

Application of the Principle of Good Faith as an Effort to Protect the Law Against Borrowers in Online Lending Practices

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Abstract

This study aims to examine the application of the principle of good faith in contractual agreements and to analyze the legal protection afforded to borrowers in online loan transactions under this principle. The core issue addressed is how the principle of good faith is operationalized in digital loan agreements and its implications for borrower protection. Employing a qualitative approach with a descriptive-analytical method, the research investigates legal instruments and practices governing online lending platforms in Indonesia. The findings reveal that the principle of good faith plays a pivotal role in ensuring fairness, transparency, and accountability in online credit transactions. This principle serves as a normative foundation for safeguarding borrowers' rights, particularly within the framework of the Indonesian Civil Code, Law No. 11/2008 on Electronic Information and Transactions, and Financial Services Authority Regulation No. 6/POJK.07/2022. The study highlights the necessity of reinforcing good faith as a legal instrument to mitigate asymmetrical power relations and promote legal certainty in digital financial services. These findings imply the need for stronger regulatory enforcement and borrower education to foster equitable financial inclusion in the digital era.

Keywords: Legal Protection, Principles of Good Faith, Online Loans.

Abstrak

Penelitian ini bertujuan untuk mengkaji penerapan prinsip itikad baik dalam perjanjian kontraktual serta menganalisis bentuk perlindungan hukum bagi peminjam dalam transaksi pinjaman online berdasarkan prinsip tersebut. Pokok permasalahan yang dibahas adalah bagaimana prinsip itikad baik diimplementasikan dalam perjanjian pinjaman digital dan apa implikasinya terhadap perlindungan hak-hak debitur. Dengan menggunakan pendekatan kualitatif dan metode deskriptif-analitis, penelitian ini menelaah instrumen hukum dan praktik yang mengatur penyelenggaraan pinjaman daring di Indonesia. Hasil penelitian menunjukkan bahwa prinsip itikad baik memiliki peran sentral dalam menjamin keadilan, transparansi, dan akuntabilitas dalam transaksi kredit online. Prinsip ini menjadi dasar normatif dalam melindungi kepentingan debitur, khususnya dalam bingkai hukum KUH Perdata, Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, serta Peraturan Otoritas Jasa Keuangan Nomor 6/POJK.07/2022. Penelitian ini menekankan pentingnya

penguatan prinsip itikad baik sebagai instrumen hukum untuk mengurangi ketimpangan hubungan hukum dan meningkatkan kepastian hukum dalam layanan keuangan digital. Implikasi temuan ini mengarah pada perlunya penegakan regulasi yang lebih kuat dan edukasi bagi peminjam untuk mendukung inklusi keuangan yang adil di era digital.

Kata Kunci: Perlindungan Hukum, Asas Itikad Baik, Pinjaman Online.

Introduction

Financial companies in the information technology-based money lending services sector are increasingly coming under scrutiny from regulators such as the Financial Services Authority and Bank Indonesia,¹ as contained in the Financial Services Authority Regulation No. 77/POJK.01/2016 on Information Technology-Based Money Lending and Credit Services. The regulation regulates electronic-based money lending and borrowing services or commonly referred to as peer to peer money lending and borrowing.² This service is a breakthrough as an answer to the needs of people who have not been touched by banking services. The implementation of online loans is based on an agreement between the parties, in this case between the organizer and the lender, and the lender and the borrower. Simply put, the loan mechanism is applied for through the Internet, without the borrower meeting the lender in person. Before applying for a cash loan, the borrower's ability to repay is first checked. Meanwhile, the borrower must respect the terms of the contract concluded to avoid future problems that could be detrimental to the parties, such as non-payment.³

The practice of online lending still has many flaws and legal problems in practice, both in terms of the legality of Pinjol, the mechanism of the concluded contract, the validity of the contract, and the equality of the contract. The agreement before and after the conclusion of the Pinjol contract looks like this. Despite the many conveniences that online loans provide, it cannot be denied that there are still some problems. Since the parties cannot reach an agreement on implementation, disputes between the parties are very fragile and often lead to problems in some cases.

The fulfillment of the principle of good faith in the online loan in question begins from the moment the platform obtains an operating license and is widely used by the public. To

¹ Muldri Pudamo James Pasaribu, "Tinjauan Yuridis Terhadap Kedudukan Fintech Yang Tidak Terdaftar Di Otoritas Jasa Keuangan," *Jurnal Ilmiah Penegakan Hukum* 8, no. 1 (2021): 49–58, <https://doi.org/10.31289/jiph.v8i1.5125>.

² Subhan Zein, "Tinjauan Yuridis Pengawasan Otoritas Jasa Keuangan Terhadap Aplikasi Pinjaman Dana Berbasis Elektronik (Peer To Peer Lending/Crowdfunding) Di Indonesia," *Jurnal Bisnis Dan Akuntansi Unsurya* 4, no. 2 (2019): 115–24, <https://doi.org/10.35968/jbau.v4i2.338>.

³ Hari Sutra Disemadi, Mochammad Abizar Yusro, and Wizna Gania Balqis, "The Problems of Consumer Protection in Fintech Peer To Peer Lending Business Activities in Indonesia," *Sociological Jurisprudence Journal* 3, no. 2 (2020): 91–97, <https://doi.org/10.22225/scj.3.2.1798.91-97>.

date, the actual implementation of online loans is still fraught with various issues. One of them is the provision of information on the amount of loan interest, which is not clearly displayed on the organizer's online loan site or platform. Organizers must provide all the latest information about online loans in a clear, accurate, truthful and non-misleading manner. The Financial Services Authority (OJK) through Letter No. S-5/D/05/IKNB/2019 appointed the Indonesia Joint Financing Fintech Association (AFPI) as OJK's strategic partner in the implementation of online lending. AFPI is an association that supports organizers in the implementation of P2P loans. As OJK's strategic partner in implementing P2P lending, AFPI is authorized to issue regulations called the "Code of Conduct for the Responsible Provision of Information Technology-Based Moneylending Services."

The principle of good faith is very important in the use of information technology and electronic transactions because if the principle of good faith is not observed, commercial transactions using information technology may be contrary to the objective of the principle, especially in the case of providing online lending. Facilitation is not achieved. The principle of facilitation is one of developing trade and the national economy to improve welfare, as stated in section 4(b) of the Information and Electronic Transactions Act. The Act states that the use of information technology and electronic transactions is "for the purpose: to develop trade and the economy to improve the prosperity of the people."

How important it is to understand the principle of good faith as an integral part of the contract becomes clear at the stage of preparation of the contract and in the course of its execution. It is often the case that certain parties take advantage of the position or status of other parties, perceived as weaker, in order to achieve greater benefits. Needless to say, when talking about the creditor-determining aspects of standard contracts, the content of the clause will certainly indicate whether there was bad faith, since this will affect its execution. Of course, the idea of the agreement clause can be judged its validity based on existing provisions, since basically any agreement not based on the principle of good faith is prone to abuse situations.

Research Methods

The research methodology used will be descriptive analytical research, which investigates the research subject as a whole and uncovers and understands its truth. Based on this analysis, it is expected that an explanation of the descriptive analytical data will be created. The study will begin by presenting the principle of good faith as a basis for contracting

and then explore how the principle of good faith can be a normative tool to protect online borrowers.

Results and Discussion

1. Application of the Principle of Good Faith in Agreement

A contract is a legal act within the framework of civil law, usually performed by people as legal subjects, with the objective of exchanging interests in order to achieve their respective objectives.⁴ The description of a contract may refer to Article 1313 of the Civil Code, according to which an act by one or more persons binding one or more others gives rise to rights and obligations for the parties to the contract.⁵ Mutual agreements must be made in good faith. Article 1338, paragraph 3 of the Civil Code provides that all contracts must be made in good faith. The principle of good faith is a fundamental principle of contract law, which requires parties to act in good faith and fairly while protecting their interests at every stage of contract performance, from negotiations regarding the conclusion of a contract to its performance. The other party must be considered.⁶ This principle aims to balance the rights and obligations between the parties and prevent actions that unfairly harm one party.

Article 1338, paragraph 3 of the Civil Code provides that contracts must be made in good faith. However, the article does not clearly explain what "good faith" means. This affects the freedom of interpretation, and many have difficulty understanding what good faith itself means. Good faith is an abstract concept, existing in the human mind, and therefore difficult to interpret in a single sense.

With regard to the sources of canon law, the duty of good faith is universally considered a moral norm, a personal attitude determined by an attitude of sincerity and devotion to God. Everyone must observe and fulfill their promises. Some canon law scholars' opinions also link good faith with conscience. The understanding that is constructed certainly comes from religious concepts, which vertically thread the concept of goodwill into the good actions of human beings. Based on legal studies, the principle of good faith has two meanings, namely:

⁴ Maria Fransiska Owa da Santo et al., *Pengantar Hukum Perdata: Teori & Referensi Komprehensif Dasar-Dasar Hukum Perdata Di Indonesia* (PT. Sonpedia Publishing Indonesia, 2024).

⁵ Niru Anita Sinaga, "Perspektif Force Majeure Dan Rebus Sic Stantibus Dalam Sistem Hukum Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 1 (2020): 1–27, <https://doi.org/10.35968/jh.v11i1.648>.

⁶ Mia Rasmiaty, "Rekonstruksi Normatif Kontrak Kerja Agen Asuransi Jiwa: Integrasi Nilai Etikad Baik Dalam Praktik Asuransi," *UNES Law Review* 6, no. 3 (2024): 8472–83, <https://doi.org/10.31933/unesrev.v6i3.1754>.

- a. Good faith in the objective sense, i.e., that the agreement made must be carried out in accordance with the norms of good sense and morality. The contract must be performed in a manner that does not cause damage to either party.
- b. Good faith in the subjective sense, i.e., the concept of good faith in a person's inner attitude. In substantive law, this good faith can be interpreted as sincerity.
- c. Good faith in the subjective sense can be interpreted as the sincerity of a person when performing a legal act, i.e., the inner attitude of a person when performing a legal act.
- d. Good faith in this subjective sense is provided for in the Civil Code, Book 2, Article 531. Furthermore, good faith is also addressed in several laws and regulations, such as Law No. 8 of 1999 on Consumer Protection and Law No. 8 of 1995 on Capital Markets. This means that the basis of good faith is good faith as the basis for the performance of the contract.⁷

Munir Fadi himself argues that the essence of Article 1338, paragraph 3 of the Civil Code is not part of the requirements for the validity of a contract as provided for in Article 1320 of the Civil Code. Since good faith with regard to the conclusion of a contract falls within the category of *halal causation* under Article 1320 of the Civil Code, the element of good faith is only required in the context of the performance of the contract, and not at the stage of the contract's conclusion.

The definition of good faith is not clear in the text, and the Civil Code does not clearly explain what good faith means.⁸ Article 1338, paragraph 1 of the Civil Code simply provides that a contract must be made in good faith. Viljono Projodikolo and Svekto argue that good faith (*te goeder trouw*), which is often translated as sincerity, can be divided into two types: (1) good faith when entering into a legal relationship or contract, and (2) good faith when exercising the rights and obligations arising from the legal relationship.⁹

The principle of good faith plays an important role in creating fairness and balance in a contract. The application of this principle requires the awareness and commitment of each party to act in good faith and fairly from negotiation to the implementation of the agreement.

⁷ Bambang Fitrianto, "A Building Ideal Concept Of Application Principles Good Faith in Agreement Law," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 10, no. 1 (2022): 459–70, <https://doi.org/10.30868/am.v10i01.3481>.

⁸ Trinas Dewi Hariyana, "Eksistensi Asas Iktikad Baik Dalam Perjanjian Jual Beli Melalui Internet Dengan Sistem Pembayaran Cash on Delivery," *Uniska Law Review* 2, no. 2 (2021): 95–118, <https://doi.org/10.32503/ulr.v2i2.2287>.

⁹ Febrina Indrasari, "Analisis Yuridis Pemenuhan Asas Itikad Baik Dalam Pelaksanaan Perjanjian Kredit Pada Bank Rakyat Indonesia Unit Batealit Cabang Jepara" (UNS (Sebelas Maret University), 2012).

In this way, the legal relationship between the parties can be harmonious and harmful disputes can be avoided. This can be seen in the procedural explanation of how good faith should be implemented in a contract:

- a. Negotiation phase During the negotiation phase, the principle of good faith requires the parties to act transparently and honestly about their terms and capabilities. This includes providing relevant and non-misleading information. For example, if one party discovers an impediment that may affect the performance of the contract, it must inform the other party of this to avoid fraud or misunderstanding that may have adverse effects.
- b. Conclusion of a contract When concluding a contract, the principle of good faith means that the terms agreed must be fair and balanced. A contract must not be made with the intent of deceiving or undermining the other party. For example, clauses that contain conditions that are too burdensome for a party without adequate compensation may be considered a breach of the principle of good faith.
- c. Performance of the Agreement

At the performance stage of the agreement, the parties are obliged to carry out what has been agreed upon in good faith. This includes trying to fulfil their contractual obligations and not taking any action that may cause damage to the other party.¹⁰ For example, if circumstances change significantly, the parties should try to find a fair solution together, rather than unilaterally imposing a contract interpretation that is favorable to one party. Good faith as a principle of contract law is essentially honesty and propriety / fairness which implies trust, transparency, autonomy, compliance with norms, without coercion and without deception. Honesty is concretized into positive legal rules such as several articles contained in the Civil Code including Articles 530, 531, 533 and 548 BW concerning good faith beziter, Articles 1963; 1966 and 1977 BW concerning ownership related to expiration; Article 1320 BW, especially the requirements of an agreement and a halal causa. Decency/fairness is concretized into the legal rules of Articles 1321, 1323, 1328 BW on negligence, duress and fraud in contract making; Article 1348 BW on payment in good faith. This means that the understanding of good faith cannot be interpreted partially with a single meaning, but a holistic meaning in connection with actions and attitudes that lead to good intentions so that an agreement can be carried out properly without harming the parties.

¹⁰ Niru Anita Sinaga, "Peranan Asas Itikad Baik Dalam Mewujudkan Keadilan Para Pihak Dalam Perjanjian," *Jurnal Ilmiah M-Progress* 8, no. 1 (2021): 47–66, <https://doi.org/10.35968/m-pu.v8i1.186>.

Basically, the principle of freedom of contract has a correlation in the agreement to actions based on good faith, in the sense that every legal action such as making an agreement will have its own juridical consequences, such as humans not only have the freedom to do or not do an act formulated by law. But in a broader sense, that freedom is what underlies a person can determine the best arrangement for himself which should be based on the principle of good faith.¹¹

The development of the principle of good faith is not necessarily based on the good faith of the parties, but must also be related to the values that develop in society, since good faith is an inseparable part of society itself, and therefore this good faith ultimately reflects the standards of justice and decency of society. In this sense, good faith is a universal social force that regulates social relations. All citizens must be obliged to act in good faith towards all citizens.

The implementation of the principle of good faith contained in Article 1338, paragraph 1 of the Civil Code must be carried out by the parties both at the pre-contractual stage, the contract performance stage, and the post-contractual stage. Thus, the contracting parties must always implement the principle of good faith at all stages of the contract. The parties must maintain good faith in the pre-contract stage even if the contract has not yet been signed. For example, in negotiations in the pre-contract stage, the content of the contract is basically the result of the parties' agreement. The agreement was created during the negotiation process. The purpose of the negotiation is basically to reach an agreement between the parties on the matters set out in the agreement.

In the negotiation process, the parties must maintain the principle of good faith. For example, one form of application of the principle of good faith in negotiations is for one party not to impose its will on the other party in order to reach an agreement. Coercive measures by one party against the other party may be based on a negotiating position or a superior position. This typically occurs in employment relationships between employers and employees, even if the parties are legally equal.¹²

Another example of the application of the principle of good faith in the negotiation process, for example the parties do not commit fraud against the other party in order to reach

¹¹ Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian," *Binamulia Hukum* 7, no. 2 (2023): 107–20, <https://doi.org/10.37893/jbh.v7i2.318>.

¹² Harry Ismaryadi, Khairani Khairani, and Yussy Adelina Mannas, "Implementasi Asas Itikad Baik Dalam Pemberian Kesempatan Penyelesaian Pekerjaan Pengadaan Barang Jasa Pemerintah," *Unes Journal of Swara Justisia* 7, no. 2 (2023): 680–94, <https://doi.org/10.31933/ujsj.v7i2.363>.

an agreement on a matter. If an agreement has been formed, while it can be proven by one of the parties making it that the agreement was born from an agreement in which there is an element of fraud, then the party who feels aggrieved can submit a cancellation of the agreement to the court. This is based on the element of defect in the formation of an agreement which is a subjective requirement for the validity of an agreement.

Good faith is a fundamental principle of great importance in any agreement or contract. This principle refers to the sincere and honest intention of the parties to an agreement to respect each other's rights and obligations and to perform the agreement in a fair and transparent manner. The importance of good faith in an agreement has several implications, including:

- a. Building trust. Good faith helps to build and maintain trust between the parties involved in a contract. This trust is an important foundation of any business or legal relationship.
- b. Avoidance of disputes: By promoting good faith, parties tend to be more open and communicative, minimizing the chances of misunderstandings and disputes.
- c. Improved compliance: When parties commit to acting in good faith, they are more likely to fulfill their obligations under the contract.
- d. Protection of rights and obligations good faith ensures that the rights and obligations of each party are respected and exercised fairly and proportionately.
- e. Maintaining long-term relationships: In business situations, good faith helps maintain long-term, mutually beneficial relationships because the parties feel valued and treated fairly.
- f. Assisting in law enforcement: In many jurisdictions, good faith is recognized and required in contract law as a condition for contract performance. This means that any act contrary to good faith can be considered illegal and subject to sanctions.

The explained meaning boils down to the fact that good faith is not only reflected in actual actions, but also in a person's attitude when trying to enter into a contract. This definition certainly confirms that good faith is not simply a principle that can be set aside, but rather is the basis for contractual performance. The development of private law is an inseparable part of the attention to legal transformation in the contract field. Contracts are now possible not only through traditional contracts, but also online. This situation poses new challenges in further examining and considering the application of the principle of good faith in online-based contracts, with the aim of legal protection for the parties involved.

2. Legal Protection of Borrowers in Online Loan Transactions Based on the Application of the Principle of Good Faith

Financial Technology or commonly referred to as Fintech is a form of digital technology application created to bring together debtors and creditors in financial matters.¹³ As for another understanding, fintech is interpreted as an industry consisting of companies that use information technology as a financial system tool and delivery of financial services to make it more effective and efficient.¹⁴ From the definitions that have been put forward previously, the majority of experts define fintech in detail. Schmitt & Weber state that fintech is a dynamic industry where there are many different business models.

This view is also corroborated by Hsueh who defines fintech as a new financial service model developed through information technology innovation. In addition to experts, fintech is also defined in more detail by the Financial Atability Board (FSB), namely technological innovation in the form of financial services that can produce business forms, process applications and products with material effects related to the provision of financial services.¹⁵ Opinions also expressed by Pribadiono experts explain that fintech is a combination of technology with financial features and innovations in the financial sector with a touch of modern technology.

The business practice of online lending brings lenders and borrowers together online. In the digital age, electronic financial lending systems through peer-to-peer lending from fintech companies have become one of the options for quick borrowing. In a fintech transaction, the parties are bound by a contract known as an e-contract. Pursuant to Article 1, Item 17 of Law No. 19 of 2016 amending Law No. 11 of 2008 on Electronic Information and Transactions (commonly known as the ITE Law), an e-contract is a contract between parties that is concluded through an electronic system. In this case, P2P lending service providers are subject to the supervision of the Financial Services Authority (OJK) in accordance with Article 7 of OJK Regulation No. 77/POJK.01/2016 on Information Technology-Based Moneylending

¹³ Bayu Novendra and Sarah Safira Aulianisa, "Konsep Dan Perbandingan Buy Now, Pay Later Dengan Kredit Perbankan Di Indonesia: Sebuah Keniscayaan Di Era Digital Dan Teknologi," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (2020): 183–201, <https://doi.org/10.33331/rechtsvinding.v9i2.444>.

¹⁴ Syahrudin Kadir, "Keuangan Terdesentralisasi (DeFi) Dan Teknologi Keuangan (FinTech) Syariah Dalam Sistem Keuangan Abad 21," *Journal of Accounting and Finance (JACFIN)* 5, no. 2 (2023): 1–14, <https://jurnal.umus.ac.id/index.php/jacfin/article/view/1253>.

¹⁵ Rizal Habibunnajar, "Problematisasi Regulasi Pinjam Meminjam Secara Online Berbasis Syariah Di Indonesia (Fintech P2P Lending Syariah)" (Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2020).

and Lending Services. Fintech entrepreneurs must register their P2P lending services with the OJK.

Good faith must be present since the online lending platform has obtained an operating license and since the public uses the platform. In online loans based on digitalization, the contractual parties do not transact as one, so one party may suffer both advantages and disadvantages. For the lender, the situation is very favorable, given that the offer comes from the lender, while the borrower is in a position where he needs credit services that may be related to urgent needs. In such a situation, it is necessary to observe and implement the principles and principles of contract law, such as the principle of good faith, which is the fundamental basis for the internal and external actions of the contracting parties.

The principle of good faith is very important when using information technology and electronic transactions, especially when using financial technology. Conducting transactions using information technology without prioritizing the principle of good faith defeats the purpose of the principle of expediency. The intended benefit is to develop trade and the national economy and improve the welfare. Section 4(b) of the Electronic Information and Transactions Act states that the use of information technology and electronic transactions is for the purpose of developing trade and the national economy and improving the welfare of the people.

The use of P2P lending based on electronics must prioritize the principle of good faith as stated in article 3 of the ITE Law, which states that "the use of information technology and electronic transactions is carried out based on the principles of legal certainty, expediency, prudence, good faith, and freedom to own technology or be technology neutral".

The meaning of the principle or principle of good faith mentioned in article 3 of the ITE Law is the basis for the parties in peer-to-peer lending transactions, which are not used intentionally and without rights and against the law which results in harm to the other party without the knowledge of the party concerned.¹⁶

Fintech as a digital financial service provider enables transactions that are not limited by time and space. In addition, the complexity of applications with the help of artificial intelligence and big data fundamentally changes the traditional financial services that have

¹⁶ Gomgom Siregar and Muhammad Ridwan Lubis, "Juridical Analysis of Religious Blasphemy Crimes Through Smartphone Application Based On The Information and Electronic Transaction," *Journal of Contemporary Issues in Business and Government* 27, no. 2 (2021): 1006–12, <https://doi.org/10.47750/cibg.2021.27.02.120>.

been established so far. However, financial services in the fintech sector not only bring profits and encourage economic growth, but also have the potential to cause conflict.¹⁷ Conflicts that occur often arise between fintech providers as financial service business actors and consumers, this is often motivated by an unbalanced bargaining position between providers and consumers so that the legal relations that occur put consumers in a disadvantaged position. The unbalanced relationship between providers and consumers is caused by, among others, asymmetric information and power imbalances, low quality of service to consumers, ineffective dispute resolution mechanisms and misuse of personal data. In addition, disputes that occur can also be caused by differences in understanding of the product and acts of default from one of the parties. This happens because the principle of good faith is not a priority in the agreement so that consumers or borrowers need to get legal protection to avoid arbitrariness.

Legal protection is defined as a form of protection of dignity, as well as recognition of human rights attached to legal subjects based on legal provisions or a set of rules that can protect one thing from another.¹⁸ On the other hand, legal protection is interpreted as a form of narrowing the meaning of protection, in this context it is interpreted in the legal aspect only. The protection provided by law is related to rights and obligations. According to Muchsin, legal protection is an activity to protect individuals by harmonizing value relationships or rules that incarnate into actions in presenting order in the association of life between fellow human beings.

Furthermore, according to Muchsin, legal protection is something that protects legal subjects based on applicable laws and regulations and is enforced by a sanction.¹⁹ Legal protection can be categorized into two, namely:

- a. Preventive legal protection, protection provided by the government with the intention of preventing before an offense occurs. This is contained in the law with the aim of preventing a violation and providing signs or limits in performing an obligation.

¹⁷ Acep Rohendi, Asriani Asriani, and Dona Budi and Kharisma, "Regulation for Startups in Indonesia: Problems and Recommendations," *Cogent Business & Management* 10, no. 3 (2023): 2276993, <https://doi.org/10.1080/23311975.2023.2276993>.

¹⁸ Herol Hansen Samin, "Perlindungan Hukum Terhadap Kebocoran Data Pribadi Oleh Pengendali Data Melalui Pendekatan Hukum Progresif," *Jurnal Ilmiah Research Student* 1, no. 3 (2024): 1–15, <https://doi.org/10.61722/jirs.v1i3.386>.

¹⁹ Ari Dermawan and Akmal Akmal, "Urgensi Perlindungan Hukum Bagi Korban Tindak Pidana Kejahatan Teknologi Informasi," *Journal of Science and Social Research* 2, no. 2 (2020): 39–46, <https://doi.org/10.54314/jssr.v2i2.353>.

- b. Repressive legal protection is legal protection that aims to provide sanctions such as fines, imprisonment and additional penalties given if a dispute has occurred or a violation has occurred.

Legal protection is also understood by Soekanto that basically the protection given to legal subjects in the form of legal instruments, further explained that in addition to the role of law enforcement there are five things that affect the law enforcement process of legal protection, namely:

- a. Statutory factors, which are written regulations that apply generally and are made by authorized institutions.
- b. Law enforcement factors, namely the parties involved in law enforcement, both directly and indirectly.
- c. Facility factors that support law enforcement, such as skilled human resources and adequate tools.
- d. Community factors, namely the environment where the law applies and is applied. Acceptance in society of the applicable law is believed to be the key to peace.
- e. Cultural factors, namely as a result of work, creation and taste based on human spirit in the association of life.

Legal instruments are the main shield to provide legal protection to borrowers or consumers of online loans. The neglect of the principle of good faith in online loan agreements has an impact on legal discrimination for borrowers, something that might happen if the unbalanced position between pinjol services and borrowers where pinjol services have more dominant power and open access to borrowers allows harmful things to happen. This needs to be seen based on regulatory constructs as reinforcement that the application of the principle of good faith is a legal basis for consumers to obtain legal protection.

Online electronic lending services are based on contracts. Contracts are stipulated in Book 3 of the Civil Code, and their basic provisions are included in Article 1320 as legal requirements for the conclusion of a contract. Apart from that, good faith is one of the principles of contracts. As already explained, the principle of good faith must be present before the conclusion of a contract and during its performance. The principle of good faith is not just a principle, but a specific norm set out in Article 1338, paragraph 3 of the Civil Code when a contract is based on the principle of good faith. This means that good faith is important to maintain an equal contract without having a more dominant position in order to fulfill full rights and obligations.

From a digital perspective, since online credit contracts are based on electricity, the laws that serve as the basis for legal protection can be found in Chapter II on Principles and Objectives, Article 3 of ITE Law No. 11 of 2008 and Law No. 19 of 2008. According to this, the use of information technology and electronic transactions is based on the principles of legal certainty, practicality, prudence, good faith and the freedom to choose technology or neutral technology. Since the "Basics of Electronic Transactions" clearly states good faith as a principle and purpose, the basis for legal protection for borrowers is clear, so this clause can be used as a legal reinforcement in the event of unilateral losses.

The strengthening of legal protection is also strengthened by the existence of the Financial Services Agency Regulation of the Republic of Indonesia No. 6/POJK.07/2022 on the Protection of Consumers and the Community in the Financial Services Sector. Article 4, paragraph 1 of Part 2 "Basic Actions of Financial Only Entrepreneurs (PUJK)" stipulates that PUJKs must act in good faith when conducting business activities. The phrase "carry out business activities in good faith" is a comprehensive phrase indicating that PUJKs will act in good faith in the unlikely event of an accident from the time of registration to the time of conducting business, including interactions with consumers. In the event of any discrepancy or abuse in terms of both bargaining power, personal data, etc., consumers have the right to legal protection under the relevant POJK based on good faith documentation. This is also confirmed in Article 2, according to which the PUJK is prohibited from treating consumers in a discriminatory manner. Therefore, any actions or behavior that does not ensure equal treatment or selectively causes losses to consumers may be sanctioned as a form of legal protection for borrowers.

Conclusion

Electronic-based online loan services are based on agreements regulated in the Civil 12 Code, especially Article 1320 which regulates the validity of agreements. Good faith is an important principle in the agreement and in its implementation, according to Article 1338 paragraph 3 of the Civil Code. In the context of electronic agreements, online loan agreements are based on the ITE Law Number 11 of 2008 jo Number 19 of 2016 which emphasizes the principle of good faith applied in electronic transactions. Likewise, legal protection for consumers is strengthened by the Financial Services Authority Regulation (POJK) Number 6/POJK.07/2022 which emphasizes that financial service business actors must act in good faith and not discriminate against consumers, so that seen from the construction of legal

protection norms for borrowers or consumers has been accommodated, therefore strengthening to provide legal protection rights on the basis of deviations in good faith can be done. PUJK in carrying out its business activities should be carried out transparently, accountably, to provide trust to the public. Continue to prioritize good faith in running a business. While consumers or borrowers continue to prioritize prudence in using pinjol services, including measuring themselves regarding their financial capabilities so that there is no default in the future.

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