



Legal Protection of Marketplace Consumer Personal Data in Indonesia

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Abstract

Marketplace is a business model where the website in question not only helps promote merchandise, but also facilitates online money transactions. All online transactions must be facilitated by the relevant website. This study aims to examine and understand the legal protection of consumer marketplace personal data in Indonesia. This is because consumer data that is not securely protected is a problem how the protection of consumer personal data can be accessed by third parties that cause losses and the legal rules that form the basis of legal protection. The problem that will be discussed in this research is how is the legal protection of the personal data of marketplace consumers in Indonesia.

Keywords: *Protection; Consumer Data; Marketplace*

Introduction

The rapid development of information technology has caused personal data protection to become so important in the digital era.[1] The development of information technology can improve performance and enable various activities to be carried out quickly, precisely and accurately so as to increase productivity.[2] The development of information technology has resulted in the emergence of various types of activities based on this technology such as e-government, e-medicine, e-laboratory, and others, all of which are based on electronics. [3]All of these activities have a risk which can cause problems if the user's personal data is leaked or misused by irresponsible parties.[4] Personal data protection includes facts, communications or opinions relating to individuals which are confidential, personal or sensitive information so that the person concerned wants to keep or restrict other people from collecting, using or distributing it to other parties.[5] The definition of personal data is data in the form of identity, code, symbol, letter or number of a person's personal marker that is private and confidential.[6] Furthermore, according to Jerry Kang, personal data describes information that is closely related to someone who can distinguish the characteristics of each person. [7]

Provisions regarding the protection of personal data are regulated in Article 26 of the Law of the Republic of Indonesia Number 19 of 2016 concerning Information and Electronic Transactions which reads:[8]

1. Unless otherwise stipulated by laws and regulations, the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned.
2. Any person whose rights are violated as referred to in Paragraph (1) may file a lawsuit for losses incurred under this Law.
3. Each Electronic System Operator is obligated to delete irrelevant Electronic Information and/or Electronic Documents under its control at the request of the Person concerned based on a court order.
4. Every Electronic System Operator is required to provide a mechanism for deleting Electronic Information and/or Electronic Documents that are no longer relevant in accordance with the provisions of laws and regulations.
5. Provisions regarding procedures for deleting Electronic Information and/or Electronic Documents as referred to in Paragraph (3) and Paragraph (4) are regulated in a government regulation. [9]

The article regulates the rights of the owner of personal data which includes protection from unauthorized use, protection by electronic system operators, and protection from illegal access. Based on the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems Article 28 Letter c "Every Electronic System Operator is required to notify the owner of personal data in the event of a failure to protect the confidentiality of personal data in the system. electronically managed, with the following notification provisions:[10]

1. Must be accompanied by reasons or causes for the failure of confidential protection of personal data;
2. It can be done electronically if the owner of the personal data has given his/her consent which was stated at the time of the acquisition and collection of his/her Personal data;
3. It must be ensured that it has been received by the owner of the personal data if the failure contains a potential loss for the person concerned and;
4. A written notification is sent to the owner of the personal data no later than 14 (fourteen) days after the failure is known.[11]

The regulation regarding the protection of personal data has not been specifically regulated in a statutory regulation, therefore, to fill the legal vacuum, the legal basis is used by the Minister of Communication and Information Technology Regulation Number 20 of 2016 concerning the Protection of Personal Data in Electronic Systems. The Ministerial Regulations are implementing regulations of the ITE Law, PP PSTE, Law Number 8 of 1999 concerning Consumer Protection, Law Number 7 of 2014 concerning Trade, the Civil Code and Electronic Contracts. Based on PP PSTE Article 46 which reads:[12]

1. Electronic Transactions can be made based on Electronic Contracts or other contractual forms as a form of agreement made by the parties;
2. An Electronic Contract is considered valid if:
 - a. There is an agreement of the parties;
 - b. Performed by legal subjects who are capable or authorized to represent in accordance with the provisions of the legislation.,
 - c. There are certain things; and
 - d. The object of the transaction must not conflict with the laws and regulations, decency, and public order. [13]

Furthermore, the binding power of the Electronic Contract is the same as the agreement regulated in Article 1320 of the Civil Code. With this it can be concluded that personal data is a component of

privacy data, [14] where in privacy is a person's right to close or keep private things (personal information) secret. [15] Article 26 of the ITE Law requires that the use of any personal data in an electronic media must obtain the consent of the owner of the data concerned. Anyone who violates this provision can be sued for the losses caused. [16] An example of a Marketplace buying and selling system is Tokopedia, which is one of the online stores in Indonesia that carries the Marketplace business model where everyone can sell goods and become a buyer in this application. Tokopedia services are intended for everyone and can be accessed for free by providing easy online facilities between sellers and buyers. Regarding the confidentiality of user data, Tokopedia applies layered security, including OTP (One-Time Password) which can only be accessed in Real Time by the account owner. Furthermore passwords and user information are protected behind encryption. [17]

Furthermore, for example regarding the weak protection of information privacy on personal data in Indonesia, it is still weak. This can be seen from the ongoing misuse of someone's personal data, including for business and political interests, for example, the case that occurred on September 5, 2021, Denny Siregar's personal data was distributed by the account @opposite6891. [18] At that time, Denny Siregar immediately protested because his personal data could be circulated on social media. It was recorded that throughout 2021 there were 7 cases of personal data leakage, both experienced by the government and private companies such as e-commerce platforms. The scattered data include account names, email addresses, phone numbers, and some other personal data stored in database files. [19]

This requires handling in the form of regulations or policies to overcome this, because it is considered very detrimental to parties whose personal data is disseminated without the permission of the owner of the personal data. Based on the description of the background above, the problem in this research is how is the legal protection of the personal data of marketplace consumers in Indonesia.

Methods

The research method used is a normative research method, using a statute approach related to legal protection of marketplace consumer personal data in Indonesia. [20] The statute approach is to examine matters relating to legal principles, legal views and doctrines, and laws and regulations related to legal protection of marketplace consumer personal data, and accurate and accountable data. [21] In addition, an in-depth examination of the legal facts is also held to then seek solutions to the problems that arise in the symptoms in question. [22]

Results and Discussion

1. Legal Protection of Marketplace Consumer Personal Data in Indonesia

The presence of various online buying and selling facilities such as OLX, Tokopedia, Shopee, and Bukalapak has helped the Indonesian people to recognize buying and selling transactions carried out online. [23] As you know, these four facilities are available in the form of a website and also a mobile application. Their platform consists of various sellers, so they can offer a variety of goods to consumers at once in only one place. This kind of media is called Marketplace. [24] Marketplace is part of E-Commerce transaction activities, Trade Regulations in general have been regulated in Law Number 7 of 2014 concerning Information and Electronic Transactions About Trade (hereinafter abbreviated as Trade Law) and on Trading activities through Electronic Systems for regulation further in Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems. Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as Law Number 8 of 1999 concerning Consumer Protection. [25]

Trade Operators Through Electronic Systems Business Actors are providers of electronic communication facilities used for trade transactions:

- a. Online retailers or traders who have their own PMSE facilities;
- b. Marketplace or platform provider as a forum where traders can post offers of goods and/or services;
- c. Online classifieds, namely a platform that brings together sellers and buyers where the entire transaction process occurs without involving PPMSE;
- d. Price comparison platform; and
- e. Daily deals.

With this legal regulation, the Ministry of Communication and Information is able to register and collect data for E-Commerce business actors through a series of profiling processes and database reports so that consumers avoid fraud by irresponsible persons. The registration process that must be carried out by the Electronic System Operator is regulated in Article 5 of PP PMSE, with several important points as follows:

- a. Electronic System Operators for public services are required to register;
- b. Electronic System Operators for public services as referred to in Paragraph (1) include;
- c. The intended public services are all electronic system operators including agencies, supervisory agencies, regulatory agencies and private legal entities that provide public services on the internet;
- d. Electronic System Operators for non-public services may also register;
- e. Obligation to register for Electronic System Operators for public services must be carried out before the Electronic System begins to be used by the public;
- f. The registration is submitted to the Minister, in this case the competent authority is the Minister of Communication and Information and the Minister can coordinate with the Sector Supervisory and Regulatory Agencies;
- g. In the implementation of registration, the Minister applies a system for using data together (data sharing) and is integrated electronically (online); and
- h. Further provisions regarding the implementation of registration in the Ministerial Regulation,

Article 65 Paragraph (1) of the Trade Law concerning Trade stipulates that every business actor who trades goods and or services using an electronic system is required to provide complete and correct data and or information.[26] Every business actor is prohibited from trading goods and or services using an electronic system that is not in accordance with the data and or information and the use of the electronic system must comply with the provisions stipulated in the Law on Information and Electronic Transactions.[27]

The definition of trading through an electronic system based on the Trade Law is a trade whose transactions are carried out through a series of electronic devices and procedures.[28] Every business actor who trades goods and or services using an electronic system that does not provide complete and correct data and or information will be subject to administrative sanctions in the form of license revocation. Types of business actors Trading through the electronic system include traders (merchant) and Electronic Trading Operators (PPSE), consisting of providers of electronic communications, electronic advertisements, electronic offerings, providers of electronic transaction application systems, service providers and payment application systems and service providers and systems freight forwarding app.[29]

The form of a trading company through an electronic system can be in the form of an individual or a legal entity.[30] Business actors are required to register and fulfill the technical provisions of the relevant agencies.[31] Every business actor must have and declare business ethics (business conduct or

code of practices).[32] Business actors are prohibited from requiring consumers to pay for products sent without prior agreement (inertia selling). Information or electronic documents can be used as evidence. Electronic information or documents have the same legal force value as an authentic deed.[33]

Regarding Electronic Contracts, electronic trading contracts are valid when there is an agreement between the parties.[34] Electronic Trading Contracts must at least contain the identity of the parties, agreed specifications of goods and or services, legality of goods and or services, value of trade transactions, terms and terms of payment, operational procedures for delivery of goods and or services, and procedures for returning goods and or if mismatch occurs.[35] Electronic Trading Contracts may use electronic signatures and must be made in the Indonesian language. Electronic Trading Contracts must be kept for a certain period of time.[36] Regarding taxes, electronic trading transactions are subject to tax in accordance with the applicable laws and regulations. Business actors who offer electronically to Indonesian consumers must comply with Indonesian tax provisions because they are considered to have a physical presence and carry out business activities permanently in Indonesia.[37]

Consumer protection is a term used to describe the legal protection provided to consumers in their efforts to meet the needs of things that harm consumers themselves.[38] The Indonesian government is engaged in providing legal protection to consumers by issuing regulations that accommodate the rights and obligations of the parties. As a form of legal certainty which in practice requires the agreement of the parties, namely by issuing Law no. 8 of 1999 concerning Consumer Protection. Consumer protection law is part of consumer law which contains principles or rules that are regulating and also contains properties that protect the interests of consumers.[39]

Consumer protection is the goal of the business to be achieved or the situation to be realized.[40] Therefore, the purpose of consumer protection needs to be designed and built in a planned and prepared beforehand.[41] The purpose of consumer protection includes activities to create and maintain a consumer protection system. Law Number 8 of 1999 concerning Consumer Protection exists as a *lex specialis* or a law that specifically regulates the protection of consumers and business actors in a balanced way. This regulation is a legal umbrella for the government and related institutions to empower consumers through consumer guidance and education and take action against business actors who act arbitrarily. The presence of the UUPK along with other legal instruments, here consumers have rights and a balanced position and they can sue or sue if it turns out that their rights have been harmed or violated by business actors. The scope of consumer protection law is difficult to limit only by accommodating it in one type of law such as UUPK.[42]

Consumer protection law always relates and interacts with various fields and other branches of law because in each field and branch of law there are always parties who are predicated as consumers.[43] By understanding the consumer's understanding, the difference between consumer law and consumer protection law, between the basic rights of consumers and the relationship between consumer protection law and other fields of law can provide a comprehensive picture of consumer protection law.[44]

2.Law Enforcement Against Marketplace Consumer Personal Data Violations

Marketplace is defined as an Online Market, which is a type of e-commerce site that connects providers of products or services (sellers) with those who are looking to buy products or services (buyers).[45] These buyers and sellers may have had difficulty finding each other beforehand and thus the Marketplace creates efficiencies in other markets that are deemed inefficient.[46] The current Consumer Protection Law in Indonesia (Law Number 8 of 1999 concerning Consumer Protection) has regulated the obligations of business actors (Article 7) and prohibited actions for business actors (Articles 8 to 17) in order to provide protection of consumer rights (Article 4), but in reality it has not been able to

fully protect consumers (in this case personal data protection) in e-commerce transactions because advances in science and technology in the process of producing goods and services have not been followed by advances in legal instruments that there is.[47] The Trade Law, in Article 65 of Law Number 7 of 2014 concerning Trade only discusses the procedures for how trading through the electronic system should be carried out and the law also does not regulate in detail the obligation to protect personal data (consumers).[48]

Law Number 19 of 2016 concerning Electronic Information and Transactions (previously Law Number 11 of 2008 concerning Electronic Information and Transactions) does not specifically contain rules for protecting personal data,[49] but implicitly in Article 27 to Article 37 of this Law regulates the understanding of the protection of electronic data or information, both public and private. While matters relating to the elaboration of personal electronic data, the ITE Law mandates it again in Government Regulation Number 71 of 2019 concerning Electronic System and Transaction Operators. Personal data protection in an electronic system in the ITE Law includes protection from unauthorized users, protection by electronic system operators, and protection from illegal access and interference.[50] Regarding the protection of personal data from users without permission, Article 26 of the ITE Law requires that users of any personal data in an electronic media must obtain the consent of the owner of the data concerned. Anyone who violates this provision can be sued for the losses caused and in its explanation Article 26 of the ITE Law states that personal data is one of a person's personal rights. Law Number 19 of 2016 concerning Information and Electronic Transactions (amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions) also does not contain rules for protecting personal data.

The guarantee of personal data is regulated in the Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems (PM 20/2016), which is a derivative of Government Regulation Number 82 of 2012 concerning Electronic System and Transaction Operators and the implementation of the Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions. The existence of the Minister of Communication and Informatics is still considered insufficient to provide a deterrent effect to individuals who misuse public personal data (in this case consumers who shop online) for personal interests, because the ministerial regulation does not have strict sanctions, namely criminal sanctions and only provides administrative sanctions only. Administrative sanctions are in Article 36 paragraph (1) which states that: [51]

Everyone who obtains, collects, processes, analyzes, stores, displays, announces, sends, and/or disseminates Personal Data without rights or not in accordance with the provisions in this Ministerial Regulation or other laws and regulations shall be subject to administrative sanctions in accordance with the provisions of the legislation. -invitation in the form of:

- a. verbal warning;
- b. written warning;
- c. temporary suspension of activities; and/or;
- d. announcements on sites in the network (online websites).

Violation of personal data causes legal consequences for violators.[52] Legal consequences are consequences that arise from legal actions carried out by legal subjects.[53] Thus, the legal consequence of a personal data breach by the online loan provider is the imposition of sanctions.[54] Legal protection needs to be given to the borrower from unilateral actions taken by business actors (in this case the lender) and the borrower has the right to obtain legal remedies.[55] In order to achieve legal protection, sanctions are needed in its implementation.[56] The sanction is based on the need from the community for crimes or violations that occur in their environment. Sanctions will create order and security in society.[57]

Furthermore, based on the Minister of Communication and Informatics Regulation No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems, personal data is certain personal data that is stored, maintained and kept true and is protected by confidentiality.[58] Protection of personal data in electronic systems includes protection against the acquisition, collection, processing, analysis, storage, display, announcement, transmission, dissemination and destruction of personal data. The implementation of personal data protection in electronic systems must be based on the principle of respect for personal data as privacy.[59]

Every owner of personal data has the right to his data in the electronic system. These rights are regulated in Article 26, namely: the right to the confidentiality of their personal data; submit a complaint in the context of resolving personal data disputes for the failure to protect the confidentiality of their personal data by the electronic system operator to the minister, gain access or opportunity to change or update their personal data without disturbing their personal data. personal data management system, unless otherwise stipulated by the provisions of laws and regulations; gain access or opportunity to obtain historical personal data that has been submitted to the electronic system operator as long as it is still in accordance with the provisions of the legislation; and request the destruction of certain personal data belonging to him in the electronic system managed by the electronic system operator, unless otherwise stipulated by the provisions of the legislation. Users of electronic systems have an obligation to maintain the confidentiality of personal data obtained, collected, processed, and analyzed; use personal data according to user needs only; protect personal data and documents containing such personal data from acts of abuse; and is responsible for the personal data contained in his control, both organizational control under his authority and individuals, in the event of an act of abuse.

The electronic system operator has the obligation to certify the electronic system it manages in accordance with the provisions of the legislation; maintain the truth, validity, confidentiality, accuracy and relevance and suitability for the purpose of obtaining, collecting, processing, analyzing, storing, displaying, publishing, transmitting, disseminating and destroying personal data; notify the owner of personal data in writing in the event of a failure to protect the confidentiality of personal data in the electronic system he manages; have internal rules related to the protection of personal data in accordance with the provisions of the legislation; provide an audit track record of all activities in the management of the electronic system it manages; provide options to the owner of personal data regarding personal data that he manages can/or cannot be used and/or displayed by/to third parties with approval as long as it is still related to the purpose of obtaining and collecting personal data; provide access or opportunity for the owner of personal data to change or update his personal data without disturbing the personal data management system, unless otherwise stipulated by the provisions of the legislation; destroy personal data in accordance with the provisions in this Ministerial Regulation or other laws and regulations that specifically regulate the respective supervisory and regulatory agencies.

Any party that obtains, collects, processes, analyzes, stores, displays, announces, sends and/or disseminates personal data without rights or contrary to this rule and other laws and regulations will be subject to administrative sanctions in the form of verbal warnings, written warnings, termination temporary activities and/or announcements on online sites (online websites). If it is associated with the dissemination of personal data carried out by the organizers of the marketplace, can be categorized as defamation as regulated in Article 27 paragraph (3) of Law no. 11 of 2008 concerning Information and Electronic Transactions which states that, Any Person who knowingly and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing insults and/or defamation, shall be subject to sanctions The sentence imposed is regulated in the criminal provisions of the ITE Law, namely Article 45 which states that, Anyone who meets the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be sentenced to imprisonment a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Conclusion

Based on the results of research related to the Legal Protection of Consumer Personal Data, Marketplaces in Indonesia are based on electronic agreements, namely agreements made with electronic media. The electronic agreement contains the rights and obligations of the parties in the marketplace. The marketplace operator's obligation is to maintain the confidentiality, integrity and availability of personal data, and transaction data from the time the data is obtained until the data is destroyed. maintain the confidentiality, integrity and availability of user's personal data and in its use must obtain approval from the owner of personal data unless otherwise stipulated by the provisions of laws and regulations and sanctions for violations of personal data which include defamation, regulated in Article 45 of the ITE Law in the form of criminal sanctions.

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