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CORPORATE CRIMINAL LIABILITY FOR DEBT COLLECTOR SERVICE USERS IN COLLECTING ONLINE LOANS WHICH HAS CRIMINAL IMPLICATIONS

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Abstract

In chapter 1 of the Introduction, describes the background that, in practice, billing in civil proceedings takes a long time, it is necessary to use summons or civil lawsuits, so companies feel inefficient with this procedure, to shorten time and get profits, online loan companies choose by threatening to use immoral and pornographic content to frighten debtors. This method is considered by the company to be faster and more effective in cutting long general procedures, this action is based on a person's preference in choosing the most profitable and effective action for himself. In addition, the motivation to get as much profit as possible is a strong impetus so that corporations in operating their trade directly or indirectly lead to involvement or involvement in crime. In this case, online loan companies participate in corporate crimes, which include crimes committed by corporate employees or the corporation itself for the benefit of the corporation. In this case, the mistakes made by debt collectors can be replaced by corporations because there is a subordinated relationship between employers and perpetrators who commit crimes, and the benefits obtained by the perpetrators are actually not the perpetrator's profits but the company's profits so that the corporation can be held criminally responsible because the perpetrators are corporate employees and act within the scope of work and on behalf of the corporation.

Keywords: Liability, Criminal, Corporation, Debt Collector

Introduction

Basically, humans have a level of life needs that will always try to be met throughout their lifetime. The level that can distinguish every human being in terms of well-being, a theory that has been officially recognized in the world of psychology. These needs range from the most urgent to those that will present themselves when previous needs have been met. Everyone will definitely go through those levels, and seriously strive to fulfill them through business development (Hukum, 1996). Business development carried out by the community requires capital, which can be obtained by borrowing through capital loans or funding through banking institutions. Financing or credit is not an unfamiliar problem, both in urban and rural life. Credit is one of the financing of most of the economic activities. Credit is an important activity for banks,

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because credit is also an important source of funds for every type of business (Sutedi, 2008).

Before the start of lending activities, a good and careful analysis of all aspects of credit that can support the lending process is needed, in order to prevent credit risk from arising. This financing is very helpful for the community in meeting their needs. In providing such financing facilities, financial institutions must act extra carefully. The financing will arise a number of considerable risks, whether the funds and interest from the loaned credit can be received back or not. To minimize the risk of loss above, an appropriate and correct regulation or procedure is needed in providing financing or credit. The procedure for granting credit does not depend on the few or many stages that must be passed by prospective debtors, but the concern is that the existing stages have been really carried out properly and precisely (Nasution, 2016).

The credit agreement begins with the making of an agreement between the recipient of credit (debtor) and the creditor (creditor) as stated in the form of an agreement. The agreement can be in the form of an oral agreement or in the form of a written agreement. Debt-receivable agreements in written agreements exist that are made with credit agreements (Adicahya, 2009). The debt agreement between the debtor and the creditor is set forth in the credit agreement. Hermansyah stated that: The credit agreement contains the rights and obligations of debtors and creditors. The credit agreement is expected to make the parties bound by the agreement fulfill all their obligations properly. However, in the credit agreement, sometimes one of the parties does not fulfill the agreement in accordance with what has been mutually agreed.

One form of financing or credit that is currently growing is the credit of goods through online applications. The development of technology is increasingly sophisticated, the more new things are encountered in everyday life. Among them, one of the developments in information technology, telecommunications and computers is the birth of a transaction model that does not need to meet directly. Device access permission requested by the application system (Arief, 2001) is the only guarantee for credit applications made. To get credit, prospective customers must go through a series of the most common credit analysis, namely 5C (Character, Capital, Collateral, Capacity and Condition of Economy). In terms of online credit applications, prospective customers need to go through several credit application processes that are almost the same as other conventional loans before getting credit. Some of these processes include device access permissions, filling in personal data information, contacts on the phone, work information, uploading supporting documents, bank information and face authentication. After these requirements are completed, then enter the review/audit process carried out by the application system and phone verification. If approved, the online loan application company will pay the price of the goods chosen by the buyer to be paid in installments in a certain amount and period of time (Waluyo, 1992). In this credit, there is no guarantee of physical assets that need to be collateralized to get credit in online loan applications. However, when the access device permission has been approved, the online loan application company already has sufficient assets to be used as collateral for the customer

(Mangesti & Tanya, 2014). This access permit is also one of the effective credit risk mitigation for online loan application companies.

Online loans stand for financial and technology is a new industry based on financial services. Online loan application companies can easily track mobile device activities, contact data, and other important personal information on mobile devices. By knowing how these permissions work or the reasons for these permissions, those who complain about data information irregularities should be aware that they have very expensive digital assets in their mobile devices and must understand that these digital assets make them have a very strong bargaining position. In addition, in the online credit application, there is also a credit agreement or terms and conditions that need to be obeyed by both parties (creditors and debtors).

In the contract or the applicable terms and conditions, there is a sentence stating that the creditor will not disseminate data information to third parties unless there is a delay in payment. If the debtor agrees, then the credit process continues, but if it does not agree, then the credit process is void (Esmi & Sosiologis, 2014). Only a handful of customers read the credit agreement contract and the terms and conditions, so there are still many complaints about the dissemination of data information that leads to defamation. Another thing to know again is that online credit applications throw credit collection tasks to third parties such as collector agencies (ranging from desk collection to remedial collection) to collect credit returns that have been agreed upon or there may be some online loan companies that do not throw billing to third parties (Rato, 2010).

The development (fintech) is the result of technological advances that offer various loan models 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 although people do not have access to finance, the penetration of ownership and use of smartphones is very high. Easy loan application requirements make many people tempted to apply for loans, only with a photo ID card and fill in personal data, everyone easily receives funds quickly, but from this convenience debtors can be trapped in the trap of high loan interest, this is because there are no rules regarding limits or interest set on this service, and acts of intimidation of loan collection that cause unrest in the community (Didik Endro, 2019).

Based on data on the growth of online loans in Indonesia, it is known that 103 fintech companies are licensed and registered with the Financial Services Authority (OJK) as of January 3, 2022. In addition, there are illegal online lending companies that are increasing in number. The Investment Alert Task Force (SWI) found 71 illegal online loans from 2018 to August 2022 with 4,160 loans that had been closed. In addition, citing a report by the National Consumer Protection Agency (BPKN), there were 2,800 consumer complaints related to online loans, both legal and illegal.

The National Police's Criminal Investigation Agency arrested four debt collectors who became suspects behind the desk of Chinese peer to peer lending (P2PL) fintech company PT. Vcard Technology Indonesia (Vloan). These debt collectors collect debts by distributing pornographic content to scare debtors. In addition, the debt collector does

not only contact the person concerned, but other phone numbers in the debtor's smartphone contacts that are not included in the emergency contact, the debt collector will also contact the debtor's colleague or relative number and even do not hesitate to contact the debtor's boss and inform that his employee has a debt that has matured, by using grub whatsaap whose members are colleagues and relatives of the debtor then send photos, Documents, videos and messages that smell of pornography In addition, the perpetrator does not hesitate to threaten to disseminate the debtor's personal data if he does not immediately pay off his debt. Such actions are clearly incompatible with collector billing ethics (Arifin et al., 2020).

Another case example occurred to one of the online loan customers, namely Yoshua. "I borrowed in several applications, including Tunai Rupiah and Dana Kilat." According to Yoshua, in the Tunai Rupiah application, there are many lenders or cooperatives or loan sharks who name their entities such as Dana Speed, Datang Pinjam, Pinjam Sono, and so on. Pinjol gives more losses to borrowers. The interest given alone is almost 50% with a tenor of only 7-10 days. "Because I was late paying the loan, they distributed photocopies of my ID card and photos of myself saying that I was a fraudster because I borrowed non-payment money to contact numbers on my WA application," Yoshua said.

In practice, collection in civil proceedings requires a long time, it is necessary to use subpoenas or civil lawsuits, so that companies feel inefficient with this procedure, to shorten time and make a profit, online loan companies choose by threatening to use immoral and pornographic content to scare debtors (Wounde et al., 2023). This method is considered by the company to be faster and more effective in cutting the general procedure that is long, this action is based on one's preferences in choosing the most profitable and effective action for the diriya. In addition, the motivation to get a large profit is a strong impulse so that corporations in operating their commerce directly or indirectly lead to involvement or involvement in crime.

In this case, online loan companies participate in corporate crime which includes criminal acts committed by corporate employees or the corporation itself for corporate interests. Corporate crime is part of white collar crime which, according to Shuterland, is a crime committed by someone who has honor and high social status in exercising his office (Amin, 2014). This when associated with online lending companies, it is clear that there is a high social position with the capital owned by the company to lend money, besides that it is included in white-collar crime because it is also supported by skills in the field of Electronic Information Technology and professional knowledge. In this case, the mistakes made by debt collectors can be replaced by corporations because there is a subordinated relationship between the employer and the perpetrator who commits a criminal act, and the benefits obtained by the perpetrator are actually not the benefits of the perpetrator through the company's profits so that the corporation can be held criminally responsible because the perpetrator is an employee of the corporation and acts within the scope of work and on behalf of the corporation (Sulistyawan, 2023).

Provisions regarding fintech-based money lending and borrowing services cannot be separated from the Financial Services Authority Regulation (POJK) Number: 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Services, then POJK Number: 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector. Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016, OJK Circular Letter (SEOJK) Number 18 / SEOJK.02 / 2017 concerning Governance and Risk Management of Information Technology in Information Technology-Based Lending and Borrowing Services, and Minister of Communication and Information Regulation Number 20 of 2016 concerning Personal Data Protection in Electronic Systems.

In (POJK) Number 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Services, sanctions provisions are considered not optimal, only limited to giving written reprimands, fines, restrictions on business activities, business freezes to the revocation of business licenses. In the regulations, the use of debt collector services can only be done for bills that have exceeded the 90-day delay limit from the loan due date. Debt collectors are also prohibited from using physical and mental violence in collecting bad loans against debtors (Widodo, 2013).

On the regulatory side, the Financial Services Authority (OJK) plans to change a number of rules related to the fintech industry to be in line with conditions in the field. However, fintech peer to peer lending (P2PL) must follow consumer protection provisions that have been issued by the Financial Services Authority (OJK) so that there is no legal vacuum and criminal provisions in this field serve to protect the legal interests of the community and the state. In addition, it is necessary to provide appropriate sanctions for debt collectors and company administrators related to this, as well as legal protection for victims of criminal acts committed by debt collectors in committing their evil acts which can be categorized as cybercrime or as a mayantara crime and included in acts that can be charged with Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Information and Electronic Transactions. The existence of this case causes sanctions, not only debt collectors are asked for sanctions but the board of directors can also be asked for criminal answers for actions committed by debt collectors because they are still within the scope of work, in this case known by the management of the corporation. For some of these things, the author wants to study and express these problems, in the form of writing a legal journal with the title: "Corporate Criminal Responsibility for Debt Collector Service Users in Collecting Online Loans with Criminal Implications".

Method

The type of research used in completing this thesis is a normative juridical research type, with a statutory approach (statute approach) and a conceptual approach (conceptual approarch) as well as a case approach. The legal materials used are primary legal materials and secondary legal materials in the form of covering laws and regulations issued in their own jurisdiction and judges' decisions. Secondary legal materials are legal

materials that are closely related to primary legal materials and can help to analyze and understand existing primary legal materials. Secondary legal materials such as the results of scientific papers of scholars and experts in the form of literature so that they can support, assist and complement in discussing problems that arise in the framework of preparing this thesis. In addition, secondary legal materials are obtained from books, legal articles, legal journals, scientific papers, and other related supporting data. The analysis of the legal material used is qualitative descriptive.

Result and Discussion

Forms of Corporate Criminal Liability (Online Loans) for Debt Collector Service Users in Collecting Online Loans which have criminal implications

Associated with the theory of criminal law, that criminal liability or toerekeiningsvatbaarheid assesses a person who commits a criminal act, whether he can be acted upon or not. There are different meanings of liability in the scope of criminal law experts. Roeslan Saleh defines it as "criminal liability". Moeljanto used another word as "accountability in criminal law". Sudarto, Sianturi, followed by Muladi, Barda Nawawi Arief who concentrated the term "criminal responsibility". Related to this, in the preparation of this thesis, the author emphasizes the term "criminal liability" by discussing the problem being discussed, namely the responsibility of online loan companies in actions made by debt collectors as third parties to power of attorney agreements. The basis that underlies criminal law in which there is a principle of legality, where this can be convicted is the principle of guilt, where those who commit acts related to crime or crime will be guilty if proven to have committed unlawful acts.

It clearly states that it is very clear that only someone who has a fault can be punished. In theory, this criminal responsibility, which as a debt collector service is meant is in the form of an individual (natuurlijke person), where in the word there is a despicable meaning (verwijtbaaheid) of the perpetrator for his actions or treatment. The meaning of this criminal law principle is "liability based on fault", and is known as "no crime without fault" (azasculpability). This specificity is associated with its intentional element and with its negligence. Analysis of the thoughts of the subject of criminal law experienced with the biological connotations of a person (verwijtbaaheid).

The Criminal Code, which is still adopted as the principle of sociatas delinguere non potest, is referred to as a legal entity that is considered not to have committed unlawful acts, namely fictional thoughts about the nature of legal entities that are not used in the field of criminal law. Thus, it is said that the formulation of responsibility for someone who violates the law in the Criminal Code can be oriented towards the maker or perpetrator of individual criminal acts and someone within the scope of the biological connotation experienced (natuurlijke person). In banking business practices, banks are required to implement the precautionary principle. In principle, prudence is related to the maintenance of bank health and the protection of its customers. Bank Indonesia stipulates Bank Indonesia Regulation No. 11/25/PBI/2009 concerning amendments to Bank Indonesia Regulation No. 5/8/PBI/20033 concerning the Implementation of Risk Management of Commercial Banks (hereinafter referred to as PBI Risk Management). The definition of risk management is defined as a logical method with systematics in identifying, quantifying and reporting risks that take place in each activity / process.

Based on this description, it can be argued that therefore third parties should not deviate from legal regulations. If the debt collector acts properly in accordance with good and correct collection guidelines, the bank that gives the power of attorney will not experience legal problems. Then if a third party commits actions that are considered against the law, the bank will be held responsible because in criminal law the mistake is not only a form of intentionality, but also as a form of negligence.

The use of third party services (debt collectors) in debt collection can cause losses to consumers due to unprofessionalism in carrying out their duties. The existence of debt collectors develops not only in the banking environment, but other business entities that have bills such as online loan companies that provide credit to debtors. However, the tendency that occurs in practice is that debt collectors rarely act in accordance with applicable norms but actually violate legal provisions such as intimidation, threats, and real violence both physical and psychological including violations of customer / debtor personal data by collecting contact numbers on the debtor's phone.

Related to this, there is nothing in the law that prohibits someone from becoming a debt collector. Even in the provisions of the agreement as stipulated in Article 1792 to Article 1819 of the Civil Code, it is stated that with a power of attorney, debt collector services can represent creditors to collect debts to debtors. However, the trend that occurs now is that in practice there are often violations of the law that force their resolution at the court table, such as making threats, pressure, and violence both physical and psychological that can be criminally responsible, along with violations of personal data of customers / debtors who are protected based on applicable legal provisions.

Law enforcement against debt collectors who commit unlawful acts has been carried out by the Police. However, the enforcement of the law that has been applied seems to be limited to debt collectors who commit these acts. The online loan company as a corporation and as the party that authorizes debt collectors to carry out debt collection as if they have not been touched by the law and bear the consequences of being accountable for the actions of debt collectors who have carried out their duties for their interests.

Corporations today are increasingly playing an important role in people's lives, especially in the economy. Doubts in the past to place corporations as subjects of criminal law who can commit criminal acts and at the same time can be held accountable in crime have shifted. The doctrine that colored the Dutch Wet Van Strafrecht (Criminal Code) of 1886, namely "university delinquere non potest" or "societas delinquere non potest" (legal entities cannot commit criminal acts), has undergone changes with respect to the acceptance of the concept of functional actors (functioneel Daderschap).

Corporations have reasons that can abolish penalties, just like human legal subjects. Because in practice it is not easy to determine the presence or absence of fault in corporations, it turns out that in its development, especially those concerning corporate criminal liability, there is known to be a new view, or let's say a somewhat different view, that especially the responsibility of legal entities, the principle of guilt does not absolutely apply. So that criminal liability which refers to the doctrine of strict liability and vicarious liability which in principle is a deviation from the principle of guilt (mens rea), should be taken into consideration in the application of corporate responsibility in criminal law. Therefore, this principle is that corporations are essentially accounted for the same as private persons.

In addition, efforts are currently being made to reform the material criminal law and have produced the formulation of the "Draft Concept of the Criminal Code" as a

replacement for the Criminal Code / WvS. The preparation of the concept according to Barda Nawawi Arief, is essentially an effort to reform / reconstruct / restructure the entire substantive criminal law system contained in the Criminal Code (WvS) relics of the Dutch East Indies era. The reform of the entire material criminal law system contained in the Criminal Code / WvS is a top priority, because the Criminal Code / WvS is the "parent / codification" of material criminal law. This parent position is in the provisions of Article 103 of the Criminal Code / WvS, that "The provisions in Chapters I to Chapter VIII of this book also apply to acts that by other statutory provisions are threatened with crime, unless otherwise provided by law".

Related to this, in criminal law, we have recognized corporations as subjects or perpetrators of criminal acts, but liability in criminal law is still ambiguous. If we look at the Criminal Code (KUHP), which we still faithfully follow today, corporate crime cannot be netted, because corporations are not legal subjects or perpetrators. In the Criminal Code, the subject of law is only humans / people. However, some laws and regulations are outside the Criminal Code. These laws and regulations include:

1. Law Number 7 Drt of 1955 concerning Economic Crimes;
2. Law Number 2 of 1992 concerning Insurance Business;
3. Law Number 11 of 1995 concerning Excise;
4. Law on Environmental Management; and
5. Law regulating the Eradication of Criminal Acts of Corruption.

The legislation has formulated that corporations are expressly recognized as subjects of law or perpetrators and can be accounted for in criminal law. However, there are other laws that are not clear about the direction of corporate criminal liability. Seeing this shows the hesitancy of lawmakers to place corporations or legal entities as subjects or actors who can be burdened with criminal responsibility. The existence of such inconsistent arrangements will certainly make it difficult for law enforcement to account corporations for crimes committed.

The construction of corporate liability is influenced by the penal policy or also known as Policy in English or politiek in Dutch. Crime prevention policies or efforts are essentially an integral part of community protection efforts (social defense) and efforts to achieve community welfare (social welfare). The ultimate goal or main objective of criminal politics/policy is the protection of society to achieve public welfare. Viewed from the perspective of criminal law, the policy formulation must pay attention to internal harmonization with the criminal law system or general penal rules in force today. It cannot be said that harmonization occurs if the formulation policy is outside the current criminal law system. Policy formulation is the most strategic stage of penal policy because at that stage the legislature is authorized in terms of determining or formulating what actions can be punished which are oriented to the main problems of criminal law including acts that are unlawful, guilt, criminal responsibility and what sanctions can be imposed. Therefore, crime suppression efforts are not only the duty of law enforcement officials but also the duty of law-making officials.

In essence, the planning stage (planinng), according to Nils Jareborg includes three main problems of criminal law structure, namely problems: Formulation of criminal acts / criminalization and threatened punishment (criminalisation and threatened punishment), punishment (adjudication of punishment sentencing) and execution of punishment (execution of punishment). The construction on corporate criminal liability of leasing parties in employing debt collectors that currently applies (existing) in settling debts has

not been fair, because corporations cannot be prosecuted to be responsible. The following paragraphs will describe the construction of debt collector criminal liability. In this case, criminal liability by debt collectors either before or after committing criminal acts in the form of threats, violence and or extortion against debtors is an individual responsibility. Without having anything to do with the company that uses its services in billing.

Article 7 of Law Number 48 of 2009 concerning Judicial Power states that No one may be subject to arrest, detention, search, and seizure, except by written order of a legitimate authority in the case and in the manner provided for in the law. So it is clear here, the debt collector cannot make a seizure let alone commit violence to the debtor, unless there is a written order from a legitimate power. In comparison, collection of debtors by online loan companies is different from financing institution companies which are carried out through several stages. For online loan companies, billing can only be done per phone or online chat application.

In contrast to leasing companies that use several stages: First, the leasing party uses a desk collector. The desk collector is in the back office or does not go to the field. They serve as reminders to remind debtors of their obligations to make payments, namely reminding debtors of the due date of debtor installments by mail or telephone. As a reminder, the desk collector's job is more oriented towards customer service so they are required to use polite communication language and try to serve debtors. Second, the collection field. Unlike desk collectors, field collectors have the duty to go to the field to make visits, as well as collect and pick up payments if debtors who have been contacted by deck collectors are still considered in default for some time. They visit the debtor's home or residence to find out what the customer's situation is like and his financial condition. In addition, they try to provide a persuasive understanding of the debtor's obligations and explain the consequences that can arise if late payments are not resolved immediately. They also provide a grace period for customers to pay off arrears and debtors can make installment payments directly to the field collector. The next stage, the leasing party will use a remedial collector aka bailiff. This remedial collector includes internal collector and external collector. This collector is tasked with collecting and withdrawing goods that are used as collateral when the debtor submits an agreement. When working, they apply different treatment depending on the response of the debtor faced. If the debtor understands the problem and voluntarily submits the guarantee as agreed, then they will be polite. But if the debtor does not show good faith, such as difficult to contact, hiding, irresponsible, to run away, they will act more aggressively. It is not uncommon for them to carry out bullying, threatening to process legally, threatening the safety of debtors, and even confiscating collateral.

The basis for the existence of a criminal act is the principle of legality, while the basis for the conviction of the maker is the principle of guilt. This means that the perpetrator of the crime will only be convicted if he has a mistake in committing the crime. This also means that the perpetrator of the crime will only be convicted if he has a mistake in committing the crime. Theoretically based on the theory of criminal liability, criminal liability for debt collector services in the form of individuals (natuurlijke person), in it must contain the meaning of reproach (verwijtbaaheid) the maker for his actions. In criminal law, this principle is known as the principle of "liability based on fault" or also known as the principle of "no crime without fault" (culpability principle), especially related to problems of intentionality and negligence.

The formulation of criminal liability in the Criminal Code does not adhere to the principle of corporate responsibility. This is based on Article 59 (b) of the Criminal Code which states that "In cases where because of an offense it is determined to be criminal against the management, members of the governing body or commissioners, the management, members of the management body, or commissioners who apparently do not interfere in committing the offense are criminalized". In other words, corporations cannot be considered legal subjects for whom criminal liability can be held.

Indonesian criminal law adheres to a separation between criminal acts and criminal responsibility known as dualistic teachings, not the other way around monoistic. Criminal acts only concern the matter of the act (actus reus), while the matter of the person who committed the act and to him being held accountable is another matter. With this separation, guilt (mens rea) becomes a determining factor in criminal liability. Criminal liability is carried out on the basis of the unwritten law "no crime without fault" (geen straf zonder schuld beginsel). Strictly speaking, a person who commits a criminal act is not necessarily sentenced to a crime, depending on whether the person can be criminalized or not. Error as a subjective element requires intentionality (dolus) or negligence (culpa). Normatively, there is no provision that explicitly states the corporate criminal liability of online loan companies if debt collectors commit criminal acts.

The elements of Article 55 paragraph (1) number 1 and Article 56 of the Criminal Code are not fulfilled. The leasing party as a corporation that employs debt collectors cannot be charged with Article 55 paragraph (1) number 1 of the Criminal Code because the elements in the article are not fulfilled in corporate actions. The existence of unlawful acts allegedly committed by debt collectors is a related act, not because of orders or cooperation with corporations. To be able to apply Article 55 paragraph 1 to 1 of the Criminal Code in handling a criminal act, more than one perpetrator must be involved. In the study of criminal law related to Article 55 of the Criminal Code, it is theoretically known as what is called deelneming (participation). In this context, deelneming is related to a criminal event whose perpetrators are more than 1 (one) person, so the role and responsibility of each perpetrator of the criminal event must be sought.

In that connection, if it is connected between Article 55 of the Criminal Code and the teaching of deelneming, then there is actually no criminal event between perpetrators having equal positions and roles. This means that it is not logical if in handling a criminal case, the judge states that Article 55 of the Criminal Code is proven by only stating the existence of a collective cooperative relationship. Using the conclusion that there is a collective cooperation in a criminal event without being able to show the role of each perpetrator, actually the process of proving Article 55 paragraph 1 to 1 of the Criminal Code is not perfect. Even at the same time describing the trial process has failed to extract material truth from the cases examined and tried.

The existence of Article 55 paragraph 1 to 1 of the Criminal Code, there is a necessity to find the role of the perpetrators and the perpetrators are held accountable in accordance with their respective roles. This means that in the principle of deelneming not all actors can be the same as people who do, or equally as people who tell to do, let alone equally as participating in doing. In this context, a criminal event in which more than one perpetrator requests a discovery from law enforcement to find the position and role of each perpetrator. In a criminal event it is very important to find the relationship between perpetrators in solving a crime, namely together committing a criminal act. A person has

a will and plans a crime whereas he uses others to carry out the crime. One person commits a crime, while another person assists in carrying out the crime.

If you pay attention to the formulation of Article 55, it is impossible to prove Article 55 of the Criminal Code in the examination of criminal cases. This article is stated as proven only by concluding the existence of collective cooperation without showing the role of each perpetrator of a criminal act. Moreover, among the perpetrators there is a working relationship between superiors and subordinates and on the other hand there are authorities from the relationship between superiors and subordinates. That a criminal act whose perpetrators are more than one person, let alone filed in one case, it is strange if only by mentioning the existence of work collectively concluded Article 55 of the Criminal Code as proven, even though the role and position of each perpetrator is not found, for example which of the perpetrators of the crime is placed as the person who committed, ordered to do or I did. In this context, how important it is to find the capacity of each criminal offender, especially related to formal employment relationships.

The law does not specify who is meant by who ordered to do so. To seek the meaning and conditions to be determined as a person who commits (doen pleger), in general legal experts refer to the information contained in the Dutch MvT WvS, which reads that "the one who ordered to do is he also the one who committed the crime, but not personally but with the intermediary of another person as an instrument in his hands if the other person committed the act unintentionally, negligence or irresponsibility, because of something unknown, misled or subject to violence".

People who are told to do so cannot be convicted. In law, people who are told to do this are categorized as manus ministra, while people who are told to do this are categorized as manus domina. The possibilities of not convicting the person ordered, because:

1. Have no misery, negligence or ability to take responsibility;
2. Based on Article 44 of the Criminal Code;
3. Coercive force Article 48 of the Criminal Code;
4. Based on Article 51 paragraph 2 of the Criminal Code; and
5. The person told does not have the characteristics or qualities required in the delict, for example Articles 413-437 of the Criminal Code

The Criminal Code does not provide a strict formulation of anyone who is said to have participated in committing a criminal act, so in this case according to the doctrine to be said to have participated in committing a criminal act must meet two conditions that there must be physical cooperation and there must be awareness that they cooperate with each other to commit a criminal act. Based on the description above, it can be concluded that the fundamental difference between "co-doing" a criminal act and "helping to commit" a criminal act. In "co-doing" there is a conscious cooperation between the perpetrators and they jointly carry out the will, the perpetrators have a purpose in committing the crime. Whereas in "helping to do", the will of the person who helps to do is only to help the main actor achieve his goal, without having a goal of his own. The basis for the existence of a criminal act is the principle of legality, while the basis for the conviction of the maker is the principle of guilt. This means that the perpetrator of the crime will only be convicted if he has a mistake in committing the crime. This also means that the perpetrator of the crime will only be convicted if he has a mistake in committing the crime.

Theoretically based on the theory of criminal liability, criminal liability for debt collector services in the form of individuals (natuurlijke person), in it must contain the

meaning of reproach (verwijtbaaheid) the maker for his actions. In criminal law, this principle is known as the principle of "liability based on fault" or also known as the principle of "no crime without fault" (culpability principle), especially related to problems of intentionality and negligence. The formulation of criminal liability in the Criminal Code does not adhere to the principle of corporate responsibility. This is based on Article 59 (b) of the Criminal Code which states that "In cases where because of an offense it is determined to be criminal against the management, members of the governing body or commissioners, the management, members of the management body, or commissioners who apparently do not interfere in committing the offense are criminalized". In other words, corporations cannot be considered legal subjects for whom criminal liability can be held.

The legal subject of criminal acts known in the Criminal Code is a person in the biological connotation experienced (natuurlijke person). In addition, the Criminal Code also still adheres to the principle of sociatas delinguere non potest which means that legal entities are considered unable to commit criminal acts, so fictional thinking about the nature of legal entities (rechtpersonlijkheid) does not apply in the field of criminal law. Thus, it can be said that the formulation of perpetrator responsibility in the Criminal Code is only oriented towards individual criminal offenders or persons in the context of the biological connotations experienced (natuurlijke person). Then if this happens later (criminal act), then the criminal responsibility lies with the debt collector itself, not the responsibility of the company.

In the beginning, Corporations or legal entities (rechtpersoon) were legal subjects known only in civil law. The so-called legal entity is actually a creation of law, that is, by referring to the existence of a body that is given the status of a legal subject, in addition to a legal subject in the form of a natural man (natuurlijk persoon). With the passage of time, the rapid growth of the world economy leading to globalization which provides great opportunities for the growth of transnational companies, the role of corporations is increasingly felt and even affects many sectors of human life.

The impact that we feel according to its nature is twofold, namely positive impacts and negative impacts. For those that have a positive impact, we agree that it is not a problem but this negative impact is what we often feel today. As a result of the increasingly perceived negative impact caused by corporate activities, developed countries, especially those with good economies, began to look for ways to minimize or prevent these impacts, one of which is by using criminal law instruments (part of public law).

Actually, corporate crime has been known for a long time in criminology, in Criminology itself Corporate Crime is part of white collar crime. White collar crime itself was introduced by the famous criminologist E.H. Sutherland that: "... at the thirty-fourth annual meeting of the American Sociological Society, this was Philadelphia on December 27, 1939". Since then many legal and criminological experts have developed the concept. In the course of thinking about corporate crime, there are many pros and cons among legal experts, especially criminal law. In criminal law there is a doctrine that has developed, namely the doctrine of "university delinquere non potest" (corporations cannot commit criminal acts), this is influenced by the thought, that the existence of corporations in criminal law is only a legal fiction that has no mind, so it does not have a moral value that is hinted to be criminally blamed (element of guilt). Whereas in a delict / criminal act

requires a mistake (mens rea) in addition to the existence of an act (actus reus) or known as "Actus non facit reum nisi mens sit rea"

But this problem is actually not a problem by those who are pro corporate crime thinking. According to Mardjono Reksodiputro, there are two things that must be considered in determining corporate crime, namely, first about the actions of the management (or other people) that must be constructed as corporate acts and second about mistakes in the corporation. In his opinion, the first thing to be able to construct an act of management is also the act of the corporation, so the "principle of identification" is used. With this principle, the actions of the management or employees of a corporation, identified (equated) with the actions of the corporation itself. For the second thing, indeed so far in criminal law the image of criminal offenders is still often associated with acts physically committed by the maker (fysieke dader) but this can be overcome by the teaching of "functional actors" (functionele dader). By proving that the actions of the management or employees of the corporation in public traffic are valid as the actions of the corporation concerned, their fault (dolus or culpa) must be regarded as the fault of the corporation.243

Corporate crime is one of the discourses that arise with the advancement of economic and technological activities. Corporate crime is not new, but old goods that always change packaging. No one can deny that the development of the times and the progress of civilization and technology are accompanied by the development of crime and its complexity. On the other hand, the provisions of the Criminal Law in force in Indonesia have not been able to reach it and always lag behind to formulate it. One example is Money Laundering which was only officially criminalized in 2002. Another example is cyber crime or cyber crime which until now the arrangement still invites question marks. As a result, many illegal acts or cases have emerged, but they cannot be categorized as crimes.

Crime can be identified with harm, which then results in the birth of criminal liability. What in turn invites debate is how corporate liability or corporate liability considering that in the Indonesian Criminal Code (KUHP) what is considered a subject of criminal law is only an individual person in a natural biological connotation (naturlijkee person). In addition, the Criminal Code also still adheres to the principle of sociates delinquere non potest where legal entities or corporations are considered unable to commit criminal acts.

Black's Law Dictionary states corporate crime is any criminal offense committed by and hence chargeable to a corporation because of activities of its officers or employees (e.g., price fixing, toxic waste dumping), often referred to as "white collar crime." Corporate crime is a criminal offense committed by and therefore can be charged against a corporation because of the activities of its employees or employees (such as price fixing, waste disposal), often also referred to as "white collar crime".

Sally. A. Simpson, quoting John Braithwaite, states that corporate crime is "conduct of a corporation, or employees acting on behalf of a corporation, which is proscribed and punishable by law". Simpson states that there are three main ideas of Braithwaite's definition of corporate crime. First, the illegal actions of corporations and their agents differ from the criminal behavior of the lower socio-economic class in terms of administrative procedures. Therefore, what is classified as corporate crime is not only a crime of criminal law, but also a violation of civil and administrative law. Second, both corporations (as "legal subjects" of legal persons) and their representatives are included

as illegal actors, which, in judicial practice, depend on, among other things, the crimes committed, the rules and quality of evidence and prosecution. Third, the motivation for crimes committed by corporations is not aimed at personal gain, but rather at meeting needs and achieving organizational benefits. It is possible that these motives are also supported by operational norms (internal) and organizational sub-cultures.

Corporate crime may not be too frequent in the media. Law enforcement officials, such as the police, also generally crack down on conventional crimes that are actually and factually contained in people's daily activities. There are several factors that influence this. First, the crimes reported by society are only conventional crimes. Research also shows that police activity is largely based on reports from members of the public, so crimes handled by the police are also conventional. Second, public views tend to see corporate crime or white-collar crime not as very dangerous things, and also influenced. Third, the views and legal basis regarding who is recognized as a subject of criminal law in Indonesian criminal law. Fourth, the purpose of corporate crime punishment is more so that there is reparation and compensation, in contrast to other conventional criminal convictions that aim to arrest and punish. Fifth, the knowledge of law enforcement officials regarding corporate crime is still considered very minimal, so sometimes it seems reluctant to follow up legally. Sixth, corporate crime often involves public figures with high social status. This is considered to affect the law enforcement process.

The Indonesian Criminal Code only stipulates that the subject of a criminal act is a natural person (legal persoon). Lawmakers in formulating offenses must take into account that human beings perform acts within or through organizations that, in civil law as well as outside (e.g. in administrative law), appear as a whole and are therefore recognized and treated as legal entities or corporations. Under the Criminal Code, lawmakers will refer to corporate administrators or commissioners if they are faced with such a situation. Corporations as legal entities certainly have their own legal identity. The legal identity of a corporation or company is separate from the legal identity of its shareholders, directors, and other organs.

In the rules of civil law, it is clearly stipulated that a corporation or legal entity is a subject of civil law, can carry out buying and selling activities, can make agreements or contracts with other parties, and can sue and be sued in court in civil relations. Shareholders enjoy the benefits derived from the concept of limited liability, and the activities of the corporation are continuous, in the sense that its existence will not change despite the addition of new members or the cessation or death of existing members. But until now, the concept of criminal liability by corporations as a person (corporate criminal liability) is something that still invites debate. Many parties do not support the view that a pseudo-existence corporal can commit a crime and has a criminal intent that gives rise to criminal liability. In addition, it is impossible to present the corporation with actual physicality in the courtroom and sit in the defendant's seat for the judicial process.

In both common law and civil law legal systems, it is very difficult to attribute a particular form of action (actus reus or guilty act), as well as prove the mens rea (criminal intent or guilty mind) element of an abstract entity such as a corporation. In Indonesia, although the above laws can be used as a legal basis to impose criminal liability on corporations, the Criminal Court until now seems reluctant to recognize and use these regulations. This can be seen from the small number of corporate crime cases in court and of course has an impact on very few court decisions related to corporate crime. As a result, there is no reference that can be used as a precedent for the judicial environment in

Indonesia. The two cases that have appeared in court to date relate only to environmental violations.

In general, law not only regulates people (natural people) as legal subjects, but in addition to individuals there are also other legal subjects, namely legal entities to which legal rights and obligations are attached like natural persons as legal subjects. On that basis, to find out what a corporation means, it cannot be separated from the field of Civil Law. This is due to the term corporation which is very closely related to the term "legal entity" which is known in the field of civil law. It should also be pointed out that the word corporation is a term commonly used among criminal law experts to refer to what can be in other fields of law, especially in the field of civil law, as a legal entity or in Dutch referred to as rechtspersoon or in English called legal entities or corporations.

Then when viewed from the etymology (origin of the word), the notion of corporation which in other terms is known as corporatie (Dutch), corporation (English), corporation (German), comes from Latin, namely "corporation". In relation to the term "corporation", according to Muladi and Dwidja Priyanto "as with other words ending in "tio", corporation is considered a noun (substantivum) derived from the verb "corporare" which was widely used by people in medieval times or later." corporare" itself comes from the word "corpus" which in Indonesian is "Body". Thus, finally "corporation" means the result of the work of incorporation or in other words, the corporation is a body made into persons, a body acquired by human actions as opposed to the human body which occurs according to nature."

The same thing was stated by Kenneth S. Ferber who stated that: "A Corporation is an artificial person. It can do anything a person can do. It can buy and sell property,both real and personal,in its own name.it can sue and be sued in its own name.it is formal. Corporations can do anything a human being can do. Corporations can buy and sell property, both tangible privately and in its own name. This causes the corporation to be able to sue and be formally sued in its own Name. According to Mardjono Reksodiputro said that the development of criminal law in Indonesia there are three systems of corporate responsibility as the subject of criminal acts, namely:

1. The management of the Corporation as the maker, the manager is responsible
2. The corporation as the maker, the responsible steward; and
3. The corporation as the maker and the responsible.

In this case, there are pros and cons of corporate criminal liability. J.C. Coffe Jr. as quoted by Sutan Remy Sjahdeini, pointed out that corporate criminal liability has been an issue that has attracted the attention of academics for years. The issue of corporate criminal liability has been a long debate since hundreds of years ago and until now it has not been resolved. Hale, one of the experts who denies corporate criminal responsibility, states that criminal responsibility and human consciousness are two things that both exist. In man there are two most important parts, namely understanding and freedom of will, so that he is rational when governed by law. Therefore, man can only be found guilty of an act and convicted of a violation of the law committed solely because of these two things. With these two things, humans have an obligation to obey (the law). Criminal liability to corporations is considered dangerous because of the lack of awareness in him.

In addition to the lack of awareness in the corporation, there are two important reasons why corporations should not be burdened with criminal responsibility. First, many countries do not criminalize corporate acts. Because there is no empirical research base to justify the wrongdoing of a corporation, a standard that can only be applied to

humans. A corporation does not have a heart. Therefore, it is unlikely that a moral value is hinted to be criminally blamed. It is completely artificial to treat a corporation as if it has a strong attitude to be criminally blamed. It is impossible to imprison a corporation for the purpose of deterrence, punishment and rehabilitation for which criminal sanctions are intended. Second, neither court rulings nor legislators have ever considered the positive and negative aspects when corporations are criminally liable. They fail to consider some of the theoretical consequences when corporations are criminally held accountable and their implications in practice. In addition, it is important to distinguish between corporate organs and people in a corporation. Corporations also have no physical essence because they are legal fiction, which can only act through the presence of people in them. Corporations themselves have no morals and feelings, so the question that arises is, whether it is still necessary to impose penalties on corporations.

As for the arguments of experts who accept corporate criminal responsibility, argue that corporate criminal responsibility will improve the quality of corporate performance that is safe to protect people. Corporate criminal responsibility will control the actions of corporate persons who will seek material gain above human life and harm them. Therefore, this responsibility is tantamount to sending the message that human problems are far more important than mere material gain while reaffirming some of the values that corporate gluttony has sacrificed.

Without corporate criminal responsibility, corporations will run away from moral prosecution for their violations. This responsibility will also reduce losses incurred by corporations, and this is necessary in order to achieve the goals of the framers of laws that make rules on pollution, health, safety and business. The value of human health and safety will be considered less important when the corporation is not recognized as a party that can be responsible for the criminal acts committed. In more detail, Elliot and Quinn put forward several reasons regarding the need to impose criminal responsibility on corporations, as follows:

1. Without corporate criminal liability, companies are not impossible to avoid criminal regulations and only their employees are prosecuted for committing criminal acts that are actually criminal acts and mistakes from business activities carried out by the company.
2. In some cases, for procedural purposes, it is easier to sue a company than its employees.
3. In a serious crime, the company has more ability to pay the fine imposed than the company's employees.
4. The threat of criminal prosecution against the company can encourage shareholders to supervise the activities of the company in which they have invested.
5. If a company has made profits from illegal business activities, then the company should bear the sanctions for the criminal acts committed, not the company's employees
6. Corporate criminal liability can prevent companies from exempting their employees, either directly or indirectly, so that employees seek profit not from carrying out illegal business activities, for example if a transportation company determines its drivers to complete their duties within a certain time limit, then the driver is forced to speed in order to meet the specified time limit. In this situation, imposing criminal liability on the corporation would be a way of ensuring that the company concerned would not be able to escape its liability when the driver concerned was prosecuted for speeding.

7. Adverse publicity and the imposition of criminal fines on the company can serve as a deterrent for the company to carry out illegal activities, which would not have been possible if the prosecuted were its employees.

Theories of punishment develop following the dynamics of people's lives as a reaction to the emergence and development of crime itself which always colors the social life of society from time to time. Goal theory as Theological Theory and combined theory as an integrative view in the purpose of punishment assume that punishment has a plural purpose, where both theories combine the Utilitarian view with the Retributive view. The utilitarian view holds that the goal of punishment must have beneficial consequences that can be proven and the retributive view that justice can be achieved if the theological goal is carried out by measuring the principles of justice.

Based on the description of the discussion above, it can be stated that the corporate criminal liability of online loan companies in employing debt collectors in settling debts has not been fair because it has not been regulated in laws and regulations so that justice does not materialize for all parties, especially debtors. The behavior of debt collectors is currently still a serious problem that has not been addressed. On the one hand, consumers are disturbed by the actions of debt collectors, on the other hand, debt collectors as messengers of finance companies are responsible for debt arrears that can harm online loan companies. In addition, until now there have been no clear limits and rules on collection procedures by a debt collector, which are only limited to their respective internal rules. Things that happen in the field, debt collectors often do things outside the agreement between the leasing and the agent. The treatment of debt collectors is already at an alarming stage. Some debt collector actions have even led to criminal action. The incidence of criminal acts continues to repeat and become more massive, not in accordance with the norms of goodness in society, and causes losses and even causes social problems / conflicts in society. Online loan companies as parties who have hired debt collectors together with other related parties will be more careful and take various preventive steps to remain effective in debt settlement and there are no criminal violations by debt collectors, so as to create justice for all parties.

Conclusion

Suggestions that can be given that: Corporate criminal liability of online loan companies in hiring debt collectors that debt collector actions that commit criminal acts are considered actions on the part of online loan companies because these actions are related to the collection activities of online loan companies to debtors. Debtors are seen using a delegating test in the formal criteria approach to corporate criminal liabitily where the debt collectors have power on the basis of delegation contained in official company documents in the form of letters of assignment or written agreements to carry out the duties and objectives of the online loan company. Corporate criminal liability for online loan companies in hiring debt collectors in settling debts must be justice-based. In this case, the reconstruction must be fair to all parties, including: online loan companies, debtors, debt collectors. Justice emphasizes the balance between rights and general obligations that exist on each party. Corporate responsibility (online loans) for debt collector service users in collecting online loans which implicates criminal acts in settling debts has not been fair because it has not been regulated in laws and regulations so that

justice does not materialize for all parties, especially debtors. The behavior of debt collectors is currently still a serious problem that has not been addressed. On the one hand, consumers are disturbed by the actions of debt collectors, on the other hand, debt collectors as messengers of finance companies are responsible for debt arrears that can harm online loan companies. In addition, until now there have been no clear limits and rules on collection procedures by a debt collector, which are only limited to their respective internal rules. Things that happen in the field, debt collectors often do things outside the agreement between the leasing and the agent. Online loan companies as parties who have hired debt collectors together with other related parties will be more careful and take various preventive steps to remain effective in debt settlement and there are no criminal violations by debt collectors, so as to create justice for all parties. To the government, Financial Services Authority Institutions, Consumer Protection Agencies and law enforcement officials need to be consistent with existing regulations, so that loopholes are not given to debt collectors to commit arbitrariness. OJK should evaluate the development of fintech in Indonesia, especially online loans, in addition to the need for socialization and the establishment of a supervisory body so that customers are not harmed by companies that offer online loan products. After the evaluation, there needs to be a firm regulation on the existence of online loans in Indonesia. To the public, in this case as a debtor, able to carry out the contents of the agreement in online loans on time to make payments in accordance with what has been agreed.

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