

# Analysis of Unlawful Collection Actions Regarding Online Loans from Illegal Fintech (Case Study on Decision Number 438/Pid.Sus/2020/PN.Jkt.Utr)

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## ABSTRACT

In Indonesia, there are 3,107 illegal fintech companies. The author focuses on illegal collection actions related to online loans from illegal fintech as stated in Decision Number 438/Pid.Sus/2020/PN.Jkt.Utara. When collecting an online loan from the victim, the defendant used harsh words towards the victim by sending a voice note via Whatsapp with words such as "bad dog", "devil's child", an insult to the victim. The problems that the author raises are How Peer-to-Peer Lending (P2P Lending) Debt Collection Actions in the Perspective of Criminal Law and How to find out whether the fintech is registered or not and what the sanctions are in terms of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to the Law Number 11 of 2008 concerning Information and Electronic Transactions. The author in his analysis stated that the act of billing using harsh words carried out by the defendant violated Article 310 of the Criminal Code and the illegal company could be subject to criminal sanctions based on Article 32 of Law no. 3 of 1982 concerning Compulsory Company Registration. The author concludes that the act of billing using harsh words committed by the defendant violated Article 310 of the Criminal Code and must be accompanied by a complaint to the police and related to the illegal company can be subject to sanctions by Article 32 of Law no. 3 of 1982 concerning Compulsory Company Registration.

**Keywords:** *Financial technology, online loans, illegal companies*

## 1. INTRODUCTION

Especially in Indonesia, there are so many fintech companies that are legal and illegal. Legal is meant here is a fintech company that already has a permit and is registered with the Financial Services Authority (OJK) while what is illegal is a fintech company that does not have a permit and is not registered with the Financial Services Authority. Money lending activities have been carried out for a long time in people lives who have known money as a means of payment. Almost all people have made money lending activities something that is indispensable to support the development of their economic activities and to improve their standard of living. [1]

In Indonesia, there are already regulations governing information technology-based lending and borrowing services which are regulated in the Financial Services Authority Regulation Number 77/POJK.01/2016/2016 concerning Information Technology-Based Borrowing-Lending Services ("POJK 77/2016") in addition to that related to lending and borrowing is also regulated in Chapter XIII Book III of the Civil Code, especially Article 1754 of the Civil Code which contains that "borrowing is an agreement whereby one party gives to another party a

certain amount of goods -goods that are exhausted due to use, on the condition that the latter party will return the same amount of the same kind and condition".[2]

The focus of the discussion that the author takes is related to illegal collection actions related to online loans from illegal fintech as stated in Decision Number 438/Pid.Sus/2020/PN.Jkt.Utr. The defendant named Dede Supardi worked at PT. VEGA DATA INDONESIA or PT. BARRACUDA FINTECH INDONESIA which PT. VEGA DATA INDONESIA or PT. BARRACUDA FINTECH INDONESIA is a business actor that does not have an operational license from the Financial Services Authority. The defendant committed an unlawful collection action through electronic media. When collecting an online loan against a victim-witness named Mahdi Ibrahim, the defendant used threatening words or words that insulted the victim by sending a voice note via Whatsapp with words such as "dog bastard", "son of the devil", which are these words This is an insult to the victim. Supposedly, the lender in doing the collection did not issue harsh words as above because it violated the rights of consumers. Those words have violated the provisions of Article 310 paragraph (1) of the Criminal Code which states that "*Whoever intentionally attacks the honor or reputation of a person, by accusing*

*something, which means clearly so that it is known to the public, is threatened, because of pollution, with a criminal sanction. imprisonment for a maximum of nine months or a fine of a maximum of three hundred rupiahs*". Apart from these words, the defendant also contacted the family and friends of the loan recipient and this made the name of the loan recipient polluted and disturbed the mentality of the loan recipient because the loan recipient had a fear of being terrorized by the lender, in this case, the Defendant. Due to the absence of a law-level regulation that specifically regulates financial technology (fintech) to protect consumers as loan recipients, namely about unlawful debt collection actions contained in article 310 of the Criminal Code. However, due to the absence of clear regulations or legal basis relating to online loans and how to collect them other than those stipulated in the Criminal Code above, it is very difficult to enforce the law. Therefore, the author is interested in taking the title of the thesis entitled "Analysis of Unlawful Collection Actions Regarding Online Loans from Illegal Fintech (Case Study on Decision Number 438/Pid.Sus/2020/PN.Jkt.Utr)".

The problem that the author raised was How is Peer To Peer Lending (P2P Lending) Debt Collection Actions in the Perspective of Criminal Law and How to find out whether the fintech is registered or not and what the sanctions are in terms of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions? The rest of the paper is organized as follows: section 2 introduces the theoretical framework used in this paper, which includes state's sovereignty over the airspace and the responsibility of the state; section 3 presents the analysis by applying the theoretical framework to the present case; lastly, section 4 will conclude the analysis and presents direction for future research.

## **2. THEORETICAL FRAMEWORK**

### **2.1. Covenant Theory**

There are differences in the use of the term agreement by legal scholars in Indonesia. Munir Fuady said that the term agreement is the equivalent of the term *overeenkomst* in Dutch or agreement in English. [3] Achmad Ichsan uses the term *verbintenis* for agreements, while Utrecht in his book Introduction to Indonesian Law uses the term *overeenkomst* for agreements. [4]

Regarding online loans, it also relates to agreements that occur between the provider and the lender and the lender and the loan recipient, as regulated in Article 18 of POJK 77/2016. In addition, there are also conditions for the validity of the agreement as regulated in Article 1320 of the Civil Code, namely (1) Agreeing on Those Who Bind Himself, (2) Ability to Make an Engagement, (3) A Certain Matter, (4) A Halal Cause.

### **2.2. Default**

Based on the Legal Dictionary, default means negligence, negligence, breach of contract, not fulfilling its obligations in the agreement.[5] Default is a condition due to negligence or error, the debtor is unable to fulfil the achievements as specified in the agreement and is not in a state of coercion as for stating that the default is not fulfilling or negligent in carrying out the obligations as specified in the agreement made between the creditor and the debtor. [6]

Default is regulated in Article 1243 of the Civil Code which states that "Reimbursement of costs, losses, and interest due to non-fulfilment of an engagement, then becomes obligatory, if the debtor, after being declared negligent in fulfilling his engagement, continues to neglect it, or if something that must be given or made, only can be given or made within the lapsed time. [7] Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions also explains that an electronic contract is considered valid if a. There is an agreement between the parties, b. It is carried out by a legal subject who is capable or authorized to represent under the provisions of the legislation, c. There are certain things, d. The object of the transaction must not conflict with the laws and regulations, decency, and public order. [8] Concerning the context of default in the fintech agreement, where one of the parties does not meet the agreed achievements because the agreement in general with the agreement made online (fintech agreement) both must be subject to the objective and subjective requirements contained in Article 1320 of the Book. The Civil Law Act, which distinguishes the two is only the medium.

### **2.3. Crime Theory**

Article 1 paragraph (1) of the Criminal Code is known as the "Legality Principle" or known as the adage which reads as follows: "Nullum delictum nulla poena lege previa poenali" is the principle that determines that every criminal act must be determined in advance by the law. Being against the law can mean contrary to the law or not following the prohibitions or legal requirements or attacking an interest that is protected by law. [9] According to the Dictionary of Popular Legal Terms, a criminal act is any act that is punishable by a crime or a violation, either as stated in the Criminal Code or other laws and regulations. [10] Wirjono Prodjodikoro explained that a criminal act is an act for which the perpetrator can be subject to a criminal penalty, and this perpetrator can be said to be the subject of a criminal act. [11] Chairul Huda explained that a criminal act is an act or series of actions to which criminal sanctions are attached. Furthermore, Chairul Huda explained that judging from the term, only the nature of his actions included a crime. Meanwhile, the characteristics of the person who commits the crime become part of another problem, namely criminal liability. [12]

Moeljatno explained that there are 5 (five) elements in a criminal act as follows: a) The act must be human, b) The act must be prohibited and be threatened with punishment,

c) The act is contrary to the law, d) Must be committed by someone who can be accounted for, e) The act must be blamed on the maker. [13]

The Criminal Code is generally described into 2 (two) kinds of elements, namely the objective element and the subjective element. What is meant by the objective element is an element that has to do with the situation, namely in which circumstances the action of the perpetrator must be carried out, while the subjective element is an element that is attached to the perpetrator or related to the perpetrator. The subjective elements of a criminal act are: a) Intentional or unintentional (*dolus* or *culpa*), b) Intent or *voornemen* in an experiment or *poging* as referred to in Article 53 paragraph 1 of the Criminal Code, c) Various types of intent or branding as defined in Article 53 paragraph 1 of the Criminal Code, there are for example in crimes of theft, fraud, extortion, forgery, etc., d) Planning in advance or *voorbedachte raad* for example contained in the crime of murder under Article 340 of the Criminal Code, e) Feelings of fear or anxiety as stated among others, contained in the formulation of criminal acts according to Article 308 of the Criminal Code. The objective elements of a criminal act are as follows: a) The nature of breaking the law or *wederrechtelijkheid*, b) The quality of the perpetrator, for example, "The state as a civil servant" in a crime of office according to Article 415 of the Criminal Code or "the condition as a manager or commissioner of a limited liability company" in a crime under Article 398 of the Criminal Code. Causality, namely the relationship between acting as a cause with reality as a result. [14]

According to Andi Hamzah, the types of criminal offenses are as follows: a) Crimes and Violations, b) Commission offenses and commission offenses, c) formal offenses and material offenses, d) independent offenses and continuous offenses, e) ordinary offenses and complaints offenses. [15]

#### **2.4. Unlawful Acts in Criminal Law**

In general, the most commonly known acts against the law are acts against the law in the context of civil law. However, it turns out that unlawful acts are also known in the context of criminal law. Acts against the law in the context of criminal law and acts against the law in the context of civil law have differences that lie in the basis of their arrangement, their nature and the elements inherent in both. Which unlawful act is regulated in Article 1365 of the Civil Code which states as follows: "*Every act that violates the law, which brings harm to another person, obliges the person who because of his fault published the loss, compensates for the loss*". Meanwhile, unlawful acts in the context of criminal law are regulated in the Criminal Code. The next difference is that unlawful acts in a civil context are often referred to as the term *onrechtmatige daad*, while in criminal law the term *wederrechtelijk* is often used. An act is said to be against the law in criminal law if the act threatens and harms the public or public interest while against the law in civil law if the act is detrimental to civil (private) interests. [16]

Based on the words "against the law", it can be interpreted that the nature of being against the law is not only recognized *formale wederrechtelijkheid*, but also *materiale wederrechtelijkheid* is accommodated. This is nothing but to accommodate customary law which is still in effect in various regions and is mostly unwritten. From this, it can be seen that there is a balance principle between formal standards (legal certainty) and material standards (values of justice) wherein concrete events both of them are urging each other, so Article 19 of the New Criminal Code Concept 1998 provides guidelines for judges to prioritize the value of justice in deciding on a case that is faced rather than the value of the certainty of the concept of material legality and the teachings of nature against material law in the current Criminal Code is not known. [17]

Andi Hamzah stated that being against the law in a formal sense is defined as being against the law. If an act has matched the formulation of the offense, it is usually said to have violated the law formally. Against material law must mean only in a negative sense, meaning that if there is no violation of the law (material) then it is the basis for justification. In imposing a crime, it must be used against formal law, meaning that it is contrary to the written positive law for the reason of *nullum crimen sine lege stricta* as stated in Article 1 paragraph (1) of the Criminal Code. [18]

If an act against the law is a criminal act, how is the legal settlement in this case. The legal settlement between the two types of law is different, with various consequences as follows: a. This action is against the law and at the same time is also a criminal act, b. This action is not an unlawful act and is not a criminal act, c. This act is against the law but is not a crime, and d. The action is not an act against the law but is a criminal act. [19]

The actions of the defendant in the case listed in the decision that the author adopted are included in a criminal act in an unlawful act. Because the defendant's act of collecting using harsh words is an act that is prohibited and threatened with punishment as stated in Article 310 of the Criminal Code, it should still be carried out in carrying out collections related to financial technology agreements polite.

#### **2.5. Criminal Sanctions**

Andi Hamzah argues that punishment or punishment is a general understanding, as a sanction that suffers or is deliberately inflicted on someone. While criminal is a special understanding related to criminal law. [20]

Barda Nawawi Arief explained that if the notion of punishment is defined broadly as a process of giving or imposing a crime by a judge, then it can be said that the criminal system includes all of the statutory provisions that regulate how the criminal law is enforced or operationalized concretely so that a person is sanctioned (criminal law). This means that all laws and regulations regarding substantive criminal law, formal criminal law, and criminal law enforcement can be seen as a unified criminal system. [21]

In Indonesia, there are known types of criminal sanctions based on article 10 of the Criminal Code as follows:

The main criminal offenses consist of:

- a. Death Penalty
- b. Imprisonment
- c. Criminal Cage: V
- d. Criminal Fines
- e. Criminal Cover

Additional penalties consist of:

- a. Revocation of certain rights
- b. Seizure of Certain Items.

## **2.6. Theory About Peer-to-Peer Lending**

Peer to Peer Lending is practically a financial service provider to bring together lenders and loan recipients.[22] Article 1 point 3 of POJK 77/2016 explains that: *"Information technology-based money lending services are the provision of financial services to bring together lenders and loan recipients to enter into lending and borrowing agreements in rupiah currency directly through an electronic system using the internet network"*. [23]

The lending and borrowing services contained in peer-to-peer lending are different from the lending and borrowing services contained in Article 1754 of the Civil Code. Borrowing and borrowing in Article 1754 of the Civil Code, the parties have a direct legal relationship while in peer to peer lending the lender does not meet directly with the loan recipient, even between the parties do not know each other because there is another party, namely the peer to peer platform. lending that connects lenders and borrowers. [24] The mechanism for peer-to-peer lending consists of:

- a) Procedures carried out by lenders in providing funding.
- b) Procedures carried out by borrowers (borrowers) in applying for loans.
- c) Procedures carried out by the peer-to-peer lending platform in conducting loan/credit analysis.
- d) Procedures carried out by peer-to-peer lending platforms in mitigating risk.[25]

## **2.7. The Role of the Financial Services Authority in Fintech Business**

The role of the Financial Services Authority in conducting supervision related to financial technology is further stated in the Financial Services Authority Regulation (POJK) No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services. OJK's regulation and supervision of Fintech business are also regulated in POJK No. 13 /POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector, the aim is to carry out Digital Financial Innovation (IKD) in a responsible manner.

The legal basis for supervision and regulation of the financial industry in the financial services sector is Article 1 paragraph (1) of the Financial Services Authority Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation in the financial services sector: "*a*

*renewal activity in business processes, business models and financial instruments that provide new added value in the financial services sector by involving the digital ecosystem, further explaining that fintech is a financial service institution that is an innovation from digital finance, which regulates the mechanism for recording and registering fintech"*. [26]

## **2.8. Criminal Case Process**

The criminal justice system in the Criminal Procedure Code is in the form of an integrated criminal justice system. This system is based on the principle of functional differentiation between law enforcement officers under the process of authority granted by law. [27] The criminal justice system in Indonesia is not only regulated in a book of laws and regulations in this case the Criminal Procedure Code but other laws and regulations relating to the criminal justice system. [28]

Romli Atmasmita argues that the criminal justice system as law enforcement or law enforcement, contains legal aspects that focus on the operationalization of laws and regulations to tackle crime and aim to achieve legal certainty (certainly. On the other hand, if the definition of the criminal justice system is seen as part of the implementation of social defense related to the goal of realizing community welfare, the criminal justice system contains social aspects that emphasize expediency).[29] Mardjono Reksodiputro explained that the criminal justice system is a crime control system consisting of the institutions of the police, prosecutors, courts, and the convict's prison.[30] The integrated criminal justice system has certain characteristics, namely "integration (coordination and synchronization), learn aims process (input throughput-output), and effective control mechanism".

In Indonesia, some principles are used as the basis for the mechanism or operation of the criminal justice system, namely:

- a. Legality Principle (Legality Principle)
- b. Principle of Feasibility or Usefulness (Expediency Principle)
- c. Priority Principle
- d. The Principle of Proportionality (Proportionality Principle)
- e. Subsidiary Principle
- f. The Principle of Equality Before the Law [31]

## **2.9. Electronic Evidence in Crime**

Concerning evidence which is generally regulated in Article 184 paragraph (1) of the Criminal Procedure Code, it is also regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions. The ITE Law aims to provide legal certainty in the field of information and electronic transactions. The law regulates important materials in the scope of electronic information and transactions, such as recognition of the principle of extraterritorial jurisdiction, application of technology-neutral principles, recognition of Electronic Information

and Documents including electronic signatures as legal evidence, arrangements for the implementation of electronic certification (certification authority), Electronic Systems, Electronic Agents, and domain names, and regulation of prohibited acts and criminal sanctions. [32]

The classification of electronic devices as evidence in criminal trials has been determined in the ITE Law. Then in the draft Criminal Procedure Code, it is also planned to accommodate the regulation of electronic devices as evidence in criminal trials. According to the explanation of Article 177 paragraph (1) letter c of the Draft Criminal Procedure Code, what is meant by "electronic evidence" is information that is spoken, sent, received, or stored electronically with optical devices or the like, including any recorded data or information that can be viewed, read and/or heard which can be issued with or without the help of a means, either written on paper, any physical object other than paper or recorded electronically in the form of writing, pictures, maps, designs, photographs, letters, signs, numbers, or meaningful perforations. [33]

Regarding the legality of electronic evidence in the ITE Law, it is regulated in Chapter III concerning Information, Documents, and Electronic Signatures, as well as Article 44 of the ITE Law. Article 5 of the ITE Law states that: (1) Electronic Information and/or Electronic Documents and/or their printouts are valid legal evidence, (2) Electronic Information and/or Electronic Documents and/or their printed results as referred to in paragraph (1) is an extension of valid evidence following the applicable procedural law in Indonesia, (3) Electronic Information and/or Electronic Documents are declared valid if they use the Electronic System following the provisions stipulated in this Law, (4) Provisions regarding Electronic Information and/or Electronic Documents as referred to in paragraph (1) do not apply to: a) Letters which according to the law must be in written form., and b) The letter and its documents which according to the law must be made in the form of a notarial deed or a deed made by the official making the deed.[34]

### 3. ANALYSIS

#### **3.1. Peer-to-Peer Lending (P2P Lending) Debt Collection Actions in the Perspective of Criminal Law**

As the collection action taken has violated the provisions of criminal law, namely Article 310 paragraph (1) of the Criminal Code, which states "*Whoever deliberately attacks the honor or good name of a person, by accusing something of something, which means clearly so that it is known to the public, threatened, because of pollution, with a maximum imprisonment of nine months or a maximum fine of three hundred rupiahs*".

The author will only research relating to debt collection actions Peer To Peer Lending (P2P Lending) in the Perspective of Criminal Law. Which is the collection made by Dede Supardi Bin H. Supriadi as the Defendant against

Mahdi Ibrahim as the victim witness who was mentioned in the verdict as a customer who borrowed money from PT. VEGA DATA INDONESIA or PT. BARRACUDA FINTECH INDONESIA through the "card wallet" application is an act of billing that violates the law, and the defendant in carrying out billing actions through conversations via *Whatsapps*. The defendant in the conversation used harsh and threatening words, namely "will kill the customer and the customer will be mutilated, if caught the customer will be hacked, tonight the defendant challenged the customer and ordered the customer to bring a knife to kill" so this violates Article 310 The Criminal Code.

The defendant's actions fulfill the elements of Article 310 paragraph (1) of the Criminal Code, namely:

1. On purpose.
2. Attacking honor or reputation.
3. Accusing of doing an act.
4. Broadcast accusations for public knowledge [35]

#### **Ad.1 On purpose**

"Deliberately" is the first element of error and the second element of error is in the words "with intent". The mental attitude "deliberately" is aimed at the act of attacking the honor or good name of people (deeds and objects of action). Where in this case, the defendant "deliberately" committed an act of attacking the honor or good name of the victim-witness. Moving on from the description, related to the billing action taken by the defendant against the victim-witness, it has fulfilled the element of "deliberately".

#### **Ad.2 Attacking honor or reputation**

The act of attacking (*aanranden*), is not physical, because what is being attacked (the object) is not physical but a feeling of honor and feeling about the good name of people. The object that is attacked is a sense of self-respect regarding honor (*eer*), and a sense of self-worth regarding the good name (*goedennaam*) of people. Moving on from the description above, it relates to the billing action taken by the defendant to the victim's witness through a conversation via *Whatapps* wherein the conversation the defendant used harsh words and threatened to fulfill the element of "attacking honor or good name".

#### **Ad.3. Accusing of doing something**

By using words/sentences through speech, by accusing a certain act. So what the maker is accused of must be a certain act, and nothing else, for example calling someone with disrespectful words, such as stupid, lazy, anointed dog, and so on. Moving on from the description above and related to the case in the decision that the actions taken by the defendant were "attacking the honor or good name" of the victim's witness by accusing the victim's witness of not wanting to pay his debt to the card wallet (internet application), so it was as if PT. BARRACUDA FINTECH INDONESIA and PT. VEGA DATA INDONESIA as the owner of the "card wallet" application (internet application) suffered a loss because the victim's Witness did not want to pay his debt, even though it was the victim's Witness who was harmed. After all, the owner of the "card wallet"

application (internet application) had deceived the public because it was not registered as an online loan service business actor and making loan interest not under applicable regulations, in addition to making collections, making threats of violence and saying rude or unkind words to victim-witnesses as customers.

**Ad.4 Broadcasting accusations for public knowledge.**

The mental attitude of "intention" is aimed at the element "known by the public" about what actions are accused of that person. Moving on from the description above and related to the case in the decision that the action taken by the defendant was "broadcasting the accusation so that it is known to the public" where the defendant had called/contacted the victim's Witness family and called/contacted the reference to a friend's phone contact that the Witness had given the victim when completing the loan terms, where the threat is that someone (the defendant) notifies if the victim's witness has debt but does not pay it. In this regard, it has been mentioned in the decision, it is clear that the fourth element, namely "Broadcasting the accusations so that it is known to the public" has been fulfilled.

The actions of the defendant in the case stated in the verdict that the author adopted are included in a criminal act in an unlawful act. Because the defendant's act of collecting using harsh words is an act that is prohibited and threatened with punishment as stated in Article 310 of the Criminal Code, it should be in making collections related to financial technology agreements, it must still be done properly and politely. In addition, the billing action carried out by the defendant has also violated the provisions contained in the Code of Conduct for Providing Responsible Information Technology-Based Lending and Borrowing Services issued by the Indonesian FinTech Association.

**3.2. The fintech has been registered or not and what are the criminal sanctions in terms of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions**

To find out whether a financial technology company is registered or not, you must first find out the differences in characteristics between legal and illegal online loans. The following are the characteristics differences between legal and illegal online loans:

**Table 1** Differences between Legal and Illegal Online Lending

| No | Subject       | Legal Online Lending           | Illegal Online Lending             |
|----|---------------|--------------------------------|------------------------------------|
| 1  | Status in OJK | Registered and Licensed in OJK | Not Registered and Licensed in OJK |

|   |                    |   |   |
|---|--------------------|---|---|
| 2 | Application        | Available in Playstore, with OJK logo.                      | Not available in Playstore, without OJK logo. Users install using APK     |
| 3 | Offering Method    | Legal Promotions and Advertisements                         | Using broadcast messages via WhatsApp, SMS                                |
| 4 | Credit Application | Paying attention to the completion of application documents | Easy-to-Apply   |
| 5 | Domicile           | Company address and contact numbers are obvious             | Company address and contact numbers are not obvious, and even not existed |

Financial technology companies that already have operational licenses and are registered with the Financial Services Authority must comply with the Financial Services Authority Regulation (POJK) No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services and the Code of Conduct for Responsible Information Technology-Based Lending and Borrowing Services issued by the Indonesian FinTech Association.

In connection with the case that the author raised that the financial technology company where Defendant is a company in the form of a Limited Liability Company is engaged in financial services. As a Limited Liability Company, it must be registered in the company register and have received an endorsement letter from the Ministry of Law and Human Rights which will later receive legal entity status based on the date of issuance of the Decree of the Minister of Law and Human Rights.[36]

However, PT. Vega Data Indonesia is a limited liability company engaged in financial services with no legal legality or no Company Registration Certificate (TDP) which is now called the Business Identification Number (NIB). This TDP or NIB is evidence of a business entity that has performed its obligations, namely registering a company as stated in Article 5 paragraph (1) of Law no. 3 of 1982 concerning Mandatory Company Registration which states that "every company must be registered in the company register". Registration of TDP (Company Registration Certificate) must be carried out by anyone who has a business entity or can be represented by a valid power of attorney. The importance of TDP (Company Registration Certificate) when the government conducts guidance, supervision, and direction as a healthy business. Every company is required to have a Company Registration Certificate (TDP) or NIB in the form of a legal entity,

cooperative, individual, PT, CV, Foundation, Firm, etc. as proof of the legality of the company.

Concerning criminal sanctions if a company intentionally or due to negligence does not register its company, it is regulated in Article 32 of Law no. 3 of 1982 concerning Mandatory Company Registration which states that: (1) Whoever according to this Law and or its implementing regulations is required to register his company in the Company Register who intentionally or because of his negligence does not fulfill his obligations, is threatened with a maximum imprisonment of 3 (three) months or a maximum fine of Rp. 3,000.000, - (three million rupiah), and (2) The crime as referred to in paragraph (1) of this article constitutes a crime.[37]

For criminal sanctions for PT. Vega Data Indonesia as a Limited Liability Company that commits negligence in the sense of not carrying out the obligation to register its company in the Company Register, should be subject to criminal sanctions according to Article 32 of Law no. 3 of 1982 concerning Compulsory Company Registration.

#### 4. CONCLUSION

In this concluding section, the author will explain the answer regarding Peer To Peer Lending (P2P Lending) Debt Collection in the Perspective of Criminal Law, and whether the Fintech problem is registered or not, and what are the criminal sanctions in terms of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions. Billing by the Defendant to the customer, by saying "it's up to me, your dog" over the phone and through a conversation (chat) "will kill me and I will be mutilated, if caught I will be hacked, tonight I challenge you and tell me to bring a gun to kill" is an act that violates the provisions of the applicable criminal law, namely Article 310 paragraph (1) of the Criminal Code and the provisions in Chapter III of the Regulations in Point C Application of Good Faith Section 5 Prohibition of the Use of Physical Violence and Mental Code of Conduct for Responsible Information Technology-Based Lending and Borrowing Services issued by the Indonesian FinTech Association Likewise, the company where the defendant works have also violated the legal provisions of the Financial Services Authority Regulation (POJK) No. 77/POJK.01/2016 regarding Information Technology-Based Lending and Borrowing Services and the Code of Conduct for Developers Information Technology-Based Lending and Borrowing Services in a Responsible manner issued by the Indonesian FinTech Association.

In connection with the debt collection activities carried out by the defendant, it is included in an unlawful act in the perspective of criminal law, because the action taken violates the legal provisions, namely Article 310 of the Criminal Code. The defendant's actions fulfill the elements of Article 310 paragraph (1) of the Criminal Code, namely:

1. On purpose
2. Attacking honor or reputation

3. Accusing of doing an act
4. Broadcast accusations for public knowledge

The act of collecting debts using harsh words is also an unlawful act from the perspective of criminal law. Acts against the law in the context of criminal law are regulated in the Criminal Code. In criminal law, the term *wederrechtelijk* is often used. An act is said to be against the law in criminal law if the act threatens and harms the public or public interest.

The actions of the defendant in the case listed in the decision that the author adopted are included in a criminal act in an unlawful act. Because the defendant's act of collecting using harsh words is an act that is prohibited and threatened with punishment as stated in Article 310 of the Criminal Code, it should be in making collections related to financial technology agreements, it must still be done properly and politely. In addition, the billing action carried out by the defendant has also violated the provisions contained in the Code of Conduct for Providing Responsible Information Technology-Based Lending and Borrowing Services issued by the Indonesian FinTech Association.

In relation to the Fintech registered or not and what the criminal sanctions are in terms of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. However, this penalty is not regulated. In the case that the author adopts, the company where the defendant works is a company in the form of a Limited Liability Company, but the company is not registered or can be said to be illegal. This has violated the legal provisions as regulated in Article 5 paragraph (1) of Law no. 3 of 1982 concerning the Compulsory Registration of Companies. PT. Vega Data Indonesia or PT. BARRACUDA FINTECH INDONESIA is a company in the form of a Limited Liability Company that is not registered and this company should be subject to sanctions as regulated in Article 32 of Law no. 3 of 1982 concerning Compulsory Company Registration.

The sanctions contained in Article 32 are: (1) Whoever according to this Law and or its implementing regulations is required to register his company in the Company Register who intentionally or because of his negligence does not fulfill his obligations, is threatened with a maximum imprisonment of 3 (three) months or a maximum fine of Rp. 3,000.000, - (three million rupiah), and (2) The crime as referred to in paragraph (1) of this article constitutes a crime.

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