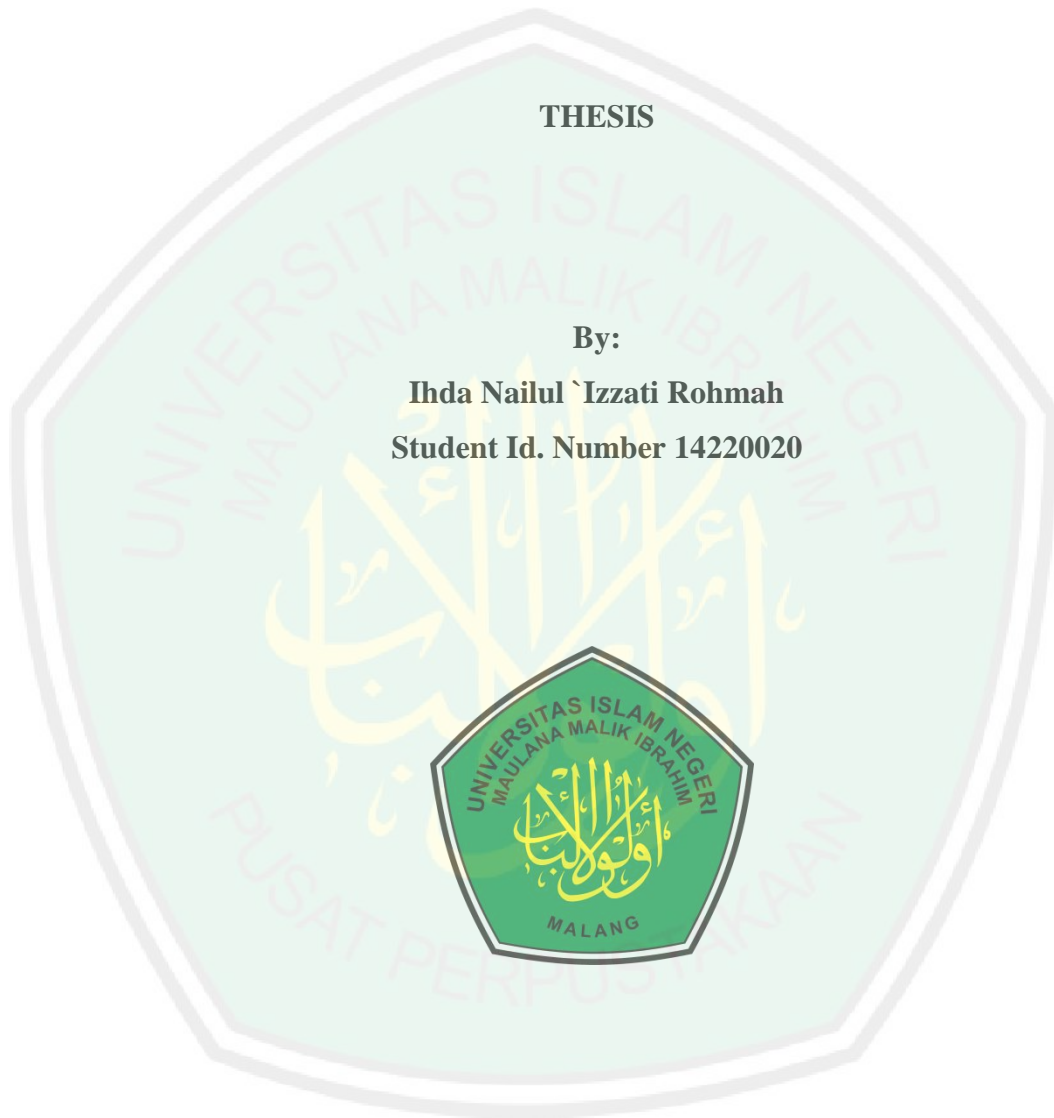


**CONTRACT ON ONLINE LENDING TRANSACTION BASED
ON THE RULES OF LENDING SERVICES USING
INFORMATION TECHNOLOGY AND *MASLAHAH*
*MURSALAH***

THESIS

By:

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Student Id. Number 14220020**



**SHARIA ECONOMIC LAW (MUAMALAH) DEPARTMENT
SHARIA FACULTY
STATE ISLAMIC UNIVERSITY OF
MAULANA MALIK IBRAHIM MALANG**

2020

**CONTRACT ON ONLINE LENDING TRANSACTION BASED
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INFORMATION TECHNOLOGY AND *MASLAHAH*
*MURSALAH***

THESIS

Presented to

Sharia Faculty of State Islamic University of Maulana Malik Ibrahim, Malang
in Partial Fulfillment of the Requirements
for the Bachelor Degree of Law (S.H.)

By:

Ihda Nailul 'Izzati Rohmah



**SHARIA ECONOMIC LAW (MUAMALAH) DEPARTMENT
SHARIA FACULTY
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MAULANA MALIK IBRAHIM MALANG**

2020

STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

CONTRACT ON ONLINE LENDING TRANSACTION BASED ON THE RULES OF LENDING SERVICES USING INFORMATION TECHNOLOGY AND MASLAHAH MURSALAH

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid

Malang, 2 April 2020
Author,



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CONTRACT ON ONLINE LENDING TRANSACTION BASED ON THE RULES OF LENDING SERVICES USING INFORMATION TECHNOLOGY AND MASLAHAH MURSALAH

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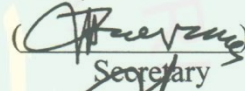
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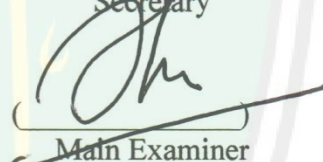
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2	Wednesday, 14 th August 2019	Chapter I	
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MOTTO

أَلَمْ تَرَ أَنَّ الْفُلُكَ تَجْرِي فِي الْبَحْرِ بِنِعْمَتِ اللَّهِ لِيُرِيَكُمْ مِنْ آيَاتِهِ إِنَّ فِي

ذَٰلِكَ لَآيَاتٍ لِّكُلِّ صَبَّارٍ شَكُورٍ ﴿٣١﴾

“Do you not see that ships sail through the sea by the favor of Allah that He may show you of His signs? Indeed in that are signs for everyone patient and grateful”

(Q.S. Luqman: 31)

“Every destination requires struggle. Every struggle requires sacrifice. Every sacrifice requires patience. Every patience has a port called submission. And as most as the port is anchored back to Allah SWT.”

(Kn_18)

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All praise due to Allah, the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His Grace and Guidance, this thesis entitled “Contract On Online Lending Transaction Based On The Rules Of Lending Services Using Information Technology And *Maslahah Mursalah*” could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (saw) who had brought us from darkness into the light, in this life. May we be together with those who believe and receive intercession from Him in the day of Judgement. Amîn.

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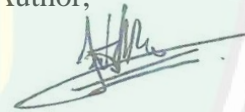
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Hopefully, by imparting what has been learned during the course of study in the Faculty of Sharia of State Islamic University, Maulana Malik Ibrahim Malang, it will benefit all readers and the author himself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far from perfection, the author appreciates constructive criticism and suggestions for the improvement and betterment of this thesis.

Malang, April 2020
Author,



Ihda Nailul 'Izzati Rohmah
SIN. 14220020

TRANSLITERATION GUIDANCE

A. General

The transliteration guidance used by Sharia Faculty, The State Islamic University, Maulana Malik Ibrahim of Malang is EYD (Ejaan Yang Disempurnakan). This usage based on Joint Decree (SKB/Surat Keputusan Bersama) Minister of Religious and Minister of Education and Cultural of Republic of Indonesia, dated January 22, 1998, Number 158/1987 and 0543. b/U/1987, as printed on A Guide Arabic Transliteration, INIS Fellow 1992.

B. Consonants

Arabic	Latin	Arabic	Latin
ا	Does not symbolized	ض	dl
ب	b	ط	th
ت	t	ظ	dh
ث	ts	ع	‘ (facing up coma)
ج	j	غ	gh
ح	h	ف	f
خ	kh	ق	q
د	d	ك	k

ذ	dz	ل	l
ر	r	م	m
ز	z	ن	n
س	s	و	w
ش	sy	هـ	h
ص	sh	ي	y

Hamzah () which is usually represented by alif, when located on the beginning of word, the transliteration follows the vocal and does not symbolized. However, when located on the middle or on the end of word, its symbolized by facing up coma ('), opposite to coma (') of the symbolize of “ع.”

C. Vocal, Length, and Diftong

Every written of Arabic text in Latin form, vocal of *fathah* written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas every length vowel of it written by:

Elongated (a) vowel = â example قَالَ becomes qâla

Elongated (i) vowel = î example قِيلَ becomes qîla

Elongated (u) vowel = û example دُونَ becomes dûna

Specially for *ya' nisbat* pronunciations, it cannot be replaced by “*r*”, but still written by “*iy*” in order to presenting *ya' nisbat* at the end, also for *diftong* sound, *wawu* and *ya'* after *fathah* written by “*aw*” and “*ay*”. Look at to the examples:

Diftong (aw) = قول example becomes *qawlun*

Diftong (ay) = خير example becomes *khayrun*

D. *Ta'marbuthah* (ة)

Ta' marbûthah transliterated to “*t*” if located on the middle of word, but if transliterated to “*h*” if located on the end of word, for example الرسالة للمدرسة becomes *alrisâlat li al-mudarrisah*, or transliterated to “*t*” which continued with the next sentence if located on the middle of words which constitutes *mudlaf* and *mudlaf ilayh*, for example في رحمة الله becomes *fî rahmatillâh*.

E. Auxiliary Verb and *Lafdh al-Jalâlah*

Auxiliary verb “*al*” (ال) written with lowercase character, unless located on the beginning of sentence, while “*al*” in *lafadh jalâlah* which located on the middle of two words or being or become *idhafah* is eliminated. Look at to the examples:

1. Al-Imâm al-Bukhâriy says ...
2. Al-Bukhâriy in *muqaddimah* of his book explains ...

3. *Masyâ' Allâh kâna wa mâ lam yasya' lam yakun.*

4. *Billâh 'azza wa jalla.*



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ABSTRAK

Ihda Nailul ‘Izzati Rohmah, 14220020, 2020. ***Kontrak pada Pinjaman Online berdasarkan Aturan Layanan Pinjam Meminjam Berbasis Teknologi Informasi dan Masalah Mursalah***. Skripsi, Jurusan Hukum Ekonomi Syariah (Muamalah), Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Prof.Dr.H. Mohamad Nur Yasin, S.H., M.Ag.

Kata Kunci : Kontrak, Pinjaman Online, Hukum Transaksi Online, *Masalah Mursalah*

Transaksi Pinjaman online merupakan transaksi pinjam meminjam uang melalui sebuah aplikasi dan dapat diakses oleh siapa saja dan dimana saja dengan memanfaatkan teknologi informasi yang dilakukan secara online. Namun, transaksi pinjaman online menyebabkan berbagai masalah dalam penggunaannya. Hal tersebut disebabkan oleh kurang jelasnya perjanjian (akad) yang dibuat pemilik aplikasi yang menimbulkan kerugian pada nasabah. Penelitian ini dibuat bertujuan untuk mengetahui mekanisme akad pada transaksi pinjaman online apabila dilihat dari perspektif Aturan Layanan Pinjam Meminjam Berbasis Teknologi Informasi dan *Masalah Mursalah*.

Penelitian ini menggunakan metode penelitian Normatif dengan pendekatan Kualitatif menggunakan Kajian Pustaka. Analisis data dengan cara mendeskripsikan data melalui bentuk kata dan digunakan untuk menafsirkan dan menginterpretasikan data hasil penelitian.

Hasil penelitian diperoleh, Prinsip yang terkandung dalam kontrak pinjaman online (dalam syarat dan ketentuan) sebagian besar sesuai dengan prinsip akad. Jenis akad yang digunakan adalah akad standar. Dalam Islam, standar akad dapat diterapkan selama itu berisi prinsip keadilan. Akad tersebut akan sah apabila kedua belah pihak sama-sama bersedia “an-Taradin” atau Rida untuk kesepakatan tersebut. Mekanisme yang digunakan sudah sesuai dengan apa yang ada dalam aturan POJK/No.01/2016. Berdasarkan Masalah Mursalah, Perjanjian Pinjaman Online tidak disalahkan atau dibenarkan, karena dalam masalah ini berisi masalah individu yang dapat menjadi masalah banyak orang. Selain itu, tidak ada aturan khusus yang mengatur isi kontrak dalam pinjaman online. Namun, pemilik Aplikasi atau pemilik dana dalam pinjaman online perlu menuliskan sanksi untuk penundaan dan pelanggaran pada kesepakatan agar nasabah tidak dirugikan. Sedangkan pengguna haruslah sangat teliti dalam membaca ketentuan, syarat maupun disclaimer resiko sebelum menyetujui transaksi.

ABSTRACT

Ihda Nailul 'Izzati Rohmah, 14220020, 2020. ***Contract On Online Lending Transaction Based On The Rules Of Lending Services Using Information Technology And Maslahah Mursalah***. Thesis, Sharia Economic Law (Muamalah), Sharia Faculty, State Islamic University of Maulana Malik Ibrahim Malang. Supervisor: Prof.Dr.H. Mohamad Nur Yasin, S.H., M.Ag.

Key Words: Contract, Online Lending, Online Transaction Law, *Maslahah Mursalah*

Online loan transactions are borrow money borrowed transactions through an application and can be accessed by anyone and anywhere by utilizing information technology that is done online. However, online lending transactions cause various problems in their use. This is due to the unexplained agreement (*akad*) that the owner of the application inflict losses on the customer. The research was made aimed at knowing the mechanism of Agreement on online loan transactions when viewed from the Rules Of Lending Services Using Information Technology and *Maslahah Mursalah* perspective.

This research uses normative research methods with qualitative approaches using the literature review. Analyze data by describing the data by word form and used to interpret and interpret the research result data.

The results of the study were obtained, the principles that are contained in the online Pinjaman contract (in terms and conditions) are largely in accordance with the principle of the agreement. The type of contract used is the standard contract. In Islam, the *akad* standard can be applied as long as it contains the principle of justice. The agreement would be legitimate for both parties to be equally willing "an-Taradin" or Rida for the deal. The mechanisms used are in accordance with what is in the rules of POJK/No.01/2016. Based on *Maslahah Mursalah*, Online lending agreement is not blamed or justified, because in this issue it contains an individual problem that can be a problem many people. In addition, there are no specific rules governing the contents of contracts in loans online. However, the application owner or the owner of the fund in an online loan must write sanctions for delays and violations of the agreement so that the customer is not harmed. While the user must be very thorough in reading the terms, conditions or risk disclaimer before agreeing to the transaction.

مخلص البحث

إحدى نيل العزة رحمة، 2020، 14220020، عقد على معاملات الإقراض عبر الإنترنت بناء على قواعد خدمات الإقراض باستخدام تكنولوجيا المعلومات و مصلحة المرسلة. قسم الإقتصادي الشريعة (معاملة)، كلية الشريعة و جا معة الحكومية "مولان مالك إبراهيم" مالنج، المشرف: الأستاذ الدكتور الحج محمد نور يسن، المحستير.

الكلمات الرئيسية: العقد، قرض عبر الإنترنت، قانون المعاملات عبر الإنترنت، المصلحة المرسلة.

معاملات القروض عبر الإنترنت هي معاملات اقترض الأموال المقترضة من خلال تطبيق ويمكن الوصول إليها من قبل أي شخص وفي أي مكان من خلال استخدام تكنولوجيا المعلومات التي تتم عبر الإنترنت. ومع ذلك، تسبب معاملات القرض عبر الإنترنت مشاكل مختلفة في استخدامها. ويرجع ذلك إلى الاتفاق (العقد) غير المبرر الذي يفرض على صاحب الطلب خسائر في العمل. وقد أجرى البحث بهدف معرفة آلية الاتفاق بشأن معاملات القروض عبر الإنترنت عند النظر إليها من منظور قواعد خدمات الإقراض باستخدام تكنولوجيا المعلومات و المصلحة المرسلة. يستخدم هذا البحث أساليب البحث المعيارية مع النهج النوعية باستخدام مراجعة الأدب. تحليل البيانات عن طريق وصف البيانات حسب نموذج الكلمة واستخدامها لتفسير وتفسير بيانات نتائج البحث.

تم الحصول على نتائج الدراسة ، والمبادئ الواردة في عقد بينجمان على الانترنت (من حيث والشروط) تتفق إلى حد كبير مع مبدأ الاتفاق. نوع العقد المستخدم هو العقد القياسي. في الإسلام، يمكن تطبيق معيار العقد طالما أنه يحتوي على مبدأ العدالة. وسيكون الاتفاق مشروعاً لكلا الطرفين ليكونا على نفس القدر من الاستعدادا "أن الترضن" أو رضا للاتفاق. الآليات المستخدمة تتفق مع ما هو موجود في القواعد POJK/No.11/2016. بواسطة مصلحة المسئلة، لا يتم إلقاء اللوم على اتفاقية القرض عبر الإنترنت أو تبريرها ، لأنه في هذه المشكلة يحتوي على مشكلة فردية يمكن أن تكون مشكلة كثيراً من الأشخاص. وبالإضافة إلى ذلك، لا توجد قواعد محددة تحكم محتويات العقود في القروض عبر الإنترنت. ومع ذلك ، يجب على مالك الطلب أو مالك الصندوق في قرض عبر الإنترنت كتابة عقوبات على التأخير وانتهاكات الاتفاقية حتى لا يتعرض العميل للضرر. في حين يجب أن يكون المستخدم دقيقاً جداً في قراءة الشروط أو الشروط أو إخلاء المسؤولية عن المخاطر قبل الموافقة على المعاملة.



CHAPTER I

INTRODUCTION

A. Background of Research

Today's technological era, humans are very difficult to separate from technological advances in their daily lives. The law also cannot be released from human lives aimed at maintaining their existence in the use of technology.¹ The change forced to change the pattern of people's lives from the time before the technology era, they have engaged with each other with a direct face-to-face, But all became different, when the technology evolved so rapidly.

¹ Edmon Makarim, *Kompilasi Hukum Telematika*.(Jakarta: Raja Grafindo Persada, 2003) Hal.VII

The meaning of "business" is broader than "commerce", Because the scope of business activities is not just trading, But covers broader areas such as production, processing, distribution, trade/marketing, export, import, procurement of goods/services, labor recruitment, business consulting services, creditors, credit guarantees, insurance, cooperation Business, investment, mass media, property, etc. Business activities conducted using electronic media called Electronic Business (e-business), While the trade made using electronic media is called electronic commerce (e-commerce).²

Online Business and e-commerce are closely related to electronic transactions or can also be called with business transactions using electronic media. The definition of "business transaction" is broader than "payment transaction", As business transactions are related to seller and buyer's actions to conduct assessment, Negotiation, trading agreement until settlement of transactions in the form of payment by buyer and submission of transaction object by seller. . Electronic transactions must also be based on contracts/agreements with the form of conventional contracts or electronic contracts (e-contracts).

Allah said on Holly Quran, Surah Al Baqarah verse of 282 about how to make a good contract :

² Cita Yustisia Serfiyani, R. Serfianto D. Purnomo dan Iswi Hariyani,, *Bisnis Online dan Transaksi Elektronik*, (Jakarta: PT Gramedia Pustaka Utama, 2013) hal. 9

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَيْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ
بِالْعَدْلِ وَلَا يَأْب كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ
اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ
يُمْلِئَ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ ...

“O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice...”³

Based on the verse can be that procedures for dealing with qard transactions or debt accounts receivable. One of the procedures for contracting which is explained by the verse is by writing the contents of the contract (akad). This is done so that the parties are aware of the content of the agreed an agreement.

The Romans (*Corpus Iuris Civilis*) formulate that the basic rule of law is to live appropriately, not harm others, and give others what it belongs to (*Juris pracepta sunt haec: honeste vivere, alterum non leadere, suum cique tribuere*).⁴ In addition to determining the laws or conditions, Also pay attention to the nature of these provisions. A specially made provision will always waive the general provisions (*Lex specialist*

³ Holly Qur'an, *Al-Baqarah*, 2:282

⁴ Prof. Dr. Donald Albert Rumokoy, SH., M.H. and Frans maramis, S.H., M.H., *Pengantar Ilmu Hukum*, (Jakarta; Rajawali Pers, 2014) . 144

Derogat legi generali).⁵ Similarly, the law applicable to a treaty, such as special rules made in the agreement, Will overwrite general rules made outside the agreement.

Indonesia Lending and borrowing is regulated in the Civil Code. In the Civil Code article 1721 it is stated that:

"Lending and borrowing is an agreement by which one party gives to the other party a certain number of items and is used up on the condition that the latter will return the same amount of the same type of situation"

Other juridical rules governing online lending are contained in the Banking Law concerning Credit, Use of the term credit is also regulated in Law No. 10 of 1998 concerning amendments to Law No. 7 of 1992 concerning banking, which in article 1 number 11 states that:

"Credit is the provision of money or bills that can be equated with that, based on a loan agreement between the bank and another party that requires the borrower to repay the debt after a certain period of time with interest."

The legal basis for information technology-based money lending services is contained in the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Services ("POJK 77/2016"). Information Technology Based Lending and Borrowing Service is the implementation of financial services to bring lenders and loan recipients together in order to enter into a loan and loan agreement in rupiah directly through an

⁵ Donald Albert dkk, *Pengantar Ilmu Hukum...*, . 147

electronic system using the internet network.⁶ According to Article 3 paragraph (1) letter e Indonesia Bank Regulation Number 19/12 / PBI / 2017 of 2017 concerning the Implementation of Financial Technology ("POJK 19/2017") that application or information technology-based money lending services are one type of Financial Technology Implementation (Fintech) category Other Financial / Financial Services.⁷ Arrangements regarding contracts or agreements in Online Loans are also regulated in the Financial Services Authority Regulation Number 77 / POJK.01 / 2016 Year IV Chapter IV, article 20.⁸

Business activities conducted using electronic media called Electronic Business (e-business), While trading is done using electronic media called Electronic commerce (e-commerce).⁹ Online business and e-commerce are closely related to electronic transactions or can be called by business transactions using electronic media. The definition of "business transactions" is broader than "payment transactions", Because business transactions are related to seller and buyer's actions to conduct assessment, negotiation, trading agreements until settlement of transactions in the form of payment by buyer and submission of transaction object by seller.

⁶Pasal 1 angka 3 POJK 77/2016

⁷Pasal 3 ayat (1) huruf e POJK 19/2017 jo. Pasal 2 ayat (1) POJK 77/2016

⁸ BAB IV Pasal 20 Peraturan Otoritas Jasa Keuangan Nomor 77/POJK.01/2016 Tahun 2016

⁹ Cita Yustisia Serfiyani, R. Serfianto D. Purnomo dan Iswi Hariyani,, *Bisnis Online dan Transaksi Elektronik*, (Jakarta: PT Gramedia Pustaka Utama, 2013) hal. 9

Electronic transactions must be based on contracts/agreements in the form of a conventional contract or electronic contract (e-contract).

Debt is something borrowed by a person or business entity with the form of material, money or service. The person who made the loan is called a debtor. Receivables in English: Accounts Receivable or AR, is one of the types of accounting transactions that bills the consumer's debt to a person, a company or an organisation for goods and services that have been provided to the consumer. The current debt-receivable transaction is not a taboo in the society. Because one of the ways society rotates their finances by means of debt-receivables. Nowadays, transactions of debt receivables or loan transactions have been widely made business by many people. A promising advantage makes a reason to be considered.¹⁰

Mashlahah Mursalah according to Al-Ghazali in the book of *al-Mustasyfa* said ""Everything that has no evidence for him from Syara ' in the form of a certain Nash that cancels and no one is noticing.¹¹ While the essence of *Mashlah Mursalah* is:

1. It is a good thing in mind with consideration that can realize good or avoid the ugliness of human beings.
2. Both according to reason in harmony and in line with the purpose of Syara ' in establishing a law.

¹⁰<https://www.berwirausaha.net/2017/02/pengertian-hutang-piutang-dan-kaitannya.html/>, diakses tanggal 07 Oktober 2018 pukul 22.29 WIB.

¹¹ Prof. Dr. H. Amir Syarifuddin, *Ushul Fiqh Jilid 2*, (Jakarta: Kencana, 2014) . 377

3. Both according to reason and in accordance with the purpose of Syara ' and there is no clue Syara ' specifically to reject it, and there is no clue of Syara ' that admit it.¹²

In the practice of Online lending, usually done using a loan application. This makes it easier for borrowers to make transactions. Agreements made in the online lending system use the type of standard agreement set by the organizer and lender. The agreement is deemed to facilitate and benefit both parties, Because the proposed warranties are very simple, for example Photos of National Identity Cards (*KTP* in Indonesia), Photos of Family Cards (*KK* in Indonesia) and some telephone numbers of debt guarantor¹³.

Behind the facilities offered, the standard agreement applied are actually inappropriate when the parties position becomes unbalanced. The most common problem with this agreement on online loans is the leaking of the contact information stored by others, then utilized by the fund owner and the owner of the application to drop the customer in debt collection. But the fact that the debt is not yet due, and there is no agreement between parties, it will be billed through such a way. Sanctions imposed by the organizer are not written in detail about the debt that is due. Therefore, a treaty will be valid when adhered to the principle of consensualism, which is agreed by both parties, and bind it to be a law. Violation of the principle of consensualism will result in the invalidity of

¹² Amir Syarifuddin, *Ushul Fiqh...*, 379

¹³ <https://www.liputan6.com/tekno/read/3686308/dampak-buruk-pinjaman-online-bikin-konsumen-trauma-hingga-ingin-bunuh-diri>, accessed on 21st March 2019, 09.29 West Indonesia Time

an agreement or contract. In addition, in conducting a contract according to Tritel in the book H.P. Panggabean states that, there are two restrictions on the ability to conduct standard contracts, restrictions made to suppress abuse caused by the principle of freedom of contract, such as the use of the excsoneration clause and the limitation of freedom of contract with reason for the public interest.¹⁴ This will harm the Contracting Party, as it is not fulfilled by the contractual principles that must be in it, and cause it to be incompatible with the purpose of Shara ' in determining the law. However, current online loans are much needed by the community because of the convenience offered as well as the minimum number of loans.

Based on the explanation above, there are a few important things to do in a more in-depth study specifically on the contract or agreement used in online lending applications, in a study entitled **“Contract On Online Lending Transaction Based On The Rules Of Lending Services Using Information Technology And *Maslahah Mursalah*”**. This research is very important, because there are many online loan applications that are easy to access by the public. In addition, similar research has not been found with the same topics.

¹⁴H.P Panggabean, *Praktik Standard Contract (Perjanjian Baku) Dam Perjanjian Kredit Perbankan*, (Bandung; PT Alumni, 2012) 24

B. Statement of Problem

Based on the background of the above problem, can be formulated some problems as follows:

1. How are the principles and mechanisms of *akad* on Online Lending transactions based on the rules of borrowing and lending services based on information technology?
2. How do you review the problem of *akad* on online Lending under perspective of *Maslahah Mursalah*?

C. Objective of Research

The purpose of this research is:

1. The principle and mechanisms of *akad* on Online Lending Transaction.
2. A review of the problem of *akad* on online lending under perspective of *Maslahah Mursalah*

D. Significance of Research

The benefits of doing this research are;

1. Theoretical benefits

Research conducted by researchers is useful to provide additional insight into the problems related to Debt Debt Contracts Through Online Loan Application Perspective *Maslahah Mursalah*. So that the existence of this study can be used as reference material or studies for subsequent studies. In addition, it can develop the

knowledge gained in lectures and to know deeply about The Analyze Of Akad On Loan Online Transaction Based On *Maslahah Mursalah*.

2. Practical Benefits

In addition to theoretically, this research is useful to practitioners who can contribute ideas in the field of law in general, and specifically can provide an explanation of the Debt Agreement through the Application of Online Loans Perspective *Maslahah Mursalah*. Besides that, it can also be a material for knowledge and insight for writers, especially in the field of law and also becomes a knowledge for users of online loan services in making transactions.

E. Research Method

1. Type of Research

The type of this research, that author use normative research. This type of research is normative legal research with the Normative Juridical approach, because in this study used ways of approaching the problem under study by reviewing in terms of applicable laws and regulations or examining existing library materials.¹⁵ Which researcher examines the Debt Agreement through the Application of Online Loans Based on The Rules of Lending Service Using Information Technology and *Maslahah Mursalah* Perspective.

¹⁵ Soerjini Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Cetakan Ke-11 (Jakarta: PT Raja Grafindo Jaya, 2009), 13-14

2. Research Approach

Based on the scientific field taken by the authors as well as this type of research, then in this study used statue approach and conceptual approach.

- a) A statutory approach is research into legal products.¹⁶ This approach is used to examine the rules relating to the problems researched, namely the arrangement of online loans, The Financial Services Authority regulation Number 77/POJK.01/2016 about money-borrowing services based on information technology.
- b) Conceptual approach is a concept research related to legal issues.¹⁷ This approach comes from a thriving view and doctrine in legal sciences, it is used because of legal issues at the level of Islamic Law theory (concept). In this case the concept used is the basic concept of *Maslahah Mursalah*.

3. Legal Material

a. Primary

- Application of Online Lending (Uang Teman.com, Tunai Kita, and Rupiah Plus)

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan Ke-4 (Jakarta: Kencana, 2010), 93

¹⁷ Johny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Cetakan kw-3 (Malang: Banyumedia Publishing, 2007), 306

- Regulation of the Financial Services Authority Number 77 / POJK.01 / 2016 Year 2016 concerning Information Technology-Based Loan Transactions.
- Other regulations governing the loan online systems and information technology.
- The Book of "*Hukum Perjanjian Syariah, Studi tentang Teori Akad dalam Fiqih*" written by Syamsul Anwar, published by Raja Grafindo Persada, Jakarta.

b. Secondary

- The book "*Ushul Fiqh 2*" written by Prof. Dr. Amir Syarifuddin, published by Kencana Prenadamedia Group, Jakarta.
- Supporting books, namely books on accounts payable, contracts, financial technology (fintech), *fiqh of muammalah*, *ushul fiqh* and others.

4. Data Collection Method

The procedure for collecting data by conducting **document studies**. Document studies carried out include study of legal materials consisting of primary and secondary legal materials related to the issues raised. Data collection was conducted in the Library of State Islamic University of Maulana Malik Ibrahim Malang and also several libraries or bookstores where there was data needed by researchers.¹⁸

¹⁸ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta:Rajawali Press, 2014), 67-89

5. Data Processing Method

In analyzing the data that has been obtained, the author performs several steps:

- a. Editing is to examine the notes, files and information from the data that has been collected.
- b. Classifying, namely grouping of data that has been obtained. After that it is also grouped based on the discussion taken.
- c. Verifying is by verifying the writing so that it fits with what the author intends to do the research.
- d. Analyzing is from the data obtained, the writer will analyze by relating the theory to the data obtained.
- e. Concluding, that is from several stages carried out by the writer will conclude the results obtained from the research conducted

6. Data Validity Test

Data legality check or data validity test is essentially an effort to increase the degree of reader confidence. This is done in anticipation of various allegations e.g. "unscientific" and so forth.¹⁹

Therefore, so that the results of this thesis can be fully accountable, then the author uses a technique test of data sound by triangulation method. Triangulation is a data validity checking technique that utilizes something else for the purpose of checking and

¹⁹ Lexi J. Moleong, 1991, *Metodologi Penelitian Kualitatif*, ... 320

as a comparison to that data. In this research, researchers compare the data of documentation results in the case that many circulate in the community and then analyzed using regulations made by the Government which is here using the reference of regulation of the Financial Services Authority No. 77/POJK. 01/2016 of 2016 about online lending transactions based on information technology and the concept of *Maslahah Mursalah*.

F. Previous Research

1. Titik Wijayanti, 2018, Department of Law, University of Muhammadiyah Surakarta, with a Thesis title *The implementation of Information Technology-Based Credit Provision by Fintech to Small Business Players*.

This study examines the implementation of credit provision by using information technology by fintech to Small and Medium Enterprises. In it also explained the supervisory function carried out by the Financial Services Authority. Besides that, it also discusses the problems that arise in providing fintech loans to Small and Medium Enterprises.

The discussion in the thesis put forward the practice of implementation and induction carried out by the Financial Services Authority on the provision of information technology-based Loans carried out by fintech to small and medium businesses. In addition,

it also discusses the problems that arise when giving credit provided by fintech to small and medium businesses.²⁰

The equation of the thesis and this researcher are together discussing related to the online loan system using the same basic rules, namely the Financial Services Authority Regulation (POJK) Number 77 / POJK.01 / 2016.

2. Farizky Arif Pasada, 2018, Department of Law University of Lampung, with the title *Electronic Credit Agreement (study at PT Bank Negara Indonesia (Persero) TBK)*.

This study analyzes the basis of PT Bank Negara Indonesia (Persero) Tbk in giving agreement to the agreement, conformity to clauses regulated in the regulations relating to the implementation of the agreement, and forms of legal protection for debtors in electronic systems.

The discussion in this paper puts forward the process of electronic credit agreements. This research looks at credit agreements electronically from various views and aspects in the regulations.²¹

The equation of the thesis with the researcher is to discuss credit or loans electronically or online together.

²⁰ Titik Wijayanti, *Pelaksanaan Pemberian Kredit Berbasis Teknologi Informasi oleh Fintech kepada Pelaku UKM.*, (Surakarta: Universitas Muhammadiyah Surakarta, 2018)

²¹ Farizky Arif Pasada, *Perjanjian Kredit secara elektronik (study pada PT Bank Negara Indonesia (persero) TBK)*, (Lampung: University of Lampung, 2018)

3. Taufiq Ilham Azhari, 2018, Department of Law of Islamic University of Indonesia Yogyakarta, with Thesis Title *The validity of Information Technology-based money lending agreements in terms of the imposition of loan interest (Study on uangteman.com)*.

This research is a research using normative-empirical method that examines the validity of information technology-based money lending and borrowing agreements in the case of the interest of the loan amounting to approximately 34% (thirty four percent) carried out using the Uangteman.com application.

The discussion in this thesis emphasizes the validity and failure of information technology-based money lending agreements in terms of the interest on loans at the application uangteman.com. other than that the payment is also based on the validity of the agreement before the law.²²

The equation of this thesis with researchers is to discuss the same agreement which is the same as the contract in online loans, but this thesis emphasizes the validity of the agreement in online loans.

4. Ihda Nailul 'Izzati Rohmah, 2020, Department of Shariah Bussines Law, State Islamic University of Maulana Malik Ibrahim Malang,

²² Tufiq Ilham Azhari, *Keabsahan perjanjian pinjam meminjam uang berbasis Teknologi Informasi dalam hal pengenaan bunga Pinjaman (Studi pada uangteman.com)*. (Yogyakarta: Islamic University of Indonesia, 2018)

with Thesis Title *Contract On Online Lending Transaction Based On The Rules Of Lending Services Using Information Technology And Maslahah Mursalah*

This reasearch is a research using normative method that examines the validity of *Akad* or agreement of Loan Online Transaction with an aplication by smartphone which is reviewed from *Mashlahah Mursalah*. The problem that will be discussed by the author is related to the existing contract in the online loan application that is being widely used by the society because of the convenience offered.

The discussion of this thesis about *akad* or contract used between the users application as the person doing a loan with masters application as the person who gives the loan.

Table 1: Equations and differences from previous research

NO	NAME/COLLEGE/ YEAR	TITLE	EQUATION	DIFFERENCE
1.	Titik Wijayanti / University of Muhammadiyah Surakarta / 2018	The implementation of Information Technology- Based Credit Provision by Fintech to Small and Medium Enterprises	Discussing with regards to the online lending system using the rules of the POJK number 77/POJK. 01/2016	There is no context of <i>Maslahah Mursalah</i> discussed.

2.	Farizky Arif Pasada/ Lampung University / 2018	Electronic Credit Agreement (study at PT Bank Negara Indonesia (persero) TBK)	Discussing loans electronically or online.	It does not address the application of online-based loans and there is no discussion of the <i>Maslahah Mursalah</i>
3.	Taufiq Ilham Azhari/ Islamic University of Indonesia, Yogyakarta / 2018	The validity of Information Technology- based money lending agreements in terms of the imposition of loan interest (Study on uangteman.com)	Reviewing the validity of the contract used in the counter- borrowing agreement borrowed money based on information technology by POJK number 77/POJK. 01/2016	There is no discussion about the context of <i>Maslahah Mursalah</i>

G. Structure of Discussion

In systematics reports, the author divides the report in research writing which consists of division into chapters. In each chapter there are sub-chapters to facilitate discussion and understanding. The systematics of this discussion consists of:

Chapter I Introduction. This chapter consists of background problems, formulation of problems, research objectives, benefits of

research and research methods. Background of problem contains about the urgency of research that comes with a description of the situation or about matters that cause problems, as well as the reason that the author undertook the research. In the case of problems should be formulated specifically, clear, concise, and solid which is formulated in a question sentence or preceded by a question word. The research benefits outlining the usefulness and contribution of research results, explaining the usability and benefits of research for the sake of development of theories and/or practices, and education, also explaining the usability and benefits of research for the community and spelled out according to the formulation of problems and research objectives. This research method includes at least 4 (four) things, including research, research approaches, data types and data collection and processing methods.

Chapter II: Literature Review. It contains juridical concepts and/or concepts as a theoretical basis for the assessment and analysis of problems and contains the development of data and/or information, both substantial and methods relevant to the research problem. Foundation concepts and theories are later used in analyzing each problem raised in the research

Chapter III: Research Results and Discussion. This chapter explains about the exposure of the research that contains the Accounts Payable Loan Agreement through the Application of Online Loans Maslahah Mursalah Perspective

Chapter IV: Closing. This chapter contains conclusions and suggestions for the research that has been done.

CHAPTER II

CONCEPTUAL FRAMEWORK

A. Contract on Islamic Law

1. Understanding and Principles

The term "Agreement" in Indonesian law is called "Akad " in Islamic law. Derived from the word *al-'aqd*, which has the meaning of binding, connecting or linking (*ar-rabt*).²³

Akad is an association or meeting of *Ijab* and *Kabul* that resulted from the law. *Ijab* is a proposed offer by one of the parties, and *Kabul* is approval responses provided by the other party in response to the first party offerings. It does not happen if the statement of the will of each party

²³ Ahmad Abu al-Fath, *Kitab al-Muamalat fi asy-Syari'ah al-Islamiyyah wa al-Qawanin al-Mishriyyah* (Mesir: Matba'ah al-Busfir, 1913), I: 139

is not related to one another because the agreement is the relation of the will of both parties that is reflected in the Ijab and Kabul.²⁴

In addition, the agreement is the legal act of two parties because the agreement is the meeting of the Ijab and Kabul as a statement of the will of two or more parties to produce a legal consequences on its object.²⁵

In doing the agreement, there are principles that must be exercised according to Islamic law, including:²⁶

a) The Principle of *Ibahah* (*Mabda' al-Ibahah*)

This principle is a general principle in Islamic law in the field of Muamalat in general. This principle is formulated in adagium "Essentially all things can be done until there is a proposition that is against it". Which this principle is the opposite of the principle prevailing in the matter of worship, With the meaning of everything commanded in the shar'i evidence is a commandment to be done. But it is inversely proportional to the problem of Muamalah, that all things were legitimately done along there were no strict prohibitions over that action.

b) The principle of contractual freedom (*Mabda' Hurriyah at-Ta'aqud*)

Islam gives the parties the freedom to do an alliance. The form and content of the alliance is determined by the parties. If the form and content are agreed upon, the agreement binds the parties to which

²⁴ Dimyaudin Djuwani, *Pengantar Fiqh Muamalah*, (Yogyakarta: Pustaka Pelajar, 2015) 50

²⁵ Dimyaudin Djuwani, *Pengantar Fiqh Muamalah...*, 52

²⁶ Syamsul Anwar, *Hukum Perjanjian Syariah, Studi tentang Teori Akad dalam Fikih Muamalat*, (Jakarta: Raja Grafindo Persada, 2010), 83-92

they are committed and must be exercised in all its rights and obligations. But this freedom is not absolute. As long as not contrary to Islamic Shari'ah, the alliance can be implemented. According to Faturrahman Djamil that, "Islamic Sharia gives freedom to every person who does akad according to the desired, but that determines the condition of his religion is religious teaching." In QS.al-Maidah (5): 1 It is mentioned, which means "O Believers, fill covenants"

c) The Principle of Consensualism (*Mabda' ar-Radha' iyyah*)

In this principle it states that in order to create an agreement with the words agreed between the parties without the need to fulfill certain formalities. In Islamic law these agreements are generally consensual.

d) The principle of promise binds

In the rule of Usul fiqh states that, "*The commandment in his power indicates mandatory*". As described in the Word of Allah SWT on Surah Al-Isra verse 34, "... *And fill the promise, verily the promise shall be held accountable*".

e) The Principle of Balance (*Mabda' at Tawazun fi al- Mu'awadhah*)

Islamic law emphasizes the need for balance between parties in transactions, Good balance between what is given and what is acceptable or balance in carrying the risk. Although factual infrequently there is a balance between the parties in the transaction. In this case can be given illustrations, creditors have the power to demand achievement and if necessary can claim the repayment of

achievement through the property of debtor, but the debtor assumed the obligation to carry out the agreement in the Faith Good.

f) The Principle of Welfare (Not incriminated)

All forms of agreement shall provide benefits and welfare for the parties who cleave to the Agreement. The principle of this welfare is very relevant to the purpose of universal Islamic law. If in the implementation of a contract there is a change in circumstances that can not be known before and bring a fatal loss to the affected Party so that it incriminated, The obligation can be changed and adjusted to a reasonable boundary.

g) The Principle of Amanah

In this principle it is intended that each party must be in good faith in transacting with the other party And is not justified by any of the parties to the exploitation of the partners ' ignorance. This principle can be deduced from article 1338 paragraph (3) of the civil law which reads, "The agreement shall be exercised in good faith". This principle contains the sense that the parties in a treaty must carry out the substance of contract or accomplishment based on a firm belief or conviction and the good will of the parties to achieve the purpose of the agreement.

h) The Principle of Justice

In Islamic law, direct Justice is the command of the Qur'an affirmed in Surah Al-Maidah verse 8, "*...be Just, that is nearer to righteousness...*" . A joint agreement made by the parties But as the

current modern era, treaty agreements are often made by one party only, and the agreement is standard so that the other party cannot negotiate the clauses in the contract. In contemporary Islamic law it has been accepted a principle that for the sake of fairness the standard terms can be altered by the court if there is indeed a reason for it.

i) The Principle of Written

A covenant should be made in writing in order to be used as a means of evidence in the event of a dispute. In Al Quran Suarh al-Baqarah (2); 282-283 can be understood that Allah SWT encourages people to make a covenant in writing, attended by the witnesses and given the responsibilities of the individual who made the Covenant and the witness. It is also advisable if an agreement is carried out not in cash then can be held an object as its collateral.

2. Pillars and Terms of Akad

In Islamic law to the establishment of a valid and binding agreement must be fulfilled and the requirements of the contract. The first one will be explained about Akad pillars. Pillars are the elements that make up something, so that it is manifested because of the elements that form it. The Akad is also formed on the elements that form it. According to Islamic legal experts, the pillars that make up a Akad consist of 4 (four), namely:²⁷

²⁷ Wahbah az-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, (Damaskus: Dar al-Fikr, 2005), 116

a) *Al-‘aqidain* (The parties who make the contract)

There are two things that must be fulfilled on these terms. First, the parties must possess the legal prowess. When the parties have legal prowess, the words and their deeds are worthy and legally regarded as the law. In Islam, legal age is when one can distinguish good and bad deeds called *Tamyiz*. Secondly, there are multiple parties. With the meaning, there must be at least two parties. Because the Akad was a meeting between *Ijab* of one party and *Qabul* from the other.

b) *Shigatul- ‘aqd* (A statement of the parties)

Wishes with both of his terms, nor does it require the nature of refinement. But according to the majority of scholars, the second term of Islamic jurists needs improvement, approval of the agreement and the in must be achieved freely without compulsion. When it happens with compulsion, it is *fasid*.

c) *Mahllul- ‘aqd* (Object of Akad)

The requirement can be submitted an object Akad requires improvement element that the submission does not cause a loss (Dharar) and when inflicting losses then the contract is *fasid*.

d) *Maudhu’ al- ‘aqd* (Porpose of Akad)

The pillars mentioned above, must exist during the creation of the Akad. For if there is not one, then an agreement will never be a covenant that causes certain laws.

While the requirements of the Akad is divided into four kinds, namely:²⁸

1) Terms of establishment of Akad (*Syuruth al-In'iqad*)

The condition of the occurrence of all things required for the occurrence of the agreement, If this is not eligible, the agreement is void, These terms are two sections: First, the general is the conditions that must exist on each contract. Second, specifically the conditions that must be in some of the agreement, and not required in other parts.

2) Legal requirements

The legal requirement shall be the conditions stipulated by the Syara ' relating to the publication or absence of the law arising out of the contract. If it is not fulfilled the the becomes bleeding (broken). Hanafiyah scholars require the inevitable person of six defects in buying and selling, namely ignorance, coercion, time restriction, estimate, there is an element of efficacy and conditions of buying and selling damaged.

3) Terms of Applicable Law (*syuruth an-Nafadz*)

A contract is said to be valid when fulfilling rukun-rukunnya, the conditions of formation, and the terms of its validity, then an agreement is declared valid. In the implementation of Akad there are two terms of ownership and power. Ownership is something that a person has so that he is free to exercise with

²⁸ Wahbah az-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu...*, 172

nothing he has and in accordance with the rules of the ' Syara. As for power is a person's ability to bertasaruf in accordance with the provisions of the terms, either in the original, that is done by himself or as a substitute or representative of a person.

4) Terms tied to the agreement (*syarthul-Luzum*)

The basis of the contract is the certainty and this is a condition stipulated by the Syara ' concerning the certainty of an agreement. Among them the conditions of sale in buying and selling are the inevitable of some buying and selling, such as terms and conditions, Khiyar ' disgrace etc.

B. Online Lending

1. Understanding of Loans and Online Loans

A language debt means money lent from others.²⁹ Meanwhile, receivables have the meaning of money borrowed (Can be billed from others).³⁰ The definition of debt payable is the same as the borrowing agreement found in the provisions of the Civil Code of Law article 1754 which reads:

"Borrowing is an agreement with which the other party gives the other party a certain amount of goods and runs out of use, Provided that the latter will return the same amount from the same circumstances as well".³¹

²⁹ Poerwadarminto, *Kamus Besar Bahasa Indonesia*, (Jakarta:Balai Pustaka,2003), 1136

³⁰ Poerwadarminto, *Kamus Besar Bahasa...*, 760

³¹ R.Subekti Dan R. Tjitrosudibyo, *Kitab Undang-Undang Hukum Perdata*, (Jakarta:Pradnya Paramita, 1992), . 451.

The other definition of debt receivable is to give something (money or goods) to someone by appointment he will pay the same accordingly.³²

Online money-borrowing lending service is The implementation of financial services to bring together lenders with loan recipients in order to perform lending agreement in rupiah currency directly through electronic system by using Internet network.³³ Based on article 3 paragraph (1) Letter E of Indonesia Bank Regulation number 19/12/PBI/2017 of 2017 concerning the implementation of financial technology that the borrowing service of money-based applications or information technology is a type of maintenance Financial/Financial Services category.³⁴

According to article 5 paragraph (1) of the regulation of the Financial Services Authority No. 77/POJK. 01/2016 of 2016 about money lending services based on information technology that the organizers of perform lending money-based information technology is the agency Limited liability company that provides, manages and operates a borrowed service for money-based information technology

³²Chairuman Pasaribu Dan Suharwadi K. Lubis, *Hukum Perjanjian Dalam Islam*, (Jakarta:Sinar Grafika, 1994), .136.

³³Sudarso, "*Dasar Hukum Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi*", via <https://www.hukumonline.com>, accessed on 11 August 2019

³⁴Indonesia Bank Regulation number 19/12/PBI/2017 of 2017, article 3 paragraph (1) Letter E

from lenders to recipients of loans whose sources are sourced from lenders.³⁵

2. Proportionality Principle of Online Lending

Proportionality principle is the embodiment of contractual justice that corrects the freedom of the contractual principle that may pose an unfair situation to the parties in the contract. It also emphasizes that the freedom of contracts is not a major principle in contractual arrangements, but should emphasize contractual justice instead. Proportionality contracts become the basis of the exchange of rights and obligations of the parties in accordance with their proportion in the process of the overall contractual relationship (pre-contractual, contractual, post-contractual) to ensure that the correlation Conducive and fair between parties. Based on this, Agus Yudha Hernoko further implies the criteria that must be a guide to find the principle of proportionality in the contract:

- a. Contracts with the principle of proportionality means contracts that give recognition to the same Contracting Parties the rights, opportunities and opportunities. It's not about the same results for the parties; However, it implies on the position of the parties to gain the rights and obligations of equitability;

³⁵ POJK Nomor 77/POJK.01/2016 about Borrowing and lending services based on information technology, article 5 paragraph (1)

- b. Based on the same rights mentioned earlier, Parties have the freedom to build contracts and decide which substances are just and unfair contracts to them;
- c. Can guarantee precise execution and proportional rights distribution for both parties at once. In this case, the final outcome for both parties may differ, thus the exchange of rights and obligations of the Parties shall be fair;
- d. In case of contractual disputes, burden of proof, distribution of faults, or related matters should be measured based on the principle of proportionality in order to achieve an elegant resolution and a Win-Win solution.

Based on this, contracts are the process of chains of the correlation of contractor that must be built based on justbased understanding of the recognition of the right of the contractor. This recognition is embodied on the same distribution of rights and obligations exchange opportunities. However, this should still be in the framework of the rules that consider the principle of proportional distribution.³⁶

In relation to the online lending contract, it is allowed to contract in the form of a standard contract clause that has been prearranged only by the organizer on behalf of the lender as referred to in article 18 ACT No. 8 of 1999 concerning Consumer Protection.

³⁶ Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial* (Jakarta: Kencana, 2010) 406

This type of contract will not be categorized into a contract of adhesion that is skewed only for one party. However, in reality online loan contracts tend to be skewed and give more burden to the borrower, Therefore, proportionality principle serves to ensure that online loan contracts are fair. Although, the first contract of online lending is governed only by one of the Contracting Parties, Although, the first contract of online lending is governed only by one of the contracting Parties, the substance contained in this Contract shall reflect and provide the distribution of equal opportunity on the exchange of rights and obligations to both contracts Party. It is true that inequality between parties cannot be avoided, but Contracting parties must realize that each of them must obtain the right and obligations proportionally. Thus, it will result in online loan contracts benefitting both contracting Parties.³⁷

3. Legal basis of Online Loan

Online credit is regulated in Law No. 11 of 2008 about Electronic information and transactions. Also explained in the regulations Financial Services Authority (OJK) No. 77/POJK. 01/2016 About Services Borrow money-based information technology.

In article 1 of Law No. 11 of 2008 explains as follows:

1. Electronic information is one or a collection of electronic data, including but not limited to writing, sound, images, maps, design,

³⁷ Chesa R. Ramadhan and Dimas Saksono, "Proportionality Principle on Online Lending in Indonesia," *Notaire, Vol 11* (Februari, 2019) 26

photographs, electronic data Interchange (EDI), Electronic mail, telegram, telex, telecopy or similar, letters, marks, numbers, access codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand them.

2. Electronic transactions are legal acts performed using a computer, computer network, or electronic media and a similar one.³⁸

The first legal basis of the rules on lending in Indonesia is governed by article 1754 of the Civil Code (*Burgerlijk Wetboek*) which reads:

"Lending is an agreement with which the other party grants to the other party a certain amount of goods that are out of use, provided that the latter party will refund the same amount of money Same type and quality as well ".

The Indonesian Government, through one of the institutions of Financial Services Authority (in Indonesia is *Otoritas Jasa Keuangan/ OJK*), issued a special rule governing the "Technology-Borrowed Money-Based Lending Service" "*(Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi* or mentioned as LPMUBTI). The rules contained in the Financial Services Authority Regulation No. 77/POJK. 01/2016 on *money-lending services based on information technology* (LPMUBTI).

³⁸ Law Number 11 of 2008 about Information and Electronic Transactions

LPMUBTI is regulated in POJK 77/2016 titled "Technology-borrowed money lending service". According to POJK 77/2016 article 1 paragraph 3, LPMUBTI is defined as a financial service that provides a meeting between lenders or borrowers with recipients of loans or lenders in order to regulate loans in Rupiah currency, directly using electronic systems via the Internet. However, the word 'direct' mentioned earlier does not mean in a literal way. In contrast, the meeting between the borrower and the lender is governed by the LPMUBTI (hereinafter referred to as the organizer) as an intermediary between the two parties.

At POJK 77/2016 in article 1, paragraph 6, the position of the organizer as an Indonesian legal entity that provides, manages and operates the Online Lending Application. The organizer uses their website as a medium to provide, manage and operate the Online Lending Application website as well as a place where borrowers and lenders meet.³⁹

While in the service agreement borrowed money-based information technology is regulated in section IV of article 18, Includes agreements between organizers and lenders and agreements between lenders and loan recipients. On the part of the section, it is explained about agreements between lending service providers

³⁹ POJK Nomor 77/POJK.01/2016 Article 1, paragraph 6.

borrowing money-based information technology with lenders. The terms of the agreement are in article 19, including:⁴⁰

1. The agreement must be set forth in an electronic document containing:
 - a. Agreement Number
 - b. Date of agreement
 - c. Identity of the parties
 - d. Provisions on the rights and obligations of the parties
 - e. Loan Amount
 - f. Loan interest rates
 - g. Commission size
 - h. Timeframe
 - i. Related cost details
 - j. Provisions on fines (if any)
 - k. Dispute resolution mechanisms
 - l. Settlement mechanism in the event that the organizer can not continue its operational activities.
2. The organizer shall provide the lender with information access to the use of the Fund, but does not include the identity of the borrower.
3. On the Fund usage information, at least contains:
 - a. The amount of funds lent to a loan recipient

⁴⁰ POJK Nomor 77/POJK.01/2016 t BAB IV Bagian kedua Pasal 19

- b. Purpose of utilization of funds by loan recipients
- c. Loan Interest
- d. Loan term.

In the second part, there is an agreement between the lender and the borrower, as stated in article 20, including:⁴¹

1. The agreement is written in an electronic document that contains at least:
 - a. Agreement Number
 - b. Date of agreement
 - c. Identity of the parties
 - d. Provisions on the rights and copyrights of the parties
 - e. Loan Amount
 - f. Loan interest rates
 - g. Installment Value
 - h. Timeframe
 - i. Object guarantee (if any)
 - j. Related Cost details
 - k. Provisions on fines (if any)
 - l. Dispute resolution mechanisms
2. The organizer is obliged to provide access to the loan recipients on loan positions received
3. Access to such information, excluding lenders ' information.

⁴¹ POJK Nomor 77/POJK.01/2016 BAB IV Bagian kedua Pasal 20

C. Maslahah Mursalah

1. Various Kinds of *Maslahah*

Ushul scholars, Divide the *maslahah* into three parts, namely:⁴²

a. *Maslahah Dharuriyah*

Are all things that become the joint existence of human life, And it must exist for their benefit. If the joints are not present or not well preserved, the human life will be chaotic, this benefit does not materialize In the world as well as in the hereafter. These things can be returned to five things that are fundamental things that must be protected, that is religion, soul, reason, descent, and treasure.

1) Protecting religious benefits.

Islamic religion is the religion of Allah SWT because it needs to be kept from destructive things, both in terms of his worship or his belief and others which bring about the damage.

2) Protecting Souls

Among the sharia that is obliged to protect the soul is the obligation to try to obtain food, drink and clothing to sustain human life. In protecting this soul is also required legal binding, For example Qisash law or impose fines to people

⁴² Alaidin Koto, *Ilmu Fiqih dan Ushul Fiqih*, (Jakarta: RajaGrafindo Persada, 2004), 122

who commit criminal so that human beings do not arbitrarily kill other humans.

3) Protecting Mind

Man is the good form of Allah SWT-given creature. Therefore it must be guarded. Among the sharia that is obliged to protect the mind is obligation to leave *khamr* (wine, etc) and all things intoxicating. So also torturing the person who drank it. The Muslims are advised to always use the understanding to think of themselves and his Lord's creations, useful knowledge and so forth.

4) Protecting Offspring

In preserving Islamic ancestry, among the sharia that is obliged to nurture offspring is the obligation to avoid adultery. So are the laws imposed on the perpetrators, male or female.

5) Protecting Property

Among the sharia that is obliged to preserve property is the obligation to avoid theft. Law is also applicable to male or female thief hand cuts. And also the prohibition of doing *riba* and necessity for those who steal to replace the treasures that have been eliminated.

b. *Maslahah Hajiyyah*

That is, everything that is needed by humans to eliminate difficulties and reject obstacles. In terms of worship, Islam gives

Rukhshah or waivers when a person who has been proficient (baligh) has difficulty in carrying out a duty of worship. For example, it is permissible for someone not to fast in Ramadan when they are sick or on a distant journey. Another example, it is permissible for someone to cut a prayer (Qashar) if he is in a distant travel by fulfilling the conditions allowed.

c. *Maslahah Tahsiniyah*

It is to use all that is worthy and appropriate that is justified by good customs and is covered by the part of *mahasinul akhlak*. *Tahsiniyah* also included in the field of worship, customs and the *Muamalah*. In terms of worship, such as the sacred duty of odious, closing the loam, wearing good clothes when going to pray, draw closer to Allah through the practices of the Sunnah such as Sunnah prayers, fasting Sunnah, charity and others. In terms of customs, such as being polite when eating and drinking. In the *Muamalah*, such as prohibition to sell items such as Khamar (Intoxicating drinks), eat healthy food, good and halal and avoid odious food.

In terms of Shara', Maslahah is divided into three parts as well, namely:⁴³

a. *Maslahah Mu'tabarah*

Is a benefit supported by the Syari' and made a basis in the determination of the law. For example fast duty in Ramadhan. There is a benefit for man, that is to educate people to be healthy

⁴³ Suwarjin, *Ushul Fiqh*, (Yogyakarta: Teras, 2012), 141-142

physically and spiritually. This benefit is attached directly to the obligation of fasting Ramadan and cannot be canceled by anyone.

As well as the benefits inherent to the obligation of zakat, That is to educate the soul of *Muzakky* to be freed from the nature of filial and excessive love of wealth, and to ensure the life of the poor. This benefit cannot be cancelled, Reason if cancelled will cause loss of urgency and relevance of zakat.

b. *Maslahah Mulghoh*

That is the benefit that was rejected by the *Syari'* and the *Syari'* sets the benefits of other than that. For example, is the benefit of women being priests for men who contradict the benefits set by Shar'i that is to prohibit women from becoming priests to men. Likewise, the benefits gained by a thief, are rejected by the shar'i by the prohibition of theft, in order to protect the greater benefits, a sense of security for the community.

c. *Maslahah Mursalah*

Is a non-written property in the Nash and Ijma ', nor is it found that Nash or Ijma ' is forbidden or ordered to take it. This benefit is released by the Shari' and handed over to man to take or not to retrieve it. If the benefit is taken by human beings, It shall bring good for them, If not taken also will not bring sin. For example, the recording of marriages, a bailout in court, and so on.

2. Definition of Maslahah Mursalah

Maslahah Mursalah in terms consisting of two words, *Maslahah* and *Mursalah*. The word of *Maslahah* in language means "benefit". As stated of Abdul Wahab Kallaf means something that is considered principles but there is no firmness of the law to define it and there is no particular evidence that supports or rejects it.⁴⁴ According to Imam Muhammad Hasbih As-Siddiqi, *Maslahah Mursalah* is keeping the goal by the way of rejecting everything that destroys the creatures.⁴⁵

Maslahah Mursalah According to Abdullah bin Abdul Husein is a benefit that is not recognized or rejected by Syara ' with a certain evidence and it includes issues that can be accepted by reason and function.⁴⁶

According to the term of *Ushul* Sholars, *Maslahah Mursalah* (general welfare) is an absolute general, where Shar'i does not recommend the law to create a *Maslahah*, There is no evidence indicating the recognition of his confession or its cancellation. *Maslahah* is called Absolute, because it is not limited to the evidence of cancellation or evidence. Explanation of the definition is the establishment of the law is not intended, except for the benefit of mankind. Meaning, bringing in profits, resisting harm and eliminating the difficulties of them. That the welfare of mankind was not revealed by its parts, not to the people. The Occurent of *maslhah* same time

⁴⁴ Satria Efendi, *Ushul Fiqih*, (Jakarta: Kencana, 2005), 148-149

⁴⁵ Satria Efendi, *Ushul Fiqih...*, 150

⁴⁶ Abdullah Bin Abdul Husein, *Al-asbab Al-ikhtilaf Al Fuqqoha*, (Riyadh: Maktabah Al- Hadisah, 2001) 189

with the development of human situation and condition due to environmental change. So also with the law, sometimes brings benefits at a time, and sometimes brings losses at other times.⁴⁷

As such, *Maslahah Mursalah* is a principles that is in line with the purpose of Syara ' which can be used as a basis in realizing the good that is in human beings and avoid loss and harm. *Maslahah Mursalah* continues to grow and evolve as the era or development of Islamic society is influenced by differences in conditions and places.

The blessings of the people in the words of Allah SWT, in the Holy Qur'an on Surah Al-Anbiya ' verse 107,

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

It Mean's: "And We have not sent you, (O Muhammad), except as a mercy to the worlds."⁴⁸

يَا أَيُّهَا النَّاسُ قَدْ جَاءَكُمْ مَوْعِظَةٌ مِّن رَّبِّكُمْ وَشِفَاءٌ لِّمَا فِي الصُّدُورِ وَهُدًى وَرَحْمَةٌ لِّلْمُؤْمِنِينَ.

It Mean's: "O mankind, there has to come to you instruction from your Lord and healing for what is in the breasts and guidance and mercy for the believers."⁴⁹

3. Evidance Ulama on Hujjah based *Maslahah Mursalah*

⁴⁷ Abdul Wahhab Khallaf, *ilmu Ushul Fiqh*, (Semarang; Dina Utama, 2014) 139

⁴⁸ Holly Qur'an, Surah Al-Anbiya (21): 107

⁴⁹ Holly Qur'an, Surah Yunus (10): 57

Jumhur Ulama argues, *maslahah mursalah* is the reason that Shar'iyah can be used as the basis of law. The incident that is not legal in the *nash*, *ijma'*, *qiyas* or *istihsan*, The law is adapted to the general benefits. The establishment of law on the basis of the benefit shall not be suspended until there is evidence and recognition from the *Shara'*.

The first evidence of the *Hujjah* of *Mashlahah Mursalah* is, The benefit of mankind is always new and never depleted. If the law is not prescribed to anticipate the welfare of mankind that continues to emerge with the demands of their development, as well as the establishment of law only in terms of the benefits of Shar'i recognized, it would have resulted in the abundance of human benefits left in various places and times, and the establishment of the law is not in accordance with the wheels of human development and their benefits. This is certainly not in accordance with the meaning of the establishment of the law as an effort to realize the benefit of the people.⁵⁰

The second evidence of the *Hujjah* of *Mashlahah Mursalah* is people who are researching about the establishment of law by being sourced from the companions of the Prophet, Taabi'een, and the Muftahid priests, it will be clear that they have a variety of laws to realize a common benefit, Because of the absence of confession.⁵¹

As examples of the Prophet's companions are, Abu Bakar Ra. Collects the slabs of Qur'anic writings, fighting against Zakat, and

⁵⁰ Abdul Wahhab Khallaf, *ilmu Ushul Fiqh...*, 141

⁵¹ Abdul Wahhab Khallaf, *ilmu Ushul Fiqh...*, 141

proposes the appointment of Umar ibn Khattab as Caliph. While Umar ibn Khattab imposed the ruling on three, even with one sentence, preventing the distribution of zakat against those whose hearts are tame (*Muallafah Qullubuhum*), establishing taxes, posting administration, the development of the prison, stopping the implementation of the law of the hand against thieves in the famine year. Some examples explain that the determination of the law by the way of seeing a people's welfare.⁵²

So, *maslahah mursalah* is All the benefits required by shar'i, through legal shards. They are a legal virtue based on *maslahah mursalah* because it contains the value of the benefit and there is no evidence of the shar'i that cancels the benefits. But in the formation of their laws not solely in terms of the benefits, but because of the Syara ' that admit it. Al-Qarrafi said: "Indeed, the companions have practiced various things because of the general benefit, not because of the evidence of confession that preceded it."⁵³

4. Requirement to *Hujjah* with *Maslahah Mursalah*

Maslahah Mursalah can be used as a proof with the following requirement:

- a. The *Maslahah* must be a true *Maslahah*, Not just the suspected or assumed *Maslahah*.

The meaning or intended by these terms is to prove that the establishment of the law in a case brings benefits and rejects the

⁵² Abdul Wahhab Khallaf, *ilmu Ushul Fiqh...*, 142

⁵³ Abdul Wahhab Khallaf, *ilmu Ushul Fiqh...*, 143

danger. As for the mere suspicion that the establishment of a law draws a benefit without regard to the danger that comes, then this is based on of alleged benefit.

For example, it is forbidden for his husband to menalak his wife and grant the Talak rights to judge alone in all circumstances.⁵⁴

- b. The *Maslahah* should be of general benefit, not for personal or special.

The intention is to prove that the establishment of the law in a case is to bring benefits to the majority of mankind or reject the dangers of them, Not for the benefit of the individual and the individual who is a minority of them.

- c. The benefit is in accordance with Maqashid Al Shari'ah and does not contradict the evidence of Syara '..

Therefore, it is not legitimate to acknowledge the benefit of the equality between men and women in terms of inheritance division. Because that *maslahah* contradicts the Nash in the Holy Qur'an. There must be no evidence of *Syara'* that acknowledges or justifies.⁵⁵

⁵⁴ Abdul Wahhab Khallaf, *ilmu Ushul Fiqh...*, 143

⁵⁵ Abdul Wahhab Khallaf, *ilmu Ushul Fiqh...*, 144-145

D. The Authority of Financial Services Authority in regulating Online lending system based on POJK number 77/POJK. 01/2016 of 2016

The activity of borrowing money directly based on the agreement either written or unwritten is a practice that has been held in the midst of community life. Borrowing directly in a lot of interest by parties requiring quick funds or parties that are not able to be funded by conventional financial services industry such as banking, capital markets, or financing companies.

All economic benefits, losses incurred, as well as the legal impact of the borrowed borrowing activities are made entirely directly the responsibility of the Parties in accordance with the agreed agreement. The practice is assessed there are still many weaknesses such as the implementation of borrowing activities done by the parties who already know each other and must face, the risk assessment of the failing pay, difficulties in billing payments, nor the systematic registration of loan repayment.

In the era of digital economic development, the community continues to develop innovation in providing services to borrow borrowing activities, one of which is characterized by the provision of the information technology-based money-borrowing services Also contribute to national development and economy.

Money Lending services based on information technology is very helpful in improving public access to financial services products online

both with various parties without needing to know each other. The main advantage of the information technology-based money borrowing service, among others, the availability of agreement documents in electronic form online for the purposes of the parties, the availability of legal authority to facilitate online transactions, , risk assessment of the parties online, the delivery of billing information (collection) online, the provision of loan status information to the parties online, and the provision of an escrow account and a virtual account in banking to the The payment of funds in the banking system. For this, money lending services based on information technology are expected to meet the needs of fast, easy, and efficient cash funds, and increase competitiveness. In addition, money lending services based on information technology is expected to be one of the solutions to help micro, small and medium enterprises (SMES) to gain access to funding.⁵⁶

Until now, there have been no legislation governing the business activities of information technology-based financial services. These conditions are feared to cause harm to users. Therefore, the regulation of business lending services based on money borrowing service is highly urgent. Based on these considerations, the information technology-based money lending service business needs to be regulated and supervised in order to protect users, the implementation of information technology-based money borrowing services, and protection of national interests while

⁵⁶ <https://www.ojk.go.id/id/regulasi/Documents/Pages/POJK-tentang-Layanan-Pinjam-Meminjam-Uang-Berbasis-Teknologi-Informasi/>. Diakses tanggal 17 Maret 2020, pukul 19.29 WIB.

providing a growing space for a start-up company in order to increase financial inclusion in Indonesian. OJK regulation includes provisions to minimize credit risk, protection of users ' interests such as misuse of funds and user data, and protection of national interests such as anti-money laundering activities and prevention Terrorism financing, as well as disruption to financial system stability.⁵⁷



⁵⁷ Explanation of regulation of the Financial Services Authority NO. 77/POJK.01/2016 on Money Lending services based on information technology.



CHAPTER III DISCUSSION

A. The Principle And Mechanism Of Contract On Online Lending Transaction Based On The Rules Of Borrowing And Lending Services Based On Information Technology

Borrowing and lending services based on information technology is a form of money-borrowing agreements, which has its own specificity because the objects are in cyberspace or virtual worlds. Lending services borrow technology based money is an agreement where one person ties himself to others to be able to

provide money loans through the website of lenders (creditors) to borrowers.

In the Civil Code of law, in article 1313 states that "a covenant is a deed by which one or more persons bind themselves to one or more persons." Based on the definition of the agreement as stipulated in the civil Law, the term agreement has several elements.⁵⁸

- a. Deeds
- b. One or more persons against one or more people
- c. Cleave.

From the definition in article 1313 of the Civil Code of law can be found, the elements of the agreement borrowed money-based information technology as follows:

- a. There are parties at least 2 (two) people;

The borrowing service of money is a form of transaction in which there are parties, perpetrators or subjects of the agreement. In this case the company's service provider borrowed money-based lending acted as creditors. While the debtor is a person who needs a money loan.

- b. There is agreement between the parties concerned;

Both creditors and debtors in this regard both agree on the agreement to borrow money based on information technology.

Where the lender provides some money and the debtor is obliged to return the amount of the borrowed money. In this case

⁵⁸ Ridwan Khairandy, *Hukum Kontrak Indonesia dalam Perspektif Perbandingan (Bagian Pertama)*, (Yogyakarta, FH UII Press, 2013) , 66

it is also agreed upon when the return or maturity time of the payment between the two.

c. Have a goal to be accomplished;

Borrow money for the parties has a goal to be achieved. Where the debtor wants convenience in borrowing money with no guarantees. For lenders want to facilitate the debtor in search of loans.

d. Have achievements to be implemented;

The creditors and debtors alike have something that can be prosecuted called accomplishment. Where the achievement here is the lender gives a certain amount of money to the debtor, and the debtor is obliged to refund the amount of money borrowed.

e. Have certain conditions as the content of the agreement.

The parties in carrying out borrowed money based on information technology will have the requirements in the implementation of mechanisms that must be obeyed in order to succeed.

In addition to the elements that must be fulfilled, in a contract there must be a principle to be fulfilled. The principles are:

a. Freedom of contract

The principle of contractual freedom is one of the essential principles of Covenant law. This principle is a free human manifestation and human rights beam. The principle of freedom of

contract is closely related to the contents of the agreement, i.e. the freedom to determine "what" and with the "who" agreement is held.

In the material sense that the parties provide an approval of any content or substance required, and that they are not bound to certain types of approvals that have been clearly outlined beforehand. The restrictions exist only in the form of the general provisions, which assuring that such content should be something lawful and in the form of special rules of law compel these types of provisions.⁵⁹

b. Binding Strength Contract (*pacta sun servanda*)

Pacta Sunt Servanda is a Latin term that has the meaning of agreement must be keep, or the agreement must be obeyed. "Any applicable agreement binds the parties to it and must be done by them in good faith".⁶⁰ The good faith basis of this agreement implies that the parties to the Agreement may not request the provisions of the city (domestic) law as a justification of failure to do.

Article 1338 of the Law of the Civil Code states that the agreement is valid as a law for its parties. The principle of binding force agreements is also known as the term Pacta Sun Servanda,

⁵⁹ Soedjono Dirjosisworo, *Kontrak Bisnis: Menurut Sistem Civil Law, Common Law, dan Praktek Dagang Internasional*, (Bandung; Mandar Maju, 2003). 69

⁶⁰ Pasal 26 Vienna Covention on the Law of Treaties between States and International Organizations or between International Organizations (VCLT), ditandatangani di Vienna pada 21 Maret 1986

that the agreement to bind the parties to which it was or each agreement must be obeyed and kept.⁶¹

It is important and worth noting that the agreement is not only binding to things expressly stated therein, but also for everything that the nature of the Covenant is required to do by the undesirable, customary or statutory.⁶² The freedom of contract is not infinite freedom, because it remains a limit and there will be a result of the law arising from the infinite freedom.

So the conclusion is in the Treaty contained a principle of binding power. The parties to the agreement are not solely limited to what is promised but also to some other elements as long as they are required by habits and dissolving and moral. So it is that the principles of moral, undition, and customs bind the parties.

c. The Principle of Consensualim

The principle of consensualism can be found in article 1320 of the Law of the Civil Code is expressly stated that for a legitimate agreement there must be an agreement between the parties. In article 1338 the Book of civil Law is found in the word "all" indicates that every person is given the opportunity to declare a desire that is well-perceived to create an agreement.

⁶¹ C.S.T. Kansil, *Pengantar Hukum dan Tata Hukum Indonesia*, (Jakarta; PN Balai Pustaka, 1983). 48

⁶² I.G. Rai Widjaya, *Merancang Suatu Kontrak (contract drafting):teori dan praktek, cet ke 1*,(Jakarta; Kesaint Blanc, 2002). 135

d. The Principle of Good Faith (*Goeder Trouw*)

The goodwill of the contract differentiated between the precontractual good faith and the good faith on contract performance (goodwill) of contract.⁶³ A good practice, it is the faith that must be present when the parties negotiate. Good practice means honesty (honesty). This good faith is called a goodwill that is subjective, because it is based on the honesty of the parties who negotiate.⁶⁴

The standard or test for good faith in the execution of the contract is certainly an objective standard. In the contract law, the understanding of acting in accordance with good faith refers to the observance of reasonable commercial standard of fair dealing, according to Dutch legislators called acting in accordance with *Redelijkheid en Billijkheid* (reasonableness and equity). If one party should not act in a way unreasonable and improper will not be a good defense to say that honestly believed his conduct to be reasonable and inequitable.⁶⁵

Good faith in the execution of the contract refers to goodwill objectives. The standard used in good faith objectives is an objective standard referring to an objective norm. The behavior of the parties in the contract must be tested on the basis of unwritten

⁶³ Ridwan Khairandy, *Hukum Kontrak Indonesia (Dalam Perspektif Perbandingan)*..., 91

⁶⁴ Ridwan Khairandy, *Hukum Kontrak Indonesia (Dalam Perspektif Perbandingan)*..., 92

⁶⁵ Ridwan Khairandy, *Hukum Kontrak Indonesia (Dalam Perspektif Perbandingan)*..., 135

objective norms that develop within the community. The terms of goodwill refer to the unwritten norms that have become legal orma as a source of the law. The norm is said to be objective because the behavior is not based on the assumption of the parties themselves, but the behavior must be in accordance with the general assumption of the good faith.⁶⁶

e. The Principle of Personality

The principle of personality can be deduced from the provisions of article 1340 paragraph (1) of the Book of Civil law, which states an agreement only applies between the parties making it. Thus the principle of personality means that a contract or agreement applies only to the parties that make it.⁶⁷

Deviation from the principle of personality among others can be deduced from the provisions of article 1317 paragraph (1) of the Civil Code. This article states "It is also permissible to ask for the establishment of an appointment to the benefit of a third party, if a set of promises, made by a person for himself, or a provision of it to another, Contain such a promise. With these provisions the parties making the agreement may make an appointment that the

⁶⁶ Ridwan Khairandy, *Hukum Kontrak Indonesia (Dalam Perspektif Perbandingan)*..., 193

⁶⁷ Ridwan Khairandy, *Hukum Kontrak Indonesia (Dalam Perspektif Perbandingan)*..., 195

agreement also applies to a third party. Such contracts are referred to as *derdenbeding*.⁶⁸

All elements and principles above, should be contained in the provisions of an online loan application that must be written by the organizer of online lending applications. These terms, including terms of conditions, privacy policy, and risk Disclaimer.

The terms and conditions are:

1) The information about application

In the information about application contain all information about the name of the application, online lending organizer, date established and some include the address and compliance with the applicable Indonesian law.

2) Terms of website and app users

In terms of website and app users contains The user's responsibility for the application, user terms and age restriction are allowed to make the loan.

3) Terms of accessing websites and applications

In terms of accessing website and applications contains Approval of complying with the procedures made by the loan organizer and does not divulge any confidentiality on the application including keywords, passwords and verification

⁶⁸ Ridwan Khairandy, *Hukum Kontrak Indonesia (Dalam Perspektif Perbandingan)*..., 195

codes. In this case there is a provision that the loan organizer has the right to close or terminate the account in case of inappropriate or suspicious transactions.

4) Terms of accessing third-party websites and apps

In terms of accessing third-party websites and apps contains If there are other applications linked to the application of the loan organizer then the loan organizer will not be responsible for the problems that will occur later on due to the loan transactions through a third party.

5) Terms of Internet Electronic Letter

- 6) In terms of internet electronic letter explained that the provider of the loan is not responsible for the message or letter sent by the loan organizer or borrower in case of changes caused by Internet network system or third party. The reason is that borrowers have agreed to the provisions and cookies that have been determined in order to use and make loan transactions.

7) Intellectual property rights

In Intellectual Property Rights explained about Proprietary rights of the application are the full rights of the loan organizers. Users are only allowed to view, copy-print the contents of the paper provided by the website and mobile application. However, all such copies are the intellectual property rights of the loan organizer, and the third party who has licensed. The user must also agree that it will not use any

part of the website and the mobile application to transmit viruses (or anything that damages the system), to paste any link that facilitates data hackers, hacking mobile sites and applications, and other matters that violate the provisions of intellectual property rights that have been governed by the law.

8) Data protection and confidentiality

9) In terms Data protection and confidentiality explained about

The organizer will protect all users ' confidentiality, including passwords and personal data to any party. The organizer will not retrieve the personal data contained in the account

10) Disclaimers and Restrictions

In disclaimers and restrictions explained about The organizer has been responsible for ensuring the accuracy, accuracy, correctness and completeness of the information of the website and application. But the information on the Web or the loan application is only basic information and the organizer does not provide any warranties or any representing. Use of the website and the loan application is the responsibility of the user or borrower. The organizer will not be liable for any loss or damage, either directly or indirectly. Failure and error when using it is the responsibility of the loan user. Including damage to the user's software or hardware. The organizer does not provide any warranty.

11) Government Regulation

Requirements, has been adjusted to the Government regulation of the Republic of Indonesia. The parties involved are subject to the non-exclusive jurisdiction of the South Jakarta District Court. This agreement may be applicable in any court in any competent jurisdiction as it has been determine at any time

12) Release

The failure of the organizer to use or suspend in exercising any right, authority or privilege under the agreement made is not a waiver; including any of the rights, powers or privileges of any or any of its use.

This privacy policy is comprehensively designed to help loan users understand how loan fraud collects, protects, uses and/or processes, and discloses the information and personal data of the service users who have been provided in connection with the Intrenging services available through the site and application. The organizers are committed to always protecting the privacy and security of service users. Furthermore, organizers want to convince all parties that they never and will never sell information and personal data of service users to any parties who are not interested because the organizer upholds the privacy and security of the user's information and personal data. In addition, the Coordinator will always prioritize and apply the principle of confidentiality to any party on the commercial interests in connection with the application

process for the loan verification process. Things that become privacy policies include:

1) Information And Personal Data Collected.

The service organizer will only collect data provided by users of the service and third parties authorized by the service user.

2) Place Of Storage And Processing Of User Information And Personal Data.

All information and data that users provide to the organizer are securely stored on services in the state of Republic of Indonesia.

All payment transaction types will be encrypted using Secure Sockets Layer (SSL) technology. Password creation and rendering are the responsibility of the user. The organizers have done their best to protect the user's information and personal data, the organizer cannot guarantee the security of the information and personal data of the users sent through the site and application of the service provider. The point is that the personal data sent by the user is the user's own responsibility, including the password and verification code while the organizer will only ensure that the system they have made is safe and stable and fully complies with Applicable laws and regulations regarding data protection in Indonesia.

3) How lending providers use information and personal Data of service users.

Personal information and data about the users that have been collected will be recorded electronically and used for some purpose that the service provider can answer. Among other things to analyze and verify your identity and credit reputation in relation to your loan submission, process a loan transaction and update your data account that we store, assess your credit history and confirm details Your work, making a decision on your loan submission, contacting a third party, such as the office or employer you are working with to confirm information about yourself, making statistical analysis and developing and improve our services to estimate the risk of borrowing, identifying and verifying your identity and credit reputation in connection with your loan submission.

4) Use of service user information for marketing purposes.

The organizer will contact the user by email or other personal information that the user has provided to offer other products and services or to introduce their new product.

5) Disclosure of User Information services

For the purposes of verification, credit scoring, and/or service analysis, the organizer may open and/or disclose the user's personal data, either partially or wholly to a legally designated third party and be bound by a confidentiality agreement with the organizer. In addition, the organizer will not sell any personal information of users to non-competent and responsible parties

and does not establish cooperation in terms of building services that have been made by the organizer.

6) Age

An age provision is allowed to access the services provided by the loan fraud. Usually the minimum age limit allowed to use online loan service at least 21 years old.

7) Changes to the loan organizer's privacy policy.

If the organizer changes the privacy policy, the organizer will provide the user with information through the service's user email account.

8) Merging

To avoid any doubt, the privacy policy and the terms therein must be combined with the terms and conditions of use of the site and the application and if the user of the service finally takes a loan from an online lending service provider, then this privacy policy shall be incorporated also by the Personal loan agreement and/or other documents in connection with the use of online lending services.

9) Contact of Service providers

Contains information on online lending service organizers, whether contact can be contacted (usually email, official website and phone number), head office address and other information that can be easily accessed by the user if they occur Inappropriate or undesired things.

Risk Disclaimer

- 1) The information technology-based lending service is a civil agreement between the lender and the borrower, so that all risks arising from the agreement are borne solely by each party.
- 2) Credit risk or failed pay is fully borne by the lender. No State agency or authority is responsible for the risks of these failed pay.
- 3) The organizer with the consent of each user (lender and/or borrower) accesses, obtain, store, manage and/or use the user's personal data ("Data utilization") on or in any object, electronic device (including smartphone or mobile phone), hardware or software, electronic documents, applications or electronic systems owned by the user or the user controlled, by notifying the purpose, limitation and mechanisms Utilization of such Data to user or who is controlled by user, notifying the purpose, limitation and mechanism of use of such Data to the affected user prior to obtaining the consent in question.
- 4) Lenders who do not have the knowledge and experience of borrowing borrowed, it is advisable not to use this service.
- 5) The borrower must consider the interest rate of the loan and other expenses in accordance with the ability to settle the loan.
- 6) Every fraud is digitally recorded in cyberspace and can be known to the wider community on social media.

- 7) The user must read and understand this information before making a decision to make a loan or borrower.
- 8) The Government in this case the financial Services Authority, shall not be liable for any breach or non-compliance by the user, either the lender or the borrower (either by user's intent or negligence) of the provisions of the legislation or the agreement or alliance between the organizer and the lender and/or the borrower.
- 9) Every transaction and borrowing or execution of an agreement concerning borrowing and lending between or involving the organizer, lender, and/or borrower shall be obliged to be made through an escrow account and a virtual account as required under regulation of the Financial Services Authority No. 77/POJK. 01/2016 regarding money-lending services based on information technology and the breach or non-compliance of such provisions Violation of the law by the organizer so that the organizer is obliged to bear the compensation suffered by each user as a direct result of the violation of the law above without prejudice to the rights of users who suffer losses under the Civil Code.

B. Contract on Online Lending Under perspective of Islamic Law (*Akad*) and *Maslahah Mursalah*.

1. The Implementation of Mechanism Contract in Islamic Law (*Akad*) on Online Lending Transaction

In terms of contract law, the principle that has been made by the real lending provider has fulfilled what is in the Financial Services Authority regulation regarding online lending. It is also in accordance with the principles contained in the standard contracts. In addition to civil law, Islamic law is also governed by the principles of conducting a contract or in Islam, referred to as *Akad*. The basic implementation of Online loan transactions based on the principle of *Akad* in Islamic law is fulfilled:

- a. If viewed based on the principle of *Ibahah*, the principle contained in online lending contract is no evidence that prohibits the contract. The statement, according to the formula in the adagium that reads "Essentially everything can be done until there is a proposition that says it". Until now, rules or evidence governing online loans do not exist. So this principle can be enforced in online lending contract.
- b. There is freedom of existence in Islamic law based on several evidence, among others, are:

1. The word of God, *"O people of Faith, fill up the Akad (covenants)"*⁶⁹

⁶⁹ Holly Quran, *Al-Maidah*, 5:1

2. The words of the Prophet Muhammad SAW, "Muslims are always faithful to their terms (promises)."⁷⁰
3. The Prophet Muhammad SAW., *"Whoever sells the palm tree that has been married, then the fruit is for the seller (not sold out), except when the buyer requires another."*⁷¹
4. The rule of Islamic law, on the basis of the contract is the agreement of the Parties and its legal consequences is what they set upon themselves through promises.⁷²

So the conclusion of the above points is, fulfilling the conditions for an agreement is an obligation. So does the contract that is contained in online loans. Where the contract has been made by the loan organizer, and the online loan client, can only comply with the rules that have been made by the loan organizer. However, the customer in this case cannot change the terms and conditions set by the loan organizer.

- c. In the principle of consensualism stated that in order to create a treaty simply by achieving the word of agreement between the parties without the need to fulfill certain formalities. Based on this principle, the provisions of Online lending will be transformed into a law if the online loan client has agreed to the provisions made by the organizer.

⁷⁰ Al-Hakim, *al-Mustadrak* (Riyad: Maktabah wa Matabi' an-Nasyr al-Haditsah, t.t), 11:49. This hadith narrated by Al-Hakim from his friend Abu Hurayrah

⁷¹ Al-Bukhari, *Sahih al-Bukhari* (Ttp: Dar al-fikr, 1994), III:47, Number of Hadith 2204

⁷² Asmuni A. Rahman, *Qa'idah-Qa'idah Fiqih* (Jakarta: Bulan Bintang, 1975), 44.

- d. In the Qur'an and Hadith there are many orders to fulfill the promise. In the principle of Usul fiqh, "the command is essentially indicating mandatory". This means that the promise is binding and obligatory. Likewise, with the contract or agreement made in an online loan, if the customer has agreed to the applicable terms and conditions, then he must also fulfill what he has agreed.
- e. Based on the principle of balance (*MABDA ' at-Tawazun fi al-Mu'awadhah*), there is a rare balance between the parties in the transaction, but the law of Islamic Treaty still emphasizes the need for that balance. Likewise, in the online loan contract, which has less balance, even more weight next to it, than the one who meets the word balanced. Because all the risks involved in online loan transactions are secured to the loan recipients. For example, there are problems arising from the network or applications that are error, thereby raising the risk of being suspended to the borrower. In addition, the principle of balance in carrying the risk reflected in the prohibition against the transaction of *Riba*, where in the concept of *Riba* only debtors who assume all risk of loss of business, while the creditors are free at all and should get a percentage of Even when the funds have a negative return.⁷³
- f. In principle not incriminated (welfare) should be the contract made by the parties aimed at realizing the welfare of them and should not cause harm or state of incriminated. However, in the online loan agreement,

⁷³ Syamsul Anwar, *Hukum Perjanjian Syariah...*, 90

you can see the terms and conditions made by the organizer, certainly incriminated the customer. In this case it can be seen from the amount of interest set, the tempo of the pay, even the risks that will arise later on due to network or problems in the application of users.⁷⁴

- g. With the principle of trust is intended that each party must have a good faith in conducting transactions with the other party and not allowed one of the parties to exploit the ignorance of its partners. Based on this principle, the parties in conducting online loan transactions must both have a good faith, it is reflected in the terms and replenishment of the initial biodata of the customer who must include the official identity card, employment and income Address, and the family phone number, and even your employer's phone number. By filling in these things, the loan recipients have a good faith in doing online loan transactions.
- h. It is known that the principle of justice is the joint of every Covenant made by the Parties. In this modern era, often the contract is closed by one party with the other without it has the opportunity to negotiate the agreement on the contract, because the agreement clause was done by the other party. So in its implementation on online loans, it will cause losses to those who accept the conditions of the raw because it is driven by needs. However, in contemporary Islamic law it has been

⁷⁴ Syamsul Anwar, *Hukum Perjanjian Syariah...*,90

accepted a principle that for the sake of fairness the standard terms can be altered by the court if there is a reason for it.⁷⁵

2. Contract On Online Lending Transaction Based *Maslahah Mursalah*

Based on the explanation on the implementation of the contract on the online loan above, it can be known that there are still many principles that can not be fulfilled based on the terms and conditions imposed by the online lending organizers. It is causing unrest in the community where they desperately need a loan with an easy system. The problem that many customers suffer from or the recipient of a loan is that they do not read what is in terms and conditions. In addition, the organizer also does not mention the sanction of Apanila Nasabh or the creditor of the loan can not pay the loan and interest that has been filed. From here there are more and more online lending problems as each online lending organizer has their respective policies on loan billing and late sanctions.

However, in addition to that, people who have limited access to the bank or the institution of conventional or direct borrowing, are greatly assisted by the online lending service. Because, ease of access and requirements are very easy as well as the minimum limit of loans offered, make the cloud community think to do online loan transactions when it takes money with not too many amounts. Seeing problems arising from the contract between the provider of loans and recipients who are currently a common problem, because it concerns the life of many people in the sense

⁷⁵ Syamsul Anwar, *Hukum Perjanjian Syariah...*,92

of many people who use loans online As a source of improbe funds. In Islam, the common problem is called a *Maslahah Mursalah*. Because it is merely to seek human welfare, it should not be harmed by others who are intended to find a profitable and avoid loss because *Maslahah* It develops according to Environmental development.

As for the problem it is called by *Maslahah Mursalah* must fulfill some of the following conditions:

1. It should really be a mashlahah, or a legal mind. The intention is to be able to realize the creation of the law of a problem or event that breeds prosperity and reject loss or misrule.
2. In the form of general *Mashlahah*, not individual mashlahah. What is meant by this, namely in order to be realised that in the formation of the law an incident can bring profit to most mankind, or can reject the ugliness of them, and not bring profit to someone or Some people only among them. If so, then it can not be prescribed a law, because it can only be specific *mashlahah* to *Amir* or to the elite, without regard to the majority of the people and their poverty. So *Mashlahah* must be profitable (benefit) for the majority of mankind.⁷⁶
3. The establishment of the law by taking this benefit does not contradict the law or the basis of the decree Nash and Ijma'.⁷⁷

⁷⁶ Ahmad Djazuli, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam dalam Menyelesaikan Masalah-Masalah yang Praktis*, (Cet. III; Jakarta: Kencana, 2012), 127.

⁷⁷ Ahmad Djazuli, *Kaidah-Kaidah Fikih...*, 129

4. The fulfilment of 5 (five) main elements contained in Maqashid Ash Syar'iyah is beneficial to realize the welfare of both the world and the hereafter. The five main elements are:⁷⁸

a. Preserving religion (حفظ الدين)

The effort to maintain the true existence of the religion of God in the face of the earth is to start from self-improvement in totality, and then to organize life into the scope of the family, then develop a call to welfare to the general public.

b. Keeping the Soul (حفظ النفس)

Each man is obliged to defend his life. As a being chosen by God to be the caliph, human beings should be able to maintain a balance of relationship between humans and other human beings as well as the environment in which the benefits will return to the human beings themselves. Islam offers a variety of ways to safeguard life among others by realizing life's efforts and sustaining life.

c. Keeping Intellect (حفظ العقل)

Intellect had a very large urgency, a place dependent on a servant's responsibility. With the science, mankind is glorified, outperforming some other beings of God, so that he is willing

⁷⁸ M. Subhan, M. Mubasysyarum, Yudhistira Aga, Dudin Fakhruddin, *Tafsir Maqashidi Kajian Tematik Maqashid al-Syariah* (Jombang: Lirboyo Press, 2013) 42-258

to carry out his message as the Caliph of God on the earth.

From this cause, Islam is very well-kept the existence of human sense so as not to be damaged and blunt.

d. Keeping offspring (حفظ النسل)

Keeping a descendant is a step in maintaining the continuity of human regeneration on the Earth through the reproduction of one of them by way of marriage and forbidden to commit adultery.

e. Keeping treasure (حفظ المال)

Muslims allow every human being to have personal assets. There is no prohibition to be a rich man. Regarding the urgency of wealth, religion to regulate in such a way both in the affairs of development, care and allocation. Whoever does not have a treasure, he will not be able to produce the world and the hereafter. Besides he was unable to fulfill his life's needs, he would also always depend on others. In addition if man has no property, he will not be able to charity for others.

Reviewed from the problem above, obviously this problem is not personal but already related to the life of the crowd or for general benefit because it concerns the needs of everyday life. If viewed based on principles not fulfilled in Islamic law, the type of contract used is a

standard contract. According to Islamic law the standard Agreement in Islam can be used with regard to the following principles:

- a. The principle of agreement
- b. Equality of obligations and rights. This principle is closely related to fairness in conducting transactions. As Murtadho Muthahari said that justice can be seen from the three meanings;
 - 1) Fairness means equalization or a state of balance, or not limb;
 - 2) Fairness means equality, or eliminating discrimination;
 - 3) Fairness means the granting of personal rights and granting rights to whom it is entitled;
- c. Responsible principle. The principle responsible here is not only responsible to others. Responsible in the Islamic economy is wider than that, that is to be accountable to Allah SWT. Who has given trust to mankind. Every transaction we do must not contradict the rules established by God. This principle is born from the value of the Tawheed (the endorsement of Allah SWT);
 - a. Good faith principles.
 - b. Principles in accordance with Sharia
 - c. The principle of khiyâr. This principle is not only a reason for freedom of contract, but also wider than that. This principle implies that the agreement must be submitted first to the consumer who received the contract.

So in essence, the agreement in Islam is based on the recognition of the principle of "*at Taradin*" that is mutual ride. The meaning of the

confidentiality here not only stated agreed, but also serves as the basis of the agreement as long as it is not done without consciously or by force.⁷⁹

Based on this, the agreement made in online loans has been easier for the public to apply for loans because they do not have to meet the requirements and have such guarantees on the application of the loan application in the bank Conventional. Then the organizer's action makes the contract in a way that as applied to the online loan does not hurt. Because there is no rule in Islam regarding the online Pinjaman procedures written, as well as the organizers have a good faith to help the people who struggle with funds and only improcular or emergency.

As for taking the law under *Maslahah Mursalah* must fulfill the conditions that have been written above. Conditions to be fulfilled include:

1. It should actually be a mashlahah, or a mind-over-the “*mashlahah*” law. Online lending agreement is a form of new contract used to conduct debt-receivable transactions by utilizing information technology. While currently, there is no Islamic law discussing this so that the Maslahah is only a mind.
2. In the form of general Mashlahah, not individual mashlahah. Indeed debt-receivable by using online lending applications is a new thing in the community. However, the application has been widely used by many people so that this maslahah is a common public.

⁷⁹ Abdul Karim Munthe, “Penggunaan Perjanjian Baku Dalam Transaksi Bisnis Menurut Hukum Islam”, *Ahkam Vol. XV, No. 2*, (Juli, 2015) 216

3. The establishment of the law by taking this benefit does not contradict the law or the basis of the decree Nash and Ijma '. In loans online have been arranged in POJK number 77/POJK. 01/2016. In addition, debt-receivable transactions and conducting agreements and contracts are not prohibited or permitted by Nash and contained in the Qur'an, provided that it is in accordance with existing provisions.

4. The fulfilment of 5 (five) main elements contained in Maqashid Ash Syar'iyah is beneficial to realize the welfare of both the world and the hereafter. The five main elements are:

a. Preserving religion (حفظ الدين)

In an effort to safeguard the religion, online lending contract already meets the requirements set by the Nash regarding the making of standard contracts or appropriate raw contracts, although not all can be fulfilled.

b. Keeping the Soul (حفظ النفس)

In keeping the soul, Akad in a good online loan has fulfilled the balance element of the parties. So it can prevent misunderstandings between parties. However, if there is still a misunderstanding between parties, it is certain that the written contracts are unclear and still contain confusing elements.

c. Keeping Intellect (حفظ العقل)

Intellect had a very large urgency, a place dependent on a servant's responsibility. With the science, mankind is glorified, outperforming some other beings of God, so that he is willing to carry out his message as the Caliph of God on the earth. Based on the reason, Islam is very well maintained the existence of human sense to avoid damage and blunt. Likewise, in conducting the contract in online loan transactions, , the parties must have the knowledge and have good faith and are responsible to both the other and to God who has given the trust to man.

d. Keeping offspring (حفظ النسل)

Keeping offspring is a step in maintaining the continuity of human regeneration on the face of the earth. In online loan accrual There are no things that could ruin offspring like adultery practices. It becomes another if the result of the online loan is used for adultery.

e. Keeping treasure (حفظ المال)

Islam allow every human being to have personal assets. There is no prohibition to be a rich man. Regarding the urgency of wealth, religion to regulate in such a way both in

the affairs of development, care and allocation. Whoever does not have a treasure, he will not be able to produce the welfare of the world or the hereafter. Online lending transactions are one of the options for those who are less capable and do not need a lot of pinjman funds to maintain and regulate their property in order to survive. In addition by some online Pinjman investors is a promising investment.

Then if viewed in terms of the quality of the existence of *Maslahah Al Dharuryyah* where the benefits relate to the needs of human beings in the world and akherat, namely to nurture religion, soul, reason, descent and property. This mashlahah is the most essential for human life, thus eliminating or damaging one of the five trees is bad and leaving and avoiding the prohibition is good or the maslahah in the level of *Dhariri*, so what is done online loan organizers are not wrong if referring to the concept of maslahah in terms of quality of benefits. If the online lending provider does not implement the Akad type which is easier or equal to apply to the loan application on conventional banks as usual, the customer will also be harmed, because with the guarantees like what is in the ordinary bank will add to the burden of customers loans online. But the amount of rupiah they ask is limited or small. In addition, organizers will be made hassles because they have to take care of the guarantees and take guarantees and slow down loan funds. Because, at this time people prefer to borrow in loans online because they can get funds quickly and easily.

For this reason, the problem of online lending contract does not deviate entirely in Islamic law. But the ruling is to return only to seek mutual benefits (the *Maslahah* of people) and to avoid the occurrence of harm. Indeed, the rules of the Financial Services Authority organizers have been set about the terms and rules that should be obeyed by online lending organizers, but the policies made by the organizers remain their authority. So that they make the authority based on the needs of loans required by the wider community such as the minimum number of loans, interest, and deadline and the conditions that must be followed by the community or prospective lenders online loan.



CHAPTER IV CLOSING

Based on the research results the researchers do as well as conclusions and suggestions expected to provide useful feedback for online loan organizers and users or customers loan online to pay more attention to the rules, terms, conditions and content of online lending applications. In addition, in order to be a matter of consideration and learning for users of online loan applications so as not to wrong in choosing the appropriate application. Here is the conclusion of the contents of this thesis.

A. Conclusion

1. Based on the provisions that have been imposed by the Financial Services Authority, the contracts used in online loans are actually

appropriate however, the drawback there is no explanation of the sanctions given to the customer when there is a delay in payment and a debt collection procedure. In addition, the contract has no agreement on the retrieval of customer personal data for the purposes of billing payments.

2. Mechanisms that must be done in conducting online lending contract should first have applications in the smartphone, before proceeding to the transaction stage, it is better to read the terms and conditions imposed, because if not then the user does not know if there is something less obvious. If there is a thing that is not or less obvious, if all the processes are implemented then the user can use the application safely should be asked to the organizer. If all these processes are implemented then the user can use the application securely. But there is a thing to note is that users should see if the application is listed on the website of OJK. Because if it is not registered then, if there is misappropriation and violation of the application, the user will be difficult to file a claim.
3. The principles contained in the online loan contract, are contained in the terms and conditions of the initial registration or application of the loan. The principles are largely in accordance with the principle of *Akad*. The *Akad* used in online loans is a standard contract. In the Islamic, standards *Akad* can be applied as long as it contains the principle of justice. In addition, the raw contract is considered valid if both sides are equally willing "*an-Taraddin*" or *Rida* for what they have agreed.

Based on *Maslahah Mursalah*, online loan agreement is not blamed or justified, because in the problem it contains individual problems that can be a problem of many people. In addition, there have been no specific rules governing the contents of the contract in online loans. The ease and needs of the community will be a fast money lending system and easy terms as well as unenactment guarantees, making Akad in online loan application is deemed very appropriate to meet these needs.

B. Suggestions

The suggestions provided are as follows:

1. Online loan organizers need to write down sanctions for delays and make the provisions terms of making the loan more restrictive. For example, those who can do loans are people who have fixed income monthly. Moreover, organizers should make terms and condition more visible, so that users/borrowers can read and learn easily.
2. Users of online loans, must be very thorough in reading the terms and conditions before agreeing to them. If it is approved without reading the terms and conditions, it will cause problems later on. Users do not hesitate to inquire at the information Center or existing contact as a customer service if there is any difficulties and want to know the sanctions that will be given in case of delays.
3. In this research there are still many things that research should be developed. Because the online lending phenomenon is expanding and

there are a variety of applications both legal and illegal. As an example of what should be researched in the days about consumer protection on online loans and many things that have not been completely done about online loans in this research. This is due to limitations of problems owned by researchers.



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APPENDIX



Screenshoot of Procedure on Online Lending Transaction

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SMA/ MA	MA Al-Islam Ponorogo	2014

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Kursus Mahir Dasar (KMD) Kwartir Cabang Ponorogo	2012
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Latihan Gabungan SAR Jungle Rescue & Pertolongan Pertama tingkat Jawa & NTB di IAIN Kudus Jawa Tengah	2014

