e-ISSN 2795-3248
p-ISSN 2795-3222

www.gphjournal.org
SOCIAL SCIENCE AND HUMANITIES RESEARCH
Open Access
Global Publication House
International Journal

10.5281/zenodo.10158455 Vol. 06 Issue 11 Nov - 2023 Manuscript ID: #01114

JURIDICAL REVIEW OF ONLINE LOANS IN ISLAMIC LAW

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ABSTRACT

These technological advances have brought convenience to the public, online loans have become a business trend this century and are seen as more effective, faster, and easier than loans made between parties by meeting in person to carry out debt and receivable transactions. On the other hand, whether online lending practices are by Islamic law or not. This has become a legal issue regarding the law enforcement process that is taking place in Indonesia regarding the rise of illegal online loans. Debts and receivables are one of the muamalah activities that are based on helping fellow humans, so Muslims are allowed to do this if they fulfill the debts and receivables agreement correctly. The research aims to analyze the juridical review of the legality of online loans in Islamic law as well as the legal consequences for debtors if they default in the implementation of online loans. This research is empirical normative legal research or library legal research and empirical juridical research, namely using rules in existing laws and regulations and research carried out by collecting data directly in the field from competent parties related to the object under study. The research results show that based on the DSN MUI Fatwa Number 117/DSN-MUI/IX/2018 concerning sharia principles information technology-based financing services it explains in terms of provisions related to general guidelines for information technology-based financing services based on sharia principles; and If the debtor voluntarily declares that he is in default, then the implementation of all the consequences of the default specified in the agreement can be carried out voluntarily. One form of binding agreement between a creditor (lender) and a debtor (loan recipient) is a loan and borrowing agreement.

KEYWORDS:

Online Loans, Islamic Law, Default

INTRODUCTION

The current development of information technology has a huge influence on human life. Various conveniences in carrying out activities are the benefits that humans obtain from the existence of information and communication technology. One of them is the convenience in the financial sector, namely online loans abbreviated as pinjol, which is increasingly becoming an alternative. The presence of online loans as a form of financial technology (fintech) is the impact of technological advances and many offer loans with easier and more flexible terms and conditions compared to conventional financial institutions such as banks in general.

According to Article 1 Number 3 POJK 77/POJK.01/2016, it is stated that Information Technology (Fintech) Based Money Lending and Borrowing Services are the provision of financial services to bring together lenders and loan recipients to carry out lending and borrowing agreements in rupiah currency directly through the electronic system using the internet network.

Regarding whether online lending practices are by Islamic law or not. This has become a legal issue regarding the law enforcement process that is taking place in Indonesia regarding the rise of illegal online loans. Islam is a religion that regulates all aspects of human life, both in the aspect of worship and the aspect of giving charity. In the muamalah aspect, especially in debts and receivables. Debts and receivables are one of the muamalah activities that are based on helping fellow humans, so Muslims are allowed to do this if they fulfill the debts and receivables agreement correctly [1].

Debts and receivables are Sunnah but can become obligatory if the person in debt needs them, so debts and receivables are often identified with helping each other. This is as Allah says: "And please help you in (doing) goodness and piety and do not help in committing sins and transgressions." (QS. Al-Maidah (5):2)

Based on this verse, humans are encouraged to help each other in good things because basically, humans cannot live alone and need the help of other people in any case. In the hadith, it is also explained that: Allah SWT will help His servants as long as His servants like to help their brothers (other people).

The research aims to analyze the juridical review of the legality of online loans in Islamic law as well as the legal consequences for debtors if they default in the implementation of online loans.=

LITERATURE REVIEW

A. Definition of Agreement

An agreement is an event that involves parties promising each other to carry out certain actions. The definition of agreement is regulated in Article 1313 of the Civil Code, namely "An agreement is an act in which one or more people commit themselves to one or more other people".

Based on the formulation of the agreement, we can conclude that the elements of the agreement are first, the existence of the parties, and the existence of agreement between the parties. Second, there is a goal to be achieved. Third, some achievements will be implemented. Fourth, there are certain forms, both oral and written. Fifth, there are certain conditions. In an agreement, there is an event where the parties agree on certain things which are then agreed upon and they are obliged to obey and implement them so that the agreement can give birth to a legal relationship for those who make it.

According to Subekti, an agreement is an event when one or more people promise to carry out an agreement or promise each other to carry out something [2]. Apart from that, many other opinions

have developed regarding the definition of an agreement. According to the doctrine (old theory), an agreement is a legal act based on an agreement based on an agreement to give rise to legal consequences. Meanwhile, according to the new theory by Van Dunne, what is meant by agreement is a legal relationship between two or more parties based on an agreement to give rise to legal consequences. In this regard, it places an agreement for the parties to carry out something, regarding assets, which can valued in money. Therefore, it is defined that an agreement is an agreement between two or more people who bind themselves to each other to carry out something in the field of assets.

B. Object and Subject of the Agreement

The object of the agreement is an achievement which can be in the form of giving something, doing something, or not doing something. Therefore, the goods that are the object of an agreement must be certain enough, at least the shape and quantity can be determined so that they are valid according to law. Apart from that, the object of the agreement must not be for a reason that is prohibited according to law and does not conflict with public order and morality. What is meant by the subject of the agreement is the parties who can be interpreted as supporting rights and obligations. In this case, obligations are borne by one party, and rights or benefits are obtained by the other party by demanding the implementation of what has been agreed to in the agreement. These parties are referred to as debtors and creditors.

C. Conditions for the Validity of the Agreement

According to the provisions of Article 1320 of the Civil Code, there are conditions for the validity of an agreement, namely:

1. There is an Agreement between the Parties

An agreement is a statement of the wishes of the parties. The purpose of this agreement is that the parties who wish to agree must first agree or agree regarding the main matters of the agreement to be entered into. Then what is appropriate is the statement, because that will cannot be seen or known by other people. The agreement must not be caused by mistake, coercion, or fraud, this provision can be seen in Article 1321 of the Civil Code.

2. Action Skills

Acting capacity is an ability or ability to carry out legal actions where the legal action will give rise to legal consequences. In this case, they must be people who are capable and authorized to carry out legal actions, as determined by law. This means that according to the law, the person can carry out legal actions. Like an adult, not under guardianship, and not mentally disabled.

3. A Certain Thing or the Object of the Agreement

A certain thing which means the agreement must determine the type of object to be agreed upon. The goods that are the object of the agreement must be certain, at least the type must be specified, while the quantity does not need to be specified, as long as it can later be determined or calculated. These provisions can be seen in Article 1333 of the Civil Code. The object of the agreement is known as performance which is the obligation of the debtor and the rights of the creditor. Achievement can be an act of giving something, doing something, or not doing something.

4. A Halal Cause or Reason

A lawful cause is the fourth condition for the validity of the agreement. Regarding this condition, Article 1335 BW states that an agreement without cause, or which has been made for a prohibited reason, has no force [3].This means that the agreement made must not conflict with

legislation, morality, and public order.

Conditions a and b are called subjective conditions because in this case, they are about the subject or parties agreeing, while conditions c and d are called objective conditions, whereas in this case, they are about the object of the agreement. The consequences that must be borne if one or more conditions for the validity of an agreement are not fulfilled, the agreement will be, namely:

"Null and void (nietig, null and void). In this case, at any time the agreement is deemed to have never been valid and is deemed to have never existed, in this case, if the objective requirements in article 1320 of the Indonesian Civil Code are not met. Voidable (vernietigerbaar, voidable). In this case, the agreement will only be deemed invalid if the agreement is canceled by the person concerned, in this case, if the subjective requirements in Article 1320 of the Indonesian Civil Code are not fulfilled. The agreement cannot be implemented (unenforceable). In this case, an agreement that is not implemented is if the agreement is not simply void, but also cannot be implemented, but the agreement still has a certain legal status. Subject to administrative sanctions. "In this case, there are conditions in the agreement, which if these conditions are not fulfilled will not result in the agreement being canceled, but will only result in one or both parties being subject to some kind of administrative sanction [4].

D. Principles of Agreement

According to Article 1338 paragraph (1) of the Civil Code, all agreements made legally apply as law for those who make them. Thus, the principle of freedom of contract is contained, the implementation of which is limited by law which is coercive. The following are several important principles in an agreement, namely:

1. Principle of Consensualism

The principle of consensual is the principle that states that an agreement can be said to occur with an agreement if there is no agreement then there is no legally binding.

2. Principle of Freedom of Contract

The principle of freedom of contract, meaning that a person is free to agree, the law provides freedom to enter into any agreement that is desired as long as it does not conflict with the law, public order, and morality. What is meant by the freedom to agree is who the agreement will be made to, freedom regarding the content of the agreement, freedom regarding the form of the agreement, and freedom regarding the law used in the agreement. Freedom of contract is a very important principle in an agreement. This freedom is a manifestation of the free will of the parties and is a reflection of human rights.

3. Principle of Trust

One party agrees with another party, between which they mutually develop trust that each other will keep their promises, in other words, they will fulfill their achievements. With this trust, both parties bind themselves, and the parties in this case have binding legal force as law.

4. Principle of Binding Strength

This principle states that every agreement made by parties is valid and binding and cannot be withdrawn unilaterally. Where the agreement applies as law to those who make it. as stated in Article 1338 paragraph (1) and paragraph (2) of the Civil Code.

5. Principle of Balance

The principle of balance is a principle that requires the parties to fulfill and implement the agreement. One party has the power to demand performance and, if necessary, can demand that the other party fulfill that performance, in this case, the other party also bears the obligation to carry out the agreement in good faith, so that the position of both parties can be balanced.

6. Principle of Good Faith

According to Article 1338 paragraph (3) of the Civil Code, it is stated that "Agreements must be executed in good faith" which means that the agreement must be carried out based on firm trust, and the goodwill of the parties, and there must be no intention to deviate from the agreement. "Wirdjono Prodjodikoro defines good faith with the term "honestly" or "honestly [5]. We can conclude that in carrying out this act honesty must run deep within a human being so that actions that will taint an agreed agreement can be avoided.

7. Principle of Legal Certainty

Agreements as legal figures contain legal certainty. This certainty is reflected in the binding force of agreements which constitute law for those who make them.

8. Principle of Protection

Indonesia highly respects the law, this is confirmed in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which contains the following, "The State of Indonesia is a State of Law". Based on this article, it is clear that Indonesia is a rule of law-state that upholds the principles of the rule of law, namely guaranteeing certainty, order, and legal protection that has truth and justice at its core. The principle of protection means that the parties to an agreement must be protected by law.

E. Elements of the Agreement

An agreement has two main points, namely: (1) the core or main part of the agreement; and (2) non-main parts. The main parts are called essential and the non-essential parts are called natural and accidental. The essential element is an agreement regarding the main thing or an element that must be present, namely related to the goods and prices being bought and sold. The natural elements are elements that always exist or elements that are regulated in the law as regulatory regulations. For example, in buying and selling, the natural element lies in the seller's obligation to guarantee the absence of hidden defects. In terms of accidental elements, these are elements that exist if the parties agree or can be said to be additional parts of an agreement. For example, a car sale and purchase agreement, not only the engine and body but also must include air conditioning, tape, and other variations.

F. Types of Agreements

Contract law is part of the law of engagement. Based on performance obligations, agreements consist of several types, namely:

1. Reciprocal and Unilateral Agreements

A reciprocal agreement is an agreement that obligates both parties to perform reciprocally, for example, buying and selling. Meanwhile, a unilateral agreement is an agreement that requires one party to perform and gives the other party the right to receive the achievement, for example, a gift agreement and a will. With these two examples, it can be concluded that the contents of the unilateral

agreement are in the form of a one-sided statement, but have consequences for both parties. party, namely the grantor or grantor of the will.

2. Named and Unnamed Agreements

A named agreement is an agreement that has its name, which can be grouped as special agreements and is limited in number. Meanwhile, an unnamed agreement is an agreement that does not have a specific name and is unlimited in number.

3. Obligatory and Material Agreements

An obligator agreement is "an agreement that gives rise to rights and obligations, for example in buying and selling, since there is a consensus regarding the object and price, the seller is obliged to pay the price. Apart from that, the seller has the right to payment of the price, the buyer has the right to the object purchased." 15 Meanwhile, what is meant by a material agreement is an agreement to transfer ownership rights.

4. Consensual and Real Agreement

A consensual agreement is an agreement that binds the parties from the moment the agreement is made. For example, buying and selling. Meanwhile, a real agreement that occurs requires not only an agreement but also the realization of the purpose of the agreement itself, namely by handing over the object of the agreement.

G. Default

According to the legal dictionary, default means negligence, neglect, breach of promise, or failure to fulfill one's obligations in an agreement. Thus, default is a situation where a debtor (debt) does not fulfill or carry out the achievements as stipulated in an agreement [6]. The word wanprestasi (default) comes from Dutch which means bad performance. This default can arise due to deliberate negligence on the part of the debtor himself and the existence of force majeure (overmatch).

A person can be said to have committed a default if the person first does not fulfill the achievements at all. Second, the person fulfills the achievements but not as they should. Third, the person fulfills the achievements but not on time. Fourth, the person fulfills the achievements but does what is prohibited in the agreement.

The consequences of default can result in losses. The Civil Code has regulated sanctions or legal consequences for parties who default and are required to compensate for losses with certain provisions, namely First, they are required to pay compensation for losses suffered by the aggrieved party, this provision can be seen in Article 1243. Second, namely that the agreement can be canceled accompanied by payment of compensation, this provision can be seen in Article 1267. Third, namely, that risk can be assessed to the debtor from the moment the default occurs, this provision can be seen in Article 1237 paragraph (2). Fourth, "namely, court fees can be paid if the case is brought before a judge.

H. General Overview of Online Loans

Online loans or peer-to-peer (P2P) lending companies have been active in Indonesia since 2013. At first, the government considered that these peer-to-peer lending companies were illegal because they did not have a permit. However, as time went by, the government, through the OJK, finally allowed this business with the issuance of OJK regulation number 77/POJK.01/2016 concerning information technology-based money lending and borrowing services. The incident of

online lending appeared in quite a lot of news in June 2018 because of inappropriate charging styles and oppressive interest or usury which in Islam is prohibited, this is due to the large number of illegal peer-to-peer lending companies. To reduce usury activities in Indonesia, there are now more and more peer-to-peer lending companies that comply with Sharia principles [7].

Loans are part of crowdfunding, where the owner of the money hopes to gain profits from the business activities or projects that are funded and also hopes that the money can be returned when the project ends [8]. The consideration for borrowers taking online loans is the difficulty of accessing formal financial facilities with various administrative requirements that must be met. Meanwhile, the administrative requirements for online loans look easier when compared to formal financial service loans.

I. Overview of Islamic Law

Islamic law is a set of norms or regulations that originate from Allah SWT and the Prophet Muhammad SAW to regulate human behavior in society. In shorter sentences, Islamic law can be interpreted as a law that originates from Islamic teachings [9]. Islamic law means the entirety of the provisions of Allah's commands that must be obeyed by a Muslim [10]. Islamic law or Islamic Shari'a is the relationship between humans and Allah SWT in the form of commands based on the revelation of Allah SWT for all humans brought by the Prophet Muhammad SAW which relates to beliefs and regulations that bind the behavior of all Muslims. As a legal system it has several key terms that need to be explained, what is meant are legal terms, hukm and ahkam, sharia or sharia, and fiqh or fiqh, and several other words related to these terms.

Talking about the law in simple terms, it immediately comes to mind that regulations or a set of norms that regulate human behavior in a society, whether the rules or norms are in the form of facts that grow and develop in society or rules or norms that are created in a certain way and enforced by the ruler. The form may be in the form of unwritten law such as customary law, it may also be written law in statutory regulations such as Western law. Western law, through the principle of concordance, has been in effect since the mid-19th century (1985) in Indonesia.

Law in a conception such as Western law is a law deliberately created by humans to regulate human interests in a particular society. In the (Western) conception of statutory law, what is regulated by law is only human relations with other humans and objects in society. Apart from that, there are other legal conceptions, including the conception of Islamic law. The basis and legal framework are determined by God, not only regulating human relationships with other humans and objects and society, but also other relationships, because humans who live in society have various relationships. These relationships include human relationships with God, human relationships with themselves, human relationships with other humans, and human relationships with objects in society and the natural surroundings. Human interactions in various relationships are regulated by a set of standards of behavior which in Arabic are called hukm, the plural is ahkam.

Sharia is a Muslim way of life. Sharia contains the decrees of Allah and the provisions of His Messenger, both in the form of prohibitions and in the form of commands, covering all aspects of human life and life. Viewed from a legal science perspective, Shari'a is the basic legal norms established by Allah, which Muslims must follow based on faith related to morals, both in their relationship with Allah and with fellow humans and objects in society. These basic legal norms were explained and/or detailed further by the Prophet Muhammad as His Messenger.

RESEARCH METHODS

This research is empirical normative legal research or library legal research and empirical juridical research, namely using rules in existing laws and regulations and research carried out by collecting data directly in the field from competent parties related to the object under study.

RESULTS AND DISCUSSION

A. Juridical Review of the Legality of Online Loans in Islamic Law

Qardh among linguists is defined as follows: Lafaz al-Qardu means al-Qat'u (cutting)[11]. Etymologically Qardh is a cut. The meaning of cut in this sense is property lent to someone who is in need. Ulama generally interprets Qardh as assets lent or given by (creditors) to someone in need (the debtor) which is intended to help the debtor and he must return it with the same value and at a time determined by both parties [12].

Compilation of Sharia Economic Law (KHES) is the preparation or collection or compiling of various rules, decisions, or decrees relating to Sharia economics [13]. Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law is a legal umbrella and guideline for religious court judges in examining, deciding, and resolving sharia economic cases." One of the matters of Sharia economics itself is the practice of accounts payable (qardh).

Accounts Payable (Qardh) in the Compilation of Sharia Economic Law (KHES) Article 20 is defined as the provision of funds or claims between Sharia financial institutions and borrowers which require the borrower to make payments in cash or installments within a certain period and qardh provides benefits by spending the substance. Provisions regarding accounts payable (qardh) are also regulated in the provisions of the MUI DSN Fatwa No. 19/DSN-MUI/IV/2001 which states that; Qardh is a loan given to customers who need it. Qardh customers are also obliged to return the principal amount received at a mutually agreed time [14].

In practice, debts and receivables (qardh) have pillars and legal requirements, including:

1. Accounts payable (qardh)
   a. Two people who make a contract, Muqaridh (the one who gives the debt) and Muqtaridh (the a person who owes the debt),
   b. Qardh (items lent)
   c. Sighat qabul [15].
2. Terms of accounts payable (Qardh)
   a. Two people who enter into a contract, the person who gives the debt (Muqaridh) and the personwho owes the debt (Muqtaridh) are required to mature, rational, independent, and capable of legal action and Muqaridh has power and authority over his property (tabarru')."
   b. Debt assets (qardh)
      1) According to Hanafiyah scholars, assets owed are mal misliyat, namely assets that can bemeasured, weighed, measured, and counted.
      2) According to Malikiyah, Syafiiyah, and Hanabilah scholars, that is every asset that can be usedto buy and sell shares, whether it is a type of cover (al-qabadh).
      3) The item has property value and may be used in Islam (mal mutaqawwim).
      4) The assets owed are known, that is, their level and nature are known.
   c. The terms of the contract or shigat, the words spoken at the time of the contract must be clear. Apart from that, in pronouncing the pronunciation of the ijab qabul, both parties must state the meaning of the debt and receivable. When pronouncing the ijab qabul, both parties must also be pleased with each other.

d. Qardh is considered perfect if the assets are already in the hands of the recipient of the debt [16].

As explained above, for a debt and receivable practice to be valid, there must be something called a contract. Compilation of Sharia Economic Law (KHES) in Book II Chapter II concerning Contract Principles. Article 21 explains that contracts are carried out based on the principles of:

1. Ikhtiyari/voluntary; Every contract is carried out at the will of the parties, avoiding coercion, due topressure from one party or another. Trustworthy/keeping promises; Each contract must be carried out by the parties by the agreement stipulated by the party concerned and at the same time avoid breach of contract.
2. Ikhtiyati/prudence; Every contract is carried out with careful consideration and is carried outprecisely and carefully.
3. Luzum/not changing; Every contract is carried out with clear objectives and careful calculations, thereby avoiding the practice of speculation or maisir.
4. Mutual benefit; Every contract is carried out to fulfill the interests of the parties to prevent practices of manipulation and harm to one party [17].

Today's developments are always accompanied by changes in people's creative thinking patterns. People tend to choose everything practical. As is the case regarding money loans or debts and receivables. Many social media nowadays offer the convenience of providing money loans online. The funds needed are disbursed quickly and without any collateral. Financial Technology (Fintech) is an innovation in financial services that changes business models to become more modern by utilizing technology. "Fintech is divided into several types, one of which is peer-to-peer lending or information technology-based money lending and borrowing services (online loans) [18].

In the legal system in Indonesia, apart from statutory regulations, there is also a Fatwa National Sharia Council which was formed by the Indonesian Ulema Council (MUI) which has the task and authority to determine fatwas regarding products and services in the business activities of financial institutions that carry out business activities based on sharia principles [19].

Information technology-based financing services based on Sharia principles are the provision of financial services based on Sharia principles that bring together or connect financing providers with financing recipients to carry out financing contracts through an electronic system using the internet network.

Based on the National Sharia Council of MUI Fatwa Number 117/DSN-MUI/IX/2018 concerning information technology-based financing services based on Sharia principles, it explains the provisions related to general guidelines for information technology-based financing services based on Sharia principles. The parties involved in online accounts receivable, company owners, and customers must comply with the general guidelines as follows:

1. The provision of information technology-based financing services must not conflict with Sharia principles, namely avoiding usury, gharar, maysir, tadlis, dharar, zhulm, and haram, among other things.
2. The standard contract made by the organizer must comply with the principles of balance, justice, and fairness by sharia and applicable laws and regulations.
3. The contracts used by parties in providing information technology-based financing services can be in the form of contracts that are in line with the characteristics of financing services, including alba'i, ijarah, mudharabah, musyarakah, wakalah bi al ujrah, and qardh contracts.
4. The use of electronic signatures in electronic certificates carried out by providers must be carried

out on the condition that their validity and authentication are guaranteed by applicable laws and regulations.

5. The provider may charge a fee (ujrah/resume) based on the ijarah principle for the provision of systems and infrastructure for information technology-based financing services.
6. If the financing or service information offered via electronic media or disclosed in electronic documents are different from reality, then the aggrieved party has the right not to continue the transaction.

In the legal provisions of the fatwa [20], it is stated that:

1. Information Technology Financing Services are permitted provided they comply with Sharia principles.
2. Implementation of Information Technology-Based Financing services based on Sharia principles must comply with the provisions contained in this Fatwa.

B. Legal Consequences of Debtors Carrying Out Defaults in Implementing Online Loans

Default is not fulfilling or failing to carry out obligations as specified in the agreement made between the creditor and the debtor. Default or broken promises can be intentional or unintentional. A debtor is said to be negligent if he does not fulfill his obligations or is late in fulfilling them but not as agreed.

Default is contained in Article 1243 of the Civil Code which states "compensation for costs, losses and interest due to non-fulfillment of an obligation will only begin to be obligatory, if the debtor, after being declared negligent in fulfilling his/her obligation, continues to neglect it, or if something has to be given or made, can only be given or made, can only be given or made within the time limit that has passed."

According to Subekti, he stated that default is negligence or neglect which can be of 4 types, namely:

1. Not doing what he has agreed or done
2. Carry out what has been promised, but not as promised
3. Did what was agreed, but was late
4. Carrying out an act that according to the agreement cannot be carried out [21].

Based on the definition above, a breach of contract is not performing an achievement, performing an achievement but not by it, performing an achievement but being late, or performing an action that was not agreed upon.

A party who intentionally or through negligence commits a breach of contract, can be punished based on Article 1244 of the Civil Code which states "The debtor must be punished to compensate for costs, losses, and interest if he cannot prove that the non-performance of the agreement or the inappropriate timing of the agreement was caused by something unexpected, which cannot be accounted for by him, even though there is no bad faith towards him."

So it can be concluded that default can occur when one of the parties does not perform, performs an achievement but does not comply, performs an achievement but is late, or performs an act that was not agreed upon. If one party, for example, a creditor, does not voluntarily accept and admit that he has committed an act of default, then the debtor cannot unilaterally enforce his will by declaring the creditor in default and carrying out the legal consequences of default unilaterally outside of the applicable legal mechanisms and procedures. Due to differences in interpretation and disputes over rights between creditors and debtors, the resolution of disputes must be through applicable legal

mechanisms and procedures, namely through an examination by an authorized official in court, namely a judge, by filing a breach of contract lawsuit.

However, if the debtor has acknowledged the existence of a default and voluntarily declares himself to be in default, then the implementation of all the consequences of the default specified in the agreement can be carried out voluntarily. One form of a binding agreement between a creditor (lender) and a debtor (loan recipient) is a loan and borrowing agreement. About lending and borrowing, especially in the context of money loans, referring to Chapter will return similar goods to the first party in the same quantity and condition"

In the Online Loan Provider application, there are instructions for prospective users to click agree as a form of agreement to the terms and conditions of the agreement and the Privacy Policy that will apply. Because the Service User and Service Provider have mutually agreed on the LendingBorrowing Agreement, the provisions of Article 1338 paragraph (1) of the Civil Code apply, which states; "All agreements made legally by the law apply as law to those who make them." This means that Borrowers and Lenders are obliged to comply with the provisions stipulated in the agreement as well as comply with applicable laws and regulations.

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In practice, if the User of online loan funds experiences delays in installment payments, it is sufficient to state that the Borrower has committed an act of default because he has violated the provisions of the installment payment schedule stipulated in the Lending and Borrowing agreement. Even though the debtor is in a weak position, dispute resolution must still be carried out through applicable legal mechanisms, and must not use thuggish or intimidating methods. Such methods will give rise to other legal problems, such as creditors spreading the borrower's identity on social media, actually tarnishing someone's good name, and violating Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 About Information and Electronic Transactions.

Personal data protection is also regulated in the ITE Law Article 26 paragraphs (1) and (2) which states that:

a. Unless otherwise determined by statutory regulations, the use of any information via electronic media that concerns a person's data must be carried out with the consent of the person concerned.
b. Any person who violates their rights as intended in paragraph (1) can file a lawsuit for losses incurred based on this Law.

This provision gives the owner of personal data the right to maintain the confidentiality of his data. If his data has been spread and misused by other parties, the owner of the personal data can file a lawsuit in court. The lawsuit in question is a civil lawsuit filed based on Article 1365 of the Civil Code regarding unlawful acts.

Usually, in Fintech agreements, clauses have been inserted regarding the resolution of lending and borrowing disputes which will be resolved by deliberation and/or through civil lawsuits in a particular court. Therefore, for the sake of fair law and legal certainty regarding the occurrence of default, by applicable law, the lender/creditor can give a summons (written warning) to the debtor and if the summons is not heeded by the debtor, the creditor can file a lawsuit for default in the District Court. to request that the defendant/debtor be declared in default and punished to carry out his performance obligations and compensate for the losses incurred. The judge is obliged to explore the substance of the case with the arguments of the creditor's claim, for example, whether the debtor is truly in default. Judges are required to maintain the court's position as a place where parties seek justice. The judge must be truly observant and neutral in examining the case submitted.

However, in practice, creditors will tend to avoid settlement through lawsuits and prefer settlement methods outside the applicable legal mechanisms. This is because civil lawsuits take a long time and costs must be borne by the plaintiff/creditor. However, based on Supreme Court Regulation Number 04 of 2019 concerning amendments to Supreme Court Regulation Number 02 of 2015 concerning Procedures for Settlement of Simple Claims, tort claims whose loss value is below 500,000,000 (five hundred million) can be carried out through a simple lawsuit mechanism whose settlement duration is 25 (twenty-five) days for the first level and 7 (seven) days for the objection level (final and binding).

After the court decision has permanent legal force, the next legal mechanism is to submit an execution request to implement the court decision. In carrying out the execution, if the Defendant/Debtor cannot carry out a court order containing a penalty to pay a sum of losses to the Plaintiff/Creditor due to financial incapacity, the Defendant/debtor cannot be arrested and detained, but the creditor must submit a request for confiscation of the Defendant/Creditor's assets. as collateral to the court, but if there is no Creditor's property that can be placed as collateral, then, in the end, the court decision cannot be implemented (non-excutable)[22]. This situation is avoided by online lenders/creditors who provide loans without collateral. But like it or not, whether we like it or not, these are the legal rules that apply in Indonesia and every citizen is obliged to follow the applicable laws and regulations.

CLOSING

In the legal system in Indonesia, apart from statutory regulations, there is also a Fatwa National Sharia Council which was formed by the Indonesian Ulema Council (MUI) which has the task and authority to determine fatwas regarding products and services in the business activities of financial institutions that carry out business activities based on sharia principles. Information technology-based financing services based on Sharia principles are the provision of financial services based on Sharia principles that bring together or connect financing providers with financing recipients to carry out financing contracts through electronic systems using the internet network. Based on DSN MUI Fatwa Number 117/DSN-MUI/IX /2018 concerning information technology-based financing services based on Sharia principles explain the provisions related to general guidelines for information technology-based financing services based on Sharia principles.

The user of online loan funds, in this case, the Debtor, experiences a default or delay in installment payments, which is enough to state that the Borrower has committed an act of default because he violated the terms of the installment payment schedule stipulated in the Lending and Borrowing agreement. If the debtor has acknowledged the existence of a default and voluntarily declares himself to be in default, then the implementation of all consequences of the default specified in the agreement can be carried out voluntarily. One form of a binding agreement between a creditor (lender) and a debtor (loan recipient) is a loan and borrowing agreement. About lending and borrowing, especially in the context of money loans, referring to CHAPTER will return similar goods to the first party in the same quantity and condition."

BIBLIOGRAPHY BOOKS AND JOURNALS

[1] KhumediJa'far. 2016.HukumPerdataIslamDiIndonesiaPermatanetPublishing,BandarLampung.
[2] Ismatullah, Dedi. 2011. *Hukum Perikatan*. Cetakan X. Penerbit CV Pustaka Setia, Bandung.
[3] WirjonoProdjodikoro.2004.*Asas-asasHukumPerjanjian*,Cet.VII,SumurBandung,Bandung,
[4]MunirFuady.2015.*KonsepHukumPerdata*,PTRajaGrafindoPersada,Jakarta.
[5] Mariam Firdaus Badrulzaman. 2009.*Kompilasi Hukum Perikatan*. Penerbit Citra Aditya Bakti,Bandung.
[6]Simajuntak, P.N.H. 2015.*HukumPerdataIndonesia*CetakanI.PenerbitKencana,Jakarta.
[7] Dhiya Tsuroyya And Muzayyanah Muzayyanah. 2019. *Analisis Pelaksanaan Musyarakah PadaLayanan Financial Technology Peer To Peer Lending Syariah Di Indonesia. Al-Mizan. JurnalHukumDan EkonomiIslam*. DOI:https://doi.org/10.33511/almizan.v3n2.32-53.
[8] Firdaus, Rahadian, and Achsania Hendratmi. 2020. Solusi Syariah). *Jurnal Ekonomi SyariahTeoridanTerapan* 6(8):1660-73.Https://Doi.Org/10.20473/Vol6iss20198pp1660-1673
[9] Marzuki. 2013.PengantarStudiHukumIslam.Penerbit Ombak, Yogyakarta.
[10] BarzahLatuponoet al.2017. BukuAjarHukumIslam.Deepublish, Yogyakarta.
[11] Ismail Nawawi. 2012. Fikih Muamalah Klasik dan Kontemporer. Ghalia Indonesia, Bogor.
[12] ImamMustofa. 2016.FiqihMu'amalahKontemporer.PTRajagrafindoPersada,Depok.
[13] Bagus Ahmadi. 2022. Akad Bai, Ijarah Dan Wadi'ah Perspektif Kompilasi Hukum Ekonomi Syariah(KHES)"dalamhttp://ejournal.iain tulungagung.ac.id/index.php/epis/article/view/28,(diaksespadatanggal 07Juni2022,pukul15.03)
[14] Mardani. 2012. FiqhEkonomiSyariah,PrenadamediaGroup,Jakarta..
[15] Rozalinda. 2016. FikihEkonomiSyariah,PTRajaGrafindoPersada, Depok.
[16] AjiPrasetyo.2019AkuntansiKeuanganSyariah(Teori, Kasus,DanPengantarMenujuPraktik),(Yogyakarta:
[17] Buku II BAB BAB II Pasal 21 Asas Akad, Kompilasi Hukum Ekonomi Syari'ah, MahkamahAgung Republik Indonesia Direktorat Jenderal Badan Peradilan Agama Tahun 2011. EdisiRevisi, Andi Offset, Yogyakarta.
[18] Fitriani,Ma'rufHafidz,Zainuddin. 2022.AnalisisHukumterhadapPinjamanOnlineIllegalPerspektifHukum Perdatadan Hukum Islam. Volume3,Nomor 3,Maret2022.
[19] Ahmad Farid Anwar, Nelly Riyanti, Zainul Alim. 2020. Pinjaman Online Dalam Perspektif FikihMuamalah Dan Analisis terhadap Fatwa DSN-MUI No. 117/DSN-MUI/IX/2018. Volume 21,Nomor 2.2020.
[20]LayananPembiayaanBerbasisTeknologiInformasiBerdasarkanPrinsipSyariah.darihttps://dsnmui.or.id/layanan pembiayaan-berbasis-teknologi-informasi-berdasarkan-prinsipsyariah/Diaksespada08Juni2022,Pukul07.26.
[21] R.Subekti.1979.HukumPerjanjian,PembimbingMasaCetakanKe-IV,Jakarta.
[22] Salim,H.S. 2008.PengantarHukumTertulis(BW).RajawaliPers,Jakarta.

LAWS AND REGULATIONS

The 1945 Constitution of the Republic of Indonesia.
Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.
Indonesian Code of Civil Law.
Compilation of Sharia Economic Law.