



## Islamic Law Review on Default and Unlawful Acts in Online Lending Practice

Fatihani Baso<sup>1</sup>  <https://orcid.org/0000-0001-8632-3211>, Ayu Kholifah<sup>2\*</sup>  <https://orcid.org/0000-0002-1060-0937>

<sup>1</sup>State Islamic Institute of Kendari, Indonesia

<sup>2</sup>UIN Saizu Purwokerto, Indonesia

Correspondence e-mail: [ayu.kholifah@gmail.com](mailto:ayu.kholifah@gmail.com)

### Abstract

Debt in Islam is a social observance with the concept of helping (*ta'awun*). The presence of information technology-based lending is an innovation that aims to provide convenience for consumers to access needs in the form of loan funds. However, the presence of these online lending has taken many victims with many debtors receiving loans experiencing greater losses due to default disputes and unlawful acts in online lending practices. Indonesia as a country with the largest Muslim population needs to review this phenomenon from the point of view of Islamic law. The goal is that the society will not only become good citizens, but also become Muslims who are obedient to the provisions of Islamic law. This research is normative legal research which is also called doctrinal legal research. Descriptive analysis will be presented through literature study techniques from secondary data in the form of library materials. The results of the study show that online loans that have a great potential to cause default disputes and unlawful acts are a madharat that must be eliminated. The reason for making it easy to provide benefits to the community must be reviewed, because eliminating harm must take precedence over achieving benefit.

**Keywords:** *default; unlawful act; online lending*

## INTRODUCTION

Technological advancement has facilitated easier economic transactions through various forms, including online lending services that can be accessed through gadgets. Technology-based financing in Indonesia is regulated in Financial Service Authority Regulation (POJK) no. 77/POJK.01/2016 on IT-based Money Lending Service as a form of financial industry development. The growth of tech-based financial transactions emerges as a challenge for Indonesia since there are many cases where people are harmed by illegal online lending services.

Since June 2021, the Ministry of Communication and Informatics of the Republic of Indonesia (Kominfo RI) has handled 447 financial technology (fintech) cases. The case significantly increased during the COVID-19 pandemic since people needed a loan to survive the pandemic (Riskinaswara, 2021). Problems in online lending services occur not only after the agreement between lender and borrower but also during the registration

process, i.e., regarding data and information validation (Wahyuni, 2021). Due to poor data validation by the online lending service provider, the borrowers' personal data were abused by other people to borrow money without the owner's consent (Tempo, 2019).

Online lending transactions begin with an agreement categorized as a debt agreement. Debt is one of the economic activities regulated by Islamic Law. One of the legal bases that allows debt transactions is Al-baqarah verse 282, which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَيْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

“O believers! When you contract a loan for a fixed period of time, commit it to writing.” (Q.S. Al-Baqarah: 282)

In the Islamic concept, debt is viewed as an agreement containing a value of ta'awun (mutual help), meaning that debt is categorized as social observance (Aziz & Ramdanyah, 2016). Debt is expected to help individuals in need. However, the fact shows that debtors suffer from greater harm after applying for online lending services. Thus, it is necessary to explore the root of problems related to online lending services, starting from the contract in accordance with the prevailing law.

A contract should adhere to the contract law and its principles. Contract law contains a set of regulations on legal relationships between parties under an agreement that may yield legal consequences of rights and responsibilities (Salim, 2017). Therefore, before agreeing with a contract, it is necessary to ensure the contract adherence to five primary principles of contract law, including the principles of freedom of contract, consensualism, good faith, legal certainty, and personality.

Legal principles serve as a foundation and guideline that determine how a law should be applied (Sinaga, 2018). Fulfillment of contract law principles is cumulative, meaning that a failure to meet one of the principles may result in a potential dispute (Kolopaking, 2013). The dispute can be related to rights and obligations. Islamic law explicitly forbids anyone to harm or to take others' rights in an unlawful manner (Q.S. Al-Baqarah: 188). Any deed that harms other parties' rights always becomes the source of a contract dispute. In general, there are two causes of a contract dispute, default and unlawful acts. Default refers to a condition where a debtor fails to perform his/her responsibility predetermined in the debt agreement (Khairandy, 2014). Failure to perform the predetermined obligation can harm another party as he/she cannot receive his/her right.

Another common source of dispute is an unlawful act, an individual behavior that violates another individual's (subjective) right or violates the prevailing regulation (Bakarbesy & Anand, 2018). The phenomenon of online loan practice has drawn public attention recently. In academic fields, several studies examine the debt law in fintech services, both from positive and Islamic legal perspectives. However, no studies specifically report the dispute causes (i.e., default and unlawful acts) in online debt agreements from an Islamic legal lens.

Existing studies focused more on discussing online loans. Previous studies have also discussed default in online loans from a range of positive legal aspects in Indonesia, one of which was conducted by Candrika Radita Putri (2018). Studies have also examined the legal protection for harmed parties in online loans. The present study took a different lens by deciphering substantive factors related to behaviors causing disputes in online loans. Prior to discussing the protection efforts, it is necessary to explore the background of disputes from Islamic legal doctrine perspectives.

Indonesia Ulema Council (MUI) has issued fatwa no. 117/DSN-MUI/II/2018 on Sharia principles of IT-based loan service. The fatwa states that an IT-based loan does not violate Islamic law as long as it applies sharia principles. The present study focuses on examining default and unlawful acts in online lending agreements from an Islamic legal perspective. The damage done due to default and unlawful acts was then analyzed based on Islamic law principles.

Based on the description above, several research problems were proposed. How does Islamic law view default and unlawful acts? What are the types of defaults and unlawful acts in online lending practice? And How does Islamic law view disputes due to default and unlawful acts in online lending practice? This study contributes to a more in-depth understanding of online lending contract disputes due to default and unlawful acts. Therefore, as a customer, the public can make proper considerations before applying for an online loan. This study is also expected to contribute to improvements in the regulation, supervision, and practice of online lending services.

## **LITERATURE REVIEW**

The practice of online lending in Indonesia has begun to develop and widely known by the public since 2016 (Situmorang, et.al, 2020). Although OJK has the authority to supervise online loans, which are specifically regulated in OJK Regulation No. 77 of 2016, the problems that exist in the practice of online loans can't be automatically overcome immediately. Various problems that arise attracted the attention of academics to do research about online loans. However, the authors have not found any research that simultaneously discusses default and unlawful acts in online lending practices from the perspective of Islamic law.

Istiqomah has conducted research related to online loans, but only used civil law studies. The results of his research suggest that debt and receivable agreements in online loans must still adhere to the terms of the agreement regulated in Article 1320 of the Civil Code (Istiqamah, 2019). Research that focuses on default was conducted by Arbra Zicki Alvandiano and Rizka in their article entitled "Legal Certainty Against Lenders Relation to Loan Recipients Defaulting in Peer To Peer Lending Transactions". The article discusses a lot about how to resolve disputes that are taken if there are parties who are in

default. It is stated that disputes can be resolved through arbitration or other dispute resolution methods determined by the online loan provider platform (Alvandiano & Rizka, 2022).

Research on default in other online loans is related to the rate of default. The level of default before and during the COVID-19 pandemic has been investigated by Risna Kartika and Mochamad Febri (2021). The rate of Default studied is associated with negligence committed by the debtor in relation to late payments over 90 days from the due date. The results of the study showed that there was an increase in the default rate after the COVID-19 pandemic. The study of default has not been reviewed at all from the perspective of Islamic law, even though debt has been regulated in fiqh muamalah. Islam gives freedom to do muamalah on the condition that it does not violate the principles of shari'ah. This is what needs to be studied more deeply about how Islamic law views various problems and disputes that arise from defaults and acts against the law in online lending practices.

Unlawful acts as the next variable studied in online lending practices are widely associated with consumer protection and are studied through positive legal juridical reviews. Eko Pratama and Abdurrahman highlight the actions of online loan service providers who abuse users' personal data and how to enforce the law. The laws and regulations that can be used to punish such unlawful acts may refer to the Consumer Protection Act (UUPK) and the Law on Information and Electronic Transactions (UU ITE) (Sinaga & Alhakim, 2022). The absence of a review of Islamic law on the unlawful act in online lending practices has convinced the author to study further.

## **METHOD**

This legal study explores a legal phenomenon, namely default and unlawful acts in online lending practice in Indonesia. This study is categorized as a normative legal study (Efendi & Ibrahim, 2016). Doctrines applied in this study originate from positive and Islamic laws, providing a comparative perspective on this phenomenon. The data used in this study were categorized as secondary data. The secondary data are ready-made and are not restricted by time and space (Soekanto & Mamudji, 1994). The data were collected using a literature study. The materials used in this study included Islamic books, journals, scientific works, and government official documents.

This normative, descriptive legal study also compared the regulations. Default and unlawful acts in loan contracts are regulated in Civil law. The present study analyzed the stipulation from an Islamic law perspective. The present study provides a comparative lens to gain a broader understanding of default and unlawful acts in online lending practices.

## RESULTS AND DISCUSSION

### 1. Default and Unlawful Acts in Islamic Law Perspective

Default belongs to the civil law domain and is regulated in the Indonesian Civil Code (KUHPPerdata) or Burgerlijk Wetboek Staatsblad 1847 no. 23 that regulates private domain interest (Yahman, 2021). Default refers to one's failure to fulfill the obligation in accordance with the agreement (Simanjuntak, 2017). In the Islamic legal system, an agreement that yields legal consequences for involving parties is known as aqd. Wahbah al-Zuhayli in his book *Fiqh Islam wa Adillatuh* specifically defines aqd as follows:

إِرْتِبَاطُ إِجَابٍ وَقَبُولٍ عَلَى وَجْهِ مَشْرُوعٍ يَثْبُتُ أَثَرُهُ فِي مَحَلِّهِ

“The attachment between ijab and qabul according to the sharia may bring legal consequences to the object of the bond.” (Yasardin, 2018)

Islamic law greatly regards every promise or ‘aqd made by an individual. Allah commands individuals to keep their promise through al-Maidah verse 1, which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

“O believers! fulfill [all] contracts.” (Q.S. Al-Maidah: 1)

This shows the importance of being amanah for a Muslim. A hadith even states that “a person is considered non-believer if he cannot be trusted and breaks a promise” (Karim, 2018). Islamic law perceives broken promises quite seriously. While positive law sees the damage only in a worldly context, Islamic law believes that breaking a promise puts one's faith at risk.

The term default does not have specific terminology in the Islamic legal context in Indonesia. Compilation of sharia Economic Laws (KHES) compiled by the Supreme Court only mentions the term broken promises by referring to Subekti (Hidayat, 2020). Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI) uses the term an-nukul, which refers to default in Fatwa no. 129/DSN/MUI-VII/2019 on Real Cost as Ta'widh due to default, issued by National Sharia Board-MUI. The term default in Indonesia refers to a condition where a party breaks a promise in a contractual relationship.

Another cause of contract disputes is unlawful acts. Civil law Code does not explicitly define the meaning of unlawful acts. However, article 1365 of the Civil Code stipulates that Every unlawful act that causes damage to another person obliges the wrongdoer to compensate for such damage (Khairandy, 2014). The term is narrowly defined as any act that violates the prevailing law or regulations (Bakarbesy & Anand, 2018).

From a broader perspective, an unlawful act (*onrechmatige daad*) is interpreted as an act that violates the prevailing law and those violating the ultimate goal of the law, i.e., to realize public interest. Thus, unlawful acts also refer to any act that contradicts propriety (Anwar, 2015). Rosa Agustina defines an unlawful act as an action that violates others' subjective rights and contradicts the obligation or authority in a social relationship.

Following Agustina's proposed definition, three aspects can be violated when an individual commits an unlawful act, including other individuals' subjective rights, the law (written/unwritten), and values or norms held by society. Subjective rights involve one's personal and property rights. Personal rights may include rights to freedom, dignity, and reputation. Meanwhile, property right refers to the right to ownership and other rights to give authority to other individuals to perform certain acts (Agustina, 2003).

In the Islamic civil law system, a subjective right is called *haqq al-adami* (right of human beings). Islamic law divides rights into two categories: Allah's rights and the right of human beings. Allah right refers to any right related to maintaining public goods, while the right of human beings refers to rights associated with personal virtue (Zanky, 2017).

Islamic law has a broader scope than positive law as it covers all life aspects, from the human relationship with their God (*hablun min Al-Allah*) to their relationship with other humans (*Hablun min an-nas*), or even their relationship with the universe (*Hablun min al-'alam*). The primary source of Islamic Law is al-Quran and Hadith. Though Islamic legal products are categorized into divine law (*samawi*) and human law (*wadh'i*) (Syofrianisda, 2021). The latter virtually aims to ground the divine law through more detailed rules according to the problems faced by human beings.

Islam condemns violations of rights and law through its sanction concepts, such as compensation (*ta'widh*), fine (*ta'zir*), and even *qishas* in criminal law context. One of the Quran verses on compensation is al-Baqarah verse 194, which reads:

فَمَنْ اَعْتَدَىٰ عَلَيْنَا فَاَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اَعْتَدَىٰ عَلَيْنَا

“So whoever has assaulted you, then assault him in the same way that he has assaulted you.” ( Al-Baqarah: 194)

Failure to meet an obligation is not necessarily a default. Likewise, violation of a stipulation is not a necessarily unlawful act. An action can only be categorized as a default or unlawful act when it meets certain criteria. The following table displays the aspects of default and unlawful act:

Table 1. Aspects of Default and Unlawful Acts

Aspects of Default	Aspects of Unlawful Act
1. Actions deviating from the agreed contract	1. An action violates others' subjective right.
2. Negligence in a non-forcing condition.	2. The action violates stipulation and/or propriety
3. Damage suffered by others.	3. Presence of intention
	4. Presence of causal relationship
	5. The presence of damage

The judge's consideration in handling default and unlawful act cases is grounded on aspects of each act. In order to determine default and unlawful acts, it is necessary to consider the actor's condition, seeing if the act is done due to negligence, intention, coercion, or other factors beyond the actor's control. Therefore, it is necessary to discover legal facts through court proof as a basis to determine the law, which is called a constitutionalizing process in civil law procedure context (Harahap, 2008).

## 2. Forms of Default and Unlawful Acts in Online Lending Practices

Default refers to a condition where debtors fail to do their obligation according to the contract. Subekti states that there are four forms of default (Subekti, 1985):

- a. Not performing obligation at all,
- b. Performing obligation but does not align the agreement;
- c. Performing the obligation late;
- d. Committing an act forbidden by the contract.

A default can be better analyzed after understanding the obligation determined in an agreement. Article 18 of OJK Regulation no. 77/POJK.01/2016 mentions two types of agreement in P2P lending practice: the agreement between the provider and the lender and between the lender and the borrower. Thus, default can involve each party in the agreement, namely the service provider and the borrower. Lenders could be individuals, legal entities, or business entities. The borrower could be individuals or legal entities, whereas the service provider should be a legal entity.

Legal relationship that emerges from the lastgeving between the lender and the service provider (Hartono & Ramli, 2018). The lender, as the fund owner, transfers authority to the service provider. One of the examples of agreement can be seen in the agreement between the lender and PT Lunaria Annua as the service provider, in which PT Lunaria Annua is authorized to represent and act on behalf of the lender to provide loan through PT Lunaria Annua's platform (Solikhah, et.al, 2020). The lender may suffer from loss when the service providers fail to return the fund in accordance with the contract.

As the agent, the service provider is responsible for any act, including loss caused by negligence or accident, as regulated in article 37 of OJK Regulation no. 77/POJK.01/2016: “The provider should be responsible for user loss that emerges due to mistake and/or negligence of director board and/or employee of the service provider.” Based on the stipulation in OJK regulation, there are several actions that can lead to loss, including:

- a. Provider's failure in properly securing personal data, transaction, data, and financial data;
- b. Provider's failure in securing its IT system;
- c. Provider’s failure in delivering accurate, honest, and clear information about the service.

Another type of default is found between the lender and the borrower. The service provider receives the authority to provide loans through its platform. Due to a power of attorney, a relationship emerges between the borrower and the service provider as the lender's representatives. As a debtor, borrowers are obliged to repay the debt in accordance with the agreement. Default related to debtor’s payment could be distinguished into several conditions:

- a. Debtors do not pay the debt at all;
- b. Debtors pay the debt, but the nominal is different from the agreement.
- c. Debtors pay the debt late;
- d. Debtors commit acts forbidden in a debt agreement.

Debtor's default in online and conventional contexts is similar. However, as online lending services offer easier requirements than the conventional ones, the risk of the debtor’s default is higher. Therefore, the service provider is responsible for performing preventive and repressive actions to avoid and mitigate the possibility of the debtor's default.

From a theoretical perspective, default represents a specific unlawful act. Nevertheless, claims on unlawful acts in contractual relationships are often considered obscure since they confuse default and unlawful acts. In this regard, M. Zamroni proposes a clear distinction between default and unlawful acts. While the former occurs without violating any prevailing regulation (Zamroni, 2020), The former covers broader scopes, an act can be considered unlawful (though it does not violate any clause in the agreement) if the act is proven to violate one’s subjective rights, law, and propriety values.

Unlawful acts found in online lending practice are commonly found after a debtor’s default. Several online lending service providers work together with the third party to collect the debt to default debtors since their responsibilities are limited to providing services to facilitate the debt transactions between creditors and debtors



(Solikhah, et.al, 2020). Unlawful acts typically occur in online lending practice include (Darmiwati & Syahfitri, 2021):

- a. Threatening acts;
- b. Applying extremely high interest rate;
- c. Personal data abuse.

One of the examples of unlawful acts can be seen in a case involving the online lending service provider, PT Vcard Technology. The problem occurred when the borrower failed to repay the debt in 30 days. The debt collector from PT Vcard Technology created a Whatsapp Group and invited people on the borrower's phone contact list. The debt collector then threatened the borrowers through that Whatsapp group (Rahatu, 2021).

This threatening act can be categorized into an unlawful act that violates Chapter VII of Law no. 11 of 2008 on Electronic Information and Transaction. Chapter VII stipulates forbidden acts in an electronic transaction, one of which is stated in article 29: "Any person who knowingly and without authority sends Electronic Information and/or Electronic Documents that contain violence threats or scares aimed personally."

The threatener in an electronic transaction can be imposed by 4-year imprisonment and/or a fine of maximum Rp. 750.000.000, - (seven hundred and fifty million rupiahs) according Article 45B UU ITE. Regarding interest rate, The Indonesian Joint Funding FinTech Association (AFPI) has made a Code of Conduct, regulating that the interest rate in online lending service should not exceed 0.8% /day. The maximum repayment should be no more than 100% of the principal loan. For instance, when a debtor applies for Rp. 2.000.000, - (two million rupiahs) loans, the maximum amount he should repay is Rp. 4.000.000, - (four million rupiahs) (OJK, 2021).

Another unlawful act is related to the debtor's personal data abuse. Though Personal Data Protection Bill has not been passed, article 31 paragraph (1) of OJK regulation no. 1/POJK.7/2013 on Financial Service Customer Protection states that: "The Business player in financial services is not allowed to give its consumer data and/or information to the third party by any means." Cases that often occurs in Indonesia related to online lending service are disputes due to default and unlawful act. The form of default and unlawful act has been regulated by the positive law. However, improved regulation and supervision are necessary to protect parties engaged in a contractual relationship in IT-based lending.

### 3. Islamic Law Perspectives on Default and Unlawful Act in Online Lending Practices.

Indonesia, as a country with the largest Muslim population, should pay attention to Islamic law perspectives on default and unlawful acts in online lending practices. IT-based lending services constitute an innovation that aims to facilitate consumers' needs in loans easier. However, it is necessary to evaluate this innovation when it leads to harm. As the prophet PBUH said “Doing harm, and reciprocating harm are not allowed (Mufid, 2019). The hadith becomes a source of principle in Islamic law, which reads:

الضَّرْرُ يُزَالُ

“Harm should be eliminated”

The principle means that everything that results in harm or misery, or other negative impacts, should be prevented or eliminated. If the online lending service aims for greater benefits for the community, it should be emphasized that eliminating harms should be prioritized over acquiring benefits.

دَفْعُ الْمَفَا سِدِّ مُقَدَّمٌ عَلَى جَابِ الْمَصَالِحِ

“Preventing harm should be prioritized over acquiring benefit”

The 7th Ijtima' Ulama held by MUI's Fatwa Commission on 9-11 November 2021 discussed and issued a recommendation regarding online lending services. It is stated that debt practice is categorized into tabarru' with the purpose of mutual help. Islam allows such agreement, as long as it applies sharia principles. Thus, from an Islamic law perspective, money-lending practice, both conventional and IT-based, is allowed as long as it is done following the sharia principle, i.e., free from riba, gharar, and/or maisir. On the contrary, any lending practice that contains elements of riba, gharar, and/or maisir is forbidden.

Default is highly forbidden in Islam. Islam highly honors promises. A person who makes a promise will be held accountable both in this world and the afterlife (Q.S. Al-Isra: 34). A Muslim is not allowed to renege promise on their promise (Q.S An-Nahl verse 91). Regarding debtor's default, the Prophet PBUH stated: “Delay in paying debts by a wealthy man is injustice” (Baqi, 2017). The hadith indicates that intentional default by debtors in debt agreement is forbidden.

Allah is the most righteous judge and knows His servants. Thus, He will not burden something beyond that they can bear (Q.S. Al-Baqarah: 286). here are several aspects that should be met to determine the type of default act and decide the sanction imposed on the perpetrators. The main aspect to consider is the actor's intention. The intention is an aspect highly considered in Islamic Law, as Prophet PBUH stated, “a

deed depends on the doer's intention, and every person will get the reward according to his intention" (Baqi, 2017). The hadith become a source of fiqh principle that reads:

الْأُمُورُ بِمَقَاصِدِهَا

"Everything depends on its intention"

The principle indicates that Islamic law does not necessarily consider failure to meet the obligation as haram. It is necessary to see the factors causing the debtor's default. A debtor may violate an Islamic law if he underestimates his obligation (Icshanuddin, 1988). A debtor who fails to meet his obligation due to unexpected condition should be given a relief. Allah says:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۗ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

"If it is difficult for someone to repay a debt, postpone it until a time of ease. And if you waive it as an act of charity, it will be better for you, if only you knew." (Q.S. Al-Baqarah: 280)

Islamic law explicitly forbids debtor's intentional default while providing relief to those who find it difficult to pay the debt. This stipulation aims to preserve the religion (hifdz al-din), soul (hifdz al-nafs), mind (hifdz al- 'aql), descent (hifdz al-nasl), and wealth (hifdz al-mal). Maqashid al-syariah is hierarchical, thus the purpose of upholding the religion should be prioritized. Islam highly recommends the provision of debt payment relief and forbids unlawful acts caused by debtors' default. A dispute can be settled through litigation and non-litigation manner. Threatening acts and spreading debtor's personal data is forbidden, as prophet says:

لَا يَحِلُّ لِمُسْلِمٍ أَنْ يُرَوِّعَ مُسْلِمًا

"It is forbidden for a Muslim to threaten another Muslims." (Misbah, 2021)

Spreading others' flaws is forbidden and is as bad as eating carcasses (Q.S. Al-Hujurat: 12). It is forbidden to eat a carcass (Q.S. Al-Ma'idah: 3), it is also forbidden to threaten to spread one's flaw when collecting debt. Another issue is related to interest, which is categorized as riba. Allah explicitly forbids riba in Al-Baqarah verse 275. The debt agreement is also called qardh, a form of agreement where a creditor gives a part of his property to debtors. This agreement aims to help debtors who are in need (Az-Zuhaili, 2011). A principle in the sharia economy stipulates that:

كُلُّ قَرْضٍ جَرَّ مَنَفَعَةً فَهُوَ رِبَا

"Every loan which attracts benefit is Riba" (Mardani, 2017)

Individuals or entities working in a loan sector should possess a social mission of helping others. In addition, society should make proper considerations when applying for an online loan. Default and unlawful acts in online lending practice can cause greater harm or even threaten the debtor's life and property. The debtor should be a

smart consumer when selecting IT-based lending services to avoid dangerous, illegal loan practices.

## CONCLUSIONS

Default is an act which does not carry out the obligations as it should be contained in the contract or is called a breach of contract. Then the unlawful act is an act which in the execution of the contract is contrary to the subjective rights of others, laws, regulations and propriety. Breach of promise in contractual relationships, both conventional contracts and sharia contracts in Indonesia in general still use the term “default”. Furthermore, unlawful acts are acts that violate haqq al-adami (right of human beings), namely rights related to personal benefit. Defaults and unlawful acts from the point of view of Islamic law have quite a serious impact, because these actions risk one's faith.

The Islamic law perspective on disputes in online lending begins with the classification of actions that can be a form of default and unlawful acts. Each of these actions certainly has elements that can result in losses to the parties in the online lending contract. Defaults that occur in online lending practices carried out by loan recipients as debtors are when the debtor fails to pay, either because it does not pay at all or pays but does not appropriate what was agreed in terms of nominal amount or timeliness. Unlawful acts in online lending practices are in the form of collecting debt with threats, loan interest that is too high and the dissemination of personal data.

Islamic law strongly condemns debtors who default intentionally. It is unlawful for people who are able but do not carry out their obligations in debt. The act of breaking a promise not only has implications for worldly losses, but also affects the faith of a Muslim. Acts against the law that cause harm and result in all forms of harm that are contrary to maqashid al-Shari'ah must be abolished starting from the cause of the act. Thus, although the practice of online lending aims to provide benefits and convenience for debtors in need, in achieving these benefits it should not bring harm.

## REFERENCES

- Agustina, Rosa, 2003, *Perbuatan Melawan Hukum*, Fakultas Hukum Universitas Indonesia, Jakarta.
- Al-Zuhaili, Wahbah, 2011, *Fiqh Islam wa Adillatuhu, Jilid 5*, Gema Insani, Jakarta.
- Anwar, Syamsul, 2015, *Pemikiran Ushul Fiqh Al-Ghazzali*, Suara Muhammadiyah, Yogyakarta.
- Bakarbesy, Leonora dan Ghansham Anand, 2018, *Buku Ajar Hukum Perikatan*, Zifatama Jawara, Sidoarjo.
- Baqi, Muhammad Fu'ad Abdul, 2017, *Al-Lu' Lu' wa Al-Marjan Shahih Bukhari – Muslim*, Elex Media Komputindo, Jakarta.

- Efendi, Jonaedi dan Johnny Ibrahim, 2016, *Metode Penelitian Hukum Normatif dan Empiris*, Kencana, Jakarta.
- Harahap, Krisna, 2008, *Hukum Acara Perdata: Mediasi, Class Action, Arbitrase dan Alternatif*, Grafiti Budi Utami, Bandung.
- Hidayat, Yusup, 2020, *Penyelesaian Sengketa Ekonomi Syariah di Indonesia*, Kencana, Jakarta
- Karim, Bustanul, 2018, *Prinsip Pembangunan Ekonomi Umat (Upaya Menggali Petunjuk Al-Qur`an Dalam Mewujudkan Kesejahteraan)*, Diandra Kreatif, Yogyakarta.
- Khairandy, Ridwan, 2014, *Hukum Kontrak Indonesia dalam Perspektif Perbandingan (Bagian Pertama)*, Cet. Ke-2, UII Press, Yogyakarta.
- Kolopaking, Anita D.A., 2013, *Asas Itikad Baik dalam Penyelesaian Sengketa Kontrak Melalui Arbitrase*, Alumni, Bandung.
- Mardani, 2017, *Hukum Sistem Ekonomi Islam*, Raja Grafindo Persada, Depok.
- Misbah, Muhammad, 2021, *Asabul Wurud: Sebab-Sebab Munculnya Hadits Nabi*, Pustaka Al-Kautsar, Jakarta.
- Mufid, Moh., 2019, *Kaidah Fikih Ekonomi dan Keuangan Kontemporer: Pendekatan Tematis dan Praktis*, Kencana, Jakarta.
- Pusat Data dan Analisa Tempo, 2019, *Perkembangan Fintech di Indonesia Jilid II*, Tempo Publishing, Jakarta.
- Salim H.S., 2017, *Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak*, Cet. Ke-12, Sinar Grafika, Jakarta.
- Simanjuntak, P.N.H., 2017, *Hukum Perdata Indonesia*, Cet. Ke-3, Kencana, Jakarta
- Soekanto, Soerjono dan Sri Mamudji, 1994, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta
- Subekti, 1985, *Hukum Perjanjian*, PT Intermedia, Jakarta.
- Yahman, 2021, *Batas Pembeda Wanprestasi dan Penipuan dalam Hubungan Kontraktual*, Jakad Media Publising, Surabaya.
- Yasardin, 2018, *Asas Kebebasan Berkontrak Syari`ah*, Prenamedia Group, Jakarta.
- Zamroni, M., 2020, *Penafsiran Hakim dalam Sengketa Kontrak: Kajian Teori dan Prektik Pengadilan*, Scopindo Media Pustaka, Surabaya.

### Journal

- Alvandiano, Arbra Zicki, and Rizka, "Kepastian Hukum Terhadap Pemberi Pinjaman Kaitannya Penerima Pinjaman Melakukan Wanprestasi Dalam Transaksi Peer To Peer Lending", *Jurnal Kertha Semaya*, Vol. 10 No. 2, 2022, 335–43. DOI: <https://doi.org/10.24843/KS.2022.v10.i02.p07>.
- Aziz, Abdul and Ramdanyah, "Esensi Utang dalam Konsep Islam", *Bisnis*, Vol. 4 No. 1, June 2016.
- Darmiwati dan Triyana Syahfitri, "Dampak Pinjaman Online bagi Masyarakat", *Communnity Development Journal*, Vol. 2 No. 3, November 2021
- Firanda, Gika Asdina, *et.all*, "Nagih Utang (Debt Collector) Pinjaman Online Berbasis Financial Technology", *Diponegoro Law Review*, Vol. 8 No. 4 2019.

- Hartanto, Ratna dan Juliyani Purnama Ramli, 2018, “Hubungan Hukum Para Pihak dalam *Peer to Peer Lending*”, *JH Ius Quia Iustum*, Volume 25 Issue 2, May 2018.
- Istiqomah, "Analisis Pinjaman Online Oleh Fintech Dalam Kajian Hukum Perdata", *Jurisprudentie*, 6.2 (2019), 291–306.
- Kartika, Risna, Mochamad Febri, and Sayidil Umam, "Tingkat Wanprestasi 90 Peer to Peer Lending Selama Pandemi COVID-19 Di Indonesia", *Akuntabilitas: Jurnal Ilmu-Ilmu Ekonomi*, 14.1 (2021), DOI: <https://doi.org/10.35457/xxx>.
- Pratama Sinaga, Eko, and Abdurrahman Alhakim, "Tinjauan Yuridis Terhadap Perlindungan Hukum Bagi Pengguna Jasa Pinjaman Online Ilegal Di Indonesia", *UNES Law Review*, 4.3 (2022), 283–96, DOI: <https://doi.org/10.31933/unesrev.v4i3.235>.
- Putri, Candrika Radita, “Tanggung Gugat Penyelenggara Peer To Peer Lending Jika Penerima Pinjaman Melakukan Wanprestasi”, *Jurist-Diction*, Vol. 1 No. 2 November 2018.
- Sinaga, Niru Anita, “Peranan Asas-Asas Hukum Perjanjian dalam Mewujudkan Tujuan Perjanjian”, *Binamulia Hukum*, Vol. 7 No. 2, December 2018
- Solikhah, Vio Yuni *et.al*, “Akibat Hukum Penyelenggara yang Wanprestasi dalam Usaha Finansial Teknologi Berbasis *Peer to Peer Lending*”, *JURNAL HUKUM*, Vo. 7 No. 2, April 2020
- Situmorang, Natal, Marthin Simangungsong, and Debora, "Pengawasan Otoritas Jasa Keuangan Terhadap Simpan Pinjam Online (Fintech)", *Jurnal Hukum PATIK*, 9.3 (2020), 147–59, DOI: <https://doi.org/10.51622/patik.v9i3.240>.
- Wahyuni, “Aspek Hukum Terhadap Pinjaman Online”, *Jurnal Hukum Ekonomi Syari'ah*, Vol. 2 No. 1 January-June 2021
- Zanky, Abdurrahman, “Perbuatan Melawan Hukum dalam Hukum Perikatan Islam dan Hukum Perikatan Positif (Studi Perbandingan), *Interest*, Vol. 12 No. 1, October 2017

### Thesis

- Icshanuddin M., 1988, *Tinjauan Hukum Islam terhadap Wanprestasi dalam Hukum Perdata*, UIN Sunan Ampel, Surabaya.

### Internet

- Majelis Ulama Indonesia, *Hukum Pinjol dan Rekomendasi Ijtima' Ulama MUI*, <https://mui.or.id/berita/32194/hukum-pinjol-dan-rekomendasi-ijtima-ulama-mui/> accessed December 10 2021
- Otoritas Jasa Keuangan, *FAQ: Kategori Umum*, <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/direktori/fintech/Documents/FAQ%20Fintech%20Lending.pdf>, accessed December 10 2021.
- Rahayu, Yayu Agustini, *Cerita Lengkap Perusahaan Fintech Ilegal yang Lakukan Penagihan Tak Manusiawi*, <https://www.liputan6.com/bisnis/read/3866011/cerita-lengkap-perusahaan-fintech-ilegal-yang-lakukan-penagihan-tak-manusiawi>, accessed December 09 2021

Riskinaswara, Leski, *Sejak Januari hingga Juni 2021 Kominfo Tangani 447 Fintech Ilegal*, <https://aptika.kominfo.go.id/2021/07/sejak-januari-hingga-juni-2021-kominfo-tangani-447-fintech-ilegal/>, accessed December 1 2021

### **Laws**

Law No. 19 Tahun 2016 concerning Amendments to Law No. 11 of 2008 concerning The Information and Electronic Transactions.

Law No. 11 Tahun 2008 concerning The Information and Electronic Transactions.

Financial Service Authority Regulation (POJK) No. 77/POJK.01/2016 on IT-based Money Lending Service IT-based Money Lending Services

Financial Service Authority Regulation (POJK) No. 1/POJK.7/2013 on Consumer Protection in the Financial Services Sector