Research Article

Leni[1]*, Udin Wahrudin[2], Fenny Damayanti Rusmana[3]

Review of Islamic Law on Online-Based Loan Financing Practices in Society

*Corresponding Author: **Leni**: STEI Al-Amar Subang, Indonesia; leni.leni@gmail.com
Udin Wahrudin: STEI Al-Amar Subang, Indonesia; udin.wahrudin@steialamar.ac.id
Fenny Damayanti Rusmana: STEI Al-Amar Subang, Indonesia; fenny.damayanti@steialamar.ac.id

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Abstract: *The background of this research is the problem of online lending practices in fintech lending cash loans that have not been registered with the Financial Services Authority and how Islamic law reviews online lending practices in fintech lending cash loans that have not been registered with the Financial Services Authority. The purpose of this research is to determine the review of Islamic law regarding the practice of online-based loan financing in society. The method used in this research is qualitative. The results of this research indicate that the review of Islamic law regarding online lending practices in fintech lending cash loans that have not been registered with the Financial Services Authority is not in accordance with Islamic law, because it contains usury. First, usury is an addition to the principal debt which includes usury qardh. Second, usury is a fine if you are late in repayment or past the due date, which includes jahiliyah usury. Furthermore, the practice of online lending in fintech lending cash loans is not in accordance with Islamic law because it contains elements of gharar due to uncertainty and lack of clarity in the operational system or agreements that have been made.*

Keywords: *Islamic Law, Loan Financing, Online Based.*

Introduction

The unlimited technological developments in today's digital era are increasingly complete with the presence of forms of application of information technology in the financial sector, namely fintech lending (financial technology). Fintech is a financial service that relies on technology as its operational basis. Financial transactions through fintech include payments, investments, borrowing money, transfers, financing, financing and so on. The presence of financial technology (fintech) actually provides convenience for society. Fintech is an innovation in the financial sector. Of course, this financial innovation has a touch of modern technology. The existence of fintech can bring about a more practical and safe financial transaction process (Muhammad, 2012).

The term fintech was first used in 1993 by Citicorp, whose official name was the Financial Service Technology Consortium. For approximately 30 years or approximately 3 decades, fintech has undergone an evolution and the first two decades of the phase, called fintech 1.0, is an innovation known as (bank driven), namely technological innovation driven by banking institutions and other formal financial institutions. In this period, the Transatlantic Cable (undersea cable) and fedwire/RTGS (Real Time Gross Settlement System) infrastructure was built (Ni Luh Wiwik Sri Wahyuni dkk, 2020).

In essence, fintech is a technology-based financial service where fintech is an innovative service in the field of financial services that uses an online system, which is one of the fintech products such as paying electricity bills, vehicle installments, or insurance premiums which are carried out online, both sending money and checking balance using mobile banking is also a fintech product (Ana Toni Robi Candra Yudha dkk, 2020). Meanwhile, PricewaterhouseCoopers or PwC as quoted (Labetubun, 2021) explains that fintech is a dynamic segment in the financial services and technology sector that focuses on start-ups that innovate in the product and service industry.

The existence of fintech aims to make it easier for people to access financial products, simplify transactions and also increase financial literacy. Fintech focuses on maximizing the use of technology to change, speed up or sharpen various aspects of financial services. These financial services can range from payment methods, fund transfers, loans, to asset management. The implementation activities of fintech companies in Indonesia cannot be separated from the public's desire to access credit using an online system (Rachmaniyah, 2019).

There are several types of fintech companies operating and developing in Indonesia. Starting from crowdfunding, micro financing, digital payment systems, peer to peer lending and also aggregators.

One of the well-known types in Indonesia is peer to peer lending (P2P), peer to peer is an information technology-based money lending and borrowing service, which is also called online lending. Online loans are money loan facilities by financial service providers that are integrated with information technology, starting from the application process, approval, to disbursement and are carried out online. Online loans first appeared in Indonesia at the end of 2014, pioneered by fintech (Financial Technology) companies. Then it developed in 2016 and at that time it was widely used to help micro, small and medium business groups and continues to grow to this day (Finpedia, 2021).

The presence of financial technology based on peer to peer lending makes transactions easy for the community, because it makes it very easy for people who need to borrow money quickly and with requirements that are easy to fulfill and do not need to apply for a loan from a bank, where borrowing money from a bank requires many requirements and must be met. come in line at the bank office (Ghozali, 2012).

Previously, online loans were generally regulated in Law Number 11 of 2011 concerning OJK and specifically regulated in OJK Regulation Number 77 of 2016 concerning information technology-based money lending and borrowing services. Online loans are one of the financial products most in demand by Indonesian people today because they have a fast application process, easy terms and are also practical.

This encourages banks, fintech and other financial institutions to offer fast disbursement online loans to help people in need. However, with the increasing development and proliferation of online financing or loan applications, various fintech lenders have emerged that are not licensed or even registered with the Financial Services Authority. It was recorded on November 17 2021 and to date only 104 fintech lending companies are registered and licensed with the Financial Services Authority. Fintech lending companies that are not licensed and not registered with the Financial Services Authority (OJK) are suspected of committing violations, ranging from problematic billing practices to misuse of personal data, which fintech companies often commit against their customers (Agung dan Erlina, 2020).

Based on this, OJK Regulation Article 7 POJK Number 77 of 2016 concerning information technology-based money lending and borrowing services was issued, which states that fintech lending providers are required to submit registration and licensing to the Financial Services Authority (OJK). The Financial Services Authority, hereinafter abbreviated as OJK, is an independent institution that has the functions, duties and authority of regulation, supervision, inspection and investigation as intended in Law Number 21 of 2011 concerning the Financial Services Authority.

However, even though there are regulations related to registration and licensing for fintech lending providers, there are still many disturbing illegal online loan applications or platforms that have reappeared even though they have been closed by the OJK SATGAS. One of the fintech lending or online loan applications that is still illegal in the sense that it is not registered and licensed with the Financial Services Authority is a cash loan application or platform.

In the Big Indonesian Dictionary, credit is defined as (1) a way of selling goods with non-cash payment, (2) a loan of money with repayment in installments, (3) a loan up to a certain amount permitted by the bank or other body. According to (Antonio, 2001) a loan is a gift of property to another person who can be charged or asked for, or in other words, lent without expecting anything in return. A loan is also something that one person has and then gives to another and then returns it to him in good conscience. Meanwhile, according to Bank Indonesia, as quoted (Shavab, 2021) a loan is a loan agreement from the Bank to a certain party which must be returned with the same amount as the loan.

Online loans are money lending facilities by financial service providers that operate online. These online loan providers are usually known as fintech. Online loans or what is known as information technology-based money lending and borrowing services (LPMUBTI) are an innovation in financial services that utilize technology that allows lenders and loan recipients to make transactions without having to meet in person through a system organized by fintech lending either through an application or website. In Article 1 paragraph 3 of the Financial Services Authority Regulation Number 77 of 2016, it is explained that information technology-based lending and borrowing services are the provision of financial services to bring together lenders and loan recipients in order to enter into lending and borrowing agreements in rupiah currency which are provided through an electronic system with using the internet network (Jumaizah, 2020).

It can be concluded that online loans are a type of loan that can be applied for online via a cellphone application, without needing to meet face to face. This method provides convenience and speed in the credit application process. Online loans are technology-based financing which is a financing solution in a more effective and efficient way. Online loans are one of Bank Indonesia's criteria for financial technology products, because they are innovative, can be used widely, and are beneficial to society.

Cash loans are an online loan application or platform. The operational system for cash loans is: 1) The highest loan amount with a loan limit of up to IDR 20,000,000, 2) Loan interest of 0.05% per day, and 3) Payment in 6x installments 4. Tenor is 91 days

However, what happens in practice is not in accordance with the theory of the cash loan fintech lending operational system above. The practice of cash loan fintech lending is that it has very large interest rates, the loan repayment deadline or tenor is only 7 days, but 2 days before the due date, the cash loan party has already charged by calling the contact number on the Borrower's cellphone.

Based on civil law studies on financial technology, legal actions that arise between debtors and creditors are based on an agreement. Based on the provisions of Article 1320 of the Civil Code, there are four conditions necessary for an agreement to be said to be legally valid, namely: 1) The agreement of those who remind themselves, 2) The ability to make an agreement, 3) A certain subject matter, and 4) A cause. which is forbidden

So both parties must fulfill the agreement. As a result, agreements made legally are valid as a law, the principle of pacta sun servanda Article 1338 of the Civil Code is that all agreements made in accordance with the law are valid as law for those who make them. This consent cannot be withdrawn other than by agreement of both parties or for reasons determined by law.

As in Article 18 of the Financial Services Authority Regulation Number 77/POJK.01/2016, the agreement for implementing information technology-based money lending and borrowing services includes: a) Agreement between the organizer and the lender, and b) Agreement between the lender and the loan recipient.

As also stated in Article 26 of the Financial Services Authority Regulation Number 77/POJK.01/2016, fintech lending providers are responsible for maintaining the confidentiality, integrity and availability of users' personal data and in using it they must obtain approval from the owner of the personal data unless otherwise determined by regulatory provisions. legislation. Then in Article 29 POJK Number 77/2016, organizers are obliged to apply the basic principles of user protection, namely transparency, fair treatment, reliability, confidentiality and data security, as well as resolving user disputes in a simple, fast and affordable manner.

Based on several legal regulations above, there are several clauses in loan agreements that conflict with the principles of good and fair agreements on cash loan platforms or fintech. This can be seen in the discrepancy between the theoretical agreement and the practical facts that occur in fintech cash loans. The practice of fintech cash loans is that they have high interest rates, the loan repayment deadline or tenor is only 7 days, but 2 days before the due date, the cash loan party has already charged by calling the contact number on the Borrower's cellphone. This happens without the knowledge and consent of the borrower or debtor.

Based on Islamic law, basically borrowing money is called qardh. In Arabic, etymologically, qardh means cut. Namely a certain contract by paying mitsil assets to another person in order to pay the same assets to him (Syafe'i, 2001).

Borrowing activities are one of the economic activities that are greatly needed by the community as a means and infrastructure in everyday life. Borrowing is basically a practice of helping others. This is in accordance with the words of God mentioned in the Al-Qur'an, Surah Al-Maidah verse 2, which means: "O you who believe, do not violate the laws of God's holiness, and do not (violating the honor) of the forbidden months, do not violate hadya (sacrificial animals) and qala'id (marked sacrificial animals), and do not disturb those who visit Baitul Haram; they seek the grace and pleasure of God. But when you have completed the ihram, then you can hunt. Do not let (your) hatred towards a people because they block the barrier from the Grand Mosque, push you to transgress (towards them). And help each other in virtue and piety, and do not help each other in sin and enmity. Fear Allah, indeed Allah is very severe in His punishment".

Lending and borrowing is also explained in the National Sharia Council Number 19/DSN-MUI/IX/2001 dated 09 April 2001 which states that al qardh or lending and borrowing is a loan to which customers are obliged to return the funds they receive to sharia financial institutions (LKS) at the specified time. has been agreed upon by LKS and the customer. Basically, online loans are regulated in DSN-MUI Number 117/DSN-MUI/11/2018 concerning information technology-based financing services based on sharia principles. Where in this fatwa it is explained that information technology-based financing services based on sharia principles are the provision of financial services based on sharia principles that bring together or connect financing providers through an electronic system using the internet network (Ahmad dkk, 2020).

Provisions regarding the implementation of operational systems related to information technology-based financing services based on sharia principles must not conflict with sharia principles, namely, among other things, avoiding usury, gharar, maysir, tadlis, dharar, zhulm and haram. As stated in the word of Allah in the Qur'an, surah An-Nisa verse 29, which means: "O you who believe, do not devour each other's wealth in a false way, except by means of commerce that is carried out with mutual consent. like among you. And do not kill yourself, indeed Allah is most merciful to you."

Based on the legal grounds above, it can be seen that cash loan platforms cause a lot of harm to the public, such as agreements that are not in accordance with the agreement, repayment times that are not in accordance with the due date, and can be dangerous for the borrower and other people who have relationship with the borrower because they are often terrorized and threatened over the telephone (Nursaidi dan Sinalele, 2021).

Likewise, from the perspective of Islamic law, there are still several gaps between practice and sharia principles in terms of loans on cash loan platforms, such as high interest rates, and some operational systems that do not have clarity.

Based on the background above, the author is interested and wishes to know and analyze the practice of online-based loan financing and how Islamic law reviews online loan practices. So starting from this phenomenon the author chose the title "Review of Islamic Law on Online-Based Loan Financing Practices in Society".

Method

This research seeks to analyze and describe Islamic law reviews of online-based loan financing practices in society. The type of research used in this research is a descriptive analysis method. According to (Tanjung, 2023) descriptive analysis is empirical research that investigates a specific symptom or phenomenon in a real life setting. The results of this research were collected using primary data and secondary data.

The approach used in this research is a qualitative approach. According to Bogdan and Taylor in (Arifudin, 2023) a qualitative approach is a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior. According to (Rahayu, 2020) the method is to transcribe the data, then coding the notes in the field and interpreting the data to obtain conclusions.

Determining appropriate data collection techniques greatly determines the scientific truth of a research. The data collection techniques used in this research are observation, interviews and documentation.

Observation is part of the research process directly regarding the phenomena to be researched (Hanafiah, 2021). With this method, researchers can see and feel directly the atmosphere and condition of the research subject (Haris, 2023). The things observed in this research are the review of Islamic law regarding the practice of online-based loan financing in society.

The interview technique in this research is a structured interview, namely interviews conducted using various standard guidelines that have been established, questions are arranged according to information needs and each question is needed to reveal any empirical data (Damayanti, 2020).

Documentation is a data collection technique through existing documents or written notes (Sofyan, 2020). Documentation comes from the word document, which means written items. In implementing the documentation method, researchers investigate written objects, such as books, magazines, meeting minutes and diaries. According to Moleong in (Fitria, 2020) the documentation method is a way of collecting information or data through examining archives and documents. Documentation strategies are also data collection techniques proposed to research subjects. The data collection method using the documentation method was carried out to obtain data about the condition of the institution (research object), namely a review of Islamic law regarding the practice of online-based loan financing in society.

Muhadjir in (Tanjung, 2020) states that data analysis is the activity of conducting, searching and organizing records of findings systematically through observation and interviews so that the researcher focuses on the research being studied. After that, make a discovery material for others, edit, classify, and present it.

Results and Discussion

In the eyes of Islamic law, online loans are included in the accounts receivable agreement, which is one of the muamalah activities that are based on helping each other so that Muslims can do it if they fulfill the accounts receivable agreement correctly. Just as Islam has also arranged an agreement that regulates all kinds of good rights and obligations between two people who have a contract, consisting of the muqridh (the one who gives the debt) and the muqtaridh (the person who owes the debt) so that there is a true agreement between the two.

Mutiara Annisa as quoted (Bairizki, 2021) stated that types of online loans are differentiated based on the loan amount, tenor (loan period), interest rate, collateral and financing purpose. The following are the types of online loans: 1) KTA (Unsecured Credit) is a personal online loan product that does not require collateral or security for the credit submitted by the customer. In general, online loan application or service providers make credit card ownership the main requirement for applying for KTA, 2) Employee Credit. Employee loans are products specifically designed for employees who actively work in an agency, company, business entity or institution. The main requirements for this loan include a decree on the appointment of civil servants/permanent employees, recommendations from authorized officials/superiors and salary slips, 3) vehicle credit. Currently, car and motorbike loans can be applied for online. The main requirements for this loan include a salary slip, having your own place to live and a down payment according to the provisions. 4) KPR (Home Ownership Credit) is a loan facility for customers who want to buy a house in installments. A number of fintechs collaborating with banks have also provided online mortgage facilities, as well as 5) business loans. Namely a loan with the aim of business capital.

As for the risks in debts and receivables via online media, Zaenab as quoted (Siregar, 2021) stated that they are as follows: a) High Interest, b) Personal Data in Online Loan Applications, c) Not Paying Bills, Collectors Contact Like all loans, If the customer does not pay, there will be collection action. Collection will not be made if the customer pays on time, d) Online Loans that have not been registered with the OJK because not all are registered with the OJK. In line with the provisions, every institution that offers online loans must be registered with the OJK. If it is not registered with the OJK then online loans are illegal and very dangerous, and e) Collection Administration Fees. When you are in arrears, the risk is not only facing collection, but also additional costs because the online loan company asks for late fees.

Islamic law provides broad opportunities for the development of new forms and types of muamalah according to the development of living needs in society. This is in accordance with the principles of muamalah, namely: Meaning: "Basically, all forms of muamalah are permissible unless there is an argument that forbids it."

Based on the rules above, it is explained that Islam gives people freedom in matters of muamalah to regulate it according to their benefit, provided that it does not violate the general provisions contained in the sharia'. Therefore, the principle that applies in an agreement or contract is the principle of willingness and agreement between the two parties. As well as fulfilling the terms and conditions. So that the rights of both parties can be fulfilled (Dawwabah, 2008).

Online loans in fintech lending are basically a platform or application that carries out cash loan transactions with online services and without collateral with a short application process and fast search. However, cash loan fintech lending does not really provide clarity regarding the operational system stated in the application or in the agreement.

Everything should be clear from the start so that one of the pillars and conditions of debt and receivables has been fulfilled. Likewise, in debt and receivable transactions, it must be in accordance with the pillars and conditions for the validity of the contract, namely the person making the contract must be competent to carry out legal action, mature, rational, the object or goods must know the amount or value, and so that at the time of payment there is no difficulty because it must be the same. the amount or value with the amount or value of the goods received.

Thus, ijab qabul is an act or statement to show one's pleasure in entering into a contract between two or more people, thereby avoiding or getting out of a bond that is not based on sharia'. Therefore, in Islam not all forms of agreements or agreements can be categorized as contracts, especially agreements that are not based on pleasure and Islamic law. Then, many online consent contracts are now done through applications without having to meet face to face, because after filling in the requirements, it includes a qabul agreement between the customer and the company, so it can be said to be valid (Rozalinda, 2016).

Conclusion

Based on the results of the discussion of the research conducted, it can be concluded that review of Islamic law regarding online lending practices in fintech lending, cash loans that have not been registered with the Financial Services Authority are not in accordance with Islamic law, because they contain usury. First, usury is an addition to the principal debt which includes usury qardh. Second, usury is a fine if you are late in repayment or past the due date, which includes jahiliyah usury. Furthermore, the practice of online lending in fintech lending cash loans is not in accordance with Islamic law because it contains elements of gharar due to uncertainty and lack of clarity in the operational system or agreements that have been made, then dharar, because in this case it can endanger users of fintech lending cash loans because of this fintech lending illegal and there are elements of zhulm, which can cause losses for cash loan fintech lending users.

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