



CRIMINAL ACTS OF ILLEGAL ONLINE LOAN DESK COLLECTION: ANALYSIS OF FACTORS AFFECTING AND CRIMINAL RESPONSIBILITY

Mutiara Jasmine Putri¹, Yuliana Yuli Wahyuningsih²

^{1,2)} Fakultas Hukum Universitas Pembangunan Nasional "Veteran" Jakarta

Article Info

Received: 24/07/2024

Approved: 29/11/2024

Keywords :

Criminal Liability; Desk
Collection; Factors; Illegal;
Online Loans.

Abstract

The rise of illegal online loans in Indonesia shows that many people still use unlawful online loans, which results in criminal acts by desk collection. This study aims to analyze the factors that influence the use of illegal online loans and how the criminal liability of desk collection of illegal online loans. The method in this study is normative, using a statute approach and a case approach. The data collection method uses literature studies supported by interview results and qualitative descriptive data collection techniques. The results of this study explain that because there are still many illegal online loans, various factors influence the use of online loans. Regarding criminal liability in criminal offenses committed by desk collection, the desk collection can be held accountable because it has fulfilled the elements of criminal liability.

This is an open-access article under the [CC BY](#) license.



Corresponding Author:

Mutiara Jasmine Putri, Yuliana Yuli Wahyuningsih

Email: 2110611002@mahasiswa.upnvj.ac.id

I. INTRODUCTION

According to Article 1 point 1 of Bank Indonesia Regulation No. 19/12/PBI/2017, financial technology is defined as an economic system that utilizes technology that can produce new products, technologies, services, and businesses that impact monetary and financial system stability, and improve, smoothness, security, and constraints in the payment system. Fintech is an innovation in non-bank financial services, primarily in technology-based lending and borrowing services called Fintech Lending/Peer-to-Peer Lending/Online Lending. It does not require face-to-face transactions because it uses technology (Maisarah, 2022). Article 1 POJK 10/2022 explains that Fintech Lending, Peer-to-Peer Lending, or Online Lending is a financial service that connects lenders and borrowers through a loan agreement in rupiah currency via an electronic system. This service is also known as Information Technology-Based Joint Funding Services (LPBBTI). OJK states that the number of fintech lending companies that have been licensed until 27 September 2024 is 98 companies (OJK, n.d.-b)

Not all online loan service providers operate legally, many platforms do not have a license from the OJK. In this regard, OJK has issued regulations related to Information Technology-Based Money Lending and Borrowing (LPMUBTI) POJK Number 77/POJK.01/2016. In this regulation,

OJK has regulated the legality of online lending platforms before carrying out their operational activities, such as how to register and also licensing and obligations in terms of providing transparent information to consumers. The Financial Services Authority (OJK) is a state institution established under Law Number 21 of 2011. OJK has a function to regulate and supervise the activities of the entire financial services sector in the banking sector, capital markets, and non-bank financial sectors such as insurance, financing institutions, pension funds, and other financial services institutions (OJK, n.d.-a). As of January 24, 2024, the PASTI Task Force or the Illegal Financial Activity Eradication Task Force has blocked 233 illegal online lending entities in various applications and sites and 78 personal loans offering content blocked by the PASTI Task Force, which can potentially harm the public and violate regulations on the dissemination of personal data. From 2017 until January 31, 2024, the PASTI Task Force stopped 8,460 illegal financial entities, including 251 illegal pawn entities, 6,991 illegal online loans, and 1,218 illegal investment entities (OJK, n.d.-d).

Fintech lending is illegal because, in practice, there is no supervision or regulator in its implementation. Common issues include charging high interest rates to customers, non-compliance with OJK regulations and other regulations, abusive debt collection practices, quick and unregulated loan disbursements, and poor customer support, especially in response to complaints etc (Yoyo et al., 2020). Several factors have driven this community to use illegal online rather than legal online loans. One part of online loans is desk collection, which reminds and collects from customers whose loans are due (Yasintha & Purwanto, 2024). With the development of technology, debt collection is often carried out using threats of violence and intimidation through electronic means, such as messages or voice notes from WhatsApp. The method of collection by threatening by using harsh words or threatening by spreading personal data is considered adequate for collecting debts because debtors will feel threatened and afraid (Gustiar & Setiawan, 2022). The collection techniques used by illegal online loans often use unlawful actions, such as threatening, spreading personal data, prohibiting access, and defamation.

Behind the convenience offered by illegal online loans, if debtors cannot fulfill their obligations to repay the debt, problems will occur. Problems often arise when there are problems regarding the maturity of debt repayment. This results in late credit payments and an increase in the number of bills due to late payment penalties, which can cause problems between the creditor and the debtor (Nurhalifah, 2024). The collection is indeed one of the processes the company must carry out as it is the company's right as a lender to the debtor. Still, in practice, many forms of fraud by fintech companies make collections not by the rules.

Based on the Decision of the Central Jakarta Court Number 457/Pid.Sus/2022/PN.Jkt.Pst. In March 2022, Witness Rian Andri Zulfikar borrowed money for his child's medical expenses from his old coworker, Witness Frandyas Paramitha (Reporter and Victim). Because the loan amount

from Witness Frandyas was insufficient, Witness Rian Andri asked Witness Frandyas to lend his data to apply for an online loan at "Cash Cash Now." After Witness Frandyas agreed and verified his data, finally, from the loan of IDR 1,800,000, Witness Frandyas only received IDR 1,070,000. However, 4 days after the loan on March 29, 2022, Witness Frandyas received a collection message via WhatsApp with a photo of his edited ID card with the sentence "THIEVES RUNNING FROM DEBT," even though the initial agreement stated that the payment was scheduled for 91 days later. Four days after the money was received, Defendant Leonard Tua sent a photo with the cellphone number +62 821-3528-0427 via the WhatsApp Application using the personal identity photo of Witness Frandyas Paramitha, which had been added with the caption "THIEVES RUNNING FROM DEBT" to make a loan payment of Rp. 1,800,000.00, even though in the initial agreement, the payment was made 91 days after the money was received/disbursed.

Criminal acts committed by illegal online loan collectors are still emerging. Related agencies such as the Government, Police, and OJK have taken firm steps to eradicate perpetrators who commit unlawful acts such as terror, threats, and the distribution of personal data in enforcing the law on illegal online loans. The difficulty faced by law enforcement is the large number of unclear identities of the owners of illegal online loan providers. (Manayra Aisha Putri Indradjaja et al., 2022). There is a legal basis in the lending and borrowing industry or fintech in Indonesia, which is regulated in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services, Bank Indonesia Regulation No. 19/12/PBI/2017 concerning the Implementation of Financial Technology, and is contained in Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 about Information and Electronic Transactions (Yasmine et al., 2023).

The existing regulations are still not optimal in providing criminal sanctions or applying the law. This is due to the absence of laws that specifically discuss criminal sanctions committed by financial technology. The perpetrators (organizers) of illegal online loans who commit criminal acts can only be legally processed if there is a complaint from the victim or a public report and if the perpetrator is proven to have committed an act that contains elements of a violation of the law (Manayra Aisha Putri Indradjaja et al., 2022).

In this case, several previous studies have discussed this research. Research by Hosea Geraldo & Bambang Waluyo. (2023) resulted in the findings of criminal liability for perpetrators involved in electronic threatening with case illustrations based on the North Jakarta District Court Decision with case number 438/Pid.Sus/2020/PN.Jkt.Utr. Research by Muhammad Andi Gustiar & Dian Alan Setiawan. (2022) produces findings related to the form of criminal liability of desk collection by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. This research produces related efforts to anticipate criminal acts of threatening violence by desk collection by reporting to associated parties such as

OJK, KOMINFO, or other institutions, as well as strengthening cooperation between government agencies and online loan providers. Another research is Research by Reino Rizkillah, Basri, Yulia & Hary Abdul (2024). This research is related to the impact of P2P lending developments on doxing in the context of personal data violations, which is then associated with criminal liability with strict liability theory.

This research aims to analyze the factors that influence illegal online lending and discuss the criminal liability of perpetrators of illegal online lending services. Hopefully, this research will help raise public awareness about the risks of illegal online loans, which result in criminal activities.

II. RESEARCH METHODS

The research method used by the author is normative juridical law. With a problem approach, namely the Statute Approach, The statutory approach is carried out by examining the rules and regulations related to the legal issues to be examined (Ismoyo, 2019). The author will examine the issues raised by analyzing the rules or regulations relevant to the research problem. The author also uses a Case Approach based on the Central Jakarta Court Decision Number 457/Pid.Sus/2022/PN.Jkt.Pst. Through this approach, the author will examine cases that have become court decisions and have permanent legal force. (Muhaimin, 2020)

The sources of legal materials used in this research are primary, secondary, and tertiary legal materials. Primary legal materials, namely laws and regulations, are relevant to this research. Secondary legal materials, namely articles or legal journals, books, research results, and other sources related to this research. Tertiary legal materials, namely internet media. Method of data collection in this study: the author uses data collection techniques through Library Research, namely by obtaining data by reading, studying, and then reviewing legal materials related to the formulation of the problems discussed by the author, and supported by data obtained by the author from interviews. The interview was conducted with one of the illegal online loan users, namely SF. Then, the author uses descriptive qualitative data analysis techniques in this research. This research aims to describe, illustrate, explain, and answer questions in more detail about the problems in this study.

III. DISCUSSION

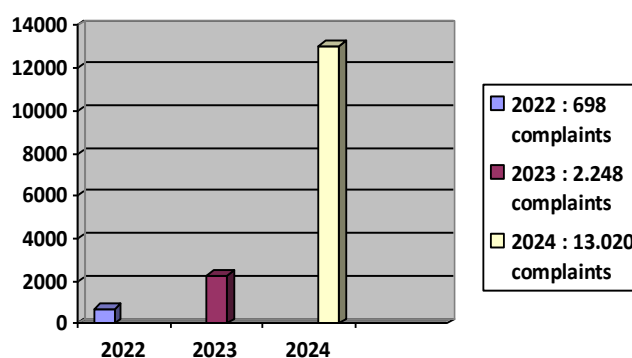
3.1 Factors Affecting the Use of Illegal Online Loans

The rapid development of technology has impacted changes in the lifestyle of people who, in practice, want to do something quickly and easily by utilizing online-based services, one of which is online loan transactions. Illegal online loans have become rampant in recent years in Indonesia because the convenience offered by illegal online loans makes a community solution and

encourages people to prefer illegal online loans to online loans registered with the OJK. Various advertisements for illegal online loan sites/applications can be found on any social media platform. Still, in this case, the public does not understand the legal basis and legality of the company, which results in impact or loss to themselves.

OJK, as an official institution, has taken action by blocking illegal online loans. Still, new illegal online loans continue to emerge due to the ease of creating and uploading applications, websites, and sites. OJK also explained that when blocking, it had difficulties due to the location of many illegal online loan servers abroad (OJK, 2021). On the other hand, people are still tempted by the advertisements offered by illegal online loans, even though they pose significant risks. (Triasih et al., 2021)As a result, people who choose to use illegal online loans have various complaints regarding collection techniques that do not follow the rule of law.

Graphics 1. Data on public complaints to OJK related to illegal online loans in 2022-2024



Data Source: Processed by the author, Based on OJK Press Conference quoted from CNBC, Liputan 6

Based on the graph data above, the number of public complaints increased from 2022, namely 698 complaints, to 2023, namely 2,248 complaints; this shows a significant increase. 2024 from January 1 to October 28, 2024, complaints reached 13,020 related to illegal online loans. This data indicates that many problems are related to illegal online loans that cause people to lose money. This increase in public complaints shows the need for more robust protection from related institutions, and this increase is also caused by factors that influence people to use illegal online loans.

Based on research conducted by Fanny, Nike, and I Made, the factors of the millennial generation that influence the use of illegal online loans are closely related to various aspects. First, cultural factors are considered a habit of society that understands something by thinking it is valuable and habitual. These factors include: a) Borrowers tend to come from the middle economic

class; b) Online loan lending procedures are pretty straightforward, not as tricky as borrowing from banks or other provider institutions; c) access to online loans is easy because almost everyone has gadgets. Second, social factors, this factor is a factor that occurs in the surrounding environment, such as a) family environment, friends, colleagues, and relatives who first use online loans; b) urgent needs or demands from the surrounding environment that must be met immediately but the lack of finance is a factor; c) roles in the family environment that make the backbone of the family so that finances must always be there (novika et al., 2022).

Third, personal factors such as lifestyle, occupation, economic situation, age, personality, and self-concept can influence buyers' behavior. These individual factors are a) Not thinking long about the possible risks in online transactions due to unstable age; b) Modern lifestyle, using online loans for traveling, shopping, and culinary; c) Consumptive behavior is somewhat seen as more by others; d) applying for online loans is easy in terms of income and age. Fourth, psychological factors, this factor underlie when borrowing online, including a) there are no conditions that can be burdensome when applying for a loan on an online loan application; b) having confidence that using online loans can solve all financial problems without thinking about the risks and interest that will be charged; c) there has been no learning if it is due time for payment, but there are other more pressing problems to solve (novika et al., 2022).

Aidha (2019) argues that one of the factors driving people's preference for online loans is that the process is quick and easy, the terms are easy, and money is easy to find. People use online loans for urgent economic needs, such as education costs, capital to open a business or daily needs. (Nurazkiyanti et al., 2023). This is supported by the results of an interview with one of the illegal online loan users, namely SF, who uses two illegal online loan applications. SF explained that the factor that influenced him to use illegal online loans was that the application to borrow on illegal loans was quickly approved, not through BI Checking like official online loans at OJK. Furthermore, economic factors are important because they need fast funds to meet their daily needs. Another factor is that he ends up applying for another loan to cover other debts because he has other debts. SF also explained that using this online loan was detrimental to him even though he knew that this loan was illegal. However, these illegal online loans did not provide information about interest and collection techniques. So, this had an impact on maturity. SF did not know that the interest charged was high and that the collection techniques used were threats and intimidation.

According to the Indonesian Joint Funding Association (AFPI), the public has very minimal literacy and information related to online loans; the public does not read and pay attention to what the terms and conditions are when registering, the public does not pay attention that this online loan application accesses the camera and cellphone contacts. The public cannot distinguish between legal online loans registered with the OJK and illegal ones not registered with the OJK (AFPI, n.d.). The lack of knowledge related to public financial literacy is a factor that affects the

use of online loans. Financial literacy is one of the essential things that the community must know and understand because it relates to understanding, knowledge, and financial management, be it personal finance or a broader scope. According to OJK, financial literacy is a skill, knowledge, and belief that can influence behavior and attitudes to achieve prosperity in community finance (OJK, n.d.-c).

Quoted from (Databoks, n.d.) Based on the results of research conducted by NoLimit Indonesia by monitoring social media from September 11-November 15, 2021, related to several keywords, namely “pinjol,” “online loans,” “illegal loans,” “pinjol ilegal”. The monitoring resulted in data totaling 135,681 conversations from these keywords.

Table 1. 10 causes of people falling into online loans according to NoLimit Indonesia's research

No	Data Name	Value
1.	Pay other debts	1.433
2.	Coming from middle to lower economy	542
3.	Funds are disbursed quickly	499
4.	Lifestyle-related needs	365
5.	Urgent needs	297
6.	Consumptive behavior	138
7.	Economic pressure	103
8.	Buying the latest gadget	52
9.	Paying education fees	46
10.	Low online loan literacy	42

Data Source: Databoks (2022)

Based on research conducted by NoLimit Indonesia shows that the highest factors for people using illegal online loans are paying other debts, followed by low economic origin, fast liquid funds, lifestyle-related needs, urgent needs, consumptive behavior, financial pressure, buying new gadgets, and paying tuition fees, and finally low literacy related to online loans. Overall, the research shows a combination of factors, such as urgent needs, economic instability, consumptive desires, and lack of literacy related to online loans. So, without education related to public financial literacy, especially related to the risks of online loans, people will continue to use online loans as an alternative to solving problems.

In this case, OJK has issued POJK Number 3 of 2023 concerning Increasing Financial Literacy and Inclusion in the Financial Services Sector for Consumers and the Community. OJK also launched the Indonesian National Financial Literacy Strategy (SNLKI) 2021-2025 to improve public financial literacy and inclusion. This is to encourage national economic recovery and

enhance the community's welfare. Regarding eradicating illegal online loans, OJK has formed the PASTI Task Force as Article 247 of Law Number 4 of 2023 concerning Financial Sector Development and Strengthening explains that OJK created the PASTI Task Force with ministerial authorities, as well as related institutions to overcome the problem of illegal financial activities in various economic sectors that can cause losses and risks to the public and are related to financial system stability (OJK, n.d.-e). The government's efforts to overcome illegal online lending are seen by forming the RI-1 Cyber Crime and Online Gambling Task Force. In its inauguration, the RI-1 Cyber Task Force mentioned that this task force eradicates all kinds of cybercrime with a unique mandate to identify, prevent, and crack down on cybercrime. The RI-1 Cyber Crime and Online Gambling Task Force also cooperates with the government, the community, law enforcement, and other parties to maximize the eradication of cybercrime (Satgas Cyber Crime RI-1, 2024).

To reduce the factors that influence the use of online loans, the public must also understand which online loans are illegal and which are legal by increasing literacy. People must know what the impact will be and the legal protection of these loans. So, in this case, the researcher made a table related to the difference between legal and illegal online loans.

Table 2. Differences between legal and illegal online loans

Legal Online Loan	Illegal Online Loans
Already registered/licensed by OJK.	Not registered / not licensed by OJK.
Legal online loans never offer loans through private communication channels such as SMS/WhatsApp	Illegal online loans offer loans via SMS/Whatsapp
Legal online loans provide loans to customers who will be selected first	Illegal online loans offer loans to customers very easily
Legal online loans provide information related to interest or borrowing costs that is transparent/clear.	Illegal online loans provide information about interest or borrowing costs and unclear fines.
The fintech data center will block customers who do not pay within 90 days, and customers cannot borrow funds from other platforms.	Illegal online loans use threats of terror, harassment, and intimidation for customers who cannot pay
Legal online loans have a complaint service facility	Illegal online loans do not have a complaint service facility
Legal online loans have clear information on the identity of the management and office address.	Illegal online loans do not have precise information regarding the management's identity and office address.

Legal online loans will only allow access to the customer's device's camera, microphone, and location.	Illegal online loans will request comprehensive access to personal data on customers' devices.
Legal online loan collectors must have a collection certification that AFPI has issued.	Illegal online loan collectors do not have a collection certification issued by AFPI.

Data Source : Otoritas Jasa Keuangan

3.2 Criminal Liability of Illegal Online Loan Desk Collection

According to Moeljatno, *Strafbaarfeit* with criminal acts explains, “An act prohibited by the rule of law whoever violates the prohibition is threatened with sanctions in the form of a certain penalty.” Based on this definition, *criminal* responsibility is not included. Therefore, Moeljatno asserted that in this case, the existence of a criminal offense is not enough with only the occurrence of a criminal offense, without linking whether the person who commits a criminal offense is capable of being responsible. Based on the dualistic view, what is meant by the element of criminal offense is a self-element of the person, while the meaning of the element of criminal responsibility is the requirement of criminalizing someone who does commit a crime (Wahyuni, 2017).

The elements of a criminal offense, according to D.Simons, are distinguished into objective elements and subjective elements. The objective elements are (1) the act of the person, (2) the visible consequences of the act, and (3) there may be certain circumstances accompanying the act, such as in public (*openbaar*) in Article 181 of the Criminal Code. Subjective elements are (1) a person capable of responsibility; (2) the existence of fault (*dolus* or *culpa*) (P, 1990). Therefore, the elements of a criminal offense are essential elements that must be fulfilled so that an act can be said to be a criminal act according to the law. The concept of criminal liability is the central concept called fault. Error in Latin is called *mens rea*. This doctrine is based on an act that will not make someone guilty unless the person's mind is evil. So based on this principle, two conditions must be met to criminalize someone: (1) there is a forbidden physical act/criminal act (*actus reus*); (2) then there is an evil/disgraceful inner attitude (*mens rea*) (Amrani, 1999).

In the Central Jakarta District Court Decision Number 457/Pid.Sus/2022/PN.Jkt.Pst., it was explained that Defendant Leonard Tua started working on March 20, 2022, at the “Cash Cash Now” application in his position as a *Collection Desk*, which has no office because this application is included in illegal online loans. Regarding online loans, according to the regulations set by the OJK, which are explained in Article 8 Paragraph 1 POJK 77/2016, it explains “if it carries out Information Technology-Based Money Lending and Borrowing Service activities, the organizer must register these activities with the OJK. So, in this article, “Cash Cash Now” is not included in online loans that are supervised and registered with the OJK.”

In March 2022, Witness Rian Andri Zulfikar borrowed money for his child's medical expenses from his old work friend, Witness Frandyas Paramitha (Complainant and Victim). Due to the insufficient loan amount from Witness Frandyas, Witness Rian Andri asked for help, so Witness Frandyas borrowed his data to apply for an online loan at "Cash Cash Now." After Witness Frandyas agreed and verified his data from a loan of Rp. 1,800,000, Witness Frandyas only received Rp.1,070,000. But 4 days after the loan on March 29, 2022, Witness Frandyas received a billing message via WhatsApp with a photo of an edited ID card with the phrase "THIEVES RUNNING FROM DEBT," even though the initial agreement stated that the payment was scheduled 91 days later. Witness Frandyas finally complained to *Customer Service*; Witness Frandyas was directed to apply for 12 additional loans with the promise of deleting his data.

Based on Witness Fradyas' testimony that the Cash Cash Now application he found on Playstore has a high rating, there is no display of loan consequences in the application. So, in this case, it is not what is regulated by the Consumer Protection Law. Article 8 paragraph (1) letter f of Law No. 8 of 1999 concerning Consumer Protection explains, "Business actors are prohibited from producing and trading goods/services that: f. Not by the promises stated in the label, information etiquette, advertising, or sales promotion of the goods and services.

On March 25, 2021, Defendant sent a selfie photo of an ID card edited with the words "THIEVES RUNNING FROM DEBT" to Witness Frandyas via WhatsApp at +62 821-3528-0427, and the photo was used as a profile photo for about one week. The photo was sent to emergency contacts, namely to Witness Rian Andri and Witness Mega Fertasari, who had the number +62 88-7192-7374. In addition to the number used by the Defendant, several other numbers (+62 859-5470-0456, +62 858-4200-7199, and +62 813-8583-0987) continued to contact Frandyas and claimed to be from the Cash Cash Now application. Witness Frandyas followed the directions of Customer Service by applying for 12 loans with a total loan of Rp.23,000,000, receiving Rp.14,860,000, and returning Rp.14,810,000. However, Witness Frandyas continued to receive billing from these numbers after making these directions, so on April 4, 2022, Witness Frandyas reported this incident to Polda Metro Jaya. In the prosecutor's indictment, the defendant was charged with Article 32 paragraph (2) jo. Article 48 paragraph (2) of Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning ITE.

So, in this case, if criminal liability is associated with the Central Jakarta Court Decision Number 457/Pid.Sus/2022/PN.Jkt.Pst, it will be seen that the elements of liability have been fulfilled. The elements of liability are: 1) Committing a criminal act; 2) having the ability to be held responsible; 3) with intent or negligence; 4) There is no excuse (Bashori, 2016). The first element is committing a criminal act. In this case, the defendant was found guilty of committing a criminal act by moving and transferring electronic information without authorization and sending

electronic data from Br. Leonard Tua's device to another electronic device. Moeljatno explained that something could be said to be a criminal act if it fulfills the elements of a criminal act, namely: a) The act must be human; b) The act must have been prohibited and there is a threat of punishment; c) The act is indeed contrary to the rule of law; d) The act must be carried out by a person who can be held accountable; e) The act must be blamed on the maker (Sari, 2020).

Therefore, referring to Article 32 paragraph (2) to Article 48 paragraph (2) of Law of the Republic of Indonesia Number 19 of 2016 concerning the amendment of Law of the Republic of Indonesia Number 11 of 2008 concerning ITE, it is explained that (1) Everyone: the person in question is Br. Leonard Tua; (2) Intentionally and without rights or against the law: committing a criminal act of electronic transaction with intent; (3) By any means: this is using an electronic device; (4) Moving or transferring: by sending electronic data through Br. Leonard Tua's electronic device is transferred to another electronic device; (5) Electronic document: This document is in the form of a photo and image of an electronic ID card owned by Sdri. Frandyas Paramitha; (6) To an unauthorized electronic system: an electronic system that receives electronic data as described above, where the system is not authorized to receive electronic data belonging to Sdri. Frandyas Paramitha.

The second element, namely having the ability to be held responsible: according to the Criminal Code, there is no explanation related to criminal responsibility, but in Article 44 paragraph (1) of the Criminal Code, which explains that "Anyone who commits an act for which he cannot be held responsible, due to a mental defect in his body or a disorder due to illness." So, based on the information of the Criminal Code, it can be concluded that regarding the ability to be responsible, there is a person's physical and mental ability to be held accountable for the guilt of his actions. Therefore, objectively, the Defendant, who is a human being with all of his equipment, both spiritually and physically, has a healthy physique, has the reasoning power, and also the capacity to accept and understand, and can respond to everything that happens in the trial; Subjectively, the Defendant is said to have the ability to be responsible for the criminal acts he has committed.

The third element is intentionality (*dolus*) or negligence: in terms of intentionality (*dolus*) there are 3 types, namely: 1) Deliberate intent (*opzet als oogemark*); 2) Deliberate with awareness of certainty (*opzet met bewustheid van zekerheid of noodzakelijkheid*); 3) Deliberate with awareness of the possibility (*opzet met waarschijnlijkheidbewustzijn*). (Fadlian, 2020). Maka perbuatan tersebut yang dilakukan oleh Terdakwa dilakukan dengan kesengajaan (*dolus*). Therefore, the Defendant committed the act with intent (*dolus*). The defendant consciously committed a criminal act by sending personal data, such as a photo of an ID card with the edited words "THIEVES RUNNING FROM DEBT" without the permission of the relevant party to intimidate the victim to pay the bill.

The fourth element is the absence of excuses: Excuses are reasons that can erase the perpetrator's guilt. The actions carried out by the perpetrator who commits a criminal offense are

still against the law, but if the actions committed are not given criminal sanctions. (Wirawan, 2022). The excuse in the Criminal Code Article 44 explains the inability to be responsible, Article 49 paragraph (2) is related to forced defense exceeding the limit, and Article 51 paragraph (2) in good faith carrying out orders given by unlawful superiors (Ifra, 2021). In the facts found during the trial, Defendant has no excuses or justifications that can release the criminal responsibility of Defendant from the law, so the criminal acts committed by Defendant must be held accountable.

Because all elements contained in Article 32 paragraph (2) of the ITE Law have been proven, the panel of judges is convinced that Defendant Leonard Tua has been legally declared and proven guilty of committing the crime of “intentionally and without rights and unlawfully by any means transferring Electronic Information and Electronic Documents to the Electronic System of another person who is not entitled.” By sentencing the Defendant to 10 (ten) months imprisonment and a fine of Rp120,000,000.00 (one hundred and twenty million Rupiah), provided that if the fine is not paid, it will be replaced by 3 (three) months imprisonment. By stipulating that the period of arrest and detention that the Defendant has served shall be deducted in full from the sentence that has been imposed.

Based on the acts violated in Article 32 paragraph (2) of the ITE Law, the Defendant is threatened with a maximum imprisonment of 9 years and a maximum fine of Rp.3,000,000.00. (3 billion rupiah) However, in this decision, the judge sentenced him to imprisonment for 10 months and a fine of Rp.120,000,000.00 (120 million rupiah). Due to the trial, the judge weighed the aggravating circumstances, namely that the actions committed by the defendant were very detrimental to the witness, Frandyas Paramitha. It is also undeniable that the judge will consider the mitigating circumstances of the Defendant, namely during this trial, the Defendant was cooperative, the Defendant has been frank and has admitted all of his actions, the Defendant has never been convicted before, the Defendant still has family dependents, the Defendant in this case regretted and promised not to repeat his actions, Witness Frandyas Paramitha has forgiven the Defendant's actions.

According to the researcher, based on the actions of the Defendant, which can be categorized as misuse of personal data and defamation by editing a photo from the victim's KTP with the words “THIEVES RUNNING FROM DEBT” and distributing it, in this case, the victim was immaterially disadvantaged, so it cannot be denied that these actions constitute insult and defamation. So, this matter related to defamation is regulated in Article 310 of the Criminal Code, Article 369 of the Criminal Code (offense of complaint), and Article 27, paragraph (3) of the ITE Law. Regarding the misuse of personal data in Law No. 27 of 2022 concerning Personal Data Protection, the law has regulated the prohibition on using personal data in Article 65. So, regarding what is experienced by victims who use illegal online loans, it is necessary to have regulations issued by the OJK to regulate sanctions for illegal online loans. Because POJK No. 77/POJK/01/2016

concerning Technology-Based Lending and Borrowing Services and POJK No.13/POJK.02/2018 concerning Digital Financial Innovations in the Financial Services Sector can only sanction companies that are officially registered with the OJK, these regulations cannot apply to online loans that are not registered with the OJK, so the OJK can only impose sanctions by closing down illegal online loan companies.

Then, based on Decision Number 457/Pid.Sus/2022/PN.Jkt.Pst, when researchers read the entire decision, they found typos in the date and year that made the decision ambiguous. Where the point “That after 4 days since the money was received into the account of Witness Frandyas Paramitha around March 29, 2022, Witness Frandyas Paramitha was billed” this point also creates ambiguity because, based on the testimony of the victim, he was billed by the defendant 4 days after borrowing and in the evidence how many *screenshots* also confirm the existence of the chat. However, this point states “That on March 25, 2021, the defendant sent an electronic document in the form of a selfie and ID card”, so this shows that there is a difference in the date, which should be on the 29th, and the year should be 2022. According to the legal concept, this typing *error* is called a *Clerical Error*, a minor error in the decision or inadvertence. It has nothing to do with the substance of the judge's legal reasoning, where this error can be corrected even though it has been decided (Anand, 2022).

IV. CONCLUSION

Based on the discussion in this study, researchers can conclude that many factors influence a person's use of illegal online loans, such as cultural, social, personal, and psychological factors. Then, based on the results of an interview with one of the illegal online loan users, it is explained that the reason for using illegal online loans is because of a more straightforward process, meeting personal needs, and covering other debts. Other factors can also be related to low economic origin, fast liquid funds, lifestyle-related needs, urgent needs, consumptive behavior, financial pressure, buying new gadgets, paying college fees, and low literacy related to online loans. This is due to the rise of illegal online loans. Therefore, the role of OJK, the government, and related institutions is significant. OJK has formed the PASTI Task Force to address problems related to illegal finance. The government has also established the RI-1 Cyber Crime and Online Gambling Task Force to eradicate all cybercrime.

Related to criminal responsibility, two conditions must be met to criminalize someone: (1) there is a forbidden physical act/criminal act (*actus reus*); (2) then there is an evil/default inner attitude (*mens rea*). In Decision Number 457/Pid.Sus/2022/PN.Jkt.Pst, Defendant Leonard Tua was found legally and convincingly guilty of committing the crime of “intentionally and without rights and unlawfully by any means transferring Electronic Information and Electronic Documents to the Electronic System of another person who is not entitled.” By imposing a sentence on the

Defendant, therefore, with imprisonment for 10 (ten) months and a fine of Rp120,000,000.00 (one hundred and twenty million Rupiah) provided that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months. Because the actions of Defendant Leonard Tua have fulfilled the elements of criminal responsibility, namely: 1) Committing a criminal act; 2) having the ability to be responsible; 3) willfully or negligently; 4) There is no excuse.

So, to eradicate illegal online loans, the role of the government, OJK, and police officers must be increased from regulations specifically related to Financial Technology; then, OJK also needs to issue regulations related to sanctions for illegal online loans. To carry out law enforcement, there must be cooperation between the government, OJK, police, and related institutions to maximize blocking illegal online loan sites and applications. The role of the community is also related to digital literacy; the community must understand the issues related to illegal online loans and what the impact will be afterward.

REFERENCE

- AFPI. (n.d.). *Mengapa Masyarakat Masih Saja Terjebak Fintech Pinjol Ilegal?* Asosiasi Fintech Pendanaan Bersama Indonesia. Retrieved November 7, 2024, from <https://afpi.or.id/articles/detail/masih-terjebak-fintech-pinjol-ilegal>
- Amrani, H. (1999). Reformasi Sistem Pertanggungjawaban Pidana. *Jurnal Hukum IUS QUIA IUSTUM*, 6(11), 26–43. <https://journal.uui.ac.id/IUSTUM/article/view/6939>
- Anand, G. (2022). *Kekeliruan Pengetikan oleh Hakim: Sebuah Exit Plan*. UNAIR News. <https://unair.ac.id/kekeliruan-pengetikan-oleh-hakim-sebuah-exit-plan/>
- Bashori, M. S. (2016). Pertanggung Jawaban Pidana Bagi Notaris Yang Melakukan Tindak Pidana Pemalsuan Surat Dalam Pembuatan Akta Otentik. *Jurnal Supremasi*, 6(2), 3. <https://doi.org/10.35457/supremasi.v6i2.392>
- Databoks. (n.d.). *Ini 10 Penyebab Masyarakat Terjerat Pinjaman Online*. Retrieved November 7, 2024, from <https://databoks.katadata.co.id/keuangan/statistik/6011609befa9afa/ini-10-penyebab-masyarakat-terjerat-pinjaman-online>
- Fadlian, A. (2020). Pertanggungjawaban Pidana Dalam Suatu Kerangka Teoritis. *Jurnal Hukum Positum*, 5(2), 10–19.
- Gustiar, M. A., & Setiawan, D. A. (2022). Pertanggungjawaban Pidana bagi Pelaku Pengancaman Kekerasan oleh Desk Collection Pinjaman Online Ditinjau dari Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik. *Bandung Conference Series: Law Studies*, 2(2), 1149–1156. <https://doi.org/10.29313/bcsls.v2i2.2591>
- Ifra, I. H. (2021). *Psikiatris dan Penghapusan Pertanggungjawaban Pidana Perspektif Pasal 44 KUHP*. Direktorat Jenderal Pemasyarakatan Kementerian Hukum Dan HAM. <https://www.ditjenpas.go.id/psikiatris-dan-penghapusan-pertanggungjawaban-pidana-perspektif-pasal-44-kuhp>
- Ismoyo, J. D. (2019). *Metode Penelitian Hukum Mendapatkan Kebenara Berdasarkan Konsep Hukum*. Depok : Rajawali Pers.
- Maisarah, S. (2022). Mekanisme Pendirian Bisnis Fintech Lending (Pinjaman Online) Berdasarkan Peraturan Perundang-Undangan. *Badamai Law Journal*, 7(2), 210. <https://ppjp.ulm.ac.id/journal/index.php/blj/article/view/14379>
- Manayra Aisha Putri Indradjaja, Sigid Suseno, & Rully Herdita Ramadhani. (2022). Analisis Penegakan Hukum Tindak Pidana Yang Dilakukan Dalam Lingkup Pinjaman Online Ilegal Di Indonesia. *Paulus Law Journal*, 3(2), 50–64. <https://doi.org/10.51342/plj.v3i2.364>
- Muhaimin. (2020). *Metode Penelitan Hukum*. NTB : Mantaram University Press.
- Novika, Fanny, Septiavani, Nike, & Indra, I Made. (2022). Pinjaman Online Ilegal Menjadi Bencana Sosial Bagi Generasi Milenial. *Management Studies and Entrepreneurship Journal*, 3(3), 1174–

1192. <http://journal.yrpiiku.com/index.php/msej>
- Nurazkiyanti, S. A., Prihantono, P., & Nurjannah, S. (2023). Dampak Pinjaman Uang Berbasis Online Terhadap Kebutuhan Finansial Masyarakat Di Kecamatan Pontianak Kota (Studi Komparasi Pinjaman Online Legal Dan Ilegal). *Jurnal Keuangan Dan Perbankan Syariah*, 2(2), 172–183. <https://doi.org/10.24260/jkubs.v2i2.2056>
- Nurhalifah, D. (2024). Pertanggungjawaban Pidana Debt Collector dan Korporasi: Tinjauan Terhadap Pelanggaran Hukum dalam Penagihan Hutang. *Proceedings Series on Social Sciences & Humanities*, 17. <https://doi.org/10.30595/pssh.v17i.1105>
- OJK. (n.d.-a). *Faq Otoritas Jasa Keuangan*. Otoritas Jasa Keuangan. Retrieved September 9, 2024, from <https://www.ojk.go.id/id/Pages/FAQ-Otoritas-Jasa-Keuangan.aspx>
- OJK. (n.d.-b). *Financial Technology - P2P Lending*. Otoritas Jasa Keuangan. Retrieved September 9, 2024, from <https://ojk.go.id/id/kanal/iknb/financial-technology/default.aspx>,
- OJK. (n.d.-c). *Literasi Keuangan*. Otoritas Jasa Keuangan. Retrieved November 7, 2024, from <https://ojk.go.id/id/kanal/edukasi-dan-perlindungan-konsumen/Pages/literasi-keuangan.aspx>
- OJK. (n.d.-d). *Satgas PASTI Blokir 311 Pinjol Ilegal dan Pinpri*. Otoritas Jasa Keuangan. Retrieved September 9, 2024, from <https://www.ojk.go.id/waspada-investasi/id/siaran-pers/Pages/Satgas-PASTI-Blokir-311-Pinjol-Ilegal-dan-Pinpri.aspx>
- OJK. (n.d.-e). *Tujuan Satgas*. Otoritas Jasa Keuangan. Retrieved November 7, 2024, from <https://ojk.go.id/waspada-investasi/id/tentang/pages/Tujuan-Satgas.aspx>
- OJK. (2021). *Infografis OJK Bersama Kementerian atau Lembaga Terkait Berkomitmen Berantas Pinjol Ilegal*. Otoritas Jasa Keuangan. <https://ojk.go.id/id/berita-dan-kegiatan/info-terkini/Pages/Infografis-OJK-Bersama-Kementerian-atau-Lembaga-Terkait-Berkomitmen-Berantas-Pinjol-Ilegal.aspx>
- P, L. (1990). *Dasar-Dasar Hukum Pidana di Indonesia*. Jakarta : Sinar Grafika.
- Sari, I. (2020). Perbuatan Melawan Hukum (Pmh) Dalam Hukum Pidana Dan Hukum Perdata. *Jurnal Ilmiah Hukum Dirgantara*, 11(1), 53–70. <https://doi.org/10.35968/jh.v11i1.651>
- Satgas Cyber Crime RI-1. (2024). *Menteri Kominfo Budi Arie dan Dr.Mulyadi DPR RI Fraksi Partai Gerindra Resmikan Satgas Cyber Crime RI-1: Langkah Besar Menuju Indonesia Aman dari Kejahatan Digital*. Satgas Cyber Crime RI-1. <https://satgascybercrimeri1.com/menteri-kominfo-budi-arie-dan-dr-mulyadi-dpr-ri-fraksi-partai-gerindra-resmikan-satgas-cyber-crime-ri-1-langkah-besar-menuju-indonesia-aman-dari-kejahatan-digital/>
- Triasih, D., Muryati, D. T., & Nuswanto, A. H. (2021). Perlindungan Hukum bagi Konsumen dalam Perjanjian Pinjaman Online. *Seminar Nasional Hukum Universitas Negeri Semarang* , 7(2), 591-608. <https://doi.org/10.15294/snhunnes.v7i2.732>
- Wahyuni, F. (2017). *Asas-Asas Hukum Pidana Indonesia*. Tangerang : PT Nusantara Persada Utama.
- Wirawan, I. (2022). *Menakar Alasan Pemaaf dan Pembenaar dalam Hukum Pidana Oleh: Kus*

Rizkiyanto, SH. MH. Fakultas Hukum Universitas Pancaskti Tegal.
<https://fh.upstegal.ac.id/?p=5372>

Yasinta, R. E., & Purwanto, S. (2024). Strategi Komunikasi Desk Collection Dalam Meningkatkan Kelancaran Pembayaran Angsuran Nasabah Pada Pembiayaan Kpr Di Bank Tabungan Negara Kantor Cabang Syariah Solo. *Jurnal Penelitian Dan Kajian Ilmiah*, 22(3), 255–265.

Yasmine, A. F., Faradila, A., Pranchastika, A., Almi, F., Rafli, M., Ayunda, M., & Apryan, I. (2023). *Dampak Pengancaman Tindak Pidana Desk-Collector Terhadap Debitur Pinjaman Online Menurut Lifestyle Routine Activity Theory*. 4(2), 183–211. <https://doi.org/10.55551/jip.v4i2.77>

Yoyo, S., Ayu, N., Yosep, M. A., & Nurdian, B. (2020). *Digital Marketing dan Fintech Indonesia*. Yogyakarta : Andi.