

## LEGAL PROTECTION FOR CUSTOMERS IN ONLINE LOANS ACCORDING TO SHARIA ECONOMIC LAW

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### **Abstract**

This article aims to examine the legal protection for customers in the implementation of online-based money loans or known as online loans (pinjol). The research method used is a doctrinal approach where the author will examine legal norms related to customer protection according to the Banking Law, and a number of Financial Services Authority (OJK) regulations related to pinjol. The results of this study conclude that there are several phenomena that occur in the implementation of pinjol that do not get legal protection for customers, namely: First, the determination of interest that does not refer to the interest rate provisions of Bank Indonesia, second, the maximum interest setting on online loans in fintech companies is 0.4 percent per day but the amount of real interest is not regulated in the agreement. Third, Financial Services Authority Regulation No.77/POJK.01/2016 on Information Technology-Based Money Lending and Borrowing Services OJK Regulation No.77 of 2016 is the basis for the implementation of Peer-to-Peer Lending business activities or online lending and borrowing which is one of the types of fintech, including the protection of customer personal data. Customer personal data collected by fintech providers must be kept confidential in accordance with applicable privacy provisions.

**Keywords:** *Islamic Economic Law, Indonesia, Customer, Legal Protection, and Pinjol*

### **Abstrak**

Artikel ini bertujuan untuk mengkaji perlindungan hukum bagi nasabah dalam pelaksanaan pinjaman uang berbasis online atau yang dikenal dengan pinjaman online (pinjol). Metode penelitian yang digunakan adalah pendekatan doktrinal dimana penulis akan mengkaji norma-norma hukum terkait perlindungan nasabah menurut UU Perbankan, dan sejumlah peraturan Otoritas Jasa Keuangan (OJK) yang terkait dengan pinjol. Hasil penelitian ini menyimpulkan bahwa terdapat beberapa fenomena yang terjadi dalam pelaksanaan pinjol yang tidak mendapatkan perlindungan hukum bagi nasabah, yaitu: Pertama, terkait penetapan bunga yang tidak mengacu pada ketentuan *suku bunga* Bank Indonesia, kedua, penetapan bunga maksimal pinjaman online di perusahaan *fintech* sebesar 0,4 persen per hari namun besaran bunga riilnya tidak diatur dalam perjanjian. Ketiga, Peraturan Otoritas Jasa Keuangan No.77/POJK.01/2016 tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi Peraturan OJK No.77 Tahun 2016 menjadi dasar pelaksanaan kegiatan usaha *Peer to Peer Lending* atau pinjam meminjam secara online yang merupakan salah satu jenis *fintech*, termasuk di dalamnya perlindungan data pribadi nasabah. Data pribadi nasabah yang dikumpulkan oleh penyelenggara *fintech* wajib dijaga kerahasiaannya sesuai dengan ketentuan privasi yang berlaku.

**Kata kunci:** *Hukum Ekonomi Syariah, Indonesia, Nasabah, Perlindungan Hukum, dan Pinjol*

### **INTRODUCTION**

Rapid advances in technology in Indonesia have opened up opportunities for people to engage in various activities, including business in the financial and banking sectors. There are 124 fintech companies authorised by the Financial Services Authority (OJK), including 7 that use sharia platforms. These fintechs offer various online money lending services to customers. Financial businesses are now not only developing in conventional banking institutions, but also in technology-based financial institutions, known as *fintech* platform businesses.<sup>1</sup>

*Fintech*, which stands for *Financial Technology*, is a financial services sector initiative that is becoming an interesting phenomenon in Indonesia's economic sector. Fintech improves access to financial products that are more practical and effective for both lenders and loan recipients. With an increasingly modern lifestyle, Fintech has emerged and is in demand by

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<sup>1</sup> Saifullah Ali, Zalva Amalia, and Yusriaina Yusuf, "THE APPLICATION OF MURABAHAH CONTRACTS IN THE INSTALMENT SERVICES OF DHUAFI PARTNER COOPERATIVES IN INDONESIA," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (November 17, 2023): 119–43, <https://doi.org/10.1234/JURISTA.V7I2.70>.

information technology users due to its practicality, convenience, and speed. Processes become more practical, fund transfers to banks or ATMs become easier, and inconvenient on-site services can be minimised<sup>2</sup>. Fintech greatly helps efficiency and effectiveness in buying and selling transactions and payment systems. Fintech services enable lending and borrowing agreements between two parties without involving a third party. This makes the transaction process easier and more convenient for businesses and consumers.<sup>3</sup>

Online loan services are provided by online loan companies (pinjol) to customers through a web-based electronic framework. To carry out this activity, pinjol companies must have an operational licence granted by the Financial Services Authority (OJK). The role of pinjol is very easy for people to access finance, because of its higher effectiveness compared to loans from banking institutions. Customers can apply for loans online without the need to meet directly with the pinjol or provide collateral in the form of goods (collateral). This provides convenience for customers because they can access these services easily without having to come to the office.<sup>4</sup>

The legal basis for this online lending activity is regulated in the Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. OJK has the authority to supervise financial services institutions in Indonesia, including the online lending sector provided by Fintech companies. As such, fintech companies wishing to operate in Indonesia must register and obtain a licence from OJK. OJK also plays a role in developing this online-based lending industry, so that this service can run optimally and provide maximum benefits to the community.<sup>5</sup>

*Fintech* companies set their own interest rates or profit margins, not referring to the BI rate, and are set by the Indonesian Fintech Funding

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<sup>2</sup> Basrowi, "Analysis of Aspects and Efforts of Sharia Fintech Consumer Protection," May 23, 2019, <https://doi.org/10.5281/Zenodo.3187539>.

<sup>3</sup> Dunyati Ilmiah, "PERAN PERBANKAN SYARIAH DALAM IMPLEMENTASI WAKAF UANG UNTUK PENGEMBANGAN INDUSTRI HALAL DI JAWA TIMUR," *DINAMIKA : Jurnal Kajian Pendidikan Dan Keislaman* 5, no. 2 (2020), <https://doi.org/10.32764/dinamika.v5i2.925>.

<sup>4</sup> C. Fahmi, "THE IMPACT OF REGULATION ON ISLAMIC FINANCIAL INSTITUTIONS TOWARD THE MONOPOLISTIC PRACTICES IN THE BANKING INDUSTRIAL IN ACEH, INDONESIA," *Jurnal Ilmiah Peuradeun* 11, no. 2 (2023), <https://doi.org/10.26811/peuradeun.v11i2.923>.

<sup>5</sup> Kornelius Benuf, et al, "Regulation and Supervision of Financial Technology Business in Indonesia."

Association (AFPI) at 0.4 per cent. However, this interest rate is considered high, so starting 1 January 2024, the lending rate will be reduced to 0.3 per cent per day, then in 2025 it will drop again to 0.2 per cent, and in 2026 to 0.1 per cent per day. This rule is regulated in POJK No. 19/SEOJK.05/2023 concerning the Implementation of Information Technology-Based Funding Services.<sup>6</sup>

However, from an Islamic perspective, the lending and borrowing system does not allow interest, so the reduction in interest rates is still considered a form of usury. In addition, customers are also charged a penalty of 0.3 per cent per day in the consumptive sector, as well as other fees such as administration fees, commissions, and platform fees. Customers who fail to repay their loans and interest often face threats and pressure from debt collectors working for the *fintech* company. Many collection cases involve violence, even causing fatalities. In addition, there is frequent misuse of customer data by companies, resulting in concerns about the security of customers' personal data and allowing *debt collectors* to track customers' whereabouts more easily.<sup>7</sup>

Threats often made by *debt collectors* include threats of lawsuits, imprisonment, dismissal from employment, and others. Unfortunately, they are often accompanied by fear and intimidation, even reaching defamation and inappropriate behaviour. Some *fintech* companies collect additional fees from customers in addition to interest, using information from customers' ID cards, and sometimes the charges are transferred to other parties. As a result of online lending abuses, many customers have been hindered or harmed. A tragic example of the adverse impact was when a taxi driver died because he was unable to pay his debts and the ever-increasing interest. Another customer lost his job because debt collectors contacted his workplace, causing him to be fired.<sup>8</sup>

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<sup>6</sup> Jarmanisa et al., "ANALYSIS OF RISK COVERAGE AGREEMENT BETWEEN PT. J&T AND AN INSURANCE COMPANY FOR DELIVERY OF CONSUMER GOODS IN THE CONTEXT OF KAFALAH CONTRACT," *JURISTA: Jurnal Hukum Dan Keadilan* 5, no. 2 (October 1, 2021): 126–46, <https://doi.org/10.1234/JURISTA.V5I2.11>.

<sup>7</sup> Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," <https://doi.org/10.1177/11771801241235261> 20, no. 1 (March 8, 2024): 157–66, <https://doi.org/10.1177/11771801241235261>.

<sup>8</sup> Syifa Un Nafsi, Chairul Fahmi, and Riadhush sholihin, "THE VALIDITY OF USED GOODS AUCTION PRACTICES ON FACEBOOK PLATFORM," *JURISTA: Jurnal Hukum Dan Keadilan* 8, no. 2 (December 31, 2024): 622–43, <https://doi.org/10.22373/JURISTA.V8I2.195>.

Based on the above issues, the author is interested in researching legal protection for customers who carry out financial transactions in pinjol companies according to the provisions of sharia economic law.

## **RESEARCH METHODS**

The research method used in this article is normative research, which is a scientific approach to finding truth based on scientific logic from a normative perspective. Normative research aims to find legal principles, legal doctrines, or legal theories to answer the legal issues at hand. This research is conducted by examining legal regulations, official records, minutes of regulations, and judges' decisions.<sup>9</sup>

It is referred to as doctrinal research, because normative research uses statutory documents and library materials as its object of study. In this research, the primary legal materials used include the Common Law Code (KUHPperdata), Regulation No. 11 of 2008 on Electronic Information and Transactions, and Financial Services Authority Regulation No. 77/POJK.01/2016 on information technology-based money lending and borrowing services.

## **RESULTS AND DISCUSSION**

### **A. Cases of Misuse of Customer Data in Online Loans**

Cases of misuse of customer data in online lending (pinjol) in Indonesia have become a troubling issue and jeopardise consumer privacy and security. This practice not only harms individuals, but can also undermine public trust in the fintech industry and hinder the growth of the digital economy. In general, the modes of misuse of pinjol customer data include the following.

- a) Theft of customers' personal data, such as names, phone numbers, and addresses, stolen from various sources, such as company data leaks, insecure websites, or malware.
- b) Data selling. Customer data is traded on the black market by unscrupulous individuals to fraudsters and debt collectors.

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<sup>9</sup> Muhammad Siddiq Armia, *PENENTUAN METODE & PENDEKATAN PENELITIAN HUKUM*, ed. Chairul Fahmi (Banda Aceh: Lembaga Kajian Konstitusi Indonesia, 2022).

- c) Data misuse. Customer data is used for various illegal purposes, such as identity fraud, unauthorised debt collection, or spreading spam and hoaxes.

One of the most notable cases of misuse of customer data in online lending in Indonesia was a case involving one of the leading online lending platforms in 2019. In that case, it was revealed that the personal data of more than 20 million customers was unlawfully spread on the internet. The data included sensitive information such as ID numbers, mobile phone numbers, addresses, and financial information. Authorities found that the leaked customer data was spread across the dark web, a hidden part of the internet often used for illegal activities. The data was then sold by the perpetrators to unscrupulous individuals, who then used it for fraudulent activities or identity theft.<sup>10</sup>

This case has raised serious concerns among the public about the vulnerability of their personal data when using online lending services. Many customers were concerned about the potential misuse of their data and demanded decisive action from relevant authorities, including OJK, to control data management practices by online lending platforms.<sup>11</sup> The investigation into this case resulted in recommendations to improve regulation and supervision of the online lending industry to ensure that service providers adhere to strict data security standards and that customers are protected from the threat of data misuse.<sup>12</sup>

In 2021, Bareskrim Polri also dismantled an illegal lending syndicate that accessed customers' contact data and photo galleries without permission. The data is then used to terrorise and collect customers who are late in paying instalments. A year later, or in 2022, the Financial Services Authority (OJK) found several legal pinjol that sold customer data to third parties without the customer's knowledge. The data was then used to offer

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<sup>10</sup> Hendro Wijayanto, Abdul Haris Muhammad, Dedy Hariyadi, "Analysis of Personal Data Abuse in Illegal Fintech Applications with Hybrid Methods" December 2020

<sup>11</sup> M . Arma Amin, Akhdiari Harpa Dj, and Fadli Yasser Arafat J, "ANALISIS SOSIOLOGIS YURIDIS TERHADAP PEMIDANAAN ANAK DI KOTA PALU," *Jurnal Hukum Unsulbar* 3, no. 1 (2020), <https://doi.org/10.31605/j-law.v3i1.598>.

<sup>12</sup> Laila Muhammad Rasyid and Fanny Tasyifa Mahdy, "THE ROLE OF FEMINIST JURISPRUDENCE IN LEGAL THOUGHT," *JURISTA: Jurnal Hukum Dan Keadilan* 6, no. 2 (December 1, 2022): 113-31, <https://doi.org/10.1234/JURISTA.V6I2.19>.

other products and services to customers. Customers felt their privacy was violated and potentially received spam and unwanted offers.<sup>13</sup>

### **B. The Urgency of Interest Rate Certainty in Online Lending**

The certainty of interest rates in online lending (pinjol) plays a crucial role in order to determine the possible financial impact that can arise from the leakage of data. When customer data is leaked, data misappropriators can utilise it to do harm to customers, including taking out unauthorised loans using stolen customer data.<sup>14</sup>

In the case of misuse of pinjol customer data, the certainty of interest rates is closely related to the possibility of illegal loans or fraud by irresponsible individuals. If a customer's data is used to apply for an illegal loan, the victimised customer can be trapped in an unauthorised debt with interest rates that may be very high. The certainty of interest rates can also understand the financial impact experienced by customers in the event of data misuse. High interest rates on illegal loans can cause customers to get trapped in a cycle of heavy debt, which can eventually lead to serious financial problems.<sup>15</sup>

In this regard, relevant authorities, such as the Financial Services Authority (OJK), need to ensure that online lenders comply with applicable rules and regulations regarding interest rates, and implement effective data security measures to protect customers from data misuse. In addition, customers also need to be vigilant and actively monitor their financial activities and report any suspicious transactions to the authorities to prevent further losses. Cases of misuse of online loan customer data (pinjol) in Indonesia are rampant, and one of the modes often used is offering interest rates that are not in accordance with reality. This is detrimental to customers and contrary to the principle of legal certainty.<sup>16</sup>

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<sup>13</sup> Chairul Fahmi, "Revitalisasi Penerapan Hukum Syariat Di Aceh (Kajian Terhadap UU No.11 Tahun 2006)," *TSAQAFAH* 8, no. 2 (2012), <https://doi.org/10.21111/tsaqafah.v8i2.27>.

<sup>14</sup> Rema Syelvita, M. Amin Qodri, Fakhriyah Annisa Afro, "Victims of Pinjol, Are they Eligible as Gharimin and Receive Zakat?," October 2023

<sup>15</sup> Dewa Ayu Trisna Dewi, Ni Ketut Supasti Darmawan, "Legal Protection for Online Loan Users Regarding Loan Interest and Personal Rights of Users", August 2021

<sup>16</sup> Kuat Waluyo Jati et al., "Islamic Social Reporting Disclosure as a Form of Social Responsibility of Islamic Banks in Indonesia," *Banks and Bank Systems* 15, no. 2 (2020), [https://doi.org/10.21511/bbs.15\(2\).2020.05](https://doi.org/10.21511/bbs.15(2).2020.05).

Legal certainty in terms of pinjol interest rates means that customers have the right to know clearly and precisely the interest rates they will pay before they agree to a loan. This interest rate must be clearly stated in the loan agreement and must not be hidden or manipulated by the pinjol. In the case of misuse of pinjol customer data, it often occurs as follows.

- a) The interest rate offered to customers does not match the interest rate stated in the loan agreement.
- b) The lender unilaterally raises the interest rate after the customer approves the loan.
- c) Lenders do not provide clear information on how to calculate interest rates, so customers do not understand how much they have to pay.

Some of the above is very contrary to the principle of legal certainty and harms customers in several ways, namely:

- a) Customers are burdened with higher borrowing costs than they anticipated.
- b) Customers have difficulty in managing their finances because they do not know how much they have to pay each month.
- c) Customers could potentially be trapped in a cycle of debt because they cannot afford the high instalments.

### **C. Legal Protection of Debtors**

Legal protection refers to efforts to maintain human dignity and recognition of human rights by law.<sup>17</sup> There are two kinds of legal protection, namely preventive and repressive. Legal protection is an important aspect in the ideals of a state because it guarantees a sense of security and dignity for all citizens. This confirms that the state has an obligation to provide protection to individuals, in accordance with applicable legal regulations, not based on policy alone. Legal protection involves efforts to safeguard human rights and individual dignity from possible violation or abuse by other parties.<sup>18</sup>

The law can act as a tool to create protections that are not only adaptable and free in all circumstances, but also predictive and

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<sup>17</sup> 180102180 Azza Nabila, "Praktik Penetapan Royalti Pada Perjanjian Penerbitan Buku Ditinjau Dari Perspektif Fiqh Muamalah ( Suatu Penelitian Pada Penerbit PeNA Banda Aceh)," January 11, 2023.

<sup>18</sup> Chairul Fahmi, "Pajak Dalam Syariat Islam : Kajian Normatif Terhadap Kedudukan Wajib Pajak Bagi Muslim," *EKBISI: Jurnal Ekonomi Dan Bisnis Islam* 5, no. 1 (2010).



anticipatory. This is particularly important for communities that are vulnerable or lack financial and strategic strength, and to ensure social justice is achieved. There are two types of legal protection: preventive, which aims to prevent offences from occurring, and repressive, which aims to enforce the law after an offence has occurred.<sup>19</sup>

### **1. Preventive Legal Protection**

Preventive protection in the context of Fintech services, especially online lending and borrowing, is an attempt to prevent disputes before they arise. This means that online lending and borrowing service providers must take steps to protect service users before problems arise. One of the principles of preventive legal protection is transparency, fair treatment, reliability, confidentiality, and security of consumer data/information, as well as complaint handling and consumer dispute resolution in a simple, fast, and affordable manner. This is regulated in Article 100 paragraph 1 POJK No. 10/POJK.05/2022.<sup>20</sup>

The principle of transparency in online lending and borrowing services aims to ensure that consumers have clear and accurate access to information about pinjol providers and the products offered. OJK stipulates the obligation for pinjol operators to provide open, honest, not misleading, and accurate information about online lending and borrowing products and services. One example of implementing transparency is by clearly stating the name of the organiser at the head office, branch offices, and in electronic systems. In addition, the organiser must also include information about the location of the head office and branches, company logo, electronic system name, funding performance, as well as information about supervision by OJK. All this information must be available in the electronic system or online loan application used.<sup>21</sup>

The principle of fair treatment in online lending services gives equal rights to all consumers to get equal access to online lending products in accordance with the provisions stipulated in POJK No. 10/POJK.05/2022.

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<sup>19</sup> Basrowi, "Analysis of Aspects and Efforts of Sharia Fintech Consumer Protection," May 23, 2019, <https://doi.org/10.5281/Zenodo.3187539>.

<sup>20</sup> Ansa, "Juridical Review of Legal Protection for Online Loan Debtors Based on the Financial Services Authority Regulation."

<sup>21</sup> "Financial Services Authority Regulation Number 6 /POJK.07/2022 on Consumer and Community Protection in the Financial Services Sector, Article 101 Paragraphs 1, 2 and 3."

In addition, the principle of reliability ensures that consumers have the right to receive accurate and quality services, which are provided by pinjol organisers with competent and professional systems, procedures, infrastructure, and human resources.<sup>22</sup>

Consumer data security is an important aspect of the online lending industry. The Financial Services Authority (OJK) has issued regulations requiring online lenders to protect consumer data. This includes the prohibition of sharing consumer data or information with third parties without prior consent. Consumer data may only be used for purposes that have been approved by the consumer. The implementation of complaint handling principles is equally important. Consumers have the right to submit complaints or problems they experience during the online loan process. The complaint can be submitted to the online loan provider in accordance with the provisions stipulated in POJK No. 18/POJK.07/2018 concerning Consumer Complaint Services in the Financial Services Sector. With the implementation of data security principles and good complaint handling, consumers can feel safer and more comfortable when using online loan services.

## **2. Repressive Legal Protection**

Repressive legal protection is a form of legal protection that aims to resolve problems or disputes that have occurred. This protection is usually carried out after a dispute has occurred between the parties involved. In the context of online lending services, repressive protection may include the application of sanctions such as fines, imprisonment, or other additional penalties against parties who violate the provisions or are involved in disputes.<sup>23</sup> POJK No.77/POJK.01/2016 provides rules governing the rights of users of online lending services as well as the obligations and prohibitions of organisers of such services. Prohibitions are also imposed on organisers to provide user data or information to third parties without the electronic consent of the user or unless required by laws and regulations.

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<sup>22</sup> Ansa, "Juridical Review of Legal Protection for Online Loan Debtors Based on the Financial Services Authority Regulation," November 2023.

<sup>23</sup> Basrowi, "Analysis of Aspects and Efforts of Sharia Fintech Consumer Protection," May 23, 2019.

Legal protection of online loan service users is an effort to maintain the dignity and human rights of individuals based on applicable legal provisions. It also aims to prevent arbitrary actions by the authorities, thus creating order and tranquillity in society. The legal basis for online lending services is contained in Financial Services Authority Regulation No. 77/POJK.01/2016 on Information Technology-Based Money Lending and Borrowing Services and Bank Indonesia Regulation No. 19/12/PBI/2017 on the Implementation of Financial Technology.

On the other hand, Bank Indonesia has issued Bank Indonesia Regulation No. 18/40/PBI/2016 on the Implementation of Payment Transaction Processing as the legal basis for the development of online lending services. Legal protection for customers and business actors of online lending services is regulated in various regulations, including Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and Law Number 8 of 2019 concerning Consumer Protection.<sup>24</sup> The contract between the organiser and the customer occurs through a written agreement that binds both parties legally.<sup>25</sup> In this agreement, it must at least include the agreement number, the date of the agreement, the identity of all parties involved, details regarding the rights and obligations of each party, the agreed loan amount, the interest rate to be charged on the loan, and the settlement mechanism in situations where the organiser is unable to continue its operations.<sup>26</sup>

In this process, the third party acts as an intermediary who facilitates the meeting between the lender (first party) and the loan recipient (second party). With the authorisation granted by the lender, the intermediary can enter into an agreement on behalf of the lender with the loan recipient. The intermediary earns profit for his services in the form of fees or wages. The obligation of the loan recipient is to return the debt in the same amount and condition and at the specified time (Article 1763 of the Civil Code). In

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<sup>24</sup> Basrowi. "Analysis of Aspects and Efforts of Sharia Fintech Consumer Protection," May 23, 2019.

<sup>25</sup> "Regulation of the Financial Services Authority (OJK) Article 19 Paragraph (1) Number 77/PJOK.01/2016 Regarding Money Lending and Borrowing Services Based on Information Technology."

<sup>26</sup> "Regulation of the Financial Services Authority (OJK) Article 19 Paragraph (2) Number 77/PJOK.01/2016 Regarding Money Lending and Borrowing Services Based on Information Technology."

addition, if the recipient of the loan is unable to return the borrowed item in the same amount and condition, then he is obliged to pay its value. If the time and place of return are not specified in the agreement, the price of the goods will be determined based on the value at the time and place of the agreement (Article 1764 of the Civil Code). If there is an agreement on interest, then the interest must be paid until the time of return or deposit of the principal money (Article 1766 of the Civil Code).

The lender's obligation is not to demand repayment of the loan before the end of the stipulated period (Article 1759 of the Civil Code). If there is no stipulated period, the appointed attorney has the obligation to make reasonable concessions to the borrower if they come to request the loan in accordance with the agreed terms (Article 1760 of the Civil Code). In addition, the lender also has an obligation to maintain the confidentiality of the borrower's or debtor's personal information (Article 26 Paragraph 1 of Law Number 19 Year 2016 on the Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions). Users of online loan services do not require collateral or guarantees. In banking law, the provision of credit without collateral by the organiser can be legally recognised, and the existence of collateral from the debtor is not an absolute requirement in every granting of credit.<sup>27</sup>

Users of online loan services as consumers have rights as stipulated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection, that consumer rights are: "(1) The right to comfort, security, and safety in consuming goods and / or services; (2) the right to choose goods and / or services and to obtain these goods and / or services in accordance with the exchange rate and the conditions and guarantees promised; (3) the right to correct, clear, and honest information about the conditions and guarantees of goods and / or services; (4) the right to have their opinions and complaints about the goods and / or services used heard; (5) the right to obtain advocacy, protection, and efforts to resolve consumer protection disputes properly; (6) the right to receive guidance and consumer education; (7) the right to be treated or served correctly and honestly and non-discriminatory; (8) the right to compensation, compensation and / or

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<sup>27</sup> Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," <https://doi.org/10.1177/11771801241235261> 20, no. 1 (March 8, 2024): 157–66, <https://doi.org/10.1177/11771801241235261>.

replacement, if the goods and / or services received are not in accordance with the agreement or not as they should; Rights stipulated in the provisions of other laws and regulations."<sup>28</sup>

According to POJK 77/POJK.01/2016 Article 29 specifies, that: "Organisers must apply the basic principles of user protection, namely: transparency; fair treatment; reliability; confidentiality and data security; and simple, fast, and affordable user dispute resolution." For this reason, business actors who violate the rights of online loan service users as consumers may be subject to sanctions. According to Article 47 paragraph (1) POJK 77/POJK.01/2016 "For violations of the obligations and prohibitions in this OJK regulation, OJK has the authority to impose administrative sanctions on the organiser in the form of: written warnings; fines, namely the obligation to pay a certain amount of money; restrictions on business activities; and revocation of permits."

The legal basis for providing credit without collateral can be seen in Banking Law Number 10 of 1998, in article 8 paragraph 1: "In providing credit or financing based on sharia principles, commercial banks must have confidence based on in-depth analysis of the intention and ability and ability of the debtor customer to repay the debt or return the financing in accordance with the agreement."

In Fatwa DSN-MUI No.117/DSN-MUI/IX/2018 Against Online Loans in the fourth part, there are several aspects that are considered, namely: "a) the implementation of information technology-based financing services must not conflict with Sharia principles, which include avoiding usury, *gharar*, *maysir*, *tadlis*, *dharar*, *zhulm*, and haram; b) the standard contract made by the organiser must fulfil the principles of balance, justice and fairness in accordance with Sharia and applicable laws and regulations; c) the contracts used by the parties in information technology-based financing service providers can be in the form of contracts that are in line with the characteristics of financing services, including *al-bai'*, *ijarah*, *mudharabah*, *musyarakah*, *wakalah bi al ujah*, and *Qard*; d) the use of electronic signatures in electronic certificates implemented by organisers must be implemented on the condition that its validity and authentication are guaranteed in accordance with applicable laws and regulations; e) organisers may charge fees (*ujrah/rusun*) based on the principle of *ijarah* for providing information technology-based financing service systems and

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<sup>28</sup> "Law of the Republic of Indonesia Number 8 Year 1999 on Consumer Protection."

infrastructure; f) if financing information or services offered through electronic media or disclosed in electronic documents are different from the reality, the aggrieved party has the right not to continue the transaction."<sup>29</sup>

In practice, sharia principles are not always applied in online lending services. The fatwa emphasises that transactions must be free from usury, but in the practice of online lending there is often interest calculation and the application of penalties for late payment of instalments, which is a form of usury. Considering only the guidelines, it is clear that the practice of information and technology-based financing service providers is not in accordance with sharia principles that reject usury. A person who gives a loan is not allowed to benefit from the loan.<sup>30</sup>

The concept of Financing in KHES, specifically Chapter III on Financing Accounting Article 745, confirms that the disclosure and recognition of *qardh* loans must be clearly explained...: "(1) Details of the amount of *qardh* loans based on the source of funds, type of use and economic sector; (2) The amount of *qardh* loans granted to parties with special relationships; (3) Management policies in the implementation of risk control of *qardh* loans; (4) A summary of *qardh* loans written off that shows the initial balance, write-offs during the year, receipts for *qardh* loans that have been written off and *qardh* loans that have been written off and the final balance of *qardh* loans written off."<sup>31</sup>

*Qardh* is the practice of giving property to others that can be borrowed or requested again without additional conditions when returning the loan. Etymologically, *al-qardh* comes from the word "*qaradha*", which consists of "*al-qath*" which means part of the loaned property, and "*al-salaf*" which means before. In the context of the term, *qardh* is the act of giving or lending property to others that can be returned in the same amount as what was loaned. Therefore, in *qardh* there is no reward or additional value that must be returned.<sup>32</sup>

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<sup>29</sup> "Fatwa DSN-117-DSN-MUI 2018," N.D..

<sup>30</sup> Chairul Fahmi, Uswatun Hasanah, and Yusriaina Yusuf, "Marriage Law Reform: Efforts in Achieving Gender Equality," *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial* 25, no. 1 (2023).

<sup>31</sup> Firdausi Nuzula et al., "Online Accounts Receivable Practices on the Loan Now Application Review of Fatwa DSN MUI and KHES."

<sup>32</sup> Abd Hakim Atang, *Fiqh of Islamic Banking*, Mould. 2, 2019 (Bandung: Aditama, N.D.).

Al-qardh has the essence as a form of help and care for the borrower, not as a means of seeking profit for the lender. In al-qardh, there is no reward or addition that must be returned by the borrower. This principle reflects humanitarian and social values that are oriented towards compassion to meet the needs of borrowers. The return of profit by the lender will cause the cancellation of the al-qardh contract, in accordance with the principle that any loan that involves the return of profit to the lender is considered haram, or any receivable that produces benefits for the recipient of the receivable is considered usury. Article 609 in the Compilation of Sharia Economic Law confirms that the borrower can make a voluntary contribution to the lender as long as it is not agreed in the transaction. However, if there is an agreement to return the excess in a certain amount at the beginning, this is considered usury except for the qardh administration fee charged to the borrower in accordance with the provisions in Article 607 KHES.<sup>33</sup>

The qardh theory gives customers the opportunity to use financing products in the form of lending funds without remuneration. This means that the company does not require the customer to return the loan with an amount greater than the borrowed funds. According to Article 606 of the Compilation of Sharia Economic Law (KHES), qardh customers are required to return the principal amount received at the agreed time. Therefore, it can be concluded that the operation of pinjol in financial technology is not in accordance with the principles stated in KHES. The Indonesian Ulema Council (MUI) has issued a fatwa stating that online loans (pinjol) and offline loans that contain usury are haram. Loans that contain usury are still declared as haram according to Islamic law. Nonetheless, some fintech Peer to Peer Lending platforms are directly supervised by the Sharia Supervisory Board.<sup>34</sup>

DSN-MUI Fatwa No. 117/DSN-MUI/II/2018 stipulates that sharia *peer-to-peer lending* platforms are only allowed to operate if they fulfil a

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<sup>33</sup> Chairul Fahmi and Syarifah Riyani, "ISLAMIC ECONOMIC ANALYSIS OF THE ACEH SPECIAL AUTONOMY FUND MANAGEMENT," *Wahana Akademika: Jurnal Studi Islam Dan Sosial* 11, no. 1 (July 17, 2024): 89-104, <https://doi.org/10.21580/WA.V11I1.20007>.

<sup>34</sup> Chairul Fahmi, Audia Humairah, and Ayrin Sazwa, "MODEL OF LEGAL DISPUTE RESOLUTION FOR BUSINESS CONTRACT DEFAULT," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (December 23, 2023): 242-63, <https://doi.org/10.22373/JURISTA.V7I2.228>.

number of conditions. First, it must avoid transactions that contain elements of *riba* (interest), *gharar* (uncertainty), *maysir* (speculation), *tadlis* (concealment of defects), and *dharar* (harming other parties). Second, the contract used must be in accordance with the principles of balance, fairness, and reasonableness in accordance with sharia and applicable regulations. Third, the contract must be in line with the characteristics of financing services such as *Al-Bai'*, *Ijarah*, *Mudharabah*, *Musarakah*, *Wakalah bi Al-Ujrah*, and *Qardh*. Fourth, there must be proof of the transaction in the form of an electronic certificate validated by the user through a valid electronic signature. Fifth, the distribution of profit sharing must be clear and mutually agreed upon. Sixth, service providers are allowed to charge *ujrah* fees with the principle of *Ijarah* to users.<sup>35</sup>

In Indonesia alone, sharia *peer-to-peer lending* platforms began to appear legally since 2017 and there are already seven sharia *peer-to-peer lending fintech* companies, which have obtained operating licences from OJK in Indonesia.<sup>36</sup> These include PT Ammana Fintek Syariah, PT Alami Fintek Sharia, PT Dana Syariah Indonesia, PT Duha Madani Syariah, PT Qazwa Mitra Hasanah, PT Piranti Alphabet Perkasa, and PT Ethis Fintek Indonesia. PT Ammana Fintek Sharia applies a guarantee system in peer-to-peer Islamic financing activities. In this system, the collateral provided by the financing applicant is joint ownership that allows subrogation rights between lenders and Ammana partners. Prospective customers are required to complete requirements such as KTP, business photos, and others, including collateral. PT Ammana Fintek Syariah only provides financing schemes for working capital or productive businesses to MSMEs or borrowers. The financing schemes provided include *mudharabah*, *murabahah*, *musarakah*, *ijarah*, or *wakalah* contracts, which are tailored to the needs of business actors or MSMEs.<sup>37</sup>

PT Alami Fintek Syariah has been established since February 2018 and is owned by PT Alami Fintek Syariah. The company functions as an

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<sup>35</sup> Andria Luhur Prakoso, "TINJAUAN TERHADAP ARBITRASE SYARIAH SEBAGAI ALTERNATIF PENYELESAIAN SENGKETA DI BIDANG PERBANKAN SYARIAH," *Jurnal Jurisprudence* 7, no. 1 (2017), <https://doi.org/10.23917/jurisprudence.v7i1.4356>.

<sup>36</sup> Nur Latifah et al., "Fintech Peer To Peer Lending Sharia as an Alternative Capital for MSME in Sidoarjo."

<sup>37</sup> Mutia, "The Collateral System in Financing with Fintech in the Perspective of Akad Rahn (A Research on Pt Investree Radhika Jaya and Ptamma Fintek Syariah)."



aggregator and peer-to-peer lending platform that specifically targets Micro, Small and Medium Enterprises (MSMEs). One of the services provided is invoice factoring financing. PT Alami Fintek Syariah collaborates with sharia financial institutions such as Mega Syariah, BNI Syariah, and Jamkrindo Syariah.<sup>38</sup> The star rating in Alami Sharia indicates the level of risk that may occur, ranging from one to five. A high star rating indicates less risk, so the reward received by the lender may also be less. In practice, Alami Sharia follows the sharia principles stipulated in DSN-MUI fatwa No. 67/DSN-MUI/III/2018 on sharia factoring and DSN-MUI No. 117/DSN-MUI/II/2018 on information technology-based financing services according to sharia principles.<sup>39</sup>

Alami Sharia has implemented sharia principles well, especially in the application of the qardh contract where the recipient of financing only needs to return the amount of funds borrowed without any additional value. This practice is in accordance with the DSN MUI fatwa Number 19/DSN-MUI/IV/2001 on Al-Qardh which allows Islamic financial institutions to ask for collateral if deemed necessary. In the context of invoice financing, the invoice itself is often used as collateral, and Al-Qardh customers can make voluntary contributions as long as there is no specific agreement in the contract.<sup>40</sup>

## CONCLUSION

Based on the description above, the author can conclude that the case of misuse of customer data on online loans (pinjol) in Indonesia has become a troubling issue and endangers consumer privacy and security. In the case of misuse of pinjol customer data, the certainty of interest rates is closely related to the possibility of illegal loans or fraud committed by irresponsible parties. To prevent this problem, legal protection of customers is very important as a form of effort to maintain human dignity and recognition of human rights by law. Legal protection of the personal rights of service users as consumers of online loans according to the Legislation is through preventive protection and repressive protection. On the other hand,

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<sup>38</sup> Winarsih, "Interpreting the Development of Islamic Fintech through the Sharia Akad System."

<sup>39</sup> "Analysis of Financial Technology Peer to Peer Lending PT Alami Fintek Sharia."

<sup>40</sup> "DSN-MUI, 'Fatwa DSN-MUI Number 113/DSN-MUI/IX/2017 on Akad Wakalah Bi Al-Ujrah' (2017), 7-8."

according to sharia economic law, online loans must refer to the MUI (Indonesian Ulema Council) fatwa which prohibits elements of usury, while in the practice of online loans, it has been determined that the calculation of interest, as well as fines when there is a delay in paying instalments, is a category of usury. Therefore, the organisation of financing services based on technology and information is not in accordance with and should not contradict the principles of sharia, namely usury.

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