

The legal status of online loan service in Indonesia according to the Islamic jurisprudence of *Shafi'i* school

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Abstract

Purpose – Start-up business has developed significantly in the last decade. The development follows the digital technology ownership. Online loan service (*pinjaman online; pinjol*) is one of the start-up products based on the online credit. But it has problems relating to human rights violations and Islamic Jurisprudence. This study aims to investigate the possibility of violence of online loan service (*pinjol*) and the view of Islamic jurisprudence of *Shafi'i* school on online loan service.

Method – This paper uses description and analysis methods.

Result – The result of this study is that one of the problem sources is the high amount of bank interest in online loan. Moreover, the debt terms are so easy, and the disbursement process is so fast, so that it causes bad credit among debtors. According to *Shafi'i* scholars, the high bank interest is part of the *mudha'afah* usury, although both parties have agreed the contract. However, the sanctions for bad debtors are not accordance with Islamic sharia that prioritize the debt (*qardh*) to help other people. In addition, this credit business causes so many harms (*mudharat*).

Implication – This study will help government, business player, and consumers to understand online loan service according to Islamic jurisprudence.

Originality – This study is among few other studies who investigate the current trend of online loan service in Indonesia.

Keywords: online loan service, Islamic jurisprudence, *shafi'i* school, Indonesia

Introduction

Today's, start-up business is developing significantly in the digital era. The development follows the rising number of smartphone technology users, which are recently used by Indonesian people. This development differs from the past two decades. In the early 2000s, still few numbers of people used mobile phone technology, even smartphones. Whereas in the era of 2005, the number of mobile phone users began to grow, followed by the blackberry users. Then, digital technology emerged, where mobile phones have not only been used as a means of communication through calling and sending message, but also for social media, even to access all services that previously could only be accessed offline. In January 2018, the number of internet users reached 132.7 million. It shows that half of the total population of Indonesia have used internet (Pardosi & Primawardani 2020), and they affected the increase in the turnover of the Capicorn industry in Indonesia.

The prior established companies began to be shifted by the fast growth of the start-up industry. For example, the bluebird taxi company has initially been successful since the 1980s. But it began to get fierce competition from online motorcycle taxi applications (Ojek online or Ojol), such as Gojek and Grab. They slowly began to shift small businesses, namely pedicabs, *andhongs*, traditional motorcycle taxis, public transportations, and so on. In addition, several previous communication companies have also been threatened and gone out of business due to current development, like Nokia.

Varied types of start-up businesses began to emerge, including financial sector. In this sector, financial institutions have begun to develop digital loan services. The process basically follows the use of an electronic ID card, so the financial institution only confirms the identity of a prospective borrower through this process. Moreover, the provision is easy, where there is no collateral or guarantees. In other words, the procedures used are relatively easier compared to previous services. Online loan is a rapidly growing business now. Until February 2021, the total disbursement of funds in this sector reached Rp 169.5 trillion, and the number of customers increased 10 times for two years, from 4.36 million to 43.56 million. (Pusparisa 2021)

Some problems are about the legal status of online loan. Because many cases of violence occur due to late payments from the customer. In some cases, financial institutions often hire debt collector services to commit violence. Several sanctions from the bank will threaten the debtor, such as physical threats, verbal violence, personal data upload to social media, and so on. Here, the problems around the legal status of conventional bank interest still have not been resolved. But a new kind of online loan services has begun to emerge and has also brought many problems.

Responding this phenomenon, it is important for Indonesian Muslims to study the legal status of online loan because most of Indonesian people are Muslims who apply the Shafi'i school. So, it is important for them to examine the legal status of online loans from the Syafi'i school perspective. On the other hand, there is *ijtihad* in the Islamic jurisprudence, which allows Muslims for possible legal changes, including interpreting the legal status of bank interest. In this case, the scholars still have different views of whether it is permissible or not. Whereas in online loan, the status of indirect contract is a problem in the Islamic jurisprudence.

This paper focuses to answer several questions, namely: What are the advantages and disadvantages of online loan? Why do online loan problems often occur? How does the Shafi'i school deal with the rise of online loan?

Literature review

Online loan service

Online loan is a debt transaction through electronic devices. Debt is a transaction between two parties voluntarily. Then the debtor takes advantages of it and return the loans to the borrower (Anwar 2020, 131). While electronic transactions are legal actions carried out with electronic media or the like (Anwar 2020). On the other hand, online loan transactions usually use remote services.

Online loan service is a credit service to wide people based online. It is a kind of start-up business because the transaction relies on online communication. Indeed, it is a continuation of the prior formed conventional financial institutions. Various methods being applied to conventional banking are still used in this kind of services.

One of those methods is the analysis mechanism, which serves to determine a person's eligibility to get a loan.

Online transaction is a new breakthrough in financial sector, because the financial institution dares to offer certain amount of money without collateral as well as the inclusion of taxpayer identification number (NPWP). Furthermore, it is only conducted by online communication and sending an ID card enclosure. In conventional financial institutions, a prospective borrower is required to include several things, and come directly to the branch office. Thus, the bank can verify and analyse the ability to pay debts on time. Another problem is related to the misuse of personal data (Pardosi and Primawardani 2020).

Human rights violations occur because of the complexity between the public's lack of knowledge about online loan mechanisms. In addition, there is no regulation on financial technology including protection against misuse of personal data that actually becomes an administrative mechanism in conducting financial technology transactions.

Elements of online loan

Online service is one of the characteristics of online loans. It is a part of Fintech (Financial Technology) because they use communication technology facilities as the basis for their services. There are several types of Fintech, such as online financial consultation and market aggregator, which is a service that provides various information about financial product services, so that the potential consumers can compare before deciding.

One of the interesting factors for consumers in online loan services is in the ease to access services, because most people today can access anything just by using their mobile phones. They do not need to queue to get services somewhere, so they do not only feel practical, but also fast and efficient. Furthermore, the process of disbursing loan funds of limit credit just needs around four hours. Whereas the process of large amount of loan with a credit duration of one month just needs about three days. On the other hand, compared to conventional banks, the time for disbursement of funds needs several weeks. So, many people prefer to choose online loan, even though the interest withdrawal is very high and has a much higher risk compared to conventional banks or offline financial services (Istiqamah 2019).

Many problems may arise in online transactions, such as the following.

1. Some potential consumers feel lack of understanding to the product, so they feel disappointed. In some cases, someone suddenly gets credit swelling, due to delays in credit payments. It happens because the prospective customers only see an interesting advertisement displayed by vendors through their website or application.
2. Fraud rate could be high. It can be committed by the providers or the customers. The customer can use a fake identity. Meanwhile, the providers can suddenly hire debt collectors to charge a certain amount of money to the debtors. Thus, both parties have potentials to disserve each other.
3. It is possible to have failed transactions, considering that there are many remedial cases, which have resulted in violence committed by the online loan service provider against the customer (Pekerti 2018)

Application of loan interest

It is known that loan interest is a must for all financial services because bank interest becomes a source of company profits. Besides, loans to productive sectors are also investments. It is because they can develop, and the profits are paid in the form of principal debt and bank interest payments. In the competition of banking industry with large loan numbers, many financial institutions reduce interest rates to increase competitiveness. But it does not happen to the developing financial institutions.

Conventional banks usually provide lower interest rates than others (Sudarsono 2009). Indeed, some banks with large amounts of capital can even lower their interest rates to very low levels, even with conditions and in-depth analysis of loan applications offered by customers (Sudarsono 2009). On the other hand, the fact shows that sharia micro credits offer higher interest rates than conventional banks. For example, in *Mudharabah* contract or ordinary *Musyarakah*, the amount of interest charged is up to 20% with a profit-sharing contract. Meanwhile, based on the author's observation to the various loan offers made by several online loan applications, they offer very large interest rates with short credit maturities.

Based on Google search, the author found many numbers of application offering online loan service business. The keyword “online loan” services are mostly found in the start page of the Google Search engine. When we open the page, many numbers of financial institution provide various promising services, even though the interest charged is very high. For example, in the 'Tunaiku' online loan service, an illustration is given, that the loan in one year is 12 million rupiah, then the monthly instalments are Rp. 1,392,549.00, or close to 40%. On the other hand, the “Bijak Fund” website gives different illustration. The number of submissions is 10 million, with a total return (seven times instalment), of Rp 15,992,900 plus an administrative fee of 500 thousand rupiah.

Banking sanctions

Financial Institutions often deal with troubled debtors. It is easy for a person to borrow some money to his friend in his daily life, but it is difficult for him to return it, even though he already can do it. In daily life, credit is usually given without any interest at all to help someone. However, people will avoid someone who has a debt habit and makes mistakes in predicting future income, because they will consider his track record. In banking, measuring, and analysing personal capacity and the source of funds are strongly required.

In the banking world, the term “Blacklist” is known as one of the most frightening sanctions and is often a warning to prospective debtors. This kind of debtor often avoids fulfilling his obligation to repay the loan. Indeed, he lets the bank to take his assets. His behaviour often causes resentment. He applies for credit to other banks while he still has problems with the other banks. Because of his disobedience, his name is included in the blacklist. Indeed, he has difficulty to access credit in any banking services (Said 2017).

Conventional Banking has Standard Operating Procedure (SOP) to deal with non-performing loans. With collateral, it is easier for the banks to execute the debtor's assets. They also have an analysis team that can assess the debtor's capability and his collateral values. On the other hand, the financial institutions with no collateral from the debtors, will have difficulties to act, instead by using violence. This happens in many cases.

According to the Indonesian Consumers Foundation (YLKI), it was stated that the highest problem of online loan (Pinjol) is relating

to billing method, which is at 39.5% (Pardosi & Primawardani 2020). Various forms of threats and terrors from financial institutions (Pinjol) can be experienced by the customers of online loan services. These various terrors are not only physical but also verbal. Besides, some financial institutions also disseminate personal information of the debtors to all their relations, so the debtors feel afraid and worried (Pardosi & Primawardani 2020).

The arising problems do not always occur due to the customer's mistakes. According to the reports of mass media, there was an employee, who borrowed 700 thousand rupiahs, with an agreement to return 1 million rupiahs for 10 days. After 10 days, she tried to pay it back, but was confused about how to process the bill payment. Then she ignored it for one month until she received a bill amounting to Rp. 3,632,000.00, so she refused to pay the large bill. As a result, she was terrorized in various ways, namely: messages containing threats and making pamphlets along with his face, name, address, and cellular number (Pardosi & Primawardani 2020, 355).

It is proven that the customers deal with various risks because of various promised conveniences. In one side, these conveniences provide easy requirement, and the process of application and disbursement goes fast. However, he should pay very high interest. Indeed, when he is late to pay, he will be threatened with various psychic threats. Seeing this phenomenon, some parties argue that this online loan is like re-legalizing moneylender system. These cases will continue, if there are no security guarantees for customers, weak law enforcement officers, and legal products that can protect customers (Istiqamah 2019, 294).

Methodology

This study is a kind of library research. It uses various library literatures as the main reference (primary source). While the method in this research is using description and analysis. Description is the method of describing the theme being discussed. While analysis is a technique to describe the elements of a theme, then the researcher tries to describe those elements.

Results and discussion

Views of *Shafi'iyah* scholars

According to the Islamic scholars of Shafi'i school, there are three pillars in the contract or transaction, which include:

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- a. The person who makes transaction (*al-'aqid*), namely the seller and the buyer.
- b. The contract (*sighat ijab-qabul*); and
- c. The goods sold (Apipudin 2016).

Most Indonesian contemporary scholars of the Shafi'i school think that the contract (*shighat*) does not have to be done verbally, but in action and any words showing that both parties have agreed a matter. Thus, the function of habit (*urf*) applies among societies, relating to the way they carry out transactions. Shafi'iyah scholars note that this can also be the basis of transaction validity (Pekerti 2018).

Indeed, the two parties are not required to attend physically at the venue. This is different from the formulation of previous scholars including the Shafi'i school, which emphasized the importance of the presence of both parties at the venue because the social context was different from today. In the development of information technology, it is possible for many people to perform online transactions.

The validity of remote transactions is also legalized by the Civil Code, because the most important thing is agreement between two parties, proficiency, and certain agreed objects (Article 1320 of the Civil Code). According to *Ahl Sunnah wal Jama'ah*'s view, Civil Law ratified by the State is also important, because the product of the law is part of *Ulil Amri*, that must be obeyed. In addition, the formulation within the articles is in accordance with Islamic law.

The last pillar of transaction is the goods being transacted. A transaction will be void if it is considered illegitimate (haram) goods. Meanwhile, it has not yet been determined whether the multiplied interest offered by this fintech business is truly legitimate (halal) or not, at least according to the majority school adopted in Indonesia (Shafi'i). Whereas in the Bai' contract (sale and purchase transaction), there is an obligation for the goods presence during transaction process. It is important for both parties to know correctly about the quality of the goods offered (Pekerti 2018). In other cases

of buying secondhand goods, some buyers feel disappointed after receiving the goods. Therefore, there are many dissents regarding this matter, even though the Indonesian Ulama Council did not issue fatwa of haram against the phenomenon of online business transactions.

Legal status of usury in loan

Generally, the Islamic scholars ('Ulama) are careful with the issue of usury. It is not only in the practice of moneylenders at the time of the Prophet, but also outside these activities. For example, the practice of exchanging gold for gold, or silver for silver. In fact, these practices are possible, because the form of gold is different, such as gold bar with necklace, oats with oats or dates with dates. In *Nas'i* usury, a person borrows dates today, then returns them a week later with an agreement, so this kind of contract is forbidden. Meanwhile, there is other category of usury, namely: *Fadhli* usury, such as exchanging old money for new money carried out before Eid al-Fitr, because there is an addition (*fadhli*) to the same item (Al Badri and Sejati 2015)

Not only the Shafi'i school, the Islamic scholars from Maliki school also have a similar opinion, particularly in the case of gold and silver, because at that time both become reference to the price of everything in the form of *nuqud* (dinar and dirham currency). So that, whatever the type of gold and silver, the standard is in weight. If the weight is same, the value is considered same. For example, someone lends gold in the form of a necklace, it cannot be exchanged for rings with different weights, because this is also classified as usury (Rusdan 2015)

The practice of *Fadl* and *Nasi'ah* usury has existed since the beginning of Islam, and they have different meanings. But there are similarities between the two. There is an excess (usury) between the two items. While the difference is that *fadhli* usury is an exchange of goods without time, while *nasi'ah* usury is determined by time (Rusdan, 360). So that, the essence of *nasi'ah* is 'payment time' and it is considered as an added value of the object being exchanged. For example, a person borrows 10 million rupiahs for 12 months. After the next 12 months, it becomes 12 million. Then usury actors assume that the 12 months period has a value equivalent to 2 million rupiah. And this is included in the category of usury, so that in this way, some scholars such as Qaradhawi forbids bank interest.

In the matter of borrowing, the 'Ulama of the Shafi'i school often used a rule, stating that all debts that benefit the borrower are considered as usury. But some contemporary scholars had different interpretation about usury. They referred to al-Qurthuby who interpreted QS Ali Imran 130, where the verse contains the word '*adh'afan mudha'afatan*', which means double usury. It is a practice that refers to the habits of the Arabs in the Jahiliyyah era. Most of them sought profit by lending doubled money. Meanwhile, Al Maraghi and Ibn Jarir argued that usury is a contract in which the borrower will provide additional money besides his debt. the point (Mokaromah, 2004). Thus, there are still doubts among interpreter scholars about soft and mutual beneficial credit between the two parties.

Views of bank interest can also be referred to Gus Baha's point of view. In a religious teaching, Gus Baha' stated that we should pay attention to the condition of Muslims when justify the *halal-ness* of bank interest. If they cannot access the economic potential of banking, the people's economy will be controlled by non-Muslim entrepreneurs (Nursalim 2019). Meanwhile, according to Ahmad Syarwat, prohibiting bank interest will give difficult impact to deal with financial matters because of various financial conveniences, such as online marketing, online payments, account transfers, and so on, referring to the function of banking services (Syarwat 2019, 8–9).

A view of allowing bank interest can refer to the opinions of the Egyptian scholars of al-Azhar, such as Sheikh Mahmud Saltut, al Thanatawi, Ahmad Tayyib, and Ali Jum'ah (Syarwat, 2019). They rely on the argument about the importance of the benefit aspect. In a verse, Allah also says that He does not make religion as a difficult thing. So, it is important to understand that human life does not become more difficult with religion, due to its restriction, including in financial matters. It is inevitably to apply banking practices to control economic resources. Almost all Arab countries also use the conventional bank services to serve their financial problems. Even so, the scholars do not agree the prohibition of usury. In fact, they prohibit usury, but it is still debatable to answer whether the conventional bank interest is included in the category of usury.

From the opinions, it is argued that online loan is not a soft loan. A case shows that in one month, someone borrowed 700 thousand rupiahs, but he should repay more than 3 million rupiahs.

This is included in the category of double usury (*adh'afan mudha'afatan*). Thus, based on their arguments, all scholars agree that this type of doubled interest is considered in the category of usury.

Laws for bad debtors

In Islamic jurisprudence, the term “debt” is *qardh*, means “to cut”. It means part of the property owned by the lender (creditor) and given to the borrower (debtor) while the debtor must return it (Cahyadi, 2014). In early Islamic history, there were several types of loan such as *qardh al hasan*, *mudharabah*, *musharaka*, and *nasi'ah* (in the category of usury).

Loan (*al qardh*) is not a negative thing in Islam. The term *Qardh* itself is mentioned several times in the Qur'an which is associated with goodness. Debt itself is not a disgraceful thing and is permissible in Islam (Cahyadi, 2014). Types of loan in ancient times were not always in the form of money. Because transactions between persons do not always use money if the transaction does not use the same goods. In the social context of ancient times, money was not a single transaction tool, as is the case today.

Debt might be legitimate, but with strict limits. The Prophet said that, anyone who intends not to repay his loan, Allah will destroy him (HR Muslim). Meanwhile, Allah will forgive those who are martyred in the way of Allah, except for those who have debts (HR Muslim). And there are still several hadiths that show caution in debt, and the threat of Hereafter if someone deliberately does not pay the debt (Cahyadi 2014, 70).

The attitude to delay payment was caused by several reasons. The debtor deliberately delays the payment, while he allocates his money to other needs. Islam does not allow this attitude. According to the Hadith narrated by Nasai and Abu Dawud, Islam allows people to defame and to punish this kind of debtor (Haryono, 2018). Meanwhile, someone with good intentions, but he is unable to repay his debts, he deserves relief. Thus, debt and receivables in Islam are based on good intentions between the two parties.

There are various sanctions given by the bank, such as including someone on the blacklist of debtors. This is necessary to do, so that the borrower needs to be careful. Meanwhile, violent sanction, like committing terror, is not permitted if the debtor has good intentions to pay the debt. Moreover, in the modern banking,

there are collateral items that can be taken any time by the bank. In addition, the bank has many reliefs based on the debtors' condition, such as having disasters or accidents. Whereas in many cases, the solutions do not happen in the system of online loan. Because they do not use collateral, so they use any means to force the debtors to return the amount of money used. There are more harms than benefits taken from the online loan system. Shafi'iyah scholars suggest us to avoid damage rather than overtake a benefit, as stated in the rule of Islamic jurisprudence "Dar-ul Mafasid Muqoddamun 'ala al Jalbi al Mashalih" (Aslati and Afrizal, 2017). Further, the collection party in online loan does not want to know the debtor's condition.

This is different from the provisions of lending and borrowing in Islam, including in the Shafi'i school. The sanctions imposed depend on the intention and willingness of the debtor to return the money. In addition, it is necessary to see how the debtor's situation. Furthermore, it is possible for other parties (either from relatives or other community members), to bear the costs of the debt.

Conclusion

Online loans have attracted the interest of Indonesian community. As the institutions which are partially registered by the Financial Services Authority (OJK), this kind of business has both advantages and disadvantages. Generally, it provides fast disbursement of funds with light conditions, including no collateral. However, it charges very high loan interest. Furthermore, it practically has many problems. In some cases, violence happens to debtors who are in arrears or late paying their loan. This violence is often used as a quick way to solve problems. In other words, many cases have been found because the bank lacks analysis and there is no collateral from the debtors. So, the banks would not suffer losses in every financial transaction.

According to Shafi'i school, it is necessary for customers to observe and to criticize the elements of how online loans work. In transaction, Shafii school considers that this business has fulfilled three elements, namely *sighat*, contract between two parties, and the goods itself must be halal. In terms of loan interest, most of Islamic scholars justify that online loan with double interest is clearly contrary to Islamic law. Furthermore, Sanctions given to debtors

also against Islam, because they should be imposed if there is no good intention to repay the loan. Here, the creditors must pay attention to the borrowers' condition, while they ignore this aspect. For them, the most important thing is how to reduce the risk of loss by demanding the return of principal debt along with the doubled interest.

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