Juridical Review of the Strength of Electronic Evidence
To Proof Online Lending Agreement

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Abstract

Online lending is a financial service provider for the community, with the granting of this online financial service license, it is hoped that the community, whose economy has been affected and has experienced setbacks during the Covid-19 pandemic, can be helped again to carry out their business activities. When viewed from the practical side, online loans are very helpful and make it easy for people to borrow money. Unlike banks or pawnshops that require a lot of administrative requirements and also collateral or collateral. The research in writing this scientific work is normative juridical research. Normative juridical research is research that examines the application of legal rules and norms related to the topic discussed. The nature of this research is descriptive, namely research that analyzes a legal regulation. All electronic documents in online lending and borrowing agreements that are affixed with valid electronic signatures and also carried out in accordance with the standard provisions stipulated in the Civil Code, ITE Law, and Financial Services Authority Regulations, are valid and strong as electronic evidence and have the same position as letter evidence. Therefore, every online lending and borrowing agreement in which the customer defaults, can file a lawsuit for default to the district court with initial evidence in the form of electronic documents.
I. Introduction

As a legal state that upholds the supremacy of law, every action must have a clear legal basis or foundation. The legal basis must be written positive law which represents legal certainty (Popelier, 2008). Legal certainty is absolutely necessary to avoid conflicts of interest between two or more legal subjects (which can be in the form of conflicts of interest between individuals and individuals, individuals and legal entities, or legal entities and legal entities). To ensure legal certainty, written legal rules are formed such as laws, government regulations, regional regulations, etc (Saepullah, 2022). However, because social interactions in society are very flexible and dynamic, these legal rules cannot always accommodate the interests of legal relations between communities. Therefore, the Civil Code provides freedom between legal subjects to make agreements or enter into agreements based on the principle of freedom of contract (as long as it does not violate the legal terms of an agreement as regulated in Article 1320 of the Civil Code) (Bakung, Abdussamad, & Muhtar, 2022). The principle of freedom of contract provides freedom to parties who wish to make an agreement to be able to make an agreement outside of the types of agreements/engagements regulated in the Civil Code (Sulistyarini, Budiono, Winarno, & Koeswahyono, 2018).

According to Hartana (2016), an agreement is a condition where one party promises to another party or a condition where the subject in the form of a legal entity promises to do something. Agreements originate from agreements implemented by two or more legal subjects who declare themselves bound by the agreed agreement. One of the basic principles in forming an agreement is the principle of freedom of contract (Herdianto & Santiago, 2022). Through the principle of freedom of contract, parties can understand that every individual or legal subject can make a contract or agreement with any party and for mutually agreed purposes. The principle of freedom of contract guarantees that legal subjects are free to determine whether these legal subjects will form a contract or not, are free to determine with whom they will enter into an agreement, are free to determine the content of the agreement, are free to determine the form of the agreement, provided that it does not conflict with the applicable legal rules (Sinaga & Wiriyawan, 2020).

One of the functions of a written agreement or contract signed by the parties making the agreement is to prove the agreement that has been mutually agreed upon by the parties to the agreement (Nawir & Santoso, 2005). In everyday social interactions, conflicts of interest sometimes occur between individuals or groups, for example, trader A agrees to supply farming equipment to farmer group B, in practice if trader A does not first make a written agreement with farmer group B regarding the price of agricultural equipment, product quality, delivery time, and payment methods, things that are not regulated in a written agreement can become gaps that cause conflict between trader A and farmer group B. Therefore, arranging agreements through written agreements or contracts is very important as evidence
in resolving conflicts between binding parties. Along with technological developments, trading and buying and selling businesses are not only carried out in the form of physical transactions, but also through electronic transactions. Based on Article 1 number 17 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, an electronic contract is stated as an agreement between the parties made through an Electronic System (Rajab, 2017).

Nowadays, electronic transactions occur in buying and selling through online shops, partnership contracts between merchants and delivery service providers, and money lending contracts with online financial financing companies (online loans). During the Covid-19 pandemic, the growth of online loans increased significantly. Online loans can develop because people affected by the economic impact of Covid-19 have difficulty getting money. Based on the results of a survey by the Financial Services Authority (OJK), there are 106 online loan fintechs that have official OJK permission as of October 6 2021. Online loans have increased quite significantly over the last 2 years. The Financial Services Authority has issued regulations governing online loan services through Financial Services Authority Regulation Number 77/POJK 01/2016.

This OJK regulation defines online loans as a financial service that brings together loan givers and recipients to enter into a loan and borrowing agreement in rupiah currency with a technology system using the internet network (Atikah, 2020). Online loans are a provider of financial services to the community, which is part of technological advances (Abubakar & Handayani, 2018).

It is hoped that by granting this online financial services permit, people whose economies have been affected and experienced setbacks during the Covid-19 pandemic will be helped to carry out business activities again through fresh funds provided by online loan companies. When viewed from a practical side, online loans are very helpful and make it easy for people to borrow money. Unlike banks or pawnshops which require many administrative requirements and collateral, online loans can be disbursed with just personal data (Nugraheni & Aziza, 2020).

Proof related to the performance of online lending and borrowing (peer-to-peer lending) can involve several aspects and documents. This proof is usually related to loan agreements, payments, and violations that may occur during the online loan process. One of the most important documents in proving online lending performance is the loan contract (Christensen, Nikolaev, & Wittenberg-Moerman, 2016). This is a written agreement between the lender and the borrower that contains the loan terms, interest rate, term, and obligations of both parties. This contract can be the main evidence in the case of a dispute.

A borrower’s payment history is strong evidence in determining whether the borrower has complied with the agreement. This includes a record of payments made, amounts due, and whether payments were made on time. Proof of funds transfer from lender to borrower, and vice versa, can be used as proof of transaction. This evidence includes a confirmable track record of money transfers. Written communications such as emails or chat messages between lenders and borrowers can be used as evidence of communication related to the loan. This
includes discussions about loan or repayment terms. Online loan platforms usually have their own rules and procedures that borrowers and lenders must follow. These documents, such as terms and conditions, rules, or refund policies, may be used as evidence in disputes. It is important to note that digital evidence such as emails, chat messages, and transaction track records are essential in online loans (Wu & Zheng, 2020). Therefore, it is important to take good care of these documents as a precautionary measure, if at any time they are needed in the process of proving online lending and borrowing performance.

With the various conveniences and fast services offered by online loan companies, coupled with the community’s economy not recovering due to the COVID-19 pandemic, many people borrow money online (Dzigbede, Gehl, & Willoughby, 2020). Borrowing money is carried out through an electronic agreement which is accompanied by an electronic signature by the borrower, which is usually done via a smartphone. In the world of business/commerce, profit or loss in carrying out business is a common thing. As a result of the Covid-19 Pandemic, many businesses experienced losses and even went bankrupt, this of course caused people’s income to decrease and people did not have enough money to carry out their obligations, including people who had online loan debts that failed to pay due to the economic impact of the Covid-19 Pandemic.

Failure to pay the online loan agreement debt will certainly result in a default on the agreement. This will of course give rise to legal conflicts (disputes) between online loan companies and money borrowing customers. Resolving these disputes, of course, can be achieved through several resolution methods, including dispute resolution through litigation in court, or non-litigation outside of court. In the case of resolving a dispute over a default on a loan agreement, evidence is needed as a method of proving that the parties involved have indeed committed a default. Evidence in the civil law system includes: written/letter evidence, witness evidence, allegations, confessions and oaths. The five pieces of evidence regulated in the Civil Procedure Code are physical evidence. The aim of this research is to determine the forms of civil evidence that are legally valid, and to determine the strength of electronic evidence in proving default on online lending and borrowing.

2. Research Method

This research uses normative juridical research. Normative juridical research is research that examines the application of legal rules and norms related to the topic being discussed (Lindroos, 2005). The nature of this research is descriptive, namely research that analyzes a legal regulation (Putra & Ahyani, 2022). This research uses secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials, namely (Indriati, Ana, & Nugroho, 2022). Normative juridical research is a type of legal research that focuses on the analysis and interpretation of existing legal regulations, including laws, government regulations, court decisions, and other regulations (Licht, Goldschmidt, & Schwartz, 2007). This research seeks to understand, explain and evaluate the legal content, structure and consistency of legal norms in a particular legal context. Therefore, the author attempts to review the juridical aspects of the strength of
electronic evidence in proving online lending and borrowing defaults. Normative juridical research involves a review of extensive legal literature. The writer must collect and analyze various legal sources related to the research topic. This research involves the interpretation of legal texts.

The author tries to understand the meaning and intent of existing legal regulations and how they apply in certain situations, in this context the strength of electronic evidence to prove the default of online lending and borrowing. This research is expected to produce certain legal recommendations or interpretations regarding how the law on the strength of electronic evidence in proving online lending and borrowing defaults should be applied in certain situations. So, this can be useful for policy makers, legal practitioners, or courts. Normative juridical research plays an important role in the development and understanding of law (Breuker, Valente, & Winkels, 2005). The results can help ensure that existing laws are effective tools for resolving social problems and addressing changes in society.

In addition, this research can also influence legal decision making, including in legislative and judicial contexts.

3. Results and Discussion

The development of information technology, which in recent decades has grown significantly, has certainly had an impact on people's lives. With the development of information technology, it makes it easier for business people and consumers to carry out economic transactions without having to meet in person (Infante & Mardikaningsih, 2022). Currently, economic transactions, especially those related to borrowing money, no longer require people to go to banks or pawnshops (Wijaya, 2022). However, with the development of information technology connected to the internet network provided by Financial Technology (Fintech), people can carry out lending and borrowing activities from anywhere, such as from home or the office (Muslih & Supeno, 2022).

Through the online system, people who need small amounts of loan funds can easily and quickly get a loan without having to apply for complicated credit at the bank. People can easily access online loans from anywhere using a smartphone. This is what differentiates the services provided by online loan companies, where just by having a smartphone and having personal data in the form of an Identity Card and Family Card, customers can borrow money with a nominal value of IDR. 500,000 up to Rp. 10.000.000,-. Even though it is carried out online, you must still follow the rules of the agreement in accordance with applicable legal provisions.

The agreement system in the Civil Code uses an open system which gives legal subjects the freedom to make agreements containing anything, as long as it does not conflict with the law, morality or public order (Idrus, 2017). The open system in the Civil Code should originate from the principle of freedom of contract which originates from the provisions of Article 1338 paragraph (1) of the Civil Code and through the formulation of Article 1319 of the Civil Code, there are two types of agreements, namely agreements called (nominaat) and unnamed agreements (innominaat).
An electronic agreement is interpreted as an agreement that is created and signed electronically. This electronic agreement creates a legal engagement relationship between the parties electronically by combining a computerized system with an international network or internet (Inshakova, Goncharov, & Ershova, 2020). Based on this description, agreements in digital form such as scans of agreement documents or softcopies of agreements are a form of electronic agreement (Cheng, Lee, Chi, & Chen, 2018).

A judicial review of the strength of electronic evidence is a legal analysis relating to the use of electronic evidence in legal processes (Manshur, Rodliyah, & Amiruddin, 2019). This involves an assessment of the extent to which electronic evidence is admissible and considered valid in court. The Principle of Legal Certainty implies that electronic evidence must be reliable and have a high level of certainty (Prasetya & Bawono, 2022). Courts usually consider whether the electronic evidence has been generated and stored securely, so that it cannot be altered or manipulated. Assessments of the strength of electronic evidence must also take into account issues of privacy and protection of personal data. In some cases, the collection and use of electronic evidence involving personal data may require certain permissions or approvals. Each jurisdiction may have different legal regulations regarding the use of electronic evidence. Therefore, it is important to understand the legal provisions applicable in a particular jurisdiction in testing the strength of electronic evidence. Courts usually consider whether electronic evidence is authentic and has not undergone alteration or manipulation during its journey from its source to court. This includes checking storage methods, data integrity, and protection against unauthorized changes.

Assessment of the strength of electronic evidence also includes consideration of the reliability and track record of the electronic evidence (Stoykova, 2021). This includes questions about whether the hardware or software used is reliable and whether there is evidence that the evidence is being used correctly. Each jurisdiction has procedural law rules that regulate the use of evidence in court. It is important to understand and follow these rules, including the formal requirements for submitting electronic evidence.

The judicial review may also consider previous cases that have addressed the issue of the use of electronic evidence. Previous court decisions can provide guidance on how electronic evidence is treated in similar cases. In some cases, digital forensic expert witnesses may be required to provide evidence regarding the authenticity and integrity of electronic evidence. Expert witnesses can assist the court in assessing the strength of electronic evidence. If electronic evidence is obtained through an agreement or agreement, it is important to consider whether the agreement is valid and complies with applicable law. Judicial review of the strength of electronic evidence is an important part of modern legal processes that increasingly rely on technology (Kartika, 2019). This requires a deep understanding of the laws, technology and evidentiary standards applicable in a particular jurisdiction. Correct application of these principles can ensure that courts make fair and accurate decisions in cases involving electronic evidence.

It is known that an online lending and borrowing agreement is an agreement
that is classified as an anonymous agreement in the Civil Code. And with the principle of freedom to contract as long as the agreement does not conflict with the law and the terms of a valid agreement in article 1320 of the Civil Code (valid terms of an agreement: agreeing to be bound, the parties’ skills in making a contract, the existence of something, and a lawful cause) then legally the agreement is valid.

A binding agreement means that the legal subject making the agreement has agreed to carry out the agreement in accordance with the wishes of each legal subject making the agreement as stated in the contents of the agreement. Competence is a standard for measuring suitability based on age, where legal subjects who are 21 years or older or have previously been married are considered to be adults and capable of acting legally. Something is an achievement of an agreement or what was promised, such as doing something, not doing something, or giving something. Because halal is a limitation so that agreements made based on the principle of freedom of contract do not turn into agreements that violate the law, so that every agreement made must be an agreement that does not give rise to violations of the law. If an agreement is made for reasons that violate the law, the agreement is automatically void by law (Hakim, 2019).

Proof is a legal effort carried out to provide clarity about the legal position for legal subjects who make an agreement based on the legal rules desired by each legal subject who is binding themselves, to provide clarity for judges so they can make decisions about who is right and who is wrong among the litigious legal subjects. Evidence aims to prove a legal event so that the class of each legal subject in the case is, which one is guilty and which one is not guilty (Solomon & Soltes, 2021).

In civil procedural law, evidence is very crucial in efforts to resolve civil disputes. The more difficult it is to prove a civil case, the more complicated the resolution of the case will be. Proof in civil procedural law is different from the system of evidence in criminal law where the search for truth is determined through valid evidence and the truth must be the essential truth that does not give rise to doubt for any party (Haspada & Fakhriah, 2019).

The Civil Code states that evidence consists of: letters, witnesses, allegations, confessions, oaths, as well as additional evidence in the form of expert statements and local examinations. Meanwhile, for electronic evidence, article 5 and article 44 of the ITE Law state that:

a) Electronic Information, Electronic Documents and their printouts are valid evidence;

b) Electronic Information, Electronic Documents and their printed results are an extension of legal evidence based on the procedural law in force in Indonesia;

Article 17 Paragraph 2 of the ITE Law explains that legal subjects executing electronic agreements are required to have good faith in carrying out electronic transactions. This article contains an element of good faith in interactions regarding the objects contained in the electronic agreement. In the presence of the principle of good faith in electronic agreements, this means that the principle is the same as the principle of good faith in conventional nominal contracts/agreements.
The strength of electronic agreements and electronic documents in an online lending and borrowing agreement from a legal perspective is that if the agreement meets the requirements for the validity of an agreement, which are regulated in Article 1320 of the Civil Code, then the validity of the agreement is guaranteed based on law. Then Article 19 of the ITE Law emphasizes that parties carrying out transactions must use an agreed electronic system (Hanafie, Herman, Gani, Firmansyah, & Amirullah, 2022).

Therefore, all electronic documents in online lending and borrowing agreements that are affixed with a valid electronic signature and are also executed in accordance with the standard provisions regulated in the Civil Code, ITE Law and Financial Services Authority Regulations, are valid and strong as electronic evidence and has the same status as documentary evidence. Therefore, for every online lending and borrowing agreement in which the customer defaults, they can file a lawsuit for default in the district court with initial evidence in the form of an electronic document.

4. Conclusion

Electronic evidence has the same strength and position as physical evidence in civil evidence. Electronic evidence must be verified for its validity by an agency or expert who has qualifications and competence in the field of information technology. In the case of proving default on online lending and borrowing, proving the validity of electronic documents as evidence must be carried out by an expert in the field of information technology and an expert in the field of forensics. If the verification results state that the electronic document and the electronic signature on the electronic document are declared valid, then the electronic document has the same legality as documentary evidence in the trial of an online loan default claim. Therefore, every person who is a legal subject and legally agrees to bind themselves in an online lending and borrowing agreement where the contents of the agreement are in accordance with the provisions of the Civil Code and the electronic system provisions in the ITE Law, and the lending and borrowing agreement has been affixed with an electronic signature by the parties, then the electronic agreement has legally become evidence that has permanent legal force like other evidence regulated in the Civil Procedure Code. Therefore, every violation committed against an electronic agreement is a form of breach of performance of the online lending and borrowing agreement.

References


