

Debt Position in Illegal Online Loans

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ABSTRACT

This research is qualitative research with a descriptive normative approach, namely explaining the Position of Debt in Online Loans in the Indonesian legal system in descriptive form and accompanied by legal arguments. The data used are secondary data that researchers obtain from credible sources, namely websites, books, scientific journals, and others that are commonly used in every study. The data are analyzed by stages of data collection, data sampling, data reduction, and drawing conclusions. The result in this article show that the borrower is still obliged to return the loan that has been borrowed without being burdened with anything outside of the debt that could burden the borrower.

Keywords: Debt Position, Illegal Online, Loan

ABSTRAK

Penelitian ini merupakan penelitian kualitatif dengan pendekatan deskriptif normatif yaitu menjelaskan Kedudukan Hutang Pinjaman Online dalam sistem hukum Indonesia dalam bentuk deskriptif dan disertai argumentasi hukum. Data yang digunakan merupakan data sekunder yang peneliti peroleh dari sumber yang dapat dipercaya yaitu website, buku, jurnal ilmiah, dan lain-lain yang umum digunakan dalam setiap penelitian. Data dianalisis dengan tahapan pengumpulan data, pengambilan sampel data, reduksi data, dan penarikan kesimpulan. Hasil pasal ini menunjukkan bahwa peminjam tetap wajib mengembalikan pinjaman yang telah dipinjamnya tanpa dibebani dengan hal-hal lain di luar utang yang dapat membebani peminjam.

Kata Kunci: Posisi Utang, Ilegal Online, Pinjaman

INTRODUCTION

Debts and receivables, namely money borrowed from others. While receivables mean money borrowed (can be collected from others). The definition of debt and receivables is the same as a loan agreement found in the provisions of the Civil Code Article 1754 which reads: "borrowing and borrowing is an agreement by which one party gives to another party a certain amount of goods and is used up due to use, on condition that the latter will return the same amount from the same type of condition (Yudi, 1985) & (NUR HILALIAH A, 2023).

Islam regulates a strong relationship between faith, worship, morals, and muamalah. The muamalah aspect is the rule of the game for humans in carrying out social life, as well as the basis for building an economic system that is in accordance with Islamic values. Muamalah will restrain humans from the desire to justify all means to obtain sustenance (Setyani, 2018). Muamalah teaches humans to obtain sustenance in a halal and good way. In the treasury of Islamic jurisprudence, borrowing and lending money linguistically comes from the word qardhu which means debt. In the general sense, debt includes buying and selling and renting transactions that are carried out non-cash (Almeida et al., 2016). People's understanding of debt and borrowing varies greatly. As long as we lend our wealth or spend our wealth in the way of Allah, Allah will repay it many times over what we have given to fellow Muslims who are in need (Asmah, 2022).

Giving debt to someone is sunnah and can be done willingly. In this sunnah it becomes obligatory if it is done to people who are neglected or in great need of help. To create debt, several things are reconciled with the conditions that must be met, the conditions and pillars of debt 1. The pillars of debt are as follows: a. Wording (sentence) Ijab Qabul As a debt agreement, ijab qabul is required. This is intended as a statement that the parties really want a legal bond with their respective rights and obligations (Chatibul Umam, 1993). The words of the one who gives the debt are usually with the words "I lend this to you" with the answer of the debtor "I admit to owing this to you" required in its implementation. However, in debt it is prohibited to take or give additional payments (specified in the agreement), so the words of both parties do not need to be given additional as another condition with the words given an additional amount of this (Hasbi As-Shidiq, 1952). If the debt agreement is written in a deed, then its contents are prohibited from writing things that intend to give or receive additional payments when paying. b. The debtor and the receivable Both parties as the debtor and the receivable must fulfill the same requirements as the parties in the sale and purchase, because even though it is open, as a contract, responsibility is required in carrying out its rights and obligations. The conditions that must be met are: 1) Reasonable 2) Of one's own will 3) Not a waste (wasteful) 4) Mature in the sense of puberty c. Items owed Each item can be owed according to its repayment capacity. In this case, the guideline, apart from not being prohibited by religion, can also be taken to estimate the ability to repay the debtor. And it is a good estimate if you can pay attention to family life, income earned and the immediate needs of the prospective debtor. Then this estimate is compared with the size (amount) of the debt. The aim of the estimate is not to create a heavy debt burden, so that repayment cannot be met (Junus Ghazali, 2002).

Lately, the topic of Debt has become a hot topic in society, the debt in question is debt in Online Loans. Online loans are a type of loan that is simply applied for online via a cellphone application, without the need for face-to-face meetings. This method provides convenience and speed in the credit application process (Sulaiman Rasjid, 2006). Online Loans offer easy requirements with fast disbursement. Usually these requirements use: KTP, Family Card, NPWP, SIM, Telephone Number and Having a

Bank Account. The case of pinjol may no longer be a foreign thing to the public. The ease of borrowing money from pinjol has caused the cases to become more widespread. The MUI spoke out regarding the views on pinjol in Islam. The permissibility of pinjol is based on the theory in the book *Al-Ma'ayir As-Syar'iyah An-Nasshul Kamil lil Ma'ayiri As-Syar'iyah*. The theory states that the handover in a legal (legal-formal/non-physical) manner is considered to have occurred both in *i'tibaran* (custom) and in *hukman* (sharia) (Hamid, 2001).

The debt in Online Loans referred to in this article is debt in illegal online loans that are not registered with the Financial Services Authority. In this article, the researcher will discuss whether debt in illegal online loans must be paid or not, which the researcher will explain in the following sections, namely the Research Methodology, Results, and Discussion sections.

RESEARCH METHODS

Based on the explanation above, it can be concluded that the main objective of the article is to analyze the Position of Debt in Illegal Online Loans in the Indonesian legal system, whether it must be paid or not (Jonathan Sarwono, 2016). This research is a qualitative research with a descriptive normative approach, namely explaining the Position of Debt in Online Loans in the Indonesian legal system in descriptive form and accompanied by legal arguments (Sugiyono, 2019). The data used are secondary data that researchers obtain from credible sources, namely websites, books, scientific journals, and others that are commonly used in every study (Henni, 2015). The data are analyzed by stages of data collection, data sampling, data reduction, and drawing conclusions (Abdurahman, 2016)

RESULT AND DISCUSSION

Online Debt and Loans

Debts and receivables, namely money borrowed from others. While receivables mean money borrowed (can be collected from others). The definition of debt and receivables is the same as a loan agreement found in the provisions of the Civil Code Article 1754 which reads: "borrowing and borrowing is an agreement by which one party gives to another party a certain amount of goods and is used up due to use, on condition that the latter will return the same amount from the same type of condition (Yudi, 1985) & (NUR HILALIAH A, 2023).

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researcher will discuss whether debt in illegal online loans must be paid or not, which the researcher will explain in the following sections, namely the Research Methodology, Results, and Discussion sections.

Debt Position in Illegal Online Loans

In principle, online loans are declared illegal not because of threats during collection or the imposition of high interest, but because the online loan organizers are not registered and do not have a permit from the Financial Services Authority ("OJK"). Thus, the characteristics of illegal online loans are that they are not licensed and not registered with the OJK, while legal online loans are licensed and registered with the OJK. This is as regulated in POJK 10/2022. However, it should be noted that in POJK 10/2022 the term online loans is not known, but rather information technology-based joint funding services ("LPBBTI") (Peraturan Otoritas Jasa Keuangan Nomor 10/POJK.05/2022 Tahun 2022 Tentang Layanan Pendanaan Bersama Berbasis Teknologi Informasi, 2022).

If you have already been caught in an illegal online loan, is it true that the illegal online loan does not need to be paid? If you look closely at POJK 10/2022, the online loan service basically brings together fund providers and fund recipients. Meanwhile, the online loan organizer plays a role in providing, managing, and operating LPBBTI both conventionally and based on sharia principles. In the loan agreement within the scope of online loans, there are two agreements made, namely between the funder and the organizer and the funder and the recipient of funds. The agreement between the funder and the online loan organizer relates to the amount of funding, the amount of commission, the mechanism for collecting funds, risk mitigation if funding is in default, and so on. Meanwhile, the agreement between the funder and the recipient of funds relates to the amount of funding, the amount of installments, related costs, fines, and so on. Based on this description, it can be concluded that the loan agreement is between the funder and the recipient of funds, while the online loan party is the party that manages the funding from the funder (Munawaroh, 2022).

Furthermore, in the article "*Terlilit Utang Pinjol Ilegal, Ini Cara Melaporkannya*", the agreement made between the lender and the borrower on online loans that are not registered and licensed by the OJK can be canceled. This is because the organizer of the unlicensed loan is not authorized to act (*handeling onbevoegheid*) so that the agreement between the lender and the borrower can be canceled. In the same article, it is explained that the consequence of the cancelable agreement is that the situation returns to its original state as before the agreement was made. Therefore, the borrower is obliged to return all the money that has been borrowed (Munawaroh, 2022).

Based on the explanation above, it can be concluded that the borrower is still obliged to return the loan that has been borrowed without being burdened with anything outside of the debt that could burden the borrower.

CONCLUSION

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