



Digital Persecution in Financial Technology-based Online Loan Collection

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ABSTRACT. The presence of financial technology tools in the form of lending makes it easy for people to get loans. Unfortunately, the trend also brings new problems. Many debtors or borrowers cannot repay their loans on time, so online loan providers collect payments through debt collectors. Collecting payments through debt collectors also triggers new problems, that is, a collection method that violates decency norms to legal norms such as committing digital persecution against debtors or borrowers. Based on these problems, this study aims to examine the legal relationship between online lending providers and debt collectors and analyze accountability for digital persecution in online loan collection. To find out the answers to these problems, this research employs the normative law approach. In the research results, it was found that the legal relationship between online lending providers and debt collectors is a contractual legal relationship. Liability for acts of digital persecution by debt collectors as loan collectors is civil liability, that is to say, the perpetrator of persecution compensates for acts against the law, and criminal responsibility by imposing sanctions on debt collectors for violations of electronic information and transaction laws and imposing criminal sanctions on online loan providers based on the theory of vicarious liability.

Keywords: Liability, Digital Persecution, Online Loan

1 Introduction

In the current digital era, technology is experiencing very rapid development, which makes it usable in various aspects of people's lives. Technology helps increase efficiency. In order to satisfy the community's demands in the area of transactions, some transactions no longer have to be carried out face-to-face since they can be done online. Technology can also be utilized in the financial sector which then creates a new financial system called financial technology (hereinafter referred to as fintech). Fintech is a term for innovation in financial services where the main key lies in technology. It is an information technology-based financial service platform, such as big data, cloud computing, and distributed ledger systems [1]. There are several classifications of fintech, such as payment startups, lending, financial planning (personal finance), retail investment, crowdfunding, remittances, financial research, and others

Since 2016, the classification of fintech that is best known and whose utilization is most in demand by the public is lending. The high utilization of online loans in Indonesia is triggered by the large number of online loan service providers, ranging from legal to illegal. Based on data released by the Indonesian Financial Services Authority (Known as OJK), as of March 2023, the number of legal online loan providers in Indonesia has reached 102. In contrast, the number of illegal online loan providers shows higher data, where up to in July 2023 the OJK stopped the operations of 5,790 illegal online loan providers, whose operating licenses had been revoked or were not registered [5]. Online loan providers provide loans to people in various sectors. OJK recorded the value of fintech lending or online loans in Indonesia in January 2023 reached 18.73 trillion rupiahs.

Online loans have different characters from conventional loans. Conventional banks in channeling credit are guided by prudential banking principles in banking. The embodiment of the implementation of the principles in lending is reflected in the criteria called "The Five C's Principle of Credit Analysis". More on analysis with the 5C is described below.

- a) Character, refers to the character, habits of the debtor which has a great impact on the granting of credit.
- b) Capacity, which relates to the ability of a debtor to return the loan.
- c) Capital, which means seeing the amount of capital owned by the debtor or seeing how much capital the debtor has invested in his or her business, then the creditor calculates the value of the debtor's capital.
- d) Collateral, which means a guarantee that is used in case the debtor cannot repay the loan.
- e) Condition of Economy, which means looking at the state of the economy around the place of residence of the prospective debtor to predict future economic conditions.

The main purpose of assessing potential creditors through 5C analysis is to ascertain whether the debtor is able to pay the creditor that will be issued thereby reducing the risk of non-performing loans.

In online lending, lending does not apply the 5C analysis. Hence, lending online is faster and easier because it only requires easy terms such as an ID card, telephone number and photo of the prospective borrower and does not require collateral, which is usually used in case the debtor is unable to repay their loan. The ease of meeting such necessary requirements has led to the large number of non-performing online loans. This condition is evident from statistical data on online loans from the OJK for the period May 2023. It was recorded that non-performing loans (delinquent for 30-90 days) amounted to 3.4 trillion rupiahs from individuals, 306 billion rupiahs from business entities, and bad loans (those that are overdue for more than 90 days) reached 1.7 trillion rupiahs from individuals and 370 billion rupiahs from business entities.

The high public interest in using online loans in various sectors is the focus of the government's attention. Therefore, to protect the public from the risk of various problems arising from online loans, in 2016 OJK the financial services supervisory institution in Indonesia issued the Regulation of the Financial Services Authority of the

Republic of Indonesia Number 77/POJK.01/2016 concerning Information Technology-based Money Lending and Borrowing Services (known as POJK Number 77 of 2016). However, the provisions in the regulation have not been able to accommodate all the problems that arise as a result of online loans. Therefore, the regulation was then replaced with the Regulation of the Financial Services Authority of the Republic of Indonesia Number 10/Pojk.05/2022 concerning Information Technology-based Joint Funding Services (known as POJK Number 10 of 2022). In this regulation, arrangements regarding online loan collection procedures have been added, because it is not regulated in POJK Number 77 of 2016.

In Article 102 subsection (1) of POJK Number 10 of 2022, debt collection has been regulated. Therein, it is determined that if the debtor defaults, the online loan provider shall be required to collect debtors and the collection shall be carried out by issuing a written warning within the time frame specified in the contract. Article 103 subsection (1) stipulates that online loan providers are permitted to cooperate with other parties to perform debt collection functions against debtors. Article 103 subsection (4) stipulates that online loan providers are responsible for actions taken by third parties. In accordance with Article 105 of POJK Number 10 of 2022, providers that break these requirements may face administrative consequences.

In practice, cooperation with other parties in collecting online loans raises various problems. One of the most common occurrences is the act of collecting debts carried out by debt collectors that violate decency norms and even violate legal norms. Unfortunately, the POJK only regulates the administrative sanctions against online loan providers who commit violations. In fact, third parties may commit acts against the law that harm debtors to committing crimes such as committing digital persecution. Based on these facts, the present research examines issues regarding liability for digital persecution in collecting fintech-based online loans and sanctions against perpetrators of digital persecution in collecting fintech-based online loans.

2 Methods

This study is a normative legal study. Research on written laws or other legal documents is known as normative legal research, sometimes known as doctrinal legal study [9]. There are two types of legal materials used—primary and secondary legal material. Primary legal materials are legal materials that are authoritative, meaning they have authority, and secondary legal materials are legal materials that are closely related to primary legal materials and provide an explanation of primary legal materials. The documentation approach was used to gather these legal resources, which entails seeking for information on issues or variables in the form of notes, transcripts, books, laws, and regulations [12]. This research is descriptive in nature, that is to say, in detail it describes and finds out legal facts associated with the problem under study.

3 Result and Discussion

3.1 Legal Relationship between Online Loan Providers and Third Parties Performing Loan Collection Functions

Implementing technology-based financial services in the form of online lending not only creates legal relationship between online loan providers and users of funds or borrowers, but also creates legal relationship with other related parties. Soeroso defines legal relationship as relationship between two or more legal subjects, which consists of bond between people and people, between people and society or between one community and another. Consequently, this connection gives birth to both the rights and duties of one party and those of the other party [13]. Between individuals, between individuals and legal entities, and between legal entities, a legal connection between legal subjects can be created. The legal relationship between the parties can be formed based on law and based on an agreement, or what is known as a contractual relationship.

POJK Number 10 of 2022 stipulates that in performing their work, financial service providers are permitted to cooperate with other parties. One of the activities in organizing online loans that can be carried out in cooperation with other parties is collecting loans from recipients of funds who are in default. This is regulated in Article 103 of the POJK Number 10 of 2022, which determines the following matters:

- (1) The provider may cooperate with other parties to perform the collection function from the Fund Recipients as referred to in Article 102 subsection (1).
- (2) The provider is required to enter into cooperation with other parties as referred to in subsection (1) in the form of a written agreement.
- (3) Cooperation with other parties as referred to in subsection (1) must comply with the following terms and conditions:
 - a. The other party is a legal entity;
 - b. The other party has a permit from the competent authority;
 - c. The other party possesses human resources who have obtained certification in the field of debt collection from a professional certification body registered with the Financial Services Authority; and
 - d. the other party is not an affiliate of the Fund Organizer or Provider.

Based on the provisions of the article, the legal relationship formed between the online loan provider and the loan collection service provider, also known as the debt collector, is a legal relationship born from an agreement. Only if the terms of the agreement meet the legal standards outlined in Article 1320 of the Indonesian Civil Code will the agreement between the online loan provider and the loan collection service provider be legally enforceable. The agreement between those who bind themselves, the capacity to enter into an agreement, a particular issue, and a legal basis are among the requirements for the legality of the agreement listed in the article. Referring to the provisions of Article 103 subsection (3) of POJK Number 10 of 2020, online loan providers are only permitted to cooperate with other parties in the form of legal entities. If these provisions are violated, the agreement made violates the provisions of laws and regulations so that it does not meet the requirements for a valid

agreement. The contractual legal relationship between the online loan provider and the party providing loan collection services serves as the basis for determining which party is liable for any impacts arising from online loan collection by the loan collection service provider or debt collector.

3.2 Liability for Digital Persecution in Financial Technology-based Loan Collection

Online loans are a form of disruption in the financial sector. The presence of fintech-based online loan providers makes it easy for the public to obtain loans in a fast time. Unfortunately, this convenience not only brings positive impacts but also negative impacts. It makes it easier for people to get loans without an analysis on their ability to pay and the allocation of the funds to be borrowed. As a result, online loans received by the public are widely used for consumptive things such as buying a new mobile phone, traveling, buying clothes and buying concert tickets. Funds used for consumptive matters are used up immediately, so they do not generate profits that can be used to repay online loans that have been obtained. In addition, online loans have interest rates that tend to be higher, non-transparent administrative costs, and installment tenors that are shorter than that of conventional loans. This is a factor causing the high number of non-performing online loans.

Online loans are given without collateral so that the online loan provider does not have assets that can be used as a substitute for payment if the debtor does not pay. The only way to get payment for the debtor's debt is to remind them continuously until the debtor pays it. Debt collection in the online lending system is specifically regulated in POJK Number 10 of 2022. The article stipulates that:

- (1) In the event that the Fund Recipient is in default, according to the timeframe in the Fund Granting Agreement between the Fund Giver and the Fund Recipient, the Provider must bill the concerned Fund Recipient at the very least by sending a warning letter.
- (2) The warning letter referred to in subsection (1) shall contain at least the following information:
 - a. The number of days of delay in payment of obligations;
 - b. Final position of total unpaid Funds or principal outstanding;
 - c. Economic benefits of Funding; and
 - d. Fines owed

Based on the provisions of the article, collection against recipients of online loan funds is not only the right of online loan providers but also an obligation. The collection cannot be done arbitrarily but must comply with the procedures stipulated in POJK Number 10 of 2022. Online loan providers in collecting funds from recipients or debtors can cooperate with other parties. Implementation of such cooperation must be made in the form of a written agreement.

Collection of online loans by third parties, or known as debt collectors, is not always carried out in compliance with applicable legal regulations. In some cases, debt collectors collect loans by taking actions that harm the debtor and even committing

crimes. There are many instances of internet loan collection that aren't in accordance with the law at the time, as described below.

1. There was an online loan collector with the initials RM who collected loans by committing an act of defamation to an act of extortion against a debtor with the initials MV. The debt collector accused the debtor of committing online prostitution when collecting debts.
2. There was an online debt collector who sent insulting blast messages through all the contact numbers of a debtor with the initials G. In addition, the debtor's personal data in the form of photos was also accessed and used without permission by the collector. The debt collector's actions caused G to resign from her job and close the business she had established with her partner due to the defamation she experienced.

Of the two cases explained above, the acts of debt collectors are acts of digital persecution, that is to say, acts of arbitrary debt collection by threatening and intimidating debtors without considering justice and humanity. These acts caused material and immaterial losses to the debtor. Not only that, these debt collectors also threatened and disseminated personal data, acts which are a crime. Actions always give rise to different legal liabilities—civil liability and criminal liability.

3.3 Civil Liability for Digital Persecution in Online Loan Collection

Liabilities in civil law can be born from laws and based on agreements. In the case of digital persecution that harms the debtor in online loan collection, it involves two parties, that is to say, the online loan provider and the debt collector as the third party who does the billing. Article 104 subsection (1) POJK Number 10 of 2022 disposes obligations for online loan providers to ensure that debt collection is carried out in compliance with the norms that apply in society and the provisions of laws and regulations. Based on these provisions, in the event that debt collection is carried out by a third party, the provider has an obligation to ensure that there are no violations of law in the online loan collection process. As previously explained, debt collectors are given the task of collecting debts by online loan providers based on agreements. Assigning the task of collection debts to debt collectors does not eliminate the responsibility of online loan providers. This is regulated in Article 103 subsection (4) POJK Number 10 of 2022 which stipulates that: "The Provider is obliged to be fully liable for all impacts arising from cooperation with other parties as referred to in subsection (1)."

Based on the provisions of the article, if the debt collector as a third party who collects debts commits actions that cause material or non-material losses to the debtor or user of funds, the online loan provider may be held liable for the loss. The liability is a liability based on the principle of vicarious liability, that is to say, the liability according to law for someone for wrongdoing committed by another person based on the existence of work relationships. In short, this liability model is often called vicarious liability.

Debtors who experience losses due to debt collectors' actions in collecting loans can sue online loan providers on the basis of unlawful acts. The liability for compen-

sation based on unlawful acts is regulated in Article 1365 of the Indonesian Civil Code (hereinafter referred to as the Civil Code), which stipulates that: “Any unlawful act that results in a loss to another person shall oblige the person, who because of his or her misconduct caused the loss, to compensate for the loss.”

The acts of the debt collectors who collected debts to the point of causing harm as experienced by debtors RM and G as described above have fulfilled the elements of Article 1365 of the Civil Code as explained below.

- a. There is an act. The debt collector acts collecting debts by intimidating, accessing the debtor’s personal and contact data and sending insulting messages to all the debtor’s contact numbers.
- b. There is an element against the law. The acts of the collectors referred in (a) are contrary to the provisions of Article 104 subsection (1) of POJK Number 10 of 2022, which stipulates that debt collection shall be carried out in compliance with the norms that apply in society and the provisions of laws and regulations.
- c. There is a loss suffered. Debtors as a victim experienced material and immaterial losses to the point where they lost their jobs, closed their businesses and had their good names tarnished as a result of debt collection by sending messages to each of the debtor’s contact numbers.
- d. There is a causal relationship between misconducts and losses, between the debt collector’s misconducts and the debtor’s losses there is a causal relationship, that is, intimidation and access to personal information which caused losses for the debtor.

3.4 Criminal Liability for Digital Persecution in Online Loan Collection

In criminal law, the concept of liability is a central concept known as the lesson for mistakes or what is known in Latin as *mens rea*. In order to be punished, a person must fulfill two conditions—the existence of an outwardly prohibited/criminal act (*actus reus*) and an evil/disgraceful inner attitude (*mens rea*) [19]. Criminal liability is defined as a continuation of objective reproach that exists in a criminal act and subjectively fulfills the requirements to be punished because of the misconduct committed. Criminal liability is a person’s liability for a crime that has been committed. Misconduct is the underlying ground to be able to convict someone because without misconducts criminal liability never exists. A person can be said to have committed a misconduct if at the time of committing the criminal act, seen from the point of view of society the person committed an act that is harmful to society while the person is actually able to recognize the purpose of the act and therefore can or is even able to avoid such an act.

In determining criminal liability for acts of digital persecution in the form of threats, intimidation, and access to personal information without permission by debt collectors in collecting online loans, the existence of mistake or *mens rea* in these actions must be first ensured. The act of digital persecution in online loan collection fulfills the element of mistake because there is an evil or despicable mental attitude from the act. In online loan collection, the debt collector committed an act that is detrimental to society despite being actually able to avoid the act. As previously ex-

plained, in order for a person to be convicted, there are two conditions that must be met, namely the existence of an outwardly prohibited/criminal act (*actus reus*) and an evil/disgraceful inner attitude (*mens rea*). Thus, in order for the act to be criminally held liable, in addition to fulfilling the *mens rea* requirement, the act must first be regulated in statutory regulations. This is in accordance with the basic principle of criminal law, that is, the principle of legality.

The act of threatening when collecting online loans constitutes a criminal act that is prohibited based on the guidelines of Article 29 of Law Number 11 of 2008 concerning Electronic Information and Transactions, as revised by Law Number 19 of 2016 concerning an Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions. The article specifies that: "Any person who intentionally and without authorization provides electronic records or information containing threats of violence or ominous content directed at them personally."

Violation of the provisions of Article 29 is punishable by a maximum imprisonment of 4 (four) years and/or a maximum fine of 750.000.000.00 Rupiah as stipulated in Article 45 of the Indonesian Law on Electronic Information and Transactions.

In addition to the prohibition against making threats, Article 27 subsection (3) of the Law on Electronic Information and Transactions also regulates the prohibition against the dissemination of electronic information without rights. The article reads: "Anyone who willfully and without authorization distributes, transmits, makes accessible, or otherwise makes electronic information and records containing insulting or defamatory content available."

Violation of the provisions of the Article 27 subsection (3) is punishable by a maximum imprisonment of 4 (four) years and/or a maximum fine of 750.000.000.00 Rupiah as stipulated in Article 45B subsection (3) of the Indonesian Law on Electronic Information and Transactions.

Based on these provisions, the debt collector's actions in the form of threatening and dissemination of electronic information containing insults and defamation of the debtor in online loan collection constitute a violation of the provisions of Article 27 subsection (3) and 29 of the Law of Electronic Information and Transactions. Thus, the debt collectors committing prohibited acts/criminal acts (*actus reus*) violate the Law of Electronic Information and Transactions and are proven to have evil/despicable mental attitudes (*mens rea*) by committing digital persecution of debtors, and therefore, can criminally held liable.

Liability for the criminal act of threatening and disseminating electronic information containing insults and defamation of the debtor, apart from being directly accounted for by the perpetrator, can also be accounted for by the online loan provider. This is based on the provisions of Article 103 subsection (4), which stipulates that the provider shall be fully liable for all impacts arising from cooperation with other parties. The criminal act committed by the debt collector against the debtor or user of funds is an impact arising from the cooperation agreement to perform the collection function made between the online loan provider and the debt collector.

In the development of the criminal liability system, there is a theory of vicarious liability which can be used as the basis for the emergence of liability of the online loan provider as a corporation for any criminal acts committed by debt collectors. Vicari-

ous liability by Henry Black is defined as a substitute liability, that is to say, indirect legal liability, the liability of the employer for the actions of workers or the liability of the principal for the actions of agents in a contract [19]. In vicarious liability, *mens rea* is the main requirement that must be met to convict a person who commits a criminal act. In other words, it must be proven first that a person has really made a mistake so that person shall be punished for that mistake [19]. The illegal conduct must also still fall within the scope of the other person's job and there must be a working relationship between the offender and the person who will be held accountable. This is known as the principle of delegation. If the theory of vicarious liability is associated with the criminal act committed by the debt collector mentioned in the previous explanation, the online loan provider delegates the function of collecting funds or online loans to another party (debt collector). This delegation is done in following the cooperation agreement as regulated in Article 103 subsection (1). The existence of this work delegation signifies that any criminal act committed by the debt collector is still within the scope of his or her work to collect online loans.

4 Conclusion

1. Administration of technology-based financial services in the form of online lending may utilize third parties to carry out the function of collecting funds against borrowers. Delegation of collection functions to other parties (debt collectors) is based on a cooperation agreement. Thus, there is a contractual legal relationship formed between online loan providers and debt collectors.
2. The act of digital persecution, an act of arbitrary collection by threatening and intimidating debtors without considering a sense of justice and humanity in online loan collection can be accounted for civilly and criminally. Civilly, based on the provisions of Article 103 subsection (4), all losses suffered by the debtor or user of funds are at the liability of the online loan provider company. In addition, the act of digital persecution committed by debt collectors is a criminal act which is prohibited in the Indonesian law on electronic information and transactions. Therefore, debt collectors committing the act can be subject to criminal sanctions as specified in the said law. On the other hand, referring to the theory of vicarious liability in the development of the criminal liability system, online loan providers as a corporation can be held liable for any criminal acts committed by debt collectors as long as the criminal acts are still within the scope of the debtors' duties to collect online loans.

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