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## CRIMINAL ACTS IN THE PROCESS OF ONLINE LOAN COLLECTION

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### ABSTRACT

*Online lending is an innovation in finance that utilizes information technology to facilitate transactions between borrowers and lenders without meeting in person. While this generally goes smoothly, problems often arise if there are late payments, particularly in collection practices. Many reports mention unethical, intimidating, and unlawful collection practices, which harass consumers. This research aims to identify and analyze legal protection for criminal acts in the online loan collection process, as well as analyze the decision of the North Jakarta District Court Number 438/Pid.Sus/2020/PN Jkt.Utr. The research method used is normative legal research with a statutory approach, using literature study as a data collection technique, which is then analyzed in three stages, namely data reduction, data presentation, and conclusion drawing. The results showed that repeated billing via text messages and telephone before the due date violated the billing code of ethics in the POJK on Consumer Protection in the Financial Services Sector. In addition, POJK 10/2022 states that organizers are not allowed to make direct collections if the delay exceeds 90 days from the due date. Legal collection by debt collectors that do not comply with the rules, especially in the case of illegal online loans, can be subject to Article 45 paragraph (4) Jo Article 27 paragraph (4) of the ITE Law, Article 368 of the Criminal Code, and Article 369 of the Criminal Code. Thus, these regulations can provide legal protection to consumers in the face of criminal acts when online loan collection occurs.*

**KEYWORDS** *Crime, Collection, Online Loans*



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**How to cite:** Adhitya Narendra Dwipa (2024). Criminal Acts in the Process of Online Loan Collection. *Journal Eduvest*. 4(11): 9968-9978  
**E-ISSN:** 2775-3727

## INTRODUCTION

In recent years, online loans or fintech lending have experienced rapid growth in Indonesia. Online loans are services that enable financial service providers to offer loans using information technology, where the entire process, from application to approval to disbursement of funds, is conducted online or via SMS or phone confirmation (Arvante, 2022). The working mechanism of online loans involves organizers who act as intermediaries to connect lenders with borrowers. Currently, many online loan services are registered and supervised by the Financial Services Authority (OJK) (Sentosa, 2021). However, there are also several online loans operating without oversight and licenses from the OJK, known as illegal online loans.

The OJK reported that the value of fintech lending or online loans (pinjol) disbursed in Indonesia reached Rp20.53 trillion in August 2023. This amount shows a slight increase of 0.78% compared to the previous month (month-on-month/mom), which reached Rp20.37 trillion. Compared to August 2022, the disbursement of pinjol in August 2023 increased by 6.87% (year-on-year/yoy). In August 2023, online loans were disbursed to 13.37 million recipient accounts. This number decreased by 6.37% compared to the previous month (mom). Most borrowers, namely 10.47 million or 78.3% of the total national borrowers, came from the Java region. Of the total loan value, Rp8.01 trillion or 39.05% was disbursed to the productive sector.

In principle, online loan providers are allowed to collaborate with third parties, such as debt collectors, to collect debts. Although debt collection can be delegated to third parties according to the cooperation agreement, the responsibility for the collection process remains with the technology-based funding service provider or fintech. However, along with this growth, various issues related to the process of online loan collection have emerged. Many reports have surfaced regarding unethical, intimidating, and even illegal collection practices. Actions such as threats, harassment, and misuse of personal data are often reported by defaulting borrowers. This situation raises concerns about the legality and ethics of collection practices by online loan service providers.

One example of a case that occurred in the field involved a teacher in Solo, identified by the initials S, who faced financial difficulties when she borrowed money online amounting to 5 million rupiahs. However, being careless in reading the terms and tempted by advertisements promising low interest rates and long loan terms, S then borrowed 900 thousand rupiahs from one of the online loan providers. After struggling to pay on time, S ended up being in debt to 27 online loan applications, amounting to a total debt of 75 million rupiahs. Despite the interest charged being much higher than advertised, S chose to pay off her debt herself without reporting her case to the police, in an effort to avoid further problems with online loans.

Another experience was encountered by Mahdi Ibrahim, who once received an SMS from a wallet app offering an online loan. In the loan application process, Mahdi had to download the wallet app, complete requirements such as a photo of his ID card and a selfie, and apply for a loan of Rp. 1,500,000. However, after being approved,

Mahdi only received Rp. 1,050,000 and was fined if he did not repay on time. Then, a person named Dede Supardi, who served as an online loan debt collector, contacted and threatened Mahdi and his family to pay the loan, even with threats of physical violence. As a result, Mahdi felt threatened and verbally abused by the defendant through phone calls and WhatsApp messages.

Repeated loan payment collection via text messages and phone calls before the payment due date violates the code of ethics for collection in the OJK Financial Services Consumer Protection regulation. Besides violating these regulations, such actions also disregard the rights of customers guaranteed by the Consumer Protection Law (UUPK), where customers have the right to comfort, security, and safety in consuming goods or services and have the right to provide criticism, suggestions, and complaints regarding the use of goods or services. In addition to these ethical violations, collection actions accompanied by threats should be subject to criminal sanctions. Therefore, it is important to conduct research on criminal acts occurring in the process of online loan collection to comprehensively understand these issues and seek appropriate solutions.

Previous research by Syamila (2023) showed that debt collection methods from the perspective of positive law in Indonesia can be resolved through civil lawsuits (Syamila et al., 2023), while online loan collection involving extortion is a form of legal violation with criminal sanctions as stipulated in Article 368 paragraph (1) of the Criminal Code (KUHP) with a maximum imprisonment of nine years and in accordance with Article 369 paragraph (1) with a maximum imprisonment of four years. Another study by Nugroho (2023) found that threatening actions in online loan collections by individuals and/or corporations are criminal acts within the digital scope (Nugroho, 2023). These threatening actions are carried out in various ways, such as through social media by sending threatening messages of violence, murder, and dissemination of confidential personal data. Law enforcement against perpetrators of threats must be carried out to create a deterrent effect, whether by individuals and/or corporations using various theories of criminal liability.

This research can enrich the legal literature by developing new theories related to consumer protection in the context of online loans and debt collection, which can include concepts such as procedural justice and privacy rights in debt collection. This research can also enhance the understanding of the dynamics of economic and financial crimes, particularly those related to financial technology.

The research problem statement is: What criminal acts often occur in the process of online loan collection related to law enforcement against perpetrators of criminal acts in the process of online loan collection from debtors, and an analysis of the North Jakarta District Court's decision Number 438/Pid.Sus/2020/PN Jkt.Utr to examine compliance with applicable regulations?

The objectives of this research are to identify and analyze the criminal acts that frequently occur in the process of online loan collection. Thus, the conclusion that can be drawn is that this research can be categorized as an effort to integrate updates from previous research. 2. Analysis of law enforcement against perpetrators of criminal acts

in the process of online loan collection from debtors, and an analysis of the North Jakarta District Court's decision Number 438/Pid.Sus/2020/PN Jkt.Utr to examine compliance with applicable regulations.

## **RESEARCH METHOD**

The research method is normative legal research with a legislative approach. Normative legal research is an approach used to analyze the law based on applicable norms or legal rules. This research focuses on legal documents such as laws, regulations, court decisions, and legal literature to understand, explain, and interpret legal concepts, principles, and rules (Jonaedi Efendi et al., 2018). The data collection technique in this research is through literature study by exploring books, journals, news articles, reports, and legal documents relevant to the research. The collected data is then analyzed in three stages: data reduction, data presentation, and conclusion drawing.

## **RESULT AND DISCUSSION**

Fintech innovation is one of the evidences of technological advancement in the financial sector. Generally, fintech is the latest technological innovation applied in financial services. The presence of fintech has transformed traditional financial markets into more digital ones, leading to more consumers using digital-based financial systems. Fintech services offer fund disbursement through a peer-to-peer (P2P) system, where consumers conduct transactions digitally using applications provided by fintech companies. These digital financial service applications have become significant innovations in the era of the industrial revolution 4.0. In Indonesia, the presence of fintech has attracted consumers who want to obtain funds quickly and easily without the complicated documentation process of conventional systems. Over the past few years, fintech companies in Indonesia have experienced significant growth (Atikah, 2020).

One type of fintech derivative is online loans or fintech lending, which is a form of information technology-based lending, an innovation in the financial sector that facilitates borrowers and lenders to transact without having to meet in person. The process, from application, approval, to fund disbursement, is done online or through short message and/or phone confirmation (Suryono et al., 2021). Online loans are regulated in the Financial Services Authority (OJK) Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services. The regulation explains that information technology-based lending services are financial services that connect lenders with borrowers to make loan agreements in rupiah directly through electronic systems using the internet.

Online loans or pinjol have several advantages that make them attractive to the public. According to Mabsuti & Nurtresna (2022), the process of obtaining funds through pinjol is very fast and easy, without many complicated requirements (Mabsuti

& Nurtresna, 2022). Additionally, pinjol can be accessed by all groups, both low-income and middle-income communities. The use of internet technology in pinjol services also attracts young people to become entrepreneurs, which can reduce unemployment and create new business opportunities. The growth of technology has driven the emergence of many fintech companies providing pinjol services. Another advantage of pinjol is the ease of administration as well as the effectiveness and efficiency in its process, making it a practical and beneficial solution for many people.

The requirements for obtaining online loans are easy, as they usually include an ID card, family card, tax ID number, driver's license, phone number, and bank account. These documents only need to be photographed and uploaded to the application (Istiqamah, 2019). Loan repayments are also easily made through bank transfers or through the nearest Indomaret or Alfamart outlets. There are three main stages in the online loan process, namely:

1. Requirements and information filling This process involves filling out the loan application form and uploading the required documents such as ID card, personal photo, and selfie with ID card. This process ensures the verification of the prospective borrower's identity.
2. Analysis and approval After the application is submitted, the P2P lending company will analyze the submitted data and documents. They will evaluate the borrower's eligibility and if approved, the loan application will be offered to funders who are willing to provide the funds.
3. Loan repayment After the loan funds are disbursed, the borrower must repay the loan according to the predetermined schedule. Repayment can be made through various methods provided by the P2P lending company, such as bank transfers or through retail outlets like Indomaret and Alfamart.

However, although online loans offer many conveniences, unfortunately, the regulation on online loans stipulated in POJK No. 77/POJK.01/2016 concerning Information Technology-Based Lending Services is still insufficient to accommodate the rapid growth of these services. This regulation has not fully been able to address various issues arising from the fast development of online loan services (Istiqamah, 2019). Additionally, many new online loan services are not registered and do not have business licenses from the OJK, making them illegal and outside the supervision of the OJK. Many of these illegal online loan services do not register their services officially because the OJK regulation does not explicitly prohibit or impose sanctions on those who do not register. This legal loophole encourages the rapid growth of unregistered illegal online loans (Chrisjanto & Tajsgoani, 2020).

In reality, online loans would not be problematic if consumers and business operators fulfilled their respective obligations. Consumers who borrow money online must repay their debts on time. Delays in loan repayment can be considered a breach of contract, causing losses for the company (Saimima & Patria, 2021). Many consumers are ensnared by online loans, both legal and illegal, and problems arise when consumers cannot repay the loans due to very high interest rates. Typically,

online loan providers use third parties such as debt collectors to collect debts (Firanda et al., 2019).

In the case of illegal online loans, debt collection is done by directly visiting the consumer's home or office, using force and harsh language to compel repayment. Debt collectors usually have access to data on the consumer's phone, including personal photos, social media, transportation, and shopping applications, as well as email (Mabsuti & Nurtresna, 2022). Additionally, debt collection is also directed at contacts in the consumer's data, such as relatives, friends, and others. According to Arvante (2022), consumers often experience harassment through phone calls containing threats, verbal sexual harassment, and cyber intimidation (Arvante, 2022). Consumers' data and photos are often spread to people in their contact list with discrediting remarks. Debt collection also targets family, friends, coworkers, and relatives, disrupting family and social relationships. This can lead to trauma, stress, depression, anxiety, lack of focus at work, loss of self-confidence, and even suicide. Some consumers even lose their jobs because debt collection is done to their superiors at work.

When such intrusive debt collection occurs, it is legally considered a violation. Human rights should protect the rights of online loan service users who are threatened and terrorized by online loan companies (Subagiyo et al., 2022). The threats and intimidation from debt collection cause fear, shame, and discomfort to the family, friends, and others who use online loan services. Article 19 (2) of the Human Rights Law No. 39 of 1999 states that "no one can be imprisoned or detained by a court for not fulfilling obligations stipulated in a debt agreement." This means that the inability to repay loans cannot be considered a criminal act by online loan service users. This principle is also reflected in various information technology regulations designed to protect users.

Repeated debt collection through text messages and phone calls before the due date violates the collection code of ethics in the OJK Consumer Protection Regulation for the Financial Services Sector. Article 3 of OJK Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector states that financial service business operators have the right to ensure good faith from consumers and obtain accurate, honest, clear, and non-misleading information and documents from consumers. The implementation of the principle of good faith in debt collection means that providers should not arbitrarily collect debts from borrowers who default. Before collecting debts, providers must communicate the resolution and collection procedures to lenders and borrowers. The goal is for both parties to understand the procedures to resolve issues if the borrower defaults. Providers must follow hierarchical steps, such as issuing warning letters that the payment is due or overdue as agreed (Firanda et al., 2019).

Furthermore, in POJK 10/2022 as the legal basis for online loans, there is no explicit regulation regarding the collection time limit by online loan providers or the provision that online loans can only collect within 90 days. Providers are not allowed to directly collect if the delay exceeds 90 days from the due date. Providers are also required to provide detailed risk information to borrowers if they fail to settle their

loans. Even if borrowers default, providers must still consider consumer protection for borrowers as a right that must be legally guaranteed (Bartlett et al., 2022; Cvik & Pelikánová, 2016).

Improper debt collection, particularly in the case of illegal online loans, can involve debt collectors engaging in unlawful practices. This criminal act is often categorized as cybercrime and can be regulated by Law No. 11 of 2008 as amended by Law No. 19 of 2016 on Amendments to the Information and Electronic Transactions Law (ITE Law). The articles that can ensnare debt collectors in cases of threats or extortion against online loan customers are as follows:

1. Article 45 paragraph (4) Jo Article 27 paragraph (4) ITE Law This article regulates threats made through electronic media. Such threats can include using information or electronic technology to intimidate, threaten, or extort someone. Debt collectors using text messages, emails, or social media to threaten online loan customers can face criminal sanctions under the ITE Law.
2. Article 368 of the Criminal Code This article regulates threats with violence, either directly or indirectly. Threats can include physical or non-physical intimidation aimed at scaring or forcing someone, including in the context of debt collection.
3. Article 369 of the Criminal Code This article regulates extortion, which occurs when someone threatens or forces another person to give something with the threat of real harm or danger. In debt collection, this can include threats to disclose personal information, disrupt peace, or cause financial harm.

In the case adjudicated in North Jakarta District Court Decision Number 438/Pid.Sus/2020/PN Jkt.Utr., there is a chronology describing the victim, Mahdi Ibrahim, and the defendant, Dede Supardi, acting as an online loan collector. Initially, in August 2019, the victim received an SMS from a wallet card application offering an online loan. The victim then followed the link in the SMS and downloaded the wallet card application through the Play Store. After registering and uploading various personal documents such as an ID card, salary slip, and tax ID number, as well as a personal photo, the victim successfully applied for a loan of IDR 1,500,000 (one million five hundred thousand rupiahs), which was approved with a received amount of IDR 1,050,000 (one million fifty thousand rupiahs), to be repaid within 14 (fourteen) days.

When the payment deadline was approaching, less than a day before the due date, the defendant contacted the victim to remind them about the impending loan payment. On November 8, 2019, the defendant contacted the victim again, inquiring when the loan would be paid off, and informed the victim that the loan had accrued a penalty, increasing the total amount to be paid to Rp.7,960,000. On December 3, 2019, the victim received a WhatsApp message from the number 087776412279 with a threat stating that the defendant would come to collect the debt in person or through a bank transfer. The defendant also threatened to contact the victim's family and the references provided by the victim during the loan application process to inform them that the victim had a debt and was not paying it.

On December 5, 2019, the victim tried to contact the WhatsApp number 083876031045 to ask why his wife and friends were being contacted by the defendant. However, there was no response from that number afterward. On the same day, the victim contacted the wallet card application again to ask who else would be contacted besides his wife and friends, but the defendant responded with harsh words, such as "whatever, you dog." On December 16, 2019, the defendant contacted the victim using the number 082149920291 and had a conversation containing harsh language and serious threats, including threats to kill and physically harm the victim, even inviting them to engage in violence that night.

In this case, DEDE SUPARDI collected debts from consumers using an electronic system through WhatsApp. This involved sending voice notes containing insults and threats to the victim and his family. These threats were serious and intimidating, including threats of physical violence and insults to the personal integrity of the victim and his family. DEDE SUPARDI's actions violated the Republic of Indonesia Law Number 11 of 2008 on Electronic Information and Transactions, which was amended by Law Number 19 of 2016. The articles in this law stipulate that using an electronic system to send documents or electronic information containing insults or threats can result in criminal sanctions.

Furthermore, in this case, PT. Barracuda Fintech Indonesia and PT. Vega Data Indonesia engaged in improper practices in promoting and advertising online loan services through the Wallet Card application. They falsely or misleadingly claimed that the online loan services they offered were regulated and supervised by the Financial Services Authority (OJK), implying that they had received official approval from OJK to operate. However, this information was not true because neither company had an operational license from OJK. According to OJK, PT. Barracuda Fintech Indonesia was not registered or licensed as an Information Technology-Based Lending and Borrowing Service Provider (LPMUBTI) in Indonesia. As financial service business operators, they should be registered and have an operational license as stipulated in Financial Services Authority Regulation (POJK) Number 77 of 2016 and be members of the Indonesian Fintech Lenders Association (AFPI).

The statements made by PT. Barracuda Fintech Indonesia in the service agreement, which stated that the TUNAI SHOP and KASCAS applications were regulated and supervised by OJK, aimed to mislead prospective customers or the public. This was a form of public deception intended to make prospective customers or the public believe that PT. Barracuda Fintech Indonesia was a legal financial service. Additionally, PT. Barracuda Fintech Indonesia's practice of asking prospective customers to allow the lender (fintech company) to access their personal data, including recording all phone contacts on the customer's phone, was also unjustified. This was regulated in a letter from the Director of Fintech Regulation, Licensing, and Supervision numbered S-72/NB.213/2019 dated February 12, 2019, which instructed the limitation of access to personal data on the smartphones of fintech lending users.

Fintech companies should only be allowed to access certain personal data of users as regulated, including access to the camera, location (via GPS), and GSM information

(such as IMEI). Besides these three types of access, fintech companies are not permitted to access other personal data from the user's device. In the context of debt collection, employees of PT. Vega Data Indonesia responsible for desk collection must conduct the collection process without using physical or mental violence against customers. This has been regulated by the Indonesian Fintech Lenders Association (AFPI) in the Code of Conduct for Responsible Information Technology-Based Lending and Borrowing Services, issued in November 2018.

Based on considerations of this case, all elements contained in Article 45 paragraph (4) Jo Article 27 paragraph (4) of the Republic of Indonesia Law Number 19 of 2016 on Amendments to the Republic of Indonesia Law Number 11 of 2008 on Electronic Information and Transactions have been fulfilled, so the defendant Dede Supardi Bin H. Supriadi must be considered legally and convincingly guilty of the criminal acts charged in the indictment.

Before deciding on the sentence, several aggravating and mitigating circumstances were considered by the court. Aggravating circumstances included the defendant's actions causing public unrest and potentially causing psychological trauma to the victim and his family. Mitigating circumstances included the fact that the defendant had no prior criminal record, behaved courteously during the trial, gave honest testimony, expressed remorse for his actions, and had family dependents.

The judge decided that the defendant Dede Supardi Bin H. Supriadi was legally and convincingly guilty of intentionally and without right distributing, transmitting, or making accessible Electronic Information and/or Electronic Documents containing extortion and/or threats, as charged in the second indictment. Consequently, the judge sentenced the defendant Dede Supardi Bin H. Supriadi to one year of imprisonment and a fine of Rp.70,000,000.00 (seventy million rupiahs). If the fine is not paid, the defendant will serve an additional two months of imprisonment. Additionally, the judge decreed that the period of arrest and detention already served by the defendant would be deducted entirely from the imposed sentence. The defendant was also ordered to remain in custody. Finally, the judge charged the defendant a case fee of Rp5,000.00 (five thousand rupiahs).

The judge's decision refers to Article 45 paragraph (4) Jo Article 27 paragraph (4) of the ITE Law, which regulates criminal acts using electronic information and/or electronic documents for extortion and/or threats. This article states that anyone who intentionally and without right distributes, transmits, or makes accessible electronic information and/or electronic documents containing extortion and/or threats can be punished with imprisonment for up to six years and/or a fine of up to one billion rupiahs. Additionally, the judge's decision also refers to Article 368 paragraph (1) of the Criminal Code, which regulates extortion. This article states that anyone who, with the intent to unlawfully benefit themselves or another person, forces another person with violence or threats of violence to give up property or erase debt, can be punished with imprisonment for up to nine years.

Lastly, Article 369 paragraph (1) of the Criminal Code is also relevant in this decision. This article regulates extortion by threats of defamation, either verbally or in

writing, or threats to disclose secrets. Anyone who commits this act with the intent to unlawfully benefit themselves or another person can be punished with imprisonment for up to four years. Therefore, the defendant Dede Supardi Bin H. Supriadi was found guilty of using electronic devices to threaten and extort the victim, violating the provisions of the ITE Law and also the articles in the Criminal Code regulating extortion. Consequently, the judge imposed a prison sentence and a fine as a form of punishment for the defendant's actions that harmed the victim and violated the law.

## CONCLUSION

Online loans involving repeated loan repayment collection through text messages and phone calls before the due date violate the debt collection code of ethics as regulated by the Financial Services Authority (OJK) Regulation on Consumer Protection in the Financial Services Sector. Additionally, under OJK Regulation Number 10/2022, which serves as the legal basis for online loans, providers are not allowed to conduct direct collections if the payment delay exceeds 90 days from the due date. Collections that do not comply with the regulations, especially in the case of illegal online loans, can be subject to applicable legal provisions. These provisions include Article 45 paragraph (4) in conjunction with Article 27 paragraph (4) of the ITE Law, Article 368 of the Criminal Code, and Article 369 of the Criminal Code, which can prosecute debt collectors in cases of threats or extortion against customers of online lending companies.

Based on the verdict of the North Jakarta District Court Number 438/Pid.Sus/2020/PN Jkt.Utr, there is convincing evidence that the defendant has been legally proven to have committed a criminal act. This criminal act includes intentionally and unlawfully distributing, transmitting, and making accessible Electronic Information and/or Electronic Documents containing elements of extortion and/or threats. The verdict sentenced the defendant to: 1 year of imprisonment and a fine of Rp.70,000,000.00 (seventy million rupiahs) with the stipulation that if the fine is not paid, it will be replaced with 2 months of imprisonment.

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