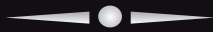


**ASBĀB AL-NUZŪL: METHODS AND ITS APPLICATION
TO VERSES OF THE AL-QUR'AN**

Rozatul Muna



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A COMPARATIVE STUDY OF ISLAMIC LAW AND POSITIVE LAW**

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ONLINE LOANS THROUGH SMART CREDIT APPLICATION; A COMPARATIVE STUDY OF ISLAMIC LAW AND POSITIVE LAW

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Abstract

This article aimed to describe and analyze the comparison of the two laws, namely Islamic Law and Positive Law, regarding online loans in the Smart Credit application. This study was a literature study using a qualitative design that was the basis for library research by exploring the postulates of Islamic law and articles of positive law that were directly related to the object studied and analyzing and concluding the comparison of the two laws. The results of this study indicated that the legal requirements for online loans in the Smart Credit application was based on the provisions of Islamic Law and Civil Code. In addition, according to Islamic Law and Positive Law, the online loan mechanism through the Smart Credit application had differences, including in Islamic Law allowing online loans. However, if the loans process used usury or interest, Islamic law forbade the lender. While the Positive Law, in this case, was contained in Article 1320 of the Civil Code, which explained that if a lender has agreed to the process of terms and conditions that the Smart Credit application has made and has bound himself in the applicable provisions, whether a loan that was known to have an interest or a delay in paying would be given a fine, then the loans process was legal in the eyes of the law. This was because they have tied themselves to the online loan process, the Smart Credit application. This study implies that online loans are allowed to be used by the public. However, people must remain careful in using online loan applications that lend funds because the interest from lending these funds is very high and will result in very large losses.

Keywords: *Application; Islamic Law; Smart Credit.*

INTRODUCTION

Humans are social beings who interact and need each other to carry out their lives in society.¹ Islam emphasizes the importance of conducting *muamalah* transactions.² *Muamalah* is a form for exchanging objects and things that can provide benefits in a predetermined way, for example, wages, buying and selling, renting, farming, association and other businesses. Every human being basically wants to fulfil their life

¹ Ahma M. Ramli, *Cyber Law dan HAKI dalam Sistem Hukum Islam Indonesia* (Jakarta: Radika Aditama, 2004), h. 1.

² Abd Shomad, *Hukum Islam Penormaan Prinsip Syariah dalam Hukum Indonesia* (Jakarta: Kencana, 2017), h. 30.

needs.³ In meeting the needs of society, humans have a direction to meet the needs of their lives, both primary, secondary and tertiary needs. Thus, humans need other people to work together and help each other fulfil these needs to meet these needs. Islamic economics is one of the fields in Islamic law, namely the field of *muammalah* which has a very broad scope and includes all interactive relationships of all God's creatures on earth that place humans as the main actor.⁴

The need in society can provide the welfare of individuals and people who need and complement each other not to compete or be competent for their respective needs. However, they work together in developing interpersonal relationships. There are so many ways that can be done to assist people in need, including providing loans, giving alms or giving zakat, which has been regulated in Islamic law. Everyone's abilities are different too. Often, it collides with limited ability and willingness to fulfil the needs and desires in life. Thus, if a very urgent need arises and is so forced, someone takes a dead-end by way of debt to others. It has the value of goodness and reward in the sight of Allah SWT. As stated in the word of Allah SWT in QS al-Baqarah 2: 245:

مَنْ ذَا الَّذِي يُقرضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ أَضْعَافًا كَثِيرَةً ۗ وَاللَّهُ يَقْبِضُ وَيَبْسُطُ وَإِلَيْهِ تُرْجَعُونَ

"Who will lend to Allah a good loan which Allah will multiply many times over? It is Allah 'alone' who decreases and increases 'wealth'. And to Him you will 'all' be returned."⁵

The verse explains that Allah SWT rewards those who make it easy and provide loans to others who need objects or money to solve the problems they are experiencing; however, as we know that basically humans are also creatures who are never satisfied with something. While the ability to fulfil these desires is very limited. Therefore, this is what causes humans to need help to fulfil their desires and goals; one of them is doing credit or instalments.

This phenomenon occurs in line with the increasingly times rapidly accompanied by the development of science and technology to carry out any activity, and it is so easily accessible. Through the internet, people can access various information still needed.⁶ Thus, in terms of loans, the public can make credit online without going through complicated procedures. With online loan applications, people can more easily apply for loans without going through certain banks.

By seeing the rapid development of technology today, online loans are also very widely available. Previously, we only knew about banks, cooperatives, and financial institutions (multi finance), but in the internet era now, we know one of the online loan

³ Ahmad Wardi Mulich, *Fiqhi Muammalah* (Jakarta: Amzah, 2010), h. 274.

⁴ Abdi Wijaya, "Hukum Islam dan Sengketa Ekonomi Syari'ah (Telaah UU No. 3/2006 dan UU No. 50/2009)" *Jurnal Al-Qadau* 7, No. 1 (Juni 2018), h. 133. <http://journal.uin-alauddin.ac.id/index.php/al-qadau/article/view/2537> (Diakses 2 Agustus 2021)

⁵ Kementerian Agama RI, *al-Qur'an dan Terjemahannya*, h. 39.

⁶ Marcel Danesi, *Pengantar Memahami semiotika Media* (Cet;Yogyakarta:Jalasutra, 2010), h.204.

applications, namely the Smart Credit application. The Smart Credit application is considered very easy for people to make loans. Smart Credit loans serve 24 hours with various advantages and conveniences offered to its customers. This is very beneficial for people who need funds quickly. One of the conveniences offered is applying for a loan without any collateral. Only by using an ID card we can apply for a loan. However, this convenience can make it easier for someone to get into endless debt. One of the things we must be aware of is the presence of online loan sharks. This is a term used by the Chairman of the Financial Services Authority (OJK), Wimboh Santoso, to remind the public about offering online money loans with very high interest rates. Online moneylenders are something that can provide high-interest loans through the internet. In the agreement, the loan sharks get big profits by giving interest and very large amounts in the short term.⁷ The characteristics that online moneylenders can see are that they provide loans or debts that can be used today, on average ranging from 1% to 3% per month. These loans have been offered by official institutions such as banks, multifinance or cooperatives. Meanwhile, online moneylenders can offer loans with interest that almost exceeds that limit, around 1% per day or 30% per month, so this is very detrimental to the community.

After looking carefully at the online loan mechanism, this is more detrimental to the community. Moreover, if the community has made loans through the Smart Credit application, the funds to be returned are larger and do not match the initial funds lent. This can be referred to as usury (excessing the loan amount upon repayment). In contrast to the lending mechanism in Islamic law, which has been described above, the lending must not harm the community, and when the lent funds are returned, it must be in accordance with the initial funds that have been lent. Therefore, people must be more careful in making online loans to avoid endless debt.

METHOD

This study was a literature study using a qualitative design that was the basis for library research by exploring the postulates of Islamic law and articles of positive law that were directly related to the object studied and analyzing and concluding the comparison of the two laws.

RESULT & DISCUSSION

1. Definition of Loans (*Qard*)

Loans in Arabic are called *qard* which means *al-qaṭ'u*, and in English are called cutting and snipping.⁸ It is also called *al-qaṭ'u* because something that will be given to someone in debt is a piece of the property of the person who gives the debt.⁹ Meanwhile,

⁷ Istiqamah and Rukaya, "Fenomena Perampasan Barang Pemilik Hutang Oleh Rentenir Di Kecamatan Bontoramba Kabupaten Jeneponto; Analisis Perbandingan Hukum Islam dan Hukum Positif", *Shautuna; Jurnal Ilmiah Perbandingan Mazhab* 2, no. 1 (Januari 2021), h. 148. <http://journal.uin-alauddin.ac.id/index.php/shautuna/article/view/17738> (Diakses 05 Mei 2021)

⁸ Mahmud Yunus, *Kamus Arab-Indonesia* (Jakarta: Hidakarya Agung, 2016), h. 337.

⁹ Ahmad Wardi Mulich, *Fihi Muammalat* (Cet IV; Jakarta: Amzah, 2017), h.273

in terms *qard* is something that gives wealth to other people in need and can be asked for back in the same amount or provides a loan of money without expecting a penny in return. In this way, the transaction on this lending is pure without any additional interest without being returned and paying it off according to the period given or agreed upon by the two parties.¹⁰ Therefore, *qard* is a mutually supportive contract and is not a commercial transaction.¹¹

According to Fatwa, *qard* is a loan agreement to a customer with the stipulation that the customer is obliged to return the funds received to the Sharia Financial Institution at the time determined by the Sharia Financial Institution and the customer.¹² The essence of *qard* is to assist in lending money with affection to the lender, not as a means to seek a reward and provide more debt repayments.

2. Legal Basis of Loans (*Qard*)

The legal basis for loans is found in the Qur'an and Hadith as follows. Allah SWT says in QS Al-Baqarah/2:245

مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ أَضْعَافًا كَثِيرَةً وَاللَّهُ يَقْبِضُ وَيَبْصِطُ وَإِلَيْهِ تُرْجَعُونَ

"Who will lend to Allah a good loan which Allah will multiply many times over? It is Allah 'alone' who decreases and increases 'wealth'. And to Him you will 'all' be returned."¹³

Allah says in QS Al-Hadid/55:11.

مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ وَلَهُ أَجْرٌ كَرِيمٌ

"Who is it that will lend to Allah a good loan which Allah will multiply 'many times over' for them, and they will have an honourable reward?"¹⁴

Allah says in QS al-Maidah/5:2.

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

"And cooperate with one another in goodness and righteousness, and do not cooperate in sin and transgression. And be mindful of Allah. Surely Allah is severe in punishment."¹⁵

¹⁰ Muhammad Syafi'i Antonio, *Bank Syariah dari Teori ke Praktik* (Jakarta: Gema Insani, 2016), h. 131.

¹¹ Ascaya, *Akad dan Produk Bank Syariah* (Jakarta: Grafindo Persada, 2008), h. 14.

¹² Atang Abd Hakim, *Fiqhi Perbankan Syariah* (Bandung: Refika Aditama, 2011), h. 222.

¹³ Departemen Agama Republik Indonesia, *al-Qur'an dan Terjemahnya*. h. 39.

¹⁴ Departemen Agama Republik Indonesia, *al- Qur'an dan Terjemahnya*. h. 538.

¹⁵ Departemen Agama Republik Indonesia, *al- Qur'an dan Terjemahnya*. h. 106.

The legal basis for loans contained in the Hadith is as follows:

مَنْ نَفَّسَ عَن مَّوْمِنٍ كُرْبَةً مِّنْ كُرْبِ الدُّنْيَا، نَفَّسَ اللَّهُ عَنْهُ كُرْبَةً مِّنْ كُرْبِ يَوْمِ الْقِيَامَةِ، وَمَنْ يَسَّرَ عَلَى مَعْسِرٍ يَسَّرَ اللَّهُ عَلَيْهِ فِي الدُّنْيَا وَالْآخِرَةِ، وَاللَّهُ فِي عَوْنِ الْعَبْدِ مَا كَانَ الْعَبْدُ فِي عَوْنِ أَخِيهِ

"Abu Huraira reported: The Messenger of Allah, peace and blessings be upon him, said, "Whoever relieves the hardship of a believer in this world, Allah will relieve his hardship on the Day of Resurrection. Whoever helps ease one in difficulty, Allah will make it easy for him in this world and the Hereafter. Whoever conceals the faults of a Muslim, Allah will conceal his faults in this world and the Hereafter. Allah helps the servant as long as he helps his brother."¹⁶ (HR. Muslim)

The legal basis for loans contained in the Qur'an and Hadith explains that Islam recommends helping each other when someone needs help or who is already in debt, such as being stuck in life's difficulties, the need for costs to go to school for children, to eat, and debts that must be paid at the same time. In addition, it does not add or reduce the loan money that has been assisted in lightening the person's burden. When viewed from the loan provider's perspective, qard can foster a spirit of wanting to help others, smoothing their feelings, so that lenders are sensitive to the difficulties experienced by relatives, friends, or neighbors

3. *Legal Terms of Online Loans in Smart Credit Applications based on the Islamic Law and Civil Code*

If explored further in using *Qardh* in Islamic law, Islamic law online lending is related to the following pillars and conditions:

a. *Muqrid*

Muqrid is someone who has given a loan or provided property, and they must be a ahliya tabarru. Ahliya tabarru is a muqrid person that must have the ability to use property absolutely according to the syara' view without any coercion. In addition, when providing a loan, it must be of its own will without the presence of a third party. As for those who have provided online credit loans to customers, it is intended that loan recipients can make loans from home. The executor is the first party without any intermediaries or third parties involved. The company uses the application as a place for online loans; some of these applications include kredit pintar, dan kilat, rupiah cepat, cicil.id, etc. Service agreements in online loan applications that provide loans to lenders are based on conditions agreed upon and applied by the load providers. If the lender meets the criteria determined by the loans provider, the disbursement will be made.

¹⁶ Abu Husain ibn al-Hajjaj ibn Muslim, *Shahih Muslim* (Juz II; Beirut: dar al-Fikr, 2002), h. 128.

Related to this, the loans provider does not force the lender, and when giving a loan, it must be according to his own will without any third party.¹⁷

b. Muqtarid

Muqtarid is a person who has lent an object or part of his property to be given to the lender on the condition that he must be an ahliyah muammalah or adult, have good sense and be dishonest (a person who is not allowed to hold his property due to several reasons). Moreover, if we lend on the Smart Credit application, we already have an ID card and account number. The service requirements that the application has implemented are caused so that they can be used by Indonesian citizens who are at least 18 years old or who are married so that they can have the legal capacity to be able to enter into binding agreements.

c. Ma'qud 'alaih

Ma'qud 'alaih is a loaned property or object in a contract process. According to the Hanafiyah view, assets that have been lent must be mitsli or equivalent, the same number, and the size must be clear so that they can be easily returned.¹⁸ For example, in the beginning, the lender will be given around Rp. 500,000 – Rp. 2,000,000, and if we lend for the second time, the loan limit will increase to Rp. 8,000,000. Thus, if we have lent around Rp. 500.000, then the liquid is around Rp. 475,000.00 and which must be returned is around Rp. 635,000.00, and the interest is 10% to 15%.

d. Sighat (ijab and qabul)

Ijab is the beginning of an explanation from one of the parties to the contract, while *qabul* is a speech that comes out of the contracting party by giving consent to accept it.¹⁹ Sighat or contract can also be made in writing, verbally or with signs that can be clearly understood. Sighat will be declared valid as follows:

1. The purpose of the contract must be clear and can be known.
2. Between *ijab* and *qabul* must have similarities or conformity.
3. The statement of *ijab* and *qabul* must be based on the wishes, and there is no doubt allowed.

Online loans made by the Smart Credit application go through processes including installing applications, filling in personal data or information, verification, determining credit limits until the disbursement of funds is made online. In the modern era, which is increasingly rapid, *ijab* and *qabul* are no longer spoken. Still, it is carried out with the attitude of taking goods and paying money from the giver and receiving and handing over the goods by the seller without any words. The provisions for online loan services have been implemented that load providers who do not have experience and knowledge are advised not to use this loan service, and loan recipients must be able to rethink because loan interest and other costs must be in accordance with their ability in terms of

¹⁷ Ahmad Rahman Ghazali, *Fiqhi Muammalah* (Jakarta: Kencana Pustaka Media Group, 2016), h. 52.

¹⁸ Ahmad Wadani, *Fiqhi Muammalah* (Jakarta: Amzah, 2016), h. 278.

¹⁹ Rahman Ahmad Gazali, *Fiqhi Muammalah* (Jakarta; Kencana Pustaka Media Group, 2017), h. 52.

repayment. Therefore, it is clear that there is no element of coercion in the lending to the loan provider because before the loan was made, the lender had read the terms of service in the application. After reading the provisions applied by the Smart Credit application, whether to continue the loan or not.

The explanation of Islamic Fiqhi can be mentioned Al-Mu'atah. According to the view of the majority of Fiqhi Al-Mu'atah scholars, the law is permissible, if it has become a habit of the people of a country. According to most scholars, because this shows the element of pleasure from both parties, the most important elements in a transaction are consensual. The attitude of both parties shows that *ijab* and *qabul* contain an element of willingness.²⁰

In the Civil Code, the agreement's legitimacy according to the Civil Code must fulfil all elements in Article 1320 of the Civil Code. Article 1320 of the Civil Code determines the terms of the subject or object. The conditions for a valid agreement include:

1. *Their agreement that binds them*

The agreement has been regulated in Article 1320 paragraph 1 of the Civil Code, namely adjusting a statement of will between one or more people and another party. An agreement begins with the parties who make the agreement.

2. *The ability to make an engagement*

The skill in question is someone said to be an adult and is not under forgiveness. R. Subekti stated that every person who has matured or has reached puberty and is in good health is an ability according to the provisions of the law.²¹ Apart from the two skills requirements above, the requirements for proficiency-based on legal provisions in Indonesia must be based on provisions that do not violate the law as stipulated in Article 1329 of the Civil Code, which mentioned that everyone could enter into an engagement if it is stated by law. If they don't have the skills, it's not allowed.

3. *A certain thing*

For a certain thing, it can be explained that the object or goods that will be used as an object in a transaction or an agreement are goods that must be clearly related to their shape, type, quality, special characteristics, and colour in order to know what is meant by something, namely by reviewing the formulation of the problem in Article 1132 of the Civil Code that only goods that can be traded can be the subject of agreements.

Article 1333 of the Civil Code explains that an agreement must have an item of at least a specified type as a subject. It is not an obstacle that the number of goods is uncertain, as long as the amount can then be determined and calculated.

The explanation that has been described above can be concluded that a certain thing is an object of the agreement, either in the form of objects/goods that must be in the form of a certain thing or the type and specifications are determined.

4. *A Lawful Cause*

A lawful cause is an agreement not allowed to conflict with the law, morality and public order. Article 1333 of the Civil Code states that the agreement that occurs must be

²⁰ Nasrun Harun, *Fiqhi Muammalah* (Jakarta: Gaya Media Pratama, 2016), h. 117.

²¹ Salim, *Hukum Kontrak* (Bandung: PT. Citra Aditya Bakti, 2016), h. 33.

based on the principle of good faith. Article 1338 of the Civil Code states that the agreement must be carried out in good faith.

The norms above can be explained that in addition to the legal obligations, for every agreement prior to the occurrence of a consensual event, each party requires a basis with a good purpose for the results of the agreement. As for the two conditions, the first is a subjective condition because it concerns the parties who agree. While the last two conditions mentioned are objective conditions due to certain objects or things that already exist in the agreement.²² Suppose an agreement contains defects in a subject, namely the terms of their agreement binding themselves and the ability to act. In that case, it can provide a high possibility of being cancelled. An agreement that has been flawed in terms of its object, namely the condition of a certain thing or a lawful cause, is annulled by law. Therefore, in the process of lending through the Smart Credit application, it is allowed because the loan is in accordance with the terms and conditions of qard in Islamic law.

Based on the explanation above, the legal requirements in the Smart Credit application are in accordance with the requirements in Islamic Law and the Civil Code. The legal requirements are to have an Ijab and Qabul, agree from both parties to bind themselves, are proficient in agreeing, the object in a certain matter or understandable form and type of the loan and a lawful cause. Likewise, in lending on the Smart Credit application, the legal requirements are that they have an Indonesian state, are considered adults around the age of 18 to 55 years, know and understand the object to be borrowed and bind themselves to agree to the provisions that apply in the Smart Credit application.

5. Online Loan Mechanism in Smart Credit Application based on the Islamic Law and the Civil Code

In Islamic Law, the object of the contract has also complied with the conditions for lending money made online, which has clearly determined the nominal amount. It can be concluded that those related to the object of the contract are in accordance with the requirements as follows:

1. Owned property is property of the same type and not much different, resulting in differences in value, such as objects exchanged, money, planted, counted and weighed.
2. Loaned property must be in the form of objects; it is not legal to owe service benefits.
3. The amount and nature of the loaned property can be known.

The sighat or ijab and qabul that both parties have spoken and the terms of the online loan agreement have been agreed by both parties and will be repaid according to the agreed tempo or tenor. According to Islamic law, if in the process of lending, the lenders make a return with a nominal that is not in accordance with the initial loan, then the process of lending is unlawful.

As has been emphasized in QS Al-Baqarah verse 275:

²² Abd Shomad, *Hukum Islam Penormaan Prinsip Syari'ah Dalam Hukum Indonesia* (Cet II; Jakarta: Kencana, 2015), h. 23.

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا
الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا
فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ
فِيهَا خَالِدُونَ

“Those who consume interest will stand ‘on Judgment Day’ like those driven to madness by Satan’s touch. That is because they say, “Trade is no different than interest.” But Allah has permitted trading and forbidden interest. Whoever refrains – after having received warning from their Lord – may keep their previous gains, and their case is left to Allah. As for those who persist, it is they who will be the residents of the Fire. They will be there forever.”²³

The above verse justifies buying and selling and forbids usury. As Muslims, we should avoid acts and practices of usury that are clear and not in accordance with Islam. Usury is a sin and is prohibited in practice because usury can have a negative impact, including; causing extortion of the rich against the poor, causing the rich to prosper while the poor are getting poorer, due to business bankruptcy if channelled into a productive process and causing inequality economy which will lead to social chaos.

Based on the Smart Credit application provisions, the delays in loan payments will be subject to fines as a form of sanctions. These regulations have actually been listed in the Smart Credit application. If the lender is late in paying, the creditor will give a fine for every payment that has passed the specified date. The sanctions for not paying online loans include the customer data is reported to the OJK, and debt continues to swell if they are late paying a loan, for example, a loan of Rp. 600,000 will be subject to a fine of 1.35%, loan Rp. 1,200.00 with a term of 28 days is subject to a penalty of 1.35%, while loans of Rp. 2,300,000 for three months subject to a 1.37% fine, being chased by debt collectors, and activities will be disrupted.²⁴

Based on the explanation of the data, it can be concluded that the fines imposed on online loan services are very high and very risky. This is clearly very detrimental to lenders. If the lenders have problems and do not pay for a long time, the fines will accumulate, and the loan amount will increase and multiply.

The provisions in Islamic law such fines are not justified in accordance with Q.S. Al Baqarah verse 188 as follows:

وَلَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ
تَعْلَمُونَ

²³ Departemen Agama Republik Indonesia, al- Qur’an dan Terjemahnya. h. 47.

²⁴ Kredit Pintar, Situs Resmi Kredit Pintar. <https://www.kreditpintar.com> (Diakses 5 Agustus 2021)

“Do not consume one another’s wealth unjustly, nor deliberately bribe authorities in order to devour a portion of others’ property, knowing that it is a sin.”²⁵

The verse above explains that Allah SWT forbids us to act arbitrarily in the property of others. Giving a fairly high fine is an arbitrary attitude towards other people's property because someone subject to a fine will suffer many losses. Thus, as a good Muslim, it is better before determining the fine we must know about the laws and terms of the loan in Islam.

Online loans are *urf fasid* because it is a habit that is contrary to the provisions of Islamic law, which includes the texts of the Qur'an and Hadith. Loans made online have elements of usury and high fines. The practice of usury is not a habit that is mutually helpful according to the Shari'ah view that the exchange of goods with similar goods is not allowed to be exaggerated and in the provisions of Islamic law does not allow fines. This kind of practice is a borrowing practice that has been in effect during the jahiliyah era until now, called usury *al-nasi'ah*, i.e. usury arises from lending. Therefore, customs or habits like this in the view of *ushul fiqhi* scholars are categorized as *urf fasid*. It can be concluded that online loans are habits that are contrary to Islamic law.

The Civil Code on the lending mechanism is regulated in Article 1754, which states an agreement that determines the first party to hand over several goods that can be used up to the second party. On the condition, the second party will return similar goods to the first party in the same amount and the same condition. Financial agreements concerning credit service providers or debts, of course, involve non-bank financial institutions. Although fintech companies are non-depository financial institutions, the loan explanation in the banking law is in line with the credit or debt category in online credit loans. It is contained in Article 1765 of the Civil Code that the lender of money or goods is used up by making conditions that the loan will be paid interest.²⁶ The article confirms a legal relationship between the lender and the recipient of the loan from the creditor in the amount that has been agreed upon. In addition, the debtor is obliged to receive a loan from the creditor in the amount that has been agreed upon. The debtor is obliged to be able to return the amount that has been mutually agreed upon. Then the debtor also pays interest in the amount specified in the loan agreement.

Like the basic type of agreement, online credit loan agreements are required to meet the legal requirements of the agreement as stated in Article 1320 of the Civil Code, which consists of 4 points as follows:²⁷

1. There is an agreement between those who have bound them
2. The legal ability of the parties to enter into an engagement
3. There is a certain subject or matter
4. There is a lawful cause or legal cause.

Based on article 1320 of the Civil Code on the first point, an agreement is born from an agreement from both parties. The agreement is formed through a process that is an

²⁵ Departemen Agama Republik Indonesia, *al- Qur'an dan Terjemahnya*. h. 29.

²⁶ Republik Indonesia, *Kitab Undang-Undang Hukum Perdata*, (Cet. I; Jakarta: 2014), h. 338.

²⁷ Republik Indonesia, *Kitab Undang-Undang Hukum Perdata*, (Cet. I; Jakarta: 2014), h. 295

important element in the preparation or creation of a contract, namely offer and acceptance. An agreement is a condition of the will that the parties have agreed with the party who offers as an offeror or offeror. This is because, in general terms, before the parties bind themselves through a contract, both parties must first reach an agreement to be able to make a contract and address the main points of the contract structure that has been agreed upon so that the contract between the two is valid. The achievement of an agreement is a negotiation process that both parties have carried out in the stages before the agreement is agreed.²⁸ In the pre-agreement process, the preparation of contract execution, the parties should be based on good faith and apply the principle of proportionality which is defined as the principle underlying the exchange of rights and obligations of the parties in accordance with their respective proportions or parts. This conformity is contained in Article 1338 of the Civil Code as follows:²⁹

1. All agreements made are validly valid as law for those who make them
2. An agreement cannot be withdrawn other than with the consent of both parties, or for reasons which are stated to be sufficient by law.
3. An agreement must be executed in good faith.

On the official website of the Smart Credit application, prospective customers are presented with complete information related to the services of their users wrapped in innuendo marketing, such as company websites that offer products or goods in general. The Smart Credit application lists the terms of service and policies that can be accessed in general. In that case, the terms of service and the uploaded personal policy are an offer made by Smart Credit to their prospective customers. This has fulfilled the rules where the offer must be communicated, and the principles of the contract are carried out. Because Smart Credit has been registered and supervised by the Financial Services Authority (OJK) and the Indonesian Joint Funding Fintech Association (AFPI), the preparation of service terms and personal policies has definitely gone through a fit and proper test. Thus, when the prospective customer reaches the stage of registering himself as a customer, they are considered to have understood and accepted the terms of service and personal policies as someone who has agreed on the procedures and conditions in online loans, namely the Smart Credit application. Law of the Republic of Indonesia, Number 11 of 2008 concerning Indonesian Electronic Information and Transactions in Article 20 paragraph 1, explains that:

1. Unless otherwise specified by the parties, the electronic transaction occurs when the transaction offer sent by the sender has been received and approved by the recipient
2. Approval of the Electronic Transaction offer as referred to in paragraph (1) must be made with an electronic acceptance statement.

The explanation above explains that electronic transactions occur at the time of agreement between the parties, which can be in the form of checking data, identity, personal identification number or password. When a prospective customer creates an account and password and uploads personal data as required in terms of service and to

²⁸ Khairandi dan Ridwan, *Hukum Kontrak Indonesia* (Cet. I; Uogyakarta, FH Press, 2016), h. 56.

²⁹ Republik Indonesia, *Kitab Undang-Undang Hukum Perdata*, (Cet. I; Jakarta: 2014), h. 298

register himself as a customer in order to use the services to be offered, based on Article 20 Paragraph 1 of Law No. 11 of 2008 concerning Electronic Information and Transactions and also upon the fulfilment of the provisions of Article 1320 of the Civil Code, the provisions and mechanisms that the Smart Credit application has made have bound the parties so that the online loan is legal in the eyes of the law.

Based on the analysis of the online loan mechanism in the Smart Credit application according to Islamic Law and the Civil Code, there are differences between the two. According to Islamic law, the online lending mechanism allows lending on the internet network. Still, it is forbidden to pay interest on the lenders or to exceed the money lent by the lenders. If we look at the implementation of the Smart Credit application, it is clear that the Smart Credit application is not in accordance with or contrary to Islamic Law. Unlike the case in the Civil Code, which is contained in article 1320 of the Civil Code, it is explained that if a lender has agreed to the process of terms and conditions that have been made by the Smart Credit application and has bound himself to the applicable provisions, whether it is a loan that is known to have interest or delays in paying will be fined, then the lending process is legal in the eyes of the law because he/she has bound himself to the online loan process, in this case, the Smart Credit application.

CONCLUSION

The legal requirements for online lending in the Smart Credit application are in accordance with the requirements of Islamic Law and the Civil Code. In the process of making an online loan, it must have an *ijab* and *qabul*, *muqrid* (lend funds without coercion), an agreement from both parties to bind himself, proficient in making an agreement, the object in certain matters or the form and type of the loan can be understood. It is all listed in the requirements on the Smart Credit application. Likewise, the online lending mechanism, according to Islamic law, allows lending on the internet network. Still, it is forbidden to pay interest on the borrower or to exceed the money lent by the lender. If we look at the implementation of the Smart Credit application, it is clear that the Smart Credit application is not in accordance with or contrary to Islamic Law. It is different in the Civil Code, which is contained in article 1320 of the Civil Code, which explains that if a lender has agreed to the process of terms and conditions that the Smart Credit application has made and has bound himself in the applicable provisions, be it a known loan. have interest or delay in paying will be given a fine, then the lending process is legal in the eyes of the law because he has bound himself to the online loan process, in this case, the Smart Credit application.

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