



Renewal of Personal Data Protection Law in E-Commerce Online Loans

Slamet Slamet¹, Agustinus Sutriyanto Hadi², Titik Susiatik³, Sri Widayati⁴

^{1,2,3,4} Faculty of Teacher Training and Education, Universitas Ivet, Semarang, Central Java, Indonesia.

ARTICLE INFO

Published Online:
29 December 2022

ABSTRACT

Online-based loan services make it easy for people to access credit, but the rapid growth of online loan services tends to open up space for "*lintah darat*" to get as much profit as possible. Online loans, on the one hand, provide convenience to the community. However, on the other hand, they can be detrimental by spreading personal data, intimidating, and being trapped in the clutches and bonds of online loans with high-interest rates, as well as various other threats of violence. Therefore, consumer protection and personal data protection are necessary for consumers. This research aims to provide an alternative to renewing legal protection for people who use online loans, especially in Central Java. Data collection through direct observation, interviews, and documentation. Data analysis used an interactive model from Miles and Huberman, including data collection, reduction, data display, and conclusions. The study results show that the large number of victims ensnared by online loans proves the need for legal renewal to protect affected communities and can ensnare perpetrators who arbitrarily commit online gender-based violence. This form of protection requires more binding regulations, which regulate criminal sanctions so that they can guarantee protection, justice, and welfare for the community. Besides that, it is also necessary to accelerate the ratification of the Personal Data Protection Bill.

Corresponding Author:
Slamet Slamet

KEYWORDS: Legal protection, personal data, e-commerce.

I. INTRODUCTION

The development of information technology in e-commerce has brought drastic changes in the 21st century in all aspects of human life. This condition is marked by the increasing use of information technology in all fields and bringing about changes in all lines of life, besides being marked by the automation of the use of computers and electrical equipment. Science and technology's development changed rapidly until a cyber-physical system emerged. This system requires interaction between humans that is integrated with computers and their physical abilities or digitalization [1]. One technology that is proliferating is digital applications. The ease with which people can access digital-based applications makes people interested in using these applications, just like technology-based online loan services, which are growing and increasingly mushrooming amidst the crush of people's needs, especially during the Covid-19 pandemic.

Online loan services or *pinjol* effortlessly offer cash loans, but unfortunately, these loans are not a solution. They are the beginning of disaster for the borrowing community. Online loan services, which are supposed to increase people's productivity, open up space to make the most of profits, such as "*lintah darat*" in an all-digital era. Data

compiled by YLBHI-LBH Jakarta has received at least 5,093 complaints related to online loans. The problems experienced by victims include very high interest, the lack of protection of personal data, to various crimes experienced by victims in the loan collection process [2]. Among them, victims experienced intimidation, threats of violence, and acts of slander, and many borrowers experienced confusion and mental pressure that led to suicide. This situation is due to the absence of rules that provide legal protection and human rights to online loan users [3].

The number of victims of loan loans continues to increase, and criminal practices that threaten privacy rights and the right to feel safe users must be considered immediately [4]. Through the OJK (Financial Services Authority), the state has issued a Financial Services Authority regulation Number: 77/POJK.01/2016 concerning Information Technology-Based Borrowing and Borrowing Services. However, this regulation is insufficient to provide security guarantees for the public, especially for victims. Therefore, there must be protection or a legal umbrella for those affected.

The renewal of the personal data protection law is essential to study because, firstly, people are safe from all forms of violence, both psychological and physical. Second, there is a

legal umbrella for protecting personal data in reducing crime rates for consumers or the public. Third, we hope that people can live independently and prosper without colonialism because people need the presence of the state to protect and provide for every citizen [5].

Legal renewal attempts to form new regulations in the framework of humanizing humans. Legal renewal means building positive legal regulation along with tools for justice and the benefit of society according to the times. In the National Long Term Development Plan (RPJMN) 2005-2025, development in the field of law is carried out to achieve the mission of creating a competitive nation and a democratic society based on law, namely: "An Indonesia that is independent, advanced, just and prosperous" [6].

Three legal views, namely: first, the legalistic view, namely the views or teachings of legalism, the law is identified with law, the legal system is seen as a *logischegeschlossenheit*, which is a logical closed structure, not contradictory to one another. Law is seen as a set of rules expected to be obeyed by members of society. Second, the functional view is a criticism of formalism that is detached from reality, launched by Jeremy Bentham (1789) by arguing for the need for utilization for society or social utilism [7]. The three critical views, namely critical legal teachings/views, also view the law as part of society, in other words, "law in society."

That legal renewal, including criminal law reform, is essentially a renewal of the main points of thought, often interpreted as updating basic concepts or ideas, not just changing the formulation of articles textually [8]. That although textual exposure cannot be ignored, the primary value behind the text is its priority. That is, in legal renewal, including in criminal law reform, the renewal of values is the basic need. That is because the substance of the law is a value. Law is a description of a value system. The law is not a series of dead and empty words. Therefore, no matter how beautiful and good the textual presentation is, it cannot be given the quality of law if it does not contain and embody a set of values. Based on that, the purpose of reform in law is for welfare, justice, and humanity [9].

According to the Consumer Protection Act in Article 1, paragraph 1, "Consumer protection is all efforts that guarantee legal certainty to protect consumers." Consumer protection law is needed if the conditions of the parties having legal relations or problems in society are unbalanced. That both consumer and consumer protection and consumer law could be interpreted of legal regulations regulating the rights and obligations of consumers and producers that arise in their efforts to meet their needs [10].

The development of Consumer Law in the world began with the consumer protection movement in the 19th century, especially marked by the emergence of PRO-BANK, a consumer movement that occurred in the United States. Consumer protection law in Indonesia only started to occur in the 1970s. This was marked by establishment of the

Indonesian Consumers Foundation (YLKI) in May 1973, chaired by Lasmidjah Hardi. At that time, consumer protection was widely conveyed through various consumer advocacy activities, such as education, research, testing, complaints, and consumer media publications. However, over time, the consumer protection movement (such as YLKI) was carried out through official legal corridors by assisting the public or consumers.

In the reform era, the desire to realize a consumer protection law can be fulfilled. During the reign of BJ Habibie, on April 20, 1999, the Consumer Protection Bill was officially passed as the Consumer Protection Law number: 8 of 1999 [5].

Based on the explanation that has been stated above, the problems in this study are related to the expansion of online loans in Central Java which ensnare the community, personal data is not protected, and gender-based violence online because of online loans, and the government's efforts to protect people from online loan trap.

II. METHODOLOGY

The research used a qualitative descriptive approach with a phenomenological design, which attempts to describe phenomena that occur in depth and complexity through a complete and inseparable understanding of the context. Therefore, researchers focus on protecting personal data in e-commerce in online loans. The data in this study were obtained from observations, interviews, and documentation from informant data and sources. The researcher's position as the main instrument, the victim of online loans as the subject obtained from the data from YLBHI-LBH Semarang, Central Java Government Legal Affairs). This information is used to obtain balanced and comprehensive information. The document media are audio recordings, consultation data, and the necessary 'incidental' data. Data analysis used an interactive model [11]. Data analysis was carried out interactively and continuously. Activities in data analysis include data reduction, data display, and conclusion. The researcher conducted data analysis departing from the phenomenon regarding online loan cases and the efforts made by Semarang Legal Aids in dealing with online loan cases which claimed many victims, followed by a description of the incident which included findings in the field, data reduction, and data analysis as well as drawing conclusions and verification, and ends with conceptualization in the form of renewal of legal protection.

III. DISCUSSIONS

Legal renewal is an effective solution amid the rapid development of the times, especially in the digital era, which creates new problems and requires special attention, considering that many victims are entangled in online loan services. Special laws governing the protection of personal data in online loan e-commerce are urgently needed because the current regulations cannot fully accommodate legal

issues arising in implementing online loan e-commerce activities. One of the most crucial problems is the absence of strict sanctions that can be used by law enforcement to ensnare and eradicate users of online loan services whose existence often violates consumer rights. Therefore, the urgency for a comprehensive regulation on the protection of personal data in online e-commerce loans as an effort to protect consumers is critical to be made immediately, with the hope that it can provide guarantees of protection and legal certainty for victims and the public.

A. The Growth of E-Commerce Online Loans in Central Java

The rapid development of technology has impacted changes in almost all aspects of life, including financial business technology and online e-commerce loans. This loan provides easy access by using a digital application medium. People can apply for a loan by registering and creating an account to apply for a loan or debt online. The online loan business model begins with an online loan fintech (pinjol) when the prospective loan recipient registers on the platform provided by the service provider, after which the loan recipient applies for a loan through the platform. After that, the organizer verifies the information on the prospective loan recipient, then shows the loan application in a container called the marketplace. The use of this marketplace is to bring together people who need financial assistance (borrowers) with people who will submit this financial assistance or funders [12].

In 2018, YLBHI-LBH Semarang received consultations for three online loan victims. In 2019, the number was the same, in three cases. Then in 2020, there will be 18 online loan victims who carry out consultations, and in 2021, as many as 16 people. The problematic situation during the Covid-19 pandemic has increasingly made vulnerable people victims of e-commerce online loan platforms.

The most common forms of anxiety in the community regarding online loan services include demands for very high-interest rates with relatively short terms, collection, collection, and dissemination of personal data against the law, as well as collection efforts with threats of violence that are often carried out by companies providing online loan services, both physical and online threats of gender-based violence.

The most common thing experienced by victims of online loan debt collectors is intimidation, both physical threats, and embarrassment by notifying the victim's loan problems to acquaintances of the victim. This problem occurs because online loan platforms can access the victim's phonebook. In fact, in 2019, three victims - all women - lost their jobs due to intimidation by online loan debt collectors. Sometimes, threats to victims are also in the form of Online Gender-Based Violence (KBGO). In addition, victims often experience demands for high loan interest payments in a short period, as well as the dissemination of personal data.

The assistance provided by YLBHI-LBH Semarang directed victims to report online problem-solving loan platforms to the OJK (Financial Services Authority), including its regional offices, and online loan associations such as the Indonesian Joint Funding Fintech Association (AFPI). Semarang Legal Aid's role is often compiling letters of complaint for the victims to send themselves to the suggested institutions. Thus, the victims will establish further communication with these institutions while continuing to consult with YLBHI-LBH Semarang if needed. This Semarang Legal Aid aims to empower victims so that victims can advocate for themselves. This situation follows the spirit of LBH's work ideology under YLBHI, namely structural legal assistance. YLBHI-LBH Semarang also conducts digital campaigns so that people can take preventive steps before applying for online loans and share tips on dealing with intimidation by online loan debt collectors. However, it must be admitted that until now, the loan problem has not been resolved. The lack of legal regulations to ensnare perpetrators has made more and more victims trapped by online-based loan lenders.

The Director of Special Criminal Investigation for the Central Java Regional Police, Kombes Johanson Ronald Simamora, said that 34 names of illegal online loan applications (pinjol) had been recorded and further investigation would be carried out. However, the question so far is whether these 34 illegal online loans (pinjol) are interrelated. OJK has again released a list of licensed loan loans and registered loan names, including 1) ShopeePay Later; 2) Damanas; 3) Investree; 4) Amarta; 5) Dompet kilat; 6) Kimo; 7) Toko modal; 8) Uang teman; 9) Modalku; 10) KTA kilat; 11) Kredit pintar; 12) Mau cahs; 13) Finmas; 14) KlikACC; 15) Akseleran; 16) Amana.id; 17) PinjamanGo; 18) KoinP2P; 19) Pohandana; 20) Mekar, and many other licensed fintechs. The licensed fintech above is registered as of October 6, 2021.

B. E-Commerce Online Lending and Gender-Based Violence Online

Online-based services are growing in society, especially during the Covid-19 period. Easy access to disbursing cash funds makes people tempted and want to try online loan services. Online loan e-commerce provides fresh air, but those people have not felt the benefits of being billed by online loan service providers. YLBHI-LBH Semarang public lawyer Rizky Putra Edry (2022) stated that the advantages of having an online loan platform are the ease of the procedure for applying for a loan and the speed of disbursement. Considering that economic inequality in Indonesia is still high, for the less fortunate, the existence of an online loan platform can help. Especially during the difficult times of the Covid-19 pandemic. However, there are so many harmful excesses than benefits. They started from the problems described when LBH Semarang received consultations to make people more consumptive.

In terms of regulations, in the context of online lending, the government has passed the Financial Services Authority (OJK) regulation Number: 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services. However, this regulation is insufficient to protect people from online lending. The scope of OJK regulations is limited to online loan administration aspects. In terms of law enforcement, OJK's authority is limited to taking action against the legal status of the platform. OJK cannot enforce the law against debt collectors who intimidate victims. In 2021, OJK, Bank Indonesia (BI), Polri, the Ministry of Communication and Information, and the Ministry of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia (Kemenkop UKM) also had a joint agreement to reduce the impact of online loans. This joint step, of course, is a small amount of fresh air. However, this step will be meaningless if there is no optimal implementation.

For the law enforcement process, apart from complaining to the OJK or online loan associations, the public can also submit reports to the police. Especially if people look at legal regulations at the level of laws, such as the Criminal Code (KUHP), the Electronic Information and Transaction Law (UU ITE), and the Sexual Violence Act (UU TPKS), can be used in investigating cases involving online loans. If later the police find that a crime has been committed and succeed in finding the suspect, then the files will be transferred to the Attorney General's Office for further prosecution in court. During the court process, victims can also apply for compensation in coordination with the prosecutor's office so that the request for compensation can be requested simultaneously with the reading of the charges so that the judges can consider it in their decision. When viewed from the history of its formation, the ITE Law is intended to protect the public from digital crimes, one of which is currently carried out by online lending platforms. In addition, the TPKS Law stipulates that KBGO is a crime and can also be used as a basis for law enforcement. Thus, the threat of punishment for intimidation by online loans can be aggravated.

In order to maximize public protection from potential online loan threats, a one-stop complaint center is needed between relevant agencies so that a quick response can be made to unlawful actions carried out by online loan platforms. This fast response is urgently needed, considering that several members of the public who consulted with LBH Semarang stated that they had previously submitted a report to the police but received no response. In this case, it is necessary to emphasize the seriousness of the legal structure so that preventive efforts can be carried out as much as possible and the rights of victims and potential victims can be protected. On the preventive aspect, the government needs to monitor the Google Playstore and AppStore so that illegal online lending platforms can be banned in real-time. This effort must be balanced with maximum outreach to the public so

they can have awareness before applying for an online loan. Thus, the public is not trapped in choosing an online loan platform. By increasing people's welfare, the opportunities for online loan platforms to "fish in murky water" are narrower.

The main problems that victims often mention include 1) the payback period is concise, not following the agreement; 2) very high interest; 3) unlawful practices of data collection, collection, and dissemination of personal data. Among them is the dissemination of consumer E-KTPs, the distribution of photos and contact numbers, and the distribution of data in mobile phones, such as photos and videos. Spreading disgrace, and slander, including the amount of online loan consumer debt to other people or the public, so that victims feel ashamed; and 4) debt collection accompanied by threats of violence by online loan companies. The violence often occurs in physical or non-physical violence to online gender-based violence (KBGO).

KBGO is a form of gender-based violence facilitated through digital or online technology in which there is content or intent to harass the victim based on gender or sexuality. At least there are several types of KBGO actions that often occur in many cases: 1) hacking (cyber hacking); 2) creating, imitating and manipulating fake social media accounts (impersonation); 3) cyber surveillance/stalking/tracking); 4) online harassment (cyber harassment spamming); 5) online recruitment; 6) threats of distribution of personal photos/videos (malicious distribution); 7) non-consensual dissemination of intimate image); 8) sexting; 9) morphing; 10) scammers; 11) approach to deceive (cyber grooming); 12) illegal content (illegal content); 13) online devastation; 14) invasion of privacy [4]. If the consumer receives the above treatment, the consumer can make a report to the police accompanied by evidence and witnesses, evidence including in the form of photos, videos, voice recordings, or screenshots of text and so on to strengthen the report and make it easier for the police to act. If the victim is a woman, she can also report it to Komnas Perempuan (National Commission on Women).

C. Government Efforts to Protect the Community from Online Loan Trap

President Joko Widodo stated that the accelerated growth of the online lending industry (*pinjol*) in Indonesia was followed by many crimes in the form of fraud that harmed the people. In practice, the grassroots are deceived and ensnared with high interest by online loans, which are pressured by many ways to return online loans. Therefore, President Jokowi asked OJK (*the Financial Service Authority*) to maintain the growth of the digital financial services industry by establishing a responsible loan ecosystem with solid mitigation. The President hopes that by supervising it quickly and perfectly, Indonesia has great potential to become a super-large digitizer after China and India. Apart from that, Jokowi also asked OJK to encourage

more inclusion and financial literacy to create a financial financing ecosystem that various parties can access. The government made various efforts to reduce the existence of fintech online loans (*pinjol*), including the OJK working with the Investment Alert Task Force and the Ministry of Communication and Information and Communication (Kemkominfo) to take action to block illegal online fintech lending platforms. However, these actions have not been maximized. Online loans are currently still in existence. The ease of technology makes the development of fintech increasingly mushrooming.

As a preventive measure, the government also provides education and outreach to the public so that they are more vigilant and do not choose the wrong online loan service. The lack of regulations in ensnaring perpetrators of illegal loan services makes it challenging to process and enforce the law. Legal sources that serve as guidelines for online loan fintech services still have many legal loopholes which illegal online loan providers often exploit. In practice, the OJK cannot supervise and act against illegal online fintech loans because of the sanctions that have been regulated.

In particular, the Central Java Government's legal department has told the public to be careful and not try to make online loans and not try things that are unclear. It is better to avoid it. Regulations that protect consumer rights have not yet been regulated, and regulations that control violations encountered in online lending service transactions have not been regulated until now. Therefore, comprehensive regulations are needed so that the public can be protected and can ensnare and eradicate the existence of online loan service companies that are detrimental to society.

IV. CONCLUSION

Based on the discussions that have been carried out, it appears that there is an urgency to reform the personal data protection law to be made immediately, considering that currently, there are still many victims who are trapped and need legal protection from the state. Currently, no specific law can comprehensively manage the implementation of online e-commerce loan (*pinjol*) activities in Indonesia, thus causing the proliferation of online loans. While being squeezed by economic needs, especially during the Covid-19 period, people were forced to use online loan services, but instead of increasing productivity, people were stuck with online loans such as "*lintah darat*." Online lending services increasingly exist because of the convenience of technology. It creates criminal practices that threaten society, including the right to privacy and safety. Therefore, as input to the Government in providing maximum legal protection for the community, it is necessary to have more binding regulations and laws regulating criminal sanctions to guarantee protection, justice, and welfare for the community. In addition, it is also necessary to accelerate the ratification of the Personal Data Protection Bill. This bill

must ensure that it can guarantee personal data use by private and public institutions. This measure is necessary to further strengthen the guarantee of citizens' rights, especially in the digital space.

REFERENCES

1. Nanami, Joko Darminto. 2020. "Protection of Personal Data in Indonesia in the Context of Electronic Commerce E-Commerce". Diponegoro Law Journal. Volume 9 Number 2.
2. Prilisari, E. 2019. "The Importance of Personal Data in Online Loan Transactions". National Law Journal. Volume 7 Number 2.
3. Wahyudi, Djafar and Komarudin, Asep. 2014. Protection of Right to Privacy on the Internet-Some Key Explanations. Toha Putra Semarang.
4. Rashid, et al. 2020. Self Help Tool Kit: How You Deal with Online Loan Debt and Gender-Based Violence Online. Yogyakarta Student Library.
5. Ambarwati, Susanti. 2014. "E-Commerce in the Perspective of Consumer Protection". Journal of Economics & Business. Volume 1 Number 2.
6. Rahardja, U. et al. 2020. "Application of Blockchain Technology as a Media for Securing E-Commerce Transaction Processes". Journal of Computer Engineering Systems and Science. Volume 5 Number 1.
7. Nyoman, Putra Jaya Union. 2017. Criminal Law Reform. Rizki Putra Jakarta Library.
8. Nawawi, Arief Barda. 2015. Objectives and Guidelines for Perspective of Criminal Law Reform and Comparison of Several Countries. Diponegoro University Semarang Research Board.
9. Sudarto. 2019. Criminal Law I A-B. Faculty of Law, Diponegoro University, Semarang.
10. Shit, NHT. 2015. Consumer Protection Law and Product Responsibility. Panta Rei Jakarta.
11. Miles, M.B. & Huberman, A.M. 2012. Qualitative Data Analysis. Translator Tjetjep Rohendi Rohidi. University of Indonesia Press, Jakarta.
12. Rumondang, A. 2018. "The Utilization of Fintech (P2P Lending) as SME's Capital Solution in Indonesia: Perspective in Islamic Economics (Qirad)". International Conference of Moslem Society, 2. 12-22.