



The Juridical Review On Legal Position Of Illegal Online Loans Based On Article 1320 Of The Civil Code (Burgerlijk Wetboek)

Wardatul Fitri^{1*}

Fx Djoko Priyono²

Bambang Eko Turisno³

*^{1,2,3}Doctoral Program in Law, Universitas Diponegoro, Indonesia, Email:pwardatul11@gmail.com, fransiskusjoko893@gmail.com, Eko.turisno@live.undip.ac.id

***Corresponding Author:** - Wardatul Fitri

*Doctoral Program in Law, Universitas Diponegoro, Indonesia, Email:pwardatul11@gmail.com

Abstract

The condition of the increasing need for funds in the pandemic era, as well as the difficulty of access to funding to banks for some people and MSE actors, make online loans an alternative for the community to overcome the financial constraints they are facing. However, along with the increase in online loans, it turns out that there are also online loans that are not registered and licensed at the OJK or what is called an illegal online loan. This study aims to analyze the practice of organizing online loans (financial technology) that occurs in Indonesia, as well as the legal position of illegal online loans based on Article 1320 of the Civil Code and its legal consequences. The study was conducted qualitatively using a statutory approach and a case approach with a normative type of juridical research. The data that have been obtained are analyzed qualitatively. The results of the study show first that it is undeniable that in the era of globalization and digitalization as it is today the presence of online loans (financial technology) is a necessity as an alternative for the community to overcome the financial constraints it is facing, which offers convenience to its users, both from access to services, terms and speed. However, along with the development of the rampant emergence of Online Loans, it is also accompanied by the emergence of illegal Online Loans, which has caused illegal borrowers to become parasites that eat away at public trust in the official (legal) *P2P Lending* industry. So that in practice it is important to pay attention first to whether the Online Loans is a legal or illegal Online Loans before someone applies for a loan (credit). Secondly, the legal position of Illegal Online Lending under civil law under Article 1320 of the Civil Code is invalid and has no binding legal force for the parties. In addition to the form of illegal online loans that contain defects of will, the process of the Illegal Online Loans also contains elements of fraud, oversight, and violating laws. This is contrary to the legal rules of the agreement as stipulated in Article 1320, Article 1321, Article 1322, and Article 1337 of the Civil Code. Therefore, the legal relationship arising from the agreement born due to the agreement in the Illegal Online Loan further has no legally binding force for the parties.

Keywords: Illegal Online Lending, Article 1320 of the Civil Code, P2P Lending

INTRODUCTION

Today's modernization era has undeniably had an impact on social change in society (Fitri, 2021). Along with its development, the era of modernization was also marked by the emergence of globalization. The discourse of globalization as a process is characterized by the rapid development of science and technology, so that it is able to fundamentally change the world (Nurhaidah, 2015).

The development of modernization and globalization which is characterized by the development of information technology has inevitably had an impact on social changes in society. Human life and activities in this era of globalization are increasingly modern and bound by technology. This technology is certainly also inseparable from the use of *smartphones* and the internet, where currently there are around 5.22 billion people already owning smartphones, equivalent to 66.6%

of the world's population. It is understandable that everything in this world can already be accessed *online*, including shopping *online* such as food or daily necessities, and that has a huge impact on the trading industry in Indonesia (Faisal, et al., 2022). It even says; "globalization" refers to 'a process of removing government-imposed restrictions on movements between countries in order to create an open, borderless world economy (Scholte, 2000).

Globalization not only has an impact on the trade industry sector, online commerce, but also has an impact on the financial industry in Indonesia, because the development of digital technology that is getting bigger and tends to be massive has resulted in the growth and development of financial technology or abbreviated as 'fintech' which is a new innovation in financial institutions (Faisal, et al., 2022).

The presence of a technology-based financial industry (fintech) is not surprising to attract the attention of the public, in the midst of the current situation and conditions of society. The urgent need during the Covid-19 Pandemic, plus erratic work is a reason to do credit (Priyatna, 2022). Moreover, it is as indicated in the following excerpt (Fitri, 2020):

WHO Director-General, Tedros Adhanom Ghebreyesus said, 'this is not just a public health crisis, it's a crisis that will impact every sector'. According to the Organisation for Economic Cooperation and Development (OECD), economic growth could fall to its worst since 2009. The OECD estimates that world growth in 2020 will be around 2.4%, down from 2.9% in November. This figure is a record low. Previously the lowest number occurred in November 2008 when the world was hit by the global financial crisis. The Minister of Finance of the Republic of Indonesia, Sri Mulyani also revealed the same thing, that the world economy will experience a very deep contraction this year. Unemployment is already rising sharply in various countries. All countries have double-digit unemployment growth. Activity in the economic sector decreased sharply due to social distancing, resulting in reduced human mobility. Based on data released by the Ministry of Manpower of the Republic of Indonesia as of April 2020, workers who were laid off due to Covid-19 have reached 2,084,593 workers, which comes from 116,370 companies. Not only that, the Minister of Manpower, Ida Fauziyah, also stated that the informal sector was also hit by the loss of 538,385 affected workers from 31,444 companies or MSMEs.

It shows the fact that Covid-19 pandemic have caused a very serious impact towards the MSME sector, the increasing of unemployment, and education costs which are now burdening the community due to the cost of internet quotas and smartphone facilities. The business world that has been overwhelmed by the pandemic and the policies issued by the government have also had an impact on workers in all existing sectors, which in the end has an effect on stagnant economic conditions, even declining (Savitri, Shahputra, Hayati, & Rofizar, 2021). It is also as expressed as follows (ITS, 2021):

Due to the Covid-19 pandemic, people have to find other ways to make ends meet. One of them is by looking for fresh funds through peer-to-peer (P2P) online loans which are one type of financial technology (Fintech)

The condition of the increasing need for funds in the pandemic era, as well as the difficulty of accessing funding to banks for some people and MSE actors, make online loans an alternative for the community to overcome the financial constraints they are facing. Small communities can feel the convenience about credit loans with the presence of online loans, where in the past credit services required long requirements, day-consuming execution and guarantees for banking institutions (Savitri, Shahputra, Hayati, & Rofizar, 2021). While on the other hand, the presence of online loans is proven to be able to provide convenience to its users, both from access to services, terms, and speed. Online loans are also a quick way out for people who need funds quickly for various purposes without having to come to financial institutions with various conditions, even collateral (Irwansyah, 2020).

However, practically, the emergence of such online loans also do not escape from problems. This lucrative market need has also provoked irresponsible parties by setting up illegal lending businesses without obtaining a Financial Services Authority (OJK) permit. As the following quote shows (JawaPos.com, 2021):

JawaPos.com –

The rise of illegal online loan cases has an impact on the number of complaints received by the Financial Services Authority (OJK). The financial technology (*fintech*) industry is most widely reported by the public. The number reached 50,413 complaints.

It's the same with that; (Harianjogja.com, 2021)

Harianjogja.com, JAKARTA –

The Indonesian Consumer Institution Foundation (YLKI) said that as many as 49.6% of the total complaints they received were related to the financial services sector.

In fact, which is even more concerning; (CNNIndonesia.com, 2021)

Jakarta, CNN Indonesia –

The list of victims of online loans (Online Loans) is getting longer. Most recently, a housewife with the initials WPS (38) in Wonogiri, Central Java, died by suicide on Saturday (2/10), after being frustrated by being entangled in debt through online 'loan sharks'.

The resort police chief at Wonogiri, AKBP Dydit Dwi Susanto said WPS left a will for the family. Letter on, she admitted that she was in debt up to ten million rupiahs from 23 loans. "Indeed, there is written report that it is often terrorized so" said Dydit, Tuesday (5/10). WPS also apologized to her husband and children for owing loans with an average value of Rp1.6 million to Rp 3 million.

Such conditions are certainly very concerning and quite troubling for the community. People are haunted by fear and threats from debt collectors of online loans. The customer is forced to repay the loans they borrowed, even by means of threats, violence, including harassment that is actually unlawful.

However, what is actually interesting for further discussion is the issuance of a statement by the Coordinating Ministry for Political, Legal, and Security Affairs of the Republic of Indonesia some time ago. Coordinating Minister for Political, Legal and Security Affairs (Menko Polhukam), Moh. Mahfud MD, as reported by

Kompas daily (10/2021) said:

Therefore, an appeal or statement by the government attended by the OJK and BI, stop the implementation of illegal loan. To those who have already been victims of illegal loans, do not pay. If someone doesn't pay, and then they don't receive it, report it to the nearest Police Station. The police will provide protection," he exclaimed (Kompas.com, 2021).

This statement is quite interesting to be studied further because civil law point of view the act is known as "default". In principle, default is condition when one party puts the act of breaking a promise in an agreement. Furthermore, the party who defaults and brings consequences to the arising of the right of the aggrieved party to further sue the party who committed the default to provide damages, so that -on the basis of these reasons- by law it is hoped that no party will be harmed because of the default. (dppferari, 2021). This is as stipulated in Article 1246 of the Civil Code, "Costs, damages and interest that the creditor may sue consist of the losses he has suffered and the benefits he could have without violating the exceptions and changes referred to "(See Article 1246 of the Civil Code (*Burgerlijk Wetboek*)).

Furthermore, if juxtaposed *vis a vis*, then of course the statement made by Moh. Mahfud MD was contrary to the provisions of Section 1246 of the Civil Code. On the one hand, it is said that the party who does not fulfill his achievements in the form of paying his installments that should be his responsibility is punished to compensate for "losses, interest and costs" for reasons of default, but (Sinaga & Darwis, Default and Its Consequences in the Implementation of the Agreement) the Coordinating Ministry for Political, Legal, and Security Affairs, Moh. Mahfud MD instead issued a statement so that the obligation of responsibility was not necessary.

Therefore, in order to get a constructive and comprehensive understanding of this matter, this paper will then discuss what the legal position of Illegal Online Loans based on civil law and the legal consequences of it.

Problem Formulation

1. What is the practice of organizing online loans (*financial technology*) that occurs in Indonesia?
2. What is the legal position of illegal online loans under Article 1320 of the Civil Code and its legal consequences?

METHODOLOGY

The study was conducted qualitatively using a law approach, a conceptual approach and a case approach with a normative juridical type of research. According to Soerjono Soekanto (Mamudji, 2001) normative legal research or normative juridical research is library law research conducted by examining library materials or secondary data. The technique of collecting legal materials in this study was carried out through library research, web research, by searching for legal materials related to the implementation of illegal online loans based on the legal rules of the agreement including whether or not the illegal online loan agreement was valid. The analysis or discussion that will be used in this research is to describe the facts related to illegal online loans based on the legal approach, conceptual approach and case approach, then analyzed using qualitative methods, namely a descriptive analysis based on the data obtained (Sugiyono, 2008). The data is grouped and then selected according to quality and correctness so as to answer the questions posed. Then the data obtained will be presented descriptively, namely by explaining and describing something that is obtained from library research.

RESULTS AND DISCUSSION

1. Online Loan Implementation Practices (*Financial Technology*) in Indonesia

Recently, many people from various circles have been talking about 'fintech'. The presence of the fintech industry in offering digital-based financial products seems to open new doors for people who want to apply for loans (credit). In contrast to conventional lending services offered by banks or cooperations, various fintech offer peer to peer lending (P2P Lending) loan products or online loans that can be applied for very easily and without complicated requirements. In fact, from the beginning of the proposal until the funds reach the customer's hands, fintech only takes no more than 24 (twenty-four) hours. This advantage is what makes financial products 'financial technology' so quickly gain popularity and are compulsively used by people especially millennials and the younger generation (Kemenkeu.go.id, 2022).

Practically, the concept of *fintech* itself is an adjustment to advances in digital technology in the financial sector, especially in the banking world. Fintech is expected to provide facilities in the process of modern financial transactions to make it safer and more practical. It is undeniable that in the era of digitalization today, the presence of *fintech* has actually offered various conveniences to its users, both from access to services, terms and speed. Through this fintech, people who need quick funding for various purposes do not need to wait longer or come to financial institutions with various conditions, even collateral. (Panginan & Irwansyah, 2020)

One form of financial technology (fintech) is Peer to peer lending (P2P L) which is an information technology-based money lending service between the Recipient and the Lender, which is also known as "Online Lending". Lending through peer-to-peer lending, makes people who need funds with a small nominal can borrow without the need to apply for credit to the bank and without the need for income requirements which is considered more efficient and in accordance with the needs of the community. Peer to peer lending services can be accessed publicly through the application anytime and anywhere. (Faisal, et al., 2022)

Historically this p2p lending system was originally introduced in the UK by a company called Zopa and later followed by America. People who need small amount of money, by the existence of Peer-to-Peer Lending (P2P) services can get credit fast and without having to go to the bank. (Purnami & Putrawan, 2020). Then in 2008 came Bitcoin which was initiated by Satoshi Nakamoto. (Rizal & et al, 2018) .

In Indonesia, regulations regarding this technology-based loan system are contained in the Financial Services Authority Regulation No. 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Services in December 2016. This P2P L system is basically almost the same as the marketplace system where platform entrepreneurs provide a

container as a place for sellers and buyers to meet. Likewise in the Peer-to-Peer Lending (P2P L) service, which later connects prospective debtors with prospective creditors in a platform. The existence of this system has made a breakthrough in the community to make it easier to get loans without having to use official financial institutions such as cooperations and banks. (Purnami & Putrawan, 2020).

However, the ease of accessibility provided by online loans to fintech has recently emerged and caused polemics and problems of its own. OJK recorded complaints against the implementation of official fintech peer-to-peer (P2P) lending, as well as illegal online loans reaching 19,711 cases during the 2019-2021 period (Finansialbisnis.com, 2022). In fact, along with the development of the practice of illegal online loans is increasingly troubling the public along with the rampant cases of lawlessness against its consumers. Violations of the law such as fraud, theft of personal data, abusive collection coloring the practice of illegal online lending (Hukumonline.com, 2022). Furthermore, OJK noted that there were at least 4 (four) issues of severe complaints that were most reported, which in fact were carried out by illegal borrowers. First, the disbursement of funds or loans without the consent of the applicant. Second, the threat of spreading personal data. Third, billing all smartphone contacts (belonging to the victim) with terror or intimidation. Finally, abusive billing and sexual harassment (Finansialbisnis.com, Pinjol Complaints Reach 19,711 Cases Of Half Of Them Serious Violations, 2021).

Such condition certainly occurs not without cause. There are many triggering factors behind the occurrence of this problem. Among others, from the victim point of view, the level of community literacy is the biggest homework, for example, ignoring legality checks and limited understanding of the dangers of borrowing, in addition to the urgent need due to financial difficulties. Moreover, in recent times, the global community has been faced with a condition of 'financial difficulties'. Covid-19 Pandemic have caused people to find other ways to meet their needs. One of them is by looking for fresh funds through peer-to-peer (P2P) Online Loans which is a type of financial technology (Financial Technology or Fintech) in (ITS, Stop Equating Fintech Lending with Illegal Borrowing, 2021).

Unfortunately, along with the development of the rampant emergence of Online Loans is also accompanied by the emergence of illegal Online Loans. These illegal online loans has caused illegal borrowing to become a parasite that eats away public trust in the P2P Lending industry. The bad image of online loans begins to emerge among people among others, loans are only considered to be limited to "loan sharks under the guise of financial balance" and so on. In response to the large amount of information from the public who were harmed by the illegal online lending, the Financial Services Authority (OJK), Indonesian Bank (BI), the Indonesian National Police (Polri), the Ministry of Communication and Information of the Republic of Indonesia (Kominfo) and the Ministry of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia (Kemenkop UKM) gave a joint statement of commitment to strengthen measures to eradicate illegal online lending.

In line with this, the Minister of Cooperatives and SMEs, Teten Masduki gave a statement, "Illegal online loans have become increasingly prevalent and have resulted in huge losses to the community, especially in the midst of the Covid-19 pandemic situation. Through this joint commitment, it is a concrete step in the synergy of Ministries/Institutions for the prevention, handling, complaints, and enforcement of the law in the eradication of illegal online lending" (BankIndonesia.go.id, 2022).

Therefore, in the practice of organizing Online Loans that occur in Indonesia, it is important to ascertain in advance whether the Online Loan is legal or illegal. This is solely so that its users (debtors) can be given proper legal protection. As reported by the kemenkeu.go.id page, it is easy to know whether the online loans is legal or illegal. Quoted from Tempo Magazine, here are the characteristics of illegal Online Loans (Priyatna, Stop Victims of Illegal Borrowing with Umi, 2021):

1. do not have an operational permit from the Financial Services Authority.
2. using the similar application name to other online loans with only different spaces or capital letters.
3. offering to download the application through whatsapp messages and using an unknown number.
4. having high amount of interest on loans and fines (1-4 percent per day or more) with short repayment period.
5. charging additional fees of up to 40 percent of the value of the loan.
6. asking access to the customer's mobile phone data.

2. Legal Position of Illegal Online Loans and Their Legal Consequences

Juridically, the substance of money or credit lending activities carried out through fintech, or online loan service providers is basically the same as being viewed as a general agreement regulated in the Civil Code, except that the agreement is carried out through electronic or online media. While in a conventional agreement, the agreement is carried out physically by meeting face-to-face between the parties. However, in principle, even though the agreement is carried out electronically (online) the validity of a loan and credit agreement carried out online must also refer to an agreement that is valid according to the Civil Code, which meets the elements required in Article 1320 of the Civil Code.

This is emphasized by Article 1 number 17 of Ri Law Number 19 of 2016 concerning Amendments to RI Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) which states that; "An electronic contract is an agreement of the parties made through an electronic system". Article 18 paragraph (1) of Ri Law Number 19 of 2016 concerning Amendments to RI Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) further states that, "Electronic transactions poured into electronic contracts are binding on the parties". Based on the content of the provisions of the article, it can be observed that contracts or agreements carried out online or carried out through electronic media are basically agreements similar to agreements regulated in the Civil Code.

Therefore, even though the agreement is carried out electronically or online, the agreement is valid and lead to a legal relationship, namely causing legal consequences in the form of rights and obligations for the parties. As explained that; (Ibrahim & Sewu, 2007) (Sinaga, Implementation of the Rights and Obligations of the Parties to the Law of the Agreement, 2019)

The existence of an agreement lead to the rights and obligations for each party. The parties are bound to abide by the contents of the agreement that has been made. In the business world, agreements are very important as a handle, guideline, evidence for the parties. A good agreement is intended to prevent unwanted problem emerge in the future. And when the problem emerges, a good agreement can offer solution. The agreement can provide guarantees and legal certainty for the parties to carry out their own obligations and rights.

The arrangements regarding the agreement of the parties are also regulated in Article 20 paragraph (1) of the ITE Law which states that; "unless otherwise specified by the parties, an Electronic Transaction occurs at the time when the transaction offer sent by the Sender has been received and approved by the Recipient". Furthermore, in subsection (2) it is mentioned; "Approval of the offer of electronic transactions as referred to in paragraph (1) shall be made by electronic declaration of acceptance". electronic agreement is valid when there is an 'Offer' and an 'Acceptance'. Products are offered to consumers by business actors, and before there is approval, all that happens is a bargaining event. Meanwhile, if the consumer has received information and agreed to the specifications of the goods and the price of the goods offered, then that is when the agreement between business actors and consumers occurs, so that an agreement is valid between them. This concept of offer and acceptance is known as the 'offer and acceptance concept'. This is what civil law refers to as an agreement born of an agreement. As explained in the following excerpt (Earth & Indrawati, 2022) (Setiawan, 2019):

When compared with an agreement, then in addition to the agreement is a source of engagement other than the law, engagement is also an abstract sense because the parties are said to carry

out something, while the agreement is already a concrete sense, because the parties are said to carry out a certain event.

Furthermore, it relates to the mutual legal relationship that occurs between creditors and debtors in the practice of Online Loans, regulated in Article 1754 of the Civil Code, which states as follows;

"A person who gives a loan in the form of money or goods for a certain person must give back the goods or money as stated in the agreement to the concerned person ". This provision, apart from being the legal basis of the loan-and-borrowing agreement, is also a norm that determines that a person (debtor) as a borrower of a certain amount of money is obliged to return the borrowed money to the creditor. This is what is then referred to as the obligation of the parties in fulfilling achievements.

The obligation of the parties to meet the agreement, in fact, is closely related to the Latin principle *pacta sunt servanda* or promises must be kept. It is the principle of obedience to carry out the contract of the agreement in accordance with the content promised by the parties. This principle was born out of the Roman praetor doctrine, *pacta conventa sevabo*, which means "I honor or cherish covenants". The doctrine is supported by the holy command of *motzeh Sfassechatismar* (you must keep your words), and from the maxim of ancient Roman law namely *pacta sunt servanda*. In classical contract law theory, *pacta sunt servanda* is sacred and its treaties must be carried out in earnest. If what is promised between the parties' defaults, then the one who commits the default is considered as sinner. (Khairandy, 2011)

In Indonesian positive law, the principle of *pacta sunt servanda* is regulated in Article 1338 paragraphs (1) and (2) of the Civil Code (*Burgerlijk Wetboek*), as follows:

1. All consents made in accordance with the law are valid as the law applies as a law to those who make them.
2. The agreement is irrevocable other than by agreement of both parties, or for reasons prescribed by law.

Based on these provisions, the parties are obliged to meet the agreement. It leads to court consequences when the agreement is violated by one party or more (Rasyid, 2022) or what is known in treaty law as default. According to the Dictionary of Law, tort means negligence, negligence of promises, non-fulfillment of its obligations in the agreement (Subekti & Tjitrosoedibio, Dictionary of Law, 1996). Default is the performance of an obligation that is not fulfilled or broken the promise or negligence committed by the debtor either because he did not carry out what had been promised or even did something that according to the agreement should not be done. As contained in "Definition, Form, Causes and Laws of Default" (dppferari.org, 2022).

In general, default only occurs if the debtor is declared to have neglected to fulfill the agreement, or when the debtor cannot prove that he had committed the default beyond his guilt or because of compelling circumstances. If in the implementation of the fulfillment of agreement, the grace period is not determined, the period of a creditor is deemed necessary to warn/reprimand the debtor so that he fulfills his obligations. This reprimand is also called *sommatie* (somasasi) (Simanjutak, 2021).

Islamic law also provides advice for anyone who binds the agreement to keep it being met. This can be observed in the Quran Surah **An-Nahl verse 91:**

وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ وَلَا تَنْفُضُوا الْأَيْمَانَ بَعْدَ تَوْكِيدِهَا وَقَدْ جَعَلْتُمُ اللَّهَ عَلَيْكُمْ كَفِيلًا إِنَّ اللَّهَ يَعْلَمُ مَا تَفْعَلُونَ ٩١

"Honour Allah's covenant when you make a pledge, and do not break your oaths after confirming them, having made Allah your guarantor. Surely Allah knows all you do."

However, the most important point is the validity of the Online Loan agreement. Whether the agreement came from the agreement in the Online Loans has met the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code and does not violate the provisions

of the applicable laws and regulations, which is further legally *mutatis mutandis* the agreement is considered valid and causes legal consequences for the parties. As explained as follows:

The valid agreement has binding force for the parties, and the legal consequences of the existence of the agreement are: the parties are bound by the content of the agreement and also based on propriety, custom and statute (Articles 1338, 1339 and 1340 of the Civil Code); The agreement must be executed in good faith regulated in Article 1338 paragraph 3 of the Civil Code; The creditor may request the cancellation of the debtor's actions that harm the creditor (*actio pauliana*) regulated in Article 1341 of the Civil Code (Sinaga, Implementation of the Rights and Obligations of the Parties to the Law of the Agreement, 2019).

Based on Article 1320 of the Civil Code, it is affirmed that an agreement is valid and legally binding for the parties, if the agreement meets the following conditions:

- 1) It is agreed by those who bound themselves in the agreement.
- 2) The ability of the parties to enter into an agreement.
- 3) A certain thing.
- 4) A lawful cause/causa.

Thus, referring to these provisions, the position of the agreement in the Illegal Online Loan Agreement is invalid. This can be seen from the terms of the validity of the first agreement, namely "their agreement (the parties) that binds themselves". This term is an essential element in an agreement because it is based on what is known as the "principle of consensualism", which is embodied in the agreement of the parties. By agreement, it is intended that between the parties concerned a conformity of will is achieved, meaning that what is desired by one is also what the other wants (Subekti, Miscellaneous Agreements, 1995).

The further arrangement of "their (the parties's) agreement binding on itself (in the agreement)" is provided in Article 1321 of the Civil Code that: "No valid agreement if the act is given due to an oversight or obtained by coercion or fraud". Or in other words, if any agreement in obtaining the word agreement arises due to coercion, oversight, and fraud, then the agreement can be judged to be defective in will therefore not meet the valid conditions of the agreement.

In casu a quo, an oversight or lie (fraud) in an Illegal Online Loan agreement is as a fact seen since the birth of the legal relationship between the parties, in which the creditor party does not convey in full and clearly about the content of the agreement, including the amount of interest that will be charged (borne) by the debtor on the amount of money loans he owns. In many cases, even the interest is increasingly soaring irrationally, so it is very "suffocating and ensnaring" for debtors, which is actually never promised and agreed upon before.

A condition that places in the presence of a will defect in the agreement entered into by the parties makes the agreement null and void. Juridically, null and void means that the agreement is immediately null and void without having to wait for the presence or absence of a request for annulment to the judge by the parties involved in it. According to Harahap (Harahap, 2015), a null and void judgment means the judgment handed down:

1. It is considered never exist in the first place.
2. A null and void judgment has no legal force and effect.
3. Thus, a null and void judgment, from the outset the judgment, has absolutely no execution force or unenforceable.

So, a judgment that is null and void is a judgment that has been handed down, the judgment is considered to have never exist, has no legal force and consequences, and has no execution power (executory). This is implicitly also regulated in Article 1322 of the Civil Code which states that an oversight of the nature of the goods (objects) that are the subject matter of the agreement, results in the cancellation of the agreement, as follows.

An oversight does not result in the invalidation of an agreement unless the oversight occurs regarding the nature of the goods on which the consent is based. An oversight does not result in an oversight, if the oversight only occurs concerning the person with whom a person intends to enter into an agreement, unless the consent is given primarily because of the person concerned (See Article 1322 of the Civil Code).

Furthermore, if we look at the mode that occurs in illegal Online Loan agreements, the process also contains fraud. That is, in carrying out the agreement contains an element of deception (or lie), thus deceiving the borrower. Article 1328 of the Civil Code describes Fraud as an excuse to cancel the agreement, if the deception used by one of the parties is so clear and evident that the other party has not made the agreement if the deception is not carried out (Satrio, 1995).

In addition, there are also other elements that can make the agreement non-free and result in the agreement being requested for cancellation, namely the existence of an abuse of circumstances (undue influence / *misbruik van de omstandigheden*) (Satrio, 1995) . To be able to abuse the situation, one party must have advantages over the other, which advantages can be in the form of psychological, economic, and physical advantages. There are several factors that we can consider as characteristic of the abuse of circumstances, namely (Satrio, 1995):

- 1) At the time of closing the agreement, one of the parties was in a pinched state.
- 2) The existence of stressful economic circumstances, urgent financial difficulties; or
- 3) The existence of a superior-subordinate relationship, economic superiority in one of the parties, an employer-labor relationship, parents / guardians-immature children.
- 4) The presence of other unfavorable circumstances, such as patients who need the help of an expert doctor.
- 5) The agreement contains an unequal relationship in the reciprocal obligations between the parties (unbalanced achievements), such as the employer's exemption from taking risks and shifting them to the responsibility of the worker.
- 6) A huge loss for either party.

Apart from the reasons mentioned above, Article 1337 of the Civil Code also specifies; "A cause is forbidden, if it is prohibited by law or if it is contrary to decency or to public order". In fact, the enactment of an agreement is further said to be legally invalid if the engagement violates the law, as specified in Article 1254 of the Civil Code below: "All conditions aimed at doing something that is impossible to do, something that is contrary to good decency, or something prohibited by law is void and results in the consent hung on it being invalid (Subekti, Law of Treaties).

More specifically, the normative concrete form that the illegal Online Loan agreement is in violation of the Law, including as shown as follows:

- a. Article 8 paragraph (1) letter f jo. Article 62 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection states that:
 - That business actors are prohibited from producing and/or trading goods and/or services that are not in accordance with the promises stated in the label, etiquette, description, advertisement, or sales promotion of the goods and/or services.
 - Violations committed by business actors, including loan providers, against these provisions are threatened with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).
- b. Article 45A of Law No. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions:
 - Everyone intentionally and without the right to spread false and misleading news that results in consumer losses in Electronic Transactions.
- c. Article 115 jo. Article 65 paragraph (2) of Law No. 7 of 2014 concerning Trade states:
 - Every Business Actor who trades Goods and/or Services using an electronic system that is not in accordance with data and/or information as referred in Article 65 paragraph (2) shall be sentenced to a maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp12,000,000,000.00 (twelve billion rupiah).

This has further been corroborated by several Court Decisions of permanent legal force *inkracht* as follows:

- a. Decision of the North Jakarta District Court No.526/Pid.Sus/2020/PN. Jkt.Utr. dated September 22, 2020. In the process of offering product sales, to attract potential consumers, the company claims to have been regulated and supervised by the OJK. However, based on the facts of the trial, it was proved that the company was never registered and did not have permission from the OJK, so the offer made by the borrower was not in accordance with the actual facts. The panel of judges stated that illegal borrowers were legally proven and convinced guilty of committing a criminal act of producing and/or trading goods and/or services, which were not in accordance with the promises stated in the labels, etiquette, descriptions, advertisements or sales promotions of goods and/or services. To account for the perpetrator's actions, in a court decision, the Panel of Judges sentenced the perpetrator to imprisonment for 9 months and 15 days.
- b. The Directorate of Cyber Crimes (*Ditipidsiber*) of the National Police arrested 4 desk collectors of illegal online loans PT. Vcard Technology Indonesia (Vloan) with police report number LP/B/1380/X/2018/Bareskrim. If it is related to corporate criminal liability, then in this case it can also be asked for criminal liability using a *vicarious liability* pattern, namely even though the Board of Directors has no mistakes, but the mistakes committed by their employees can still be charged to the directors as long as they are within the scope of their work and still have an employment relationship with their superiors, in other words, the company management (directors) should also be able to be asked for criminal liability. In the Barracuda illegal P2PL fintech case where there are 5 (five) suspects, namely DS is a desk collector who commits criminal acts by spreading slander to people closest to the victim, AR acts as a supervisor, Mr Li is a foreigner who is the owner of the illegal P2PL fintech company, then those who are still DPO are Mr D and Mrs F who are foreigners as well.

Hence, even though the parties to an agreement (contract) on the basis of the principle of *pacta sun servanda* have freedom of contract or autonomy of will to determine the agreement they make. On the basis of the principle of *pacta sun servanda* to the community, it is given the freedom to enter into an agreement in any case (Cahyono, 2022). This is how it is affirmed in Article 1338 of the Civil Code which states that all agreements validly made are valid as laws for those who make them.

Nevertheless, the freedom or autonomy of the will possessed by those parties is not then without limits. There is essentially no freedom of contract which is unlimited (absolute), but rather in that freedom contains limits that must not be exceeded in the making of contracts (Septarina, 2022). Article 1337 of the Civil Code also specifies; "A cause is forbidden, if it is prohibited by law or when the cause of itube is contrary to decency or to public order".

This outlines a principle that although in the law of the agreement, the principle of freedom of contract is adopted, in that case the parties are also limited by certain fundamental rules that serve to protect the legal interests of the parties and thus ensure that what is agreed can be carried out by the parties. As shown in the following excerpt (Sjahdeini & Remy, 1993):

In its development, it turns out that the principle of freedom of contract can bring injustice, because this principle can only achieve its goal, which is to bring about optimal welfare if the parties have a balanced bargaining power. If one party is weak, then the party who has a stronger bargaining position can impose its will to suppress the other party, for the benefit of itself. The terms or conditions of such a contract will eventually violate the rules of fairness and proper. In its development, this principle has caused lameness in people's lives, so the state needs to intervene in restricting the implementation of the principle of freedom of contract to protect the weak.

In line with this: (Ibrahim & Sewu, 2007)

In its development since 1870 the freedom of contract has failed. This can be seen by the interference in the field of legislation produced by the British parliament. Likewise, in the Dutch state, freedom of contract since the middle of the XIX century has been reduced by the ruler by narrowing the circle of freedom. A number of laws were issued by the government that caused the freedom of the individual to regulate relations that were in accordance with his wishes to be

reduced increasingly and rapidly. This is driven by the idea of providing protection to those who are classified as economically weak against the dominance of their opponents or motivated by providing protection for the public interest.

Eventhough, it is said that in the event of an unlawful act or default against the obligations specified in the contract purely becomes the business of the contracting parties (private) (Jamil & Rumawi, 2020). However, in that case, it is absolutely necessary to have coercive legal rules that are not kept by the parties. As said "Mandatory rules are generally those rules that cannot be derogated by agreement. If in the domestic contracts was contractually derogated the mandatory of rule, this would be considered to be void" (In general, Mandatory rules/ coercive legal provisions) are provisions that should not be ruled out in an agreement. Legal consequences of it, if the contract overrides the mandatory rules, then the contract can be canceled (Chintya Indah Pertiwi, 2018).

CONCLUSION

It is undeniable that in the era of globalization and digitalization as it is today, the presence of online loans (financial technology) is a necessity as an alternative for people to overcome the financial constraints they are facing, which offers convenience to its users, both from access to services, terms, and speed. However, along with the development of the rampant emergence of Online Loans, it is also accompanied by the emergence of illegal Online Loans, which has caused illegal borrowers to become parasites that eat away at public trust in the official (legal) P2P Lending industry. So that in practice it is important to pay attention first to whether the Online Loans is a legal or illegal Online Loans before someone applies for a loan (credit). That the legal position of Illegal Online Lending according to civil law under Article 1320 of the Civil Code is invalid and has no binding legal force for the parties. In addition to the form of illegal online loans that contain defects of will, the process of the Illegal Online Loans also contains elements of fraud, oversight, and violating laws. This is contrary to the legal rules of the agreement as stipulated in Article 1320, Article 1321, Article 1322, and Article 1337 of the Civil Code. Therefore, the legal relationship arising from the agreement born due to the agreement in the Illegal Online Loan has no legal binding force for the parties.

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