



## Regulations, Problems, and Legal Solutions for Online Loan Agreements in Indonesia

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### Abstract

The aim of this research is first to analyze regulations regarding online loans, identify legal problems arising from online loans, and find an appropriate legal solution to resolving legal issues with online loans. The method used is normative juridical. The research results found that Indonesia already has written laws to regulate online loans, namely financial services authority regulations. However, this regulation is insufficient in resolving online lending legal problems. Normative inconsistencies, especially regarding capital sourcing regulations, Lack of technical clarity, such as in the implementation of lenders' general meetings, Heavy regulatory burdens for new market entrants (e.g., high equity requirements), Unregulated areas, including lender protection, AI/technology ethics, and secondary market mechanisms. Recommended Legal Solutions: 1) Clarification via OJK Circular Letters (SEOJK); 2) Issuance of Fintech Ethics & Technology Guidelines; 3) Establishment of Credit Risk Protection Schemes; 4) Progressive Evaluation and Stakeholder Dialogues; 5) Harmonization with Other Regulations and the P2SK Law.

## I. Introduction

Indonesia is a country of law based on the mandate of the 1945 Constitution, and the mandate in the constitution also states that national development that is implemented must aim to provide welfare to the community. National development must be carried out by building a democratic economic nuance in order to improve the business world and produce products in the form of goods and/or services that can answer the needs of the community. Activities in the business world involve legal relations between buyers and sellers regarding matters that are usually agreed upon as objects of the legal relationship which are usually stated in the form of agreements.<sup>1</sup>

<sup>1</sup> Tajuddin Noor, Masnun Masnun, and Kahfi Ambawa Alkaf, "Aspek Hukum Perjanjian Pinjaman Online," *Jurnal Hukum Al-Hikmah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 3, no. 1 (March 1, 2022): 71–82, <https://doi.org/10.30743/JHAH.V3I1.5050>.

Furthermore, the civil law book emphasizes that an agreement arises from an agreement, namely that it is explained in 1233 of the Civil Code that it is stated that an agreement arises from an agreement and because of the law. So, every relationship that occurs in society creates bonds that are caused by law or an agreement. To meet the needs of life from an economic perspective, people can make agreements with one another that regulate the rights they obtain and the obligations they must carry out, such as work contracts or cooperation agreements in business.<sup>2</sup>

However, as we enter the Industrial Revolution 4.0, more often called the digital era 4.0 in the global industrial world, sophisticated technology has become a supporter of the convenience of all activities in life.<sup>3</sup> Currently, the development of information technology is very rapid and rapid, including in Indonesia itself. The development of technology makes everyone's life easier because it is often used to process and analyze data that provides faster and more accurate information. Every agency has also started using this technological development to help their work. The same thing also happens in the business world. In the business world, it also utilizes technological developments to speed up and simplify business processes.<sup>4</sup>

The development of technology that is so close to society greatly facilitates all activities carried out by society, including in the business world. One of the impacts of technology in the business world is the existence of electronic commerce where buying and selling transactions are carried out through cyberspace.<sup>5</sup> This electronic commerce changes many ways or cultures of commerce that are usually carried out conventionally such as payment methods, access to information on goods and/or services that are traded. In addition to buying and selling goods and/or services, there is also a new breakthrough in the business world in the current era of technological development, namely the existence of technology-based financial services known as Financial Technology which is abbreviated as Fintech. One of the services provided is online money loans.<sup>6</sup>

Financial technology is a combination of an economic system and a technological system, a form of innovation currently viral in Indonesia. The emergence of financial technology, or what is usually called fintech in Indonesia, will make it easier for people in remote areas to access technology-based financial services. Several companies are working to

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<sup>2</sup> Nyoman Andhi Priyambawa et al., "Perjanjian Elektronik Pada Pinjaman Online," *Jurnal Interpretasi Hukum* 3, no. 3 (December 30, 2022): 455-60, <https://doi.org/10.55637/JUINHUM.3.3.5803.455-460>.

<sup>3</sup> Nada Ulya Qinvi and Henry Darmawan Hutagaol, "Kewenangan Pemerintah Dalam Pengaturan Pinjaman Online Di Google Play Store," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 9, no. 4 (June 25, 2022): 1271-82, <https://doi.org/10.15408/SJSBS.V9I4.26456>.

<sup>4</sup> Lisma Yana Siregar, Muhammad Irwan Padli Nasution Prodi Manajemen, and Universitas Negeri Islam Sumatera Utara, "Perkembangan Teknologi Informasi Terhadap Peningkatan Bisnis Online," *Hirarki: Jurnal Ilmiah Manajemen Dan Bisnis* 2, no. 1 (April 4, 2020): 71-75, <https://doi.org/10.30606/hjimb>.

<sup>5</sup> Shenti Agustini, Udin Silalahi, Lu Sudirman, Jonker Sihombing, Faradina Ahmad, "The Urgency of Forming Legislation Regarding Online Loans in Indonesia: Legal Protection Solutions for The Community", *Jurnal Pembaharuan Hukum* 12, no. 1 (2025) :2

<sup>6</sup> Dewi A.A. Sagung Laksmi Priyambawa Nyoman adi, Budiarta I Nyoman Putu, "Perjanjian Elektronik Pada Pinjaman Online" 3, no. 3 (2022): 1-23, <https://doi.org/https://doi.org/10.55637/juinhum.3.3.5803.455-460>.

meet people's needs, including housing costs, insurance, vehicles, and education. This is related to the increasing progress of information technology, namely the increasingly sophisticated internet, so online loans are increasingly being made in Indonesia, apart from the fact that the loan process is relatively easy and fast compared to loans from savings and loan cooperatives or banks, where sometimes the requirements are complicated and convoluted.<sup>7</sup>

Indonesia as a country of law has regulations governing online loans, namely in the POJK 40/2023 is a Financial Services Authority Regulation (POJK) that regulates Information Technology-Based Joint Funding Services. Then it is also regulated in the Civil Code which explicitly regulates the loan agreement. Based on Article 1754 of the Civil Code, it explains that "Money Lending is an agreement in which one party gives another party a number of goods that have expired with the provision that the party will return an amount of the same type and quality."

During the process of borrowing money, there is a debt incurred, namely the amount stated in the agreement. Then if there is an increase or decrease in price or value or change in currency before the repayment period, then the return of the money that has been borrowed must be adjusted to the change in the value of the currency as regulated in Article 1756 of the Civil Code.<sup>8</sup>

This money lending agreement is called a fintech agreement based on peer-to-peer lending. The parties make a fintech agreement based on the principle of freedom of contract, namely that the fintech agreement has been made in a standard manner. This money lending process will occur if the borrower has agreed to all the terms and conditions that apply in the agreement where the contents of the agreement have been made by the lender through a platform and if the borrower agrees, the borrower simply presses the agree button with the agreement as a statement of will to agree to the agreement. However, in its implementation, there are also legal problems that arise, such as the existence of a breach of contract because the borrower fails to pay off his loan. In terms of resolving this conflict or legal problem, it can be taken through litigation and non-litigation.<sup>9</sup>

Several previous studies have also discussed online loans. However, these studies examined online lending from various legal perspectives, such as business law, Islamic economic law, civil law, and consumer protection. For example, an article titled "Online Loans (Fintech) from the Perspective of Positive Law and Islamic Economic Law" examines the legality of online lending practices based on regulations from the Financial

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<sup>7</sup> Sheila Wijayanti, "Dampak Aplikasi Pinjaman Online Terhadap Kebutuhan Dan Gaya Hidup Konsumtif Buruh Pabrik," *MIZANIA: Jurnal Ekonomi Dan Akuntansi* 2, no. 2 (December 11, 2022): 230-35, <https://doi.org/10.47776/mizania.v2i2.592>.

<sup>8</sup> Tajuddin Noor, Masnun, and Kahfi Ambawa Alkaf, "Aspek Hukum Perjanjian Pinjaman Online," *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah* 3, no. 1 (2022): 71-82, <https://doi.org/10.30743/jhah.v3i1.5050>.

<sup>9</sup> Wulandani, "Perjanjian Pinjam Meminjam Fintech Dihubungkan Kata Sepakat Para Pihak Sesuai Ketentuan Pasal 1320 KUHperdata Dan Undang Undang ITE," *Yustitia* 6, no. 2 (November 30, 2020): 201-16, <https://doi.org/10.31943/yustitia.v6i2.115>.

Services Authority and Islamic law.<sup>10</sup> Another study, titled "Legal Protection for Consumers of Illegal Online Loans in Indonesia from a Civil Law Perspective," focuses on the legal protection provided to consumers who have fallen victim to illegal online loans.<sup>11</sup> This research article, meanwhile, details the legal issues arising from online agreements and offers appropriate legal solutions to address these issues.

Based on this background, this research has several objectives: first, analyzing the regulations related to online loan agreements in Indonesia and the legal problems that arise from them; second, finding the ideal legal solution to answer the legal problems related to online loan agreements in Indonesia.

## **2. Research Method**

The research method used in this study is normative juridical. This normative juridical method is supported by a statutory regulatory approach and a conceptual approach in answering research problems.<sup>12</sup> Then the type of data used is secondary data, which comes from primary legal materials consisting of the Civil Code, Law Number 8 of 1999, Law Number 11 of 2008, Government Regulation in Lieu of Law (Perpu) Number 3 of 2008, Bank Indonesia Regulation Number 19/12/PBI/2017, POJK 40/2023 is a Financial Services Authority Regulation (POJK) that regulates Information Technology-Based Joint Funding Services.

## **3. Result and Discussion**

### **3.1 Legal Problems That Arise from Online Loan Agreements in Indonesia**

Economic growth in Indonesia has experienced a very significant decline. Based on data from the Central Statistics Agency (BPS), Indonesia's economic growth in 2019 was 5.07% (Year on Year/yoy). Then in 2020 it was 2.97%.<sup>13</sup> One of the factors that caused the decline in the Indonesian economy from 2019 to 2020 was the decline in export activities to China and the United States as the largest destinations for Indonesian exports. This happened during the pandemic situation, causing export activities to also experience various obstacles.

This decline in economic growth also impacts population size, inflation rates, and the increasingly high cost of living in Indonesia. This has also led to the rise of online loans to meet social needs. This online loan is organized by a financial service provider that has been recognized and supervised by the Financial Services Authority or can be called

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<sup>10</sup> Choyrul Tsani, Fadoilul Umam, "Pinjaman Online Dalam Perspektif Hukum Positif dan Hukum Ekonomi Syariah", *Iqtishaduna: Jurnal Ilmiah Mahasiswa Jurusan Hukum Ekonomi Syariah* 5, no. 3 (2024): 299.

<sup>11</sup> I Wayan Remi Santika, I Wayan Novy Purwanto, "Perlindungan Hukum Terhadap Konsumen Pinjaman Online Ilegal di Indonesia Dalam Perspektif Hukum Perdata", *Jurnal Kertha Desa* 11, no. 12 (2023):1.

<sup>12</sup> David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum", *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 2 (2021): 1003.

<sup>13</sup> Badan Pusat Statistik, "Ekonomi Indonesia 2019 Tumbuh 5,02 Persen," , <https://www.bps.go.id/id/pressrelease/2020/02/05/1755/ekonomi-indonesia-2019-tumbuh-5-02-persen.html> , diakses pada Mei 2025.

OJK. This financial service provider provides online loan services through the Online Loan application that is connected to information technology. This online loan is carried out fully through technology from the application stage, approval to disbursement of funds which are carried out online or via SMS and/or telephone confirmation. This online loan financial service provider was present in Indonesia at the end of 2014 which was pioneered by the Fintech (Financial Technology) company. Then it began to be developed by banks and financial institutions that offer this money lending service where this financial service provider is registered and supervised by the Financial Services Authority (OJK).<sup>14</sup>

Based on the National Digital Research Center (NDRC), the term online loan is one of the technological innovations in the financial sector where the innovation in question is financial services that utilize technological developments. Simply put, Fintech is a financial services provider company that utilizes technological developments that provide many benefits to the community because all processes of providing financial services are carried out online, starting from loan applications, accessibility of accurate, adequate and fast information to disbursement of loan funds is also carried out online.<sup>15</sup>

Then, in Article 3 of Bank Indonesia Regulation Number 19/12/PBI/2017 concerning the Implementation of Financial Technology, Fintech implementation is categorized into 5, namely: "(1) Payment procedures consisting of authorization, clearing, final settlement, and payment execution, (2) A supportive market is a technological development in the financial sector by utilizing technological developments in providing access to information related to financial products and/or services, (3) Regulations on risk and investment which include the provision of online investment products and online insurance services, (4) Loans, financing and capital provision consisting of the lending and borrowing process carried out through online platforms such as Peer to Peer Lending and financing carried out by utilizing technology (crowdfunding), and (5) Other technology-based financial services include payment procedures, investment and risk management, and loans, financing and capital procurement. Based on these online-based financial services, the most popular services are loan services and/or capital provision in the form of funds. One of the products offered is a money lending service carried out through an electronic platform or usually called Peer to Peer Lending or abbreviated as P2P Lending."<sup>16</sup>

Financial services in the form of P2P Lending are growing rapidly. This is evident from data in 2017 showing that the growth of loans with the P2P Lending model in Indonesia reached 1.6 trillion rupiah with details, namely the procurement of loans outside Java increased by 1,074%, which is Rp276 billion (two hundred and seventy-six billion

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<sup>14</sup> Jeremy Zefanya Yaka Arvante, "Dampak Permasalahan Pinjaman Online Dan Perlindungan Hukum Bagi Konsumen Pinjaman Online," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 1 (February 2, 2022): 73-87, <https://doi.org/10.15294/IPMHI.V2I1.53736>.

<sup>15</sup> Rani Maulida, "Fintech: Pengertian, Jenis, Hingga Regulasinya Di Indonesia," *online-pajak.com*, November 23, 2019, <https://www.online-pajak.com/tentang-pajak-pribadi/fintech>.

<sup>16</sup> Windy Sonya Novita and Moch. Najib Imanullah, "Aspek Hukum Peer to Peer Lending (Identifikasi Permasalahan Hukum Dan Mekanisme Penyelesaian)," *Jurnal Privat Law* 8, no. 1 (February 2, 2020): 151, <https://doi.org/10.20961/privat.v8i1.40389>.

rupiah). This is supported by an increase in the number of lenders outside Java by 784% and an increase in the number of borrowers by 745%).<sup>17</sup>

Indonesia is a country of law, so in responding to the development of online fund procurement or borrowing services, Indonesia has explicitly regulated it in POJK 40/2023 is a Financial Services Authority Regulation (POJK) that regulates Information Technology-Based Joint Funding Services. Based on this regulation, it explains that "financial services in the procurement of funds in the form of online loans are an online platform that brings together lenders and borrowers to carry out the loan agreement online. This also shows that P2P Lending is a new breakthrough in current technological developments because it provides many conveniences for the community in financial services."<sup>18</sup>

Then, in terms of making an online loan, it is also stated in the agreement. Regarding agreements, it is regulated in the Civil Code, namely in Article 1320, namely that the legal conditions for an agreement must fulfill 4 (four) elements, namely:

1. Agreements made by the parties are binding on the parties who make them;
2. The parties making the agreement are parties who are legally competent to act on their own behalf
3. The agreement made contains a certain object/point that is being agreed upon
4. What is agreed does not conflict with statutory regulations

Financial services in the form of lending or procuring funds are also regulated in the Civil Code, namely Article 1754, which states "Lending and borrowing is an agreement by which one party provides an item to another party in a certain amount that has been used up due to its use, with the provision that the latter party will return the same amount, both in type and terms."

The provisions of Article 1754 of the Civil Code indicate that "someone who lends a certain amount of money or goods to another party will pay back the same amount following the agreed agreement." Article 1763 of the Civil Code states that "anyone who receives a loan must return it in the same amount and condition and at the specified time."

The Civil Code has regulated electronic money lending agreements. This is regulated in Articles 1759 to 1761, namely as follows:

- a. Money that has been handed over to a debtor as a loan. Before the time specified in the agreement has passed, the creditor cannot ask for it back.
- b. If the loan agreement does not specify a time period and the creditor demands debt repayment, the method is to file a civil lawsuit in court. Based on Article

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<sup>17</sup> Adi Setiadi Saputra, "Perlindungan Terhadap Pemberi Pinjaman Selaku Konsumen Dan Tanggung Jawab Penyelenggara Peer To Peer Lending Dalam Kegiatan Peer To Peer Lending Di Indonesia," *Veritas et Justitia* 5, no. 1 (2019): 238-61.

<sup>18</sup> Rodes Ober Adi Guna Pardosi and Yuliana Primawardani, "Perlindungan Hak Pengguna Layanan Pinjaman Online Dalam Perspektif Hak Asasi Manusia," *Jurnal HAM* 11, no. 3 (December 11, 2020): 353, <https://doi.org/10.30641/HAM.2020.11.353-368>.

1760 of the Civil Code, the judge is given the authority to determine the debt repayment period, taking into account the debtor's condition and giving him leeway to pay the debt.

- c. If the agreement stipulates that the debtor will return the debt once he can pay it, the creditor must also demand the return of the debt through court. The judge, after considering the debtor's situation, will determine the time for the return (Article 1761 of the Civil Code)

The legal provisions that accommodate online or online agreements are still the same as those governing conventional agreements. This means online contracts are still subject to the provisions governing direct or conventional agreements, namely the Civil Code. In an online agreement, the parties do not need space to execute the agreement physically. The online agreement signing process is carried out with a proper electronic document and can be declared valid if the relevant parties add their signatures. The signature used in the agreement is an electronic signature.

The electronic signature is considered valid according to law if it complies with the requirements stipulated in Article 11 of the Electronic Transaction Information (ITE) Law. In principle, online lending and borrowing agreements do not bring parties together, but the loan organizer connects the lender and loan recipient. This means that the evidence and collateral used in the agreement will be submitted online.

Based on the description above, online money lending and borrowing agreements are legally valid because the provisions remain subject to Articles 1320 and 1338 of the Civil Code as long as the agreement does not violate the legal requirements stipulated in Article 1320.<sup>19</sup> The following are some of the changes that have occurred from the old financial services authority regulations to the new regulations:

**Table 1.**

**Changes regulated in POJK No. 40/2023**

<b>Aspect</b>	<b>POJK 10/2022</b>	<b>POJK 40/2023 (<i>effective from 2024</i>)</b>
<b>Funding Limit</b>	IDR 2 billion	IDR 2 billion; up to IDR 5 billion subject to NPL & compliance criteria
<b>Legal Entity Type</b>	Not explicitly regulated	Must be a Limited Liability Company (PT) or a Cooperative
<b>Minimum Equity</b>	Not regulated	Minimum equity of IDR 12.5 billion is mandatory

<sup>19</sup> Adela Pitri Yani Dewi and Taun, "Tinjauan Yuridis Sistem Perjanjian Pinjaman Online Berdasarkan Kitab Undang-Undang Hukum Perdata," *Jurnal Ilmiah Wahana Pendidikan*, Januari 9, no. 2 (2023): 7-13, <https://doi.org/10.5281/zenodo.7563495>.

Aspect	POJK 10/2022	POJK 40/2023 ( <i>effective from 2024</i> )
<b>Source of Capital</b>	Not specified	Borrowed funds are prohibited as capital; conversion of loans into equity is allowed
<b>Lenders' General Meeting</b>	Not required	Mandatory; governance procedures to be set by the platform operator
<b>Borrower's Domicile</b>	Not clearly defined	Must be domiciled in Indonesia
<b>Risk Management</b>	General minimal standards	Clearly regulated: includes risk analysis, identity verification (KYC), and collection procedures

*Source: POJK 10/2022 and POJK No. 40/2023*

Furthermore, in Financial Services Authority Regulation Number 40 of 2023, there are still several weaknesses, namely as follows:

**Table 2.**

**Weaknesses in Financial Services Authority Regulation Number 40 of 2023**

No. Weakness	Description
1. <b>Inconsistent Regulation</b>	<b>Capital</b> Article 8 prohibits loan funds as capital, yet Article 58(4)(c) allows loan-to-equity conversion – creating legal ambiguity.
2. <b>Unclear General Mechanism</b>	<b>Lenders' Meeting</b> No technical guidance on frequency, voting procedures, or roles of retail vs institutional lenders – may confuse new platforms and investors.
3. <b>High Minimum Equity Requirement</b>	The IDR 12.5 billion equity threshold may be burdensome for startups, potentially limiting financial inclusion and market entry.
4. <b>Borrower Restriction</b>	<b>Domicile</b> Only borrowers domiciled in Indonesia are eligible – this limits regional expansion and global competitiveness.
5. <b>Lack of Lender Risk Protection</b>	No clear framework for credit insurance, guarantee funds, or structured risk mitigation – lenders fully bear the default risk.



No.	Weakness	Description
6.	<b>No Regulation on AI and Fintech Ethics</b>	The POJK lacks rules on the use of AI in credit scoring or collections – potential issues around data ethics and algorithmic bias remain unaddressed.
7.	<b>No Secondary Market Framework</b>	There is no provision for loan trading between lenders – limiting liquidity and exit options for investors.

Source: The author's analysis

Based on this explanation, it can be seen that Indonesia already has regulations governing online loan agreements, but there are still various legal problems with these online loan agreements. Based on OJK data as of September 30, 2022, there were 2,019 complaints related to online loans; these complaints included the behavior of billing officers or debt collectors, loan disbursement without the applicant's consent, threats of sharing personal data, fraud, interest problems, fines and penalties, and transaction failures or delays.<sup>20</sup>

The development of electronic money lending has also raised various legal issues, because there have been many cases of violations of the law from the development of online lending. Some cases that arise from electronic lending include the distribution of personal data of consumers, namely debtors, this is certainly contrary to Article 32 in conjunction with Article 48 of the ITE Law and Article 65 paragraph 2 in conjunction with Article 67 paragraph 2 of the Personal Data Protection Law. Then there is also the emergence of debt collection cases carried out by lenders to borrowers which are carried out in an intimidating manner, this also contradicts Article 368 of the Criminal Code and Article 29 in conjunction with Article 45 of the ITE Law, Article 378 of the Criminal Code and Article 28 paragraph 1 in conjunction with Article 45 paragraph 2 of the ITE Law. Then it also raises cases of electronic sexual harassment, this also contradicts Article 27 paragraph 1 in conjunction with Article 45 Paragraph 1 of the ITE Law.

This data is also supported by data in figures. Based on data from various Legal Aid Institutions, in 2021 there were 7,200 public reports regarding online loan problems, complaints from the public were made via email or consultation complaints.<sup>21</sup>

### 3.2 Ideal Legal Solution for Responding to Legal Problems Related to Online Loan Agreements in Indonesia

Indonesia does have regulations governing electronic money lending which are specifically regulated in the financial services authority regulations or abbreviated as

<sup>20</sup> Rika Anggraeni, "Pengaduan Membludak, OJK Panggil Direksi Pinjol," October 7, 2022, <https://finansial.bisnis.com/read/20221007/563/1585341/pengaduan-membludak-ojk-panggil-direksi-pinjol>.

<sup>21</sup> Tatang Guritno and Dani Prabowo, "LBH Jakarta Terima 7.200 Laporan Masyarakat Terkait Masalah Pinjaman 'Online,'" *Kompas.Com*, December 11, 2021, [https://nasional.kompas.com/read/2021/11/12/13354671/lbh-jakarta-terima-7200-laporan-masyarakat-terkait-masalah-pinjaman-online#google\\_vignette](https://nasional.kompas.com/read/2021/11/12/13354671/lbh-jakarta-terima-7200-laporan-masyarakat-terkait-masalah-pinjaman-online#google_vignette).

POJK. However, the POJK regulations only regulate technical matters. If referring to the type or meaning of state regulations, they can be broadly divided into several groups, namely laws and regulations, policy regulations and provisions. Included in this is a set of laws and regulations in the hierarchy of laws and regulations as regulated in Law Number 12 of 2011 concerning laws and regulations.<sup>22</sup>

The regulations related to laws and regulations in Indonesia are regulated in Law Number 13 of 2022 concerning the Formation of Legislation. The concept of the sequence of levels or levels of statutory regulations (legal norms) was put forward by Hans Kelsen, namely the Stufenbautheorie theory. According to Hans Kelsen, law is hierarchical. This means the law must not conflict with provisions of a higher level. The stratification of legal degrees is as follows: the lowest is the court's decision, the top is laws and customs, the top is the constitution, and the top is grundnorm. Kelsen made a legal interpretation related to meta-juridical matters. What is meant by meta-juridical matters is regarding the law that should be (*das sollen*). Simply put, Kelsen wanted to state that the law is always formed according to the will and needs. Therefore, the law will be made and binding if society wants it to exist. The law referred to by Kelsen is a law that is made in writing and made by an authorized institution.<sup>23</sup>

The Stufenbautheorie rules, as stated by Hans Kelsen, are contained in the hierarchy of statutory regulations in Article 7, paragraph (1) of the Law Concerning Legislative Regulations. "The types and hierarchy of statutory regulations consist of:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Law/Government Regulation in Lieu of Law;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regional Regulations; And
- g. Regency/City Regional Regulations."

However, Article 8 also regulates regulations whose legal force is recognized outside the statutory hierarchy as regulated in Article 7. Based on the descriptions above, POJK can qualify as a statutory regulation outside the hierarchy and have a binding force. This is because POJK has the nature and form of statutory regulations and was formed by OJK, which is a state institution formed based on the OJK Law so that OJK has the authority to create regulations as regulated in Article 8 paragraph (1) of the Law Concerning Legislative Regulations. Invitation.

The implementation of online loans needs to be regulated in special laws (*lex specialis*), not just technical regulations in the form of POJK, which cannot yet regulate all online loans. So, with a special law, it is hoped that it can regulate all online loans, both legal and illegal online loans. Online loan customers are still weak, and consumers suffer a lot

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<sup>22</sup> I Gde Pantja Astawa and Suprin Na'a, *Dinamika Hukum Dan Ilmu Perundang-Undangan Di Indonesia* (Bandung: Alumni, 2008).

<sup>23</sup> FX. Adji Samekto, "Menelusuri Akar Pemikiran Hans Kelsen Tentang Stufenbeautheorie Dalam Pendekatan Normatif-Filosofis," *Jurnal Hukum Progresif* 7, no. 1 (April 30, 2019): 1, <https://doi.org/10.14710/hp.7.1.1-19>.

because sanctions against online loan providers who violate the provisions of POJK Number 10/POJK.05/2022 are only subject to administrative sanctions as regulated in Article 15 administrative sanctions. In the form of: "(1) written warning; (2) restrictions on business activities; and/or (3) license revocation."

So, in the future, it is necessary to form a special law regarding online loans that can criminally ensnare problematic borrowers. This law would have a deterrent effect on loan sharks who violate the rules.

The formation of special regulations regarding online loans in the form of "laws" is urgent in providing a sense of legal certainty to the public and is expected to have a deterrent effect on perpetrators. Legal certainty is needed in the creation of laws and regulations because legal certainty is the main principle of various supremacy principles in Law.<sup>24</sup>

Therefore, the formation of a special law to regulate electronic money lending is believed to have become a community need and can be an answer to legal certainty for the community. This is in line with the Theory of Legal Certainty by Hans Kelsen which emphasizes that laws made in writing by the authorized institution must emphasize and realize the will of the community and emphasize aspects that "should" be expected by the community. Kelsen also emphasized in his theory that law is the result of human actions that are deliberative in nature. Laws made in written form and are deliberative in nature must function as guidelines for society in behaving. Therefore, with the existence of these rules and the implementation of these rules, legal certainty arises. So the formation of a special law on electronic money lending is believed to be able to provide a sense of legal certainty to the community because electronic lending services have developed rapidly and there are no legal regulations that specifically regulate this matter.<sup>25</sup>

#### 4. Conclusions

POJK No. 40 of 2023 is a progressive step in regulating fintech-based peer-to-peer (P2P) lending services in Indonesia. However, it still contains several weaknesses that may result in legal uncertainty and practical obstacles. The main issues include: Normative inconsistencies, especially regarding capital sourcing regulations, Lack of technical clarity, such as in the implementation of lenders' general meetings, Heavy regulatory burdens for new market entrants (e.g., high equity requirements), Unregulated areas, including lender protection, AI/technology ethics, and secondary market mechanisms. Recommended Legal Solutions: 1) Clarification via OJK Circular Letters (SEOJK); 2) Issuance of Fintech Ethics & Technology Guidelines; 3) Establishment of Credit Risk Protection Schemes; 4) Progressive Evaluation and Stakeholder Dialogues; 5) Harmonization with Other Regulations and the P2SK Law.

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<sup>24</sup> Samudra Putra Indratanto, Nurainun Nurainun, and Kristoforus Laga Kleden, "Asas Kepastian Hukum Dalam Implementasi Putusan Mahkamah Konstitusi Berbentuk Peraturan Lembaga Negara Dan Peraturan Pemerintah Pengganti Undang-Undang," *DiH: Jurnal Ilmu Hukum* 16, no. 1 (January 24, 2020): 88-100, <https://doi.org/10.30996/dih.v16i1.2729>.

<sup>25</sup> *Ibid*, n.d.

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## **Laws and Regulations**

The 1945 Constitution of the Republic of Indonesia  
Civil Code

Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011  
concerning the Formation of Legislation

Regulation of the Financial Services Authority of The Republic of Indonesia Number 40  
Of 2024 Concerning Information Technology-Based Joint Funding Services

Regulation of The Financial Services Authority of The Republic of Indonesia Number 10  
/Pojk.05/2022 Concerning Information Technology-Based Joint Funding Services