asked OJK to promote inclusion in addition to financial literacy, to build an accessible financial ecosystem.<sup>20</sup>

Regulating online loan in Indonesia has resulted in a lack of specificity regarding the penalties that unlawful online loan enterprises face, which could serve as a deterrent. As of right now, only online loans that are legitimate or registered with OJK are subject to the requirements. Then, the only recourse left is administrative

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<sup>19</sup> Muna, M. A. C. (2023). *Peran Pemerintah dalam menangani Pinjaman Online Illegal Perspektif Hukum Islam* (Doctoral dissertation, Universitas Islam Indonesia). Doi: <https://dspace.uii.ac.id/handle/123456789/dspace.uii.ac.id/123456789/47291>, accessed from <https://dspace.uii.ac.id/handle/123456789/47291>

<sup>20</sup> Kompas.com, "Banyak Masyarakat Terjerat Bunga Tinggi Pinjol, Ini Perintah Jokowi ke OJK", <https://money.kompas.com/read/2021/10/11/114458926/banyak-masyarakat-terjerat-bunga-tinggi-pinjol-ini-perintah-jokowi-ke-ojk>, accessed on May 19, 2024 at 22.32 WIB.

punishment, which includes banning or restricting websites to take advantage of security flaws and support optimization or regulation, particularly about unlawful online loans. By doing these things, it is hoped that smart and healthy consumers will be created by using the services provided by online loan companies. The government must also immediately make new legal regulations specifically to regulate the implementation of illegal online loan which also contains burdensome sanctions such as criminal sanctions. Because what has been done so far is only the closure of illegal online loan companies and there are no sanctions that create a deterrent effect.

#### **4. Conclusion**

Many online loan companies, especially illegal ones, employ the services of debt collectors and use violence to collect payments from online loan users even though payments are not yet due. Therefore, when consumers/users have been subjected to such threats and terror, they also have the right to obtain damages that are settled through certain procedures, both through litigation and non-litigation efforts. The government has a role in informing and educating the public about their rights, the dangers of online loans, and how to use these services wisely. By collaborating with various parties and enforcing laws relating to online lending, consumer protection agencies have firmly done their job. However, this does not necessarily make all companies run their business activities by applicable regulations.

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