

BORROWER'S RIGHT TO A SENSE OF SECURITY IN ILLEGAL PEER TO PEER LENDING IN INDONESIA PERSPECTIVE OF DIGNIFIED JUSTICE THEORY

Rizky Pratama Putra Karo Karo, Univeritas Pelita Harapan

ABSTRACT

Peer to peer lending provides benefits for prospective borrowers who needs money, but do not have the qualification as borrowers in the Bank. Borrowers on a peer-to-peer lending are required to provide an accurate personal data, in the form of full names, bank account numbers, active mobile numbers, and a residential number. In Indonesia, legal peer-to-peer lending must be licensed by the Financial Services Authority, but there are some illegal peer-to-peer lending services that are utilized by the people of Indonesia. The purpose of this article is to analyze the right to a sense of security owned by borrowers in illegal peer to peer lending in Indonesia. The research methods used are normative juridical, utilizing secondary data, and qualitative analysis. The results of the study are based on the perspective of the theory of dignified justice, a theory based on the norms of Pancasila, and is aiming to humanize human, by emphasizing that illegal peer to peer lending must respect the right to security entitled to the borrowers, by collecting receivables with the sense of humanity, with no online threats, and to advice the organizers of illegal peer to peer lending to conduct a negotiation of debt restructuring with debtors. Based on the theory of dignified justice, the consumers or borrowers are entitled the right to complaint and are protected by authorized institutions in Indonesia, such as the Financial Services Authority.

Keywords: Illegal Peer to Peer Lending, Dignified Justice Theory, Right to Security of Person

INTRODUCTION

Peer to Peer Lending (hereinafter referred to as P2P Lending) is a financial technology that is developing in Indonesia. P2P lending is used to borrow money. P2P Lending are meant for those who, for some reasons, is not qualified to borrow money in Banks. Bank regulates a condition for prospective borrowers in order to borrow money. Based on Bank Indonesia Regulation No: 19/12/PBI/2017 on the Implementation of Financial Technology (BI Reg/2017), financial technology is the use of technology in the financial system that produces new products, services, technologies, and/or business models and can have an impact on monetary stability, financial system stability, and/or efficiency, smoothness, security, and reliability of payment systems.

Financial Technology has criteria: a. is innovative; b. may have an impact on existing financial products, services, technologies and/or business models; c. can benefit the community; d. can be widely used; and e. other criteria set by Bank Indonesia (vide: Article 3(2) BI Reg/2017).

One of the form of financial technology used in Indonesia, namely peer to peer lending. According to the Financial Services Authority until August 2021, the distributed amount from financial technology or online loans has reached Rp 101.51 trillion. The amount of distribution in Java Island has reached Rp.12.1 trillion for 21.1 million loan recipients. In the period January to August 2021 the amount of loans channeled to the productive sector has reached Rp. 52.69 trillion or about 51.8% (Financial Services Authority, website: cnbcindonesia.com: Oct 2021).

The legal basis governing peer to peer lending (P2P Lending) is Financial Services Authority Regulation No. 77/POJK.01/2016 on Information Technology-Based Lending Services (hereinafter referred to as POJK P2P Lending). The purpose of fintech is to simplify the transaction process and make it easier for people to access financial products. The development of fintech provides many benefits to the national economy either as a business actor or consumer. Lending funds in fintech can be obtained with easier, faster, and more flexible terms and conditions so that it can be used as an alternative source of community financing (Arifin, 2018).

In the opinion of the author, peer to peer lending provides benefits for providing loans, channeling loans / credit to prospective recipients, especially to provide small amount loans. Peer to peer lending service has differences with banks when it comes to lending money. Peer to peer lending makes it easier for consumers to get a limited amount of funds in an instant amount of time.

The main purposes of lending or loans are: first, looking for benefits-That is, aiming to obtain the benefits from the allocation of credit, especially in the form of interest received by banks; second, helping the consumer's business; third, helping the government-In behalf of the government the more credit gets channeled by the bank, the better, because it will increase tax revenues and also open employment opportunities (Kasmir, 2012).

Lending to banks requires and implements the principle of 5C (Character, Capacity, Capital, Collateral, Condition of Economy). First, Character, the tool used to obtain an overview of the character of prospective customers can be done in a way that includes: 1. Analyzing the life history of prospective customers 2. Analyzing the reputation of prospective customers in their business environment; 3. Conduct the sharing of bank to bank information 4. Looking for information to business associations where prospective customers are located. 5. Inform whether prospective customers like to gamble (Rivai & Veithzal, 2006).

Second, Capacity, an approach that can be used in assessing customer capacity, are as follows: 1. Historical approach, namely assessing past performance. 2. Financial approach, which is to assess the financial capabilities of prospective financing customers. 3. Juridical approach, which is to look juridically at the person who is authorized to represent prospective financing customers in signing a financing agreement with the bank. 4. Managerial approach, which is to assess the ability of customers to carry out management functions in leading a company. 5. Technical approach, namely assessing the ability of prospective financing customers related to technical production, such as labor, raw material sources (Indonesian Bankers Association, 2015).

Third, capital. Assessment of the financial position of prospective financing customers as a whole including cash flow, both for the past and projections in the future, is carried out to find out the capital ability of the prospective financing customers in carrying out the project or business of the financing customer concerned (Indonesian Bankers Association, 2015).

Fourth, collateral. Collateral goods can be categorized into two, namely: 1. Tangible, that is a collateral that has a physical form so that it can be touched. Such as land, vehicles, machinery, buildings, and others. 2. Intangible, that is a collateral that does not have a form but has more value than physical formed goods, and is valuable such as copyright (Indonesian Bankers Association, 2015).

Fifth, condition of economy. Government policy is required in analyzing the condition of economy, if the government policy changes frequently, it will be difficult for the Unit Simpan Pinjam (savings and loan unit) to conduct analysis (Ismail, 2010). 5 C is a burdensome condition for the community, the majority of the community will not pass the 5 C and get the quite large amount of loans or creditors. These five basic elements of credit lending cannot be ruled out except with an agreement. However, in its practice, credit lending

requires the need for collateral (Pranatia, 2021). Then, is there any solution for those who needs to borrow a small amount of money instantly? Financial Technology, Peer to Peer Lending is used to obtain such loans, loans in small amounts, and do not require a collateral in exchange for it.

One of the Peer to Peer Lending in Indonesia registered and licensed in OJK as of October 6, 2021 is 'PinjamanGO' which can be accessed through <https://www.pinjamango.co.id> (OJK: 2021). The requirement to become a borrower on the 'PinjamanGo' platform is to have: a. Identity Card; b. Bank account; c. Fixed mobile number; d. Stable income. And prospective borrowers can borrow, for example up to Rp6,000,000.00 (six million Rupiah) (website: pinjamango.co.id: 2021).

The authority that oversees financial stability, financial services institutions in Indonesia, namely Bank Indonesia (hereinafter referred to as BI), and the Financial Services Authority (hereinafter referred to as the OJK Law). Based on Article 1 Number 1 of Law No. 21 of 2011 concerning the Financial Services Authority (OJK Law), the Financial Services Authority (OJK) is an independent institution and is free from interference from other parties, which has the functions, duties, and regulatory authorities, supervision, examination, and investigation as referred to in this Law. Based on Article 1 Number 4 of the OJK Law, Financial Services Institutions are institutions that carry out activities in the banking sector, capital markets, insurance, pension funds, financing institutions, and other financial services institutions.

OJK serves as a state institution that functions as an integrated regulatory and supervisory system for all activities in the financial sector. The establishment of OJK is to replace the role of Bank Indonesia, even though one of its primary functions is to carry out a supervisory function in the banking sector, financial service activities in the insurance sector, venture capital companies, pension funds, and others (Ginting, 2021).

Based on Article 4 of the OJK Law, OJK was formed with the aim that all activities within the financial services sector: a. can be carried out regularly, fairly, transparently, and accountably; b. is able to create a financial system that grows in a sustainable and stable manner; and c. is able to protect the interests of consumers and the public. Explanation of Article 4 letter c of the OJK Law, which is meant by "protecting the interests of consumers and the public" including protection against violations and crimes in the financial sector such as manipulation and various forms of embezzlement in financial services activities.

POJK P2P Lending has firmly regulated licensing procedures, peer to peer lending registration to protect consumers. However, perpetrators utilize technology, leveraging their knowledge to build illegal peer to peer lending. Illegal peer to peer lending is also widely used by the community because the community needs money instantly. The system contained in P2P Lending is basically the same as the concept of online marketplace because in P2P Lending the borrower does not meet directly with the lending party because they will only be met through the existing system online through the P2P Lending platform that will connect the interests of the parties (Hartanto & Ramli, 2018).

Based on the Satuan Tugas Waspada Investasi (investment alert force), as of August 2021, there are 442 illegal peer to peer lending that are still actively operating in Indonesia. Based on the Chairman of the Satuan Tugas Waspada Investasi, from 2018-July 2021 has eradicated the amount of 3,365 illegal peer to peer lending (website: bisnis.com: Ags 2021). There are 106 (one hundred and six) Peer to Peer Lending companies that have been licensed and registered in OJK by October 6, 2021. Organizers with licensed or registered status can run a business of lending services based on information technology in accordance with applicable provisions. However, organizers who have licensed status have differences with organizers who remains in the registered status, including: a. Licensed organizers are companies that have obtained permanent permission and have an Information Security Management System certificate with the number of SNI/ISO 270001. b. Registered

organizers are companies that are currently in the process of obtaining permanent permits and must apply for permanent permits to OJK. Currently, all registered organizers have applied and are in the process of obtaining the permanent permit (OJK, 2021).

The Dignified Justice Theory or Dignified Justice that legal norms and principles can only be found in a particular legal system or in the spirit of the people (Volksgeist) which has been set as the focus of an observation and a study (Prasetyo and Handayani: 2017). In the perspective of the Theory of Dignified Justice, or Dignified Justice; justice is where the three purposes of law and regulation as expressed by Gustav Radbruch (fairness, certainty and benefit) are united in the Dignified Justice. The Justice is exist to pursue the human dignity within every civilized social context (Kameo et al., 2020).

Based on this background, the formulation of the issues raised is on how to protect and actualize the right of borrowers to a sense of security in illegal peer to peer lending in Indonesia based on the perspective of dignified justice theory? The purpose of this article is to analyze the right to a sense of security for consumers of illegal peer to peer lending in Indonesia. The benefits of this article acts as an input for authorities to make regulations about illegal online loan organizers.

METHODOLOGY

The method used in order to acquire, investigate and analyse concepts pertaining to law reform is doctrinal and normative method (Prasetyo, 2019). The methodology used is the normative juridical method. The author uses secondary data on primary legal materials consisting of: 1. The 1945 Constitution of the Republic of Indonesia; 2. Law No. 39 of 1999 on Human Rights; 3. Law No. 11 of 2008 on Information and Electronic Transactions as amended by Law No. 19 of 2016; 4. Law No. 21 of 2011 concerning the Financial Services Authority (OJK Law); 5. Financial Services Authority Regulation No. 77/POJK.01/2016 on Information Technology-Based Lending Services; 6. Other laws and regulations related to the topic chosen by the author. Secondary legal materials used are in the form of scientific articles in journals; and tertiary legal materials used are in the form of The Indonesian Grand Dictionary (Kamus Besar Bahasa Indonesia), The Dictionary of Law (Kamus Hukum).

Normative legal research fully uses secondary data (literature), the preparation of tentative theoretical frameworks (schemes) can be abandoned, but the preparation of conceptual frameworks is necessary. In compiling the conceptual framework, formulations contained in the statutory regulations which form the basis of research can be used (Budianto, 2020).

DISCUSSION

Dignified Justice Theory Review

The concept of justice in an adjudicative field, is identical to legal acts that enable to accommodate rights and responsibilities appropriately. It also gives suitable punishment. Legal practitioners (as lawyer, advocate, prosecutor, judge and academics dealing with teachings, research and community service in their universities) are not counted as promoting scientific/legal contributions when they are not practicing their legal enforcement based on a widely researched and competent legal theories/principle (Prasetyo, 2015).

The philosophy of sentencing based on dignified justice should attached to Pancasila as the nation's principle as the main source of laws. Pancasila is founded with its five precepts, they are: 1. Belief in God's divinity 2. Refine humanity 3. Unity 4. Democracy and deliberation 5. Justice and fairnes (Sulistiowati, 2020).

The theory of dignified justice uses the principles exist in doctrines or clauses in the legal system based on Pancasila as the main and initial legal system. They are then becoming the main research and study in theory of dignified justice. This theory studies its legal system, so it is meant to aim justice in its whole system. This dignified justice puts positive legal system as a material object that defines Pancasila as the nation's philosophy (Prasetyo, 2015).

The authors use the theory of dignified justice to analyze that legal protection, consumer protection of licensed peer to peer lending and illegal peer to peer lending are mandatory. Based on the theory of dignified justice, business must be done in accordance with the provisions of applicable laws and regulations and provide benefits for business actors and consumers.

Based on the theory of dignified justice, business must be done by conducting a just and civilized humanity. Illegal peer to peer lending is mandatory to charge in a way that does not violate the law, does not threaten and spread slander. This obligation is the responsibility of illegal peer to peer lending to the implementation of maintaining the right to a sense of security.

The Right to a Sense of Security under the 1945 Constitution and the Law on Human Rights in Indonesia

The rights of consumers become an aspect that needs to get the attention of online loan providers. In this case the offer provided becomes the main attraction for someone to use online loan services. Therefore, online lenders should also be able to pay attention to the rights of the users of online loan services as their consumers (Pardosi & Primawardani, 2020).

In the opinion of the author, borrowers or can also be referred to as consumers have the right to a sense of security, personal, and family protection. This right to security is a human right that must be protected as mandated in the 1945 Constitution of the Republic of Indonesia (UUD 1945), as well as the Universal Declaration of Human Rights. Based on the mandate of Article 28G paragraph (1) of the 1945 Constitution "Everyone is entitled to the protection of personal self, family, honor, dignity, and property under their authority, and is entitled to a sense of security and protection from the threat of fear in doing or not doing something that is a considered as human right".

Personal data entered by prospective borrowers into the electronic system of peer to peer lending in Indonesia is a form of approval of prospective borrowers to be able to use an application, personal data is a right to privacy, a right guaranteed by the Constitution of the Republic of Indonesia, and ITE Law (Karo&Prasetyo: 2020). The law provides justice, expediency. Fair treatment of each person and occupying it equally regardless of differences in biological and sociological factors that exist. Balance of rights by law becomes very important to be protected and organized in the life of the state, nation, and society (Sugianto et al., 2021).

In the opinion of the authors, the organizers of illegal peer to peer lending are prohibited from providing acidification, and accusing borrowers with false accusation. The accusation will certainly have psychological consequences for borrowers. The accusation, the threat is contrary to Article 9 paragraph (2) of Law No. 39 of 1999 on Human Rights (Human Rights Law) namely "Everyone has the right to be peaceful, safe, happy, prosperous physically and mentally."

In addition, threats, accusations, and spreading things that are not true, as well as contacting people who are close to borrowers when these people never approve themselves as emergency contacts are also contrary to Article 30 of the Human Rights Law "Everyone is

entitled to a sense of security and protection against the threat of fear in doing or not doing something".

Respect, protection of human rights has also been firmly mandated in the Universal Declaration of Human Rights (UDHR). Based on Article 3 UDHR "Everyone has the right to life, liberty, and security of person". Based on Article 12 UDHR "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has right to the protection of the law against such interference or attacks".

In Indonesia, in October 2021 there were adverse consequences of peer to peer lending. A woman (WPS, 38 years old) in Wonogiri, Central Java, Indonesia became a victim, WPS has borrowed money on 23 peer to peer lending applications and one Cooperative (Koperasi Simpan Pinjam). WPS chose to commit suicide, she hung herself on the terrace of her house in Wonogiri regency, Central Java, Indonesia. Before she died, WPS left a will to her husband and family, with one of the points being to pay off her debts. WPS borrowed at 23 peer to peer lending with a total of Rp51.3 million (Khulafa, Website: merdeka.com/October 2021).

The author hopes that this incident will not happen again, therefore a form of support from the Financial Services Authority is essential, and also from the Police to take precautions, always providing socialization on the risk of using illegal peer to peer lending for consumers.

In the opinion of the authors, the authorities (institutions) in Indonesia, the Financial Services Authority (OJK), Bank Indonesia (BI), the Police of the Republic of Indonesia (in - Indonesia Language: Polri), the Ministry of Communication and Information of the Republic of Indonesia (in- Indonesia Language: Kominfo) and the Ministry of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia (in- Indonesia Language: Kemenkop UKM) should make a joint commitment in making preventive efforts, and law enforcement. The author will dissect different manuscripts related to preventive efforts, and repressive efforts. However, the competent institution is obliged to provide legal protection, providing legal assistance because consumers are considered in being in the weak stand.

The authors also hope that the Government will oftenly conduct cyber patrols and block websites that organize, and provide online loans to the public. Illegal peer to peer lending that are unlicensed, and are not registered with the Financial Services Authority.

Torts (Perbuatan Melawan Hukum) in Illegal Peer to Peer Lending in Indonesia

Fintech itself is a type of company that innovates by utilizing the use of modern technology so that it can share new added value in the field of financial services by including the digital economy which encourages increased reliability, and efficiency that ultimately has an impact on financial system stability (Surjaningsih, 2019).

Illegal peer to peer lending in Indonesia is a current dilemma for the people of Indonesia. Indonesians need money to survive, Indonesians and people in other countries are experiencing economic difficulties due to the Covid-19 pandemic. Indonesian people needs money for business purposes, needs capital to do business, even needs money to eat.

Characteristics or characteristics of illegal peer to peer lending according to the Financial Services Authority through Special Investment Surveillance Unit (Satuan Tugas Waspada Investasi), namely: a. not registered / licensed from OJK; b. giving offers by using SMS/Whatsapp; c. High interest and fines reaching 1-4% per day; d. Other additional costs reaching the amount of 40% of the loan value; e. A short repayment period is not in accordance with the agreement; f. requesting access to personal data such as contacts, photos, and videos, and other personal data used to terrorize concerning borrowers; g. carry out

unethical billing; h. does not have a definite complaints services and office identity (OJK, 2020).

One of the unlawful acts committed by illegal peer to peer lending is to commit terror in collecting loans to consumers. According to the Criminal Investigation Department of the Police of the Republic of Indonesia (in – Indonesia Language: Bareskrim POLRI) that has conducted an investigation into illegal peer to peer lending. Illegal peer to peer lending is charging money from borrowers by providing threats, spreading vulgar photos, and manipulated photos in regard of the borrowers on social media. According to Deputy Director of Special Economic Crimes of Bareskrim POLRI, Whisnu H (June, 2021), the mode of peer to peer lending crimes is carried out by breaking into personal data in regard of victims who register to apply for loans at the perpetrator's company. The money borrowed will be pegged at high interest so that it makes it difficult for the borrower to pay. Billing is done with a threat in cyber space (CNN Indonesia, 2021).

Consumer complaints, public complaints against illegal peer to peer lending has got the attention of the authorized institutions in Indonesia. The Financial Services Authority (OJK), Bank Indonesia (BI), the Police of the Republic of Indonesia (in – Indonesia Language: Polri), the Ministry of Communication and Information of the Republic of Indonesia (in - Indonesia Language: Kominfo) and the Ministry of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia (in– Indonesia Language: Kemenkop UKM) gave a joint statement of commitment to strengthen measures to combat illegal online loans. Chairman of the Board of Commissioners of OJK Wimboh Santoso said OJK has been carrying out various policies to eradicate illegal online loans through the Special Investment Surveillance Unit (in- Indonesia Language: SWI), including running various educational programs to the public to use fintech lending that are registered or licensed in OJK and prevent the public from utilizing illegal online loans. OJK also appreciates the efforts made by other SWI members, including conducting cyber-patrols, routinely blocking sites and applications of illegal peer to peer lending, regulating cooperatives that offer online loans, banning payment gateways, and conducting legal proceedings against illegal peer to peer lending (Bank Indonesia Website, 2021).

Relevance of Dignified Justice Theory and Peer to Peer Lending Borrower Protection

In the opinion of the author, based on the perspective of the theory of dignified justice, borrowers have the right to a sense of security both borrowers on legal peer to peer lending or illegal peer to peer lending. The right to security is a fundamental right, a right to privacy is entitled to everyone, either as borrowers or people as citizens. Peer to peer lending has the right to get back receivables / creditors given to borrowers. This right is owned by peer to peer lending licensed by the Financial Services Authority (OJK), or even illegal peer to peer lending.

Users of online loan services as consumers have rights that must be considered by online loan companies. However, what mostly occurs is the opposite, under certain conditions the online loan service provider violates the rights of service customers if the business process is not in accordance with the willings of the service provider for example, service users get less pleasant treatment (Pardosi & Primawardani, 2020).

In the opinion of the author, the right of peer to peer lending must be aligned with the theory of dignified justice, especially regarding billing. Based on the theory of dignified justice, billing should be done in the most humane way. The organizer charges in a dignified manner, not disseminating the borrower's personal data to others without the borrower's permission. Dignified billing is also done in a way that is not defamatory, insulting the borrower with sentences, manipulated narratives, for example, that the borrower has

committed embezzlement from a company, then the borrower must pay off within a certain time.

Based on the theory of dignified justice, the protection of peer to peer lending borrowers is the responsibility of the peer to peer lenders. Peer to peer lending that is legal and licensed certainly provides good consumer protection because it has been ordered by law, and OJK Regulations. According to the author, illegal peer to peer lending is also obliged to provide protection to borrowers, consumers. The protection that can be provided by illegal peer to peer lending is, first, charging in a humane way. Billing in the most humane way, such as calling borrowers using polite language, and does not issue threatening sentences.

Second, protection in the form of providing debt restructuring opportunities. In the opinion of the author, this second protection can be done if there has been an agreement between illegal peer to peer lending and borrowers / consumers. However, on the one hand, borrowers are obliged to have good faith in payment if this debt restructuring application is accepted by the illegal peer to peer lending. This second regulation can prevent potential criminal acts in the form of acidification by illegal peer to peer lending to borrowers.

The theory of dignified justice is based on Pancasila. The source of all positive laws in Indonesia. Illegal Peer to Peer Lending, Licensed Peer to Peer Lending that operates actively in Indonesia must respect, and protect the human rights possessed by borrowers. The protection of human rights is a tangible form of the practice of the Second Precept of Pancasila "Just and Civilized Humanity".

In the opinion of the author, based on the theory of dignified justice, consumers / borrowers have the legal right to file a complaint to the police with alleged defamation through electronic media, or with alleged acidification through electronic media. This legal right is protected and maintained by Indonesia ITE Law. The author explained the provisions in Article 29 of the ITE Law "Anyone who intentionally and with no right to send Electronic Information and / or Electronic Documents containing threats of violence or scaremongering to a personal". Sanctions for any person who violates this provision are charged with a maximum prison term of 4 (four) years and / or a maximum fine of Rp750,000,000.00 (seven hundred and fifty million rupiah) (Vide: Article 45B Indonesia ITE Law).

CONCLUSION

Based on the discussion, the conclusion obtained is that the right to a sense of security is entitled to every human being, even borrowers on illegal peer to peer lending services. The organizer of illegal peer to peer lending has the right to have the credit / receivable paid by the borrower. Borrowers are required to pay their debts at a predetermined time, the amount specified even though on the other side arises a dilemma because the amount of credit given is identified against the law. Illegal peer to peer lending has an obligation to maintain, protect the right to a sense of security of the consumers / borrowers. The right to security is a human right protected by the Indonesian Constitution. Article 28G paragraph (1) of the 1945 Constitution stated that "Everyone is entitled to the protection of personal self, family, honor, dignity, and property under his authority, and entitled to a sense of security and protection from the threat of fear to do or not do something that is a basic human right". Borrowers / consumers who are disturbed by the right to a sense of security, terrorized by illegal peer to peer lending can file complaints to the Financial Services Authority and police within the consumer's resident. The Financial Services Authority and the Police are a form of protection from the Government to its people.

ACKNOWLEDGMENT

The author would like to thank my faculty leaders who has supported this scientific paper:

- 1) Dean of the Faculty of Law of Pelita Harapan;
- 2) Head of The Doctoral Study Program of Law, Universitas Pelita Harapan.
- 3) Prof. Dr. Teguh Prasetyo, S.H., M.Si. Professor of Law Faculty, Universitas Pelita Harapan.

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Received: 28-Jan-2022, Manuscript No. JLERI-21-10010; **Editor assigned:** 31-Jan-2022, PreQC No. JLERI-21-10010 (PQ); **Reviewed:** 14-Feb-2022, QC No. JLERI-21-10010; **Revised:** 28-Feb-2022, Manuscript No. JLERI-21-10010 (R); **Published:** 08-Mar-2022.