



Criminal Liability for Perpetrators of Falsifying Online Loan Identity Documents

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Abstract

Many business collaborations are carried out by business actors in the form of contracts or agreements made in writing. This loan provider is a financial service provider institution that operates online with the help of information technology. Criminal law regulations regarding the criminal act of manipulating electronic documents so that they can be considered as authentic data refer to article 35 of the ITE Law. The application of criminal law (criminal law application) is one of the efforts to overcome crime. The approach method used in this study is normative juridical, which is carried out by means of literature research. Article 35 of the ITE Law is more appropriate to be imposed on the crime than article 263 of the Criminal Code. Efforts to combat crime need to be taken with a policy approach before criminal efforts.

Keywords: *Data Falsification; Online Loans; ITE Law*

Introduction

Contracts or agreements are growing rapidly today as a logical consequence of the development of business cooperation between business actors. Many business collaborations are carried out by business actors in the form of contracts or agreements made in writing. Even business practices develop the understanding that business cooperation is made in writing. A written agreement as a basis for the parties (business actors) to demand if one party does not carry out what is agreed in the agreement. Actually, juridically the agreement can be made in writing or orally. However, oral agreements have a high risk because they have difficulty proving in the event of a contract or agreement dispute.

The State of Indonesia is a State of law as stated in Article 1 Paragraph (3) of the State Constitution of the Republic of Indonesia Year 1945 which explains that "The State of Indonesia is a State of law". Various aspects of life are regulated by law, one of which is the economic aspect, including credit. The lending system is one of the efforts of banking institutions to maintain economic stability. This obviously benefits the State.

An online loan is a money loan facility by a financial service provider that operates online. The development of online loans in recent years is very significant and people can easily reach them through the play store application and website freely.¹ These online loan providers are commonly known as fintech. This loan provider is a financial service provider institution that operates online with the help of information technology. According to the Financial Services Authority Regulation Number 77/POJK.01/2016 of 2016 concerning Information Technology-Based Money Lending and Borrowing Services ("POJK 77/2016"). That online loans are "*the provision of financial services to bring together lenders and loan recipients in the context of making loan and loan agreements in rupiah directly through an electronic system using the internet network*". Online loan applications have the following requirements: being an Indonesian citizen, a minimum of 21 years old with a maximum of 60 years, income equivalent to UMR, having a Taxpayer Principal Nmor (NPWP) and having a bank account in accordance with the Identity Card (KTP).

Forgery is the process of making, adapting, imitating or imitating objects, statistics, or documents, with the intent to deceive. A crime similar to fraud is another crime of deceiving, including through the use of objects obtained through forgery.

Article 35 of Law number 11 of 2008 concerning Electronic Information and Transactions as amended by Law number 19 of 2016 concerning Electronic Information and Transactions states "everyone intentionally and without rights or against the law manipulates, creates, changes, disappears, destroys electronic information and/or electronic documents with the aim that the electronic information is considered as if the data were authentic. The purpose of regulating article 35 of the ITE Law is to maintain the reliability of electronic information or documents, especially in electronic transactions. Authentic data is not only intended for data made by or before authorized officials based on laws and regulations, but also includes personal data. Thus the ultimate goal or main objective of the criminal objective is to provide protection to society for the welfare of society.

Problem Statement

- 1.How to Regulate the Criminal Act of Electronic Document Manipulation?
- 2.How is the Criminal Law Policy in Overcoming the Crime of Forgery?

Research Methods

The approach used in the discussion of writing this research is a normative juridical approach. The juridical normative approach is legal research carried out by means of literature research by studying theoretical matters concerning legal principles, conceptions, views, legal regulations and laws related to problems.

Results and Discussion

1.Regulation of the Criminal Act of Electronic Document Manipulation

Discussion in criminal law, computer networks such as the internet can make the problem of crime more complex because of its wide scope.² Where technological transformation in finance presents Financial Technology (Fintech) or known as financial technology.³

¹ Ayu Kholifah and Arini Rufaida. Contract Law in Online Lending Practice. Al-'Adl Vol.15 No.1. January 2022. p.45.

² Ubait Kurniawan Aziz and Nur Azizah Hidayat. Criminal Liability Of Misuse Personal Identity Number For Cellphone Cards Registration Illegally. Mulawarman Law Review Vol 7 Issue 1. June 2022. p.26.

One of the criminal acts that occurs through social media is the criminal act of manipulating information and/or electronic documents so that it is considered as if authentic data is contained in Law of the Republic of Indonesia No. 11 of 2008 concerning Electronic Information and Transactions as amended by Law of the Republic of Indonesia No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law).

Regulations related to the criminal act of manipulating information and / or electronic documents are not regulated in the Criminal Code, but article 263 paragraph 1 reads (1) Whoever makes a false letter or forges a letter that can give rise to a right, engagement or debt release, or which is intended as evidence of something with the intention of using or instructing others to use or instruct others to use or instruct others to use the letter as if the contents were true and not forged, It is threatened that such use may cause harm, due to forgery of letters, with a maximum imprisonment of six years. (2) Shall be punished with the same offence, whoever knowingly uses a forged or forged letter as if it were true, if the use of the letter is likely to cause harm.

When examined, article 263 paragraph 1 contains several elements, namely:

- a. Making fake letters or forging letters;
- b. Give rise to a right, engagement or discharge of debt, or intended as evidence of a thing;
- c. With intent to use or instruct others to use or to instruct others to use such letters;
- d. It is as if the contents are true and not falsified;
- e. Incur losses.⁴

The first element explains about making fake letters or forging letters. According to the Great Dictionary of Indonesian, a letter is:

- a. Paper and so on that are written;
- b. A piece of paper and so on as a sign or caption; Cards;
- c. Something written; which is written; writing.

While fake according to the Big Dictionary Indonesian namely:

- a. Not pure; illegitimate; Direct;
- b. Imitation;
- c. Fake;
- d. Dishonest; dishonest;
- e. Contribute.

There are 2 acts related to forged letters, namely intellectual forgery (*intelectueele valscheids*) or making false letters and material forgery (*materiele valscheid*) or forging a letter where the two acts are different.⁵

In making a fake letter, the perpetrator creates a new letter whose existence did not previously exist. The content conveyed is purely from the thoughts of the perpetrator. While forging letters is a letter that has been changed in such a way by the perpetrator against a previously existing letter. In forgery of letters, forged signatures and stamps are also included in the category of forgery.

³ Kasmanto Rinaldi. The Legal Consequences for Victims in Illegal Online Loan Agreements. Journal of Deed Vol 10 No 3. September 2023. p.163.

⁴ Amir Ilyas, Opcit, p. 30

⁵ Teguh Prasetyo. Op.Cit, p. 19

"Give rise to a right, engagement or discharge of debt, or intended as evidence of a thing...". In this element, the word "raise" above is not addressed to the letter. But refer to the content contained in the letter. The letter itself does not give birth to rights, but the content of the letter gives birth to these rights and engagements. Similarly, other consequences in the element, which refer more to the content contained in the contents of the letter with the intention to use or instruct others to use or to have others use the letter...". The formulation of a criminal act is determined by the formulation of the sentence. In criminal acts, there are elements of guilt, namely intentionality and negligence. If understood further, there are 3 types of intentionality where one of them is intentionality as intent. In the above element, it can be seen if in this article the perpetrator who committed the act of forging or making a false letter had the intention that the letter was used by himself or others. The element of intentionality as an intention is sufficiently evidenced by the intention of the perpetrator in his heart and inner attitude. According to Adami Chazawi, to prove this, it is enough to see from 3 things, namely, the relationship between intentionality and other elements in the formulation of criminal acts, the circumstances when the act was committed, and the condition and state of the perpetrator's soul.

The element "with intent" in article 263 paragraph (1) of this Criminal Code has to do with other elements aimed at the element of using or instructing others to use forged letters or forged letters and aimed at elements as if the contents of the letter were true. Then regarding the circumstances when the deed was committed, it is proven by looking at the background of making the letter, the content of the letter and the making of the letter. The last is the mental state of the perpetrator, where if he is proven to suffer from a disorder or mental disorder when committing the act, the perpetrator cannot be subject to criminal sanctions. The above 3 things must be proven so that the element "*with intent*" can be fulfilled.

The next element is "... *It's as if the contents are true and not faked* ...". The word ostensibly means to have the purpose that the letter is forged or the forged letter can be considered as a true letter or a real letter. The person who uses or uses the letter will eventually be deceived and use the letter. The word as if it must be proven through the contents contained in the letter so that it will be seen whether the letter is genuine or not. Finally, the element "... *inflict losses* ...". Regarding losses, it cannot be ascertained about the amount or amount of losses caused. In proof, the determination of losses can only be done by estimating who gets losses from the existence of fake letters or forged letters.

Furthermore, in article 263 paragraph 2, the elements that can be detailed include:

- 1) Intentionally;
- 2) wearing;
- 3) Forged letters and forged letters;
- 4) As if true.

According to Law of the Republic of Indonesia No. 11 of 2008 concerning Electronic Information and Transactions as amended by Law of the Republic of Indonesia No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions

One type of crime in the field of technology is the criminal act of manipulation. Electronic document manipulation is the same as electronic document forgery where the act makes changes to a pre-existing electronic document and is changed in such a simple way, deleting or changing the subject matter into a new electronic document. Electronic document manipulation is an act that is done intentionally and does not have the right to insert, change, delete an authentic data to be inauthentic with the aim that it looks like authentic data and can be used properly.⁶

⁶ Syarif Mappiasse, 2015, Legal Logic of Judges' Decision Considerations, Jakarta, Prenadamedia Group, p 44

Next is about the elements of manipulation, creation, change, elimination, destruction. In the ITE Law, there is no detailed explanation related to these elements, so it is necessary to refer to other sources. Basically, to be able to punish someone using the article above, the defendant / perpetrator must show the purpose of using the information and / or electronic documents. This intention must have arisen in the heart of the perpetrator even though he has not done the act. According to this article, there are 2 things that are the main focus, namely his actions which include manipulation, creation, change, elimination, destruction and the purpose of being considered as if the data is authentic.

Juridical consideration is the consideration given by the judge adhering to the factors that have been revealed at the time of the trial and by law such consideration must be contained in the judgment.

Juridical considerations usually consist of:

- Indictment filed by the public prosecutor,
- Statements given by witnesses and defendants,
- Evidence (weight/lightness) presented at the time of the trial,
- Facts revealed at the time of the trial,
- Confidence in the Judge, and
- Articles in the ITE Law.

The absence of excusing reasons (*including justifying reasons*) as an element of criminal liability, which is more precisely to use the term negation of criminal liability. The elimination of criminal responsibility means that it is not accountable to the maker. The elimination of criminal liability is the opposite if the crime has been proven and the maker is responsible.

2. Criminal Law Policy in Tackling Counterfeiting

The political conception of criminal law for crime reduction, in addition to the procurement of criminal law making which is an integral part of public welfare efforts (*Social Welfare*), and from social policy (*Social Policy*). Conception of social policy (*Social Welfare*) can be interpreted as any rational effort to achieve the welfare of society covered in the conception (*Social defence*), community protection. So that the chain of understanding social policy, as well as including social welfare policy, and social defense policy. Viewed from a broad angle on criminal law policy, in principle, it is not merely technical work of legislation that can be carried out juridically factually which can be in the form of sociological, psychological, historical and comparative approaches, even requires an integral approach to social policy with national development in general.⁷

Two points of thought in the policy of criminalization using penal means (criminal law) are the issue of determination:

- a) What acts should be made a criminal offence, and;
- b) What sanctions should be imposed on the violator.

A social policy-oriented approach was also seen in the Report of the National Criminal Law Reform Symposium in August 1980 in Semarang. The issue of criminalization and decriminalization of an act must be in accordance with the criminal politics adopted by the Indonesian nation, namely the extent to which the act contradicts or does not contradict the fundamental values prevailing in society and by the community is considered appropriate or inappropriate to be punished in order to carry out public welfare.

⁷ Barda Nawawi Arief, Potpourri of Criminal Law Policy, Op. Cit, p 4

Particularly regarding the criteria for criminalization and decriminalization, the symposium report among other things recommends that in order to establish an act as a criminal act, it is necessary to pay attention to the following general criteria.

- a) Whether the act is disliked or hated by society because it harms, or can harm, bring victims or can bring victims.
- b) Whether the cost of criminalizing is balanced with the outcome to be achieved, meaning that the costs of lawmaking, supervision and enforcement, as well as the burden borne by victims, perpetrators and perpetrators of the crime themselves must be balanced with the legal order situation to be achieved.
- c) Whether it will increase the burden on law enforcement officials is not balanced or actually cannot be carried by the capabilities they have.
- d) Whether these actions hinder or hinder the ideals of the Indonesian nation, so that they are a danger to the whole society.⁸

In addition to the general criteria above, the Symposium considers it also necessary to pay attention to people's attitudes and views regarding the disgrace of a particular act, by conducting research, especially those related to technological progress and social change. Similarly, according to Bassiouni, the decision to criminalize or decriminalize should *be based on certain policy factors which take into account a variety of factors, including*.

- a) *The proportionality of the means used in relationship to the outcome obtained;*
- b) *The cost analysis of the outcomes obtained in relationship to the objectives sought;*
- c) *An appraisal of the objectives sought in relationship to other priorities in the allocation of human-power, and;*
- d) *The social impact of criminalization and decriminalization in terms of its secondary effects.*⁹

- a. More explanation of the policy mentioned above can be summed up as follows. The balance of the means used in relation to the results to be achieved.
- b. Cost analysis of the results obtained in relation to the objectives sought in relation to other priorities in the allocation of human resources.
- c. Assessment is the assessment of the objectives sought in relation to other priorities in the allocation of human resources.
- d. The social influence of criminalization and decriminalization is related to or viewed from secondary influences.

The problem with a policy-oriented approach is that it tends to be pragmatic and quantitative and does not allow for subjective factors, such as values, into the decision-making process. However, according to Bassionuni, this policy-oriented approach should be considered as a scientific tool and used as an alternative to the emotionally laden value judgment approach by the legislature. It is also argued that the development of a *policy-oriented* approach has been slow to come because the legislative process is not ready for such an approach.

The inaction in question lies among other things in the financial resources to carry out the scientific orientation. Such inaction, coupled with the ongoing process of criminalization without being based on commendable judgments and without an evaluation of the effect on the entire system, can result in:

⁸ Ibid

⁹ Eko Adi Susanto, 2018, Criminal Responsibility Using

Fake Letter Reviewed from Article 263 paragraph (2) of the Criminal Code, Journal of the Rule of Law, Vol.

1 No.1, p. 14.

- a) The crisis of overcriminalization, and
- b) The crisis of Ovarian of the Criminal Law. The first effect is about the large or abundant number of crimes and acts criminalized, and the second is about efforts to control acts by not using effective criminal sanctions.¹⁰

The problem of law enforcement in Indonesia seems to be starting to face obstacles related to the increasingly rapid development of society. Various cases illustrate the difficulty of law enforcement finding ways to make the law appear to be in line with societal norms.

The phenomenon of crime as a form of "*deviant behavior*" always exists and is inherent in every form of society. According to Benedict S. Alper, crime is the oldest social problem. As a form of social problem and even a humanitarian problem, crime needs to be addressed immediately. Efforts to combat crime or commonly referred to as criminal policy.

According to Marc Ancel in Lamintang criminal policy (*criminal policy*) is as follows: "*A rational effort from the community in tackling crime*" Broadly speaking, this criminal policy can be pursued in two ways, namely:

- a) Penal efforts, are efforts to overcome crime that focuses more on repressive efforts (oppression / eradication / eradication) after evil occurs;
- b) Non-Penal Effort, is an effort to overcome crime that focuses more on preventive efforts (prevention / deterrence / control) before the crime occurs. The main objective of this crime is to deal with the factors conducive to the occurrence of crime.
- c) Criminal policy efforts are as follows:
 1. Criminal law application;
 2. Prevention without punishment, and;
 3. Influencing view society on crime and punishment (mass media).

Based on the scope of the criminal policy above, the application of criminal law (*criminal law application*) is one of the efforts to overcome crime.

Countering crime using crime is actually not a new method, but the oldest method, as old as human civilization itself. In fact, da yang is to the extreme of mentioning it as "*Older Philosophy of Crime Control*."¹¹

Efforts to combat crime need to be taken with a policy approach. That is, there is cohesiveness (*Integrity*) between criminal politics and social politics, as well as there is an integration between crime prevention efforts with "pens" and "*non-penal*".

As an effort to combat crime with criminal law, criminal law policy is part of law enforcement policy (*Law Enforcement Policy*), particularly criminal law enforcement, and is also an integral part of community protection efforts (*Social Defence*) and efforts to achieve community welfare (*Social Welfare*).

Crime or criminal acts in addition to being a humanitarian problem is also a social problem, even declared as the oldest social problem. Faced with this problem, many efforts have been made to overcome it. Efforts to combat crime are included in the framework of criminal policy. Criminal policy is the

¹⁰ Kanter and Sianturi. Principles of Criminal Law in Indonesia and Their Application. Jakarta, Stora Grafika Publishers, 2014.. p. 29.

¹¹ Ibid, p 27

rational effort of a State to tackle crime. This effort is essentially social *defense planning or protection of society* whose purpose is to achieve prosperity.

Tackling crime using criminal sanctions is the oldest method, as old as human civilization itself. There is also a mention of older philosophy control. Seen as a policy problem it is addressed, prevented or controlled by the use of criminal sanctions. There is a provisional opinion that criminals or lawbreakers in general need not be criminally charged.

Conclusion

Criminal law regulations regarding the criminal act of manipulating electronic documents so that they can be considered as authentic data refer to article 35 of the ITE Law. In the article, it is explained in detail that the prohibited actions in the article aim so that the information and / or electronic documents can be considered as authentic data. With the principle of *Lex Speciale Derogat Legi Generali*, article 35 of the ITE Law becomes more appropriate to be imposed on these crimes than article 263 of the Criminal Code which in this case the Criminal Code has weaknesses in tackling criminal acts with electronic and virtual media.

All people are urged to be more careful in maintaining personal data / documents, so that the same thing does not happen as the case of falsification of data belonging to others that someone uses to seek profits from falsifying other people's data / documents and if there is suspicion of certain people who falsify other people's documents to report to the authorities. To law enforcement officials to be more firm in carrying out the duties assigned by the State of Indonesia and cooperate with each other in eradicating or following up and preventing all types of violations of the law. The government should be able to educate the public not to trust fake websites on behalf of an agency or institution and fill out forms related to personal information so as to minimize the occurrence of similar crimes.

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