Legal Protection of Personal Data of E-Commerce Users According to Indonesian Laws

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Abstract

In this rapidly developing era, the existence of the internet is not only for learning media, but can also be used as a promising source of income in today's era. In addition, the internet can also be used as a means of getting convenience in buying and selling transactions, because the ease of access to the internet today makes it very easy for people to make online transactions, besides being easy, this is considered more practical, especially during a pandemic that never ends like today. The rise of online shopping has resulted in new problems arising in the field of consumer protection law. One of the issues that need attention is the protection of personal data of consumers who carry out online shopping activities. The intended personal data such as family card numbers.

1. Introduction

In this rapidly developing era, the existence of the internet is not only for learning media, but can also be used as a promising source of income in today's era. In addition, the internet can also be used as a means to get convenience in buying and selling transactions, because the ease of access to the internet today makes it very easy for people to make online transactions, besides being easy, this is also considered more practical, especially during a pandemic that never ends like now.

People prefer and choose the online shopping option, apart from saving energy, online shopping is also very easy and has a wide reach. So whatever goods people need are all available in full at online sales stalls. Recently, online shopping has become more popular with the public than shopping at traditional markets. Online shopping makes it very easy for

consumers to make buying and selling transactions, because in online shopping sellers and buyers do not have to meet in person to make buying and selling transactions. This makes it very easy for people to fulfill their needs through online shopping. With this convenience and practicality, people's interest in shopping online is greater than shopping at traditional markets.The presence of e-commerce provides extraordinary comfort to consumers, because consumers do not need to leave the house to shop besides that the choice of goods/services also varies with relatively lower prices. This is a challenge that is both positive and negative. It is said to be positive because these conditions can provide benefits for consumers to freely choose the goods/services they want. Consumers have the freedom to determine the type and quality of goods/services according to their needs. It is said to be negative because these conditions cause the consumer's position to be weaker than that of the business actor which can result in disappointment and loss.[1]

The rise of online shopping has resulted in the emergence of new problems in the field of consumer protection law. One of the issues that need attention is the protection of personal data of consumers who carry out online shopping activities. The intended personal data includes family card numbers, identity cards, identity card numbers and birth mother's names, mobile phone numbers, photos of yourself holding identity cards, emails and bank account numbers.[2]

2. Research Method

The method I use in this research is normative juridical. The normative juridical approach is an approach that is carried out based on the main legal material by examining the theories, concepts, legal principles and laws and regulations related to this research. Normative legal research essentially examines laws that are conceptualized as norms or rules that apply in society, and become a reference for everyone's behavior. According to Soerjono Soekamto and Sri Mamudji, normative legal research is legal

[1] Happy Susanto,*Consumer Rights If Aggrieved*, Vision Media, Yogyakarta, 2008, p. 3
[2] Chodijah Febriani, Must Know, This is Personal Data that Must Be Protected in the Digital Space,https://www.industry.co.id/read/89840/wajib-diketahui-ini-data-privadi-yang-harus-dilindungi- di-ruang-digital(Accessed on Sunday, September 26, 2021)

research conducted by examining literature or secondary data.[3]

3. Results and Discussion

a. Legal Protection for E-commerce users who experience Personal Data Leakage

As with the description regarding the regulation and protection of personal data in various countries, it is only natural that the Indonesian state compares the law in handling data misuse as a perfect form of crime from a cyber law perspective and studies it thoroughly. Article 28 G of the 1945 Constitution stipulates that everyone has the right to protection for himself, his family, honor, dignity and property under his control and has the right to feel safe and protected from threats of fear. In Article 26 of the ITE Law it is stated that the use of personal data through electronic media must be based on the consent of the person concerned, and losses arising from misuse of personal data can take non-litigation channels through deliberations, taking the litigation route either through a lawsuit in court as an effort to file for compensation. Article 26 of the Law on Information and Electronic Transactions in its explanation states that one of the rights possessed by a person is the protection of his personal data, while in the Government Regulation concerning System Operators and Electronic Transactions Number 82 of 2012 it is stated that certain individual data stored , treated and guarded truth and protected confidentiality. The Law on Information and Electronic Transactions has regulated data protection including wiretapping, where wiretapping is an act that may not be carried out, not belonging to groups that have the right to do so in the context of legal action. If seen from the explanation of Article 26 of the Law on Information and Electronic Transactions, there is a weakness, namely there is no legal protection for the owner of the data used by the organizers or service providers with the aim of making a profit.

These weaknesses are things that must be corrected for the realization of legal objectives, namely maintaining and ensuring order and order, therefore it is necessary to reformulate existing legal norms. 6/PUU-VIII/2010 and Number 006/PUU-I/2003 which stated their views regarding the protection of privacy that must be protected by the state.

[3] Soerjono Soekanto and Sri Mamudji, Normative Legal Research, A Brief Overview, (Jakarta: Raja Grafindo Persada, 2003), p. 13.

However, in terms of legal interests, these rights can be reduced as long as it is through a mechanism regulated in the law. 24 of 2013 concerning Population Administration states that personal data that must be safeguarded is information regarding special records of a person's characteristics. 24 of 2013 concerning Population Administration states that there are criminal sanctions for violators as intended, because there is a criminal element in it, then the provisions contained in Law no. 8 of 1997 concerning Company Data explains, that company documents are data, notes and or information made and or received by companies in the context of carrying out their activities, whether written on paper or other means or recorded in any form that can be seen, read or heard. The Central National Archives and the Regional National Archives are required to store, maintain and save archives originating from private bodies and/or individuals.

Banking explained that bank secrecy is everything with information about depositors and their deposits. 18/22/DKSP dated 27 September 2016 concerning the Implementation of Digital Financial Services regulates the implementation of digital financial services for Banks and Non-Banks, a cooperation agreement between digital financial service providers and agents stating that all data obtained from digital financial institution agents must be kept confidential by organizer of the digital financial institution. At present Indonesia also has a Personal Data Protection Bill, with the aim of combining privacy regulations on scattered personal data into a separate law with the aim of providing boundaries between rights and obligations regarding the acquisition and use of personal data. Pursuant to Article 32 which states that in efforts to resolve disputes through deliberation or through other alternative settlement efforts, they have not been able to resolve disputes over failures to protect the confidentiality of personal data, each owner of personal data and the operation of an electronic system can file a lawsuit over a failure to protect confidential personal data. From the provisions contained in the Draft Law on Personal Data Protection, the researcher believes that reformulation is necessary regarding the legal norms contained in the form of its articles, because the provisions stipulated in the Draft Law on Personal Data Protection are seen as too bureaucratic and the process to obtain legal certainty will be very long, convoluted and uncertain. In Indonesia,

legal protection for personal data is still considered not optimal, this can be seen from the fact that there is still a lot of misuse of personal data without the knowledge of the owner due to the lack of strict security and supervision from data users.

Therefore, if the consumer can prove that there has been a sale and purchase of data or the service owner leaked the data causing harm to the data owner as a consumer, then the consumer has the right to sue legally and ask for compensation for the losses it has caused. Regarding legal protection the use of personal data is inseparable from the obstacles that will be faced, for example difficulties in tracking down the main perpetrators and proving them, difficulties in handling them, and others. Boelewoekli is of the view that the direct involvement of the government and the law in matters of personal data is something that is needed, especially in resolving disputes that arise inthe field of telematics.

b. Legal Remedies That Can Be Taken When Personal Data of E-commerce UsersExperiencing Data Leakage

The rise of data leak cases in Indonesia shows the weakness of personal data protection in this country. Even among hackers, sites belonging to the Indonesian government are known to be easily broken into. This personal data contains a set of information related to a person's identity. Leakage of personal data such as identity card numbers, family card numbers, birth mother's name and address, to e-mails that could be misused by irresponsible parties to commit crimes. This personal data leak is the result of the Indonesian government's weak cyber security. Not only that, the absence of regulations that regulate and protect can also be the cause of rampant theft of personal data. Meanwhile, the National Cyber and Crypto Agency was officially formed since the enactment of Presidential Decree Number 53 of 2017 concerning the National Cyber and Crypto Agency, on May 19 2017. Under this regulation, the National Cyber and Crypto Agency was formed by considering that the cyber security sector is one of the government sectors. which need to be encouraged and strengthened as an effort to improve the national economy and realize national security. The establishment of the National Cyber and Crypto Agency is an effort to organize the National Crypto Agency to become the National Cyber and Crypto Agency in order to ensure the

implementation of government policies and programs in the field of cyber security. Cyberspace crimes or what is known as cybercrime include identity and data theft, account hijacking Components of legal culture In terms of legal consequences related to administrative data protection, apart from administrative sanctions, there are also civil law consequences for perpetrators of data abuse. Civil lawsuits for misuse of personal data are intended to be a form of compensation for legal abuse. Civil lawsuits are based on an element of error, this is regulated in Article 1365 Burgelik Wetboek. This civil lawsuit rests on two things, violating the law and wrongdoing. People who cause harm to other people can be sued as long as the loss is the result of a violation of norms and the perpetrator can be regretted for violating these norms.

4. Conclusion

From the results of the discussion above, it can be concluded that currently Indonesia is still very concerned about the protection of personal data of e-commerce users because there is no law that specifically, clearly and clearly regulates the protection of personal data. There are several laws and regulations in Indonesia that regulate the protection of personal data, but these have not been able to provide sufficient protection for the personal data of consumers who use e-commerce. Basically the protection of personal data has been regulated in the Regulation of the Minister of Communication and Informatics Number 20 of 2016, but the repressive legal protection in this regulation cannot yet provide sufficient protection, because this regulation does not yet have sufficient sanctions to stop or minimize the crime of leaking personal data of e-commerce users, only administrative sanctions exist, and there are no criminal sanctions as ultimum remedium. Indonesia still really needs a regulation that specifically and clearly regulates the protection of personal data of e-commerce users in the form of a law. the existence of more specific and strict regulations can suppress the crime of leaking personal data of e-commerce users carried out by irresponsible individuals who take actions that are detrimental and violate the protection of personal data. Because the existence of strict and clear regulations will create comfort and a sense of security for consumers in conducting online shopping activities and in this way can increase electronic economic activities in Indonesia.

References

Andi, Sri Rezky W. Nurdiyana Tadjuddin. 2018. Consumer Protection Law. Media Discourse Partners.

Bryan A. Garner,*Black's Law Dictionary, ninth edition, St. paul*, West, 2009,

CST Kansil, Introduction to Indonesian Law and Legal Studies, 8th Cet, Balai Pustaka, Jakarta,1989.

Dikdik M. Arief Mansyur & Elisatris Gultom, Cyber Law and IPR in the Indonesian Legal System, Refika Aditama, Jakarta. 2005.

Edmon Makarim, Legal Responsibilities of Electronic System Operators, Jakarta: Raja Grafindo Persada, 2010.

HansKelsen, Fundamentals of Normative Law, Nusamedia, Jakarta, 2009. Happy Susanto, Consumer Rights If Aggrieved, Visi Media, Yogyakarta, 2008.

HR Sardjono and Frieda Husni Hasbullah, Anthology of Comparative Civil Law, INDHILL, Jakarta, 2003.

Ishaq. "Legal Research Methods and Thesis Writing, Theses, and Dissertations". Alphabet.
2017

Jimly Asshiddiqie and M. Ali Safa'at, Hans Kelsen's Theory of Law, Secretariat General and Clerk of the Indonesian Constitutional Court, Jakarta, 2006.

Muchsin, Dissertation: "Protection and Legal Certainty for Investors in Indonesia", Faculty of Law, Sebelas Maret University, Surakarta, 2003.

Muhammad Abdulkadir. 2000. "Indonesian Civil Law". PT. Image Aditya Bakti. Bandung. Philipus. M. Hardjo, Legal Protection for the Indonesian People, Science Development,
Surabaya, 1988.

R. Subekti and Tjitrosoedibio, Legal Dictionary, Pradnya Paramita, Jakarta, 1999.

Raphael LaPorta, "*Investor Protection and Corporate Governance; Journal of Financial Economics*",No. 58, October, 1999.

Ravena, HD, & SH, M. 2017. Criminal Policy: (Criminal Policy). Jakarta: Prenada Media. Rianto Adi, Social and Legal Research Methodology, Jakarta, 2004.

Rosmawati. Principles of Consumer Protection Law. Depok. Prenada Media Group. Jakarta.
2018.

Sajipto Raharjo, Law Studies, Citra Aditya Bakti, Bandung, 2006. Regards, MF Indonesian Military Court. Bandung: Mandar Maju. 1994.

Salim HS and Erlies Septiana Nurbaini, "Application of Legal Theory in Thesis an Dissertation Research", cet. 1, PT. Rajagrafindo Persada, Jakarta, 2013.

Setiono, Dissertation: "Rule of Law", Faculty of Law, Sebelas Maret University, Surakarta, 2004, p. 3.

Shinta Devi. Cyber Law: Privacy Protection for Personal Information in E-Commerce According to International Law. (Bandung: Widya Padjadjaran, 2009), p. 37.

Soedjono Dirdjosisworo, Introduction to Law, PT. Raja Grafindo Persada, Jakarta, 2008. Soerjono Soekanto and Sri Mamudji, Normative Legal Research, A Brief Overview, Jakarta:

Raja Grafindo Persada, 2003.

Sudikno Martokusumo, Knowing the Law of One Introduction, Liberty, Yogyakarta, 2005.

Suradji, et.al, Research on Legal Protection of Digital Data, Jakarta: Legal Advisory Board of the Indonesian Ministry of Law and Human Rights, 2005.

Sutantya R. Hadhikusuma and Sumantoro, Basic Understanding of Company Law: Forms of companies that apply in Indonesia, PT. Rajagrafindo Persada, Jakarta, 1996.

Suteki, Galang Taufani. ”Legal Research Methodology”. Rajawali Press. 2018.

Wahyudi Djafar, et al. “Personal Data Protection: Proposals for Policy Institutionalization From a Human Rights Perspective”, Institute for Community Studies and Advocacy (ELSAM), 2016.

Wahyu Sasongko, Main Provisions of Consumer Protection Law. Lampung University, Bandar Lampung, 2007.

Wulan Sari, F. Legal Protection of Customer Personal Data in the Implementation of Internet Banking Services. 2015.

Journal :

Anggraeni, SF (2018). Polemic on Personal Data Ownership Regulations: The Urgency for Harmonization and Legal Reform in Indonesia. Journal of Law & Development, 48(4).

Aprilia, ML, & Prasetyawati, E. (2017). Legal Protection of Gojek User Consumer Personal Data.*Justice Platform*, 90-105.

Bertus Calvin.” Writing Thesis on Legal Protection of Personal Data of Consumers Who Shop Online” Atma Jaya University, Yogyakarta. 2019.

I Dewa Gede Adi Wiranjaya and I Gede Putra Ariana, "Legal Protection Against Consumer Privacy Violations in Online Transactions,” Kerta Semaya Vol.4, no.4 (2016) p. 3.

Latumahina, RE (2014). Legal Aspects of Personal Data Protection in Cyberspace.*Journal of GEMA ACTUALITY*, 3(2). 14-25.

Pelealu, AG (2018). Legal Protection of Consumer Personal Data in E-Commerce Transactions (Doctoral dissertation, UAJY).

Son, Faithful. "Legal Protection of Consumers in Buying and Selling Transactions Through E- Commerce." Journal of Law Science 5.2 (2014): 197-208.

Putri, Deanne Destriani Firmansyah, and Muhammad Helmi Fahrozi. "EFFORTS TO PREVENT CONSUMER DATA LEAKS THROUGH THE APPROVAL OF PERSONAL DATA PROTECTION BILL (CASE STUDY E-COMMERCE BHINNEKA.COM)."

National Conference on Law Studies (NCOLS). Vol. 2. No. 1. 2020.

Rani, M. (2014). Protection of the Financial Services Authority Against the Confidentiality and Security of Bank Customer Personal Data. Journal of the Straits, 2(1).

Rosadi, SD, & Primary, GG (2018). The Urgency of Privacy Data Protection in the Digital Economy Era in Indonesia. Veritas et Justitia, 4(1).

Sautunnida, L. (2018). The Urgency of Personal Data Protection Law in Indonesia: A Comparative Study of British and Malaysian Laws. Kanun Journal of Law, 20(2).

Setiawan, Herdi, Mohammad Ghufron, and Dewi Astutty Mochtar. "Legal Protection of Consumer Personal Data in e-Commerce Transactions." MLJ Merdeka Law Journal 2.1 (2020): 102-111.

Yuniarti, Siti. "Legal Protection of Personal Data in Indonesia". Business Economic, Communication, and Social Sciences (BECOSS) Journal 1.1 (2019): 147-154.

Constitution :

The 1945 Constitution of the Republic of Indonesia.

Law Number 8 of 1999 Concerning Consumer Protection. Law Number 11 of 2008 concerning Internet and Electronics. Law Number 36 of 1999 concerning Telecommunications

Internet :

Kominfo Admin, Guarantee Personal Data Protection, Kominfo Gives Sanctions AgainstMisuse by Third Parties,https://kominfo.kulonprogokab.go.id/detil/469/jamin-perlindungan-data-pribadi-kominfo-beri-sanksi-terhadap-penyalahguna-oleh-party- ketiga. Accessed on Thursday 16 December 2021.

Alwin nayoan, Definition and Types and benefits of E-commerce,https://www.niagahoster.co.id/blog/apa-itu-ecommerce/ (Accessed on Thursday, December 2, 2021).

Axle, advantages and disadvantages of E-commerce,https://axle.id/company-registration/apa-saja-kekurangan-e-commerce/ (Accessed on Thursday,

December 2, 2021).

BEM Fisilkom, "Personal Data: Valuable Things We Must Protect"https://bem.cs.ui.ac.id/data-pribadi-hal-berharga-yang-harus-kita-jaga/(Accessed on Tuesday, September 14, 2021).

Bernandheta Aurelia Oktavira, Legal Basis for Internet User Personal Data Protection,https://www.Hukumonline.com/klinik/detail/review/lt4f235fec78736/dasar- Hukum-perlindungan-data-pribadi-pengguna-internet/. Accessed on Thursday 16 December 2021.

CR22, this is an important point in the Minister of Communication and Information for Personal Data Protection in,https://www.Hukumonline.com/berita/baca/lt584cc775d00a4/ini-poin-penting-dalam-permen- kominfo-perlindungan-data-privadi?page=all(Accessed on Sunday, September 26, 2021).

Chodijah Febriani, "Must Be Known, This is Personal Data that Must Be Protected in the Digital Space"https://www.industry.co.id/read/89840/wajib-diketahui-ini-data- privadi-yang-harus-dilindungi-di-ruang-digital(Accessed on Sunday, September 26, 2021).

Dwi Hadya Jayani, Danger of Personal Data Leakage,https://katadata.co.id/ariayudhistira/infographic/61398d76a4324/bahaya- kebocoran-data-privadi(Accessed on Monday, December 27, 2021).

Online Law, "Important Points in the Regulation of the Minister of Communication and Informatics, Protection of Personal Data"https://www.Hukumonline.com/berita/baca/lt584cc775d00a4/ini-poin-penting-dalam-permen- kominfo-perlindungan-data-privadi?page=all (accessed Tuesday, September 14, 2021).

Indo Telko, "Indonesia Already Has Regulations Concerning Personal Data Protection" https://www.indotelko.com/read/1482988065/Indonesia-perlindungan-Data- Pribadi(accessed on Sunday, September 26, 2021).

Maqdir Ismail, E-commerce Legislation in Indonesia,https://mip-law.com/uncategorized/perundang-undang-undang-e-commerce-di-indonesia-are- we-there-yet/. Accessed Thursday 16 December 2020).

M.Ikhsan, The Danger of Stolen Personal Data,https://www.cnnindonesia.com/technology/20210108121603-185-591120/bahaya-data-privadi-yang-dicuri/2. Accessed on Thursday 16 December 2020

Samina Sharanani, Benefits of E-commerce,https://blog.mokapos.com/untung-e-commerce(Accessed on Thursday, December 2, 2021).

Yovita, Indonesia Already Has Regulations Regarding Personal Data,https://kominfo.go.id/content/detail/8621/indonesia-already-miliki-aturan-soal-perlindungan-data-privadi/0/sorotan_media(Accessed on Sunday, September 26,2021).