



Criminal Responsibility for Use of Other People's KTP in Online Loan Services

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Abstract

KTP as the main requirement for applying for online loans is currently being abused. Misuse of other people's KTPs for online loan services results in losses for KTP owners who are not aware of these activities. This study aims to examine and analyze the existence of KTP in online loans along with criminal charges for misusing other people's KTPs for online loans. This type of research is normative legal research with statutory and conceptual approaches. The results of the study show that KTP as an electronic document in online loan services and misuse of other people's KTPs for online loans are snared by the ITE Law as well as the Personal Data Protection Law both alternatively and cumulatively. This legal research uses a statutory approach (statute approach) and a conceptual approach (conceptual approach). It highlights the absence of explicit provisions regarding the use of KTP in online loans under Indonesian laws. However, it emphasizes that KTP is considered personal data and subject to protection under the Personal Data Protection Act and regulations by the Financial Services Authority.

Keywords: criminal sanctions, misuse, personal data, online loans

Introduction

The rapid development of development in Indonesia accompanied by technological developments has resulted in changes in people's needs and lifestyles. In essence, humans are social beings who unconsciously never feel satisfied in meeting their needs. The human desire to always meet these needs with the aim of not only surviving but also increasing social status. However, humans often have desires that are not in accordance with the economy they have. Therefore, most people choose to enter into loan and loan agreements.

Along with the development of the times in the era of globalization, any community activity will not be separated from technological assistance, especially technological developments which are increasingly rapid with the emergence of the industrial revolution 4.0. This is the impetus for the birth of innovations in the realm of digital finance. Likewise, financial institutions are now starting to shift to technology-based financial institutions. One of the current

advances in the financial sector is the adaptation of Financial Technology, or what is familiarly known as Fintech.

Fintech is the implementation and utilization of technology to improve banking and financial services which are believed to be able to be a solution to simplify, speed up time, provide convenience, and present a more practical, safe and modern financial transaction process. One form of Financial Technology (Fintech) as part of technological advances is the presence of online loans or what is commonly known as *pinjol* (Priliasari, 2019). Online loans (*pinjol*) are money loan facilities by service providers that operate online, namely fintech with the help of information technology.

In the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money-Lending Services (hereinafter referred to as POJK 77/2016) in Article 1 point 3 states, "Information Technology-Based Money-Lending Services is the provision of financial services to bring to-

gether lenders and loan recipients in the context of entering into loan agreements in the rupiah currency directly through an electronic system using the internet network” (hereinafter referred to as LPMUBTI).

Examining based on 77/2016, LPMUBTI is actually a new method that makes it possible to carry out loan agreements through applications or websites. Based on Article 1754 of the Civil Code (hereinafter referred to as the Civil Code) which defines that a loan is an agreement by one party to give another party an amount of goods or money, on condition that the latter party will return the amount of the same type and condition.

Applying for an online loan can be an alternative when you need sizable funds, both for developing a business, renovating a house, and many other matters with a relatively easy and fast submission process (Mahfuz, 2021). Many online loans offer loans with easier and more flexible terms and conditions compared to conventional financial institutions such as banks. In addition, online loans are considered suitable for the market in Indonesia because even though people do not yet have access to finance, the penetration of ownership and use of mobile phones is very high (Arifin, 2018). This can be seen in the data released by the Association of Indonesian Internet Service Providers (APJII) which shows that the number of Internet users in Indonesia in 2022 will exceed 210 million users with a penetration rate of 77.02%. (Asosiasi Penyedia Jasa Internet Indonesia, 2022)

Based on these data, it is not surprising that the growth of online loans is increasing rapidly in Indonesia. This can also be seen from data on fintech lending companies licensed and registered with the Financial Services Authority (OJK) as of April 22, 2022, as many as 102 companies (ojk.go/id, 2022) The large number of online lending service companies that are very easy to access makes people even more tempted so that demand is really high among Indonesian people.

In applying for an online loan, you must meet easy requirements with fast disbursement. Usually these conditions use: KTP, Family Card, NPWP, SIM, Telephone Number and have a bank account. Then the file is only enough to take a photo and then upload it. Likewise with the method of payment which is so easy with transfers between banks or through

the nearest Indomaret/Alfamart (Situmeang, 2021).

One of the administrative requirements for applying for an online loan is a KTP (Resident Identity Card). KTP contains identity data from name to address equipped with a chip to store resident data electronically. KTP is an absolute requirement in various services, from public services to government programs (Hardianto et al., 2021). Therefore, a KTP must be owned by Indonesian residents who are 17 years old or married, whether they are Indonesian Citizens (WNI) or foreigners who have Permanent Stay Permits in Indonesia as stipulated in RI Law 23/2006 jo. Law 24/2013 concerning Population Administration.

KTP is a personal residence document for a person as an Indonesian citizen (WNI). With population documents that can be accounted for, citizens can take care of other important papers, anytime and anywhere (Fwbriharini, 2016). Thus, the Government needs to provide services to the public regarding these population documents. In the era of the Industrial Revolution 4.0, when the KTP was updated to become an electronic KTP (eKTP), namely a population document that contains a security or control system both from an administrative or information technology perspective in the national population database.

In applying for an online loan, scanning the KTP is the main requirement as proof of identity for personal data. The identity of the borrower is generally validated by including an Identity Card (KTP), which is the primary condition in the online lending process (Erdisy, 2020: 149).

The various conveniences provided in online loan services, and there are not a few problems that occur, one of which is misuse of personal data such as using other people's KTPs to make loans online. This is unnoticed and often happens. Plus if you often lend your KTP to other people, because this will have long tails. Instead of helping friends, it could even be that we as KTP owners are in trouble.

The personal data contained in the KTP contains sensitive information that can be used for various criminal purposes, one of which is borrowing money from online loans (*pinjol*). Therefore, it is necessary to be vigilant against misuse of personal data in the development of the digital financial sector, one of which is fintech (Mahireksha et al., 2021: 120).

Misuse of other people's KTPs for online loans (*pinjol*) by someone by including other

people's data as their personal data in order to gain profit, can be said to be identity falsification. The crime of falsifying personal identity is a form of crime that is quite often committed by the community with or without a tool. Especially in online loans that are rife at this time, technological advances are increasingly rapid which can support criminals so that it is easier for them to falsify their identity, in this case the misuse of the identity of other people's personal data becomes the identity of their personal data (Anggraeni, 2018).

Adami Chazawi stated, the crime of counterfeiting or abbreviated as the crime of counterfeiting is a crime in which there is an element of untruth or fakeness of something (object) that looks from the outside as if it is true even though in fact it is contrary to what actually is (Gunadi, 2011). The act of counterfeiting with the aim of obtaining profit for oneself in a social life in society cannot take place without guaranteeing the truth of several proofs of letters and other documents. Therefore the act of counterfeiting can be a threat to the survival of the community. Humans have been created to live in society, in an atmosphere of social life that there is a feeling of interdependence with one another.

In connection with the misuse of other people's KTPs for online loans (*pinjol*) it can be detrimental to victims of KTP owners who are not aware of this activity. As in the case that occurred in the environment around the author, there was someone without the knowledge of the victim who owned the KTP who secretly took a photo of his KTP and then contacted someone to borrow money. After time, someone collected debts from the victim who owned the KTP, even though the victim who owned the KTP had never borrowed funds online.

Misuse of other people's KTPs for electronic loans can legally be subject to sanctions as in RI Law 11/2008 concerning Electronic Information and Transactions which was last amended by RI Law 19/2016 concerning Amendments to Law 11/2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law). Besides that, KTP as personal data also applies RI Law 27/2022 concerning Protection of Personal Data as *Lex Specialis* of the Criminal Code itself. In addition, victims of KTP owners experienced losses both materially and immaterially due to terror, threats and intimidation from debt collectors who clearly did not know that the KTP owner

was aware of the online lending and borrowing of funds.

Based on the theory of victimology, the importance of the victim gets the main attention in discussing crime because victims often have a very important role in the occurrence of a crime. Obtaining a broad and in-depth understanding of victims of crime is expected to make it easier to find crime prevention efforts which will ultimately lead to a decrease in the quantity and quality of crime. If you want to observe the problem of crime in a comprehensive manner, you cannot ignore the role of the victim in the occurrence of a crime, even if you pay attention to the aspect of seeking material truth as a goal to be achieved in examining a crime, the role of the victim is very strategic. Thus, more or less determines whether or not the perpetrators of crimes can receive a punishment commensurate with the actions they have committed. It is no exaggeration if there has been a growing opinion that victims are an important asset in an effort to punish criminals (Soetoto et al., n.d.).

According to Separovic said that the victim's losses that must be taken into account do not always come from losses due to being victims of crime, but losses due to violations or losses incurred, experiencing losses both materially and mentally (Soetoto et al., n.d.).

Victims have a functional role in the occurrence of a crime. The perpetrator's actions can result in other people becoming victims, as stated by Samuel Walker that the relationship between the victim and the perpetrator is a causal relationship. As a result of the perpetrator's actions, namely a crime and the victim becomes the target object of the perpetrator's actions, the victim must suffer because of the crime (Walker, n.d.).

The loss experienced by the victim as a result of the occurrence of a crime is not always in the form of material loss or physical suffering, but what has the greatest influence is the loss or psychological impact. Victimology also plays a role in respecting the human rights of victims as human beings, members of society and as citizens who have the same basic rights and obligations and are in a balanced position in law and government. (Arief, 1998)

Judging from the concept of a rule of law, a rule of law is known by several terms, one of which is *rechtstaat*. This term is defined as a state that has the goal of realizing legal order or order in the form of law. In the concept of a rule of law (*rechtstaat*), the principle of legality applies in all aspects (due process of law), that is, actions taken

by the government must be based on valid written laws and regulations (Kelsen, 2018).

Utrecht and Rochmat Soemitro argue that the principle of legality and the principle of protecting human rights is a feature of a rule of law state (E. Utrecht, 1989) In contrast to Franz Magnis Suseno who divided the characteristics of a rule of law state into 4 characteristics, namely, the principle of legality (Nasution, 2018); Freedom or independence in judicial power; Protection of human rights; and the constitutional system as the basic law.

Online loan applications basically make it easier for someone to get a money loan because the requirements are quite easy and require a fast time to withdraw loan money, which is different from borrowing money conventionally. Online loan services in providing financial loans to recipients of funds must use personal identity as a condition for applying for a loan. In line with this, Article 1 number 22 in conjunction with Article 79 paragraph (1) of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration stipulates that personal data is certain individual data that is stored, cared for, and safeguarded. truth and confidentiality protected by the state.

However, because online loans use requirements that are easy enough to allow someone to falsify personal data identities to make loans and harm other parties, namely the misuse of other people's KTPs for online loans (*pinjol*). With the existence of terror, threats and intimidation from debt collectors to victims of KTP owners, victims of KTP owners can experience losses both materially and immaterially with what is clear that the KTP owner is not aware of the online lending and borrowing of funds.

Starting from the description above, it is necessary to have further discussion regarding the regulation and existence of KTPs in online loan services along with criminal charges for misusing other people's KTPs used in online loan services as a form of criminal responsibility for using other people's KTPs for online loans (*pinjol*) which is expected to provide a deterrent effect and not lead to similar acts in the future.

Based on the description of the background that has been described above, in this legal research, 2 (two) problem formulations will be discussed as follows:

1. Setting and Existence of KTP in Online Loan Services (*pinjol*).

2. Crime of Misusing Other People's KTPs Used in Online Loan Services (*pinjol*).

Materials and Method

This legal research uses a statutory approach (statute approach) and a conceptual approach (conceptual approach). The statutory approach (statute approach) is carried out by examining the statutory regulations that are related to the legal issues being discussed. Philipus M. Hadjon and Tatiek Sri Djatmiati explained that the "statute" approach begins with a constitution in terms of aspects of legal principles and legal concepts as well as follow-up laws or organic regulations (Muhjad & Nuswardani, 2012).

Meanwhile, the conceptual approach (conceptual approach), according to Peter Mahmud Marzuki is to move on to the views of experts so that researchers need to look for legal ratios and the ontological basis for the birth of laws and researchers can understand the philosophical content behind the laws and conclude whether or not there is a clash of philosophies between the law and the issues at hand.(Rijadi, 2017) Philipus M. Hadjon and Tatiek Sri Djatmiati argue that the conceptual approach is an approach used to obtain scientific clarity and justification based on legal concepts originating from legal principles (Muhjad & Nuswardani, 2012).

Results and Discussion

Definition and Existence of KTP in Online Loan Services (*Pinjol*)

Online loans are a means of entering into money lending and borrowing agreements and are operated by online service providers. In other words, online loans are product services such as credit loans that are in information technology. Borrowing money in an online loan, the funds will immediately be disbursed and do not require any guarantee or collateral (Afiudin et al., 2022). Therefore online loans are often referred to as a solution for people who need funds without having to apply for a loan directly by coming to a place where there are usually money-borrowing transactions.

The legal basis for Online Loans is regulated in the Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending Services (hereinafter referred to as POJK 77/2016) and Bank Indonesia Regulation Number 19/12/

PBI/2017 of 2017 concerning Implementation of Financial Technology.

Article 1 point 3 POJK 77/2016 states, Information Technology-Based Lending and Borrowing Services is the provision of financial services to bring together lenders and loan recipients in the context of entering into loan agreements in the rupiah currency directly through an electronic system using the internet network.”

According to Article 3 paragraph (1) letter e of Bank Indonesia Regulation Number 19/12/PBI/2017 of 2017 concerning the Implementation of Financial Technology that application-based or information technology-based loan services are one type of financial technology (Fintech) implementation in the category of financial services/ other financials (Manalu et al., 2017). Mentioned in the elucidation of Article 3 paragraph (1) letter d, examples of the implementation of Financial Technology in the categories of lending, financing (financing or funding), and providing capital (capital raising) include information technology-based money lending services (peer-to-peer lending) as well as information technology-based financing or fundraising (crowd-funding).

The agreement for the provision of Information Technology-Based Borrowing-Lending Services between the Provider and the Lender is set forth in an Electronic Document as stated in the provisions of Article 19 paragraph (1) POJK 17/2016. Electronic Documents are any electronic information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and/or heard through a computer or Electronic System including but not limited to writing, sound, pictures, design maps, photos or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by people who are able to understand them as stipulated in Article 1 number 4 RI Law 19/2016 regarding Amendments to RI Law 11/2008 concerning Information and Electronic Transactions.

The electronic document contains the identities of the parties, in this case the KTP as an electronic document. Electronic Identity Card (KTP-el) is a resident identity card equipped with a chip which is the official identity of the resident as proof of identity issued by the implementing agency. KTP-el as personal data. Personal data contains most of a person's

circumstances. The condition of a person who is not shown to the public based on reasons of security and self-convenience. The concept of privacy was first coined by Warren and Brandeis in "The Right to Privacy" or the right not to be disturbed. With the development and advancement of technology, a public awareness arises that an awareness has been born that there is a person's right to enjoy life (Kusnadi & Wijaya, 2021).

The legal basis for personal data and data protection has been regulated separately in several regulations in accordance with sectoral interests, namely RI Law 24/2013 concerning Population Administration (hereinafter referred to as the Population Administration Law) and this regulation regulates data protection for citizen registration in the context of population administration. The Population Administration Law states that personal data that must be protected as stated in Article 84 paragraph (1) of the Population Administration Law, includes:

- a. Family Card Number;
- b. National Identity Number;
- c. Date/month/year of birth;
- d. Information about physical and/or mental disabilities;
- e. biological mother's NIK;
- f. father's NIK; and
- g. Some of the contents of the note important events.

The definition of personal data can be found in the Regulation of the Minister of Communication and Informatics Number 20/2016 concerning Protection of Personal Data in Electronic Systems (hereinafter referred to as Ministerial Regulation 20/2016). Based on Article 1 point 1 and 2, personal data is defined as any true and real personal data that is attached and can be identified with that person, certain personal data that is stored, maintained, and is kept true and protected by confidentiality. Meanwhile, protection of personal data is regulated under Article 2 point 1 of Ministerial Regulation 20/2016 which stipulates that Protection of Personal Data in Electronic Systems includes protection against acquisition, collection, processing, analysis, storage, display, announcement, delivery, dissemination and destruction Personal data. Furthermore, such protection must follow the principle of personal data protection which respects personal data as privacy.

The definition of personal data can also be found in RI Government Regulation 71/2019 concerning the Implementation of Electronic Systems and Transactions (hereinafter referred to as

PP 71/2019). In Article 1 number 29 PP 71/2019 states, Personal Data is any data about a person either identified and/or identifiable separately or combined with other information either directly or indirectly through Electronic and/or non-electronic Systems. While this definition is assumed at first glance to include any information from an individual, it is not clear what exactly counts as personal data and whether anonymous or publicly available data is covered by this definition (Anggraeni, 2018).

Personal data based on RI Law 27/2022 concerning Protection of Personal Data (hereinafter referred to as the PDP Law) is data about individuals who are identified or can be identified separately or combined with other information either directly or indirectly through electronic or non-electronic systems.

Personal data consists of specific personal data and general personal data. Specific personal data as stipulated in Article 4 paragraph (2) of the PDP Law, among others:

- a. health data and information;
- b. biometric data;
- c. genetic data;
- d. crime record;
- e. child data;
- f. personal work data; and/or
- g. other data in accordance with the provisions of the legislation.

As for general personal data as regulated in Article 4 paragraph (3) of the PDP Law, includes:

- a. full name;
- b. gender;
- c. citizenship;
- d. religion;
- e. marital status; and/or
- f. personal data combined to identify an individual.

Even though the PDP Law does not explicitly mention KTP, but Identity Cards (KTP), KTPs contain general personal data so that they are categorized as personal data that can be used in Information Technology-Based Borrowing and Borrowing Services (LPMUBTI).

Crime of Misusing Other People's KTPs Used in Online Loan Services (*Pinjol*)

The starting point of law in Indonesia comes from the Constitution and applicable laws and regulations. The 1945 Constitution of the Republic of Indonesia stipulates that everyone has the right to protection of himself/herself, family, honor, dignity and property under his control, and has the right to feel safe and protected from threats of fear as stipulated in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Table 1. Law on Misusing Other People's KTPs for Online Loan Services

No.	Constitution	Article Contents	Criminal sanctions
	Article 32 paragraph (1) in conjunction with Article 48 of RI Law 11/2008 in conjunction with RI Law 19/2016 concerning Information and Electronic Transactions	Everyone intentionally and without rights or against the law in any way changes, adds, subtracts, transmits, destroys, deletes, transfers, hides Electronic Information and/or Electronic Documents belonging to other people or public property.	Maximum imprisonment of 8 (eight) years and/or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiahs)
	Article 36 jo. Article 51 paragraph (2) RI Law 11/2008 in conjunction with RI Law 19/2016 concerning Information and Electronic Transactions	Everyone intentionally and without rights or against the law commits acts as referred to in Articles 27 to 34 which result in losses for other people.	Maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp. 12,000,000,000.00 (twelve billion rupiah).
	Article 65 paragraph (1) jo. Article 67 paragraph (1) RI Law 27/2022 concerning Protection of Personal Data	Everyone is prohibited from unlawfully obtaining or collecting Personal Data that does not belong to them with the intention of benefiting themselves or others which can result in loss of Personal Data Subjects.	Maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah)
	Article 65 paragraph (3) jo. Article 67 paragraph (3) RI Law 27/2022 concerning Personal Data Protection	Everyone is prohibited from unlawfully using Personal Data that does not belong to him.	Maximum imprisonment of 5 (five) years and/or maximum fine Rp. 5,000,000,000.00 (five billion rupiah)

In general it is acceptable that the 1945 Constitution as the Constitution protects private property of a person. If this is acknowledged, then the big question is whether personal data can be considered as personal property and whether it can be followed by the view that protection of personal data is a fundamental right that everyone has. If the answer is yes, then it is important for the Indonesian government to protect this right.

Misuse of personal data in the development of the digital financial sector, one of which is fintech by using other people's KTPs for online loans (*pinjol*) needs to be criminally accounted for, considering that personal data contained on KTPs contains sensitive information (Erdisy, 2020).

Previously, the victim who owned the KTP could check whether the KTP was being misused or not in the loan application by visiting the Financial Information Service System (SLIK) website from the Financial Services Authority (OJK). Furthermore, requests for checking information (iDeb) can be seen via the email used when verifying the SLIK from OJK.

If it is true that the KTP was misused by other people for online loans, then the victim who owns the KTP can try to do so by reporting it to the OJK (Financial Services Authority). This is so that there is legal evidence that the KTP was indeed misused and was not a fabrication. Apart from the OJK, another institution that can be used as a report by victims is the Indonesian Joint Funding Fintech Association (AFPI). It is known that AFPI helps people who are having problems with illegal online loans (illegal loans). Complaints to AFPI can be submitted via email or via the official AFPI website.

Victims who own KTPs who experience losses, both material and immaterial losses can report them to the Police by collecting all evidence of terror, threats and intimacy which will then be processed criminally through legal channels.

Based on the table.1 parties who misuse other people's KTPs for online loan services (*pinjol*) can be subject to criminal sanctions alternatively or cumulatively by fulfilling the elements listed in each article as mentioned.

Conclusion

The arrangement and existence of a KTP in online loans (*pinjol*) are not explicitly stated in Indonesian laws and regulations. However, the existence of a KTP is the main condition for making online loans, the KTP contains general personal data. Thus KTP is categorized as personal data that

can be used in Information Technology-Based Borrowing-Lending Services (LPMUBTI) or online loans (*pinjol*) based on the Personal Data Protection Act as well as in the Financial Services Authority Regulation concerning Information Technology-Based Borrowing and Lending Services which is strengthened by the Law Population Administration and its derivatives.

Criminal charges for misusing other people's KTPs used in online loan services (*pinjol*) in the form of imprisonment and/or fines which can be imposed alternatively or cumulatively by fulfilling the elements of the Article as stated in the ITE Law as well as in the Personal Data Protection Law as a form of juridical consequence of criminal responsibility for misusing other people's KTPs for online loans (*pinjol*).

Suggestion

1. In an effort to minimize the occurrence of misuse of personal data which results in falsifying personal data identities for online loans, it is recommended not to easily provide personal data identity data to other parties which can result in being targeted for online lending on behalf of the victim, the owner of the personal data that is harmed.
2. In an effort to maximize the applicable statutory provisions, fintech providers as borrowers of funds in online lending services are advised to be more careful in identifying the identity of the beneficiary's personal data and if necessary make special company arrangements that can prevent misuse and falsification of personal data identities in online lending services (*pinjol*).

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