



Legal responsibility towards personal data controller due to dissemination of personal data

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ABSTRACT

Rapid technological developments have negative impacts. One of them is a new crime, namely Cybercrime. One of the objects targeted by cybercrime perpetrators is Personal Data. The PDP Law is a legal regulation that aims to protect the privacy and confidentiality of individuals' personal information. This law is important in regulating the use, collection, processing and dissemination of personal data by entities or organizations. One of them is by applicators who provide e-commerce services who in the PDP Law are referred to as Personal Data Controllers. This research will examine further the responsibilities of personal data controllers in the event of dissemination of personal data belonging to the public. This research method is normative juridical with a statutory approach. The research results show that there are deficiencies in legal regulations regarding personal data controllers located abroad. Thus, the participation of the government and citizens is needed in preventing the spread of personal data.

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1. Introduction

It cannot be denied, the internet has provided many benefits, such as access to markets, libraries, helping research and scientific development, data exchange, and collaboration (Effendi, 2009). In fact, current technological developments have penetrated various areas of life, including business. Technology has also created new types and business opportunities where business transactions are increasingly carried out via electronic media (Romadloniyah & Prayitno, 2018). This is very helpful and makes it easier for anyone to carry out communication and buying and selling transactions via the internet. One application of the internet in business is electronic commerce (e-commerce). E-commerce is a form of computerization of business activities, where business activities are made easier and expanded in scope by using the internet network (Masrul et al., 2020).

In its development, the most popular e-commerce activities are through applications or marketplaces. Marketplace is an Internet-based (web-based) online media that is used as a place to carry out business activities and transactions between buyers and sellers (Wardani, 2018). The

ease of accessing the internet makes many consumers prefer to shop using marketplaces compared to traditional markets. Based on data from the Global Web Index (GWI), as many as 90 percent of internet users aged 16 to 64 years in Indonesia have purchased products and services online (Indonesia, 2020). The purpose of change in this era is to focus on human development and economic progress to be balanced, balance is certainly present because of the relationship between cyberspace and the digital world which is facilitated by technology (Chalid, 2020).

Apart from the positive impacts as mentioned above, this rapid technological development also has negative impacts. One of them is a new crime, namely Cybercrime. Cybercrime can be translated as illegal activities carried out using computers via the internet network (JALAN & PELAWI, 2016). Cybercrime is closely related to cyber space. Cyberspace, also called cyberspace, is a communication medium on a computer that is carried out using the internet. Cyberspace is a social space that is not limited by distance and time (Maskun et al., 2013). One of the objects targeted by cybercrime perpetrators is Personal Data. Personal Data is important in this digital era because it is widely used to register or register for all types of digital platforms. Therefore, it is not surprising that personal data is one of the targets of criminals (Febriansyah et al., 2023). Nowadays, there are many countries whose laws regulate data protection, there are at least more than 120 countries that have laws regarding data protection (Sudarwanto & Kharisma, 2022).

Since October 17 2022, Indonesia has had a law that specifically regulates the use and protection of personal data, namely Law Number 27 of 2022 concerning Personal Data Protection (UU PDP). The PDP Law is a legal regulation that aims to protect the privacy and confidentiality of individuals' personal information. This law is important in regulating the use, collection, processing and dissemination of personal data by entities or organizations. One of them is by applicators who provide e-commerce services who in the PDP Law are referred to as Personal Data Controllers. The obligations of personal data controllers are regulated in Articles 20 to 50 of the PDP Law, including being obliged to show proof of the consent that the personal data subject has given when processing personal data, being obliged to maintain the confidentiality of personal data, and being obliged to prevent personal data from being accessed unlawfully.

The need for legal regulations as mentioned above is due to the large number of members of the public who are starting to be disturbed and complain about the leak of personal data. There are many members of the public who feel they have never provided data, but are suddenly offered products or services that they don't actually need. In fact, these members of the public have never given the right to companies providing e-commerce services or financial institutions or whatever to share their personal data with other parties. Moreover, privacy and personal data can increase individual confidence in participating in a society in the digital economic era (Marlina et al., 2018).

Protection of oneself, including in this case personal data, is part of Human Rights. However, Indonesia only passed the PDP Law at the end of 2022. Therefore, Research on Personal Data Protection as currently regulated in the PDP Law, is an important thing that is tested to know and evaluate the effectiveness of the PDP Law, which was previously expected to be able to provide solutions to problems regarding efforts to protect the personal data of citizens, especially related to personal data that is in the Personal Data Controller.

Based on all of the above, the problems that the author can put forward are: Firstly, to what extent the PDP Law can provide protection for people's personal data from misuse by other parties? Second, what is the legal responsibility for Personal Data Controllers as a result of leaks of people's personal data?

2. Method

Philippus M. Hadjon said that legal science has a unique character, namely in terms of its normative, practical and prescriptive nature. Departing from this, in this article, in order to

answer the problem formulation above, the author uses a type of normative legal research (normative juridical), namely legal research that places law as a system of norms. The norm system in question is about principles, norms, rules, laws and regulations, and court decisions (Mukti Fajar & Achmad, 2010). The focus of this research will be on matters related to legal systematics, namely identifying the main meanings in law, including legal subjects, legal acts, legal events in relation to the application of legal theory, legal doctrine and statutory regulations. One of the uses is a statutory approach. The data collection method used by the author uses the library research (Benuf & Azhar, 2020).

3. Analysis and Results

3.1. Personal Data Protection from the perspective of the PDP Law

The right to privacy is one of the rights inherent in every person. The right to privacy is the dignity of every person that must be protected. Personal data is data relating to a person's characteristics, name, age, gender, education, occupation, address and position in the family (Kusnadi, 2021).

The PDP Law is an embodiment of Article 28G paragraph (1) of the 1945 Constitution which reads: "Every person has the right to personal protection, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear of do or not do something that constitutes a human right." The concept of personal data protection emphasizes that every person has the right to determine his own fate, such as whether he will share data or not, and if data sharing is carried out, he also has the right to determine the conditions that will be fulfilled in a community (Fanny, 2019).

In line with the above, based on Article 1 number 2 of the PDP Law, in principle all efforts are to protect personal data in the process of processing personal data in order to guarantee the constitutional rights of personal data subjects. There are also several international instruments, such as the Guidelines and the Data Protection Convention from the Council of Europe, which define personal data as all information relating to an identified or identifiable natural person (Rosadi, 2017).

In an effort to provide personal data protection and guarantee citizens' basic rights regarding personal data, the government passed the Personal Data Protection Law or PDP Law. In the PDP Law, a number of provisions are regulated. One of the discussions is about the rights of personal data owners. Another definition of "personal data" is data in the form of identity, codes, symbols, letters or numbers that identify a person's personal characteristics which are private and confidential (Sautunnida, 2018). The rights of personal data owners or Personal Data Subjects as contained in the PDP Law are: 1) The right to obtain clarity regarding the use of personal data, 2) The right to change personal data to be accurate, 3) Right of access and copy of personal data, 4) The right to delete the data, 5) Right to withdraw consent to processing of personal data, 6) The right to object to automated processing of personal data, 7) The right to delay or limit the processing of personal data, 8) The right to sue and receive compensation, 9) The right to obtain and use personal data about himself.

The most interesting thing is regarding the ninth right, which is to obtain and/or use personal data about oneself from the personal data controller in a form that complies with the structure and/or format commonly used or a format that is read by electronic systems. Personal Data Subjects also have the right to use and send their personal data to other personal data controllers (Article 13 of the PDP Law).

This right gives the owner of personal data the authority to request a copy of his personal data from the personal data controller. In addition, this right also allows the owner of personal data to transfer his personal data from one personal data controller to another personal data controller. So, if the data owner decides to move to another service or platform, he has the right to transfer his personal data without unnecessary obstacles. The concept of data protection

implies that individuals have the right to determine whether or not they will share or exchange their personal data. In addition, individuals also have the right to determine the conditions for the transfer of personal data. Furthermore, privacy protection. The right to privacy has developed so that it can be used to formulate the right to protect personal data (Erna, 2019).

It aims to give personal data owners greater control over their personal information and to ensure that they can use and exploit it in the way they deem appropriate. The PDP Law aims to protect the privacy of individuals' personal data and regulate how companies and organizations manage personal data. Deviations from the provisions of the law occur when companies or organizations do not comply with the provisions set out in the PDP Law, such as not providing access to data to individuals who apply for it, this can also be considered a violation.

The PDP Law is currently the basis for legal certainty for Personal Data Owners. In this regard, the PDP Law provides regulations regarding the management of prohibited personal data, which includes: 1) Article 65 paragraph (1) contains the prohibition on obtaining or collecting personal data that does not belong to you with the intention of benefiting yourself or others which could result in losses. personal data subject. 2) Article 65 paragraph (2) contains a prohibition on disclosing personal data that does not belong to him with the intention of benefiting himself or another person which could result in harm to the personal data subject. 3) Article 65 paragraph (3) contains a prohibition against using personal data that does not belong to him with the intention of to benefit oneself or others which may result in loss to the subject of personal data. 4) Article 66 contains a prohibition on creating false personal data or falsifying personal data with the intention of benefiting oneself or another person which could result in harm to others (Tektona et al., 2023).

PDP laws typically cover a number of key aspects designed to protect the privacy and rights of individuals in relation to their personal data. One of the legal instruments that is closely related to the state's function in maintaining security and public order is criminal law. Criminal law is one of the legal instruments that operates in a country. Criminal law regulates the principles and contains rules to determine an act that is prohibited followed by criminal sanctions as a threat to every person who commits an act that has been prohibited, and determines procedures for carrying out the crime when someone violates the act as formulated (Moeljatno, 2015).

3.2. Legal Responsibility for Personal Data Controllers Due to Leaks of Public Personal Data

Personal data regulations specifically regulate the protection of personal data. In particular, the content of the PDP Law contains the existence of legal subjects in data protection, the rights of data subjects, the obligations of personal data controllers and personal data processors as well as the scope of the application of personal data regulations, and also contains sanctions from legal subjects that violate the provisions contained in these rules (Wicaksono, 2023).

A personal data controller is any person, public body and international organization acting individually or jointly in determining the purposes and exercising control over the processing of personal data. Meanwhile, what is meant by personal data processor is every person, public body and international organization that acts individually or jointly in processing personal data on behalf of a personal data controller. In other words, a public body is a government that can be a data controller personal or personal data processor. The obligations of personal data controllers are regulated in Articles 20 to 50 of the PDP Law, including being obliged to show proof of the consent that the personal data subject has given when processing personal data, being obliged to maintain the confidentiality of personal data, and being obliged to prevent personal data from being accessed unlawfully. Protection of privacy and data privacy cannot be separated from the existence of law as a tool to protect individual constitutional rights (Disemadi, 2021).

Article 47 of the PDP Law clearly states that "*Personal Data Controllers must be responsible for the processing of Personal Data and show responsibility in fulfilling obligations to implement the principles*

of *Personal Data Protection*". Violations of the provisions of Article 46 paragraphs (1) and (3) and Article 47 of the PDP Law as mentioned above are subject to administrative sanctions in the form of written warnings, temporary suspension of personal data processing activities, deletion or destruction of personal data, and/or administrative fines. Administrative sanctions are imposed by the institution and are subject to a maximum fine of 2% of annual income or annual receipts for variable violations. If the personal data controller in an Electronic System system is negligent in efforts to protect personal data so that the individual suffers losses due to his actions, then claims for losses can be made accordingly, in accordance with applicable regulations (Fikri & Rusdiana, 2023).

In the event that the personal data controller is also an Electronic System Operator, he must operate the Electronic System reliably and safely and be responsible for the Electronic System Operation. This responsibility is excluded if it can be proven that force majeure, error and/or negligence on the part of the Electronic System user has occurred (Tektona et al., 2023).

Febriansyah (2023), found that Indonesia has a relatively low level of cybersecurity, especially with respect to digital service providers operating in Indonesia. This is evident from the many hacking cases that lead to personal data leaks (Sholikhah et al., 2021). Therefore, increasing cybersecurity is also a mandatory thing to do so that personal data protection efforts can run optimally. In addition, the PDP Law does not expressly provide sanctions that can be imposed on data controllers located in other countries outside Indonesia. Meanwhile, from the examples of personal data leak cases described above, the leak of personal data of Indonesian citizens occurred on foreign platforms with foreign nationals and domiciled outside Indonesia. This is truly unfortunate because the crime of theft of personal data through internet crime in the cyber world knows no boundaries, space and time which endangers the personal data of Indonesian citizens. If we look more deeply into the modus operandi used by perpetrators of criminal acts of data breaching or what are known as hackers or hackers. According to the Big Indonesian Online Dictionary (KBBI), hacker means, among other things, a person who is obsessed with knowing more about computers or a person who accesses other people's computers without permission, usually with the help of communication technology. Hackers can secretly take control of a victim's computer, using it to commit crimes or spread spam (Marhana et al., 2022).

4. Conclusion

In order to provide protection to the owners of Personal Data, the PDP Law stipulates that only Personal Data Subjects have the right to use and transmit their personal data, including to give permission to the Personal Data Controller whether they are entitled to share or exchange personal data belonging to individuals to other parties or not. The PDP Law also stipulates penalties for parties who without permission from the owner of Personal Data, collect, disseminate, and/or use personal data belonging to others. Law enforcement officials must strictly implement this rule so that the right to Personal Data can be implemented as expected.

Legal arrangements regarding the Responsibility of Personal Data Controllers due to leakage of personal data of the Community are regulated in Article 47 of the PDP Law. However, in order for Personal Data protection efforts to run optimally, the government is obliged to improve national cyber security, considering the many cases of personal data leakage, caused by weak cybersecurity on Digital Service Provider platforms. In addition, the government must also make strict rules regarding personal data controllers located outside Indonesia. This is intended so that bribery data security has a guarantee of legal certainty both from unlawful actions by Personal Data Controllers located in the territory of Indonesia, and outside the territory of Indonesia.

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