



Comparison of Legal Culture on the Imposition of Interest on Online Loans in Indonesia, USA, and China

Nurhilmayah^(✉) and Asliani

Universitas Muhammadiyah Sumatera Utara, Medan, Indonesia
nurhilmiyah@umsu.ac.id

Abstract. Legal culture is the most difficult element of the legal system to form because it requires a relatively long period of time. This happens because culture is related to values. What is related to values, definitely requires an internalization process so that the values are not only known, but also practiced in everyday life. In accordance with Lawrence Friedman's Legal System Theory, the elements being compared are elements of legal substance, legal structure, and legal culture from the aspect of imposing interest on online loans. The attitude of online loan platform organizers, creditors and debtors towards the imposition of loan interest. This is the concern in discussing this legal issue from the aspect of legal culture. Highlighting the legal culture that has emerged around the issue of imposing online loan interest in Indonesia, the United States, and in China. In Indonesia, it is based on the interest rate set by APFI (Indonesian Fintech Joint Funding Association) which is 0.4% per day. The United States refers to the interest rate set by the Fed, which is 0.75% to 1%, and China applies loan interest at 8% to 10% per year.

Keywords: legal · culture interest · online · loans

1 Introduction

This study focuses on the legal culture that exists in Indonesia, the United States, and China. Then explore aspects of the legal attitude of legal subjects who are parties to online loans in these countries to support green economy. The goal is to see and obtain a comparison of the advantages and disadvantages of existing legal cultures. So that best practices are obtained which in the future are expected to contribute constructively to the development of national law in the field of online loans. Currently, people's need for cash loans does not only expect funding from banks. Along with the development of the era of globalization and the digital economy and information technology, fintech or financial technology or more widely known to the public as an online loan platform was born. At the end of 2016 the Financial Services Authority (OJK) issued a regulation regarding this online loan through OJK Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. Based on the Code of Conduct (CoC) from AFPI, the loan interest rate given to debtors is 0.8% per day (maximum limit). Plus, there is a stipulation that the total amount of fees, late fees, and all other

© The Author(s) 2023

Y. A. Yusran et al. (Eds.): BIC 2022, AEBMR 235, pp. 362–369, 2023.

https://doi.org/10.2991/978-94-6463-140-1_36

fees is a maximum of 100% of the principal value of the loan [1]. Unfortunately, at the implementation level, there are not a few online loans that apply loan interest rates above the conditions set by AFPI, plus other costs. This is what causes problems for people who use online loan services in Indonesia.

The Financial Services Authority (OJK) as an independent institution and free from interference from other parties, has the functions, duties, and authorities of regulation, supervision, examination, and investigation as referred to in Law Number 21 of 2011 concerning OJK. In today's modern economic era, the development of the non-bank financial industry is progressing rapidly, which is marked by the emergence of Information Technology-Based Borrowing-Lending Services or abbreviated as LPMUBTI or commonly referred to by the public as fintech peer-to-peer lending (fintech lending). The problem is, the OJK with its authority regulated in Articles 7, 8, 9 of the OJK Law does not accommodate restrictions on the amount of loan interest and other costs. The arrangement regarding this is left to the Indonesian Joint Funding Fintech Association (AFPI). Due to the absence of these restrictions, it provides an opportunity for LPMUBTI to apply loan interest and other fees to the maximum and is not transparent, so that it is contrary to the basic principles of user protection, especially transparency and fair treatment as regulated in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Lending Services [2]. In October 2021, online loan interest fell by 50%, from 0.8% to 0.4% according to AFPI General Chair Adrian Gunadi, based on the agreement, AFPI lowered the maximum loan interest limit by approximately 50% [3].

Writing this article aims to answer the question, how does the legal culture compare in relation to the imposition of interest on online loans in Indonesia, the United States, and China? Before discussing it further into the substance of the matter, the use of the term Chinese has a basis that should be considered. Other terms are China, People's Republic of China (PRC), China, and People's Republic of China (PRC). According to the fourth edition of the Big Indonesian Dictionary (KBBI), the term "Chinese" is still spelled without the letter "h" and is read as "Ci.na", not "Cai.na". In addition, the explanation of "China" according to the KBBI is "1). a country in Asia; China; 2). People living in China; Chinese." Based on this thought, it should not be a problem for us to return to using the term "China" as written in the Treaty on Opening Diplomatic Relations of the People's Republic of China and the Republic of Indonesia in 1950 [4].

Depending on the different concepts, approaches and tools identified in the green economy framework, different degrees of substitutability and trade-offs between environmental and economic benefits are allowed, and more or less structural changes of our modes of living are required. By discussing the notion of green economy and related concepts, approaches and tools we seek to make a contribution to their definitions and relationships as a prerequisite for operationalizing green economy [5].

2 Research Method

This research is a library research. Secondary data was obtained by conducting a literature study. The research is limited to the issue of comparative legal culture in its relevance to the imposition of interest on online loans. Specifically, choosing a country for comparison

because according to Global Perspective data, 2013, online loans in the United States are the largest in the world, besides the United States, China is also known to be progressive in the development of information technology in the financial sector such as this online loan platform. So it is hoped that from the comparisons carried out, we can adopt new things that are good for solving the problems of imposing interest on online loans in Indonesia.

3 Results and Discussion

Culture comes from the word mind and power, perspective and results of human cultivation. The factors that shape culture are livelihoods, beliefs, political systems, technological progress, and international relations [6]. While in other definitions, legal culture is defined as the same general response from certain people to legal phenomena. The response is a view of the values of legal culture [6]. The two definitions above, although with different editorials, provide more or less the same emphasis, namely the perspective and human response to the law. This will be related to the imposition of interest on information technology-based money loans.

To discuss the comparison of legal culture on the imposition of online credit interest in Indonesia, the United States and China, the IRAC method is used. According to Marie Bittner, "The IRAC method is an instructional tool that can assist students in understanding and evaluating information so that they can make informed value decisions. It stands for Issue, Rule, Analysis, and Conclusion. Although this is a legal model used to evaluate a hypothetical situation in a legal case, it is by no means limited to the study of law, ... in law classes students are given a firm method for cases, analysis. According to this method, students recognize legal issues from facts according to legal precedents and reach conclusions [7]. Another scholar points out that if there are no exact equivalents in Chinese, the translator can flexibly utilize functional equivalents, lexical expansion, paraphrasing, neutral terms, and borrowing on the premise of faithfulness [8]. However, the translation of legal terms, as a by-product of legal cultural exchange and transplantation, aims to be well comprehended by target readers. Transliteration is rarely used, and interpretation for functional equivalents would be advantageous for target readers to understand Chinese legal culture [9].

Comparative legal aspects of termination civil law contract in connection with a significant change in circumstances on the example of post-Soviet states; questions legal regulation of patent relations and intellectual property in the field application of artificial intelligence technologies; facets of interaction between the German history of concepts and the history of political and legal doctrines; dual unity of electoral-legal culture and political communication in the elections of the Prussian Landtag in a historical aspect [10]. Examine the legal problems that arise, adjust to the existing legal rules and then come to a conclusion. The IRAC method is an instructional tool that can assist researchers in understanding and providing information so that they can make value decisions. That stands for the acronym, Issue, Rule, Analysis, and Conclusion. Although this method is a legal model used for hypothetical situations in legal cases, it is not limited to legal studies, other social studies can be applied.

Experts in comparative legal culture generally work by comparing various awareness, culture, and legal awareness of different nations. This can be done either on a narrow

scale (microcomparison), or on a broad scale (macrocomparison). What can be classified as a macrocomparison is to compare the spirit and style of different legal systems, the methods of thinking and the procedures they use. While micro comparisons, on the other hand, have to do with specific institutions or legal issues, i.e. with the rules used to solve actual problems or specific conflicts of interest [11]. According to Friedman, legal culture is part of the legal system which consists of substance, structure, and legal culture itself. The problem to be compared is the absence of a legal mechanism in determining the determining factors for imposing interest on online loans, causing online loan platforms to tend to charge interest unilaterally and in amounts exceeding the upper limit as set by APFI. It is important to study the attitude of the parties, in this case the online loan platform operator or the peer-to-peer lending (P2PL) financial technology (fintech) provider in an online loan legal relationship (information technology-based).

There are a number of fundamental differences between the three legal cultures practiced in Indonesia, the United States, and China. Further can be seen in Table 1.

Legal culture by Lawrence Friedman is defined as a number of ideas, values, expectations, and attitudes towards law and legal institutions which are partly public or partly in the public domain. Peter de Cruz argues that this definition of legal culture is not a

Table 1. Comparison of the Legal Culture of Countries and the Imposition of Interest on Online Loans

No	Country	Legal Culture	Imposition of Online Loan Interest
1	Indonesia	It is not enough to have adequate financial literacy, showing interest in instant disbursement of funds, without collateral, and allocated for consumptive needs, A small portion for distribution of MSMEs (productive)	Financial Services Authority (OJK) – The Indonesian Fintech Joint Funding Association (AFPI) sets an interest limit of 0.4% per day.
2	United States of America	Some use it for productive and consumptive	-Security Exchange Commission (SEC) did not specify, when referring to the increase in the central bank's interest rate, by 0.75–1% per day -Consumer Financial Protection Bureau (CFPB)
3	China	Making the position of creditors an opportunity to increase income. Allocation for productive and consumptive (for debtors)	The practice of fintech P2P lending in China, offers unsecured loans with interest rates reaching 8–10 percent per year.

universally accepted definition, but nevertheless, it is a useful way of describing measurable phenomena. It should be noted that some authors use the word legal culture when they refer to the legal system in general. The word “culture” is sometimes equated with the word “tradition.” It must also be realized that there are differences in the use of these terms to refer to the same phenomenon. But all problems in comparative law do involve variations of this terminology, and to compare different systems/traditions/cultures as part of a comparative law methodology [12].

In short, in raising legal awareness and legal culture in society, the population, especially young people, widely promote the ideas of socio-economic reforms, the formation of a system of consistent delivery of the content and essence of legislation and government programs, maintaining a balance between personal and public interests, as well as strengthening cooperation between public authorities, including law enforcement agencies and civil society institutions in the implementation of targeted legal advocacy and in-depth study of the scientific basis for raising legal awareness and legal culture among the population. plays an important role in raising [13].

The imposition of interest on online loans in the United States, explicitly does not have institutional arrangements that are authorized to regulate and supervise online loan providers such as the Financial Services Authority in Indonesia. A similar institution is the Security Exchange Commission (SEC). This institution did not specify, when referring to the increase in the central bank’s interest rate, by 0.25–0.5% per day [14]. There is another institution, namely the Consumer Financial Protection Bureau (CFPB) which is concerned with handling consumer protection disputes in the United States [15]. The United States legal system includes criminal law that punishes people when they violate the law with a penalty (penal), and civil law when an aggrieved person or party seeks compensation for the harm suffered. An understanding of a legal system is very important, as the substance, structure, and decision-making procedures are always controversial, in particular always being questioned and not liked by the losing party [16]. The imposition of interest on online loans in China, the legal culture of the Chinese state is heavily influenced by local values, in the post-1912 period marked by the acceptance of western laws, discussed in close connection with the early communist period of the development of Chinese law. Finally, modern China and its increasingly formal socialist legal system are presented as a legal system [17]’ To attract individual investors with investment gains of up to 1 billion Yuan equivalents to \$149 million. The lure in the form of “BMW as collateral” and online loan interest of 5 (five) percent every month in a year”, is able to attract public interest to invest money in this crowdfunding or co-financing-based financing company [18].

The authority of the Financial Services Authority in limiting the amount of loan interest and other fees on Information Technology-Based Borrowing-Lending Services (LPMUBTI) is very large as mandated by Law Number 21 of 2011 concerning the Financial Services Authority. Especially the authority that is directly related to consumer protection, in this case LPMUBTI users. The very strategic authority of the OJK in establishing regulations regarding supervision in the financial services sector, and conducting supervision, examination, investigation, consumer protection, and other actions against financial service institutions, actors, and/or supporting financial service activities as referred to in the laws and regulations invitations in the financial services sector,

in particular regulations regarding the limitation of loan interest rates and other fees at LPMUBTI [19].

Without education and marketing, consumers will not incentivize the private sector to supply green goods. Without research and innovation, growth cannot be achieved and solutions are not created. Finally, without government support, the transition that lateralizes power and drives socio-economic development in a sustainable environment cannot be supported because of an unethical business environment that hampers long-term ROI of emerging fourth sector organizations. The road has just been paved but promises to diverge into further crossroads that will support the traffic of innovation and sustainability through time [20].

4 Conclusion

In conclusion, a comparison of the legal culture of imposing interest on online loans in Indonesia, the United States and China, provides an understanding that different legal cultures greatly determine the concept of imposing interest on online loans in their respective countries. And the implementation of transactions on an online loan. In Indonesia, the imposition of interest is left to the AFPI organization at 0.4% per day. The United States is more likely to leave it to the market mechanism even though there are institutions that regulate but do not set interest explicitly, when referring to the interest rates of the United States central bank, the Fed, online loan interest rates reach 0.25–0.5% and 0.75–0.1% per day. Meanwhile, for China with its legal system, interest rates reach 8–10 percent per year. The imposition of online loan interest in Indonesia is not determined by authorized institutions such as the Financial Services Authority, but by AFPI. This is not the same with the United States and China.

Suggestion, learning from the legal culture of the United States and the legal culture of China on online loan platforms, so that the Indonesian people strengthen the legal culture, especially in the aspect of legal awareness in financial literacy, namely finding out in advance about the amount of loan interest, as well as the rights and obligations of the parties in an online loan legal relationship. Financial Services in the implementation of registration and licensing of online loan platforms, both old and new. Because it is possible after closing many problematic online loan platforms, in an instant these platforms are camouflaged into new platforms, and apply for registration and licensing to the Financial Services Authority, for the success of the green economy. In this case, cross-sectoral cooperation is also needed between various ministries, institutions related private sectors, fintech (financial technology) associations, and legal awareness of potential creditors and debtors of online loan platforms.

Acknowledgments. We thank the committee of Green Economy in Building A Resilient Society which held by Universitas Brawijaya, Indonesia. Thanks to the dean and his deputies by inform this event to the lecturer in Faculty of Law Universitas Muhammadiyah Sumatera Utara.

References

1. FAQ *Fintech Lending*. (tanpa tahun). Otoritas Jasa Keuangan
2. Nurhilmayah. (2021). Kewenangan OJK Dalam Pembatasan Besaran Bunga Pinjaman dan Biaya Lainnya Pada Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi (LPMUBTI). Prosiding Seminar Nasional SiNTESa Vol. 1 No.1 2021. DOI: <https://doi.org/10.53695/sintesa.v1i1.445>
3. Ketahui Istilah Tiongkok, Cina dan China. Diakses pada 14 April 2022 dari <https://www.bamboocyberschool.com/post/ketahuiilah-istilah-tiongkok-cina-dan-china>
4. Tarsisius Murwadi (2022, April 8). Perbandingan Budaya Hukum [materi kuliah dipresentasikan di kelas Angkatan 2021 Prodi S3 Ilmu Hukum]. PowerPoint Slides. Fakultas Hukum. Universitas Sumatera Utara.
5. Rosnidar Sembiring (2022, April 2). Perbandingan Budaya Hukum [materi kuliah dipresentasikan di kelas Angkatan 2021 Prodi S3 Ilmu Hukum]. PowerPoint Slides. Fakultas Hukum. Universitas Sumatera Utara.
6. Loiseau, E., Saikku, L., Antikainen, R., Droste, N., Hansjürgens, B., Pitkänen, K.,... & Thomsen, M. (2016). Green economy and related concepts: An overview. *Journal of cleaner production*, 139, 361-371.
7. Marie Bittner (2010). *The IRAC Method of Case Study Analysis: A Legal Model For The Social Studies*. The Social Studies. Vol. 81, 1990 – Issue 5. DOI: <https://doi.org/10.1080/00377996.1990.9957530>
8. Ade Maman Suherman (2008). Pengantar Perbandingan Sistem Hukum. Edisi Ke-3. Jakarta. PT. RajaGrafindo Press.
9. An, J., & Sun, J. (2022). Translation strategy of legal terms with chinese characteristics in 0RW1S34RfeSDcfkexd09rT2civil code of the People's republic of china1RW1S34RfeSDcfkexd09rT2 based on skopos theory. *PLoS One*, 17(9) doi: <https://doi.org/10.1371/journal.pone.0273944>.
10. Inshakova, A. O. (2020). The determining factors in the development of jurisdictions: The evolution of legal policy and legal culture. [Определяющие факторы развития юрисдикций: эволюция правовой политики и правовой культуры] *Legal Concept = Pravovaya Paradigma*, 19(4) doi:<https://doi.org/10.15688/lc.jvolsu.2020.4.1>.
11. Fika Nurul Ulya. (2022, 5 Mei). The Fed Naikkan Suku Bunga 0,50 Persen Tertinggi sejak Tahun 2000/ Kompas.com: Money. Diakses dari <https://money.kompas.com/read/2022/05/05/075356626/the-fed-naikkan-suku-bunga-050-persen-tertinggi-sejak-tahun-2000#:~:text=Dikutip%20dari%20Nikkei%20Asia%2C%20Kamis,Covid%2D19%20untuk%20mengendalikan%20inflasi>.
12. Werner Menski. (2015). *Perbandingan Hukum Dalam Konteksi Global Sistem Eropa, Asia, dan Afrika (Terjemahan dari Comparative Law in A Global Context)*. United Kingdom, Cambridge University Press, Cet. XV diterbitkan kembali di Bandung. Nusamedia, hlm. 665.
13. Makhmut, U. (2021). The effect of legal nihilism and legal idealism on the level of legal consciousness and culture. *Turkish Journal of Computer and Mathematics Education*, 12(9), 3433-3435. Retrieved from <https://www.proquest.com/scholarly-journals/effect-legal-nihilism-idealism-on-level/docview/2623459441/se-2>.
14. Dea Chadiza Syafina. (2019). Tirto.id/ Sempat Booming Bisnis Pinjaman Online di Cina Rontok. Diakses dari <https://tirto.id/sempat-booming-bisnis-pinjaman-online-di-cina-rontok-djaS>.
15. Sidharta. (2019, Juni). *Apa Itu Budaya Hukum*. Diakses dari: <https://business-law.binus.ac.id/2019/10/04/apa-itu-budaya-hukum/>.
16. Ferrika Sari. (2019). Kontan.co.id/ Keuangan. OJK resmikan Asosiasi Fintech Pendanaan Bersama Indonesia (AFPI). Diakses dari <https://keuangan.kontan.co.id/news/ojk-resmikan-asosiasi-fintech-pendanaan-bersama-indonesia-afpi>.

17. Asosiasi Fintech Syariah Indonesia. (2022, April 16). Diakses dari <https://fintechsyariah.id/id/about>.
18. Huala Adolf. (2019) dalam Ernst-Ulrich Petersmann, *Codes of Conduct* dalam R. Bernhardt (ed). Encyclopedia of Public International Law, Instalment 7 (1987), hlm. 28–29 dalam *Hukum Ekonomi Internasional Suatu Pengantar*. Cetakan ke-7. Bandung. Keni Media, hlm. 166.
19. Selvi Mayasari. (2022, Maret 22). Penurunan Batas Biaya Pinjaman 0,4% Dinilai Memberatkan Pelaku Bisnis Fintech P2P. Kontan.co.id/ Keuangan. Diakses dari <https://keuangan.kontan.co.id/news/penurunan-batas-biaya-pinjaman-04-dinilai-memberatkan-pelaku-bisnis-fintech-p2p>.
20. Delaunay, C. J., & Torrisi, C. R. (2016). MBA Program in Paris: A Cross-Cultural Joint Venture. *Research in Higher Education Journal*, 34.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

