



Criminal Liability of Online Money Lenders

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ABSTRACT

Although it is most commonly associated with financial loans, a loan is a kind of liability that can include any kind of tangible asset. Similar to other debt instruments, loans involve the redistribution of financial assets over time between the debtor and the lender. Online loans are financial assistance provided by financial institutions in which the loan application is conducted using an application controlled by the financial institution. The availability of online loans makes the loan application procedure easier, faster, and less complicated. Legal research using juridical normative research methods was conducted to understand the legal issues and legal relationships of criminal liability of online lenders. This research aims to examine the effectiveness of positive law in Indonesia in law enforcement of online money lending criminal cases and examine the actions of online money lending criminal offenders who make threats, especially through cell phones, have clear legal sanctions as an effort to protect online money loan recipients. This criminal liability is in the form of punishment. There are criminal sanctions for companies or individuals including debt collectors as part of fintech lending who commit violations in the form of disclosure of personal data subject to Article 32 juncto (jo) Article 48 of the amendment to the Bill of Act on Electronic Information and Transaction.

Keywords: Financial Institutions, Financial Technology, Online Loans

INTRODUCTION

Globalization currently plays an important role as a driving force for progress between countries, especially in technological developments. Technology brings convenience in all aspect of life, especially mainly in the economic sector. Technological developments, especially in financial services today is called Financial Technology or Fintech. Fintech provides real convenience for the public in conducting transactions in financial sector, include payment, investment, financing, insurance, cross-processing and infrastructure.¹ Fintech is the use of enhanced services in banking and financial services, which are typically provided by startups using the most recent software, internet, communication, and computing technologies². Fintech Lending, also known as information technology-based money lending or online money lending, is one sort of Fintech that is frequently employed in Indonesia as a form of investment.

Financial Services Authority (OJK) as the regulator of all activities in financial services sector has issued a Fintech Lending regulation, called Financial Services Authority Regulation No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services which has a derivative regulation in the form of OJK Circular Letter (SEOJK) Number 18/SEOJK.02/2017 regarding Information Technology Governance and Risk Management in Information Technology-Based Money Lending and Borrowing Services³ Based on Article 1 Paragraph 3 of POJK No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services, it is explained that Fintech Lending or Online Money Lending and Borrowing Services is the implementation of financial services to bring together the lenders and loan recipients to conduct the lending and borrowing agreements in rupiah currency directly through electronic systems using the internet network.

Fintech Lending or Information Technology-Based Money Borrowing Services or most commonly referred to as online loans (pinjol) is an innovation in the field of financial services that allows lenders and loan recipients to conduct money borrowing and lending transactions without having to meet in person. This online loan transaction mechanism (pinjol) is conducted through a system provided by the online loans organizer either through an application or website. Online loans companies provide various types of loan facilities from Unsecured Loans (KTA), Public Housing Loans (KPR), wedding loans, motor vehicle loans, and others. When making a loan application, the data that must be provided by the customer

¹ Agus Priyonggojati, "Perlindungan Hukum Terhadap Penerima Pinjaman Dalam Penyelenggaraan Financial Technology Berbasis Peer To Peer Lending," *Jurnal Usm Law Review* 2, no. 2 (2019): 162.

² Dhevi Nayasari Sastradinata, "Aspek Hukum Lembaga Pinjaman Online Ilegal Di Indonesia," *Jurnal Independent* 8, no. 1 (2020): 293.

³ Nunung Ayu Yoyo Sudaryo, *Digital Marketing Dan Fintech Di Indonesia* (Yogyakarta: Penerbit Andi, 2020).

consists of name, date of birth, address, occupation, NIK, workplace ID card, as well as a selfie photo by holding the ID Card clearly, and providing at least 5 emergency contacts⁴. It may be argued that Pinjol offers accommodations to individuals who want to support projects or invest in businesses in order to receive a return in the future.

Although *Pinjol* offers many amazing advantages, there is a significant issue in its economic activities, particularly in the area of cybercrime, including instances of extortion, coercive billing (threats), fraud, and online distribution of personal information. As for the cases of criminal acts committed in illegal online lending business activities in Indonesia in 2020-2021, according to the statement of the Director of Special Economic Crimes (Ditipideksus) *Bareskrim Polri*, there were 371 reports of unlawful *pinjol* instances, of which the police investigation found 91 incidents, particularly in terms of criminal acts of threatening or intimidating over telephone or social media. This research aims to examine the effectiveness of positive law in Indonesia in law enforcement of Online Money Lending Crime cases and examine whether the actions of Online Money Lending Crime Perpetrators who make threats, especially through cellphones, have clear legal sanctions as an effort to protect Online Money Lending Receivers.

RESEARCH METHODOLOGY

Legal research utilizing the methodology of judicial normative research was carried out to comprehend the legal issue and legal relationship of the criminal liability of online money lenders. In legal research, normative research examines the applicable legal norms. In this research, three sources of legal materials, such as primary, secondary, and tertiary were used. As part of this legal study, which also analyzes current trends and forecasts them, the laws and regulations that are currently in force are evaluated and assessed.

RESULT AND DISCUSSION

Legal Liability for Online Money Lending Crimes

The use of online lending services or Fintech Lending is increasingly widespread today. The ease of borrowing funds is one of the advantages of this financial service compared to banks. In a matter of days, the loan can be disbursed immediately without visiting the bank.⁵ One benefit of this financial service over

⁴ Dea Lestari Septiani, "Pertanggungjawaban Pidana Korporasi Pelaku Pelacakan Dan Penyebaran Data Pribadi Nasabah Pinjaman Uang Berbasis Online Tanpa Izin," *Institutional Repositories & Scientific Journal* (2021).

⁵ Raden Ani Eko Wahyuni and Bambang Eko Turisno, "Praktik Finansial Teknologi Ilegal Dalam Bentuk Pinjaman Online Ditinjau Dari Etika Bisnis," *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (2019): 379–391.

banking is the simplicity of borrowing money via online⁶ The kind of criminal crimes that are frequently conducted in illegal internet lending include extortion, threatening behavior, fraud, the publication of personal information, and cybersex harassment.⁷ In Fintech Lending services or Money Lending and Borrowing Services Based on Information Technology involves various parties, such following below:⁸

1. Fintech Lending Service Providers

The definition of an information technology-based money lending and borrowing service organizer is regulated in Article 1 point 6 of POJK Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. The providers in this provision is an Indonesian legal entity that provides, manages, and operates information technology-based money lending and borrowing services. According to Article 2 Paragraph (2) POJK Number 77/POJK.01/2016, the legal entity form of the organizer can be a limited liability company or cooperative.

2. Loan Recipient Party (Debtor)

Loan recipients or debtors as stipulated in Article 1 point 7 POJK Number 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services are persons or legal entities that have debts due to information technology-based money lending and borrowing service agreements. In Article 15 loan recipients in Peer-to-Peer lending system must originate and be domiciled in the jurisdiction of Republic Indonesia. The loan recipient can be an individual Indonesian citizen or Indonesian legal entity. Based on the provisions above, loan recipients in Fintech Lending are not foreign individuals or foreign legal entities. This clause, however, is insufficient because it simply specifies that the party who is owed money is the one who receives the loan; it does not define who the loan recipient is bound to in a borrowing or debt relationship. It that the loan recipient and the Fintech Lending organizer have a lending and borrowing agreement that is comparable to banks activities in terms of receiving and dispersing money to general public.

3. Lender (Creditor)

⁶ Anugrah Adhiguna Pangindoman, "Penyelesaian Hukum Tindak Pidana Financial Technology Sebagai Upaya Perlindungan Hukum Bagi Konsumen Pengguna Pinjaman Dana Online Oleh : Anugrah Adhiguna Pangindoman * Riwayat Artikel : Diterima : 29 Januari 2021 Revisi : 22 Maret 2021 Disetujui : 19 Mei," *Jurnal Ilmiah Ilmu Hukum*, no. 19 (2017): 210–218.

⁷ Manayra Aisha Putri Indradjaja, Sigid Suseno, and Rully Herdita Ramadhani, "Analisis Penegakan Hukum Tindak Pidana Yang Dilakukan Dalam Lingkup Pinjaman Online Ilegal Di Indonesia," *PAULUS Law Journal* 3, no. 1 (2022): 50–64.

⁸ Muhammad Yusuf, "Pada Layanan Pinjaman Uang Berbasis Financial Technology" (2019): 42–88.

According to Article 1 Point 8 POJK Number 77/POJK.01/2016 Concerning Information Technology-Based Lending and Borrowing Services, lenders are defined as natural persons, legal entities, or business entities who have receivables as a result of agreements for information technology-based money lending and borrowing services. It is possible for the lenders to be domestic or foreign.

4. Debt Collector

Debt collectors are parties authorized by the lender to collect debts. This party is actively and directly dealing with the loan recipient. Due to its role in using electronic media facilities to collect debts from Loan Recipients rather than meeting them in person, Debt Collector in Fintech Lending is frequently referred to as Desk Collector. Criminal liability of desk collectors is individual responsibility, there is no relationship with the company Online loan service company, called the board of directors on the joint decision of the company. When the desk collector does his job authorized by the creditor to collect debts from the debtor, the corporation is responsible for the consequences arising from cooperation with the desk collector concerned, although in reality, the creditors are often free from all the criminal acts.⁹

Criminal liability has been established with the aim of determining whether a suspect/defendant is responsible for the crime(s) he committed. In other words, will the perpetrator be sentenced or acquitted. When he or she is convicted, it must clear that the act committed was unlawful and the defendant can be held accountable. This indicates the existence of misconduct, whether intentional or negligent.¹⁰ Legal responsibility refers to the continuation of an objective requirement that underlies a criminal act and qualifies a person to be found guilty of a crime. The legality concept and the guilt principle serve as the foundation for illegal behavior.¹¹ Criminal responsibility is a determination that is made once all the conditions for a crime have been met or the crime has been committed. The assessment of liability must be both of objective and subjective, and since the assessment is objective in relation to the producer and the violation of legal norms, it is related to the violation of morality values. This fault is based on moral values, and the perpetrators must

⁹ Dirga Agung and Wahyu Rasyid, "Analisis Yuridis Terhadap Tindak Pidana Yang Dilakukan Oleh Penyedia Aplikasi Pinjaman Online," *Madani Legal Review* 5, no. 2 (2021): 1–7, <http://jurnal.umpar.ac.id/index.php/malrev/article/view/1432>.

¹⁰ Anugrah Adhiguna Pangindoman, "Penyelesaian Hukum Tindak Pidana Financial Technology Sebagai Upaya Perlindungan Hukum Bagi Konsumen Pengguna Pinjaman Dana Online Oleh : Anugrah Adhiguna Pangindoman * Riwayat Artikel : Diterima : 29 Januari 2021 Revisi : 22 Maret 2021 Disetujui : 19 Mei."

¹¹ Mahrus Ali, *Dasar-Dasar Hukum Pidana* (Jakarta: Sinar Grafika, 2017).

be responsible. Some psychiatric issues that transgress ethical standards are either to blame for or not to blame, according on the subjective assessment.¹²

Criminal Sanctions on the Perpetrators of Online Money Lending Crime

In Indonesia, the criminal offense of threatening particularly using electronic systems is governed by Law No. 11/2008 on Electronic Information and Transactions, is found in Articles 27 Paragraph (4), 29, and 369 of the Criminal Code (KUHP). The requirements of the aforementioned article such following below:

1. Article 27 Paragraph (4) of Law No. 11/2008 on Electronic Information and Transactions states that "anyone who knowingly distributes, transmits, or makes accessible electronic information or documents that involve threats or extortion without authorization."
2. Article 29 of Law No. 11/2008 on Electronic Information and Transactions, states that "every individual purposefully and without authorization communicates electronic information and/or documents that include personally visible threats of violence or fear."
3. Article 369 of the Criminal Code states:
 - (1) Any person who, with intent to unlawfully benefit himself or another, by threat of verbal or written defamation, or by threat of disclosure, forces someone to give something wholly or partially belonging to that person or to another, or to incur a debt or to cancel a debt, shall be punished by a maximum imprisonment of four years.
 - (2) This crime is not prosecuted except upon the complaint of the person against the committed. When the criminal offense is formulated in one text, it reads as follows. "every person who intentionally and without right distributes or transmits or makes accessible Electronic Information or Electronic Documents containing extortion or threatening content shall be punished with imprisonment of 6 (six) years and/or a maximum penalize of IDR. 1,000,000,000 (one billion rupiah)."

The perpetrators of criminal acts, especially in the crime of online money lending, commit criminal acts in terms of threatening through sms or telephone and spreading the personal data of the loan recipient to the cellphone contact of the loan recipient in order to cause embarrassment for the loan recipient. Whereas the right of loan recipients should be regulated in the ITE law contains the notion of the right to live in peace with a private life and free from all kinds of interference, the right

¹² Agus Rusianto, *Tindak Pidana Dan Pertanggungjawaban Pidana* (Jakarta: Prenadamedia Group, 2016).

to communicate with others without feeling watched or spied on, the right to have and store information or personal data without interception from other people.¹³

The Elements of Threats through Electronic Media

The elements of a criminal offense can be distinguished from two perspectives, called theoretical perspectives and Law perspectives. The theoretical point is based on the opinion of legal experts, which is reflected in the formulation. The criminal act is divided into specific criminal acts in the Articles of the existing legislation, according to the legal perspective.¹⁴ According to Moeljatno, the elements of criminal acts are prohibited actions (by the rule of law) and criminal threats (for those who violate the prohibition). From the limitations made by Jonkers, it can be detailed that the elements of the criminal offense are action against the law (which is related to), fault (committed by a person who responsible). E.Y. Kanter and SR. Sianturi compiled the elements of a criminal offense, such as subject, fault, unlawful (from the action), an action that is prohibited by the Law and the violator is threatened with sanctions, and time, place, circumstances (other objective elements).

Criminal Sanctions on the Perpetrators of Online Money Lending Crime

Users of online lending services are protected by the following provisions of Law No. 19/2016 on the Amendment to Law No. 11/2008 on Electronic Information and Transactions, among others:

1. Article 26 Paragraphs (1) and (2) which contains:
 - (1) Otherwise provided by laws and regulations, the use of any information through electronic media concerning a person's personal data must be conducted with the consent of the person concerned.
 - (2) Every person whose rights are violated in accordance with paragraph (1) may file a lawsuit for damages sustained as a result of this Law.
2. Article 45 Paragraph (3) which contains:

Any person who intentionally and without right distributes or makes accessible Electronic Information or Electronic Documents that contain insults and/or defamation as referred to in Article 27 Paragraph (3) shall be punished with a maximum imprisonment of 4 (four) years or a maximum fine of IDR. 750,000,000 (seven hundred fifty million rupiah).
3. Article 27 Paragraph (1) of ITE Law which states " anyone who knowingly and without authorization disseminates, transmits, or makes accessible electronic information or documents with offensive content."

¹³ Saida Dita Hanifawati, "Urgensi Penegakan Hukum Pidana Pada Penerima Pinjaman Kegiatan Peer To Peer Lending Fintech Ilegal Dan Perlindungan Data Pribadi," *Jurnal Penegakan Hukum dan Keadilan* 2, no. 2 (2021): 162–172.

¹⁴and Rully Herdita Ramadhani Manayra Aisha Putri Indradjaja, Sigid Suseno, "Analisis Penegakan Hukum Tindak Pidana Yang Dilakukan Dalam Lingkup Pinjaman Online Ilegal Di Indonesia," *Paulus Law Journal* 3, no. 1 (2022): 50–64.

4. Article 45 B which contains:

Any person who intentionally and without right transmits Electronic Information or Electronic Documents containing threats of violence or fear personally addressed as referred to in Article 29 shall be punished with a maximum imprisonment of 4 (four) years or a maximum penalize of IDR.750,000,000 (seven hundred fifty million rupiah)."

The crime of online loan collection by spreading the identity of the borrower is included in cyber-crime regulated in criminal provisions of the ITE Law. For this reason, it has previously been described that the act of spreading someone's identity (borrower) is an act prohibited by law and can have criminal consequences. The criminal sanctions in question can be seen in Article 45 Paragraph (4) of Law Number 19 of 2016 which states as follows:

Any person who intentionally and without right distributes or transmits or makes accessible Electronic Information or Electronic Documents that contain extortion or threats as referred to in Article 27 Paragraph (4) of the ITE Law shall be punished with a maximum imprisonment of 6 (six) years or a maximum penalize of IDR. 1,000,000,000 (one billion rupiah).

In Article 27 Paragraph 4 of the ITE Law states that "every person intentionally and without authority to distribute, transmit, make accessible, or use electronic information or electronic documents that have extortion or threatening content" constitutes the crime of Pinjol in Forced Collection by Extortion or Threatening.

When the perpetrator has the potential for defamation, Article 27 Paragraph (3) of the ITE Law is applied, but the article can be implemented when the perpetrator has committed the criminal act that proven based on a court decision with permanent legal force. The provisions of this article can be applied when the dissemination of borrower's personal data has the defamation elements. Based on the above legal circumstances, it can be concluded that the criminal liability of fintech lending companies that collect money unlawfully is an individual responsibility, without any relationship with the fintech lending company in this case, is the management including the office. The debt collectors are authorized by creditors to collect debts to debtors, but in fact the company in this case is not responsible for the consequences arising from cooperation with the relevant collector office. When the company authorizes the debt collector to collect debts, the company can also be held accountable in accordance with Articles 55 and 56 of the Criminal Code which states:

Paragraph (1) Sentenced as a person who commits a criminal act:

1. The person who commits, orders to commit or participates in the act;
2. The act of purposely ask someone to do something through the use of a gift, an agreement, the improper use of authority or influence, force, a threat, or a lie, or by offering them the chance, or the information.

Criminal law has the power to penalize organizations that qualify as legal entities. Peter Gillies explains that a company or business is a person or human being before the law, and do things as a human being are recognized by the law as wealth, bound by contractual agreements, and must be held accountable for the committed crimes. This concept of corporate responsibility is the same as ordinary criminal liability.¹⁵

CONCLUSION AND SUGGESTION

Conclusion

The perpetrators of the threat also known as debt collectors and lenders, both individuals and corporations, may be criminally prosecuted for their actions if it is determined that they violated the ITE Law and the Criminal Code and committed a criminal offense. This criminal liability takes the form of a punishment. There are criminal sanctions for companies or individuals including debt collectors as part of fintech lending who commit violations in the form of disclosing personal data subject to Article 32 juncto (jo) Article 48 concerning amendments to the ITE Law. Threatening fintech companies or individuals against customers can be imposed with Article 368 of the Criminal Code (KUHP) and Article 29 jo Article 45B of the ITE Law, and fintech lending in the form of companies or individuals can also be charged with Article 55 of the Criminal Code for being involved in a criminal act, and if the criminal act takes the form of physical violence, it can be subject to sanctions in accordance with the Criminal Code Article 170, Article 351, Article 368 Paragraph 1, Article 335 Paragraph 1 after the decision of the Constitutional Court.

Suggestion

Encouraging the general public to be more cautious and sensible in choosing Online Loans or Fintech Lending from applications to first check whether the Online Loan is legal or not, so that people fairly acquire loans from these Online Loans in accordance with economic legislation in Indonesia. The government is required to conduct preventive counseling to the public regarding illegal Pinjol through publication to the community in order for them to protect and supervise each other regarding the existence of illegal Pinjol, which is frequently in collection and makes the community restless, and reenact in terms of law enforcement firmly acting against the alleged perpetrators of threatening of Online Loans in Indonesia.

¹⁵ Dea Lestari Septiani, "Pertanggungjawaban Pidana Korporasi Pelaku Pelacakan Dan Penyebaran Data Pribadi Nasabah Pinjaman Uang Berbasis Online Tanpa Izin."

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