



Legal impact and urgency of protection for users of illegal online loan services

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ABSTRACT

This study aims to identify legal sanction against illegal lending providers in Indonesia and examine legal protection for users of illegal online loan services. The research method used is a normative legal approach with a focus on analysis of applicable laws and regulations. Indonesia has a number of legal sanctions that have been imposed on illegal loan organisers, including suspensions of operations, administrative sanctions, and even criminal penalties under the Law and OJK Regulations. These measures aim to protect the public from illegal practices that can harm them financially and socially. On the user side, legal protection is regulated by POJK 77/2016 and the Consumer Protection Law, which provides consumer protection facilities such as complaint services and legal defence. Even though there are regulations that have been implemented, illegal loan services remain a problem because they offer loans without official permission, take advantages of people's lack of financial literacy, and create the risk of uncontrolled lending. The importance of understanding and complying with the rules and laws that apply in lending services is the key to avoiding legal risks and financial problems.

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1. INTRODUCTION

In the dynamics of the modern economy, debt and credit relationships have become an integral aspect of people's lives. Debt refers to a financial transaction in which one party lends funds to another party with the expectation that they will be repaid at a predetermined time. However, this phenomenon has undergone a significant change with the emergence of online lending platforms (hereinafter referred to as pinjol) that operate legally. These platforms utilise digital technology to provide loan services that are faster and easier than the traditional process involving conventional financial institutions (Akyuwen et al., 2021; Arifin, 2018). However, on the other hand, illegal pinjol practices have also emerged, causing a negative impact on the community.

Legal Pinjol operates within the framework of rules and regulations established by the Financial Services Authority (hereinafter referred to as OJK) in the form of OJK Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services (hereinafter referred to as POJK 77/2016). However, in reality, the issuance of the regulation by OJK has not been effective in preventing the emergence of illegal pinjol companies or those that are not registered with OJK. In addition, Article 8 POJK 77/2016 also stipulated that organisers who have been operating before this regulation takes effect must register within six

months after the regulation takes effect. Only by fulfilling these requirements, pinjol organisers can be said to be operating legally. But digging deeper, administrative sanctions are the only consequences for non-compliance in legal pinjol registration; these include written warnings, fines, business restrictions, or license revocation, as outlined in Article 47 of POJK 77/2016. Moreover, the POJK does not regulate the limit on loan interest rates, so the existence of illegal pinjol still continues to emerge and is considered unsettling to the public.

Public interest in pinjol, both legal and illegal, is mainly triggered by the ease of access, fast application process, and fulfilment of urgent financial needs (Wahyuni & Eko, 2020). Especially among individuals with limited access to the formal financial sector, pinjol is a very attractive alternative. However, this interest can have serious consequences, as high interest in illegal pinjol can lead people into a debt trap that is difficult to overcome due to astronomical interest rates and harmful collection practices. This can certainly disrupt an individual's financial stability, impacting family welfare and economic productivity.

The long line of cases caused by illegal pinjol arrears that cannot be paid continues to add, one of which involves an elementary school teacher with the initials NR (36 years old) in Wonogiri who made an online money loan of no more than three million rupiah with a tenor of two weeks through the Easycash application (pinjol licensed and supervised by OJK) in June 2022. However, when the loan was due, it could not be repaid, and NR was terrorised and threatened that her personal data would be shared. As a result, NR inevitably dug a hole through several other illegal pinjol services, resulting in the debt ballooning to more than Rp 90 million from several pinjol applications within six months (Muslimah, 2022).

These issues often become controversial in the community but rarely receive adequate legal solutions from the government. The Legal Aid Institute (hereinafter LBH) is of the opinion that OJK needs to be involved in dealing with issues arising from the existence of both legal and illegal pinjol (Fiansyah, 2019). This is because in POJK 77/2016 Articles 4,5 and 6 state that OJK is responsible for all financial services; the word "all" referred to in the regulation certainly means for pinjol services that are officially registered or not. Therefore legally, unregistered illegal pinjol remains under the law. Based on the above background, there are two objectives in this study, namely (1) to find out the existence of strict legal sanctions for illegal pinjol organisers in Indonesia and (2) the existence of legal protection for illegal pinjol users according to Indonesian law.

This research holds significant practical and theoretical implications in the context of legal protection for users of illegal pinjol services in Indonesia. In practical terms, the results of the research can serve as a foundation for recommending policy changes or more stringent regulations to address pinjol. From a theoretical perspective, this research contributes to the understanding of consumer protection law in the realm of illegal pinjol. Additionally, it advocates for the application of a more holistic legal approach to address complex legal problems in the digital era. Furthermore, this research may act as a catalyst for further development in fintech law, encompassing both regulatory aspects and consumer protection.

Whereas from an academic perspective, this research is expected to make a significant contribution that can provide a robust theoretical basis in understanding and analysing legal protection for users of illegal pinjol in Indonesia. From a practical perspective, this research aims to offer valuable insights for policymakers, legal practitioners and related institutions in addressing problems arising from proliferation of illegal pinjol services. From a social perspective, this research endeavours to increase public awareness regarding the risks and their rights associated with using illegal pinjol services. Thus, it is hoped that the research will contribute to improving legal protection for the community in addressing the phenomenon of illegal pinjol services, providing a more comprehensive perspective on overcoming related legal problems.

2. RESEARCH METHOD

The research method employed in this proposal is the normative research method, which involves examining and analysing the subject matter with a focus on the substance of the legislation. The research approach utilised includes the statutory approach, doctrinal approach, and case approach which, in the context of this study, are carried out by examining the legal issues to be answered with all the laws and regulations concerned (Mezak, 2006). Two types of legal materials are used in

this research, namely primary and secondary legal materials. Primary legal materials consist of laws and regulations, namely the Civil Code, Criminal Code, Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services, and Law Number 21 of 2011 concerning the Financial Services Authority (Santi et al., 2017) (hereinafter referred to as the OJK Law). Secondary legal materials include supporting books related to financial technology (hereinafter referred to as fintech) and online loans, such as scholarly works and research results. Descriptive techniques are employed to analyse the legal materials and determine the final result of this study.

The research method employed is normative juridical, referring to an analytical legal approach based on legislation. Deduction syllogism is also used, meaning that in analysing legal materials that are general in nature, including related laws and literature applied in the problem formulation, it leads to a specific answer (Amiruddin & Tjoa, 2006). Literal interpretation and systematic interpretation are carried out to support accountable answers. Literal interpretation focuses on the literal meaning of words in regulatory text without changing or adding to their meaning. Whilst the second interpretation, systematic interpretation, involves analysing the relationship between various articles or sections in the legal regulation, considering the overall context of the legal regulation to understand the purpose and logic behind the existing provisions; therefore, with systematic interpretation, researchers aim to integrate various parts of the legal regulations for a more comprehensive understanding.

The indicators used to assess the relevance of data sources to the research topic can include several aspects, as follows: 1) thematic relevance; data sources are considered relevant if they are thematically related to the research topic concerning legal impacts and protection for users of illegal pinjol services. This encompasses a discussion of pinjol service laws, related regulations, and consumer protection. 2) Source quality; researchers assessed the credibility and quality of data sources. Sources derived from official documents such as laws, regulations and government policies, as well as scientific publications from reputable institutions, which are generally deemed more relevant and reliable. 3) Timeliness; given that the research topic is connected to evolving regulations and policies, the most relevant data sources are the most recent and suitable for the temporal context of the research. Information that is outdated or not pertinent to current conditions may be considered irrelevant. 4) Depth of analysis; data sources providing in-depth analysis of legal aspects, impacts and protections related to illegal pinjol services will be considered more relevant. This includes detailed examinations of existing regulations, case studies and legal implications for users. 5) Suitability of method; researchers also assessed whether the data source employs methods that are appropriate to the research approach used. For example, in normative research like this, data sources containing legal analysis and regulatory interpretation will be considered more relevant.

3. RESULTS AND DISCUSSIONS

The nature of illegal online loan and legal consequences for organisers

A debt and credit agreement is a form of agreement that is often facilitated by banking, financial, and various other institutions; where one party (creditor) provides a loan of money, and the other party (debtor) has an obligation to return the amount of money and interest within the promised period. In the Civil Code, this debt and credit agreement is better known as a loan-to-own agreement. One form of technological development that is considered to have provided many conveniences for the wider community is fintech; or better known as an innovation from digital/online-based financial services that allows users to make transactions with other parties anywhere online. Fintech has rapidly developed since 2016; one form of development can be seen from pinjol, which began to appear in Indonesia, providing easily accessible money/credit loans (Rumondang et al., 2019; Subagiyo et al., 2022).

From a civil law perspective, pinjol does have a legal basis regulated in the Civil Code. Law No. 19/2016 on the Amendment to Law No. 11/2008 on Electronic Information and Transactions (hereinafter referred to as ITE Law), provides a legal basis for tackling illegal pinjol practices. The ITE Law prohibits using electronic systems for harmful actions, such as fraud, extortion or other illegal actions. Articles in the ITE Law, especially Article 27 and Article 28, state the prohibition

against the distribution of electronic information or documents that can harm other parties. Therefore, parties involved in illegal pinjol practices as written in Article 30 of the ITE Law may be subject to sanctions in accordance with Article 45 and/or Article 46 of the ITE Law, which includes fines and/or imprisonment as a consequence of the violation.

The ITE Law can be used as a relevant legal basis in regulating pinjol practices (Dei, 2020; Koto, 2021). The ITE Law has regulated various aspects related to electronic transactions, including in the case of pinjol. Article 5 paragraph (3) of the ITE Law states that "*electronic information and/or electronic documents are declared valid if they use an electronic system in accordance with the provisions stipulated in this law*". This indicates that online financial transactions can be considered valid if they meet the requirements set out in the ITE Law. However, while the ITE Law provides a legal basis for pinjol, it also raises a variety of issues that need to be handled with care. One of the main challenges is related to data security and consumer privacy.

Consumers are often asked to provide personal and sensitive information, such as financial data and personal identity. Protecting the security and privacy of consumer data is therefore of paramount importance in this context (Noptabi et al., 2022). In the context of pinjol, this can refer to unethical debt collection practices, such as threats or intimidation to borrowers who fail to pay on time. Article 28 paragraph (2) of the ITE Law also regulates the prohibition of "*every person intentionally and without right to send electronic information and/or electronic documents that contain threats of violence or fear that are personally addressed*". In simple terms, the article prohibits any party from intentionally and without the right to disseminate information aimed at creating a sense of hatred or hostility towards individuals and/or certain community groups based on ethnicity, religion, race and intergroup (hereinafter referred to as SARA).

The supervision of pinjol itself is an important part of the OJK framework in Indonesia. OJK has become the institution responsible for supervising activities in the financial services sector, including pinjol (Otoritas Jasa Keuangan, 2018). The establishment of OJK aims to improve the regulation and supervision of the financial sector, as well as protect consumers. In this context, it is important to understand OJK's authority in the supervision of pinjol. OJK's main authority is in regulating the establishment and operational licenses of pinjol; this includes the licensing process for the establishment of pinjol, the opening of operational offices, as well as requirements related to articles of association, work plans, ownership, management, and human resources. OJK also oversees mergers, consolidations, and acquisitions of pinjol and has the right to revoke the business licenses of pinjol that violate the applicable regulations (Sentosa, 2021).

OJK has the authority to supervise the business activities of pinjol; this includes regulating the source of funds, provision of funds, products offered, and activities in the service sector. OJK also has an important role in the prudential regulation of pinjol; this includes oversight of risk management, corporate governance, know-your-customer principles, money laundering prevention measures, as well as efforts to prevent the financing of terrorism, and banking crimes. If pinjol or parties involved in the financial services sector violate established laws and regulations, OJK has strong authority to impose administrative sanctions as law enforcement actions; this has been regulated in several relevant regulatory articles, including POJK 77/2016.

Article 47 of POJK 77/2016 also gives OJK the authority to issue administrative sanctions against financial service institutions that do not comply with the regulations that have been set. These administrative sanctions can be in the form of fines, the amount of which can vary according to the level of violation and the loss incurred. These fine aims to provide financial as a deterrent for violations (Chandra, 2015). The administrative sanctions imposed by OJK are in line with the principles of consumer protection and the overall safety of the financial services sector. The legal basis for this administrative sanction has been regulated in Article 9 letter (g) of the OJK Law; where illegal pinjol organisers can be subject to administrative sanctions which are usually in the form of fines with significant amounts. This reflects OJK's commitment to ensuring that actors in the sector comply with regulations and maintain the stability of the national financial system (Chandra, 2015). In addition to the administrative sanctions above, there are several legal consequences for violations of the provisions carried out by unlicensed pinjol organisers that are very diverse and include criminal actions and civil sanctions. Some of the main legal consequences are as followed:

a. Suspension of operations and blocking of access

The legal basis for this action can be found in Article 7 and Article 9 of the OJK Law; where OJK, acting as the entity responsible for maintaining the stability and security of the financial services sector in Indonesia, is authorized to regulate and supervise the banking sector, allowing actions such as suspension of operations and blocking access to maintain stability and protect the public in the loan-sharking industry (Hanifawati, 2021).

b. Criminal penalties

Criminal penalties that may be applied to illegal pinjol organisers involve Article 368 and Article 369 of the Criminal Code, as well as privacy-related regulations. In addition, the ITE Law can also be used as a relevant legal basis in regulating pinjol practices. This legal basis is mainly found in Article 27 and Article 28 which state the legal basis for tackling illegal pinjol practices by regulating the prohibition of using electronic systems for harmful actions, such as fraud, extortion, or other unlawful acts as well as sanctions in the form of fines and/or imprisonment as a consequence of such violations (Article 45 and/or 46). This aims to provide legal protection for parties who are victims of illegal actions, especially in the context of illegal pinjol (Hamdani & Fauzia, 2021; Utomo et al., 2022).

c. Civil sanctions

Civil sanctions are one of the legal consequences that can be taken by users who are victims of illegal pinjol activities. In this context, if a user has suffered losses caused by the actions of an illegal pinjol organizer, the user has the right to file a civil claim against the organizer. The legal basis governing this is formulated in Article 1365 of the Civil Code.

Analysis of legal protection for users' illegal online loan

The pinjol case reflects the modern economic reality where debt transactions have become increasingly integrated into people's lives. This phenomenon is mainly triggered by the presence of pinjol platforms that tempt people with easy access, fast application processes, and fulfilment of urgent financial needs. Pinjol interest is actually considered higher than bank interest, but in the midst of an economy struggling in economic recovery due to the Covid-19 pandemic, the emergence of companies in the field of pinjol services is currently getting public attention and making people more tempted by the programs offered.

An elementary school teacher with the initials NR (36 years old) in Wonogiri is one of the victims of pinjol due to the urgency of needs (Susmayanti, 2023). The first loan was made in June 2022 for three million rupiah through the *Easycash* application, a pinjol licensed and supervised by OJK, with a tenor of two weeks. However, when the loan was due, NR was still unable to repay it, so she ended up "digging a hole" by borrowing more money through several other pinjol applications, both legal and illegal. Since her name had been blocked and she was not allowed to register on legal pinjol applications, NR started downloading illegal pinjol applications and took out a loan of two million rupiah; however, the amount of money she received was only half with a tenor of a week, and even before the due date, NR was already being charged through text messages and phone calls.

Moreover, mostly in illegal pinjol applications, the amount of debt will be increased by around Rp 800-900 thousand for every tenor extension due to not being able to pay off the debt on time. In addition, NR also received terror through messages and phone calls with threats that her privacy data, such as ID card photos and personal photos, would be spread to contacts on her cellular device. In order to escape from the pinjol trap, NR had made every effort, such as selling her two motorcycles to pay off her debts. But in fact, this was not enough, where the debt, which was originally only three million rupiah, swelled to more than Rp 90 million in less than six months. This situation is considered to have a huge impact on the psychological and social conditions of illegal pinjol users.

Legal protection of consumers is manifested in the supervision of fintech companies, which is closely related to consumer protection regulations in Law Number 8 Year 1999 (hereinafter Law 8/1999). In this context, the government, especially OJK, holds the main responsibility in

supervising fintech companies with the main objective of creating a good system, increasing consumer empowerment, and increasing awareness of financial services business actors about the importance of consumer protection. This is certainly useful for building public trust in the often-complex financial sector. POJK 77/2016 was specifically issued to regulate information technology-based money lending and borrowing services; through this regulation, OJK controls the practices and activities of all fintech companies to ensure that they operate according to standards set to protect the interests of consumers. These regulations not only oversee the activities of fintech companies, but also ensure that consumers are protected from potential abuse or unethical practices in technology-based financial services (Suryamizon & Iswari, 2021; Triasih et al., 2021).

In practice, the distribution of pinjol in Indonesia is very high; in August 2023, OJK reported that the distribution of pinjol reached 20.53 trillion rupiah. This figure marks a slight increase of 0.78% from the previous month, which was 20.37 trillion rupiah. However, when compared to the previous year, there was a significant increase of 6.87%. Of the total loans disbursed, around 8.01 trillion rupiah or 39.05% was allocated to the productive sector, and interestingly, the distribution of loans was carried out in collaboration with 2,196 conventional financial service institutions in August 2023 with a total value of cooperation reaching 5.92 trillion rupiah. This figure shows the extensive involvement of conventional financial institutions in supporting the fintech lending sector (Annur, 2023; Wajuba et al., 2021).

The significant increase in the number of pinjol distributions from year to year indicates the development of the pinjol ecosystem in Indonesia. From the large number of pinjol user data, it can be ascertained that the number of illegal pinjol is very high. When viewed from the rampant cases that have occurred, the high number certainly not only raises legal consequences for violations of provisions committed by illegal pinjol organisers, but also raises legal consequences that occur as a result of the inability of pinjol users to fulfil their obligations. Some of these consequences include:

a. High interest expense

High interest charges in the context of pinjol refer to the interest rates charged by pinjol providers, which can often reach very high levels. OJK and the Association of Indonesian Joint Funding Fintech (hereinafter AFPI) have formulated a Code of Conduct that provides several regulations such as the maximum interest limit and collection procedures (Otoritas Jasa Keuangan, 2017). The regulation gives OJK the authority to regulate the maximum interest rate that can be charged by pinjol organisers to their users.

b. Legal liability

Legal liability is a legal principle that emphasises that pinjol users who have borrowed money and then failed to fulfil their obligations to pay still have legal obligations. This legal basis has been formulated in Article 1338 of the Civil Code which reads: "*All agreements made in accordance with the law shall apply as law to those who make them. The agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. The agreement must be carried out in good faith*".

c. Prevention of the next loan

Prevention from subsequent loans is a legitimate measure taken by pinjol organisers to avoid a user, who has defaulted on a previous loan, from continuing a series of loans that could potentially result in deeper debt (Arvante, 2022). In this case, POJK 77/2016 has become the legal basis that regulates such actions, with the aim of protecting pinjol users from greater risks in debt management.

The legal consequences of violating the terms of lending are noteworthy. For illegal pinjol organisers, the legal risks faced are very serious; where they can be threatened with various legal actions that can stop operations. One of the main consequences is temporary or permanent suspension of operations, which may be imposed by OJK and other relevant regulatory bodies. Whereas high interest charges are one of the most severe consequences for users who are unable to repay their loans; however, POJK 77/2016 has regulated the maximum interest rates that can be charged by these pinjol providers; which is an important step to avoid legal risks and problems that can arise in the context of pinjol.

4. CONCLUSION

Indonesia already has some strict rules and sanctions for illegal pinjol providers. These sanctions can be seen in Article 7 and Article 9 of the OJK Law; temporary suspension of the pinjol operations that do not have the required licenses and even revocation of the authorization of registration of electronic system operators by OJK. In addition, there are also administrative sanctions that have been regulated in Article 9 letter (g) of OJK Law and Article 47 POJK 77/2016 in the form of written warnings, fines with significant amounts, restrictions on business activities, and license revocation. OJK also provides consumer protection facilities such as loss prevention, complaint services, and legal defence. Legal consequences for illegal pinjol providers include operational termination, administrative sanctions, and even criminal consequences.

Law No. 19/2016, or known as ITE Law, can also be used as a relevant legal basis in regulating pinjol practices. This legal basis is mainly found in Article 27 and Article 28, which state the legal basis for tackling illegal pinjol practices by regulating the prohibition of using electronic systems for harmful actions, such as fraud, extortion, or other unlawful acts, as well as sanctions in the form of fines and/or imprisonment as a consequence of such violations. The articles in the ITE Law provide the legal basis for imposing administrative and criminal sanctions, including fines and imprisonment of up to 6 years or a fine of 1 billion rupiah for certain offenses.

Furthermore, according to the author, there is a need to strengthen regulations and stricter law enforcement against illegal pinjol providers in Indonesia. Increasing public awareness of the risks of using illegal pinjol services is an important step in protecting themselves. Preventive measures such as education and socialization of the risks and adverse effects of illegal pinjol, such as high interest rates, unethical collection practices, and threats to personal data security, need to be improved. Clearer restrictions on interest rates and enforcement of related regulations will provide better protection for consumers.

The implication of this research is to provide an in-depth understanding of the legal impact and urgency of protection for users of illegal pinjol services in Indonesia. This research can serve as a basis for formulating policies or changing regulations related to pinjol services, making them more effective in preventing and cracking down on illegal pinjol. For the decision-making process, this research holds significant implications, particularly in the context of regulation and consumer protection in the pinjol industry. The research results can provide input for strengthening regulations governing pinjol services, encourage increased legal protection for users of illegal pinjol services and protect consumers from harmful illegal pinjol practices; this may involve enhancing the capacity and role of the OJK in addressing violations and protecting consumer interests. The implications of the research can bolster law enforcement efforts against illegal pinjol organisers.

The contribution of this research lies in presenting an in-depth normative analysis of the laws and regulations governing pinjol services. It also provides a critical view of the shortcomings in existing regulations, particularly in handling illegal pinjol. Thus, this contribution can stimulate improvements in the regulatory system, legal protection and public awareness regarding illegal pinjol services in Indonesia.

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