

CRIMINAL LIABILITY FOR DEBT COLLECTOR ONLINE LOANS WHO THREATEN CUSTOMERS

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DOI : <https://doi.org/10.29313/shjih.v20i1.9640>

Submitted : March 2022

Accepted : September 2022

Published : November 2022

ABSTRACT

The ease of a series of processes offered online that lead to criminal acts by debt collectors with threats to customers. The purpose of the study is to determine the criminal liability of debt collectors online who collect with threats. The research method is normative juridical and the nature of the research is descriptive analysis. The results of the study are that debt collectors who commit criminal acts of threatening customers can be charged with the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. That criminal liability imposed on debt collectors who threaten customers can have a deterrent effect.

Keywords: *Debt Collector; Loan; Online; Threat.*

A. INTRODUCTION

The development of information technology in the industrial era 4.0 and social 5.0 has significantly influenced the pattern of life in society, which can be done only by using information technology-based communication tools, including the provision of public service applications.¹ One application currently being spread is an online loan application, such as a card wallet application under the auspices of PT. Vega Data Indonesia. In other words, it can be said that with the Industrial Revolution 4.0 and Social 5.0 in this global and digital era, the emergence of online loan applications has fundamentally had a significant influence on easy and fast access to financial transactions. However, it is necessary to realize that the fast process with all the conveniences offered by the online loan application, on the other hand, can lead to various types/forms of criminal acts. One of the most common crimes about online loans is the collection of debts to customers by loan application providers using debt collector services accompanied by extortion, violence, and threats to customers. If examined further, the criminal acts of extortion, violence, and threats to customers committed by debt collectors can be in the form of various actions that not only harm the borrower concerned but, more than that, have disturbed the public in general.

Concerning the conditions in the current digital era, Barda Nawawi Arief also revealed that technology has an impact on changes in people's behavior patterns and is also used as an effective means of committing acts against the law by reviewing the Background Paper of the Workshop on Measures to Combat Computerrelated Crime at the XI UN Congress which stated that New technology that is global in the field of communication and information provides a dark shadow because it allows new forms of opportunity for criminal activity, even new forms of crime, including the emergence of various types of high tech crime and cybercrime so that it is stated that cybercrime is the most recent type of crime and cybercrime is part

¹ Wahyuni, "Aspek Hukum Terhadap Transaksi Pinjaman Online," *Tadayun: Jurnal Hukum Ekonomi Syariah* 2, no. 1 (2021): 25–40.

of the seamy side of the Information Society (cybercrime is part of the worst side of the Information Society).²

In addition, there are also several risks from online loans, including the following: first, the total bill at the end of the loan is soaring due to interest rates from day to day. Second, the leaking of personal data of borrowing customers when applying for online loans. Third, debt collectors use debtors' electronic data when collecting loans. Fourth, debtors or borrowing customers are at risk of being exposed to cyberbullying because the financial situation of borrowing customers may be disseminated to other parties (usually parties who are in contact with the debtor's cellphone), and many other risks result in many losses and give birth to many victims.³

The author agrees with the opinion of Handayani and Asmara in their writing entitled "Criminal Liability of Debt Collectors Who Perform Crimes of Deprivation in Problem Loans," which states that the use of debt collectors in consumer finance companies is not prohibited as long as established procedures carry out the use of debt collectors. Established and does not violate existing norms and rules.⁴ However, in practice, debt collectors often collect debts in ways that violate the law: coercion, violence, and even threats that indicate or can qualify as a criminal act.

The legal basis regarding the existence of debt collectors is protected by regulations, namely the Civil Code Articles 1792-1819, which states that with a power of attorney, debt collectors can represent creditors to collect debts from debtors. However, in practice, there are often violations of the law, which, of

² Barda Nawawi Arief, *Tindak Pidana Mayantara: Perkembangan Kajian Cyber Crime Di Indonesia* (Jakarta: Raja Grafindo Persada, 2007); Wening Novridasati and Aliyih Prakarsa, "Pertanggungjawaban Pidana *Desk Collector Fintech Ilegal* Serta Perlindungan Terhadap Korban," *Jurnal Litigasi* 21, no. 2 (2020): 238–265.

³ Dina Aprilia, "Pertanggungjawaban Pidana Penyelenggara Aplikasi Virtual Loan Dalam Penagihan Pinjaman Online Dengan Ancaman, Asusila Dan Pornografi," *Jurist-Diction* 4, no. 6 (2021): 2301.

⁴ Prika Handayani dan Teddy Asmara, "Pertanggungjawaban Pidana Debt Collector Yang Melakukan Tindak Pidana Perampasan Dalam Kredit Bermasalah," *Hukum Responsif* 10, no. 2 (2019): 57.

course, can be held criminally responsible.⁵ Therefore, OJK, in this case, which supervises online loans, should formulate and review debt collectors' regulations to provide legal protection for consumers as borrowers and investors as lenders.⁶

One example of a threat case carried out by debt collectors or debt collectors against customers can be found in a criminal case that occurred at the North Jakarta District Court, precisely in District Court Decision Number 438/Pid.Sus/2020/PN Jkt.Utr. In this case, the defendant, Dede Supardi, was found guilty of committing a crime as stipulated in Article 45 paragraph (4) Jo. Article 27 paragraph (4) of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, namely "deliberately and without rights distributing and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents containing extortion and/or threats." In this case, the Panel of Judges sentenced the defendant Dede Supardi to imprisonment for 1 (one) year and a fine of Rp. 70,000,000.00 (seventy million rupiahs) provided that if the fine was not paid, it was replaced with imprisonment for 2 (two) months.

The criminal case committed by the debt collection service shows the urgent need to strengthen the legal basis related to customer protection in the financial sector. Furthermore, it is time for Indonesia to have a law that comprehensively regulates debt collection accompanied by the threat of sanctions that can cause a deterrent effect for debt collectors who commit criminal acts in collecting debt to consumers. The goal is to protect customers

⁵ Vera Rimbawani Sushanty, "Tinjauan Yuridis Terhadap Debt Collector Dan Leasing Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019," *Gorontalo Law Review* 3, no. 1 (2020): 59.

⁶ G A Firanda, P Prananingtyas, and S N Lestari, "Nagih Utang (Debt Collector) Pinjaman Online Berbasis Financial Technology," *Diponegoro Law Journal* 8, no. 4 (2019): 2523–2538.

from arbitrary acts committed by debt collectors. The legal basis is necessary because the current Law Number 8 of 1999 concerning Consumer Protection does not regulate debt collection activities carried out by debt collectors.⁷

Thus, the absence of regulations in the form of special laws that can comprehensively manage the implementation of debt collection carried out by debt collectors in Indonesia at this time has led to rampant debt collection by debt collectors accompanied by threats, violence, or other actions that can lead to debt collection—indicated as a crime. In addition, no institution houses debt collectors that can be used to implement training and character building for debt collection services to comply with established regulations.

The main problem that will be discussed in this legal research is the criminal liability of online loan debt collectors who collect debts to customers in ways that violate the law by coercion, violence, and even threats that indicate or can be qualified. as a crime. Thus, the purpose of writing this law is to determine the criminal liability imposed on debt collectors who carry out their duties in ways that are against the law (committing various types of criminal acts).

B. METHOD

This research uses a normative juridical approach by examining library materials or secondary data as a basis for research by searching for regulations and literature related to the problems studied.⁸ This research is descriptive-analytical by describing the applicable laws and regulations associated with legal theories and the practice of implementing positive law concerning the problems studied. The data analysis used in this study is qualitative analysis, which is an analysis of data that does not use numbers, but provides descriptions in words of

⁷ Firganefi January Prakoso, “Pertanggungjawaban Pidana Oleh Debt Collector Yang Melakukan Tindak Pidana Dalam Menagih Kredit Bermasalah,” *Poenale* 5, no. 2 (2017).

⁸ Soerjono Soekanto dan Sri Mamudja, *Penelitian Hukum Normatif* (Jakarta: Rajawali Pers, 2001).

the findings and, therefore, in this case, prioritizes the quality of the data and not quantity.⁹

C. RESULT OR DISCUSSION

1. Basic Concepts/Principles in an Online Loan

Loan activities have become commonplace in people's lives. However, among people, lending in the form of money is an activity that is more needed than goods because the loan activity can help a person in the process of growth and development and support the welfare of his life. Therefore, there are several ways to get money, one of which is by taking a loan.

In the Civil Code, a loan agreement can be identified as a borrowing agreement for goods in the form of money with the stipulation that the borrower will replace it with the same value as when he borrowed.¹⁰ In this case, the provision of loans is also not accessible to those who want to borrow money but must be with some assessments to avoid unwanted risks in the future. According to Kasmir, someone who deserves a loan could be assessed by five criteria as follows:¹¹

- a. character or the nature of a person;
- b. capacity is an analysis to determine the customer's ability to pay;
- c. capital is used to see the use of capital;
- d. condition assessment of the condition or prospect of the business sector being financed should have good prospects so that the probability of the loan having problems is relatively small; and
- e. collateral or a guarantee.

⁹ Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi* (Jakarta: PT. Raja Grafindo Persada, 2013).

¹⁰ R. Subekti, *Aneka Perjanjian* (Bandung: PT. Citra Aditya Bakti, 1995).

¹¹ Kasmir, *Bank Dan Lembaga Keuangan Lainnya* (Jakarta: PT. Raja Grafindo Persada, 2008).

In the modern era, the internet is needed in daily activities both in the economic and financial sectors. The many innovations in the current era can produce everything digitally based, including money loans. In order to face this digital era, many other financial service institutions and companies have updated their service system to become more modern by utilizing digital facilities. It is not only in the banking sector; most companies have also innovated and established themselves in the online loan business. In this case, online loans are included in the Non-Bank Financial Industry (IKNB) sector.¹²

Financial technology, abbreviated as fintech, is an innovation in financial institutions. The fintech concept here is an adjustment to the advancement of digital technology in the financial sector. Fintech is expected to provide facilities in daily financial transactions to make it safer and more practical, so it can be concluded that fintech is a service change in the financial sector, where to reach consumers, they must use technology as an intermediary.¹³ One form of fintech is peer-to-peer lending, an information technology-based lending and borrowing service between recipients and lenders, also known as online cooperation funding and online loans. Online loans through peer-to-peer lending provide convenience to people who need funds with a small nominal so they can obtain loans without the need to apply for credit to the bank, where it is felt to be more efficient and following the needs of the community because the process requirements are straightforward and without the need for collateral. This peer-to-peer lending service can be accessed by the public through the application quickly, anytime, and anywhere.¹⁴

Dina Aprilia, in her research entitled "Criminal Liability of Virtual Loan Application Operators in Online Loan Collection With Threats, Immorality,

¹² Firanda, Prananingtyas, and Lestari, "Nagih Utang (Debt Collector) Pinjaman Online Berbasis Financial Technology."

¹³ Andi Ahmad Faisal et al., "Cinematology: Journal Anthology of Film and Television Studies Attack On Pinjol: Siapa Yang Salah Antara Pinjol Dan Debitur" 2, no. 1 (2022): 2022.

¹⁴ Dewa Ayu Trisna Dewi and Ni Ketut Supasti Darmawan, "Perlindungan Hukum Bagi Pengguna Pinjaman Online Terkait Bunga Pinjaman Dan Hak-Hak Pribadi Pengguna," *Acta Comitas* 6, no. 02 (2021): 259.

and Pornography," revealed that the basic agreement of online loans is a loan-borrowing agreement, which is one form of agreement as regulated in Article 1754 BW, Article 1338 BW which regulates the principle of freedom of contract. With the principle of freedom of contract, it is permissible to have an online loan-borrowing agreement as long as it pays attention to the legal terms of the agreement under Article 1320 BW.¹⁵

2. Billing Concept By Online Loan Debt Collector

Online loans are a financial service facility currently in great demand among the public because the transactions are more effective and efficient for their users. The more interested borrowers, the more online loan service providers that offer various facilities, starting from an easy process, the requirements provided are not difficult for the borrower, loans without collateral, fast cash disbursement time, and other offers.

Regarding the definition of the billing concept, Dina Aprilia, in her legal writing, explains that billing is an act of informing, reminding and/or warning the collectible party that he or she has an obligation in the form of a debt that must be paid to the collecting party. Online loans are collected virtually, and the facilities used are electronic systems and internet networks. Because it is done by utilizing the internet network, the law that applies to billing in ways that indicate a criminal act is cyber law. Cyberlaw stipulates every aspect related to individuals or legal subjects who use and utilize internet technology, from online media to the cyber world.¹⁶

According to Andri Fauzi, before debt collectors are given collection tasks to certain creditors, usually, debt collectors have received an explanation of the rules or collection procedures that apply in the company concerned and then signed an agreement. Mutual Agreement regarding the cooperation as well as several statements. The statement is that the debt collector will act

¹⁵ Dina Aprilia, *Op.Cit.*, hlm. 2303.

¹⁶ *Ibid.*

under the applicable provisions and only carry out his work under what is mandated received. The statement includes a provision that he will be fully responsible for legal risks due to the implementation of the collection. The granting of Power of Attorney is perfectly justified according to civil law. Thus, granting a Power of Attorney by a finance company to a debt collector should not be hindered by anyone because it violates the civil rights of a particular legal subject, including protecting the rights of a specific legal subject. It is clear that deviation from the implementation of what is mandated in the Power of Attorney is the responsibility of the debt collector himself as the Proxy and cannot simply be inflicted on the Proxy solely because of the assumption that the incident occurred. The crime will not occur if the Power of Attorney is not given.¹⁷

In addition, Andri Fauzi also explained that the debt collector agreement does not recognize the term debt collector, but withdrawals must be made under the Fiduciary Law. So, the company can use a fiduciary if it can be withdrawn. The actions of financial institutions or banks that use the services of debt collectors are tantamount to maintaining thuggery. So even in business, the act of thuggery is not justified. If it continues to be used, the company must revoke its license.¹⁸

However, at this time, most loan companies more often use the services of debt collectors due to the high costs that must be incurred when loan companies want to choose civil law action. With the high cost of court proceedings compared to the total arrears of customers, loan companies prefer to use the services of debt collectors so that loan companies do not need to incur high costs to force customers to pay their debts. Therefore, because the court process is considered too procedural, complicated, and expensive, triggers loan companies prefer to use shortcuts by using the services of outside

¹⁷ Andri Fauzi Sinurat, "Peran Polda DIY Dalam Menanggulangi Penganiayaan Yang Dilakukan Oleh Debt Collector" (2017).

¹⁸ *Ibid.*

parties as debt collectors.¹⁹ According to the results of legal research by Dina Aprilia, a debt collector is a person who sells services to collect the debts of a person or institution that rents their services using smartphones, computers, and data.²⁰

We often hear of debt collection cases against customers by borrowing companies using debt collector services in collecting debts from customers. Furthermore, it is not uncommon for debt collectors to do so by using threats and violence, which can cause losses for customers billed for their debts. In practice, debt collectors are expected to collect debts from customers efficiently, quickly, and through non-bureaucratic procedures.²¹ However, in current practice, debt collectors rarely act under applicable norms. However, most of them violate legal provisions such as intimidation, threats, and physical and psychological violence.

Therefore, the author agrees with Adinda Hardi and I Ketut Rai Setiabudhi. They revealed that debt collection is not allowed to use physical or verbal violence; it is recommended through communication and can be done continuously so that debtors or borrowers can find out if their debt is past due. The billing system has been set from 08.00 am to 8.00 pm. Even though the debtor is not at the place stated in the domicile, it can be sought elsewhere through an agreement where the debtor stays or works.²²

¹⁹ I Made Rommy Gustara dan I Gusti Ketut Ariawan, "Penggunaan Jasa Debt Collector Dalam Menagih Kredit Bermasalah Oleh Bank," *Fakultas Hukum Universitas Udayana*, no. 11 (2012): 5-6.

²⁰ Dina Aprilia, *Op.Cit.*, hlm. 2304.

²¹ January Prakoso, *Loc.Cit.*

²² Md Adinda Hardi DS dan I Ketut Rai Setiabudhi, "Pertanggungjawaban Bank Dalam Tindak Pidana Yang Dilakukan Oleh Debt Collector Atas Perjanjian Kerjasama," *Jurnal Kertha Desa* 9, no. 1, hlm. 12-24.

Regarding debt collection, AFTECH (Indonesian Fintech Association) and AFPI (Indonesian Joint Funding Fintech Association), official associations recognized by the OJK, have issued a Code of Conduct for the Provision of Information Technology-Based Lending and Borrowing Services. The code of conduct contains the application of the principle of good faith. It explained that in facilitating offering and lending activities as a platform or marketplace, each operator must apply the principle of good faith by taking into account the interests of all parties involved and without degrading the dignity of users.²³

Furthermore, regarding the application of the principle of good faith, Firanda et al., in their research journal, said that when the principle of good faith is associated with debt collection, the organizer cannot arbitrarily collect the loan recipients who fail to pay. Before collection, the organizer must submit settlement and collection procedures to the lender and the loan recipient. The organizer should follow the procedure hierarchy if the lender and the loan recipient fail to pay. First, the organizer must give a warning letter that the payment has overdue. Suppose there is a warning letter that the loan recipient does not pay. In that case, the organizer requires a loan scheduling or restructuring—operators can perform remote billing by telephone, email, or conversation. Meanwhile, if it is needed to visit directly, the organizer, through the collection team, must first communicate with the loan recipient.²⁴

The main factor that causes criminal acts in billing by debt collectors is personal data accessed by online loan providers, by accessing personal data of prospective customers such as taking all the numbers in the contact list and photos in the customer's cellphone gallery. However, the letter of the director

²³ “Asosiasi *FinTech* Pendanaan Bersama Indonesia, Pedoman Perilaku Pemberian Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi Secara Bertanggung Jawab,” *last modified* 2019, <https://www.afpi.or.id/detailsnews/pedoman-perilaku>; Firanda, Prananingtyas, and Lestari, “Nagih Utang (*Debt Collector*) Pinjaman Online Berbasis *Financial Technology*.”

²⁴ Firanda, Prananingtyas, and Lestari, “Nagih Utang (*Debt Collector*) Pinjaman Online Berbasis *Financial Technology*.”

of fintech regulation, licensing, and supervision number: S-72/NB.213/2019 regarding the order to limit access to personal data on the cellphones of online loan users, stipulates that the companies are only allowed to access personal data in cameras, locations, and microphones.²⁵

With related reports regarding online loan crimes, many people have felt cheated by online loans. While it is not certain that in the case of online loans, creditors become victims, this happens because currently, most of the debtors have been negligent in making payments under the agreement at the beginning, which means the debtor has defaulted. After all, he has reneged on the agreement agreed. So that the debtor's actions are actions that do not keep their promises because they do not pay debts to creditors (lenders), which makes creditors suffer losses.²⁶ The relationship between creditors and debtors is a private law concept better known as default. The impact of this default makes creditors collect debts by threatening them via SMS, bringing debt collectors to the debtor's house, and defaming the debtor's good name. Thus, what initially only occurred was a default into a crime in online loan collection. Because the resolution of these problems is not always related to the settlement of private law, but it can also be through criminal law instruments.²⁷

In addition, with the imposition of high interest on debtors who are late in making payments, debtors are struggling to make debt payments. The struggle is real because the debtors cannot pay the higher interest rates daily. So debtors will always be chased by debt collectors who make debtors feel threatened and afraid of the threats of these debt collectors. Other

²⁵ Dina Aprilia, *Loc.Cit.*

²⁶ Moeljatno, *Asas-Asas Hukum Pidana* (Tanpa Kota: Rineka Cipta, 2008); Anggraini Dila Pitaloka, "Pertanggungjawaban Pidana Pelaku Pinjaman Online Yang Berimplikasi Tindak Pidana," *Jurist-Diction* 3, no. 5 (2020): 1600.

²⁷ Anggraini Dila Pitaloka, *Loc.Cit.*

consequences of online loans include selling kidneys to pay off debts, resigning from work; being fired from work; the emergence of shame; and committing suicide.²⁸

Although there are rules that aim to protect online loan service users, they have not been able to prevent violations of online loan service users. These violations have led to threats and terror against online loan service users who are negligent in making payments. The Universal Declaration of Human Rights (UDHR) stipulates that “no one may have arbitrarily interfered with his personal affairs, his family, his household or his correspondence and also not allowed to violate the honor and good name. Everyone has the right to legal protection against interference or violations.” The contents of the UDHR have also been revealed in the Human Rights Law.²⁹

In Indonesia's legal system, nothing in the legislation prohibits someone from becoming a debt collector. Even in terms of the agreement as regulated in Article 1792-1819 of the Civil Code, it stated that with a power of attorney, debt collector services could represent creditors to collect debts from debtors.³⁰ However, in reality, what happens in the field is that there are often various kinds of law violations that are finally resolved at the trial table. As for the crimes committed, such as threats and violence, both physical and psychological, they must be held criminally accountable.

3. The Concept of Fault and Criminal Liability

According to Sudarto, it is not enough to punish a person if they have committed an act against the law. Even though the act meets the formulation of the offense in the law and is not justified, it does not necessarily meet the requirements for a criminal imposition. In terms of punishment, there is still a need for conditions for imposing a crime, namely, the person who commits

²⁸ *Ibid.*

²⁹ Trisna Dewi dan Darmawan, *Loc.Cit.*

³⁰ January Prakoso, *Loc.Cit.*

the act has a fault or is guilty. In other words, a person must hold accountable for his actions.³¹

Sudarto indicates that the element of fault is crucial to impose a criminal on someone. Without fault, criminal liability will never exist. Therefore, in criminal law, the principle of "no crime without fault" is known, which is fundamental. The elements of fault in the broadest sense are as follows: 1). The existence of the ability to be responsible for the maker; it means that the maker's soul must be normal; 2). The mental relationship between the maker and his actions, which is either intentional (*dolus*) or negligence (*culpa*); these are called fault forms; and 3). There are no excuses that erase mistakes or no excuses.³²

According to Aswan, in his book entitled "Electronic Transaction-Based Fraud," a criminal act is an act that must meet the requirements or contain elements determined and described in detail by the provisions. So that if the act does not meet one of the elements or descriptions stipulated by legal provisions, then the act or action is not a criminal act. In contrast, Adinda Hardi and I Ketut Rai Setiabudhi, in their research, expressed the opinion that the principle meaning of this criminal law is "liability based on fault" and is known as "no crime without error" (culpability principle).³³ This specificity is associated with

³¹ Sudarto, *Hukum Pidana I* (Semarang: Yayasan Sudarto d/s Fakultas Hukum Universitas Diponegoro, 1990); Surti Sumarsono; Nugroho, Bastianto; Yustianti, "Pertanggungjawaban Pidana Atas Tindak Pidana Yang Dilakukan Oleh Debt Collector Dalam Penagihan Piutang Terhadap Debitur Bank," *Ilmu Hukum* 13, no. 1 (n.d.).

³² Dwidja Priyatno, *Kebijakan Legislatif Tentang Sistem Pertanggungjawaban Korporasi Di Indonesia* (Bandung: Utomo, 2004); Sumarsono; Nugroho, Bastianto; Yustianti, "Pertanggungjawaban Pidana Atas Tindak Pidana Yang Dilakukan Oleh *Debt Collector* Dalam Penagihan Piutang Terhadap Debitur Bank."

³³ Aswan, *Tindak Pidana Penipuan Berbasis Transaksi Elektronik* (Tanpa Kota: Guepedia, 2019).

the element of intentionality and with negligence.³⁴ Furthermore, Utrecht explained that a crime is a behavior against the law in which a maker (*dader*) is responsible for his behavior. There is an element of fault (*element van schuld*) in the sense of the word "responsible" (*strafbaarheid van de dader*).³⁵ The criminal law that applies in Indonesia, especially in the Criminal Code, which until now still applies, adheres to the monistic theory, which states that the nature of being against the law (*wederrechtelijkheid*) and fault (*schuld*) is an element of a criminal act (*strafbaarfeit*).³⁶

Agus Rusianto, in his book entitled "Criminal Acts & Criminal Liability Critical Review Through Consistency Between Principles, Theories, and Their Applications," concludes that criminal acts have elements. Firstly, an objective element in the form of contradiction. Second is the subjective element of fault. The fault itself is an element of criminal responsibility. This argument shows that criminal acts and criminal liability cannot be separated. Utrecht argues that fault is an element of criminal responsibility that embodies the principle of "no crime without fault." However, this fault is also an element of a criminal act. Therefore, the fulfillment of a criminal act also fulfills a criminal responsibility. Criminal law experts who follow the monistic theory argue that criminal responsibility arises from the fulfillment of the formulation of a criminal act consisting of the inner attitude of the maker and the nature of the unlawful act. Therefore, with the fulfillment of these elements, the maker has committed a crime and has criminal responsibility.³⁷

Criminal responsibility can be seen as part of implementing the judge's duties starting from examining and adjudicating to deciding cases. The rule of law in criminal liability determines the conditions that must be met in a person so that it is legal if sentenced to a criminal. Determining whether a person deserves to be reproached for his actions in the form of punishment. The

³⁴ Md Adinda Hardi DS dan I Ketut Rai Setiabudhi, *Loc. Cit.*

³⁵ Agus Rusianto, *Tindak Pidana & Pertanggungjawaban Pidana Tinjauan Kritis Melalui Konsistensi Antara Asas, Teori, Dan Penerapannya* (Jakarta: Kencana, 2016), hlm. 3

³⁶ Andi Zainal Abidin, *Hukum Pidana I* (Jakarta: Sinar Grafika, 2007).

³⁷ Agus Rusianto, *Loc. Cit.*

emphasis is on legitimizing law enforcement's actions to impose penalties on perpetrators of criminal acts and considering the balance between the level of the disgrace of a person for committing a crime and determining the severity of the punishment that is a consequence of the criminal act.³⁸ The provisions in criminal liability are a filter in criminal imposition, which can only be applied to those who have errors, and the punishment imposed is limited to those faults.³⁹

Concerning criminal acts committed by online loan debt collectors who threaten. The debt collector has fulfilled the element of fault contained in Article 27 paragraph (4) 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, in which the elements of criminal acts are:

- a) Everyone;
- b) Deliberately and without rights distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents; and
- c) Has extortion and/or threats as referred to in Article 27 paragraph (4).

So that the debt collector can be held accountable for his crime under Article 45, paragraph (4), which reads:

Any person who intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing extortion and/or threats as referred to in Article 27 paragraph (4) shall be subject to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

³⁸ Chairul Huda, *Dari "Tiada Pidana Tanpa Kesalahan" Menuju Kepada "Tiada Pertanggungjawaban Pidana Tanpa Kesalahan,"* Edisi Pert. (Jakarta: Kencana, 2006).

³⁹ *Ibid.*

4. Criminal Liability of Online Loan Debt Collectors Who Threaten Customers

Perpetrators of criminal acts are legal subjects who can be charged with criminal responsibility. Legal subjects that can be charged with criminal liability are in the form of individuals or corporations. Online loan providers can do their billing through employees in the collection division. If the debt collector, an employee, collects an online loan that is not under the collection SOP, which stipulates that collection cannot be done with threats, he can be responsible as an individual. The criminal act of threatening customers in online loan collection cannot be held accountable to the online loan application provider if the agreement is expressly regulated regarding billing and must be carried out under billing procedures. If there are collection actions contrary to the law, it is the debt collector's responsibility as a collector. A result of the threats and terrors carried out by debt collectors has caused fear, shame, and discomfort due to disseminating information to family, friends, and people who are known to be users of the online loan service.

Perpetrators of criminal acts are legal subjects who can be charged with criminal responsibility. Legal subjects that can be charged with criminal liability are individuals or corporations. Online loan providers can do their billing through employees in the collection division. The debt collector or an employee should collect an online loan under the collection SOP, which stipulates that collection should do without threats. If the debt collector or an employee makes the threats, he can be responsible as an individual. The criminal act of threatening customers in online loan collection cannot be held accountable to the online loan application provider if the agreement is expressly regulated that collection of debt must be carried out under billing procedures. If there are collection actions contrary to the procedures, it is the debt collector's responsibility as a collector.⁴⁰ A result of the threats and terrors carried out by debt collectors has caused fear, shame, and discomfort

⁴⁰ Dina Aprilia, *Op.Cit.*, hlm. 2311.

due to disseminating information to family, friends, and people who are known to be users of the online loan service.⁴¹

Sumarso argues that the existence of debt collectors still raises pros and cons because, until now, the best way has not been obtained for the disputing parties or between creditors and debtors. The proliferation of various business transactions involving parties such as companies and individuals means that regulations must also be prepared to avoid losses on one side. Bad loans are one of the determining factors and indicators of the performance of an online loan company. Therefore the presence of non-performing loans will demand a fast, precise, and accurate settlement. However, sometimes, the temporary measure does not pay attention to the existing legal rules, one of which is the use of debt collector services which incidentally is a settlement method outside the law. It is controversial because the way debt collectors work does not have a Standard Operational Procedure (SOP) and does not yet have a robust legal basis.⁴²

In Indonesia, there is no specific regulation that regulates debt collectors. In carrying out their work, the debt collectors have a power of attorney from creditors to collect debts from debtors but still comply with collection ethics as stated in Bank Indonesia Circular Letter Number 11/10/DASP regarding the Implementation Card-Based Payment Instrument. The collection activities must be carried out in a way that is not against the law. In contrast, if a debt collector commits an act that violates these rules, then his actions can be accounted for through criminal law.⁴³

⁴¹ Egi Anggriawan, "Perlindungan Hukum Terhadap Debitur Yang Diancam Oleh Kreditur Dalam Perjanjian Hutang Piutang Secara Online" 3, no. 530 (2020): 76.

⁴² Sumarsono; Nugroho, Bastianto; Yustianti, "Pertanggungjawaban Pidana Atas Tindak Pidana Yang Dilakukan Oleh Debt Collector Dalam Penagihan Piutang Terhadap Debitur Bank."

⁴³ Novridasati and Prakarsa, "Pertanggungjawaban Pidana Desk Collector Fintech Ilegal Serta Perlindungan Terhadap Korban."

Extortion and threats in the Criminal Code (KUHP) are regulated in Chapter XXIII, Articles 368 to 371 of the Criminal Code. In the Criminal Code, extortion is defined as an act that uses violence, threats, or even defamation of someone to benefit themselves or others so that that person gives his property or also to write off debts. The crime of extortion is a complaint offense which means that a complaint must be made to the police by a person who feels aggrieved. If there is no complaint, the police cannot act against the perpetrators.⁴⁴

Extortion is an act to take as much profit as possible from other people by asking for money and so on threats. At the same time, threatening is stating the intention to do something that can harm others. The crime of extortion and threats harms society, so every act of extortion and threats, either directly or through social media, can be punished under the laws in Indonesia.⁴⁵

Debt collectors who commit acts against the law to customers in the collection process can be subject to criminal liability in accordance with the actions committed by the debt collector. So, in that case, the customer can report the debt collector concerned to the police. Because, in this case, the police are one of the spearheads of law enforcement in Indonesia, they must take appropriate steps to overcome community problems that have always been inherent in everyday life.⁴⁶

D. CONCLUSION

The collection method carried out by online loan debt collectors accompanied by violence and threats has fulfilled the elements of a criminal act as stipulated in the provisions of Article 27 paragraph (4) of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law

⁴⁴ Zainab Ompu Jainah et al., "Pertanggungjawaban Pidana Pelaku Turut Serta Melakukan Pemerasan Dengan Ancaman Berdasarkan Putusan Nomor 672/PID.B/2020/PN.Tjk," *Wajah Hukum* 5, no. 1 (2021): 111.

⁴⁵ *Ibid.*

⁴⁶ Sinurat, "Peran Polda DIY Dalam Menanggulangi Penganiayaan Yang Dilakukan Oleh Debt Collector."

Number 11 of 2008 regarding Information and Electronic Transactions. Criminal liability can impose on online loan debt collectors who make such threats under Article 45 paragraph (4) 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 provide a deterrent effect. Therefore, considering that the criminal act of threatening is a complaint offense, the customer can report the debt collector who committed a criminal act in the collection.

Suggestions that the author can convey include the need for establishing a more comprehensive regulation regarding debt collection. It would be better if efforts were made to establish an institution that oversees debt collectors, in which there is training and character building. By established regulations, debt collectors have ethics in carrying out their duties as debt collectors so as not to cause losses to the loan company and the customer. That way, the online loan service provider can enter a cooperation contract under the applicable provisions.

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