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## *Legal Protection Against Consumers In Illegal Online Loans*

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### ABSTRACT

This study discusses legal protection for consumers in illegal online loans. The purpose of this research is to find out legal protection for consumers in illegal online loans, and to find out the legal consequences of default in illegal online loans. The method used is normative research using library data

The results of this study are that online loan service providers have been regulated in Financial Services Authority Regulation Number 77 /POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services, but not all online loan companies are registered with financial services authorities. Then the legal consequences of default in online loans are not clearly regulated because existing regulations only regulate defaults carried out by legal online loans, while illegal ones are only regulated for reprimands and up to blocking if proven guilty, related to consumers being transferred to the Criminal Code and the Protection Act. consumer.

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## 1. Introduction

The rise of online loan services (fintech) makes it easy to apply. In the past, before there was fintech, someone who wanted to get a loan from a bank had to have a bank account, come directly to the bank, fill out the form and submit the required files, then the bank would conduct a survey, then the bank did a feasibility analysis, then if everything went smoothly, new loans can be disbursed. Now, with the existence of fintech, someone who wants to apply for a loan can simply download an application or access the loan service provider's website, fill in the data and upload the required documents, and in a matter of days, the loan is immediately disbursed into the customer's account.<sup>1</sup>

In this case, OJK issues Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. In terms of terminology, OJK provides terminology related to lending and borrowing as follows: "Information Technology-Based Lending and Borrowing Services is the provision of financial services to bring together lenders and loan recipients in order to enter into lending and borrowing agreements in rupiah currency directly through an electronic system using the internet network."<sup>2</sup>

In this regard, this is also regulated in Information Technology-Based Borrowing-Lending Services and Bank Indonesia Regulation Number 19/12/PBI/2017 of 2017 concerning the Implementation of Financial Technology as the legal basis for the application of online loan agreement business. keep up with the very fast development of financial technology. In credit activities through online media, all agreements made between debtors and creditors are contained in electronic contracts.

Regulations related to electronic contracts are stated in Article 1 number 17 of the Electronic Information and Transactions Law (ITE) which states that: "Electronic contracts are agreements between parties made through Electronic Systems". The legal power of electronic contracts can be seen in Article 18 paragraph (1) of the ITE Law which states that, "Electronic transactions contained in Electronic Contracts are binding on the parties." This means that it can be concluded that a transaction that becomes an agreement and then is stated in an electronic contract has the nature or is binding on the parties, which can be equated with agreements or contracts in general.

Online loans themselves provide convenience that is more efficient, if you compare the speed between conventional banks and online loans, it is quite significant. Banks can take 7-14 working days, while online loan services are between 4 hours to 3 days. However, the rapid growth of this online loan service provider does not seem to be followed by

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<sup>1</sup> P.Dwi Atmojo, *Internet Untuk Bisnis I*, Dirkomnet Training, Jogjakarta, 2002, Hlm. 34

<sup>2</sup> Pasal 1 angka 3 Nomor 77/POJK.01/2016

adequate education to the public. Finally, side effects also arise from the many types of online loans. The convenience offered by online lending services does not escape negative things. This happens to illegal online loans.

Illegal online loans basically have no special understanding from the laws and regulations or experts. However, it can be understood that illegal online loans are online loans that are not registered and not recognized by the OJK.

Because of the many violations in illegal online lending, many borrowers have become victims. The following are examples of cases in illegal online loans.

An example is the case experienced by an honorary teacher in Semarang Regency, Afifah Muflihati. Initially, Afifah as an honorary teacher did not earn enough for her daily needs, finally when she received a loan offer sms and downloaded the application, Afifah immediately applied for a loan from 500 thousand to 1 million rupiah which was immediately approved by the application with a loan duration of 7 days to 14 day. Afifah is in debt in dozens of loan applications up to hundreds of millions of rupiah. Afifah's total loan was only Rp. 3.7 million, but if it was added up, it swelled to Rp. 206.3 million (total interest). In fact, he received terror and intimidation when he was billed by the threat of his personal data being released to the public. The Head of Public Relations of the Central Java Police, Kombes M. Iqbal Alqudusy said that currently there were 24 online loan cases in the Central Java area that were reported to the police, not including those that were not reported.

Another case also occurred in Gorontalo, for example what happened to Mr. Yanto, a resident of Pulubala sub-district who borrowed two million rupiah in an online loan, but then Mr. Yanto was late in paying because he was in debt in other places, due to the delay the lender disseminated information to all the contact on Pak Yanto's cellphone that Pak Yanto is not responsible for the process of paying off the debt. There are still many other cases that are not included in this study. However, these various examples are sufficient to represent the negatives of illegal online loans.

Another case is carried out by online loan debt collectors. They make messages and writings that are already defaming the borrower. For example, it is made as if the borrower is a methamphetamine dealer, a drug dealer. Then, I'm sorry, if it's a girl, the photo is cut and pasted with an indecent (picture). This is detrimental to the victim as an online borrower. Along with the report from this case, there are already 112 online loan companies registered with the OJK. Meanwhile, the Task Force has blocked 3,193 illegal online loans that are troubling the public

The problems above are actually an important concern, because of the consumer losses

caused by illegal online loans. If you look at Article 1 number 1 of Law no. 8 of 1999 concerning consumer protection. The existence of this UUPK, is to ensure legal certainty of consumer protection by fulfilling consumer rights, and this (UUPK) is used as an umbrella (umbrella act) for other laws that aim to protect consumers, both existing and those that will apply later.<sup>3</sup>

Apart from distributing consumer personal data, in principle, it has been protected by Law no. 39 of 1999 concerning Human Rights, in Article 29 paragraph (1) states that "Everyone has the right to personal protection..." So in the statement, it can be said that the protection of personal data is a right (privacy rights) owned by everyone that must be protected by the state, where in privacy rights everyone has the right to close or keep private things private.<sup>4</sup>

Based on the explanation above, it can be said that the problem regarding illegal online loans is important to examine so that it is interesting for the author to be studied with the title "Legal Protection against consumers in illegal online loans"

## **2. Problem Formulation**

1. How is the legal protection for consumers in illegal online loans?
2. What are the legal consequences of default in illegal online loans?

## **3. Method**

The method used in this research is normative legal research. "Normative Legal Research is a legal research conducted by examining library materials or secondary data". "Normative legal research is also known as doctrinal legal research. According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. "In this type of legal research, law is conceptualized as what is written in statutory regulations or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate"

## **4. Analysis or Discussion**

### **Legal Protection Of Consumers In Illegal Online Loans**

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<sup>3</sup> <https://nasional.kompas.com/read/2021/07/29/16185771/polri-cara-debt-collector-pinjol-ilegal-tagih-utang-ke-peminjam-mencemarkan>. Diakses pada 04-09-2021

<sup>4</sup> I Dewa Gede Adi Wiranjaya dan I Gede Putra Ariana, "Perindungan Hukum Terhadap Pelanggaran Privasi Konsumen Dalam Bertransaksi Online", Kerta Semaya, Vol. 4, No. 4, Juni 2016, hlm. 3.

Protection of the rights of online loan service users is a necessity. In this case, the government plays a very important role in providing protection through laws and regulations as well as through firm action as an effort to prevent and handle cases of violations of the rights of online loan service users. These violations even lead to human rights violations as a result of threats and terror against online loan service users who are considered negligent in making payments.<sup>5</sup>

Although there are no sanctions in Law Number 39 of 1999 concerning Human Rights, this law is an umbrella for all laws and regulations on human rights. Therefore, direct or indirect violations of human rights are subject to criminal, civil, and/or administrative sanctions in accordance with the provisions of laws and regulations.

Various cases of human rights violations experienced by online loan service users as consumers basically start from loan agreements that may be made unilaterally and understood by consumers and sometimes service providers are reluctant to clearly inform about these clauses because of the risk that prospective online loan service users cancel plans. using the online loan facility. From a legal perspective, there is a prohibition for online loan providers as business actors to include standard clauses in every document and/or agreement as stated in Article 18 Paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection,

Furthermore, in Article 18 Paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection, it is stated that business actors are prohibited from including standard clauses whose location or form is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand.

The two articles seek to make it easier to identify whether the standard contract applied to business actors has the potential to harm consumers. In addition, it is also a guide for consumers so that at the law enforcement stage it will be easier to impose legal sanctions on business actors. Consumer protection basically seeks to synergize the position between consumers and business actors<sup>29</sup>. It is based on the principle of freedom of contract.

Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

Likewise, RI Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions which has articles that seek to

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<sup>5</sup> Az. Nasution, 1999, *Hukum Perlindungan Konsumen, Suatu Pengantar*, Daya Widya, Jakarta. Hlm. 8

provide protection to users of online loan services.

1. In Article 26 Paragraphs (1) and (2):

(1) Unless stipulated otherwise by laws and regulations, the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned.

(2) Any person whose rights are violated as referred to in Paragraph (1) may file a lawsuit for the losses incurred under this Law.

2. Article 45 Paragraph (3) which reads

Any person who intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing insults and/or defamation as referred to in Article 27 Paragraph

(3) shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah).

3. Article 45 B

Any person who intentionally and without rights sends Electronic Information and/or Electronic Documents containing threats of violence or intimidation aimed at personally as referred to in Article 29 shall be subject to a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 750,000,000.00 (seven hundred and fifty million rupiah)."

With these regulations, legal settlements can be carried out through sanctions regarding violations of the rights of service users that only provide unilateral benefits for online loan companies. However, related to the use of a person's personal data, it still requires further regulations, which until now there are no regulations specifically regulating this matter.

This is very concerning considering that data protection is also a fundamental human right. In the international world, data protection has been recognized as a constitutional right in the form of "free data" namely the right of a person to obtain security for his data and for justification when errors are found in his data. However, the reality of data security in Indonesia is in fact inversely proportional to the prevailing *ius constitutum*.<sup>6</sup>

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<sup>6</sup> Sri Lestari Poernomo, "Standar Kontrak Dalam Perspektif Hukum Perlindungan Konsumen," *Jurnal Penelitian Hukum De Jure* 19, no. 1(2019): 109–120

Another effort is if it is clear that the company that has the digital service does not yet have a permit from the OJK, aka illegal, then there is no other way than using repressive methods by closing the application service. Therefore, coordination between OJK and the Ministry of Communication and Information is relevant. In addition, the Ministry of Communication and Informatics should have technology system skills by rejecting the process of installing applications in digital services if they do not meet the formal requirements as stipulated in the legislation. In this context, financial technology providers are required to include company legal documents from the OJK before installing applications on digital platforms<sup>7</sup>

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further regulations, which until now there are no regulations specifically regulating this matter.<sup>8</sup>

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### **Legal Consequences On Default In Illegal Online Loans**

The creditor as one of the users of this fintech-based loan agreement service is entitled to protection in its implementation considering the large potential losses that the creditor can experience in the event of a default by the debtor. This is in line with Satjipto Rahardjo's view that the law exists in society to integrate and coordinate interests that may conflict with one another. The coordination of these interests is carried out by limiting and protecting these interests. So that the law should also be present to protect the interests of creditors in fintech-based lending and borrowing agreements where creditors are part of the community whose interests must be protected. Regarding the form of legal protection, Philipus M. Hadjon divides the forms of legal protection into two namely;<sup>9</sup>

#### 1. Preventive Legal Protection

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<sup>8</sup> UPAYA MENGATASI LAYANAN PINJAMAN ONLINE ILEGAL Eka Budiyanti, Jurnal Singkat, Vol. XI, No.04/II/Puslit/Februari/2019,

<sup>9</sup> Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, 2000, h.53



#### a. Judging from the Civil Code

Violation of these contractual rights creates an obligation for compensation as regulated in article 1239 of the Civil Code, related to this default, it is also regulated in article 1243 of the Civil Code which states that:

Compensation of costs, losses and interest due to non-fulfillment of an engagement, then becomes obligatory, if the debtor, after being declared negligent in fulfilling his engagement, continues to neglect it, or if something that must be given or made, can only be given or made within the time limit that has been exceeded.

The debtor is declared negligent if (i) does not meet the performance; (ii) late for achievement; and (iii) performing but not as it should. However, in general, defaults only occur after a statement of negligence (in mora stelling: ingebereke stelling) is made from the creditor to the debtor<sup>10</sup>

#### b. Judging from the ITE Law

Fintech-based lending and borrowing agreements as a service that uses an electronic system. Therefore, this fintech-based lending and borrowing agreement cannot be separated from Law 11/2008 concerning Electronic Information and Transactions. One of the provisions in this Law is that as a business actor who offers products (goods/services) through the Electronic System, he must provide complete and correct information relating to contract terms, producers, and products offered. "Complete and correct information" includes:

1. information containing the identity and status of legal subjects and their competencies, both as producers, suppliers, providers and intermediaries;
2. other information that explains certain things that are conditions for the validity of the agreement and explains the goods and/or services offered, such as names, addresses, and descriptions of goods/services.

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<sup>10</sup> Agus Yuda Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, Kencana, Surabaya, 2009, h, 261

The existence of these provisions in which the operator as a business actor must provide correct information regarding the services provided to provide protection also to creditors so that creditors can fully understand how it works and the advantages and disadvantages that can be obtained. By knowing that there is a risk of default which is the responsibility of the creditor, this right can be considered for a prospective creditor before becoming a creditor and providing the funds. This is in line with what was conveyed by Satjipto Rahardjo that the law can be functioned to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. The necessity to contain correct information is a form of anticipatory and predictive protection so that creditors can find out what potential losses they have and be taken into consideration for someone before applying to become a creditor in a fintech-based loan agreement.

c. Judging from the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services

Judging from this regulation, the provisions that can provide protection to creditors in fintech-based lending agreements will be discussed:<sup>11</sup>

a. Risk Mitigation

This regulation regulates several articles relating to risk mitigation. What is meant by risk mitigation is a planned and sustainable action taken in order to reduce the impact of an event that has the potential to harm.

b. Security System

Article 28

1. Operators are required to secure information technology system components by owning and implementing procedures and facilities to secure Information Technology-Based Lending and Borrowing Services in order to avoid disruption, failure, and loss.

2. Operators are required to provide a security system that includes procedures, prevention systems, and countermeasures against threats and attacks that cause

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<sup>11</sup> I Ketut Oka Setiawan, 2018, *Hukum Perikatan*, Cet. III, Sinar Grafika, Jakarta, 2018, Halaman 19. 25

disturbance, failure, and loss.

3. Operators are required to participate in the management of information technology security loopholes in supporting information security in the information technology-based financial services industry.

4. Operators are required to re-display Electronic Documents in their entirety in accordance with the format and retention period determined in accordance with the provisions of the laws and regulations.

c. Protection of Users of Information Technology-Based Lending and Borrowing Services  
Article 37 The Operator is required to be responsible for User losses arising from errors and/or negligence, the Board of Directors, and/or employees of the Operator. In this article, we can see that this provision provides protection for losses suffered by creditors as long as the losses incurred are the fault or negligence of the organizer.

Through the description above, it can be seen that basically POJK Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services has regulated provisions as an effort to protect creditors. Where this regulation regulates the provisions on risk mitigation as a planned and sustainable action carried out in order to reduce the impact of an event that has the potential to be detrimental so that this risk mitigation provision provides anticipatory and predictive protection.

In addition, this POJK regulation regulates the security system in the implementation of this lending and borrowing agreement, which is an important thing to do considering that this fintech-based lending and borrowing agreement is held through an electronic system where the parties do not meet each other face to face. So there is an obligation for the operator to provide a security system that includes procedures, prevention and control systems against threats that can cause harm or disruption to provide indirect protection. With a good security system, there is a greater potential for the implementation of fintech-based lending and borrowing agreements to run well.<sup>28</sup>

Article 37 of the POJK also stipulates that the organizer must be responsible if there is a

loss arising from the negligence or error of the organizer. This provides direct protection, including to creditors if the creditor suffers a loss caused by an error or negligence of the organizer. However, in the event of a default by the debtor, the organizer is not responsible and becomes the full responsibility of the creditor. So that it can be understood in the event of a default by the debtor, the POJK has not provided legal protection to creditors where there is no protection for the interests of creditors in the event of a default.<sup>12</sup>

## 2. Repressive Legal Protection

Repressive legal protection is protection that aims to resolve disputes, including their handling in judicial institutions. This legal protection can only be carried out after a dispute occurs

formerly. In relation to fintech-based lending and borrowing agreements, the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services stipulates administrative sanctions on the operator in the event of a violation of obligations and prohibitions carried out by the provider as stipulated in article 47 number 1 which reads “for violations of obligations and prohibitions in this OJK regulation, OJK has the authority to impose administrative sanctions on the Operator in the form of:

1. written warning;
2. fines, namely the obligation to pay a certain amount of money/funds;
3. limitation of business activities; and
4. license revocation.”

As a form of repressive legal protection, dispute resolution of this fintech-based loan agreement can be carried out either through court or out of court:

### 1) Dispute Resolution Through Court

Dispute resolution through the courts (litigation) is a pattern of dispute resolution that

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<sup>12</sup> I. G. Rai Widjaya, *Merancang Suatu Kontrak*, Megapoin, Bekasi, 2004, Halaman 47

occurs between the disputing parties through the courts and the decisions are binding. Settlement through the courts (litigation) is usually carried out if the settlement outside the court does not find an agreement. If the settlement of the dispute outside the court does not find an agreement, then the creditor who suffers a loss due to default by the debtor can take a court route to resolve the dispute.

## 2) Dispute Resolution outside the court

Settlement of disputes over fintech-based lending and borrowing agreements outside the court can be done through the Alternative Dispute Resolution Institution (LAPS). Financial Services Authority Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector Article 1 paragraph 2 states that alternative dispute resolution institutions are institutions that carry out dispute resolution outside the court. Dispute resolution through LAPS in the financial services sector is carried out by people who have expertise according to the type of dispute, so that the resulting decisions can be objective and relevant.<sup>13</sup>

Based on the description above, it can be understood that the OJK as an institution that functions to organize an integrated regulatory and supervisory system for all activities in the financial services sector has provided repressive legal protection by regulating dispute resolution mechanisms for the aggrieved parties. Through the POJK concerning Fintech-Based Lending and Borrowing Services, administrative sanctions have been clearly regulated by the OJK to the organizers if they do not violate the obligations or prohibitions of the provisions stipulated in this POJK. The existence of this regulated administrative sanction provides legal certainty, including for creditors as parties involved. So that this provision provides legal protection as stated by Hetty Hasanah that legal protection is all efforts that can guarantee legal certainty and provide legal

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<sup>13</sup> Sulasi Rongiyati, "Perjanjian Penjaminan Kredit Antara UMKM Dan Lembaga Penjamin Berdasarkan Undang-Undang Nomor 1 Tahun 2016 Tentang Penjaminan" dalam Jurnal NegaraHukum: Vol. 7, No. 1, Juni 2016, h.7

protection to the parties concerned.<sup>14</sup>

In addition, the existence of an Alternative Dispute Resolution Institution (LAPS) by the OJK provides comprehensive legal protection to the parties by providing a dispute resolution mechanism, where in the case of fintech-based lending and borrowing agreements, creditors can choose the services used which can be in the form of mediation, adjudication, or arbitration. . In addition, the principles in LAPS in the form of the principle of accessibility, the principle of independence, the principle of justice, and the principle of efficiency and effectiveness make LAPS have a clear benchmark for carrying out dispute resolution properly. If the dispute resolution outside the court does not find an agreement between the parties, in this case the creditor and the debtor, regarding the default by the debtor, the dispute resolution can be carried out through the courts.<sup>15</sup>

Based on PJOK n. 77 / POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services and POJK n. 13/POJK.02/2018 regarding digital financial innovation in the financial services sector. OJK can only impose sanctions on online loan service companies that are officially registered with OJK (legal entities). However, OJK cannot impose sanctions other than business closures for illegal online loan service companies. That on the one hand many people suffer losses due to investments or loans through illegal online loan service companies. In this case, special regulations or policies are needed regarding consumer protection for users of illegal online loan services. The need to evaluate the mechanism for registration or authorization of the OJK online loan service company. Likewise with the sanctions rules, based on PJOK No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services and POJK No. 13/POJK.02/2018 regarding digital financial innovation in the financial services sector. The OJK is also only authorized to supervise online loan service companies that have been registered with the OJK. The existence of illegal online loan service companies can arise because of the difficult authorization mechanism at the OJK. This needs to be a consideration for OJK to evaluate the licensing or registration mechanism for online loan service companies

So basically there are no regulations that specifically regulate when illegal online loans default because all laws and regulations only regulate legal online loans, especially the POJK which should have more definite rules but in reality there are none. As for what is regulated when defaulting is only legal online loans. For illegal online loans, the legal basis is the consumer protection law and the Criminal Code. The POJK only states that if the online loan is not registered with the OJK, a sanction will be given to revoking the

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<sup>14</sup> Kartini Muljadi dan Gunawan Widjaja, Perikatan yang lahir dari undang-undang, Jakarta, Raja Grafindo Perkasa, 2005, Halaman 156.

<sup>15</sup> Miru Ahmadi, Prinsip-Prinsip perlindungan hukum bagi konsumen di Indonesia, Raja Grafindo, 2013, Jakarta, Halaman. 24.

operating license

## 5. Closing

Online loan arrangements are crucial considering that their presence in Indonesia has developed because it offers various conveniences in disbursing funds. Although regulation and supervision have been carried out through Financial Services Authority Regulation Number 77 / POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services, not all online loan companies are registered with the financial services authority, so that currently there are service providers legal and illegal or unregistered services. The difficulty in taking action against illegal online loan businesses is because there are no regulations that provide strict sanctions against the existence of illegal online loans. These conditions make online loan service users get into problems at the time of collection. In this case, the billing method is sometimes unreasonable by using threats and terror techniques that lead to human rights violations. The protection of the rights of online loan service users is still not optimal even though there are sanctions in the laws and regulations regarding violations of one's right to security through electronic media. Likewise with violations of the use of personal data for which until now there are no regulations that specifically provide strict sanctions for this, causing unrest for service users as a result of misuse of data owned.

The legal consequences of default in online loans are not clearly regulated because existing regulations only regulate defaults carried out by legal online loans, while illegal ones are only regulated for reprimands and up to blocking if proven guilty, related to consumers being transferred to the Criminal Code and the Protection Act. Consumer

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