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Role Criminal Law Against Case Usage Identity Card (KTP) Someone Else to Make an Online Loan

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Abstract

In Indonesia, 50% of online loans are made using another person's identity card (KTP), with West Java province accounting for around 50%. So this study employs normative research approaches. Role of criminal law in cases of using another person's identity (KTP) to make online loans by providing criminal sanctions in accordance with Law of Republic of Indonesia Number 27 of 2022 concerning Protection of Personal Data Article 67 paragraph (1) is punishable by a maximum imprisonment of 5 (five) years and/or a maximum fine of IDR 5,000,000,000 in conjunction with Indonesian Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions Article 48 Paragraph (1) Every person who complies with elements as intended in Article 32 paragraph (1) shall be punished with imprisonment for a maximum of 8 (eight) years and/or a fine of up to IDR 2,000,000,000. Suggestions for role of criminal law in cases of using someone else's identity (KTP) to make online loans are increasingly being implemented well and effectively, including (a) cooperation between government, legal entities, and Ministry of Information and Communications, such as ignoring suspicious links or attachments. (b) Collaboration between government, civil registration population service, and financial services authority in determining validity of a person's identity (KTP) when registering for online loans; however, this can only be done for online loans that have received operational permits from financial services authority. (c) Collaboration between government and community, such as not disclosing personal information to anybody. Second, disregard any suspicious links and only use legitimate applications. Third, update your password and make frequent backups of crucial data.

Keywords: Identity, Law, Loans, Role, Online

1. INTRODUCTION

The role is included in category of an authority that must be held accountable by implementing it properly according to authority that has been established. Role can be explained by its definition according to opinion of some experts, such as:

a. Soekanto

The role of role is a dynamic aspect of position (status), if someone carries out their rights and obligations in accordance with , then he carries out a role.

b. Gibson Invancevich and Donelly

A role is someone who has to relate to 2 different systems, usually organizations.

c. Riyadi

Role can be defined as orientation and concept of part played by a party in social opposition. With this role, perpetrator, both individuals and organizations, will behave according to expectations of people or their environment. While in general, roles are demands

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that are given structurally (norms, expectations, taboos, responsibilities and others). Role has three components, is:

a) Role Conception

A persons beliefs about what to do with a given situation.

b) Role Expectations

Expectations of others towards a person who occupies a certain position regarding how he should act.

c) Role Implementation

The actual behavior of a person who is in a certain position. If three components are in harmony, then social interaction will be established continuity and smoothness.

The existence of these three components makes role can be applied in any field and case such as law. In Arabic, it means "Alkas", which is then taken over in Indonesian as "Hukum". In sense of law contained understanding closely related to understanding that can do coercion. And according to experts in legal definition of:

a. Soediman Kartohadiprodjo

“that if we speak of law in sense as it is named in sense as it is named in English " Law“, in French” droit“,” Recht “(German),” recht “(Dutch) or” dirito”(Italian)".

b. L.J. Van Apeldoorn

Van Apeldoorn's assumption we can agree with. From what is stated in following paragraphs we will know that law regulates relationship of one member of society with another, as well as relationship between that member and society. Relationships are multifaceted. In society there is a relationship of people with each other both as members of community, between people with his group,between people in his family, between people with co-religious groups Marriage, place residence. organizational membership, various agreements entered into in field of business and subsequently constitute public relations regulated by so-called “law”.

c. E. Utrecht

Since it cannot be said beforehand what kind of concrete relations are found in society and each concrete relationship is multifaceted, it cannot also be said what kind of legal person regulates these concrete relations. Because there are a thousand and one kinds of relationships governed by law, and likewise with aspects of law, it is not possible to make a definition that covers all aspects of law.

d. Darji Darmodihardjo and Shidarta

Until now, according to Apeldoorn as quoted from Immanuel Kant, jurists are still looking for what definition of law (*Noch suchen die Juristen eine Definition zu ihrem Begriffe von Recht*). Definitions (limits on the law that jurists put forward are very diverse, depending on which angle they look at it. As stipulated in our Constitution, that state of Indonesia is a state of law (*Rechstaat*) –UUD'45 Third Amendment -, not a state of power (*Machstaat*). This means that sovereignty or supreme power in state is not based on power of power alone, but is based on law, in sense of ideals of law (*Rechtsidee*) which contains noble ideals of Indonesian nation. Thus, law has a very high position in country. In Republic of Indonesia law comes from Pancasila. Pancasila is used as source of all sources of law. In days of Old Order was once called a tool that is a tool of revolution. If tool here in sense of devotion, and revolution in sense of ideals and goals of Indonesian nation as listed and contained in Preamble to Constitution'45, it is still understandable. But if law is used as a means of justifying all means in achieving goal (het doel heiligtde middelen) is unacceptable. In National Law Seminar I year 1963 related to National Law Development Institute stated that "National Law serves "Protection". This principle (the law serves protection), we may accept until now. Because function of law that regulates relationship of human life in society has purpose also to protect interests. Law also has several functions in protecting human beings as follows: in general, it can be said that there are several functions of law in society, is ;

- **Facilitating Function**

  In this case, including facilitating between certain parties to achieve an order.
- **Repressive Function**

  This includes use of law as a tool for ruling elite to achieve goals.
- **Ideological Function**

  These functions include ensuring achievement of legitimacy, hegemony, domination, freedom, independence, Justice and others.
- **Reflective Function**

  In this case law reflects Common will in society so that law should be neutral. In this legal function arises role of law role of law is as a social controller, in social control role of law has three classifications in carrying out its role in society is:

a) Role Administrative Law

More to responsible government arrangements to build concept of government management that emphasizes involvement of elements of government, society and private

sector in proportion as three main pillars. In role of administrative law is associated with principles include:

1) Principle Carefulness

The definition of principle carefulness until now can not be given definitively, but nevertheless this principle is principle that is most often used. Principle of carefulness can be defined as principle of carefulness implies that a provision must be prepared and taken carefully. Within principle of rigor there are several parts that are included in it, namely: careful preparation, investigation, hearing, publication.

(a) Careful preparation

Issue of this careful preparation in Netherlands is regulated in Article 3 Paragraph 2 of AWB, it is determined that at time of preparing a decision Competent Authority (State Administration) must collect necessary information with regard to relevant facts and interests taken into consideration *(when preparing an order an administrative authority shall gather – necessary information concerning the relevant facts and the interests to be weighed)*. Indroharto explain that what is required by principle of careful preparation is that at time of preparing a decision factors and circumstances relevant to decision to be issued are sought, researched and collected, so that they can be included in decision to be issued.

(b) Carefulness Investigation

In this stage, investigation activities are carried out regarding implementation of a policy that has been decided, especially from juridical aspect whether there are requirements and procedures that have been violated. If based on investigation of a violation, it is processed so that a decision can be made and appropriate sanctions are given in accordance with severity of violation committed. This stage of investigation by Philip M. Langbroek is said to be part of principle of carefulness, and it is an indirect obligation of administrative body to investigate case in order to obtain information that should be considered in making a decision.

(c) Carefulness Hearing

Carefulness Hearing (*hearing*) is part of principle of carefulness. This principle requires that interested parties be heard first, before they are faced with an adverse decision, if interested parties have opportunity to explain. J.G.Brouwer and A.E Schilder argues, that publication is: *A fundamental requirement for law and treaties to enter into force is publication.* From this opinion, it can be concluded that what is meant by publication is promulgation of a law. His opinion is based on provisions of

Article 88 of Constitution of Netherlands which determines *"The publication and entry into force of act of parliament shall be regulated by act of parliament. They shall not enter into force before they have been published*". This provision is similar to provisions in Article 87 of Law No. 12 of 2011 concerning establishment of laws and regulations that stipulate: "laws and regulations shall enter into force and have binding force on date of promulgation, unless otherwise specified in relevant laws and regulations.. For public to know, order promulgation of this law by its placement in State Gazette of Republic of Indonesia."

2) Principle Reasoning

Giving rational reasons is one understanding of essence of procedure in designing a decision. This is necessary in order for decision to have a good basis, and even more so in decisions of a negative nature, for example, decisions containing refusal of a permit, or imposition of an administrative fine.

b) Role Civil Law

The role of civil law is private, civil law liability is a legal obligation that requires one party to pay damages or follow other court enforcement in a lawsuit. Principles include::

▪) Principles Of Civil Liability

Conventionally, civil liability only arises when contractual or non-contractual obligations are not fulfilled. Contractual obligations are those that are born of a contractual relationship. This means that there is a legal relationship that is deliberately created and desired by parties to agreement/contract. While what is meant by non-contractual obligations is an obligation that is born because of law that determines it. In this case, existing legal relationship is not based on an agreement but on an act established by law as a legal relationship that gives birth to rights and obligations. One of obligations that have been determined by law is obligation to provide compensation as a result of an unlawful act (*onrecht matige daad*) either committed through one's own fault (article 1365) or through fault of others under his supervision (article 1367) - in many literatures such responsibility is referred to as qualitative responsibility or vicarious liability - as well as losses.

c) Role Criminal Law

The role of criminal law is a legal concept that holds individuals accountable for their actions or omissions if they are found to have committed a criminal offense. The principles are:

a. **Principle legality**, which states that there is no crime without law, no crime without law and no prosecution without law.
b. **Principle error**, which contains that people can only be convicted for criminal acts committed intentionally or because of negligence.
c. Principle rewards, secular, which contains that concrete crime is not imposed with intention of achieving a useful result, but is commensurate with severity of act committed.

Principles in role of criminal law are used depending on case because use of principles determines what criminal penalties will be used in solving a case. Any cases can occur such as fraud, fraud that is rife is fraud using someone else's personal identity (KTP) to make online loans, use of someone else's personal identity (KTP) has been prohibited and has been described in law of Republic of Indonesia number 27 of 2022 concerning Personal Data Protection Article 65 (1) Everyone is prohibited from unlawfully obtaining or collecting personal Data that does not belong to him with intention of benefiting himself or others which can result in loss of personal Data subjects. And law of Republic of Indonesia number 11 of 2008 on Electronic Information and transactions which is replaced to law of Indonesia number 19 of 2016 on amendments to Law Number 11 of 2008 on Electronic Information and transactions Article 32 (1) Any person intentionally and without rights or against law in any way alter, add, reduce, transmit, damage, eliminate, move, hide an electronic information and/or electronic documents belonging to other persons or public property. Many of above laws are violated and this makes cases of using someone else's identity card (KTP) to make online loans higher can be seen from percentage of 28.40% universally in Americas, for parts of Asia such as Australia and Indonesia by 50%. Provinces that do a lot of West Java about 50%, plus examples of cases as follows:

▪) **Decision *Mahkamah Agung* Nomor 270/Pid.Sus/2023/PN Btl** defendant on behalf of BERLIAN BESTARI daugther from USMAN TRIYONO has used identity (KTP) of another person to make online loans, identity (KTP) used by defendant is owned by HANI AULIA LARASSAKTI. And evidence has been found in form of establishing evidence in form of:-1 (one) copy of debtor information Financial Information Service System on behalf of HANI AULIA LARASSAKTI print date December 1, 2022. - 2 (two) copies of BRI account mutation 663601024813531 on behalf of HANI Aulia LARASSAKTI for period January to February 2022. - 9 (nine) WA conversation Chat sheets between brothers and sisters. HANI Aulia LARASSAKTI with brother. THE

BEST DIAMOND. - 2 (two) information data sheets that appear from flavvis account users.shop when activating SPayLater and *SPinjam* facilities. - 10 (ten) copies of multipurpose financing agreement by way of purchase with payment in installments. - 2 (two) copies of cash loan facility agreement, still attached in case file. 1 (one) email account flavvish.pudding@gmail.com. - 1 (one) Shopee account named flavvish.shop. - 1 (one) Indosat Sim card with number 085600588887. Seized to destroy. - 1 (one) unit mobile phone brand Vivo 1820 Color Dark Blue IMEI number 1 (862516046753119) IMEI number 2 (862516046753101). Seized for country.

Then defendant was found guilty, from many percentages and also examples of cases proving that there are still many uses of other people's identities (KTP) used for online loans. With this, researcher will conduct deeper research with title role of criminal law in case of using someone else's identity (KTP) to make online loans.

2. RESEARCH METHOD

Methodology is a method or technique that is arranged regularly used by a researcher to collect data/information in conducting research tailored to subject/object under study. While research is a series of scientific activities in order to solve a problem. So research is part of problem solving effort. Function of research is to find explanations and answers to problems and provide alternatives to possibilities that can be used for problem solving. Explanations and answers to problems can be abstract and general as well as in basic research and can also be very concrete and specific as is usually found in applied Research. If, combined into one, research methodology is a science that studies how to make a true scientific research. In general, research methodology is divided into two yiatu:

(a) Quantitative Research Methodology

Quantitative research methodology, as stated by Sugiyono can be interpreted as a research methodology based on philosophy of positivism, used to research on specific populations/samples, sampling techniques are generally carried out randomly, data collection using research instruments, quantitative/statistical data analysis with aim of testing hypotheses that have been established.

(b) Qualitative Research Methodology

Qualitative research methodology is a research that emphasizes its analysis on process of deductive and inductive inference and on analysis of dynamics of relationship between observed phenomena, using logic. Qualitative research methodology is more widely used in research that relies on theoretical, such as legal qualitative research

methodology legal qualitative research methodology is divided into 3 qualitative legal research methodologies, namely:

1) Empirical Qualitative Legal Research Methodology

Empirical law research, that is, study of unwritten positive law regarding behavior of members of society in relationship of community life. Empirical legal research reveals living law in society through actions done by society. Focus of his research leads to empirical / sociology (law as human interaction), social theory of sociological Law (primary data), qualitative analysis, research steps Problems-Theory-Methods-Data-Analysis-Conclusion.

2) Normative Qualitative Legal Research Methodology

Legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope and material, consistency,general explanation and article by Article, formality and binding force of an act, and legal language used, but does not examine applied aspects or implementation. Especially in this study with theme of role of criminal law on case of use of identity (KTP) of others to make online borrowing using normative qualitative research methodology focuses on (research on principles of Law, Research on legal Systematics, research on degree of synchronization of Law, Research on legal history, and research on Comparative Law. Karangka theory of internal theories of law) data in form of secondary data such as:

(a) Law Of Republic Of Indonesia Number 27 Of 2022 Concerning Personal Data Protection (Supplement To Statute Book Of Republic Of Indonesia Number 6820).

(b) Indonesian Law No. 19 Of 2016 On Amendments To Law No. 11 Of 2008 On Information And Electronic Transactions (Supplement To State Gazette Of Republic Of Indonesia Of 2016 No. 4843).

Which is synchronized with primary data such as legal dictionaries, court decisions related to cases, journals, and research-related literature to obtain criteria determination, identification, collecting norms, organizing collected norms.

3. DISCUSSION

1. The role of Criminal Law in case of using someone else's identity (KTP) to make Online loans

Criminal law is called *ius poenale* and *ius puniendi*. *Ius poenale* is an objective understanding of Criminal Law. Criminal law in this sense according to Mezger is , "the rules of law that bind to a certain act that meets certain conditions a result in form of a crime". From this definition, it can be seen that criminal law is based on 2 things, namely :" acts that meet certain conditions", and "criminal". Acts that meet certain conditions contain two things: "evil deeds (prohibited acts)"and "the person who committed act". Jurists also expressed opinions regarding definition of law as follows:

a) Hazewinkel–Suringa

Criminal law is an order and prohibition, for violation of which a threat of sanctions has been established in advance by an authorized state institution, rules of which determine how or by what means state can react to those who violate these rules, rules that determine scope of application of these regulations at a certain time and in a certain region of country.

b) Muljatno

Criminal law is to determine which acts should not be done that are prohibited accompanied by threats or sanctions in form of certain crimes for anyone who violates ban, determine when and in what cases to those who have violated ban can be imposed or sentenced to a crime as has been threatened, determine in what way imposition of crime can be carried out if there are people who are suspected of having violated ban. Criminal law has 2 kinds, is:

a) Material/ Substantive Criminal Law

Material/substantive criminal law regulates prohibited acts, a person's inner attitude to be said to be guilty when committing prohibited acts, and criminal threats when act is committed.As for determining a person by fact of guilt, proof is required. This proof is carried out by law enforcement according to predetermined rules, so that arbitrariness does not occur.

b) Formal Criminal Law

The regulation on how to enforce material criminal law is what is called formal criminal law. Formal criminal law in principle regulates who is authorized to conduct evidence, how to prove, what can be used as evidence, how to treat people who are suspected/charged with committing a criminal offense, and determine who is

authorized and how to implement court decisions. So formal criminal law regulates procedure for enforcement of material criminal law. Nature of criminal law as p A crime that still exists, even if action has received prior approval from victim public law, among others, can be known based on:

1. Suatu tindak pidana itu tetap ada, walaupun tindakannya itu telah mendapat persetujuan terlebih dahulu dari korbannya;
2. Prosecution according to criminal law is not contingent upon will of person who has been harmed by a crime that has been committed by another person.
3. Costs criminal imposition are covered by state while fines and confiscation of goods become state income.

In history of development of Criminal Law, an action/ deed is only seen as an act of damaging or harming interests of others, which is then followed by retaliation. Retribution is not only an obligation of a person who is harmed or affected by an action, but also an obligation of whole family/family and even a group of people. There are even more extreme meenganggap that in case of retaliation is required up to seven derivatives. Act of revenge which was murder in ancient times became an inexhaustible Act and further thickened hatred for generations. Act of retaliation is also known as TALIO principle (Ius Talio = law of retaliation). An act of mutual retaliation will lead to revenge. Symptoms like this are still present today. Perpetrators usually consist of members of a dark organization such as Mafia in America. In a society that has been more developed, crime and retaliation can no longer be allowed because it disrupts security and order in society. Ruler (Primus Inter Pares) at first only tried to punish those who threatened interests of society and inhibit retaliatory actions by injured party individually. For sake of security arose then Stelsel composition (Compotie Stelsel / Afkoop Stelsel):

1. An obligation for wrongdoer (criminal, perpetrator of a criminal offense) to make atonement for his guilt by paying compensation or a fine to aggrieved person.
2. In addition, it is also obliged to pay a fine to injured community (in event of a murder) to restore balance in community. Thus a “condemnation” has begun to develop towards nature of Public Law, whose punishment is based on interests of society and is duty of ruler.

From this history comes rules of law such as legislation, history of law includes science of legislation (Gesetzgebungswissenschaft) or science of legislation (wetgevingswetenschap) is an interdisciplinary science that studies formation of state regulations.1 main figures who sparked this field of knowledge include Peter Noll (1973)

with term Gesetzgebungslehre, Jurgen Roodig (1975) with term wetgevingsleer or wetgevingskunde, and W.G. van der Velden (1988) with term wetgevingstheorie, while in Indonesia proposed by A. Hamid S. Attamimi (1975) with term science of legislation. Science gave birth to term legislation, which is now widely used in legal Science. In Indonesia, in various literature widely known various terms such as legislation, legislation, legislation, and state regulations. In Netherlands it is commonly known as wet, wetgeving, wettelijke regels, or wettelijke regeling. Term legislation comes from term wettelijke regels. Unlike term state regulation, which is a translation of staatsregeling, term staats means state, and regeling is regulation. Term ‘legislation’ comes from word ‘law’, not from word 'legislation'. Word ‘law ‘has no connotation with meaning of’ wet ‘or’ law‘, because term’ law ' has its own meaning. As for what is meant by state regulations are written regulations issued by official agencies either in sense of certain institutions or officials, while what is meant by legislation is a regulation on procedure for making state regulations. On other hand, legislation is often interpreted as wetgeving, that is, notion of forming laws and whole rather than laws of state. In Juridisch woordenboek, wetgeving is defined as: first, process of forming or process of forming state regulations, both at central and regional levels; second, all state regulations that are result of formation of regulations, both at central and regional levels. This definition is also reinforced by H. Soehino stated that legislation has meaning as: first, process or procedure for formation of state legislation of highest type and level, namely law to lowest, which is produced by attribution or delegation of legislative power; second, overall product of these legal regulations. But in fact, Soehino more often use term 'Legal Regulation'. Along with Suhino, Amiroeddin Syarief also used same term on grounds that it was shorter and therefore very economical. Term was once used in MPRS Resolution No. XX / MPRS / 1966 as stated in title of decree is source of Order of law of Republic of Indonesia and Order of laws and regulations of Republic of Indonesia. In addition, some of MPR RI resolutions that use term ‘legislation’ are as follows: MPR Ri Resolution Number II/MPR/1993 on outline of State Policy (GBHN) in law development program mentions “efforts to replace legislation that is derived from Pancasila and 1945 Constitution”. Reform MPR-RI No. X / MPR / 1998 on principles of Development Reform in order to rescue and normalize national life as state law, in letter C of legal field which states, “the development of special laws concerning organic legislation on limitation of presidential powers is not sufficient. Therefore, it is necessary to assess functions of legislative, executive, and judicial institutions. MPR-RI Decree No IV / MPR / 1999 on outlines of state policy in 1999-2004, among others, Article 3 states, “with this decree, material that has not been accommodated in

and does not conflict with outlines of state policy in 1999-2004, can be regulated in legislation", in direction of Legal Policy, Article 7 states, "developing legislation that supports economic activities in face of free trade without harming national interests. This term is also used in Constitution of Republic of Indonesia (UUD) 1945 after changes, namely: 1. In Article 24A paragraph (1) of 1945 Constitution states that "the Supreme Court is authorized to adjudicate at Cassation level, test legislation in that law against law, and have other powers granted by law. 2. Article 28i paragraph (5) of 1945 Constitution states that to uphold and protect human rights in accordance with principles of a democratic rule of law, implementation of human rights is guaranteed, regulated, and set forth in legislation. 3. Article I of transitional rules of 1945 Indonesian constitution states "all existing laws and regulations remain in force as long as a new one has not been held according to this Basic Law. Term has also been used in 1949 Ris Constitution as contained in Article 51 paragraph (3) with formulation 'federal legislation' and in 1950 Interim Constitution as contained in Part II with title 'legislation' and in Article 89 which mentions 'statutory powers'. In science of legislation will certainly learn about legislation. Term 'legislation' is used by A. Hamid S. Attamimi, Sri Soemantri, and Bagir Manan. According To A. Hamid S. Attamimi, term is derived from term wettelijke regels or wettelijke regeling, but term is not absolutely used consistently. There are times when term 'legislation' alone is used. Use of term 'legislation' is more relevant in talking about type or form of regulation (law), but in other contexts it is more appropriate to use term legislation, for example in mentioning theory of legislation, basics of legislation, and so on. In connection with definition of legislation, Bagir Manan provides a general description of meaning of legislation as follows: legislation is a written decision issued by an official or an authorized position environment, contains rules of conduct that are generally binding, are rules of conduct that contain provisions regarding rights, obligations, functions, status, or an order, are regulations that have general-abstract or abstract -, specific concrete events or symptoms. In connection with this definition, Bagir Manan also stated that legislation has a greater role from day to day, especially in Indonesia. This is due to following:

1. Legislation is a rule of law that is easily known (identified), easily rediscovered, and easily traced. As a rule of written law, form, type, and place are clear. So does maker.
2. Legislation provides more real legal certainty because rules are easily identified and easily rediscovered.
3. The structure and systematics of legislation are clearer so that it is possible to re-examine and test both formal and material aspects of content.

4. The establishment and development of legislation can be planned. This factor is very important for developing countries including building new legal systems that match needs and development of society. So to implement rules of law in criminal law takes a role or often referred to as role of criminal law.

The role of criminal law is a legal concept that holds individuals accountable for their actions or omissions if they are found to have committed a criminal offense. Role of criminal law has several principles before determining appropriate criminal law legislation to provide criminal sanctions, such as:

Principle Legality

The principle of legality has following meaning that no act can be punished except by force of criminal law that existed before act was committed. Principle of legality can be enforced with following elements:

(a) Lex Scripta: written

In civil law system, first aspect is that punishment must be based on law, in other words based on written law. Law must regulate behavior (Act) that is considered a criminal offense. Without a law that regulates prohibited acts, act cannot be said to be a criminal offense. This implies that customary law / living law cannot be used as a basis for punishing someone. Not usually habit of being basis of punishment does not mean that habit does not have a role in criminal law. He became important in interpreting elements of crimes contained in criminal acts formulated by law.

(b) Lex Certa: Clear and Detailed

In relation to written law, legislator must formulate clearly and in detail acts referred to as crimes. This is called lex certa principle or bestimmtheitsgebot. Legislator must define clearly without being vague (*nullum crimen sine lege stricta*), so that there is no unambiguous formulation regarding prohibited and sanctioned acts. Unclear or overly complex formulations will only create legal uncertainty and hinder success of (criminal) prosecution efforts because citizens will always be able to defend themselves that such provisions are not useful as a code of conduct.

(c) Analogy

Analogy means extending validity of a regulation by abstracting it into a legal rule that is basis of that regulation (ratio legis) and then applying this general rule to concrete actions that are not regulated in law. Application of this regulation by analogy is carried out when there is a vacancy (*leemte ata lucke*) in law for an act (event) similar to what is regulated by law. But on other hand, if there is a (new) event that is not regulated

in law, regulation is not applied, if it is not in accordance with ratio of regulation. Such use is called argumentum a contrario(giving reasons in reverse / *bewijs van het tegendeel*).

(d) Non-Reactive

The principle of legality is seen from space of criminal law enforcement according to time related to non-retroactive requires that provisions of laws and regulations that formulate criminal acts can not be applied retroactively (non-retroactive). Of all principles and provisions of role of criminal law, criminal law rules such as laws can be enforced according to case.

Case is actual state of affairs or cases, cases can occur due to criminal actions of individuals or groups of people who are not responsible. Some experts put forward definition of criminal acts as follows:

a) According Wirjono Prodjodikoro, a criminal act means an act for which perpetrator can be subject to criminal punishment.
b) According G.A. van Hamel, as translated by Moeljatno, strafbaar feit is behavior of people (*menselijke gedraging*) which is formulated in wet, criminal law that is against law, which should be punished (*strafwaardig*) and make mistakes.

Criminal acts can occur when fulfilling elements of a criminal act as described by legal experts as follows:

1) D. Simons

A human act (*menselijk handelingen*) by handeling is meant not only "*een doen*" (act), but also "*een nalatten*" (which resulted); Act (is act and Devote) is prohibited and punishable by punishment by law; act must be carried out by someone who can be held accountable, meaning that he can be blamed for committing act. According To D.Simons crime in divide into 2 is:

(1) Objective Elements

The objective element is act of person, visible consequence of act, there may be certain circumstances that accompany act such as act of person; visible consequence of act; there may be certain circumstances that accompany act, such as in public (openbaar) in Article 181 KUHP.

(2) Subjective Element

The subjective element is person who is able to take responsibility, presence of errors includes person who is able to take responsibility; and presence of errors (*dolus* or *culpa*).

2) Hazewinkel-Suringa

The elements of a criminal act include elements of people's behavior; elements of consequences (in a criminal act that is formulated materially); psychological elements (intentionally or with alpa); objective elements that accompany circumstances of a criminal act, such as in public; elements of additional requirements for conviction of Act (Article 164, 165) are required when a criminal act occurs; elements against.

3) E. Mezger

The elements of a criminal act include an act in broad sense of a human being (active or permitting); unlawful nature (both objective and subjective); accountable to a person; punishable by criminal.

4) Pompe

The elements of a criminal act include presence of a human act, fulfilling formulation in formal terms, of an unlawful nature.

Of criminal elements can be divided into types of criminal acts, following types of criminal acts:

a) Transnational Crime

Transnational organized crime or transnational organized crime generally refers to criminal:

(A) Illegal Arms Trade

Illegal arms trafficking transnational crime has become one of challenges that have a great influence on international security stability. Trafficking and smuggling of human beings, weapons, and drugs and money laundering across territorial borders of a country is a threat that is considered very dangerous which ultimately causes a domino effect that affects other sectors within framework of international security stability. Terrorism then appears as a threat to international security that becomes a means for a group of interests with certain political goals that use violence and terror as a tool in achieving their interests.

(B) Money Laundering

Money laundering is a series of activities that are processes carried out by a person or organization against illicit money, that is, money derived from crime, with intention of hiding data and disguising origin of money from government or authority authorized to carry out actions by inserting money into financial system, either utilizing bank or non-bank services. These institutions include stock exchanges, insurance and foreign exchange trading so that money can be removed from financial

system as halal money. Such actions are included in scope of organized crime, in relation to money laundering is a criminal offense in economic field which in essence gives an idea of direct relationship that criminality is a continuation of economic activity and growth.

(C) Human Trafficking

Human Trafficking has a different meaning for everyone. Human Trafficking encompasses a complex set of sensitive issues and issues that are interpreted differently by each person, depending on their personal or organizational point of view. definition of Human Trafficking was first proposed in 2000, when United Nations General Assembly adopted a protocol to Prevent, Suppress and punish Trafficking in persons, particularly women and children, known as "Palermo Protocol". This protocol is a treaty that is a binding legal instrument and creates obligations for all countries that ratify it or accede to it. definition of Human Trafficking according to Palermo Protocol is contained in Article 3 whose Formula:

a. Human Trafficking committed by another person, means recruitment, transfer, shelter or acceptance by threat, or coercion by other violence, kidnapping, fraud, abuse, sale, or rental action for a particular benefit or payment for purpose of exploitation. Exploitation shall at least include exploitation through prostitution, through other forms of sexual exploitation, through slavery, through, slavery-like practices, through servitude or through removal of her organs .
b. Consent of trafficking victims to exploitation referred to in Article (3) sub (A), this article becomes irrelevant when means referred to in sub (a)are used.
c. The recruitment, transport, transfer, shelter or reception of a child for purpose of exploitation shall be deemed to be "trafficking in persons" even if this does not include any of means provided for in sub (a) of this article.
d. "Child " means a person under age of eighteen (18) years. Crime of Human Trafficking should be considered as an extraordinary crime, because it degrades dignity of human beings as creatures of God which means human rights violations.

(D) Drug Trafficking

Illegal drug trafficking is a very complex form of criminal activity, often involving multiple countries and often overlapping with other offenses, including financial crimes and cybercrime. Problem of abuse and illegal trafficking of narcotics and dangerous drugs (drugs) continues to be a global problem, occurring in almost all

countries in world. It also threatens national security and stability. This drug trafficking is a security threat to country that is transnational (involving a number of countries), therefore, its handling must be in form of international cooperation. Increase in narcotics trafficking is generally caused by two things, namely: first, for dealers promise great profits, while for users promise peace and comfort of life, so that psychological burden experienced can be eliminated. Second, promise given by narcotics causes fear of risk of being caught to be reduced, even on contrary will cause a sense of courage. And drug trafficking is among most prevalent transnational crimes at 37,617 cases or 99%.

b) Crimes Against National Wealth

Crime against state property is a negative action that harms state property rights such as corruption, corruption has actually existed for a long time, especially since humans first embraced administrative governance. In most cases, corruption cannot be separated from power, democracy, or government. Corruption is often associated with politics. Even once it has been categorized as an unlawful act, notion of corruption is separated from other forms of violation of law. In addition to linking corruption to politics, corruption is also associated with social Economy, Public Policy, International Policy, social Welfare and National Development. Such is breadth of aspects related to corruption, that international organizations, such as UN, have specialized bodies that monitor World corruption. While expert opinions include:

a. *Corruptie* is corruption, cheating. Fraud, criminal acts that harm country's finances.
b. Describe term corruption in various fields, namely those related to bribery, those related to manipulation in economic field, and those related to field of public interest. Based on data from 2021 to date, corruption cases that occurred in Indonesia were 478 cases or 20% of cases of wealth crimes against state property that occurred in Indonesia.

c) Conventional Crime

Conventional/ national crimes are crimes against life, property, and honor that cause harm both physical and psychological whether committed in ordinary ways or new dimensions, which occur within country. Conventional crime is a social problem that is still difficult to overcome, it is triggered by issues of poverty, lack of education, unemployment, population density, weak social control and others, which are considered troubling to society.

There are several conventional crimes that often occur, namely:

1) Theft

Theft is a crime directed against property and occurs most frequently in society. This crime is a crime that can shake stability of security both against property and against soul of society. Main elements of theft usually involve intention to take someone else's property, taking is carried out without permission or without rights, as well as transfer of ownership of goods from original owner to perpetrator of theft.

Theft can occur due to following causal factors:

(A) Popularity Theft

Theft is often top choice for criminals, both those who make this their profession and those involved in other crimes. This phenomenon can be observed in various environments, including large cities, urban areas and rural areas.

(B) Spread Crime

Theft is not only limited to urban areas or big cities, but also has spread to remote villages or villages. This suggests that no region is completely safe from threat of theft.

(C) Frequency Theft Cases

Theft is one of crimes with a high frequency of cases in various places in Indonesia. This is reflected in large number of reports and cases of theft submitted to court proceedings.

(D) Legal Involvement

Legal involvement in dealing with theft cases is evident from number of reporters or reporters presented to trial. Theft is often focus of law enforcement as a criminal offense that harms and threatens safety of community.

It is from causative factors that theft is constantly developing and has three classifications:

(1) Ordinary Theft

Ordinary theft is a theft committed by force, ordinary theft has been, Take, which is where act of taking is main element in theft. Take in narrow sense of moving hands and fingers to hold goods and divert to another place. It is common theft of liquid objects such as stealing beer in a bar by opening a beer faucet to be flowed into a bottle that is moved, even cutting electric power wires can also be said to steal, an item, which is purpose of stealing is to harm victim's wealth, then what is taken is a valuable item. What is meant by valuable here is not something that is only economical, but goods that can be enjoyed by those who need them, whole goods or

some of them belong to other people. Point is that goods taken to be stolen are property of other people, either in whole or in part, intending to possess goods against law. Meaning is that perpetrator has a desire to possess goods in a way against law, namely stealing or taking without knowledge of owner. Ordinary theft has been prohibited in Article 362 of Criminal Code which states:

"*Whoever takes an object that partially or completely belongs to another person, with intention of taking possession of object unlawfully, being guilty of theft, shall be punished with a maximum imprisonment of five years or a maximum fine of nine hundred rupiah*".

(2) Petty Theft

A misdemeanor is a felony because it is contained in Book II KUHP but as for similarities with offense where a person who commits a misdemeanor can not be detained. Examples of petty theft are taking a helmet,stealing fruit in someone else's yard, stealing animals and committing theft in times of misfortune. Of course, light theft has violated rules of criminal law and can be subject to criminal sanctions in form of Article 205 paragraph (1) KUHP so tipiring is a criminal offense punishable by imprisonment or imprisonment for a maximum of 3 months and / or a fine of seven thousand five hundred rupiah.

(3) Aggravated Theft

Theft with weights has basic elements of ordinary theft, but theft with weights (gequalificeerde diefstal), defined as theft specifically in sense of stealing, is more serious. Examples of serious theft of livestock theft, theft at time of disasters such as fires, volcanic eruptions, flash floods, and so on, theft committed at night 11 in a house or closed pekaranagn existing house without knowledge of owner, theft committed by two or more people and theft by dismantling, damaging or breaking something in order to take goods therein. Serious theft is subject to Article of Criminal Law Act, hereinafter abbreviated as KUHP in second book of crimes chapter XXII on theft in Article 363, which is as follows (1) shall be punished with a maximum imprisonment of seven years.

(4) Theft by Force

Violent theft is an act of theft that takes place when victim is known, while identical theft is committed when victim is not known. Article 365 KUHP. In this article crime of theft by force is formulated as:

1. The act of theft that is preceded, accompanied or followed by violence or threat of violence, against a person with intention of preparing or facilitating theft, or in event of being caught (caught) to allow escape of oneself or other participants, or to remain in possession of stolen goods.
2. Theft committed at night in a closed House or compound in which there is a house or a public road or in a train or tram running.
3. If act of theft is committed by two persons together or more.
4. If offender enters crime scene by vandalism or climbing or by wearing a false key, false warrant or false dress of office.
5. If act of theft resulted in someone getting seriously injured.
6. If act of theft resulted in a dead person.
7. If act of theft results in serious injury or death and is committed by two or more persons in alliance. Then theft by force shall be subject to criminal sanctions as followt:

Article 170 KUHP, which determines:

1) Whoever in public together commits violence against persons or goods, is sentenced to imprisonment for at most five years and six months.
2) Offender punished:
    1. Imprisonment for seven years, if violence causes minor injury.
    2. Imprisonment for a term of nine years, if violence causes grievous bodily harm.
    3. Imprisonment for twelve years, if such violence causes death of a person.

2) Fraud

Understanding fraud in accordance with above opinion it is clear that what is meant by fraud is a ruse or a series of false words so that someone feels deceived because of speech that seems to be true. Usually a person who commits fraud, is explaining something that seems to be true or happened, but actually his words are not in accordance with reality, because purpose is only to convince person being targeted to be recognized his desire, while using a false name so that person concerned is not known his identity, as well as using a false position so that people are convinced of his words. Fraud includes most common criminal acts, such as online fraud that uses someone else's identity to make online loan transactions. Since rapid development of digital world, functions of digital are increasingly widespread such as connection of internet to digital where Internet (Inter-Network) is a set of computer networks connecting websites/sites of academics,

government, businesses, organizations, and individuals. Internet provides access to telecommunications services and information resources for millions of users around world. Its services include direct communication(email, chat), discussion (Usenet news, email, mailing list), distributed information sources(WWW, Gopher), remote login and file traffic (Telnet, FTP) and others. Internet makes everything easier because it can connect to anything, but not all humans can use intrnet wisely as a result of this act can occur misuse of one's identity (KTP) to make loans online.

Online loans represent a financial service for people, result of technological advances in national economy. Online loans are excellent in community because administrative registration is not as difficult as through a bank, if you borrow at a bank, you have to go through many procedures, including ID cards, Family Cards, Credit Cards, parents ' names, and much more. Ironically, even though it has included many requirements, loan will not necessarily be approved but level of security in bank is better. If making a loan through online only requires sending a selfie (selfie) along with a Identity Card (KTP), and account number. After that, just wait a while, required funds have been transferred to user's account, but for security it is very questionable. What's more, identity security (KTP) who make online loans are often many irresponsible people who use someone else's identity or KTP to make online loans for their own sake. Already many cases that occur can be seen from percentage of 28.40% universally in Americas, for parts of Asia such as Australia and Indonesia by 50%. Provinces that do a lot of West Java about 50%, plus following case examples:

- **Mahkamah Agung decision No 5 /PID.SUS-TPK/2018/PT.DKI** on behalf of defendant Andi Agustinus alias Andi Narogong has used identity card (KTP) of another person, namely on behalf of victim Gumawan Fauzi to make online loans that are used in his own interests.

Of course, this case is a violation of principles and rules of criminal law in form of:

(1) Violating Principle Legality

The principle of legality has following meaning that no act can be punished except for provisions of criminal law that existed before act was committed. In above case defendant has done something that harms others, of course, this has violated provisions of law because provisions of law that have been violated have existed before defendant committed offense.

(2) Violation Two Rules of Criminal Law

(a) Law of Republic of Indonesia number 27 of 2022 concerning Personal Data Protection Article 65 (1) Any person is prohibited from unlawfully obtaining or collecting personal Data that does not belong to him with intention of benefiting himself or others which may result in loss of subject of personal Data.

(b) Law of Republic of Indonesia No. 11 of 2008 on Electronic Information and transactions replaced to law of Indonesia No. 19 of 2016 on amendments to Law No. 11 of 2008 on Electronic Information and transactions Article 32 (1) Any person intentionally and without right or against law in any way alter, add, reduce, transmit, destroy, eliminate, move, hide an electronic information and/or electronic documents belonging to other persons or public property. From violations described above, defendant can be punished with criminal sanctions as follows law of Republic of Indonesia number 27 of 2022 concerning Personal Data Protection Article 67 (1) Any person who intentionally and unlawfully obtains or collects personal Data that is not mililoeya with intention to benefit themselves or others which may result in loss of personal Data subject as referred to in Article 65 paragraph (1) shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine many Rp5,000,000,000.00 (five billion rupiah) jo law of Republic of Indonesia No. 11 of 2008 concerning information and electronic transactions were replaced to law of Indonesia No. 19 of 2016 concerning amendments to Law No. 11 of 2008 concerning information and Electronic Transactions Article 48 Paragraph (1) Any person who meets elements referred to in Article 32 paragraph (1) shall be punished with imprisonment for a maximum of 8 (eight) years and/or a fine of a maximum of Rp2.000,000,000.00 (two billion rupiah) with role of law as above can reduce occurrence of similar cases.

4. CONCLUSION

The role of criminal law in case of using someone else's identity card (KTP) to borrow online by providing criminal sanctions in accordance with law of Republic of Indonesia number 27 of 2022 concerning Personal Data Protection Article 67 (1) Any person who intentionally and unlawfully obtains or collects personal Data that is not mililoeya with intention of benefiting themselves or others that a maximum fine of Rp5, 000, 000, 000.00 (five billion rupiah) jo law of Republic of Indonesia number 11 of 2008 concerning

information and electronic transactions which is replaced to law of Indonesia number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning information and Electronic Transactions Article 48 Paragraph (1) Any person who meets elements referred to in Article 32 paragraph (1) shall be punished with a maximum imprisonment of 8 (eight) years and/or a maximum fine RP2, 000, 000, 000.00 (two billion rupiah).

Suggestions that role of criminal law in case of using someone else's identity (KTP) to make online loans is increasingly being implemented properly and effectively in addition to providing criminal sanctions, there must be (a) cooperation between government, legal entities, and Ministry of information and communications such as ignoring suspicious links or attachments. (b) cooperation between government, Department of population and civil registration and Financial Services Authority in checking validity of a person's identity (KTP) in registering an online loan, of course, this can only be done on online loans that have obtained an operating permit from Financial Services Authority. (c) cooperation between government and public such as not sharing personal information with any party. Second, ignore suspicious links and only use genuine software. And third, perform password replacement (password) and backup important data on a regular basis.

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