

LEGAL PROTECTION FOR USERS OF INTERNET BANKING CUSTOMERS FOLLOWING CHANGES IN INFORMATION AND ELECTRONIC TRANSACTIONS LAW

Azharuddin
Universitas Prima Indonesia, Medan, Indonesia
azharuddin@unprimdn.ac.id

ABSTRACT

The presence of the Internet Banking service has offered a number of convenience and flexibility in conducting transactions, both between the bank and its customers, the bank and merchant, bank with the bank and the customer with the customer. However, this simplicity does not mean no risk. In addition to the Internet Banking service provides convenience, also in fact have some risks. The risk of a new character and is a challenge for practitioners and experts in the field of Internet Banking service to handle it, so it becomes important to discuss the legal efforts to protect customers' personal data in the operation of Internet Banking service after changes in legislation and elektronik information transaction. Forms of protection against customer data in Internet Banking in Indonesia are from several types of regulations that have regulated internet banking, namely Bank Indonesia Regulation Number 9/15 / PBI / 2007 concerning Application of Risk Management in the Use of Information Technology by Commercial Banks and Act No. 19 of 2016 concerning Amendments to Act No. 8 of 2011 concerning Electronic Information and Transactions along with the Financial Services Authority Act in the section on consumer protection.

A. INTRODUCTION

Advances in information technology have changed mankind's view of the variety of activities that has been monopolized by a mere physical activity. The birth of the Internet is changing the paradigm of one's communication in relationships, business, and also the company. Internet changed the concept of distance and time drastically so as if the world be small and limited. Everyone can communicate, do business with other people thousands of kilometers from one place to another just by pressing the keys of a computer keyboard and mouse that are in front of him.

The presence of the Internet Banking service through home banking and wireless banking, it has dramatically changed the pattern of interaction between the financial institution and its customers. With the provision of the service facilities of Internet Banking, bank customers gain the advantage of flexibility to carry out activities at any time. Customers can also access the Internet Banking service via a personal computer, a mobile phone (cell phone) or wireless media. Nevertheless, the Internet Banking service in the setting as a new channel and customer touchpoint. To make the Internet Banking service member benefits, The financial

institution must provide an integral part of the customer, regardless of the multi-channel strategy, whenever, wherever they can transact.¹

The presence of the Internet Banking service has offered a number of convenience and flexibility in conducting transactions, both between the bank and its customers, the bank and merchant bank, the bank with the bank and the customer with the customer. However, this simplicity does not mean no risk. In addition to the Internet Banking service provides convenience, also in fact have some risks. The risk of a new character and is a challenge for practitioners and experts in the field of Internet Banking services to address them.

In the implementation, Internet banking in Indonesia is carried out by national banks are not executed in full. That is, some banks in Indonesia such as PT. Bank Maybank Indonesia, Tbk. formerly PT. Bank Internasional Indonesia Tbk. (BII), which the agency claims that they have carried out the implementation of Internet Banking (www.bankbii.co.id), At the beginning of its establishment, merely as a means of promotion for the products of PT. Bank Internasional Indonesia Tbk. (BII). It happens maybe remind the availability of funds for the procurement of technology related to Internet Banking. In addition, concerning the readiness of human resources, so that the

application of Internet Banking can not be implemented in full.²

Bank secrecy seems now no longer enough to anticipate the business dynamics of the banking sector. It can be seen on the problem of the emergence of a number of Internet banking services in Indonesia. Internet Banking Services itself in reality presents a number of amenity in banking transactions. However, in the case of legal arrangements like setting customers' personal data are governed by banking secrecy, banks are no longer able to anticipate the impact of the utilization of the Internet Banking service.³

The problem in this research is how the legal efforts to protect customers' personal data in the operation of Internet Banking service after law change information and electronic transactions.

B. DISCUSSION

In the context of Internet Banking, where self-regulation has a strategic role in providing protection against personal data and bank customers (privacy). There are two factors, among others: First, the positive law in the territory of that State can not reach the system of transactions by their Internet Banking services. Second, the lack of a legal instrument governing the transaction system, both at national and international levels.

Some examples of the practice of self-regulation in the Internet

1 "Next-generation retail banking", 2003 <http://zle.nonstop.compaq.com/view.asp> IO = INTBKGWP[12/22/2018]

2 Budi Agus Riswandi, *Aspek Hukum Internet Banking*, PT. Raja Grafindo Persada, Jakarta, 2005, p. 53.

3 *Ibid*, p. 186.

Banking to the protection of personal data and bank (privacy) contained in some images of the site. From the pictures of some sites, it turns out the banking industry who use the Internet Banking service using the instrument of personal data and bank protection (privacy) through the provision of self-regulation that is used through the regulation of Internet Banking taken unilaterally by the banking industry. This unilateral manifestation can be seen, for example in the privacy policies made by the organizers of Internet Banking PT. Bank Central Asia Tbk (BCA). PT. Bank Central Asia Tbk (BCA) policy can change this any time to keep adjusting to the situation and the latest technology. You can always review the policies of PT. Bank Central Asia Tbk (BCA) which is the latest in <http://www.klikbca.com/privacy.html> or you may request it by sending an email toklikbca@bca.co.id

However, if that is reliable it is only based on self-regulation, there is a very serious concern where industry banks would tend to transfer the responsibility if there are legal issues of the organization of Internet Banking. This was probably also due to the subjectivity of the organizers, for example in understanding the word 'new technology'. As a result of these circumstances, the purpose of the law to achieve a balance in the legal protection is not achieved.

On development, there is some suggestion that the instrument of self-regulation can be effective in its enforcement. One proposal, among others, as proposed by Paula Bruening. He stated that for her effective regime of self-regulation of privacy should

include mechanisms to ensure the complaint with the rules and appropriate sources for the injured party when the rules are not followed, such a mechanism is essential tool that would allow consumers to test the right to privacy and should by quickly provide and deliver to consumers. He then recommends to the private sector provided an excellent way of enforcement, where the enforcement is a necessity and needed by consumers. Some recommendations are as follows:⁴

1. Consumer Resources

Companies that collect and use information that is personally identifiable to consumers should offer mechanisms which their complaints can be solved, such as readily available and affordable mechanism.

2. Verification

Verification provides unequivocal endorsement of the company in the form of a statement about their privacy practices properly and their privacy practices already being implemented as indicated. For verification, depending on the type of information which is owned company. If the information is of high sensitivity, verification standards would be higher as well.

3. Consequences

In order for effective self-regulation, failure to comply with the fair information practices should consequently. Among other things, the cancellation of the right to use the mark and logo, disqualification from membership in

4 Paula Bruening, Op. Cit.

industry trade associations. In the end, the sanctions were applied strictly will ensure the consumer. Furthermore, also when the company insisted that they are bound by privacy practices and then failed to do so, they must be responsible for the fraud.

From learn against privacy settings through self-regulation, it can be concluded that the existence of self-regulation does not become an instrument that really can provide full protection against bank customers' personal data and instrument government regulation if not immediately established. That is the need of the Law on Privacy becomes something that is not negotiable.

Preventive legal protection of personal data of customers in the implementation of internet banking services with self-regulation approach is basically seen from the aspect of legal arrangements internally approach of the organizers of the internet banking service itself. The protection of customers' personal data is tightened again with their specific preconditions in the use of technology tools that will be used to transact using Internet banking services PT. Bank OCBC NISP Tbk. This may be based on an awareness that not all technology has the same security power and not all of the technologies controlled by the internet banking service providers.

Besides the policy specifically within the site www.online.ocbcnisp.com related to

customer confidentiality policy, also when the customer will use the internet banking service of PT. Bank OCBC NISP Tbk. It is required to register. In the registration section also outlined some guidelines and steps that are intended to protect customers' personal data. Instructions were packed in two aspects, namely registration requirements and registration steps. Efforts protection of customers' personal data which was formed through the self-regulation approach contained in the privacy policy instrument. Sebagai berikut stated in our privacy policy:

- a. That certificate regularly to ensure that you receive a valid certificate is registered to www.ibank.klikbca.com
- b. If the certificate is invalid, please you do not continue. Make sure that you have typed the correct address.
- c. Make sure that the side that your browser has an image of a lock / key indicates that the page you are currently using SSL access.

In this case PT. Bank Central Asia Tbk. (BCA) requires you to enter a User ID and PIN before you are allowed to access the internet banking facility. You also need to enter a PIN when you make a financial transaction as a sign of approval. Protection efforts are also done by providing information about the proper technology applied in the use of internet banking services. Besides, with this policy of the banks as service

providers have the right to make changes to the policy are aligned with technology development. The law on personal data protection in the administration of internet banking customers with government regulation approach focuses on a set of rules established by the government with the authority to establish such rules.

Based on the description of the overall legal protection of customers' personal data in the operation of Internet Banking, both based approach to self-regulation and government regulation, it can be stated that the safeguards have been done, but it must be recognized that legal protection is not yet reflected in a comprehensive protection and reflect the principle of balance. Comprehensive word meaning and reflect the principle of balance that legal protection is only partially located in various kinds of law and the rules do not yet reflect the principle of balance, means that such rules do not yet reflect a balance of rights and obligations between providers of Internet Banking with the customers themselves.

Problems of law on personal data protection in the administration of internet banking customers, of course, are relevant in order to find answers to attempt the legal protection of personal data in the operation of internet banking customers that reflect the principle of balance.

In contract law, there are several principles, as follows:

- a. The principle of Freedom of Conduct Agreement (Partij autonomous)
- b. The principle of freedom of an agreement or the principle of freedom of contract (contract vrijheid) is related to the content of the agreement, namely the freedom to determine what and with whom the agreement was held.⁵
- c. principle consensualism
- d. Consensualism principle contained in Article 1320 of the Civil Code, which implies the existence of a will (will) of the parties to mutually participate, there is a willingness to be bound to each other. They agreed that bind is an essential principle of contract law. This principle determines the existence of the agreement.⁶
- e. The principle of belief
- f. Someone who has an agreement with other parties build trust between the two parties together hold fast to his promise.
- g. Principle Power of Binding
- h. In the agreement also contained the principle of binding force, *pacta sunt servanda* (the promise binding). The principle of

5 Mariam Darus Badruzaman, *Kompilasi Hukum Perikatan*, (Bandung: PT. Citra Aditya Bakti, 2001), p. 73

6 Mariam Darus Badruzaman, *Aneka Hukum Bisnis*, (Bandung: Alumi, 1994), p. 42

binding force of Article 1338 subsection (1) of the Civil Code, which reads: "All approvals are made legally valid as law for those who make it." The parties are bound by the agreement is not solely limited to what is agreed but also against the elements of the customs, decency, and morality.

- i. Principle of Equality Law
- j. This principle puts the parties in equality, it means that there is no difference.
- k. Principle of balance
- l. This principle requires that the parties to make an agreement or legal act to be done in a balanced manner.⁷
- m. The principle of Rule of Law
- n. This principle provides legal certainty to the binding force of a treaty that is as a law for the parties.
- o. Moral Principles
- p. Factors that motivate concerned to take legal actions based on morality as the call of conscience.
- q. The principle of Decency
- r. This principle is stated in Article 1339 of the Civil Code relating to the provisions on the content of the agreement.
- s. The principle of habit
- t. According to Munir Fuady, principles of contract in the Civil Code is the law of the contract is the law regulates, the principle of freedom of contract, the principle of

pancta sunt servanda (the promise binding), the principle of consensual and principle obligator means after the validity of the contract is already binding, but merely cause rights and obligations between the parties. But at that rate has not changed to property rights of others. To be able to make over the property, needed another contract called a material contract

(zakelijkeovereenkomst).

Material agreement is often called by delivery *(levering)*.⁸

- u. Principle of Protection of Vulnerable Group
- v. This principle applies to the parties entered into an agreement or legal act whereby the debtor in an agreement with the lender / bank are always in a weak position.⁹
- w. The principle of Open Systems
- x. This principle provides a legal basis for the parties to perform a treaty should be open and / or transparent to the parties to make such an agreement.¹⁰

Law as a system known as the legal system has a broad meaning, which not only have to

7 Ibid, p. 42

8 Munir Fuady, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)*, (Bandung: PT. Citra Aditya Bakti, 1999), p. 29-31.

9 Mariam Darus Badruzaman, "Codification Sistem Kodifikasi Pembaharuan Parsial KUH Perdata Indonesia", *Jurnal Hukum Bisnis*, Jakarta, 1999, p. 17

10 Ibid, p. 17

meet the elements of legal regulations that narrow, but the legal system must be interpreted in the context of the elements of legal regulations in the broadest sense. In a legal sense in this broader sense should at least include three aspects, namely:

1. Regulations formed by the legislature (in the broad sense) so it's not just legislation alone;
2. The regulations established by law through decisions (judge made in law);
3. The regulations contained in the habit.

Laws are made with the intent that he might take effect in society, so that citizens/residents and who are on its frontiers in (country) complied. Everyone is supposed to know the law, although few people actually read how sound legislation. Act, they mean all the rules, which are binding, regardless of who makes it and what it's called. The manufacturer may Parliament and the government, maybe the government, perhaps the Minister, perhaps the governor, may judge the village, customs authorities may, perhaps Dean of the Faculty and so on. Is very good at all, if the legislation reader can easily understand what they read. One of the conditions for it is a sentence in the legislation should be brief, so easily understood. At first impression the Dutch period, as if the sentences were legal "accidentally" made in the form elusive. Long-term sentences. There sentences principal/parent,

there are clauses, sometimes children have litter sentence anyway. Spoken words are sometimes convoluted. It is certainly not intentionally made that way; traditions, perhaps also pride is a factor for them. Should such a habit and did not need us to imitate. Well we can use simple sentences, short and straightforward formula. perhaps also pride is a factor for them. Should such a habit and did not need us to imitate. Well we can use simple sentences, short and straightforward formula. perhaps also pride is a factor for them. Should such a habit and did not need us to imitate. Well we can use simple sentences, short and straightforward formula.¹¹

In conjunction with the regulations established by the legislature typically occurs due to the needs in the community to those rules or may also be due to previously existing law is no longer able to anticipate and carry out their functions societal changes that occur.

The main objective of the regulations established by the legislature is to achieve the purpose and function of law. In various kinds of legal study has been widely known to many destinations and the function of the law that has been raised by legal experts. One of the purposes and functions of the law as a means of protection for the parties concerned

11 Mahadi, *Falsafah Hukum Suatu Pengantar*, (Bandung: PT. Citra Aditya Bakti, 1989), p. 91

on the law. Legal protection for the stakeholders implies that law reflects the principle of balance. The principle of balance itself implies the existence of legal protection to all interested parties on the object being regulated.

This is obtained by doing an analysis of the realities that exist in the legal protection of personal data in the operation of Internet banking customers during this run from a normative standpoint. As stated in the analysis of the law on personal data protection in the administration of internet banking customers with a model approach to self-regulation and government regulation, imply that it is legally normative not reflect a balanced legal protection.

Therefore, to take effective legal protection balanced, the establishment of the law relating to the issue becomes one of the alternatives. Legal establishment itself when interpreted in the beginning it contains a very broad sense, which encompasses not only the statute. However, with regard to the establishment of laws for the protection of customers' personal data law, the concept of legal establishment will only be directed towards the establishment of legislation.

Establishment of legislation that must be done in providing legal protection of customers' personal data should be carried out in the beginning by forming a general law first. Then, if the problem is more complex in the future, it may be recommended to

make a provision of the law on protection of personal data that are specific to certain fields.

These efforts are advised to remember when studying the legal arrangements in the same field in several countries, it appears that the efforts of the establishment legislation is generally the first step in what they do. Take the following example. Australia now has a statutory provision, called the Privacy Act. Privacy Act is set by the Federal Parliament in late 1998. The Privacy Act is a legal action that carried Australia as a member state within the Organization for Economic Cooperation and Development (OECD), where one of the obligations of OECD member states is required to harmonize the provisions of the Protection of Privacy and transborder Flows of Personal Data. This is certainly no exception to the Australian Privacy Act has now been set.

The interesting thing about the Privacy Act is in this rule set issues legal protection of personal information. The legal protection of personal information includes information that the collection, storage, access, use and disclosure. In December 2000, amendments to privacy (private sector) have been carried out by the Federal Parliament and its contents expanded by amending the act to the person of the organization.

In reality, the legal establishment seems to be a tendency to be implemented. This can be observed with the passing of the plan to establish Digital

Signature Act and the Electronic Transaction, appears in Chapter VI, Article 29 subsection (1) and (2) shall issue the legal protection of privacy. Learn the sound of these provisions are as follows:

1. The use of any information through electronic media concerning the data on a personal right must be done with the consent of the owner of the data.
2. Excepted from the provisions referred to in subsection (1) is the use of information of a general nature and is not confidential through electronic media.

From the wording of the Act No. 19 Of 2016 on Information and Electronic Transactions can be seen that there is a desire that the issue of privacy in the electronic transaction needs to be protected. This is no exception for transactions that occur in the administration of internet banking services. However, when looking at the substance of the sound of the Law on Electronic Transactions information and this, not yet indicate a maximum safeguards. The unmaximal result of this law is still vague (simple), whereas it's own privacy issues, particularly the issue of data privacy is very wide-ranging. For example, it is necessary to distinguish between the nature of the data for the public and private sector.

In the establishment of the Act itself should not only pay attention to the needs of the practice, but it would be helpful if

the establishment also noticed models of law at the international level. As the legal provisions designed by OECD countries through Online Privacy: Policy and Practical Guidelines. OECD Guidelines on the Protection Privacy and transborder Flows and Personal Data, and the OECD Guidelines for the Security of Information Systems and Networks towards a Culture of Security.

Another aspect that must be considered can be based on the experience in some countries. Henry H. Peritt stated that when watching developments in the regulation of some developed countries looks fundamentally they have nearly the same basic norm in terms of privacy.¹² The equation that norm can be expressed as follows:¹³

1. There is no surveillance system recording personal data may be kept confidential.
2. Individuals have to decide what information about them on the record and how it is used.
3. Individuals should prevent their information is acquired for the purpose of availability of use and formation for other purposes without their permission.
4. Restrictions should be placed on the disclosure of personal

12 Henry H. Perritt, Jr. "Regulatory Models for Protecting Privacy in the Internet", Villanova University School of Law, <http://www.law.vil.edu/>, Accessed on February 5, 2019.

13 Ibid.

information that is sure to third parties.

5. Organizations creating, maintaining or using a recording of personal data that can be identified should ensure the confidence of their purpose of use and must take precautions against misuse of the data itself.

On the basis and efforts above, the purpose of the establishment legislation, which provides legal protection of customers' personal data in the operation of internet banking services can really be achieved effectively and balanced as everything was in line with the objectives of the legal establishment in general.

At least five new and important points that make the Law on Information and Electronic Transactions (UU ITE) 2016 is relevant to the fulfillment of a sense of justice for the people who use cyberspace as a place for expression, namely:¹⁴

1. Avoid arrest immediately by lowering the imprisonment of 6 (six) years to four (4) years.
2. With the decline of these threats, the complainant and reported have the same position until it can be proven in court who is right. Reported does not need to be detained beforehand because the threat of prison under 5 years old.

3. Add provisions regarding the "right to be forgotten" or "right to be forgotten" on the provisions of Article 26.

4. Later Electronic System Operator shall remove irrelevant Electronic Information under its control at the request of the person concerned to be determined by the court and provide mechanisms.

5. Giving protection of the public from the negative content.

6. There are two ways, namely in terms of protection of deployment and access restrictions in terms of education. In terms of content, the government always gets input from various parties, especially related to pornography and gambling.

7. Accommodate the Indonesian Constitutional Court's decision to change the setting procedures for the interception or eavesdropping, from the previously stipulated in Government Regulation be regulated in the Act.

8. The assertion that a legitimate legal evidence of the result of the interception is carried out in order interception of law enforcement at the request of law enforcement officers.

Five points are above a differentiator in the Law on Information and Electronic Transactions (UU ITE) in 2016 thanks to the presence of the new procedure and substance of a sense of justice for the community

14 Danrivanto Budhijanto, *Revolusi Cyberlaw Indonesia Pembaharuan dan Revisi UU ITE2016* (Pt. Refika Aditama, 2017), p. 97

search. Nevertheless, the spirit of the frame members are clear rules so that the free flow of opinions are not counterproductive for our people who are building into a Law on Information and Electronic Transactions (UU ITE), has existed since 2008.

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C. CONCLUSION

Forms of protection of customer data in the Internet Banking in Indonesia are of several kinds of rules that have been set up on the internet banking yaitu Indonesia's Bank Rule No. 9/15 / PBI / 2007 regarding Implementation of Risk Management in the Use of Information Technology by Commercial Banks and Act No. 19 2016 on the amendment of Act No. 8 of 2011 on Information and Electronic Transactions Act together with the Financial Services Authority in the protection of consumers.

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