



## Imposing Restorative Justice Sanctions on Online Loan Users Who Commit Criminal Fraud and Compensating Online Loan Victims Through Alternative Dispute Resolution

Warmiyana Zairi Absi; Martini; Rusniati

Youth Pledge Law College, Muhammadiyah Palembang Universities, Indonesia

E-mail: warmiyana5973@gmail.com; martiniidris2019@gmail.com; rusniati813@gmail.com

<http://dx.doi.org/10.47814/ijssrr.v6i2.963>

---

### **Abstract**

The interesting thing that can result in criminal penalties is that the director can be held accountable for all company operations in carrying out the business of producing and/or trading goods and/or services that do not correspond to the promises stated in labels, etiquette, descriptions, advertisements, or sales promotions of goods and/or services. The Republic of Indonesia Law No. 19 of 2016 (RI Law No. 19/2016), as amended by Law No. 11 of 2008 Concerning Electronic Information and Transactions (RI Law No. 19/2016), states that anyone who intentionally and without authorization or in a way that is against the law modifies, reduces, transmits, destroys, deletes, transfers, or hides electronic information and/or documents that belong to another person or to the public domain is still in violation of Chapter 32 (1). Article 32 paragraph (1) of the Law of the Republic of Indonesia Number 19 of 2016 which was last amended by Law Number 11 of 2008 Concerning Electronic Information and Transactions (RI Law No.19/2016) which confirms that every person intentionally and without rights or in a way against the law in all ways to change, add, reduce, transmit, destroy, delete, transfer, hide an Electronic Information and/or Electronic Document belonging to another person or public property.

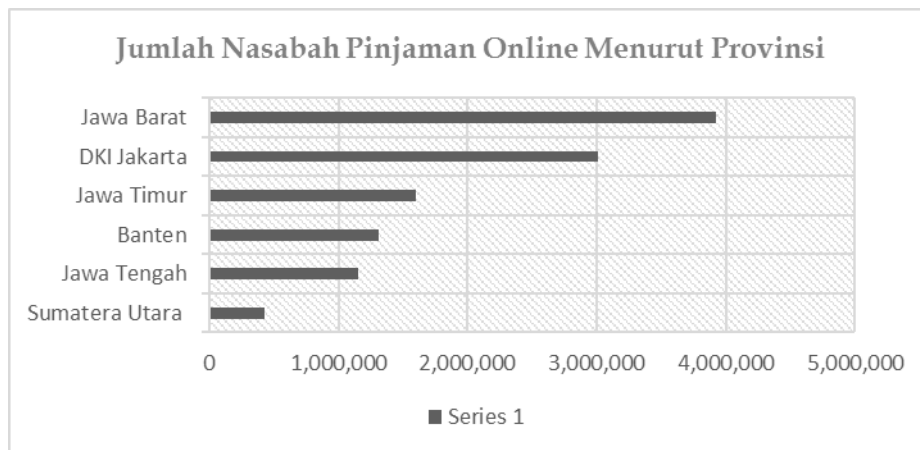
**Keywords:** *Online Loans; Penalty; Restorative Justice; Compensation*

### **Introduction**

Chapter 32 (1) of the Law of the Republic of Indonesia No. 19 of 2016, as amended by Law No. 11 of 2008 Concerning Electronic Information and Transactions (RI Law No. 19/2016), confirms that any person who intentionally and without rights or in a way against the law changes, adds, reduces, transmits, destroys, deletes, transfers, or hides electronic information and/or electronic documents belonging to another person or public property. (Nurmantari and Martana 2019). The presence of the fintech industry in offering digital-based financial products seems to open new doors for people who want to apply for

loans. In contrast to conventional loan services offered by banks or cooperatives, various fintechs offer peer to peer lending (P2P Lending) loan products or online loans that can be submitted very easily and without complicated requirements. Because of the convenience and speed that is fintech (Darmiwati and Syahfitri 2021).

The Financial Services Authority (OJK) the value of online lending (pinjol) in Indonesia reached IDR 19.49 trillion in September 2022. This amount was distributed to 14.17 million customer accounts throughout Indonesia. When viewed by region, it turns out that West Java is the province with the largest number of loan customers in Indonesia where there are 3.92 million loan customers in the province led by Ridwan Kamil. Then, DKI Jakarta followed in second place with 3.01 million loan customers. Then, there are 1.6 million loan customers in East Java. Meanwhile, if you look at loan customers in Banten and Central Java, there are 1.31 million accounts and 1.15 million accounts, respectively. Then, there are 424,750 loan customers in North Sumatra. Meanwhile, the least number of loan customers were in West Sulawesi, namely 10,998 accounts.



By looking at the above, if the researcher provides an analysis from the point of view of imposing criminal sanctions on online loan actors, of course it will not be easy, because in essence online loan providers can only be imposed administrative sanctions on corporate crimes, resulting in minimal imposition of sanctions on individual. The interesting thing that can be subject to criminal sanctions is that the Director can be responsible for all company operations in carrying out the business of producing and/or trading goods and/or services, which are not in accordance with the promises stated in labels, etiquette, descriptions, advertisements or sales promotions of goods and / or services (see Ruling on Supreme Court Decision: Decision Number 525/Pid.Sus/2020/PN Jkt.Utr).s/2020/PN Jkt. Utr).

Chapter 32 (1) of Law of the Republic of Indonesia No. 19 of 2016 (RI Law No. 19/2016), that was last amended by Law No. 11 of 2008 Concerning Digital Information and Transactions (RI Law No. 19/2016), claims that it is unlawful for anyone to intentionally alter, reduce, transmit, destroy, delete, transfer, or hide each and every electronic information or document that belongs to another person or to the public domain.

The RI Law No. 19/2016's Chapter 26 (2), which explicitly indicates that anyone whose personal rights have been violated can file a lawsuit for the damages sustained, stipulates that a person may file a claim for compensation in the civil context. According Article 1365 of the Civil Code, which confirms that any action that violates the law and causes harm to other people obligates the person who committed the contravention because of his fault to compensate for the loss, the type of lawsuit that can be filed in connection to the incident of KTP being misused online loans is a lawsuit against the law (PMH).

### ***Research Method***

Researchers use the Juridical-Analytical approach method (Sonata 2015), It involves gathering, analysing, and debating the outcomes of factual data gleaned from the study's findings, which will then be drawn through analytical identification at the conclusion.

### ***Result and Discussion***

#### **1.Imposition of Criminal Sanctions Against Online Loan Crime Actors with Aspects of Fraudulent Actions Through Restorative Justice**

In the old Criminal Code (KUHP), criminal acts were better known as "Strafbaar Feit." In the main substance of "Strafbaar Feit," Moeljatno interprets the term "criminal act" as "an act prohibited by a rule of law, a prohibition which is accompanied by threats (sanctions) in the form of certain penalties for anyone who violates the prohibition." (Moeljatno 1983). A criminal act is an act that violates a rule of law, which can be subject to criminal sanctions for anyone who violates the rule, which are directed at the act, while threats or sanctions can be directed at the person who committed the crime.

The legal issues that arise as a result of these online loans are fraud issues. In general, fraud is included in crimes against property, as stipulated in Article 378 of the Criminal Code, which confirms that anyone with the intent to benefit himself or others by breaking the law, using a false name or dignity, deception or series of lies, inciting other people to hand over something to him, as well as giving debts and writing off receivables, is threatened with fraud by a maximum imprisonment of four years.

There are elements of online fraud that are not fulfilled in the provisions of Article 378 of the Criminal Code (Pitaloka 2020), namely the non-fulfillment of the main media elements used in committing online fraud crimes, namely electronic media that are not yet known in the Criminal Code and the Criminal Procedure Code, different methods of fraud between conventional fraud and online fraud, and there are also limitations in the Criminal Code, namely not being able to impose criminal responsibility on legal subjects in the form of legal entities (corporations) that commit online fraud crimes. Capital loan transaction services can be carried out by service providers if they follow the rules, one of which is that the company has been registered with the OJK. The interest charged to customers is also no more than 10% of the total loan. The positive impact of the presence of money lending service providers is to help people who need fast funds, as long as the loan services are not illegal; the negative impact is that it can make people accustomed to debt and create a culture of digging holes and closing holes. If people's habit of going into debt has become a trend, then all parties must help solve this problem, especially if from the start there was no education about debt and credit rules. (Rahma and others 2021).

Restorative justice provides benefits for victims in the form of empowerment by fulfilling the needs and rights of victims by involving the active participation of victims in the process of resolving cases they experience. The principle of restorative justice is to create peace between the perpetrators, victims and society based on the process of returning damage as a result of a crime. (Wulandari 2021). Restorative justice carried out at the level of investigation and prosecution shows that the settlement of criminal cases based on restorative justice is one of the efforts to resolve criminal cases, which is expected to reduce the accumulation of cases at the court level. In the aspect of online lending, the perpetrators of online lending crimes and their victims agree to complete the restorative justice pathway by returning all forms of losses suffered by online loan victims as regulated by Financial Services Authority Number 77/POJK.01/2016 concerning Online Lending and Borrowing.

## **2.Imposition of Compensation Sanctions Against Online Lenders with Aspects in the Implementation of Alternative Dispute Resolutions**

Alternative Dispute Resolution (APS) is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlements outside the court by way of consultation, negotiation, mediation, conciliation, or expert judgment. (Syafriada 2020). This APS regulates the choice of dispute resolution by deliberation from the disputing parties based on the agreement of the disputing parties by excluding litigation dispute resolution in court. Therefore, the main goal of APS is to achieve peace or agreement that no party is harmed and mutually beneficial to the disputing parties, and this will be achieved if it is based on the good faith of the disputing parties or differences of opinion by setting aside litigation disputes in court.

This APS regulates the choice of dispute resolution by deliberation from the disputing parties based on the agreement of the disputing parties by excluding litigation dispute resolution in court. Therefore, the main goal of APS is to achieve peace or agreement that no party is harmed and mutually beneficial to the disputing parties, and this will be achieved if it is based on the good faith of the disputing parties or differences of opinion by setting aside litigation disputes in court. (Sarini and Yustisia Utami 2020). In imposing compensation sanctions on online lenders to victims, the benchmark is ASP, namely through a family process that prioritizes the interests of both parties to the dispute by returning money as a form of compensation charged by online lenders, namely the directors of companies registered by OJK, and if someone is a business actor on the basis of illegal online loans. The parties to the dispute directly negotiate or bargain to produce a joint agreement. The parties to the dispute have certainly held discussions or deliberations in such a way that the rights and interests of the parties are accommodated to become their common interests or needs and interests of the parties are accommodated to become their common interests or needs. In general, the mutual agreement of the disputing parties is the result of negotiations set forth in written form. (Rongiyati 2019). Mutual agreements are carried out by the parties on the basis of more harmonious and creative cooperation. Dispute resolution is based on a direct meeting of the parties carried out within a maximum period of 14 days after the negotiations (negotiations) are carried out by the parties, and the parties must make a decision as outlined in the form of a written agreement.

### ***Conclusion***

Legal uncertainty in imposing criminal sanctions on online loan providers has resulted in many victims experiencing fraud. In addition, online loan providers use third-party services such as debt collectors to threaten, carry out acts of intimidation in collection, disseminate personal data, and engage in sexual harassment through electronic media. There is a moral hazard for online loan providers, causing risks to victims and state losses to be able to commit a crime.

In the aspect of online lending, the perpetrators of online lending crimes and their victims agree to complete the restorative justice pathway by returning all forms of losses suffered by online loan victims as regulated by Financial Services Authority Number 77/POJK.01/2016 concerning Online Lending and Borrowing. Injustice in imposing sanctions on online loan providers places more emphasis on administrative sanctions. Therefore, more priority is given to elements of corporate crime, where, if the director commits a policy of violating the law, he may be subject to criminal sanction, \In imposing compensation sanctions on online lenders to victims, the benchmark is Alternative Dispute Resolution (ASP), namely, a family process that prioritizes the interests of both parties to the dispute by returning money as a form of compensation charged by the online lender, namely, the director. Companies that are registered with the OJK or if a person is a business actor on the basis of illegal online loans

## References

- Darmiwati, and Triyana Syahfitri. 2021. 'Dampak Pinjaman Online Untuk Masyarakat', *Update.Com*, 2.3.
- Kurniawan, Cicelly Chiesa, Sanny Nuyessy Putri, Zahra Alsabilah, and Abdul Gani Aabdullah. 2021. 'Tanggung Jawab Otoritas Jasa Keuangan (Ojk) Terhadap Pemberantasan Pinjaman Online Ilegal', *Prosiding Senapenmas* <<https://doi.org/10.24912/psenapenmas.v0i0.15179>>.
- Moeljatno. 1983. 'Perbuatan Pidana Dan Pertanggungjawaban Dalam Hukum Pidana', in *Pidato Yang Diucapkan Pada Upacara Perayaan Dies Natalies Ke- 6 Universitas Gadjah Mada Tanggal 19 Desember 1965*.
- Nurmantari, Ni Nyoman Ari Diah, and Nyoman A Martana. 2019. 'Perlindungan Hukum Terhadap Data Pribadi Peminjaman Dalam Layanan Aplikasi Pinjaman Online', *Kertha Wicara : Journal Ilmu Hukum*, 8.12.
- Pitaloka, Anggraini Dila. 2020. 'Pertanggungjawaban Pidana Pelaku Pinjaman Online Yang Berimplikasi Tindak Pidana', *Jurist-Diction*, 3.5 <<https://doi.org/10.20473/jd.v3i5.21968>>.
- Rahma, Fatimah Aulia, Agus Machfud Fauzi, and Muh. Rizal S. 2021. 'PANDEMI COVID-19, MEMULUSKAN BISNIS PENIPUAN BERKEDOK JASA PINJAMAN UANG', *SUPREMASI: Jurnal Pemikiran, Penelitian Ilmu-Ilmu Sosial, Hukum Dan Pengajarannya*, 16.1 (Universitas Negeri Makassar): 01 <<https://doi.org/10.26858/supremasi.v16i1.19680>>.
- Rongiyati, Sulasi. 2019. 'Pelindungan Konsumen Dalam Transaksi Dagang Melalui Sistem Elektronik (Consumer Protection in E-Commerce)', *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 10.1 <<https://doi.org/10.22212/jnh.v10i1.1223>>.
- Sarini, Luh, and Putu Devi Yustisia Utami. 2020. 'PENGATURAN PENYELESAIAN SENGKETA DALAM SISTEM PEER TO PEER LENDING', *Kertha Semaya : Journal Ilmu Hukum*, 9.1 <<https://doi.org/10.24843/ks.2020.v09.i01.p05>>.
- Sonata, Depri Liber. 2015. 'Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum', *Fiat Justisia: Jurnal Ilmu Hukum*, 8.1 <<https://doi.org/10.25041/fiatjustisia.v8no1.283>>.
- Syafrida, Syafrida. 2020. 'Alternatif Penyelesaian Sengketa Sebagai Solusi Mewujudkan Asas Pemeriksaan Perkara "Sederhana, Waktu Singkat Dan Biaya Murah"', *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 7.4 (LP2M Universitas Islam Negeri (UIN) Syarif Hidayatullah Jakarta): 353–70 <<https://doi.org/10.15408/sjsbs.v7i4.15167>>.
- Wulandari, Cahya. 2021. 'Dinamika Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia', *Jurnal Jurisprudence*, 10.2 (Universitas Muhammadiyah Surakarta): 233–49 <<https://doi.org/10.23917/jurisprudence.v10i2.12233>>.

## Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).