



## The Urgency of Digital Oversight and Literacy in Balancing the Rights and Obligations of Debtors and Creditors in Online Loan Services

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### Abstract

The rise of the digital economy has been greatly facilitated by the development of electronic lending and transactions, particularly in terms of increasing access and corporate access to funding. Protection of users' personal information, as stipulated in Law Number 11 of 2008 concerning Electronic Information and Transactions and Regulation of the Minister of Communication and Informatics Number 20 of 2016, must always be considered in implementing these activities. Only institutions registered and providing services in accordance with Financial Services Authority Regulation Number: 77/POJK.01/2016 are permitted to offer financial technology (fintech) lending services. Using a legislative approach and normative legal techniques, this research is supported by secondary legal materials such as legal philosophy and literature. Based on the research findings, legal protection for creditors and debtors in fintech lending services has been made possible by various legal instruments. However, several obstacles remain in its implementation, particularly related to the scope of personal information and collection methods that violate ethical standards. Law Number 8 of 1999 concerning Consumer Protection provides legal protection for debtors, while Law Number 4 of 1996 concerning Mortgage Rights provides legal protection for creditors. Therefore, to achieve a fair, proportional, and sustainable balance of rights and obligations between debtors and creditors, stricter supervision, better digital literacy, and consistent law enforcement are needed.

**Keywords:** Personal Data; Fintech Lending; Financial Services Authority; Legal Protection; Online Loans.

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## INTRODUCTION

Technological advances created to make human life easier are inevitable. Every year, information technology continues to develop rapidly on a global scale. This development has been the main driver behind the emergence and globalization of information technology in the era of globalization.<sup>1</sup> According to Riwanto, Indonesia has implemented several laws and regulations related to electronic-based transactions through "Law Number 11 of 2008 governing Electronic Information and Transactions (ITE Law).<sup>2</sup> Law Number 19 of 2016 subsequently amended this regulation, and Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Personal Data Protection in

<sup>1</sup> Haini, Hazwan, and Pang Wei Loon. "Information Communication Technologies, Globalisation and Growth: Evidence from the ASEAN Economies." *Economic Papers: A Journal of Applied Economics and Policy* 41, no. 1 (2022): 34-53.

<sup>2</sup> Riwanto, Agus. "Menganalisis Kesiapan Indonesia Dalam Penanggulangan dan Penegakan Hukum Kejahatan Global Berbasis Internet Berdasarkan Undang-Undang Informasi dan Transaksi Elektronik." *Seminar Nasional Indocompac*. Universitas Bakrie, Jakarta, 2016, p. 573-578

Electronic Systems, which also contains provisions on sanctions and violations of electronic data protection, reinforced it. "Electronic information" means any and all data and information stored in various forms of electronic media that have meaning and can be understood by humans.<sup>3</sup> This includes audio, video, and other forms of visual data. The "virtual world" refers to a new world created by rapidly developing information technology; specifically, it is a computer-based communication system that provides virtual reality. The Internet is one example. Technology in the information age has changed human behavior and culture on a global scale. Along with its unlimited growth potential, information technology has triggered profound and rapidly developing social changes.<sup>4</sup>

As the internet becomes increasingly integrated into everyday life, programs that utilize the internet can now be used to borrow money. Borrowing has become easier thanks to services offered by the accredited financial services authority, the Financial Services Authority (OJK). Currently, borrowing is much easier than borrowing directly from a bank thanks to the availability of internet loans and fintech-based peer-to-peer (P2P) loans. Since 2016, online financing has grown rapidly and helped micro, small, and medium enterprises (MSMEs) develop their own businesses without assistance by providing a quick approach. In addition, loan applications are easy to fill out, helping clients overcome their financial obstacles. Internet loans also offer options for lenders and investors with attractive return.<sup>5</sup>

In addition, OJK has promoted [www.adakami.com](http://www.adakami.com), an application with registration Number KEP-128/DO.05//2019 that facilitates access to fintech loans. With an interest rate of 0.05%, this application offers a fast application process of up to 1-2 days and installments of up to 6 months for first-time borrowers. The loan limit will be invested, and the disbursement procedure will be efficient if the borrower regularly repays the loan by achieving a certain level of repayment. "Financial Services Authority Regulation Number 77/POJK.01/2016 concerning electronic technology-based lending and borrowing services and Bank Indonesia Regulation Number 19/12/PBI/2017 concerning financial technology providers both quickly established a legal basis for online lending, or fintech lending. According to Article 1 point 17 of the ITE Law, all agreements signed by the debtor and creditor have been previously stipulated in the contract, and this also applies to technology-based electronic credit".<sup>6</sup> According to Article 1338, paragraph (1) of the Civil Code, the concept of freedom of contract affirms that all agreements can be enforced as law.

To help the author better understand its meaning, we have included a background explanation. Therefore, the author plans to improve the title. "The Urgency of Digital Oversight and Literacy in Balancing the Rights and Obligations of Debtors and Creditors in Online Loan Services". Based on the above background, the research questions for this study are as follows: 1) How do the Civil Code and the Electronic Information and Transactions Law assess the legal validity of online loan agreements? 2) What forms of legal protection are provided in online loan agreements for all parties involved? 3) What legal steps can be taken if one of the parties fails to comply with the provisions of an online loan agreement? the objectives of this study are: "a) To understand the legal validity of online loan

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<sup>3</sup> Winullah, Ragan. "Perlindungan Data Dalam Bentuk Akun Game Online Ditinjau Dari Undang-Undang Informasi Dan Transaksi Elektronik." (2016), p. 39

<sup>4</sup> Meilarati, M. D. *Aspek Hukum Penipuan Berbasis Internet*. (Bandung: Kemi Media, 2017).

<sup>5</sup> Santi, Ernama, Budiharto, and Hendro Saptano. "Pengawasan Otoritas Jasa Keuangan Terhadap Financial Technology (Peraturan Otoritas Jasa Keuangan Nomor 77/POJK. 01/2016)." *Diponegoro law journal* 6, no. 3 (2017): 1-20.

<sup>6</sup> Falahiyati, Nurhimmi. "Tinjauan Hukum Kontrak Elektronik Dalam Pinjam Meminjam Uang Berbasis Teknologi Informasi (Transaksi Peer to Peer Lending)." *Jurnal Justitia* 2, no. 1 (2020): 1-11.

agreements based on the Civil Code and the Electronic Information and Transactions Law. b) To determine the legal protection available in online loan agreements for all parties. c) To determine the legal resolution if there is a default in an online loan agreement.”

## METHODS OF THE RESEARCH

Legal textbooks, legal dictionaries, legal literature, regulations, and methods based on the study and discussion of legal rules, legal principles, and related literature are the main sources of normative legal research.<sup>7</sup> Most legal sources originate from secondary data that has been collected and compiled from relevant literature that has been published previously, such as legal textbooks, regulations, and online media supervised by legal bodies: a) Primary legal materials. “(a) Civil Code (BW). (b) Law Number 19/2016 on electronic information and transactions. (c) Law Number 20/2016 on personal data protection. (d) Financial Services Authority Regulation Number 77/POJK.01/2016 on online lending services.” b) Secondary legal materials. These provide explanations of legal resources, including laws, books on legal science, and texts related to specific legal literature; c) Tertiary legal materials. Specifically, by collecting legal materials, books, and other sources, guidance and explanations for primary and secondary legal materials are provided. Data collection methods, such as reading law books, researching relevant online works, and examining library resources related to legal literature. Qualitative information obtained from perspectives and solutions to problems found in legal literature, books, online media, legislation, interviews, and similar sources is known as data analysis.

## RESULTS AND DISCUSSION

### A. The Civil Code and The Electronic Information and Transactions Law Assess the Legal Validity of Online Loan Agreements

Based on “Article 1233 of the Civil Code, a contract is an abstract agreement that results in a legal relationship between two or more persons that is not valid in itself because it creates rights and obligations that bind both parties.”<sup>8</sup> According to Article 1313 of the Civil Code, a contract occurs when two or more persons enter into an agreement, either verbally or in writing, binding themselves and creating rights and obligations for each party. This can occur through a message, a physical action, or an act involving more than two persons and binding themselves.<sup>9</sup> By agreeing and committing themselves, both parties have established a mutual agreement, both verbally and in writing, to achieve positive and mutually beneficial goals and results.<sup>10</sup> Every agreement must be carried out properly, honestly, and without any indication of fraud, forgery, or violation.<sup>11</sup> So when an agreement is reached, the transaction is clearly free from defects. Therefore, to create an agreement that is binding on the parties involved in lending and borrowing, the following agreement is required: 1) The parties agree to two people or more under Article 1340; Online borrowing and lending are carried out through transactions in which the borrower, or the subject of

<sup>7</sup> Muhammad Syahrudin, S. T. *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi Dan Tesis*. (Riau: Dotplus Publisher, 2022).

<sup>8</sup> Kartini Muljadi, Gunawan Widjaja. *Perikatan Yang Lahir Dari Perjanjian*. (Jakarta: Raja Grafindo Persada, 2008), p. 17

<sup>9</sup> Nurlette, Ayesha Haiqa, Sufirman Rahman, and Ahyuni Yunus. "Keabsahan Perjanjian Jual Beli Kosmetik Secara Online." *Journal of Lex Generalis (JLG)* 2, no. 3 (2021): 1516-1528.

<sup>10</sup> Wauran, Regina Veronika. "Kepastian Hukum Perjanjian Secara Lisan Menurut Kuhperdata Pasal 1338." *Lex Privatum* 8, no. 4 (2020).

<sup>11</sup> Harlina, Yuni, and Hellen Lastfitriani. "Kajian Hukum Islam tentang wanprestasi (ingkar janji) pada konsumen yang tidak menerima sertifikat kepemilikan pembelian rumah." *Hukum Islam* 17, no. 1 (2017): 1-16.

the agreement, and the online loan provider, or creditor, become the subjects of the agreement. 2) There is an agreement and consent: In order for the loan agreement to result in a repayment period and interest rate that is beneficial to the debtor, the creditor and debtor must first provide clear information, both verbally and in writing, then prepare the funds in accordance with the loan agreement or the funds they wish to lend to the debtor. They also agree to return the items that have been borrowed and used.<sup>12</sup>

A number of components can be divided into the following three categories:<sup>13</sup> (1) Essential components (essentialia) of the agreement, which cannot occur without the consent of both parties. (2) Natural factors (naturaliae), components that are stipulated by law as benchmarks. (3) Incidental elements, additional components of the agreement that are not subject to legislation. As explained in Article 1754 of the Civil Code, which distinguishes between lending and borrowing conditions and lending and borrowing in the case of lending that is exhausted due to use. The agreement between the subject and object of the loan must form the basis of the loan agreement. According to the guidelines outlined in Article 1755 of the Civil Code, the lender is liable if the object of the loan is destroyed or damaged. Furthermore, the agreement allows for the payment of interest on the loan in the form of cash or goods adjusted to usage. Regulation Number 77/POJK.01/2016 from the Financial Services Authority and Regulation Number 19/12/PBI2017 from Bank Indonesia both discuss online lending services and loans and loans based on electronic technology. "Article 1320 of the Civil Code, which states that loan arrangements between debtors and creditors are intended to benefit both parties, is still cited in this law." Thirteen chapters and fifty-four articles of the Electronic Information and Transactions Law Number 11/2018, which discusses electronic information and transactions, including cyber laws, provide specific regulations related to internet use.

The laws related to electronic information and transactions (Law Number 19/2019) and information technology (Law Number 20/2016) were updated in 2019. The following are the benefits for those who use electronic transactions or online loans: 1) Loans without collateral or security; 2) ID card; 3) Electronically agreed agreements; 4) Fast processing and distribution of funds; 5) Interest based on usage, etc<sup>14</sup> PT Pembinaan Digital Indonesia, a limited liability company governed by the laws of the Republic of Indonesia, acts as a witness to agreements between lenders and borrowers. In its capacity as a facilitator, this company is authorized by law to supervise and facilitate platforms and mobile applications to provide loans to eligible borrowers through mobile applications, provided that the loans are granted in good faith and with the consent of both parties. If the borrower repays the principal and interest in accordance with the loan, this is known as normal repayment. The borrower expressly agrees and accepts that the loan will be used legally, namely for company capital and educational expenses, not for prohibited purposes such as gambling. The facilitator must report to the authorities and face consequences if the loan is used illegally.<sup>15</sup>

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<sup>12</sup> Utomo, Satriyo Tyas. "Wansprestasi Dalam Perjanjian Meminjam Uang Antara Koperasi Dengan Anggotanya Di Yogyakarta." (2012).

<sup>13</sup> Subekti, R. *Hukum Perjanjian*, (Jakarta: Intermasa, 2005).

<sup>14</sup> Mailanti, Ade Feni. *Dampak Pinjaman Berbasis Online di Kota Bengkulu Dalam Tinjauan Ekonomi Islam (Studi Pada Masyarakat Kelurahan Pagar Dewa Kota Bengkulu)*. Diss. UIN Fatmawati Sukarno Bengkulu, 2020.

<sup>15</sup> Azhari, Taufiq Ilham. "Keabsahan Perjanjian Pinjam Meminjam Uang Berbasis Teknologi Informasi Dalam Hal Pengenaan Bunga Pinjaman (Studi Pada uangteman. com)." (2018).

## **B. The Form of Legal Protection Provided in Online Loan Agreements for All Parties Involved**

The term “personal data” refers to an individual's identity, which is kept confidential, stored carefully, and always updated. Article 26 paragraph (1) and the Explanation of Law 19/2016 contain rules related to the protection of internet users' personal data, but the ITE Law does not yet contain explicit rules related to this. The following individual rights are included in the protection of personal data in the use of information technology: 1) Enjoying a private life. 2). Communicating freely with any individual or group. 3) Gaining more knowledge for yourself and others.

Meanwhile, Article 1 point 29 of the ITE Law, Government Regulation No. 71/2019, which regulates electronic transactions, explains personal electronic data as follows: 1) Personal data, whether electronic or not, is information that has been identified and provided with the consent of the parties. 2) Hacking accounts or damaging electronic systems by accessing accounts violates Article 26 paragraph (1) of Law 19/2016. In accordance with "Financial Services Authority Circular Letter Number 14/SEOJK.07/2014 concerning Confidentiality, Security, and Privacy of Customer Personal Data, namely: personal data or complete identity of application or platform users that is not used without an agreement regarding such data or users, the right to privacy, as stated in Article 84 paragraph (1) of Law 24/2013, including personal information and its suitability, facial features, as well as data and information that must be kept confidential." Based on the Civil Code, any fraudulent act not included in the agreement is considered a criminal act or an unlawful act, and criminal acts are clearly human rights violations. Article 1(2) of Law No. 82/2012 regulates how the right to privacy and individual rights are exercised. The borrower's consent is required for all information related to the risks of online loans and electronic transactions. 1) The user's mobile phone number is leaked. 2) Continuous communication with online lenders. 3) Receiving SMS communications from online lenders. 4) Delays will result in higher loan interest rates. 5) Pay a minimum monthly loan service fee of 3% of the loan balance. 6) The loan term and repayment period must match. 7) Set a loan limit based on your income. 8) The online agreement serves as the basis for all fees.

## **C. Legal Steps That Can Be Taken If One Party Fails to Comply with The Terms of An Online Loan Agreement**

When one party, whether intentionally or unintentionally, fails to perform an agreement that has been mutually agreed upon by avoiding obligations, committing errors, or acting in bad faith, this is considered a breach of contract. According to Article 1320 of the Civil Code, an agreement serves as the basis for a debt agreement. This constitutes an unlawful act until proven otherwise based on “Article 387 of the Criminal Code, according to the jurisprudence of MARI/993/Pid/1994 dated August 28, which involved a debt agreement secured by a check or without providing the required cash.” However, the MARI jurisprudence in case MARI/411K/Pid/1992 dated August 28, 1994, in which the evidence was not supported by Article 378 of the Criminal Code, remains unfounded. Nevertheless, the defendant was still found guilty of default.<sup>16</sup>

However, online lending, often known as online transactions, is regulated in Article 1320 of the Civil Code, which regulates agreements made to achieve a certain purpose. According

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<sup>16</sup> Yahman, Karakteristik Wanprestasi. *"Tindak Pidana Penipuan Yang Lahir Dari Hubungan Kontraktual."* (Jakarta: Prenadamedia Group, 2014).

to Article 1321, such agreements are based on two or more parties, not due to coercion from one party, and are carried out intentionally, sincerely, and without incident. Articles 1329–1331 of the Civil Code regulate this matter. Although default is regulated in Article 1328 of the Civil Code, fraud, and Article 378 of the Criminal Code, both parties find it difficult to define the limits of their behavior. In reality, these clauses can sometimes be violated by loans based on the concept of electronic transactions (unsecured loans) without collateral or guarantees. The agreed terms as outlined in Article 1131 conflict with high administrative costs, which reach around 20% of the loan amount, and interest rates that are burdensome for borrowers.

Creditors have the following rights if debtors completely violate the agreement by renegeing on their promises or completely failing to fulfill their obligations: 1) In accordance with the principal and interest of the loan, request payment of late fees. 2) Creditors will monitor the whereabouts of borrowers at all times, including by repeatedly calling debtors. 3) Request compensation for losses affecting the debtor or the loan. 4) As a result of the borrower's negligence and delay, pay the principal and interest on the loan. 5) The borrower or debtor will be responsible for paying court costs if the creditor's lawsuit is pursued through the court system. According to Article 51 of Law Number 5/1960 and Law Number 4/1996, creditors are legally protected in the event of debtor default. In addition, based on Article 20 paragraph (1) of the Mortgage Law, creditors have the authority to impose sanctions on defaulting debtors. Therefore, to prevent illegal practices, borrowing through electronic transactions needs to be understood and comprehended properly. Default is a form of intentional act because it harms other parties. Causal action is an agreement reached voluntarily by both parties without coercion or unconsciousness. Agreements must be made voluntarily and in good faith, as stated in Article 11321; if there is coercion, the agreement is null and void. Since its inception in 2016, electronic transaction-based loans have become part of society and continue to be carried out based on the principles of agreement, namely the concepts of good faith, personality, freedom of contract, and consensualism. A valid agreement must first refer to paragraphs 1320, 1321–1328, and 1329–1331 before it can be fulfilled.

This agreement is based on legal principles and is made between the subject and object of online loans. The subject will receive favorable treatment if it is proven that they violated the contract in good faith, as defined by Article 378 of the Criminal Code. One party will suffer negative consequences from the violation. Sanctions will be applied in the form of penalties and compensation for unforeseen losses if it is proven that they completely disregarded their responsibilities. The owner bears the principal and interest risks in accordance with the mutually agreed debt agreement (article 1243); obligations are based on the agreement of both parties; creditors can release themselves from their obligations (article 1266); the debtor is required to compensate the creditor for losses incurred; and the obligation remains enforceable in accordance with the applicable provisions of the agreement. provide a contract for performance, bear the risk of payment in the event of default (article 1237), and pay the costs of the case if it is brought before a judge or court (article 181 paragraph (1)). HIR.37 The first part of Consumer Protection Law Nomor 8/1999, Article 4, regulates consumers and offers legal protection for defaulting debtors.

## CONCLUSION

The urgency of supervision and digital literacy in balancing the rights and obligations of debtors and creditors in online lending services is crucial amid the increase in technology-based financial activities in Indonesia. Based on the Civil Code (KUHPPerdata) and Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) along with its amendments in Law Number 19 of 2016, online loan agreements are legally valid if they meet the requirements for a valid agreement as stated in Article 1320 of the Civil Code, namely the agreement of the parties, legal competence, a specific object, and a lawful cause. Thus, electronic contracts made through digital media remain binding as conventional agreements as long as they do not conflict with the law and principles of justice. Legal protection for parties to online loan agreements is also regulated in Financial Services Authority Regulation (POJK) Number 10/POJK.05/2022 concerning Information Technology-Based Joint Funding Services. This regulation emphasizes the obligation of fintech operators to protect users' personal data, provide transparency on loan costs and interest rates, and ensure that collection procedures are carried out in an ethical and humane manner. In addition, the principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code serves as the moral and legal basis for both parties to implement the contents of the agreement with full responsibility. In the event of a breach, default, or misuse in the implementation of an online loan agreement, there are various legal settlement mechanisms available, ranging from internal settlement through the organizer's platform, mediation under the supervision of the OJK, to civil lawsuits in district courts in accordance with Article 1243 of the Civil Code. If the violation involves criminal elements such as digital fraud or misuse of personal data, sanctions may be imposed based on Articles 26, 27, and 30 of the Electronic Information and Transactions Law (ITE Law), as well as criminal provisions in the Criminal Code. Thus, active supervision by the OJK and increased digital literacy among the public are two important pillars in creating a healthy, fair, and equitable online loan ecosystem. Good digital literacy will encourage the public to understand their rights and obligations in every transaction, while effective supervision ensures that every fintech operator operates in accordance with applicable legal and business ethics provisions. The combination of regulation, education, and legal awareness is expected to strengthen protection for all parties in the national digital financial ecosystem.

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