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CRIMINAL LIABILITY OF ONLINE LOAN JOCKEY SERVICE PROVIDERS: A LEGAL ANALYSIS UNDER INDONESIAN POSITIVE LAW

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Abstract

Online loan jockeys represent individuals or groups offering services to apply for loans using another person's identity, falsified identity, or fictitious identity. In practice, online loan jockeys cause losses not only to fintech lending companies but also to individuals whose personal data are stolen or misused. Therefore, legal accountability is required. This study examines the forms of criminal acts committed by online loan jockeys under Indonesian positive law and analyzes the criminal liability framework applicable to these service providers. The research employs normative legal methodology, utilizing statutory, case, and conceptual approaches. Findings reveal that online loan jockey conduct fulfills several criminal elements simultaneously: falsification of documents, fraudulent acts, unlawful manipulation of electronic information, and violations of personal data protection norms. Based on juridical analysis, online loan jockeys may be charged under Article 263 of the Indonesian Criminal Code (KUHP) for document forgery, Article 378 KUHP for fraud, Article 35 in conjunction with Article 51 of the Electronic Information and Transactions Law (ITE Law) for electronic data manipulation, and criminal provisions under the Personal Data Protection Law (PDP Law). The criminal act of online loan jockeying is multidimensional in nature, involving forgery, fraud, and cybercrime in an integrated manner. Criminal liability may be imposed cumulatively on the basis of concursus idealis (ideal concurrence), thereby creating a deterrent effect and ensuring maximum legal protection for the public.

Keywords: Criminal liability, online loan jockey, fintech, cybercrime, Indonesian law

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1. INTRODUCTION

1.1 Background

The rapid development of digital technology in Indonesia's financial sector has created innovative financial technology (fintech) solutions that provide easier access to financial services, including online loans. Fintech represents the convergence of "financial" and "technology," referring to the utilization of technology in providing financial services and products to consumers. With only identity documents and electronic devices, individuals can quickly obtain loans without navigating complex banking procedures. This accessibility has enabled broader financial inclusion, particularly for individuals previously underserved by conventional banking institutions.

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The presence of fintech in Indonesia has generated positive macroeconomic impacts, particularly in promoting financial inclusion and transaction efficiency. Fintech facilitates easier access to financial services, enables capital acquisition for small businesses, enhances financial inclusion, and improves living standards. It simplifies buying and selling transactions and payments by reducing constraints such as limited shopping time, difficulties accessing banks or ATMs, and unsatisfactory service experiences. Consequently, fintech makes transaction processes more efficient, economical, and effective.

With clear regulations, fintech is expected to develop healthily and contribute benefits to the national economy. Bank Indonesia, as the payment system authority, recognizes the importance of maintaining balance between innovation and risk mitigation in technology-based financial transactions. Therefore, the regulations created focus not only on consumer protection but also on risk management and coordination with various stakeholders. In supporting safe and trustworthy fintech implementation, Bank Indonesia regulates the fintech industry through Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Financial Technology Implementation (PBI Tekfin). This regulation emphasizes that innovation in the financial sector must continue to consider consumer protection aspects, risk management, and prudential principles.

According to Article 1 Paragraph 3 of Financial Services Authority Regulation (POJK) 77/POJK.01/2016, fintech in money lending services based on information technology constitutes the provision of financial services that connect lenders and borrowers through internet-based electronic systems in rupiah transactions. Fintech leverages information technology developments to improve services in the financial industry. One widely favored type of fintech is Peer to Peer Lending (P2P) and automated investment management. Customers can apply for loans for business purposes without visiting banks. The process is quite simple using computers or smartphones, with more straightforward requirements compared to bank loans.

However, behind this convenience, various problems have emerged, one of which is the misuse of online lending services through illegal online loan jockey practices. Online loan jockeys are individuals or groups offering services to apply for loans using another person's identity, fake identity, or fictitious identity. In practice, online loan jockeys harm not only fintech companies but also individuals whose identities are stolen or misused. Many victims suddenly receive loan repayment demands for loans they never applied for. This often occurs due to personal data breaches obtained from various sources, such as illegal websites, hacking, or misuse of information voluntarily provided by victims.

One notable case occurred in Jakarta in 2023, where police successfully uncovered an online loan jockey network that had harmed many victims. The perpetrators used ID cards and personal information belonging to others to apply for loans on various illegal fintech platforms. Some victims only realized their identities had been used when debt collectors contacted them. This case serves as concrete evidence that online loan jockey practices constitute a serious threat requiring firm legal action.

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From a legal perspective, the actions of online loan jockey perpetrators can be categorized as criminal offenses. Some perpetrators may act only as intermediaries without fully realizing the legal consequences of their actions, while others are part of larger criminal networks. Additionally, public ignorance about the dangers of online loan jockeys also exacerbates the situation. Many people are tempted to become jockeys due to promises of quick profits without realizing the legal consequences. On the other hand, many people remain unaware that their personal data can be misused by irresponsible parties.

The Financial Services Authority (OJK) and the Investment Alert Task Force (SWI) have attempted to suppress the spread of illegal online loans by closing thousands of fintech platforms since 2018. However, these efforts have not fully addressed the online loan jockey problem due to continued demand and weak oversight of identity use in online loan applications. The impact of online loan jockey practices extends beyond financial consequences to psychological and social harm. Many victims experience mental distress due to debt collector terror, with some cases resulting in suicide. Additionally, public trust in fintech services has eroded due to widespread online loan misuse cases.

1.2 Research Problems

Based on the background described above, this research formulates the following problems:

1. What are the forms of criminal acts committed by online loan jockeys according to Indonesian positive law?

2. What forms of criminal liability apply to online loan jockey service providers according to Indonesian positive law?

1.3 Research Objectives

This research aims to:

1. Analyze the forms of criminal acts committed by online loan jockeys according to Indonesian positive law.

2. Analyze the forms of criminal liability applicable to online loan jockey service providers according to Indonesian positive law.

2. RESEARCH METHODS

This research employs normative legal research methodology (doctrinal research), focusing on the study of applicable legal norms. The doctrinal research method, according to Peter Mahmud Marzuki, is used to analyze legal rules related to criminal liability for online loan jockeys based on legislation, jurisprudence, legal theory, and legal doctrine.

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2.1 Research Approach

This research utilizes several approaches:

Statutory Approach: Analyzing various relevant legal regulations, including the Indonesian Criminal Code (KUHP), the Electronic Information and Transactions Law (UU ITE), and OJK regulations related to online loans.

Case Approach: Examining court decisions related to online loan jockey cases to understand the application of law in practice.

Conceptual Approach: Employing legal theories related to criminal liability and identity misuse in online loans.

2.2 Legal Materials

This research uses two types of legal materials:

Primary Legal Materials: Relevant legislation, including KUHP, UU ITE, OJK regulations, and relevant court decisions.

Secondary Legal Materials: Legal literature, journals, books, and expert legal opinions related to illegal online loan jockey issues.

2.3 Data Collection Procedure

Legal material collection is conducted through library research, primarily gathering primary legal materials using techniques involving comprehensive analysis and understanding of legal norms, related regulations, and the ratio legis contained in legislation related to the issues raised by the researcher.

2.4 Legal Material Analysis

The collected legal materials are analyzed normatively, examining legal problems related to the online loan jockey issue and studying them based on regulations and legal theory to produce applicable legal solutions.

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3. RESULTS AND DISCUSSION

3.1 Forms of Criminal Acts by Online Loan Jockeys Under Indonesian Positive Law

3.1.1 Characteristics and Mechanisms of Online Loan Jockeys

The term "jockey" refers to an individual who replaces another person's position in conducting an examination while pretending to be a legitimate participant and receiving compensation for such activities, such as in university entrance examinations. Additionally, the term jockey is also used to refer to someone who provides services to non-public vehicle drivers to fulfill passenger number requirements or certain conditions in an area.

Jockey services constitute services provided by an individual or group to help complete a task, job, or specific need. After the service is provided, the party utilizing the service provides compensation in the form of wages, profit margins, payment, or ujroh. This compensation is generally provided in monetary form, either in cash or through electronic transactions.

The jockey practice is no longer a new phenomenon among university students, and its spread has now expanded to various layers of society. The COVID-19 pandemic situation, which caused decreased income while increasing economic needs, contributed to the development of this practice. This situation was exploited by jockey perpetrators to earn additional income by offering their services, especially to people experiencing financial difficulties.

Although fundamentally jockey activities constitute conduct deviating from applicable provisions, the form of jockey services offered in this context has different characteristics from general jockey practices. Jockeys lend money previously obtained from online lending platforms using their own identities. The loan proceeds are then given to service users, with the agreement that service users must pay certain fees to the jockey perpetrators according to predetermined agreements.

The process of someone using online loan jockey services generally begins through the existence of Telegram groups serving as meeting media between jockey perpetrators and prospective service users. These groups are utilized by jockeys as means to promote their services, namely online loan application services. Through this platform, prospective customers have various jockey choices that can be used according to their needs. In practice, one of the main consideration factors for customers is recommendations from relatives or close acquaintances.

After customers reach an agreement with jockeys regarding services and fees to be paid, both parties determine the meeting mechanism, whether conducted directly or through online communication. Customers who receive recommendations generally tend to choose the online process because they already have trust in the jockey in question. Meanwhile, for customers who are newly acquainted with jockeys, direct meetings are preferred to minimize fraud risks.

The next stage is the loan agreement making process and fulfillment of various requirements needed to apply for fund disbursement on the online lending platform. After all requirements are met and the application is approved, funds will be disbursed to the jockey's account. Then, the jockey will transfer these funds to the customer according to the initial agreement.

3.1.2 Criminal Act Aspects of Online Loan Jockeys

Online loan jockey conduct can be categorized as a criminal offense if its implementation fulfills elements of unlawful acts as regulated in Indonesian criminal law provisions. Online loan jockeys become criminal offenses when using fake identities or exploiting other people's personal data without right to apply for loans, because such conduct can be qualified as fraud, document or data forgery, and personal data misuse.

Additionally, online loan jockey conduct is also criminal in nature if conducted with deception, such as providing misleading information to prospective borrowers, promising fund disbursement without risk, or taking advantage of applied loan funds. The criminal element strengthens if the activity is conducted repeatedly or in an organized manner, with role division and profit-making purposes, so it can be considered as participation in crime or even organized crime.

The relationship between online loan jockeys and victims needs to be analyzed based on the role, awareness, and intent (mens rea) of each party to determine whether both can be subject to Article 55 KUHP regarding participation. Article 55 KUHP regulates that those who can be criminally punished as perpetrators of criminal acts include not only those who commit directly, but also those who order the commission, participate in committing, or intentionally provide assistance or means for the occurrence of criminal acts.

If victims consciously and intentionally cooperate with online loan jockeys, for example by providing personal data to be used to apply for loans in ways violating the law (such as falsifying data, manipulating information, or deceiving the online loan system), then the legal relationship between jockeys and victims can be qualified as jointly committing criminal acts. In this condition, victims are no longer viewed as harmed parties, but as co-perpetrators (medepleger) or at least as parties ordering commission, so both potentially face criminal punishment based on Article 55 paragraph (1) KUHP.

Article 263 KUHP: Document Forgery

Article 263 KUHP regulates the prohibition against making or using false documents that can create rights or obligations. In the context of online loan jockeys, actions included in this element include falsification of ID cards, salary slips, bank statements, or other documents used to convince fintech providers that applicants deserve loans.

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The elements of Article 263 paragraph (1) KUHP include:

1. Anyone - Every legal subject, including jockeys
2. Making false documents or falsifying documents - Including modifying digital documents
3. Such documents can create rights or obligations - For example, credit obligations arising after loan approval
4. With the intention to use or have others use - Containing intent element (dolus)
5. Causing harm - Both material and immaterial losses

Jockeys actively falsify documents to deceive fintech examination systems. In legal doctrine, forgery is included as crimes against trust (feit tegen het vertrouwen) because it damages public trust in documents as evidence. Jockey actions that falsify documents or alter electronic data so they appear authentic clearly fulfill all elements of Article 263 KUHP.

Article 378 KUHP: Fraud

Article 378 KUHP prosecutes anyone who benefits themselves unlawfully through deception or a series of lies. The elements of Article 378 include:

1. Intent to benefit oneself or others - Jockeys receive compensation; service users obtain loans
2. Unlawfully - No right to apply for loans with false data
3. Using deception or a series of lies - Including manipulation of income data, identity, and personal information
4. Moving others to surrender an item or provide debt - Lending platforms surrender a sum of money based on false information

Based on comprehensive analysis, online loan jockey actions normatively fulfill all elements of Article 378 KUHP, so they can be qualified as fraud crimes. The normative character of the action includes active conduct creating lies, the core of the offense in the form of fake identity utilization, and legal consequences in the form of loan fund surrender from fintech to unauthorized parties.

Article 35 UU ITE: Electronic Data Manipulation

Article 35 of Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 states: "Anyone who intentionally and without right or

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unlawfully manipulates, creates, changes, eliminates, destroys Electronic Information and/or Electronic Documents with the purpose that such Electronic Information and/or Electronic Documents are considered as if authentic data."

This offense is a formal offense, so the focus lies on manipulative conduct over electronic data, not on its consequences. Elements contained in this article provision include:

1. Anyone
2. Intentionally
3. Without right or unlawfully
4. Manipulating, creating, changing, eliminating or destroying electronic information/electronic documents
5. With the purpose that it is considered as if authentic

Based on analysis of all elements, online loan jockey actions fulfill all elements of Article 35 UU ITE, because: The perpetrator is "anyone"; The conduct is done "intentionally"; The action is done "without right/unlawfully"; There is "manipulation/creation/change/elimination" of electronic data; The main purpose is that the data is "considered authentic" by online lending platform providers.

Therefore, normatively, online loan jockeys can be criminally punished based on Article 35 UU ITE, with criminal threats as per Article 51 paragraph (1) UU ITE: Imprisonment of at most 12 years and/or a fine of at most Rp12 billion.

Personal Data Protection Law (UU PDP)

One provision of the Article that fulfills the offense of online loan jockey crime is contained in Article 67 UU PDP which determines: "Anyone who intentionally and unlawfully obtains or collects Personal Data that is not theirs with the intention of benefiting themselves or others that can result in harm to Personal Data Subjects as referred to in Article 65 paragraph (1) shall be punished with imprisonment of at most 5 (five) years and/or a fine of at most Rp5,000,000,000.00 (five billion rupiah)."

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3.2 Criminal Liability of Online Loan Jockey Service Providers

3.2.1 Criminal Liability Concept

Criminal liability constitutes a fundamental concept in criminal law used to determine whether someone can be subject to criminal punishment for an act prohibited by law. According to Moeljatno, criminal liability is "the relationship between the perpetrator and the criminal act so that the perpetrator deserves to be subject to criminal punishment for their act." Thus, criminal liability not only looks at the act committed but also at the fault that exists in the perpetrator.

In criminal law, the concept of liability is known. This term in Dutch is called toerekenbaarheid, while in English it is known as criminal responsibility or criminal liability. Some legal experts use different terms; Roeslan Saleh, for example, uses the term "criminal liability," while Moeljatno calls it "liability in criminal law." However, generally experts tend to use the term "criminal liability."

In principle, criminal liability is a mechanism structured in criminal law to provide reactions to violations of prohibitions against certain acts. Roeslan Saleh explains that criminal liability constitutes objective blame attribution toward a criminal act that subjectively fulfills conditions for criminal punishment because it was committed by its perpetrator.

According to Roeslan Saleh, criminal liability contains three main elements:

1. Capacity to be responsible - Healthy mental state so perpetrators can understand their actions
2. Existence of fault - In the form of intent (dolus) or negligence (culpa)
3. Absence of excuse reasons - Such as force majeure (overmacht), excessive self-defense, and incapacity to be responsible

These elements must be fulfilled for someone to be subject to criminal punishment.

3.2.2 Application to Online Loan Jockeys

In cases of illegal online loans and online loan jockey practices, criminal liability is not only given to individuals but also to lending service provider corporations. Forms of liability in this context include:

1. Personal data misuse, as regulated in Articles 32 and 35 of Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE)

2. Fraud, regulated in Article 378 KUHP

3. Identity or document forgery, according to Article 263 KUHP

Online loan jockey service provider practices using other people's personal data without permission can be categorized as criminal offenses, both based on KUHP and UU ITE. These crimes also create potential criminal liability for illegal online loan corporations cooperating with perpetrators.

Criminal liability becomes an important instrument in prosecuting illegal online loan perpetrators. Law enforcement must consider fault elements, the role of each perpetrator, and corporate roles in facilitating criminal acts. Additionally, application of criminal liability theories, such as strict liability and vicarious liability, can help prosecute illegal online loan corporations operating without permits and conducting unlawful practices.

Cumulative Criminal Liability (Concursus Idealis)

The conduct of online loan jockeys fulfills elements of several criminal offenses simultaneously: document forgery, fraud, electronic data manipulation, and personal data violations. Based on juridical analysis, jockeys can be prosecuted under Article 263 KUHP, Article 378 KUHP, Article 35 in conjunction with Article 51 UU ITE, and criminal provisions in UU PDP.

Online loan jockey criminal acts are multidimensional in nature, involving forgery, fraud, and cybercrime in an integrated manner. Criminal liability can be imposed cumulatively on the basis of concursus idealis, thereby providing a deterrent effect and maximum legal protection for the public.

4. CONCLUSION

4.1 Summary of Findings

Based on the discussion and analysis, the following conclusions can be drawn:

1. Forms of Criminal Acts: Online loan jockeys constitute individuals or groups offering services to apply for loans using another person's identity, fake identity, or fictitious identity. In practice, online loan jockeys harm not only fintech companies but also individuals whose identities are stolen or misused. Therefore, legal accountability is required. Online loan jockey conduct fulfills elements of several criminal offenses simultaneously: document forgery, fraud, electronic data manipulation, and personal data violations. Based on juridical analysis, jockeys can be prosecuted under Article 263 KUHP, Article 378 KUHP, Article 35 in conjunction with Article 51 UU ITE, and criminal provisions in UU PDP. Online loan jockey criminal acts are multidimensional in nature, involving forgery, fraud, and cybercrime in an integrated manner.

2. Criminal Liability: Criminal liability can be imposed cumulatively on the basis of concursus idealis, thereby providing a deterrent effect and maximum legal protection for the public. Online lending providers who use personal data without owner consent can be subject to administrative sanctions according to OJK Regulation Number 77/POJK.01/2016. Fintech or online lending service users also have the right to report such violations to OJK if there is no consent in personal data processing or providers do not comply with provisions as regulated in UU PDP and POJK 77/2016.

4.2 Recommendations

The recommendations that can be provided in this research are:

1. The House of Representatives and the President as law-making bodies should regulate criteria for criminal forms for online loan jockey perpetrators.

2. The House of Representatives and the President as law-making bodies should at least revise related regulations by adding online loan jockey crimes as cybercrime.

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Law Number 1 of 2023 concerning the Criminal Code

Law Number 11 of 2008 concerning Electronic Information and Transactions

Law Number 27 of 2022 concerning Personal Data Protection

Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services

Bank Indonesia Regulation Number 19/12/PBI/2017 concerning Financial Technology Implementation