



Review on Online Loan Regulations: In the Course of Citizen Lawsuit Against the Indonesian Government over Online Loan

Citizen Lawsuit Filed Against the Indonesian Government

In 2021, 19 Indonesian citizens filed a citizen lawsuit against the Indonesian Government c.q. the President and the Vice President of the Republic of Indonesia, the House of Representatives (DPR), the Ministry of Communications and Information, and the Financial Services Authority (OJK) regarding the negligence and failure of the government in protecting citizens from the trap of exploitative online lending or loan practices.

According to the Jakarta Legal Aid Institute (LBH Jakarta), there are a total of 1.330 complaints received from victims of online loans from 25 provinces in Indonesia since the opening of a complaint post on November 25 2018. From these numerous complaints, LBH Jakarta can conclude that the existence of online loans shows that it is easy to borrow and obtain quick funds, with the cost of exploitation and lack of adequate legal protection from the government, especially regarding consumers' rights to feel secure. The state has so far failed to curb the growth and regulate the practices of online loan; it is rife with violations such as high and unlimited interest rates, aggressive, and inhumane debt collection, violence against women, dissemination of personal data, etc.

The lawsuit was initially declared lost at the first instance and the appeal levels until the Supreme Court issued Decision Number 1206K/Pdt/2024 ("Decision 1206 K/Pdt/2024") on April 24 2024. The panel of judges at the cassation level who examined and adjudicated this case declares that the Plaintiffs' lawsuit is accepted and, generally, orders the Defendants to form strict regulations that ensure and respect and legal protection for users of online loan applications and the public and to enforce the law against criminal acts occurring in peer-to-peer lending or online loan practices. The panel of judges stated in the Decision that "...if it continues without fair and certain legal regulation, the existence of online lending will not bring benefits and goodness to society, but on the contrary, will lead to society sinking into economic despair, being exploited, and unable to rise again." and "Based on these reasons, the lawsuit filed by the Plaintiffs against the Defendants brings great benefit to society in the effort to stop the traps and exploitation of

online lending, through the establishment of fair, legally certain, and comprehensive regulations, which all become the obligation of Defendant I, the President of the Republic of Indonesia, with the support of Defendants II, III, IV, and V.”.

Decision 1206K/Pdt/2024 marks a significant step for the Indonesian judicial system. Online loan practices have been proved to be exploitative and predatory against its borrowers. Stricter regulations from the government as the policy makers is necessary to eradicate unfair practices conducted by the online loan lenders.

Online Loan

Online loan is a loan service conducted by the organizers of Information Technology-Based Shared Funding Services (LPBBTI). This service allows individuals or businesses to obtain funds quickly and easily through a digital platform. The online loan application process usually involves online form filling, data verification, and approval that can be done in a short time.

An online loan provider is an Indonesian legal entity that provides, manages, and operates LPBBTI either conventionally or based on Sharia Principles. These providers are categorized as Other Financial Services Institutions and are limited liability companies (LLC). Before carrying out LPBBTI business activities, the organizer must first obtain a business license from the Financial Services Authority (OJK). In addition, the organizer is prohibited from conducting funding before being registered as an electronic system organizer with the authorized agency.

Differences Between Digital Bank and Online Loan

A digital bank is an Indonesian Legal Entity Bank (BHI) that provides and conducts its business activities primarily through electronic channels, without physical offices other than the head office or using limited physical offices. The main characteristic of a digital bank is that its operations are mostly conducted through electronic channels, as well as the use of very limited physical offices. Loans offered by digital banks are in the form of credit, similar to those offered by conventional commercial banks. The main difference is that the loan services are online.

The main difference between digital banks and online loan providers lies in the scope of services offered. Digital banks provide a full range of banking services such as savings, deposits, fund transfers and loans. On the other hand, online loan providers focus on providing loans without offering the full range of banking services that digital banks do. Both types of services offer ease of access and speed in transaction completion, but digital banks have a wider range of services compared to online loan providers.

Loans offered by digital banks are similar to those offered by conventional commercial banks, including consumer loans, mortgage loans, motor vehicle loans, and business loans. Loan applications are done entirely online through the digital bank's app or website, with requirements such as identity documents, pay slips, and financial statements for businesses.

Meanwhile, online loans provided by LPBBTI providers are generally short-term loans with relatively smaller amounts, such as personal loans or small business loans. The online loan application process is fast, simple, and done online with simple documents such as KTP, NPWP, pay slip, and personal photo.

Thus, while both types of services offer convenience and speed, digital banks offer a wider range of banking services than online loan providers. Thus, while both types of loans use digital platforms, digital banks offer services that are more similar to conventional banks, while online loans focus more on the ease and speed of the application process.

The Current Online Loan Regulations

Online loans as a financial services provider are regulated by the OJK. OJK have issued the following regulations as follows:

a. OJK Regulation Number 10/POJK.05/2022 on Technology-Based Crowdfunding Services (“POJK 10/2022”)

In summary, POJK 10/2022 regulates that the entity conducting LPBBTI business activities from OJK and is only permitted to provide funding if registered as Electronic System providers within the relevant authority. This regulation also governs the establishment of such entities. Moreover, according to POJK 10/2022, OJK is authorized to give administrative sanctions for unregistered and unpermitted entities that conduct LPBBTI business. Entities are also obligated to conduct activity according to consumers’ protection as stipulated in POJK 10/2022 and other relevant regulations.

b. OJK Circular Letter Number 19/SEOJK.06/2023 on the Implementation of Technology-Based Crowdfunding Services (“SEOJK 19/2023”)

This circular letter regulates further on the implementation of LPBBTI entities. SEOJK 19/2023 states in detail the funding distribution and settlement mechanism as well as debt collection mechanism. LPBBTI entities shall comply with this regulation and other relevant laws and regulations.

c. OJK Regulation Number 22 Year 2023 on Consumer and Public Protection in the Financial Services Sector (“POJK 22/2023”)

OJK Regulation Number 22 Year 2023 focuses on enhancing consumer and public protection in the financial services sector. It establishes guidelines for financial service providers to ensure transparency, fairness, and accountability in their dealings with consumers. The regulation mandates clear communication of terms and conditions, safeguards against unfair practices, and robust mechanisms for handling consumer complaints and disputes.

Review on Online Loan Regulations

As per Article 2 of POJK 10/2022, LPBBTI activity must be conducted by a legal entity in the form of limited liability company (LLC) and given permit as well as registered by the OJK. Therefore, an illegal online loan application is the one that performs LPBBTI activity without permit and is not registered in the OJK. This illegal practice is usually done by hacking the victim’s device then installing the online loan application without the victim’s consent. However, it is also not unusual for the illegal online loan application to be downloaded by the user willingly because it is widely spread in the application store.

Legal online loan applications, which are registered and have permits, also often do not comply with the regulations. According to the complaints received by LBH Jakarta, there are several violations towards consumers which were done by registered online loan applications. In conclusion, legal online loan applications do not guarantee compliance and consumers's protection.

Online loan is characterized by its high interest rate compared to other money lending services such as banks. SEOJK 19/2023 determines the online loan interest for 2024 with a daily interest rate of 0.3%, equivalent to 108% per year. For comparison, based on data from OJK, as of September 2023 the average annual interest rate for general bank loans for consumption purposes was 10.23% per year. Meanwhile, for credit cards, the maximum interest rate is 1.75% per month, which equals to 21% per year.

Even though online loans have high interest rates, its relatively easy steps to apply for a loan intrigues people to borrow money from it. Following SEOJK 19/2023, an individual only has to provide identification card or driver license or passport, selfie, and an account number for verification purposes. Then, the online loan providers will conduct a scoring based on the loan application. Later, the money will be sent to the Fund Recipient's account. It is an effortless process paid with the price of high interest and high risk of data privacy violation.

The current regulation, specifically SEOJK 19/2023, states that in the event of a default by the Fund Recipient, the online loan provider at the very least must issue a warning letter after the funding period has expired and after the due date as stipulated in the funding agreement. Debt collection can be done in two ways: desk collection such as indirect collection through texts, call, video call and field collection that is direct face to face collection. It is prohibited to conduct debt collection using threats, violence, and/or actions that humiliate the Fund Recipient. Moreover, online loan providers may only access, obtain, store, manage, process, and/or use the User's Personal Data after obtaining the User's consent. Online loan providers that do not comply with the applicable regulations when collecting debt can be subject to written warning sanctions and fine sanctions as per POJK 22/2023.

There is an issue regarding the existing regulation as it is not an adequate legal framework to accommodate consumers' protection. Even though OJK has issued POJK 10/2022 in which it will give sanction to online loan providers that are not registered and do not have permits, illegal online loan applications are still rampant and accessible to the people as proved by the citizen lawsuit filed by LBH Jakarta. Moreover, by the looks of it, OJK's regulations are thorough, leaving no room for unlawful practices, such as violent debt collection. However, it becomes a problem in the case that illegal online loan providers are the one who do it as the existing laws essentially only apply to the legal online loan provider. By law, illegal online loans supposedly can not even exist in the first place. Therefore, the victims of illegal online loans whose rights have been violated are not protected by any law.

OJK whose function and duty is to supervise and regulate the financial services in Indonesia needs to be committed to address this online loan issue, cooperating with other relevant government institutions. To eradicate predatory online loans, there needs to be stricter supervision at the upstream level first that is the circulation of online loan provider applications. Additionally, expanding regulations related to consumer protection is needed, by providing legal coverage not only for legal online loans consumers but also for users of illegal online loans. This aligns with the essence of the establishment of the OJK which is to

protect the interests of consumers and the public.