



Indonesian General Data Protection on Covid 19 Pandemic

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Abstract

Trading Through Electronic Systems (PMSE) is an unavoidable form of technological development that plays a role in facilitating the human need for the sale and consumption of an item. It is interspersed by the Electronic System Operator known as Marketplace, behind the convenience provided by PMSE vulnerable to potential violations of the personal data of its users who are PMSE consumers in this case Marketplace. This is characterized by an undeniable leakage of personal data resulting from Marketplace's negligence as an Electronic System Organizer. As part of the human rights of personal data is a mandatory right of privacy to be protected. This paper uses normative legal research methods with descriptive writing techniques. Based on these issues and descriptions, this paper is compiled to address existing issues, namely the conception of personal data as a right of privacy and the legal protection of consumers' data. This paper is expected to be a critical reference to consumers' weak personal data protection. To examine and answer the problems that have been outlined in the introduction, in this paper, the author uses normative legal research methods (normative juridical), namely by studying library materials.

Keywords: *Protection; Personal Data; Trading Through Electronic Systems*

Introduction

The use of information technology in Indonesia shows a significant increase from year to year. The integration of information technology with media and telecommunications today has resulted in various services and products. The convergence of these technologies is called telematics (telecommunications, media, and informatics). The development of information technology is seen in the emergence of various types of activities based on this technology, such as e-government, e-commerce, and various other cyber space-based activities.

In previous research, logical and historical data protection is intertwined with privacy, and exposing their substance has proven to be a daunting task.¹ Based on data protection regulations (GDPR), information transparency becomes an obligation to create an ecosystem where data subjects understand

¹ Lorenzo Dalla Corte, (2020). A Right to a Rule: On the Substance and Essence of the Fundamental Right to Personal Data Protection. In D. Hallinan, R. Leenes, S. Gutwirth & P. De Hert (Eds.). Data Protection and Privacy: Data Protection and Democracy (Computers, Privacy and Data Protection, pp. 27–58). Oxford: Hart Publishing. Retrieved May 21, 2020

and control what happens to their data.² The concept of personal data and the future of EU data protection law.³ Data protection legislation produces enforceable frameworks to protect against adverse information privacy.⁴ Comparison is brought to the type of protection best suited to protect investment in database creation.⁵ The increasing intensity of the use of technology is a consequence of the development of science that leads humans to the development of telecommunications and informatics, consequently causing the world to seem *borderless*; as it develops now, technology is like a double-edged sword. In addition to contributing to the improvement of welfare, progress for human civilization is an effective means for the potential of action against the world law.⁶ In Indonesia, there are no rules that accommodate the protection of personal data on financial technology.⁷

The development of technology and informatics in such a way also affects trademarked by the transition of conventional trade into trading with electronic media, known in Indonesia's positive law as Trading Through Electronic Systems (PMSE). Which now has a legal foundation, namely Government Regulation No. 80 of 2019 on Trading Through Electronic Systems, by containing arrangements on the Implementation of Trade Through The Electronic System. It is trading Through Electronic Systems, while one of the business models that is often used by the public is the type of Marketplace or platform provider/platform/launch as a container where merchants can install goods or services, not infrequently.⁸ Marketplace is known with other nomenclature as e-commerce, which in its utilization Marketplace has similarities with e-commerce.⁹ Although providing Trade Through The Electronic System benefits of the Marketplace type is vulnerable to leakage of personal consumer data, personal data is now a commodity of high economic value.¹⁰ Marketplace consumer personal data leak is an event that often occurs, including the leak of personal data of Marketplace Bukalapak consumers that occurred on May 1, 2020, as many as 13 million accounts.¹¹, This was followed by a data leak on the Bhinneka Marketplace, which was allegedly the result of a breach by a hacking group called ShinyHunters.¹² Lastly, the leak of personal data of Tokopedia Marketplace consumers, as many as 91 million accounts, led to a lawsuit by the Indonesian Consumer Community.

Some cases of personal data leakage in *Marketplace* are a reflection of the lack of legal protection of personal data in trading through electronic systems; this is in line with the opinion of Prof. Graham Greenleaf through his book entitled *Asian Data Privacy on Privacy Data Law, Trade and Human Rights Perspectives*, which regrets The lack of protection of the right to privacy or personal data is because Indonesia tends to be ignorant in discussions about privacy in personal data, besides that in the Indonesian legal system there are no regulations that specifically regulate the right to privacy or legal protection of

² Rossi & Palmirani, (2020). What's in an Icon?: Promises and Pitfalls of Data Protection Iconography. In D. Hallinan, R. Leenes, S. Gutwirth & P. De Hert (Eds.). *Data Protection and Privacy: Data Protection and Democracy* (Computers, Privacy and Data Protection, pp. 59–92). Oxford: Hart Publishing. Retrieved May 21, 2020

³ Purtova, The law of everything. Broad concept of personal data and future of EU data protection law, *Law, Innovation and Technology* Volume 10, Issue 1, 2 January 2018, pp. 40-81

⁴ Tamò-Larrioux A, (2018) Privacy and Data Protection Regulation in Europe. In: *Designing for Privacy and its Legal Framework*. Law, Governance and Technology Series, vol 40. Springer, Cham

⁵ Estelle Derclaye, 2007, *The Legal Protection of Databases A Comparative Analysis*, Edward Elgar Publishing Limited, USA

⁶ Ahmad M. Ramli, *Cyber Law & HAKI-Dalam Sistem Hukum Indonesia*, (Jakarta: Penerbit PT. Refika Aditama, 2004), p.1

⁷ Andriyanto Adhi Nugroho, Atik Winanti, Surahmad, Personal Data Protection in Indonesia: Legal Perspective, *International Journal of Multicultural and Multireligious Understanding* Volume 7, Issue 7 August, 2020, p. 183-189

⁸ Explanation of Article 5, Government Regulation No. 80 of 2019 on Trading Through Electronic Systems.

⁹ Teguh Tresna Puja Asmara, dan Tri Handayani, *Ketidakpastian Hukum Pengguna Kode Unik Dalam Sistem Pembayaran E-Commerce*. *Jurnal Penelitian Hukum DE JURE* Vol. 19 No. 4, Desember 2019, p. 504

¹⁰ Edmon Makarim, *Kompilasi Hukum Telematika*, (Jakarta: Raja Grafindo Perkasa, 2003) dalam Sinta Dewi Rosadi, *Cyberlaw Aspek Data Privasi Menurut Hukum Internasional, Regional, dan Nasional*. (Bandung Refika Aditama, 2015), p. 10

¹¹ CNN Indonesia, *13 Juta Data Bocor Bukalapak Dijual di Forum Hacker*, diakses melalui: <https://www.cnnindonesia.com/teknologi/20200506065657-185-500477/13-juta-data-bocor-bukalapak-dijual-di-forum-hacker>

¹² Irene Poetranto, Pelanggaran perlindungan data pribadi di Indonesia, disampaikan dalam Webinar “Belanja Online: Nasib Data Pribadi Kita di Mata Hukum” Djokosoetono Research Center, Fakultas Hukum Universitas Indonesia, on 14 Juli 2020.

personal data¹³, the lack of regulation that ensures legal protection of consumer personal data in trading through electronic systems as well as weak consumer positions that must be protected by law¹⁴, This is the basis of the argument for the author to examine issues related to the conception of personal data which is the right to privacy of consumers in trading through electronic systems and review of legal protection of legal protection of personal data of trading through electronic systems consumers reviewed from Indonesia's positive law.

Research Methods

To examine and answer the problems that have been outlined in the introduction, in this paper, the author uses normative legal research methods (normative juridical), namely by studying library materials or secondary data consisting of primary, secondary, and tertiary legal materials.¹⁵ Secondary data referred to in research includes laws and regulations, literature reviews, legal theories and refers to previous research to find novelty elements. Normative juridical research methods are helpful to provide legal arguments in the event of a legal problem where the goal is to maintain the critical aspect of legal science as a science of sui generis.¹⁶ In this study, the author also wants to re-emphasize the prescriptive nature of a legal study that aims to study the purpose of the law, the values of justice, the validity of the rule of law, legal concepts, and legal norms. The analytical technique used in this research is a qualitative analysis that uses content analysis, accompanied by a statute approach that examines regulations related to the issues discussed.

Discussion

Legal protection is the protection of dignity and dignity and recognition of human rights owned by legal subjects based on the legal provisions of arbitrary or as a collection of rules or rules that will protect something from other things.¹⁷ Legal protection, according to Hadjon, is divided into two, namely preventive legal protection and repressive legal protection. In contrast, preventive legal protection aims to prevent the occurrence of a case or dispute, and repressive protection aims to resolve a case or dispute that has occurred. Based on the theory of legal protection associated with personal data as a right to privacy which is also part of human rights, the legal protection of personal data is a necessity in the era of disruption as it is today.

Regulations related to legal personal data protection were first realized regionally by the initiative of nations on the continent, namely with the presence of Directive 95/46/EC of The European Parliament and of the Council of October 24, 1995, on the protection of the with the processing of personal data and the free movement of such data. (Directive 95/46/EC) which was last updated in 2016 with Regulation (EU) 2016/679, while for the Asia Pacific region, to encourage the protection of Personal Data, Indonesia can refer to the APEC Privacy Framework 2015 (APF 2015). In its opening, APF 2015 expressed recognition of the importance of personal information protection while maintaining the flow of information between economies in the Asia Pacific and between trading partners; moreover, it concerns consumers trading through electronic systems.

Moving on from the two regional regulations of the General Data Protection Regulation (GDPR) and APEC privacy framework, in Indonesia's positive law, the legal protection of personal consumer data

¹³ Sinta Dewi Rosadi, *Protecting Privacy On Personal Data In Digital Economic Era: Legal Framework In Indonesia*, Brawijaya Law Journal Vol. 5 No. 1 2018, p. 145

¹⁴ Celina Tri Kristiyanti, *Hukum Perlindungan Konsumen* (Jakarta: Sinar Grafika, 2018), p.13

¹⁵ Soerjono Soekanto, *Pengantar Penelitian Hukum*. (Jakarta: Penerbit Universitas Indonesia (UI Press, 2006), p. 52

¹⁶ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. (Jakarta: Prenada Media, 2016), p. 12

¹⁷ Philipus M. Hadjon *Perlindungan Hukum Bagi Rakyat Indonesia*. (Surabaya: Bina Ilmu, 1987), p. 25

in electronic commerce in Indonesia was first regulated in Law No. 11 of 2008 jo. Law No. 19 of 2016 on Information and Electronic Transactions, which then implements regulation, is Government Regulation No. 82 of 2012, which has been revoked, as replaced by Government Regulation No. 71 of 2019 on The Implementation of Electronic Systems and Transactions (PP PSTE).

Related to the leakage of personal data that befell *Marketplaceconsumers*, Marketplace's actual position in Indonesia's positive law is the Electronic System Operator used to provide, manage, operate, and trade offers of goods and services.¹⁸

Efforts to protect personal consumer data in the Marketplace can be in PP Number 80 of 2019 on Trading Through Electronic Systems (PP PMSE). which consists of the obligations of the Operator of Private Scope Electronic Systems (PSELP) in implementing the principle of personal data protection in personal process data that include:

- a. Collection of personal data on a limited, legal, fair basis, with the knowledge and consent of the owner of the personal data
- b. Processing of personal data carried out by its purposes
- c. Processing of personal data is carried out by guaranteeing the rights of the owner of the personal data
- d. Accurate, complete, non-misleading, up-to-date personal process data, accountability, and taking into account the purposes of personal processing data.
- e. Processing of personal data that protects the security of personal data from unauthorized loss, misuse, access and disclosure, and alteration or destruction of personal data
- f. Processing of personal data carried out in the presence of notice of the purposes for which it was collected, processing activities, and failure of personal data
- g. The personal data processing is destroyed and/or deleted unless it is still in the retention period of all the needs under the provisions laws and regulations.

The principles of personal processing data regulated by PP PSTE include acquisition and collection, management and analysis, storage, repair and updating, appearance, announcement, transfer, dissemination, or disclosure and deletion or extermination.

Trading Through Electronic Systems in the form of *Marketplace* not infrequently also provides products or services provided alone. Therefore, there is the same tendency with business actors and ensuring legal protection for consumers *marketplace*. Private Scope Electronic System Organizers who organize electronic transactions can be certified by the Reliability Certification Agency and guarantee reliability in maintaining consumers' data. This is proof that businesses are worthy of conducting e-commerce transactions through audit assessment.¹⁹ This is also as a fulfillment of the provisions of Articles 9 and 10 of the IT Law. It becomes in sync with the privacy policy settings, which are the scope of the reliability certificate category, whose reliability guarantee provides certainty that personal data is kept confidential as it should be.²⁰ Refers to regulations outside the IT Law and Government Regulation No. 80 of 2019 on Trade Through Electronic Systems (PP PMSE). PP PMSE, as a regulation that regulates explicitly trading through electronic systems regulates is a private legal relationship that can be

¹⁸ Article 2 paragraph (5) letter b, Government Regulation No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions

¹⁹ Nenny Rianarizkiwati, *Kebebasan Informasi versus Hak Atas Privasi: Tanggung Jawab Negara Dalam Perlindungan Data Pribadi*, (Depok: Infermia Publishing, 2020), p. 288.

²⁰ Explanation of Article 76, Government Regulation No. 71 of 2019 on The Implementation of Electronic Systems and Transactions

done between business actors and consumers. The position of PSELF is also a business actor who conducts trade, thus requiring it also to protect the rights of consumers.

Furthermore, to protect the privacy rights of consumers, PP PMSE recognizes respect for personal data that is regulated as the personal property of the person or business actor concerned.²¹ In line with the principle of personal data protection stipulated in PP PSTE, it contains personal data protection standards that must be by and meet the standards of prevalence, the acquisition of which must be pursued honestly and lawfully. Then for the use of personal data only for one or more purposes, but must first be explicitly described. Emphasis on the protection of personal data of trading through electronic systems consumers is seen in Article 59 paragraph (2) letter g in PP PMSE, which requires parties who store personal data to have appropriate security systems to prevent leakage or activities of processing or utilizing personal data unlawfully. In this provision, liability becomes the obligation of the party who stores personal data, which in this context is a marketplace consumer in trading through electronic systems. The substance provided in Article 59 paragraph (2) indicates that to store consumers' data, they must pay attention to European data protection standards or APEC privacy framework, which creates consumer confidence mandated in AFP 2015.²²

To ensure personal consumer data protection in Trade Through Electronic Systems, there is a Regulation of the Minister of Communication and Informatics of the Republic of Indonesia No. 20 of 2016 on The Protection of Personal Data in Electronic Systems. That regulates the right of data owners of one of their data to be kept confidential and the obligation of personal data users to maintain and protect personal data as stipulated in Article 27. Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 20 of 2016 also requires certification to electronic system organizers.

Referring back to the theory of repressive legal protection, which aims to resolve cases or disputes that arise to ensure the protection of personal data, the imposition of sanctions against violations of personal data is necessary. Also, considering one of the purposes of the law when violator of the rule exists, then in reaction to his actions that violate the law.²³ The sanctions are regulated in several articles in PP PSTE and trading through electronic systems, including:

- Article 100 PP PSTE, in paragraph (1) which mentions sanctions for violations of the provisions of Article 14, Article 29, and Article 37 paragraph (1). which sanctions given to administrative sanctions in the form of written reprimands, administrative fines, termination of access, and temporary termination, and removed from the list.
- Article 80 PP PMSE regulates the imposition of administrative sanctions against violations of Article 58 paragraph (2) and Article 59 paragraph (1), which is an article that focuses on the protection of personal data in PP PMSE.

Following the two provisions above, the regulation of sanctions in PP PMSE and PSTE is only in administrative sanctions given by ministers whose procedures for the imposition of sanctions are regulated in ministerial regulations. PP PSTE as the implementing regulation of the IT Law, in the substance of legal protection of personal data delegates in the Ministerial Regulation, one of the relevant ministerial regulations, which contains administrative sanctions in the form of oral and written warnings, temporary suspension of activities, and announcements on sites in the network.

Aspects of Consumer Protection in Indonesia's positive law are based on Law No. 8 of 1999 on Consumer Protection. In the eyes of the Consumer Protection Law itself, consumers are placed as the

²¹ Article 58 of Government Regulation No. 80 of 2019 on Trading Through Electronic Systems

²² Ernis Feriandes. *Perdagangan Melalui Sistem Elektronik Sistem Elektronik Dalam Ketentuan Peraturan Perundang-undangan*. Jurnal Jendela Informasi Hukum, Oktober 2020, p.16

²³ C.S.T Kansil, *Pengantar Ilmu dan Tata Hukum Indonesia*, (Jakarta: Balai Pustaka, 1986), p. 40

primary legal subjects.²⁴ As a subject of law, consumers are faced with rights and obligations relating to personal data, so focus on consumer rights in privacy. The rights of consumers who are sliced with personal data are the rights to comfort and security. This is because personal consumer data is often obtained when consumers use services, which are then used for promotional purposes; thus, indirectly, consumers are harmed by promotional activities that use personal consumer data.²⁵

Legal protection of personal data according to the author's frugality stipulated in Article 4 of the Consumer Protection Act is sustainable with Article 2 of the Consumer Protection Act. Which contains the principle of balance that is intended to provide a balance between the interests of consumers, business actors, and governments; balance, in this case, can also be drawn on the protection of personal data, as stated by Fred Cate, the principle of balance in privacy settings. Demand government intervention to accommodate all interests that also pay attention to the protection of individuals.²⁶ In addition, the principles of security and safety contained in Consumer Protection Law are intended to assure the safety and security of consumers in the use of and utilization of goods and/or services.²⁷ Although it has been based on the principle of balance, security, and safety, it cannot be denied that the provisions in the Consumer Protection Law have not guaranteed legal protection of personal consumer data ultimately. This is because of promotional activities that use personal data even though it is contrary to that principle, but the Consumer Protection Law. Article 9 only prohibits promotion or marketing relating to goods. In addition, the sanctions threatened parties who violated. Article 9 paragraph (3) relating to promotion as contained in Article 63 does not protect personal data belonging to consumers. The aspect of consumer protection can still be said to be weak.²⁸

The disadvantages of the Consumer Protection Act by not regulate the protection of personal data in the Consumer Protection Act; it can be one proposal offered by the author to update the Consumer Protection Act and to improve the legal protection of personal consumer data. Which is the right to privacy of consumers themselves in trading through electronic systems, a conclusion that personal data should be a priority for every business regardless of the size, sector, or location. Businesses, in this case, need to know consumers' understanding of privacy and what they expect from the business.²⁹

Conclusion

In Indonesia Law on the right to privacy is regulated first in the Population Administration Law, which is within the scope of personal data of the population. In contrast, the conception of the right to privacy in positive law can only be found in the explanation of Article 26 of the IT Law, which is divided into 3 (three) understandings, namely the right to life, the right to communicate without supervision, and the right to supervise. The interrelationship and connection between the right to privacy and consumer rights can be found in the provisions of Article 4 letter a Law Perlindungan Konsumen. In addition, the 1945 Constitution, the highest hierarchy of laws and regulations, contains personal rights but does not regulate them explicitly as a right to privacy.

It reflects both the 1945 Constitution, the Population Administration Law, and the IT Law. The conception of the right to privacy in Indonesia's positive law is recognized as still not comprehensive in regulating the conception of the right to privacy over personal data. However, regulated in a separate law, only one article clearly explains the right to privacy, namely in the provisions of the explanation of Article 26 of the IT Act.

²⁴ Shidarta, dkk. *Aspek Hukum Ekonomi & Bisnis Edisi Pertama*. (Jakarta: Prenadamedia Group (Divisi Kencana), 2018), p.178.

²⁵ Sinta Dewi Rosadi, *CYBER LAW: Aspek Data Privasi Menurut Hukum Internasional, Regional, dan Nasional*, (Bandung: PT. Refika Aditama, 2015), p. 98

²⁶ *Ibid*, p. 45

²⁷ Explanation of Article 2, Law No. 8 of 1999 on Consumer Protection.

²⁸ Academic Text of the Draft Personal Data Law, p. 119-120.

²⁹ Kiersten E. Todt, *Data Privacy and Protection*. *Cyber Defense Review* Vol. 4, No. 2. 2019, p. 46.

Legal protection of personal data in trading through electronic systems is reviewed from the favorable laws of Indonesia accommodated by the IT Law, but more specifically regulated in the implementing regulations, namely PP PSTE by accommodating the principle of protection of personal data in the processing of personal data, sometimes PSELP also sells its products. The regulation of sanctions for violations of the provisions of PP PMSE and PP PSTE hints at administrative sanctions stipulated in the ministerial regulations. However, the procedures for the imposition of such sanctions are devolved in the minister's regulations that have not been promulgated.

In the aspect of consumer protection, the protection of personal data has been contained in the United Nations Guidelines for Consumer Protection, which in Indonesia's positive law is only regulated under the Consumer Protection Law with the provisions of Articles 2 and 4 of the Consumer protection law. However, it has been regulated, the consumer protection law It has not regulated the explicit protection of personal data in the torso so that it becomes a weakness.

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