

The Relevance of Caveat Emptor Doctrine to Online Loan Contracts in Indonesia

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Abstract

The rapid development of financial technologies in the internet-based P2P lending platform revolutionizes the way to get access to credit by directly connecting borrowers and lenders. It also develops grave legal issues coupled with consumer protection matters, primarily because of the problems arising from information asymmetry and the dominance of platform-controlled contracts. This research attempts to examine the possibility of the application of the caveat emptor doctrine on online loan contracts in Indonesia and whether or not the application of the doctrine is too oppressive for the borrowers amidst the development of fintech. Adopting a normative juridical type of research, this research follows a close examination of the laws, regulations, court decisions, and legal literature. This study shows that, while caveat emptor still applies, its unqualified application is modified by robust consumer protection law that imposes standards of transparency and honesty on the lending sites. Problems of usury rates of interest, oppressive debt collection, and privacy violations all suggest the necessity for greater regulatory supervision and better consumer financial education. It contributes to the legal literature as the reinterpretation of traditional contract law principles-that is, pursuant to cases brought about by the digital era-provides balanced insights relevant to regulators, platform providers, and consumers. The research thus points to the need to balance these ancient doctrines with modern consumer protection mechanisms to achieve equity and sustainability in the online lending market.

I. Introduction

The development of financial technology (fintech) in recent years has exhibited a very rapid trend,¹ particularly with the emergence of various online lending platforms that offer ease of access and speed in the loan application process.² These technology-based lending services are also known as online lending or peer-to-peer lending (P2P lending).³ P2P lending directly connects lenders and borrowers via web-based platforms without the involvement of traditional financial institution intermediaries.⁴ The model has attracted widespread public interest primarily due to the relatively faster funding application processes,⁵ reduced bureaucratic administrative requirements, and ease of accessing the services at any time and place, as long as there is an internet connection.⁶ Along with many benefits arising from online lending services, there is also a lot of legal traps⁷ and consumer protection challenges⁸ which seriously need to be taken into consideration in their practice. Plenty of instances of usurious interest rates, violent debt collection methods, and even compromises of borrowers' personal data turn out to be public,⁹ these factors indicate the need for extended regulatory oversight and enhanced legal awareness of the services.

P2P lending, being a particular expression of technological progress, has some features that distinguish it from traditional banking.¹⁰ Apart from its application of digital interfaces, the legal relationship between lenders and borrowers is typically reduced to a uniform online contract.¹¹ Members are often asked to simply click the "I agree" or "I accept terms and conditions" button without knowing the complex terms of the contract.¹² This weakens the bargaining position of the consumers, especially when they lack legal

¹ Reem Ahmed AlSuwaidi dan Charilaos Mertzanis, "Financial Literacy and FinTech Market Growth Around the World," *International Review of Financial Analysis* 95 (2024): 103481, <https://doi.org/10.1016/j.irfa.2024.103481>.

² Thomas Puschmann, "Fintech," *Business & Information Systems Engineering* 59, no. 1 (2017): 69–76, <https://doi.org/10.1007/s12599-017-0464-6>.

³ Hongke Zhao et al., "P2P Lending Survey: Platforms, Recent Advances and Prospects," *ACM Trans. Intell. Syst. Technol.* 8, no. 6 (Juli 2017), <https://doi.org/10.1145/3078848>.

⁴ Huaqing Wang et al., "A Process Model on P2P Lending," *Financial Innovation* 1, no. 1 (2015): 3, <https://doi.org/10.1186/s40854-015-0002-9>.

⁵ Yannis Pierrakis, "Peer-to-Peer Lending to Businesses: Investors' Characteristics, Investment Criteria and Motivation," *The International Journal of Entrepreneurship and Innovation* 20, no. 4 (17 September 2019): 239–51, <https://doi.org/10.1177/1465750319842528>.

⁶ Monica Rosavina et al., "P2P Lending Adoption by SMEs in Indonesia," *Qualitative Research in Financial Markets* 11, no. 2 (1 Januari 2019): 260–79, <https://doi.org/10.1108/QRFM-09-2018-0103>.

⁷ Ryan Randy Suryono, Indra Budi, dan Betty Purwandari, "Challenges and Trends of Financial Technology (Fintech): A Systematic Literature Review," *Information* 11, no. 12 (2020): 590, <https://doi.org/10.3390/info11120590>.

⁸ Budiharto Budiharto, Sartika Nanda Lestari, dan Gusto Hartanto, "The Legal Protection of Lenders in Peer to Peer Lending System," *Law Reform* 15, no. 2 (2019): 275–89, <https://doi.org/10.14710/lr.v15i2.26186>.

⁹ Brinda Sampat, Emmanuel Mogaji, dan Nguyen Phong Nguyen, "The Dark Side of FinTech in Financial Services: a Qualitative Enquiry Into FinTech Developers' Perspective," *International Journal of Bank Marketing* 42, no. 1 (2023): 38–65, <https://doi.org/10.1108/IJBM-07-2022-0328>.

¹⁰ Rainer Lenz, "Peer-to-Peer Lending: Opportunities and Risks," *European Journal of Risk Regulation* 7, no. 4 (2016): 688–700, <https://doi.org/10.1017/S1867299X00010126>.

¹¹ Randall E Duran dan Paul Griffin, "Smart Contracts: Will Fintech be the Catalyst for the Next Global Financial Crisis?," *Journal of Financial Regulation and Compliance* 29, no. 1 (1 Januari 2021): 104–22, <https://doi.org/10.1108/JFRC-09-2018-0122>.

¹² Bart Custers, "Click Here to Consent Forever: Expiry Dates for Informed Consent," *Big Data & Society* 3, no. 1 (10 Januari 2016): 2053951715624935, <https://doi.org/10.1177/2053951715624935>.

awareness and expertise. Asymmetry of information¹³ between the borrowers and the platform operators also increases, hence resulting in asymmetry of knowledge and terms exploitation by the platform.

Caveat emptor originates from the common law system, which literally means “let the buyer beware.”¹⁴ In the context of conventional trade, this doctrine emphasizes the responsibility of the buyer to examine the condition of goods or services before completing a transaction.¹⁵ In other words, if there is an error or dissatisfaction with the purchased object, the fault may be attributed to the buyer who did not conduct a thorough examination. In the past, this doctrine was widely used to encourage consumer caution,¹⁶ while sellers held a relatively advantageous position due to the assumption that buyers are obliged to ensure that the products they acquire align with their desires or needs.

But in the modern period, especially in consumer protection laws, the principle of caveat emptor has been more or less criticized.¹⁷ Laws in most nations have moved towards the need for greater protection for consumers, who are usually at the mercy of business organizations. This is parallel with the realization of information asymmetry that naturally exists in business transactions.¹⁸ A opposite principle, caveat venditor, has also emerged, where the sellers or providers of services are under the responsibility of providing complete and accurate information pertaining to the goods or services being offered.¹⁹ Consumer protection spirits in most countries, including Indonesia, are provided for in various legal instruments, namely the Consumer Protection Law (Law No. 8 of 1999) and technical regulations published by the competent authorities, in this case the Financial Services Authority for the financial services sector. Placing P2P lending within this context renders the extent to which the doctrine of caveat emptor can or should still apply highly pertinent, since online lending sites are often operated under highly asymmetric knowledge and bargaining power conditions in relation to the consumers.

The prevalence of the caveat emptor principle in internet-based lending practice can be viewed as a requirement of the borrower to have full knowledge of the contents of the

¹³ Peng Ma, Jennifer Shang, dan Haiyan Wang, “Enhancing Corporate Social Responsibility: Contract Design Under Information Asymmetry,” *Omega* 67 (2017): 19–30, <https://doi.org/10.1016/j.omega.2016.03.004>.

¹⁴ Muhammad Hafiz Mohd. Shukri, Rahmah Ismail, dan Ruzian Markom, “The Application of Caveat Emptor and Caveat Venditor Doctrines From Civil and Islamic Perspectives,” *Jurnal Undang-Undang dan Masyarakat* 28 (2021): 92–103, <https://doi.org/10.17576/juum-2021-28-09>.

¹⁵ Deviana Yuanitasari, Hazar Kusmayanti, dan Agus Suwandono, “A Comparison Study of Strict Liability Principles Implementation for the Product Wiability within Indonesian Consumer Protection Law Between Indonesia and United States of America law,” *Cogent Social Sciences* 9, no. 2 (15 Desember 2023): 2246748, <https://doi.org/10.1080/23311886.2023.2246748>.

¹⁶ James M Buchanan, “In Defense of Caveat Emptor,” *The University of Chicago Law Review* 38, no. 1 (24 Januari 1970): 64–73, <https://doi.org/10.2307/1598958>.

¹⁷ Ong Tze Chin dan Sakina Shaik Ahmad Yusoff, “Remedy as of Right for Consumer Protection,” *Mediterranean Journal of Social Sciences* 7, no. 2 (2 Maret 2016): 142, <https://doi.org/10.5901/mjss.2016.v7n2p142>.

¹⁸ Peter Murrell dan Radu A Păun, “Caveat Venditor: The Conditional Effect of Relationship-Specific Investment on Contractual Behavior,” *The Journal of Law, Economics, and Organization* 33, no. 1 (1 Maret 2017): 105–38, <https://doi.org/10.1093/jleo/eww011>.

¹⁹ Mengyang Wang, Qiyuan Zhang, dan Kevin Zheng Zhou, “The Origins of Trust Asymmetry in International Relationships: An Institutional View,” *Journal of International Marketing* 28, no. 2 (12 Maret 2020): 81–101, <https://doi.org/10.1177/1069031X19898492>.

agreement prior to signing.²⁰ In most instances, consumers are keen on the loan amount and interest charge, whereas all the other significant information, including terms related to penalty for delayed payment, debt recovery, and data processing, can be ignored.²¹ In addition to that, locating the terms and conditions in long pages of legal jargon that may not be clear to every individual makes borrowers shy away from reading the entire script. The online lending sites are, however ethically and legally obligated to ensure that consumers of the websites are provided with proper, intelligible, and transparent information relating to their rights and responsibilities.²² When this is neglected, there is an imbalance that may cause consumer injury with legal disputes that may follow subsequently.

Therefore, one of the basic questions that can be raised is to what degree the doctrine of caveat emptor is applicable in e-lending contracts and whether the doctrine remains applicable in the online environment? In this age, consumer protection has also become more complicated since transactions are done at a very fast pace and often cut across the territorial reach of a nation's laws. Transactions via digital platforms also do not necessarily involve direct face-to-face interactions between lenders and borrowers, so trust factors are primarily reliant on the reputation of the platform and information packaged electronically. Applied, the doctrine of caveat emptor would be counterproductive such as in the situation of putting consumers solely in charge of conducting all the legal and technical examination, while consumers are not well placed in terms of ability.²³ Subsequently, the majority of the consumers fall into misunderstandings that result in financial, psychological, and reputational losses.

This essay tends to test the extent to which the doctrine of caveat emptor legally protects online lending rights of borrowers or debtors. Precisely, the investigation checks if the doctrine really casts immense burden on the buyer-or our case, the borrower-and whether it is irrelevant where the platform of the lender controls both the flow of information and the significant terms of contracts. The study would further compare Indonesian applicable positive law, such as laws, including but not limited to Law No. 8 of 1999 regarding Consumer Protection; any OJK regulation, such as POJK No. 77/POJK.01/2016 on Technology-Based Lending Services; and court decisions concerning online lending cases, if there are relevant decisions available. From this normative context, what one would expect is a discussion of how consumer protection has been articulated and the respective roles of the platform providers and the consumers' rights are controlled.

In a broader way, this paper also intends to assess the legal risks associated with the functioning of P2P lending platforms that the consumers are exposed to. This is relevant because most people are still attracted by the ease and speed of online lending without

²⁰ Ni Made Eka Pradnyawati, I Nyoman Sukandia, dan Desak Gde Dwi Arini, "Perjanjian Pinjaman Online Berbasis Financial Technology (Fintech)," *Jurnal Konstruksi Hukum* 2, no. 2 (2021): 320–25, <https://doi.org/10.22225/jkh.2.2.3230.320-325>.

²¹ Jean-Jacques Laffont dan David Martimort, "Collusion Under Asymmetric Information," *Econometrica* 65, no. 4 (4 Februari 1997): 875–911, <https://doi.org/10.2307/2171943>.

²² Ade Putri Lestari dan St. Laksanto Utomo, "Kepastian Perlindungan Hukum pada Klausula Baku dalam Perjanjian Pinjaman Online di Indonesia," *Supremasi Jurnal Hukum* 2, no. 2 (2020): 174–93, <https://doi.org/10.36441/supremasi.v3i1.124>.

²³ Murrell dan Păun, "Caveat Venditor: The Conditional Effect of Relationship-Specific Investment on Contractual Behavior."

thinking about the legal consequences.²⁴ Looking into the positive law of Indonesia should be able to shed some light in respect to the legality of providing certainty for consumers, where deleterious terms in agreements or inhuman debt collection practices should be avoidable or at least reduced. Thus, this research will try to provide an overview of how the law and the doctrine of caveat emptor may complement or contradict the protection of consumer rights in the area of online lending.

Besides, this research is expected to render practical usefulness for stakeholders. For researchers, the output of this research could contribute to the developing body of literature on the transposition of traditional contract law doctrines into an online environment. The importance of caveat emptor: debate will have a wider importance for legal theory development, particularly on how best to develop consumer protection and the doctrine of fairness in e-agreements. The findings of the study are also expected to be of benefit to P2P lending platform providers and financial institutions in carrying out lessons on the requirement for transparency and good faith within a transaction cycle-from offer to debt collection. Platforms need to realize that putting all the load on users is no more aligned with the spirit of consumer protection. Transparency in information, regulation of interest rates at reasonable rates, decent collections practices are a must to ensure that a sustainable fintech ecosystem is built.

No less important, this study can also be a reference for regulators, such as the Financial Services Authority and the Ministry of Communication and Information Technology, in developing or improving fintech-related policy. Current regulations, for example, POJK No. 77/POJK.01/2016, of course, need to be reviewed again in terms of the ability to protect consumers. If there are a number of outstanding issues, there should be review, improvement, and increased law enforcement. Against the backdrop of data and scientific research developed, it is envisaged that regulators can therefore be more responsive to issues arising in the Fintech space, both in terms of the supervisory framework, and in terms of initiatives to improve digital literacy among the general population. The best regulations will encourage not only the emergence of fintech innovations but also provide robust legal safeguards for consumers.

The study gains relevance with the various emerging issues since online lending is currently a massive phenomenon in society.²⁵ From the small business operators who need urgent capital injections, to individuals in need of emergency funds, the services are accessed from literally all spheres of economic life. On the other hand, lenders are increasingly concerned with competitive return propositions.²⁶ But all of this positive impression may be undone in situations where consumer protection aspects are not appropriately addressed. Scare debt collection, illegal publication of personal data, and inefficient dispute settlement arrangements are some of the common problems which call for an overhaul and upgrading in the involved legal framework.²⁷ By continuing to discuss

²⁴ Pradnyawati, Sukandia, dan Arini, "Perjanjian Pinjaman Online Berbasis Financial Technology (Fintech)."

²⁵ Aldi Akbar et al., "Penyaluran Peer To Peer Lending Secara Daring (Ketahui Seluk Beluk Pinjaman Online)," *Jurnal Pengabdian Kepada Masyarakat Politeknik Piksi Ganesha Indonesia* 3, no. 1 (2022): 39–47, <https://doi.org/10.37339/jurpikat.v3i1.807>.

²⁶ Lenz, "Peer-to-Peer Lending: Opportunities and Risks."

²⁷ Sampat, Mogaji, dan Nguyen, "The Dark Side of FinTech in Financial Services: a Qualitative Enquiry Into FinTech Developers' Perspective."

fundamental principles like caveat emptor, we can closely examine whether online transactions therein are actually fair to both parties or whether they encourage power imbalances at the expense of consumers.

Lastly, This Research Arose from the Notion That the Caveat Emptor Doctrine Cannot Be Directly Applied in an Absolute Sense in Online Lending Contracts.²⁸ This doctrine, though it presumes vigilance on the borrower's part in the light of the environment and character of an internet-based lending transaction, places squarely the consumers at disadvantage. The study also examines to what degree the other principles of contractual law, such as good faith and the principle of equilibrium between the contracting parties, consumer protection, can be applied with a view to proposing balanced conclusions. The normative methodology to be followed here debates the application of laws, evolving legal doctrines, and practices within the field as much as it is available in literature reviews and governmental sources. It is anticipated that, in this context, the findings shall accumulate to the legal discussion whereas providing recommendations both from a theoretic standpoint as well as an applicative one in which business operators, regulators, and the general population can utilize.

Thus, This Study Not Only Focuses on the Normative Level Alone but Also Considers Real Implications for Consumer Protection. The further development of fintech and various other types of online lending increases the responsibility borne by financial service providers and regulators to ensure the creation of healthy and equitable business practices. At the same time, consumers also need to be encouraged to enhance their financial and legal literacy, so they can be more cautious before clicking the “I agree” button on digital platforms. It is hoped that this study can become a starting point for more in-depth subsequent studies, including the possibility of empirical approaches that explore the direct experiences of consumers and P2P lending providers in practicing the caveat emptor doctrine and other consumer protection principles.

With this level of discussion, this study is expected to contribute intellectually to the development of contract law principles in the information age, more so in the dynamics of Caveat Emptor that may be ready for reinterpretation. The application of this doctrine in the face of the sheer number of online lending transactions will be an analytical framework to come up with the best solutions in creating a responsible and consumer-friendly online lending culture. Additionally, it is also hoped that the study's results will spark even more passionate debates among practitioners, scholars, and regulators so that financial technology innovations do not rather give rise to practices eroding legal protection of the most exposed stakeholders, namely consumers.

2. Results and Discussion

Revisiting Caveat Emptor in the Digital Age: Reassessing Liability and Information Asymmetry in P2P Lending

The traditional doctrine of caveat emptor, which literally means “let the buyer

²⁸ Can Uslay, “Toward a More General Theory of Marketing Ethics,” *Journal of Research in Marketing and Entrepreneurship* 27, no. 1 (1 Januari 2025): 126–61, <https://doi.org/10.1108/JRME-03-2024-0083>.

beware,”²⁹ has historically placed the burden of diligence on the party purchasing goods or services. In commercial transactions of the past, sellers enjoyed a more advantageous position because they were under no explicit obligation to disclose complete information about the product or service, and buyers were expected to meticulously investigate what they were buying.³⁰ In several ways, this principle was addressed within a far less complex marketplace, where transactions were typically face to face and where the nature of goods was less complex than the financial services being sold today. The age of the internet has also, through the rise of P2P online lending platforms, brought into question the effectiveness and fairness of caveat emptor, particularly when weighed against new consumer protection legislation in Indonesia and internationally.³¹ All this changing landscape becomes quite clear if one considers the day-to-day operation of online lending, where service providers benefit from technological advantages, an opportunity to draft their standardized forms in their favor and having an enormous informational edge over the borrowers that seek immediate liquidation.

A key point in understanding why caveat emptor struggles in the digital environment is the pronounced asymmetry of information between platform operators and borrowers.³² Many online lenders make use of automated credit scoring algorithms that assess potential borrowers in ways that remain opaque to average consumers,³³ and standard-form contracts embedded in clickwrap or browse wrap interfaces.³⁴ In an era of instant credit approvals and minimal human interaction, the complexity of fine print is rarely scrutinized, and the “I agree” button takes the place of meaningful consent. Borrowers, often motivated by urgent need, do not necessarily read or understand lengthy terms that outline interest rates, penalty fees, data-collection practices, and consequences of default.³⁵ In a conventional marketplace predating the internet, a buyer had more opportunities to inspect a tangible product and negotiate aspects of a deal; in digital P2P lending, the lender or platform wields greater control over both the substance and presentation of legal terms.

Within Indonesia’s legal framework, consumer protection has become significantly more robust, and in many respects, it attempts to counteract the inadequacies of an unchecked caveat emptor principle. Law No. 8 of 1999 concerning Consumer Protection (UUPK) asserts several central principles that influence how contracts for consumer services should be designed, interpreted, and enforced. Consumer rights to receive correct and honest information, the prohibition against hidden clauses that disadvantage them, and the requirement of fairness in contractual dealings illustrate that legislative intent favors

²⁹ Bryan A. Garner, Tiger Jackson, dan Jeff Newman, ed., *Black’s Law Dictionary*, 9th ed. (Dallas: Thomson Reuters, 2009).

³⁰ Shukri, Ismail, dan Markom, “The Application of Caveat Emptor and Caveat Venditor Doctrines From Civil and Islamic Perspectives.”

³¹ Wang et al., “A Process Model on P2P Lending.”

³² Murrell dan Păun, “Caveat Venditor: The Conditional Effect of Relationship-Specific Investment on Contractual Behavior.”

³³ Z Zhang, K Niu, dan Y Liu, “A Deep Learning Based Online Credit Scoring Model for P2P Lending,” *IEEE Access* 8 (2020): 177307–17, <https://doi.org/10.1109/ACCESS.2020.3027337>.

³⁴ Nabilah Luthfiyah Chusnida, “Click-Wrap Agreement: Pengalihan Tanggungjawab Dalam Melindungi Konsumen,” *Prograsif: Jurnal Hukum* 17, no. 2 (2023): 180–204, <https://doi.org/10.33019/progresif.v17i2.4368>.

³⁵ Sampat, Mogaji, dan Nguyen, “The Dark Side of FinTech in Financial Services: a Qualitative Enquiry Into FinTech Developers’ Perspective.”

protecting the weaker party in the transaction.³⁶ This emphasis on safeguarding the public is also reflected in sector-specific regulations, such as the Financial Services Authority's Regulation (POJK) No. 77/POJK.01/2016 on Information Technology-Based Money Lending Services, often called the main legal foundation for Indonesian P2P lending operators. The stated provisions mandate transparent disclosures, responsible debt collection, and adequate privacy protections for users. Taken together, these regulations convey a modern shift away from assigning all diligence to the buyer (or borrower) alone, thereby recognizing that an acute imbalance of power and knowledge exists in online lending transactions.

Empirical observations and anecdotal evidence from borrowers' experiences underscore why caveat emptor has lost much of its practical relevance in this sphere.³⁷ Frequent grievances revolve around disproportionately high effective interest rates, hidden administrative fees, or default penalties that multiply daily and exceed the principal of the loan.³⁸ Platforms have also sometimes been reported to employ aggressive or unethical debt collection practices, ranging from harassment of borrowers by telephone to the unsolicited contact of friends and family based on personal data gleaned from the borrower's smartphone.³⁹ In many of these disputes, the platform's defense would traditionally hinge on the premise that the borrower "agreed" to the terms when checking the electronic consent box, reflecting a literal application of caveat emptor. However, these real-world controversies illuminate a gap between formal legal consent and genuine informed consent.⁴⁰ The stronger party drafts the clauses, the weaker party merely assents to them, and arguably, the mere presence of a standard clickwrap agreement is a frail basis for claiming that both parties stand on equal footing.

From a legal theory standpoint, this tension justifies the pivot toward a caveat venditor orientation, which translates to "let the seller beware," or more precisely, mandates that service providers assume a higher level of responsibility for honest communication and equitable risk allocation.⁴¹ While it does not entirely negate the consumer's obligation to read the terms and act prudently, it mitigates scenarios in which providers can hide behind complex jargon or meticulously buried clauses.⁴² Indonesian consumer protection law has thus codified on Article 7 of UUPK, either explicitly or implicitly, the notion that businesses

³⁶ Ika Atikah, "CONSUMER PROTECTION AND FINTECH COMPANIES IN INDONESIA: INNOVATIONS AND CHALLENGES OF THE FINANCIAL SERVICES AUTHORITY," *Jurnal Hukum dan Peradilan* 9, no. 1 (2020): 132–53, <https://doi.org/10.25216/jhp.9.1.2020.132-153>.

³⁷ Dwi Yulianto, "Analisis Kejahatan Ekonomi dalam Praktik Pinjaman Online: Dampak terhadap Masyarakat dan Strategi Penanggulangan," *Jurnal Syntax Admiration* 5, no. 12 SE- (23 Desember 2024): 5641–57, <https://doi.org/10.46799/jsa.v5i12.1888>.

³⁸ Gika Asdina Firanda, Paramita Prananingtyas, dan Sartika Nanda Lestari, "Nagih Utang (Debt Collector) Pinjaman Online Berbasis Financial Technology," *Diponegoro Law Journal; Vol 8, No 4 (2019): Volume 8 Nomor 4, Tahun 2019DO - 10.14710/dlj.2019.25509*, 31 Oktober 2019, <https://doi.org/10.14710/dlj.2019.25509>.

³⁹ Reino Rizkillah Fatah et al., "Pertanggungjawaban Tindak Pidana Doxing oleh Debt Collector Pinjaman Online dalam Penagihan Hutang Nasabah," *Borobudur Law and Society Journal* 3, no. 2 (2024): 43–51, <https://doi.org/10.31603/11708>.

⁴⁰ Custers, "Click Here to Consent Forever: Expiry Dates for Informed Consent."

⁴¹ Shukri, Ismail, dan Markom, "The Application of Caveat Emptor and Caveat Venditor Doctrines From Civil and Islamic Perspectives."

⁴² Fransiska Novita Eleanora dan Aliya Sandra Dewi, "Pelaksanaan Perjanjian Baku dan Akibat Hukumnya bagi Konsumen," *JURNAL MERCATORIA* 15, no. 1 SE-Articles (27 Juni 2022): 19–27, <https://doi.org/10.31289/mercatoria.v15i1.6812>.

with superior bargaining power and knowledge must not exploit that advantage.⁴³ When a standard-form contract from an online lending platform is challenged in court or reported to the Financial Services Authority, the emphasis of the legal analysis often shifts to issues of fairness, clarity, and transparency. Has the lender accurately disclosed the effective interest rate? Does the contract mention the possibility and amount of compounding penalties? Are there oppressive clauses that breach the principles enumerated by the UUPK?⁴⁴ If so, those clauses might be deemed void, and the platform could face sanctions for acting in bad faith.

The ubiquity of standard, non-negotiable electronic contracts is one of the greatest practical obstacles to consumer protection in P2P lending.⁴⁵ Borrowers' consent effectively becomes a "take it or leave it" proposition, with minimal bargaining leeway. If a borrower rejects the terms, they cannot secure the urgently needed loan. This environment can produce systemic abuse, as unscrupulous operators—particularly those unregistered with, or unlicensed by, OJK—insert hidden fees or burdensome debt collection stipulations without fear of negotiation.⁴⁶ Some providers may also craft ambiguous definitions of "default" or embed disclaimers that any personal data collected through the mobile application can be used in an unlimited way to recover debts.⁴⁷ While POJK No. 77/POJK.01/2016 explicitly outlaws intimidating or unethical debt collection, and the newly enacted Personal Data Protection Law (UU PDP) restricts unauthorized data processing, the discrepancy between the written norm and actual practice remains significant.⁴⁸ The formal pronouncement of a rule does not always guarantee real compliance, particularly when enforcement is uneven.

Information asymmetry thus becomes the linchpin of the discussion. In an ideal application of caveat emptor, both parties should be able to engage in a fair assessment, with consumers thoroughly understanding the item or service.⁴⁹ In P2P lending, the platform often has an in-depth knowledge of underwriting models, risk calculations, and the actual costs that the loan might entail; most borrowers can barely compare interest rate structures across multiple lenders before making a rushed decision. The fact that so many P2P lending advertisements emphasize speed and simplicity, rather than balanced disclosure, adds to the problem.⁵⁰ Borrowers are frequently drawn to marketing claims that the money will be disbursed "within minutes," overshadowing the potential pitfalls outlined in fine print. Given that the spirit of Indonesian consumer protection laws is to ameliorate precisely these sorts of pitfalls, it becomes apparent that the old principle of "let the buyer beware" is insufficient unless there is a countervailing framework ensuring that "the seller," or in this case, the

⁴³ "Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 tentang Perlindungan Konsumen"

⁴⁴ Lestari dan Utomo, "Kepastian Perlindungan Hukum pada Klausula Baku dalam Perjanjian Pinjaman Online di Indonesia."

⁴⁵ Pierrakis, "Peer-to-Peer Lending to Businesses: Investors' Characteristics, Investment Criteria and Motivation."

⁴⁶ Sampat, Mogaji, dan Nguyen, "The Dark Side of FinTech in Financial Services: a Qualitative Enquiry Into FinTech Developers' Perspective."

⁴⁷ Firanda, Prananingtyas, dan Lestari, "Nagih Utang (Debt Collector) Pinjaman Online Berbasis Financial Technology."

⁴⁸ Fatah et al., "Pertanggungjawaban Tindak Pidana Doxing oleh Debt Collector Pinjaman Online dalam Penagihan Hutang Nasabah."

⁴⁹ Buchanan, "In Defense of Caveat Emptor."

⁵⁰ Gwenn L. L. Parrinama, "Pengaruh Kemudahan Akses Terhadap Niat Melakukan Pinjaman Pada Peer to Peer Lending," *Jurnal Ekonomi Bisnis dan Kewirausahaan* 1, no. 6 (2024): 1–5, <https://doi.org/10.69714/dveg4m29>.

lender, must not obscure crucial information.

Legally, the shift away from a pure caveat emptor position is also sustained by the principle of good faith and the principle of balance in Indonesian contract law. Article 1338 of the Civil Code (Kitab Undang-Undang Hukum Perdata (KUHPerdata)) underpins the idea that contracts have binding force upon the parties, but this principle coexists with the notion that such contracts should not breach decency or public order. Meanwhile, UUPK goes a step further, categorically prohibiting unfair clauses. Good faith in online lending means that lenders should reveal the details of loan obligations and not slip detrimental conditions into the background of digital fine print.⁵¹ Where the lender knows or should know that certain terms would be unacceptable to a reasonable borrower if they were prominently disclosed, the principle of good faith commands that such terms be made transparent or, if inherently abusive, omitted altogether.⁵² If lenders are found to have subverted the principle of good faith, Indonesian law allows for the partial or total nullification of the relevant contract terms.

An important point to consider is the interplay between low financial literacy and the feasibility of expecting borrowers to be the primary watchdogs of their own interests.⁵³ Surveys and anecdotal feedback suggest that many Indonesians, especially in rural or less economically advantaged segments, are not deeply conversant with financial terminology or the intricacies of compound interest, annual percentage rates, or various penalty structures.⁵⁴ This educational gap exacerbates information asymmetry and further weakens any argument that borrowers must simply “be more careful.” If the average borrower is ill-equipped to parse contractual intricacies, then the law has a stronger moral and policy justification for tilting the responsibility toward the provider, thus reinforcing a partial or full transition from caveat emptor to caveat venditor. While regulators like OJK have initiated programs to improve digital financial literacy,⁵⁵ such moves can only incompletely address the problem if unscrupulous lenders are allowed to exploit such ignorance among consumers. The responsibility, thus, still rests equally with the two public authorities to enforce the rules without fail and with the lenders themselves to uphold ethics.

One might argue that caveat emptor cannot be dismissed entirely, even in Indonesia’s online lending landscape. Consumers do bear some measure of personal responsibility when accepting loan terms or providing sensitive personal data.⁵⁶ Moreover, courts and arbitral

⁵¹ Eleanora dan Dewi, “Pelaksanaan Perjanjian Baku dan Akibat Hukumnya bagi Konsumen.”

⁵² Paula Giliker, “Contract Negotiations and the Common Law: A Move to Good Faith in Commercial Contracting?,” *Liverpool Law Review* 43, no. 2 (2022): 175–202, <https://doi.org/10.1007/s10991-022-09299-2>.

⁵³ Aris Yuni Pawerstri, Asti Bhawika Adwitiya, dan Wahyu Ramadani, “Sosialisasi Upaya Hukum dan Literasi Keuangan Digital sebagai Solusi Hadapi Pinjaman Online Ilegal,” *Jurnal Pengabdian Masyarakat IPTEKS* 9, no. 1 (2023): 36–41, <https://doi.org/10.32528/jpmi.v9i1.650>.

⁵⁴ Aviani Malik Gomulya, “Efektivitas Peran Literasi Digital dalam Pembangunan Ekonomi Digital, Studi Kasus pada Korban Kejahatan Pinjaman Online Ilegal,” *Jurnal Kritis* 32, no. 2 (2023): 117–36, <https://doi.org/10.24246/kritis.v32i2p117-136>.

⁵⁵ Dede Sofyan Setiawati, “Pemkot Cirebon Dorong Literasi Keuangan untuk Berantas Judi Online dan Pinjol Ilegal,” Pemerintah Kota Cirebon, 2024, <https://cirebonkota.go.id/pemkot-cirebon-dorong-literasi-keuangan-untuk-berantas-judi-online-dan-pinjol-ilegal/>.

⁵⁶ Usman Razak Putra Achsan, Eti Purwiyantiningsih, dan Suyadi Suyadi, “Tinjauan Yuridis Terhadap Penerapan Pasal 18 Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen Mengenai Pencantuman Klausula

bodies still consider whether the borrower should have at least attempted to understand the contract or exercised the slightest degree of caution. However, the mere theoretical recognition of caveat emptor does not absolve lenders of the heightened obligations spelled out by law. In a balanced application, the borrower's duty to read the contract coexists with the platform's duty to present that contract in a straightforward, understandable format and avoid hidden manipulations.⁵⁷ This coexistence ensures that both parties share responsibilities, but the heavier burden lies on the party better equipped to bear it—the more knowledgeable, more organized, and more resourceful lender or service provider.

A related issue emerges in the realm of personal data privacy. Given that many P2P platforms require mobile applications with permissions to access contacts, storage, camera, and sometimes location data, concerns about how that data might be misused loom large.⁵⁸ Instances of lenders broadcasting a borrower's indebtedness to the borrower's social network or threatening to publicly shame them highlight abuses that clearly clash with the consumer protection orientation of UUPK and POJK. The question of consent again arises: did the user not "agree" to these data-access permissions at the time of installation? Caveat emptor in its strict sense might place the blame on the borrower for accepting these permissions. But in contemporary practice, particularly under the new Personal Data Protection Law, any consent must be informed, freely given, and for a specified purpose.⁵⁹ If the platform failed to delineate precisely how it intended to use or share personal data, that consent is legally questionable, and claims of caveat emptor lose traction.⁶⁰ Instead, the regulators and courts generally treat such breaches as violations by the platform, assigning liability to the provider rather than the borrower.

A review of court and regulatory decisions to date suggests an emerging trend of protection of borrowers, where OJK has shut down or blocked illegal lenders which fail to adhere to the regulations.⁶¹ Although systemic data are not available, a series of documented cases of abusive or predatory P2P practices have resulted in public warnings, delisting of mobile applications from the main application stores, and sometimes also administrative fines.⁶² There are, however, issues in seeking restitution or damages against such lenders, particularly if the lender is unregistered or has multiple corporate personas. A best practice system might thus be one where not only is there good regulation, but also readily accessed

Eksonerasi Dalam Kontrak Elektronik," *Soedirman Law Review* 2, no. 3 (2020): 64–72, <https://doi.org/10.20884/1.slr.2020.2.3.93>.

⁵⁷ Ahmadi Miru, *Hukum Kontrak dan Perancangan Kontrak* (Depok: Rajawali Pers, 2018).

⁵⁸ Eko Pratama Sinaga dan Abdurrahman Alhakim, "Tinjauan Yuridis Terhadap Perlindungan Hukum Bagi Pengguna Jasa Pinjaman Online Ilegal di Indonesia," *Unes Law Review* 4, no. 3 (2022): 283–96, <https://doi.org/10.31933/unesrev.v4i3.235>.

⁵⁹ Cindy Vania et al., "Tinjauan Yuridis terhadap Perlindungan Data Pribadi dari Aspek Pengamanan Data dan Keamanan Siber," 2023 2, no. 3 (2023): 654–66, <https://doi.org/10.58344/jmi.v2i3.157>.

⁶⁰ Alexander Kennedy, "Perlindungan Data Pribadi Dalam Dunia Siber Di Indonesia Ditinjau Berdasarkan Hukum Tata Negara," *Hukum Dinamika Ekselensia* 6, no. 2 (2024): 82–98.

⁶¹ Otoritas Jasa Keuangan, "Siaran Pers SP 05/XI/SWI/2021 Berantas Pinjol Ilegal, Satgas Waspada Investasi Tutup 116 Pinjol Ilegal" (Otoritas Jasa Keuangan, 2021), <https://ojk.go.id/waspada-investasi/id/siaran-pers/Pages/Berantas-Pinjol-Ilegal,-Satgas-Waspada-Investasi-Tutup-116-Pinjol-Ilegal.aspx>.

⁶² Otoritas Jasa Keuangan, "Siaran Pers SP-6/STPASTI/VIII/2024 Satgas PASTI Blokir 1.001 Entitas Ilegal di Juni-Juli 2024" (Otoritas Jasa Keuangan, n.d.), <https://ojk.go.id/id/berita-dan-kegiatan/info-terkini/Pages/Satgas-PASTI-Blokir-1001-Entitas-Ilegal-di-Juni-Juli-2024.aspx>.

legal remedies and dispute resolution mechanisms that enable consumers to push back against rogue platforms. Without an effective enforcement mechanism, a legal shift from caveat emptor to caveat venditor is more aspiration than general reality.

What is clear from the wider discussion is that any reconsideration of caveat emptor is not a question of removing the expectation of consumer vigilance altogether but rather one of calibrating the doctrine so that it better reflects the reality of actual market conditions and furthers legal conceptions of fairness.⁶³ If borrowers are in a position of urgent financial need and face an elaborate digital infrastructure they do not fully comprehend, allowing businesses to hide behind “let the buyer beware” creates unjust outcomes.⁶⁴ Instead, the emphasis placed by Indonesian law on transparency, fairness, and good faith is a corrective mechanism designed to minimize exploitation and align legal outcomes with the ideals of consumer welfare. The liabilities of P2P lending platforms thus extend beyond mere disclaimers; they include obligations to educate or at least inform users adequately, charge reasonable and disclosed fees, handle personal data lawfully, and enforce debts through humane and lawful methods.

In sum, liability in the digital age has become more about balancing the respective duties of borrowers and lenders than simply reaffirming a centuries-old common law principle. The hallmark of modern Indonesian regulatory policy, embodied by UUPK and POJK No. 77/POJK.01/2016, is that where a platform exercises dominance over the flow of information, the design of contracts, and the manner of debt enforcement, it also carries a heightened duty of care toward consumers. This duty stands in direct opposition to the premise that consumers alone must beware. It may be argued that even if caveat emptor once served a heuristic purpose in simpler markets, the present environment demands a nuanced framework wherein borrowers are encouraged to be vigilant, but platforms must not exploit a borrower’s lack of bargaining power or financial literacy.⁶⁵ Any effort, then, to employ caveat emptor as a justification for dubious clauses or hidden fees will not pass judicial scrutiny or the intent of consumer protection in today’s Indonesian fintech sector. This is echoed in various regulatory attempts to compel more open contract terms, transparent calculations of open interest, and binding requirements with regard to data—herein, things the regulators have included to make sure that the evolution of P2P lending falls within the broad frame of public interest, not one-sided commercial convenience.

By reassessing liability in this manner, Indonesia’s regulatory environment and legal system have embarked upon a journey that transcends older doctrines, seeking to ensure that rapid technological innovations do not outstrip the protective apparatus for consumers. The continuing challenge lies in translating these legal mandates into on-the-ground realities. Enforcement measures must be firm enough to deter violations, and educational programs must be sufficiently effective to elevate consumer awareness. These elements,

⁶³ Alexander Kennedy, “Hak Asasi Manusia dan Keadilan Bermartabat: Perbandingan Teori dan Realitas di Indonesia,” *Ekasakti Jurnal Penelitian & Pengabdian* 4, no. 1 (2023): 132–41, <https://doi.org/10.31933/ejpp.v4i1.1043>.

⁶⁴ Suryono, Budi, dan Purwandari, “Challenges and Trends of Financial Technology (Fintech): A Systematic Literature Review.”

⁶⁵ Murrell dan Păun, “Caveat Venditor: The Conditional Effect of Relationship-Specific Investment on Contractual Behavior.”

together, help mitigate the structural asymmetries that gave rise to the original justification for caveat emptor, thereby positioning the doctrine more as a cautionary note than a blanket defense for P2P operators. The future of online lending in Indonesia thus rests on whether these protective frameworks can adapt effectively as technology evolves, guaranteeing that borrower vulnerability does not become an avenue for abuse and that the principle of “let the buyer beware” does not overshadow the responsibilities incumbent upon digital-age “sellers.”

Evaluating Standard-Form E-Contracts: The Constraints of Freedom of Contract under Indonesian Consumer Protection Laws

In the Standard-form e-contracts, also known as standardized or boilerplate agreements, have emerged as the primary means of formalizing transactions within Indonesia’s online lending landscape.⁶⁶ In principle, such contracts reflect an attempt to streamline and accelerate the contracting process. Given that peer-to-peer (P2P) lending platforms process thousands of loans daily, issuing personalized documents for each transaction is not feasible.⁶⁷ Standard-form terms, therefore, supply swift access to credit and reduce operational costs. In practice, however, these ostensibly convenient digital agreements also pose serious challenges to the legal principle of freedom of contract. Under Indonesian law, the doctrine of freedom of contract allows parties to negotiate and construct an agreement as they see fit.⁶⁸ Yet, in the context of consumer protection, especially for borrowers under urgent financial conditions, negotiations rarely occur. This tension between streamlined efficiency and legal fairness underlies an ongoing debate on how standard-form e-contracts either circumvent or constrain the exercise of contractual freedom under Indonesian consumer protection laws.

At the root of the controversy is the inherent imbalance of power between the online lending platforms and their potential borrowers.⁶⁹ Freedom of contract assumes a modicum of equality of bargaining power, affording each party the strength to bargain against or decline unconscionable terms.⁷⁰ However, in standard-form e-contracts, the borrower seldom has the opportunity—much less the bargaining power—to propose amendments. Most platforms design their digital agreement so that users encounter a final, non-negotiable set of terms.⁷¹ Borrowers must click “Agree” to proceed or abandon the transaction altogether, which, in circumstances of financial urgency, is rarely a viable option. This dynamic gives rise to what consumer protection law in Indonesia terms the “unfair clause” problem. As regulated under Law No. 8 of 1999 on Consumer Protection (UUPK), any standard-form provision that unilaterally imposes obligations or waives liabilities for the benefit of the business actor can be declared null and void. In practice, however, these provisions remain widespread in digital lending.

A good example is the terms that allow overreaching data collection or invasive debt

⁶⁶ Salim H. Sidik, *Hukum Kontrak Elektronik* (Depok: Rajawali Pers, 2021).

⁶⁷ M. Raihan Mappuji dan Lingga Wisnu Wardana, “Fintech Competition Compliance: Analisis Pelaku Usaha Fintech dalam Menjalankan Program Kepatuhan Persaingan Usaha KPPU,” *Journal of Studia Legalia* 4, no. 1 (2023): 43–59, <https://doi.org/10.61084/jsl.v4i01.64>.

⁶⁸ Dwi Atmoko, “Penerapan Asas Kebebasan Berkontrak Dalam Suatu Perjanjian Baku,” *Binamulia Hukum* 11, no. 1 (10 Maret 2023): 81–92, <https://doi.org/10.37893/jbh.v11i1.308>.

⁶⁹ Murrell dan Păun, “Caveat Vendor: The Conditional Effect of Relationship-Specific Investment on Contractual Behavior.”

⁷⁰ Miru, *Hukum Kontrak dan Perancangan Kontrak*.

⁷¹ Chusnida, “Click-Wrap Agreement: Pengalihan Tanggungjawab Dalam Melindungi Konsumen.”

collection methods.⁷² Most of those are included after signing, with the platform laying claim to even the phone contacts for repayment assurance. Such terms, often buried in the fine print, raise the question of whether the borrower actually gave informed consent.⁷³ Under the classical notion of freedom of contract, the borrower's acceptance would suffice to make these clauses binding. Yet Indonesian consumer law Article 18 imposes a stricter standard, recognizing that acceptance procured through confusing or hidden provisions does not necessarily equate to genuine meeting of the minds. The statutory requirement is that business operators must disclose material information in a manner that is comprehensible, accurate, and transparent. If platforms fail this requirement, the law effectively places them in breach, creating room for the borrower to invoke the relevant consumer protection norms. In the real market, however, the issues of enforcement persist as most of the borrowers are still in ignorance of their right to challenge such terms or simply daunted by court litigation prospects.⁷⁴ Freedom of contract is doctrinally well entrenched in Indonesian civil law, as it is enshrined in the Civil Code, Kitab Undang-Undang Hukum Perdata.

From a doctrinal perspective, freedom of contract has deep roots in Indonesian civil law, as codified in the Civil Code (Kitab Undang-Undang Hukum Perdata). Traditionally, these principal grants parties broad latitude to determine the content and scope of their agreement. So long as the contract does not contravene public order or morality, it is deemed valid.⁷⁵ Yet, in modern practice, the state has layered specific consumer-centric rules on top of this doctrine. The UUPK is the classical example of a statutory restriction of unlimited contractual freedom insofar as it prohibits unfair standard terms. The legislative intervention is a response to the recognition that standard contracts are, by definition, drawn up by one party - the business actor - and offered to the other - the consumer - on a take-it-or-leave-it basis.⁷⁶ The law thus attempts to protect the weaker party by proscribing clauses that, for example, deny liability, transfer risks entirely to the consumer, or restrict the consumer's right to seek legal recourse.

In online lending, the contravention of consumer protection laws commonly manifests in two major ways.⁷⁷ First, terms relating to loan costs and default penalties are often written in obscure language or placed in footnotes. Consumers, encouraged by the platform's marketing claims of "fast approval" or "low interest rates," typically click the "Agree" button without scrutinizing each provision. When they default, they are shocked to find that there are accrued charges or daily penalty rates several times the initial loan value. Second, debt collection terms can be just as problematic. Some contracts provide that by clicking "Agree," consumers consent to let the platform use personal data—telephone numbers, email addresses, social media accounts—to recover debts.⁷⁸ In extreme cases, personal data is shared or threatened to be shared

⁷² Vania et al., "Tinjauan Yuridis terhadap Perlindungan Data Pribadi dari Aspek Pengamanan Data dan Keamanan Siber."

⁷³ Suryono, Budi, dan Purwandari, "Challenges and Trends of Financial Technology (Fintech): A Systematic Literature Review."

⁷⁴ Firanda, Prananingtyas, dan Lestari, "Nagih Utang (Debt Collector) Pinjaman Online Berbasis Financial Technology."

⁷⁵ Achsan, Purwiyantiningih, dan Suyadi, "Tinjauan Yuridis Terhadap Penerapan Pasal 18 Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen Mengenai Pencantuman Klausula Eksonerasi Dalam Kontrak Elektronik."

⁷⁶ Duran dan Griffin, "Smart Contracts: Will Fintech be the Catalyst for the Next Global Financial Crisis?"

⁷⁷ Sampat, Mogaji, dan Nguyen, "The Dark Side of FinTech in Financial Services: a Qualitative Enquiry Into FinTech Developers' Perspective."

⁷⁸ Fatah et al., "Pertanggungjawaban Tindak Pidana Doxing oleh Debt Collector Pinjaman Online dalam Penagihan Hutang Nasabah."

with the borrower's family, employer, or social circles, creating a form of psychological pressure.⁷⁹ Under Indonesian law, these tactics clash with the principles of good faith and balance mandated by UUPK, and they may also breach the Personal Data Protection Law (UU PDP) to the extent they involve unauthorized dissemination of personal information.

Although consumer protection law is designed to combat such injustices, the reality is that countless consumers remain trapped by standard-form provisions. One reason is the relative novelty of online lending itself.⁸⁰ P2P platforms, having proliferated only in the past few years, tend to operate in an environment of partial regulation and evolving oversight. The Financial Services Authority (OJK) has sought to address these gaps through regulations like POJK No. 77/POJK.01/2016 on Information Technology-Based Lending Services. It compels lending platforms to register with the OJK, maintain certain capital requirements, and abide by transparency obligations, including clear disclosure of costs and interest rates. Yet, these obligations do not specifically enumerate the precise format for standard clauses, nor do they prescribe uniform contract language. The deficiency persists that many platforms technically disclose fees and data usage, but do so in cumbersome blocks of text or with ambiguous wording.⁸¹ Formal compliance with the regulation does not necessarily translate into effective consumer understanding.

Another critical factor hampering the enforcement of consumer protection norms is the general lack of legal awareness and financial literacy among borrowers.⁸² The UUPK theoretically empowers them to bring claims for contract annulment or damages in the event of deceptive standard clauses. In practice, aggrieved borrowers seldom sue, or even file formal complaints with the OJK. Few want to risk the social stigma of default; others simply cannot afford lawyers.⁸³ Complicating things, many seedy platforms operate lending businesses without licenses, in which case borrowers may have a hard time naming a responsible legal entity in the first place. As such, most consumers yield to onerous repayment terms, thereby legitimizing the online platform's strategy of imposing its terms on consumers through standard-form agreements.

In analyzing these circumstances, it becomes evident that standard-form e-contracts function as a strategic device for platforms to enforce certain contractual conditions that might be renegotiated or disputed in a more balanced setting. Freedom of contract, when seen through the lens of Indonesian jurisprudence, cannot be separated from the principle of good faith (*itikad baik*) and public order.⁸⁴ The doctrine of good faith demands that neither party conceal material facts nor act in a way intended to render the contract's essential purpose void. Sticking basic clauses in unavailable attachments or concealing them in electronic forms full of obscure redundancy would

⁷⁹ Firanda, Prananingtyas, dan Lestari, "Nagih Utang (Debt Collector) Pinjaman Online Berbasis Financial Technology."

⁸⁰ Pawerstri, Adwitiya, dan Ramadani, "Sosialisasi Upaya Hukum dan Literasi Keuangan Digital sebagai Solusi Hadapi Pinjaman Online Ilegal."

⁸¹ Yulianto, "Analisis Kejahatan Ekonomi dalam Praktik Pinjaman Online: Dampak terhadap Masyarakat dan Strategi Penanggulangan."

⁸² Pawerstri, Adwitiya, dan Ramadani, "Sosialisasi Upaya Hukum dan Literasi Keuangan Digital sebagai Solusi Hadapi Pinjaman Online Ilegal."

⁸³ Gomulya, "Efektivitas Peran Literasi Digital dalam Pembangunan Ekonomi Digital, Studi Kasus pada Korban Kejahatan Pinjaman Online Ilegal."

⁸⁴ Giliker, "Contract Negotiations and the Common Law: A Move to Good Faith in Commercial Contracting?"

seem to contravene the doctrine.⁸⁵ The borrowers have no real chance of approximating the real scope of financial obligation or intrusion into their private lives. These tactics frustrate substantive bargaining and thereby compromise the integrity of the contract formation process itself.

Legal interpretation practices further underscore the vulnerability of standard-form clauses to judicial nullification. Article 18 of the UUPK stipulates that any agreement that negates or diminishes the rights of consumers, or imposes unfair obligations, can be declared void. In principle, a court would be justified in annulling debt collection clauses that permit harassment or invasion of privacy. The same applies to clauses shifting all risk to the borrower through punitive penalty structures.⁸⁶ Judicial authorities in Indonesia, in several reported consumer protection cases, have tended to side with the consumer when there is a clear imbalance or misleading representation.⁸⁷ Yet, for these principles to have real effect, borrowers must first bring a claim or complaint before the courts, which, as mentioned, is far from common. Consequently, standard-form e-contracts remain predominantly in force, with borrowers either unaware of their rights or lacking confidence in legal remedies.

The scandal of standard-form e-contracts for online lending also calls for more consideration of how to fix or bring such contracts into alignment with fairness norms.⁸⁸ A central part of any way forward is much more robust regulatory intervention as mentioned on Supreme Court Ruling No. 1206K/Pdt/2024 where the Government are also held responsible to make sure that the contracts that are made between lenders and borrowers have met the necessary standard. For instance, the OJK could require standardized short-form disclosures that summarize all of the major terms in summary form-effective interest rates, penalty fees, debt-collection methods, and data use. Platforms could be obliged to present this summary prominently, requiring a separate consent step for especially sensitive clauses, such as data-sharing or invasive collection techniques. This approach would give borrowers a clearer understanding of the most crucial terms before they commit. Some fintech platforms have already begun incorporating best practices by offering interactive calculators that provide transparency over how interest and penalties add up over time, therefore disclosing this information in good faith.⁸⁹

An additional step would be better public legal education. The more pervasive consumer awareness is about the protections of the UUPK and the availability of legal recourse, the less able platforms will be to get away with obscuring complex digital forms.⁹⁰ Furthermore, the availability of mechanisms that will provide methods of settling disputes, such as online mediation or affordable expedited arbitration, may trigger more borrowers to object to unfair clauses. The legal

⁸⁵ Ma, Shang, dan Wang, "Enhancing Corporate Social Responsibility: Contract Design Under Information Asymmetry."

⁸⁶ Sinaga dan Alhakim, "Tinjauan Yuridis Terhadap Perlindungan Hukum Bagi Pengguna Jasa Pinjaman Online Ilegal di Indonesia."

⁸⁷ Fahdelika Mahendar dan Christiana Tri Budhayati, "Konsep Take It or Leave It dalam Perjanjian Baku Sesuai dengan Asas Kebebasan Berkontrak," *Jurnal Ilmu Hukum: ALETHEA* 2, no. 2 (27 Februari 2019): 97–114, <https://doi.org/10.24246/alethea.vol2.no2.p97-114>.

⁸⁸ Achsan, Purwiyantiningih, dan Suyadi, "Tinjauan Yuridis Terhadap Penerapan Pasal 18 Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen Mengenai Pencantuman Klausula Eksonerasi Dalam Kontrak Elektronik."

⁸⁹ Prisca Dwi Maylinda et al., "Konsep Pengadaptasian Undang-Undang Perlindungan Konsumen Dalam POJK Tentang Peer to Peer Lending," *Jurnal Hukum Ius Publicum* 4, no. 2 (23 November 2023): 104–22, <https://doi.org/10.55551/jip.v4i2.73>.

⁹⁰ Akbar et al., "Penyuluhan Peer To Peer Lending Secara Daring (Ketahui Seluk Beluk Pinjaman Online)."

aid organizations or community-based organizations can also play an important role in helping borrowers file complaints with the OJK or seek civil remedies before the courts. Where the enforcement mechanisms are stronger, and borrower complaints are acted upon with promptness by the regulators or the judiciary, platforms have an incentive to revise objectionable standard terms.

But the question is whether such interventions necessarily undermine freedom of contract. At the doctrinal level, the doctrine of freedom of contract has never been absolute.⁹¹ Even for the classical legal thought, a contract which is opposed to public order or good morals can be void. Consumer protection legislation and OJK regulations merely operationalize these limits to protect the weaker party in an inherently imbalanced relationship.⁹² By enforcing mandatory disclosures and banning unfair clauses, regulators do not abolish freedom of contract but contextualize it: business operators are free to set terms, so long as these terms do not violate higher-order norms of fairness and transparency. In practice, the existence of additional formalities does not nullify freedom; it ensures that the contract's formation is aligned with the broader public interest reflected in consumer protection law.

Viewed collectively, these factors highlight the complexities of evaluating standard-form e-contracts under Indonesian consumer protection laws. On one hand, the digital medium and the urgency of short-term loans make fast, automated contracting almost a necessity.⁹³ On the other, these very aspects make borrowers susceptible to hidden fees, exploitative penalties, and intrusive data practices. Legally, the tension centers on whether a borrower's electronic "consent" is an authentic exercise of contractual freedom or a perfunctory step that blinds them to onerous obligations.⁹⁴ The UUPK gives a solid foundation for the nullity of abusive standard terms, and OJK regulations bring disclosure and licensing obligations. However, such regulations would be effective only if there is stringent enforcement and better consumer education, along with resolve on the borrowers' part to assert their rights.

As courts and regulators respond to complaints, a kind of agreement may build up on best practices for creating standard-form terms that actually produce transparency.⁹⁵ More and more platforms would move toward a layered presentation of important terms in a way such that they receive sufficiently informed consent from borrowers. Finally, the imperfect legal machinery discloses an evolving view that rejects a simply laissez-faire approach to freedom of contract. It is restricted not to undermine contractual autonomy but to inculcate precepts of justice and fairness into transactions where the inequality of power is stark.

The Indonesian context then presents itself as a microcosm of the engagement between consumer protection law and contemporary regulatory regimes with the realities of e-commerce. The standard-form e-contracts, however much beneficial to the functioning of an efficient

⁹¹ Michael Bridge, "Limits on Contractual Freedom," *The Chinese Journal of Comparative Law* 7, no. 3 (2019): 387–412, <https://doi.org/10.1093/cjcl/cxz017>.

⁹² Laffont dan Martimort, "Collusion Under Asymmetric Information."

⁹³ David Mhlanga, "FinTech and Artificial Intelligence in Addressing Poverty, Towards Sustainable Development," in *FinTech and Artificial Intelligence for Sustainable Development* (London: Palgrave Macmillan, 2023), 89–117, https://doi.org/10.1007/978-3-031-37776-1_5.

⁹⁴ Sampat, Mogaji, dan Nguyen, "The Dark Side of FinTech in Financial Services: a Qualitative Enquiry Into FinTech Developers' Perspective."

⁹⁵ Sinaga dan Alhakim, "Tinjauan Yuridis Terhadap Perlindungan Hukum Bagi Pengguna Jasa Pinjaman Online Ilegal di Indonesia."

market,⁹⁶ turn repugnant when they seek to shield the most powerful party from any liability or hide essential information. Such contracts in online lending epitomize the shifting balance between the effective facilitation of access to credit and the prevention of consumer overreach. Legal equity will be realized when regulatory agencies sharpen their enforcement tools and empower borrowers to make challenges to suspect clauses. In so doing, the freedom of contract doctrine is not jettisoned but rather qualified by relevant legislative and ethical imperatives that would make the contract both substantively and procedurally consistent with the underlying precept of good faith and fairness—a precept that Indonesian law has increasingly favored in the face of technological and market developments. If developed properly, this type of balance could maintain a situation where there is innovation in credit services, as well as accompanying consumer protection, to sustain trust and sustainability in the overall fintech ecosystem.

4. Conclusion

The findings of this research confirm that the doctrine of caveat emptor can no longer be applied absolutely in Indonesia's online lending environment, where significant power imbalances and information asymmetry favor the platform operators. This study affirms that while consumers retain an obligation to exercise prudence, the dominant role of the lender in drafting standard-form contracts and shaping loan terms necessitates stronger protections, as mandated by Law No. 8 of 1999 on Consumer Protection (UUPK) and POJK No. 77/POJK.01/2016. The higher degree of responsibility now placed on platform operators reflects the shift toward caveat venditor, especially when consumer awareness of complex fee structures, digital consent procedures, and potential abuses in debt collection remains limited.

These findings demonstrate the need for increased transparency, better good-faith duties, and more vigorous enforcement against usurious conditions. The borrowers at the very least do not receive information about the penalty structures and information-sharing practices, not to mention aware consent to contractual conditions. Placing the entire risk on the borrower also contradicts the modern Indonesian law on consumer law prohibiting unfair clauses and placing strict obligations of disclosure on the business parties.

Based on the above, the implication can be distinctly stated that, first, regulators need to increase scrutiny of online lenders to ensure that clear, concise disclosures are made regarding major issues such as interest rates, penalties, and the use of personal information. Websites should show the terms in a readily accessible format, supported by clear summaries and also segmented opt-in for sensitive provisions. To further promote equity, public financial literacy programs need to be improved so that borrowers can better defend themselves against and identify illegal practices. Secondly, the role of accessible dispute resolution remains crucial and should encourage consumers to challenge abusive terms without embarrassment or excessive expense. Overall, this paper demonstrates that although caveat emptor remains useful to promote caution on the part of borrowers, consumer protection regimes de facto recalibrated the duties of lenders in online transactions. This recalibration amounts to the institution of a responsible, equitable, and sustainable P2P lending market in Indonesia.

⁹⁶ Rosavina et al., "P2P Lending Adoption by SMEs in Indonesia."

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