

Does Regulations of in Peer to Peer Lending has Legitimated Hidden Cyber Extortion? a legal review

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Abstract:

The purpose of this article is to present the results of an analysis of whether P2P lending practices contain elements of covert cyber extortion when viewed from an integrative legal perspective between regulations and Islamic law. Covert cyber extortion that hides behind contracts is more dangerous than extortion in general because many victims do not feel exploited. The findings of this study conclude that the practice of P2P lending which charges multiple interest rates and fines due to late installment payments which is calculated per day contains elements of hidden cyber extortion legitimated by regulations. Therefore, the concept and regulating for P2P landing in Indonesia should be reviewed immediately so that there are no victims of exploitation. If in research, Islamic banks are considered loan sharks, then the practice of P2P lending, which is based on daily interest and fines, is more than just a loan shark.

Keywords: regulations; P2P lending; hidden cyber extortion; legal review.

Introduction

P2P lending has the opportunity to be used as a medium for financial inclusion for people who need financing. However, if P2P lending is not properly conceptualized and regulated, it could very well be used as a means of exploitation and extortion. The properly concept is a concept that is good according to economic interests, but is also in line with religious values in society. A law that is said to be appropriate is a law that not only regulates procedural aspects but also *halal/ haram* and *maslahat/ mudharat* aspects from a religious perspective. To ensure feasibility, the concept and regulations of P2P lending in Indonesia need to be reviewed through a perspective of legal philosophy to ensure whether the regulations are in accordance with the principles of truth and justice or not. Through this perspective, the author will look at law not only from the aspect of norms, but also from the aspects of the values behind a norm. To gain legitimacy, the values of a norm must be in line with the truth values believed by society.

P2P lending which is more inclusive opens up opportunities to get many customers from various groups. Therefore, before being legitimized by law, the P2P lending concept must be ensured to bring benefits to all parties. Don't let P2P lending become a hidden instrument of exploitation or extortion for the community and only provide abundant profits for capital owners. Covert extortion wrapped in a contract is more dangerous than open extortion. Covert extortion can be carried out via the internet network which is called cyber extortion. In a netizen survey, one of sharia sharia banks were considered to have committed extortion. Negative stigma of sharia banks after the viral customer extortion issue and taking usury (*riba*). Netizens term high profit making by Islamic banks with term loan shark. A loan shark is a term to describe a person or entity who lends money at very high-interest rates. The word

loan shark appears in the top ten trending in extortion cases, which is the study's objective.¹ If Islamic banks as they are called loan shark are considered to be committing extortion, what about P2P lending? This article aims to examine whether P2P lending in Indonesia is synonymous with hidden cyber extortion when viewed from legal philosophy perspective. The reason for using this perspective because it carries out a not superficial but in-depth analysis of every legal problem that arises in society and through that perspective we can develop legal science itself. In this case the author uses a legal philosophy theory in general and Islamic perspective.

Legal Philosophy Review

Philosophical thinking is thinking to understand the nature of reality in order to find the true truth. Thinking deeply about meaning means finding the most profound sense of something in the content of that thing. In philosophy, a person seeks and needs answers not only by showing appearances alone but tracing them far behind the appearance to determine something called the value of reality.² Even the philosophical way of thinking not only reveals the values behind the facts, but how the truth of these values becomes ideal. In the perspective of natural law, the highest value comes from God. Mankind's search for justice found the idea of natural law as something higher than positive law. Law must conform to the right reason, i.e. must be governed by natural law. True law is right reason in agreement with nature; it is of universal application, unchanging and ever-lasting; it summons to duty by its commands and averts from wrongdoing by its prohibitions.³ Therefore, the function of legal philosophy is to explore the values of truth from God to be applied in positive law.

Legal philosophy is a branch of legal science that investigates what measures can be used to assess the content of law in order to fulfill good laws. Legal philosophy in the system of legal teachings functions as a rounder (core) of the legal teachings themselves and has the goal of achieving legal objectives, including: justice, peace and prosperity. Legal philosophy seeks to find problem points so that it can then create more perfect laws for the future.⁴ According to Roscoe Pound, philosophies of law historically have rationally adjusted legal developments to the circumstantial needs of society. Philosophers of law may have appeared to be preoccupied with abstract questions of justice, seeking to conform the mundane to the universal, but in the course of legal developments the perceived social interests of the respective societies eventually prevailed.⁵

The function of legal philosophy is to rationally formulate a general theory of law which conforms to the interests, the general security first and for most of society. Legal philosophy requires the law to apply perfectly so that it is relevant to be

¹ Rosana Eri Puspita and Mohamed Asmy bin Mohd Thas Thaker, "Netnography on Finance Research: The Case of Customer Blackmail in a Sharia Bank," *Journal of Accounting and Strategic Finance* 5, no. 1 (2022): 179–92, <https://doi.org/10.33005/jasf.v5i1.299>.

² Ervina Dwi Indriati, Sary Ana, and Nunung Nugroho, "Philosophy Of Law And The Development Of Law As A Normative Legal Science," *International Journal of Educational Research & Social Sciences* 3, no. 1 (2022): 425–32, <https://doi.org/10.51601/ijersc.v3i1.293>.

³ Justice K N Saikia, "Philosophy of Natural Law," n.d.

⁴ Tri Madya Wianto, "The Role of Legal Philosophy in Building the Moral of the Nation ' S Children," *Journal of Law and Natiin (JOLN)* 2, no. 1 (2023): 49–53.

⁵ Marshall L. Derosa, *An Introduction to the Philosophy of Law* (New Haven: Yale University Press, 1998), <https://doi.org/10.4324/9781351288880>.

implemented in all places and times.⁶ The thought of legal philosophy has a positive impact because it carries out a not superficial but in-depth analysis of every legal problem that arises in society or the theoretical development of legal science itself, its horizons are broad and comprehensive.⁷ Law must be integrated with moral values. A proper law is a law that contains high moral values to realize justice, benefit, legal certainty and order. Helmi (2015) said that through the philosophy of law asking questions which are fundamental about law. These issues are related to the position, nature, function and objectives of law and others. The objectives of law in the form of certainty, justice, benefit and others are a study of legal philosophy. With a philosophical approach, justice becomes an inseparable part of the purpose of law, in addition to certainty and benefits.⁸

Legal Review of Cyber Extortion In P2P Lending

Linguistically, extortion (blackmail) is to obtain money or benefit from someone under coerce and threat to expose a secret or to reveal information harmful to reputation. It is defined as a crime committed against a person to force him to hand over money or to sign a document due to being threatened with the disclosure of a particular matter or to charge him with a crime.⁹ Extortion is “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.”¹⁰ Cyber extortion involves the added element of a threat of committing a wrongful act involving computers or information systems. Cyber-extortions often consist of three distinct illegal acts: the threat, the act (if committed), and often a preliminary criminal act to make the threatened act credible. Cyber extortion and threats are specific intent crimes, allowing defendants to bring up defenses involving their mental or emotional conditions.¹¹ Threats do not always mean threats of physical violence, but also financial exploitation.

According Putten, the extortion bears three specific characteristics: (a) The involvement of multiple perpetrators; (b) A gradual development or unfolding of the extortion process; and (c) The use of deceit and manipulation as coercive tools in the first phases of the extortion process, prior to the use of violence or the threats with violence. These three aspects tend to make the crime of extortion invisible for a long period of time, primarily because of the way the crime is normally looked upon. Stages leading to extortion practices:¹²

⁶ Derosa.

⁷ Muhammad Iqbal, “Legal Philosophy In Establishing Justice,” *The 1th Proceeding International Conference And Call Paper XIV*, no. 2 (2021): 330–41.

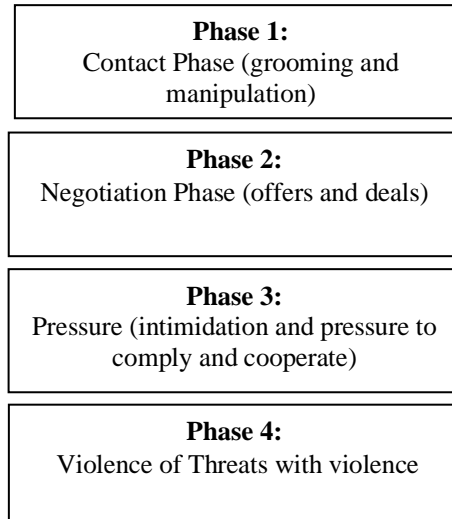
⁸ Iqbal.

⁹ Hiba Abdul Mohsin Abdul Kareem, “The Social Risks Of Electronic Extortion,” *Palarch’s Journal Of Archaeology Of Egypt/Egyptology* 18, no. 4 (2021): 8263–73.

¹⁰ Ezenwobodo and Somkene Samuel, “International Journal of Research Publication and Reviews,” *International Journal of Research Publication and Reviews* 04, no. 01 (2022): 1806–12, <https://doi.org/10.55248/gengpi.2023.4149>.

¹¹ Ioana VasIU and Lucian VasIU, “Cyber Extortion and Threats: Analysis of the United States Case Law,” *Masaryk University Journal of Law and Technology* 14, no. 1 (2020): 3–28, <https://doi.org/10.5817/MUJLT2020-1-1>.

¹² Cornelis van Putten, “The Process of Extortion: Problems and Qualifications,” *GLODERS Conference on Extortion Racket Systems*, 2012, 3–12.



The chart above illustrates that extortion can start from the existence of a contractual agreement. Even though there is a negotiation stage, the parties are often in an unbalanced position. In the context of P2P lending, debtors are often positioned as weak parties. The pressure on debtors is through charging multiple loan interest rates. Meanwhile, the threat is realized in the form of paying fines for those who are late in paying installments or have bad credit. P2P lending is one of financial technologies that provides excess financial inclusion for people who need the financing both for fulfilment of consumptive need and business capital.¹³ P2P lending practices in Indonesia are regulated specifically in the law on Fintech Lending Operators under the Financial Services Authority Regulation (POJK) 77/POJK.01/2016.

The fact is that in Indonesia there are many loan provider companies (LPC) that offer P2P lending, whether registered with the OJK or not. On the one hand, P2P lending can support financial inclusion, but on the other hand, it is prone to being misused as a medium for extortion or exploitation. Extortion can occur due to high loan interest or fines for late payment of installments. The debtor is responsible for returning the principal along with interest calculated per day. If a customer experiences delays in installment payments, they will also be subject to a fine calculated per day. Provisions related to limits on loan interest amounts and late fines are regulated in OJK Circular Letter (SE) No. 19/SEOJK.06/ 2023. On the one hand, this regulation provides limits on debt interest rates and late fines, but on the other hand it actually legitimizes it. Accumulation of fines for late installments calculated per day and loan interest rate will certainly add to the burden on debtors. This is what in our terms is called extortion.

The practice of extorting customers can be carried out by legal or illegal P2P lending. Illegal online loan business actors in their implementation lack transparency in providing information on the benefits and risks of the products offered so that consumers often do not understand the mechanism for calculating service fees and

¹³ S Burhanuddin, A Akbar, and M M Tajuddin, "Law Review on Fintech P2P Lending, Regulations and Its Institutions in Indonesia," *International Conference on Engineering, Technology, and Social Sciences (ICONETOS)* 3, no. 1 (2022), <http://repository.uin-malang.ac.id/15295/%0Ahttp://repository.uin-malang.ac.id/15295/1/15295.pdf>.

interest which impact on the nominal loan disbursed and the amount that must be returned. Consumers also do not know that providers charge fees for repayment of loans before maturity or for cancellation of loan applications. The impacts that arise on consumers of online loans, especially illegal online loans are interest is too high and interest continues to rise while the application changes name without notification to the borrower, and etc.¹⁴

Basically, a contract agreed to by both parties is like law for those who make it. This provision refers to the consensual principles and freedom of contract. In Indonesia, freedom of contract is one of the axioms of contract law which is based on Article 1338 paragraph (1) of Indonesian Civil Law (KUH Perdata). This principle has regulated that essentially the parties can make an agreement which can create any obligation as long as such compulsory duty is not prohibited. According the stipulation of Article 1337, cause is prohibited if it is prohibited by law or if it violates morality or public order. Such stipulation gives a description that basically all agreements can be concluded and performed by every person. An agreement which is prohibited is an agreement that contains obligation or duty on one of the parties which violates the law or morality.¹⁵ Forcing profits from multiple loan interest rates and fines for late installments calculated per day are contrary to the principles of morality.

Through P2P lending, creditors can make agreements with debtors because they are guaranteed by law. However, if creditors take advantage of loan interest, especially to an unreasonable amount, it is against the law and morality. Therefore, if this aspect does not meet the objective requirements of the agreement as contained in Article 1320, then the implication is that it is void. Because the agreement is void, the parties must immediately return the money that is due to the creditor. In several incidents, there were creditors who forced the debt to be returned along with multiple interest rates until the creditor was unable to pay (bankrupt). Debtors who do not pay debts from a reasonable agreement can be said to be in default (*wanprestasi*), so that person can be sued civilly. However, if the debtor is unable to pay the debt because he is charged multiple interest rates, then he is not in default but is a victim of extortion. Therefore, perpetrators of extortion should be subject to criminal sanctions.

The word "extortion" can mean asking for money or goods by threat or coercion. Extortion as regulated in Chapter XXIII of the Criminal Code actually consists of two types of criminal acts, namely extortion (*affersing*) and criminal acts of threat (*afdreiging*). Both types of crime have the same nature, namely an act that aims to extort other people.¹⁶ Extortion can be carried out by companies that offer P2P lending services by asking for multiple loan interest rates and fines for late installments calculated per day. However, unfortunately many law enforcement

¹⁴ Sri Wahyu Ningsih, "Implementasi Peer To Peer Lending Di Indonesia, Layanan Pembiayaan Berbasis Financial Technology," 2016.

¹⁵ Muhammad Natsir Asnawi and Edi Hudiata, "Delimitation of Freedom of Contract Principle and Judge'S Corrective Function in Assessing the Parties' Positions on an Agreement," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 29, no. 1 (2017): 150, <https://doi.org/10.22146/jmh.16889>.

¹⁶ Heri Susanto, Ramlani Lina Sinaulan, and Mohamad Ismed, "Legal Certainty Regarding the Imposition of Criminal Extortion Sanctions Involving Community Organizations (Ormas)," *Policy, Law, Notary and Regulatory Issues (Polri)* 1, no. 2 (2022): 37–54, <https://doi.org/10.55047/polri.v1i2.152>.

officials see these cases as extortion because the perpetrators are hiding behind civil agreements and the operational permits of company from the financial services authority (OJK).

Excessive interest withdrawal is often referred to as "**loan sharks**." A loan shark is a term to describe a person or entity who lends money at very high-interest rates. The word loan shark appears in the top ten trending in extortion cases. If withdrawing profits by Islamic banks is considered extortion,¹⁷ of course collecting loan interest of conventional bank or P2P lending can also be considered extortion. Apart from being charged loan interest, debtors from P2P lending are also charged fines for late installments which are calculated per day. In the Indonesian criminal law system regulated in Article 368 of the Criminal Code and Article 482 Law 1/2023, extortion that can be subject to criminal sanctions is accompanied by threats of violence. In legal philosophy perspective, creditors who exploit debtors with multiple loan interest rates and fines for late installments calculated per day can be called extortion although it arises from an agreement. This perspective looks at legal or agreements norms not only at the level of formality, but also at moral values that originate from belief. Taking advantage of loan agreements can bring benefits, but goes against religious values. In a religious moral perspective, the advantage must be built through commercial agreements, not through loan agreements. Therefore, extortion that hides behind an agreement is more dangerous than extortion itself because it is difficult to be touched by the law. If the meaning of threat in the crime of extortion is extended to not only the physical aspect but also the threat of financial fines, then perpetrators of cyber extortion through P2P lending can be punished.

In Islamic law, based on (QS.Al-Baqarah[2]:279), burdening debtors through loan interest is a form of injustice (extortion). To avoid extortion in P2P lending, debt agreements must be converted into non-commercial form. In the Islamic financial system, term P2P lending can only be used for disbursement of funds based on a debt agreement (*aqd al-qardh*) which is actually part of the non-commercial contracts (*'uqud al-tabarru'at*).¹⁸ Taking advantage of debt interest in P2P lending is part of usury (*riba*) which is prohibited in Islamic law. If financial service providers want to make a profit, the concept of P2P lending based on debt agreements must be converted into P2P financing based on commercial agreements.

Conclusion

The fact that there is a regulation that has legitimized the practice of cyber extortion through P2P lending. From a legal philosophy perspective, the charging loan interest and fines for late installments calculated daily to gain profits and avoid risks are not only unfair but also contrary to moral values originating from religion. Profits must be achieved through business agreements, not by commercializing loan. In civil law, agreements that conflict with objective requirements are null and void. The consequences of a void agreement require the parties to return their respective rights.

Loan agreements via P2P lending with interest compensation accompanied by fines are synonymous with hidden cyber extortion. It is said that, because the

¹⁷ Puspita and Thaker, "Netnography on Finance Research: The Case of Customer Blackmail in a Sharia Bank."

¹⁸ Burhanuddin, Akbar, and Tajuddin, "Law Review on Fintech P2P Lending, Regulations and Its Institutions in Indonesia."

extortion is hidden behind the agreement and regulation. Perpetrators of cyber extortion in P2P lending can be charged with the crime of extortion, if the meaning of the threat is expanded from physical threats to financial treats.

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