

The Criminal Liability of An Online Loan For Spreading Personal Private Data

Adjietama Ryan Wichaksono ^{1*}, Rehnalemkan Ginting ²

^{1,2} Universitas Sebelas Maret, Indonesia

Email : ryanwichaksono97@student.uns.ac.id ¹, rehnalemken_g@staff.uns.ac.id ²

Alamat : Jalan Ir. Sutami 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126

Korespondensi penulis: ryanwichaksono97@student.uns.ac.id*

Abstract, *The abuse of personal data in the online loans has been a center of attention in the context of criminal law. This article analyzed the criminal liability of the illegal disclosing personal data in the scheme of online loans. By considering the constitutional law in Indonesia and the recent development of in those fields, this research explored the constitutional implication to the abuse of personal private data by online loans. The research methodology covered the analysis of relevant constitutional laws, court judgment, constitutional literatures, and recent cases. The results showed that the criminal liability can be applied to the online loans which used or spread illegally the private data of a debtor. The misuse of personal data included the illegal disclosing, the violation of privacy, and personal data hijacking. The implementation of constitutional law played an important role in protecting the security and privacy rights of individual data. However, the challenge in implementing the laws was the limited relevant regulation and lack of competent investigator in revealing the illegal activity. This article suggested to increase the effective constitutional frames and law enforcement in handling the problem. The collaboration of government, inspectorate agency, and industry, was considered necessary to make sure that there would be a legal and ethical online loan and the rule-breaking activity could be judged constitutionally.*

Keywords; *The Abuse of Personal Private Data, Criminal Liability, Online Loans, Individual Privacy, Law Enforcement*

1. INTRODUCTION

In this advanced digital era, the industry of online loans has been a phenomenon of domination in providing the service of online loans. The online loans serve many conveniences and comforts that are never got previously by the debtor, including quick processing and the minimum documents are required compared to the conventional banks. Though, with all of those conveniences, there are some challenges faced by the debtors particularly on the part of personal private data security and privacy.[1]

The illegal disclosing of personal data has been a central issue in an online loan financial technology because the companies have the access to central information of the debtors, including their financial information, identity, and others. Even though the initial aim in collecting the personal data was for helping the debtors to process efficiently and quickly the loan, there would be a chance of illegal data disclosing crime happened without the consent of the online loan company, intentionally or unintentionally. [2]

Due to the vital cases, the criminal liability becomes crucial to comprehend and implement well. This should be done for securing the individual privacy, preventing the misuse of customers' data, and enforcing the justice in the system of constitutions. This research aimed at identifying and analyzing the criminal liability of an online loan for spreading illegally the personal data of debtor and exploring the relevant constitutional implication in solving the related cases. [3]

In the context of criminal law, it is crucial to understand the constitutional frame that rules the online loan industries and personal data security. Many laws and regulations have been implemented in many countries to protect the individual rights related to their privacy and data security. In contrast, the practices are still facing some challenges particularly in handling the big companies that have strong sources to avoid or cancel their criminal liability.

Besides, the role of inspectorate agency and law enforcer is crucial in solving the data infringing cases committed by the online loans. It requires a tight collaboration among many parties including the government, inspectorate agency, and community to make sure that the laws are implemented fairly and effectively.

This research identified various cases and issues related to the illegal disclosing of personal data by the online loan companies and discovered how the constitutional laws were implemented in that cases. The exploration of various approach and strategy was also used in this research to increase the protection to personal data in the context of online loans and make sure that those online loan companies that have broken the laws would be responsible for their crime and how was the criminal liability of the online loans when the personal private data were illegally revealed?

By considering the case, this research could give a meaningful contribution in understanding the complexity of criminal liability in the online loans and provide a clearer view on how the problem could be handled effectively with the available constitutional frame. [4]

2. LITERATURE REVIEW

The Concept of Online Loan

Online loan is a loan scheme which is done digitally through an application or website without a face-to-face meeting between the debtor and the lender. The debtor proposes a loan, uploads a document, and gets approval online. Then, the amount of money will be transferred electronically.

The online loan appears in the 21st century along with the development of internet and cellular phone. The benefits are the efficient accessibility, quick process, and minimum documents are required. Those are extremely convenience compared to the conventional banks. However, the interest rate is sometimes higher, especially for a little amount and short-term of loan. The data security and privacy become one of the problems in the online loans because the debtor need to submit their personal private information to the company. [5]

Personal Data Protection

The personal data protection refers to the effort of protecting an individual private information form the illegal spreading, accessing, or using from other people. This concept highlights the important of securing data privacy and safety including the name, address, financial information, medical record, and others. The personal data protection has become more important in this digital era since many sensitive data are processed and managed electronically. The infringement of private data and security can cause a serious consequence such as identity stealing, account hijacking, scamming, and other violation.

The vital role of protecting personal data is in the effort to secure the individual rights of their privacy and safe information. The hijacked personal data or misused can cause a financial damage, reputation, and emotional for the individual. Besides, the personal data protection is important to maintain the customer's trust and the business reputation that manages the data. Many regulations and laws for protecting personal data have been implemented in many countries, including the Laws for Personal Data Security in Indonesia, GDPR (General Data Protection Regulation) in European Union, and others related laws. These regulations set the standards and requirements that should be followed by an organization in managing and protecting the personal data and establish a penalty for those who infringe. [6]

The Corporate Criminal Liability

The corporate criminal liability refers to the chance of a corporate or enterprise for being constitutionally responsible of an illegal action which is done by the corporate or their members. This concept is based on the principles that a corporate can commit a crime and should be responsible for that, even though the corporate does not have a real office. The criminal liability constitution for the corporate is written on the law in every country, such as on the Indonesian criminal code (KUHP).[7]

The criminal liability can be implemented for the corporate through some steps, such as corporate direct liability for the crimes that they have done, corporate criminal liability for the crimes that their members have done (vicarious liability), or corporate criminal liability based on the identification doctrine. In implementing the criminal liability, the authority should prove evidence of error or omission from the corporate that causes the crime happens. Kinds of penalty that can be given are revocation corporate license, corporate dismissal, and any other related penalty. The implementation of corporate criminal liability is important to make sure the law enforcement works well and prevents the corporate from committing a crime that can damage societies or individual. This can be one of strategies to bring justice and make sure that no one is bullet-proof from the laws, including the big corporate.

3. METHOD

The study will use a non-doctrinal approach to investigate the impact of the disclosure of personal data by online lender agencies in Indonesia. This methodology will include empirical studies to explore how online lender agency policies and practices affect the protection of customer personal data. The research will focus on the collection of primary data through surveys and interviews with consumers of online loan services, as well as the analysis of the agency's compliance with Amendment Act No. 11 of 2008 on Electronic Information and Transactions, Act no. 19 of 2016 on electronic information and transactions and Law no. 27 of 2022 on the protection of personal data. With this approach, the study aims to provide in-depth insight into how law enforcement and public awareness relate to the protection of personal data in the digital financial services sector in Indonesia.

4. RESULT AND DISCUSSION

The Law Number 11 of 2008 on the concerning Information and Electronic Transactions (UU ITE) is the main regulation that rules the personal data security and information in Indonesia, including the online loans. Generally, UU ITE gives a law for the personal data security in the context of electronic transaction and digital activity.

Article 26 Section (1) ITE stated that unless provided otherwise by Rules, use of any information through electronic media that involves personal data of a Person must be made with the consent of the Person concerned. This regulation can be implemented for the case of online loan that have committed an illegal access and personal data collection from the customers without their consent or infringe the current law. However, the article in UU ITE

did not specifically rule the illegal spreading and misuse of personal data that have been collected legally by the online loan company.

Moreover, Article 26 Section (2) UU ITE also stated that Any Person is prohibited intentionally, infringing the rights, or breaking the laws to spread, send, or get the electronic information or documents of private data. This regulation can be implemented to protect the customer's personal data from the illegal spreading or misuse by the online loan company. However, the formulation of this constitutional article is still general and not very specific in solving the illegal spreading cases of personal data related to the online loans. [8]

One of the weaknesses of UU ITE in regulating the personal data security in online loan industry is the lack of specific requirements in ruling the liability and obligatory of the company in managing and protecting the customers' personal data. UU ITE focuses on the warning and penalty for the infringement but it has a lack of detail requirements about the data security standard, data management procedure, and other aspects that are needed to guarantee the ideal data security system.

Besides, UU ITE did not regulate specifically the advisor mechanism and law enforcement that are effective in solving the personal data infringement done by the online loan company. The lack of special inspectorate agency and competent law enforcer in handling the cases of digital data infringement has become a challenge in implementing UU ITE effectively. Even though, UU ITE gives a law to protect personal data generally, there are still some specific and comprehensive regulations that should be made to regulate the personal data in online loan, The new regulations should include the detail requirements about the liability of online loan industry, data security standard, advisory mechanism, dan effective law enforcement to solve the infringement.

The criminal liability of online loans for the illegal spreading personal data is one of complex issues and interesting to discuss from various parties, including government inspectorate agency, and community. In many cases, the misuse or illegal spreading of personal data by the online loan company has raised worry about the individual privacy and data security. To solve this problem, it requires a strong and effective constitutional frame in enforcing the criminal liability for the infringement.

In many countries, constitutions have been applied to protect the personal private data and rule the activities of online loan companies. One of the regulations that ruled the online loans was the Law Number 11 of 2008 on the concerning Information and Electronic Transactions (UU ITE). Article 26 Section (1) ITE stated that unless provided otherwise by Rules, use of any information through electronic media that involves personal data of a

Person must be made with the consent of the Person concerned. This was one of the efforts to protect a personal data from hijacking. [9]

Moreover, Article 26 Section (2) ITE also stated that Any Person is prohibited intentionally, infringing the rights, or breaking the laws to spread, send, or get the electronic information or documents of private data. This statement showed that the illegal spread of personal informational without a consent was law-breaking action.

Even though there is a law governing this problem, the law enforcers often face some problems in solving the case. One of the cases is the incapability of law enforcement agency to collect enough evidences or to find the law infringer that commits online.

In this context, the collaboration of government, inspectorate agency, and industry became extremely important. The industry of online loans must be responsible ethically in managing their customers' private data and obey all governmental regulations. The government and inspectorate agency should enhance the supervision and law enforcement to prevent the company in breaking the regulations.

Besides the criminal law, the aspect of civil law liability should be also considered in the infringing cases data by the online loan companies. According to Article 1365 of Indonesian Civil Code (KUHP Perdata), every unlawful act that causes damage onto another person obliges the wrongdoer to compensate such damage. In this context was the illegal spread of personal data, the online loan companies which intentionally or unintentionally caused damage to their clients could be sued to compensate such damage. [10]

However, it should be noted that the process of enforcing the criminal liability or the civil code related to the illegal spreading personal data of online loan company often consumes more time and becomes complicated. The main challenges are collecting enough evidences and proves that there are some infringing rules conclusively in the digital platform that are sometime complex.

In solving the challenges, there may be a revision on the constitutions related to the specific and strict regulations in ruling the personal data security of online loan. Besides, the government can enhance the competency of inspectorate agency and the collaboration between the law enforcers and industries to make sure that the law is implemented fairly and effectively.

Overall, the criminal liability related to the illegal spread of personal data in the industry of online loan was one of complex issues and needed comprehensible approach from the relevant participants. It required a great collaboration among the government, inspectorate

agency, and community to solve this problem effectively and protect the individual privacy in this advancing digital era. [11]

To effectively solve the problem of illegal data spreading by online loan companies, it requires a regulation reformation and the improvement of law enforcers significantly. First, there should be a research and revision to the laws and regulations about the personal data and online loan practice. The regulation is currently considered unspecific and did not give a proper protection for the customers in the context of online loans. Therefore, the government needs to make a new regulation and revise the old ones to make it clearer, stricter, and more comprehensive in protecting the personal data and the online loan company liability. Besides, the new reformed regulations should also enforce the supervision mechanism and law enforcement to the online loan companies. The new regulations also need to cover the establishment of supervision agency that has authority and enough sources to monitor how discipline the online loan companies in following the regulation of personal data regulation. This agency should also implement a strict penalty to the infringement, such as extra fine, the revocation of operational license, or even company dismissal. [12]

Besides, the law enforcer should be tightened up to enhance the capacity and competency of the law enforcers in solving the infringement of personal data in digital platform. The special training about electronic evidence, cyber investigation, and the treatment of the cases of online loan should be given to the police, prosecutor, and judge. The collaboration between the law enforcers and information technologists should be enhances to handle the case effectively. The reformed regulations should implement a strong protection for the victim of illegal data spreading. The regulations should apply a fair compensation mechanism and simple procedure in reporting the case for the customers that have become a victim. Besides, there should be an attempt to raise the society awareness about the rights of protecting their personal data dan how to report the infringement. The last, the reformed regulations should include the collaboration and active participants from all of the authorities, including the government, law enforcers, online loan industries, customers' organization, and community. By collaboration, the reformed regulation and law enforcement will be more effective and guarantee the proper protection of the customers' personal data in online loan industries. [13]

5. CONCLUSION

In the context of criminal liability related to the illegal disclosing of personal data by the online loan companies, it was found that the regulation and law enforcement faced some

significant challenges. Although the laws of personal data security have been implemented in the various countries, the practice was ineffective to solve the infringing action done by some online loan companies. This showed that the needs of reformations and improvement action in terms of the current regulations. This research also showed that the law enforcement in the case of illegal spread personal data by online loan companies faced a challenge in terms of collecting relevant electronic evidence or finding the perpetrators of cybercrime. This revealed that the needs of improving the capacity of law enforcement institutions in solving the challenges related to cybercrime.

REFERENCES

- Ashifa, K., Anjani, M., & Hosnah, A. U. (2024). Tindak pidana pengancaman dan pemerasan dalam penanganan kasus pinjaman online. *Akademika Jurnal Mahasiswa Humanis*, 4(2), 213–226. <https://doi.org/10.37481/jmh.v4i2.732>
- Azhar, D. P., & Mahyani, A. (2023). Pertanggungjawaban pidana korporasi sebagai pelaku tindak pidana penyebaran data pribadi. *Bureau Jurnal Indonesia: Law, Society and Governance*, 3(1), 540–558. <https://doi.org/10.53363/bureau.v3i1.200>
- Dade, L. L., Waha, C. J., & Nachrawy, N. (2024). Kajian yuridis tentang tindak pidana penyebaran data pribadi melalui internet (doxing) di Indonesia. *Jurnal Yuridis*, 13(3), 1–13.
- Disemadi, H. S., Silviani, N. Z., Jaya, D., & others. (2022). Literasi masyarakat pesisir terhadap perlindungan data pribadi dalam transaksi financial technology. *Jurnal Abdimasa*, 5(2), 68–76. <https://unimuda.e-journal.id/jurnalabdimasa/article/view/2504>
- Geraldo, H., & Waluyo, B. (2023). Pertanggungjawaban pidana pelaku tindak pidana pengancaman secara elektronik. *Jurnal Yuridis*, 10(2), 33–51.
- Hanifawati, S. D. (2021). Urgensi penegakan hukum pidana pada penerima pinjaman kegiatan peer to peer lending fintech ilegal dan perlindungan data pribadi. *Jurnal Penegakan Hukum dan Keadilan*, 2(2), 162–172. <https://doi.org/10.18196/jphk.v2i2.12181>
- Hidayat, A. R., Sriwidodo, J., & Paparang, S. (2022). Implementasi restorative justice pada pertanggungjawaban pidana korporasi tindak pidana pinjaman online sesuai sistem peradilan pidana di Indonesia. *SALAM Jurnal Sosial dan Budaya Syar-i*, 9(5), 1461–1472. <https://doi.org/10.15408/sjsbs.v9i5.27514>
- Jamba, P., & Svinarky, I. (2023). Pertanggungjawaban pidana dalam penyebaran data pribadi: Tinjauan hukum pidana saat ini. *Prosiding Seminar Nasional Ilmu Sosial dan Teknologi*, 5(September), 498–506. <https://doi.org/10.33884/psnistek.v5i.8125>
- Masriyani, M., Siregar, N. O., & Tresya, T. (2024). Tinjauan yuridis terhadap penyebaran data pribadi yang dilakukan oleh aplikasi pinjaman online ilegal. *Wajah Hukum*, 8(1), 249. <https://doi.org/10.33087/wjh.v8i1.1459>

- Mulyo Utomo, A. (n.d.). Penagihan utang berdasarkan hukum positif Indonesia oleh PT. Media Akademik Publisher. *Jurnal Masyarakat*, (1), 816–845.
- Nasution, I. I. S. (2023). Analisis yuridis pasal 218 ayat (1) tentang penghinaan terhadap presiden ditinjau dari ketatanegaraan Indonesia. *Jurnal IICET*, 9(1), 500–506. <https://doi.org/10.29210/1202323131>
- Saputra, M. I., Rizal, M., & Mursid, F. (1970). Pertanggung jawaban pidana debt collector pengaihan hutang dalam pinjaman online ditinjau dari hukum pidana Islam. *Ta'zir Jurnal Hukum Pidana*, 6(2), 103–118. <https://doi.org/10.19109/tazir.v6i2.14528>
- Siahaan, A. Y. (2023). Sanksi pidana terhadap pelaku perbuatan penyalahgunaan KTP orang lain untuk pinjaman online. *Nanggroe Jurnal Pengabdian Cendikia*, 84(4), 2986–7002. <https://doi.org/10.5281/zenodo.8133281>