

The Corporate Legal Responsibility for The Leak of Personal Data of Application Consumers in Indonesia

Gesa Bimantara¹⁾, Tri Astuti Handayani²⁾ & Muhammad Ainul Yaqin Al Irsyad³⁾

¹⁾Faculty of Law, Universitas Bojonegoro, Indonesia, E-mail: gesabimantara1@gmail.com

²⁾ Faculty of Law, Universitas Bojonegoro, Indonesia, E-mail: [iynun07@gmail.com](mailto:iyunun07@gmail.com)

³⁾ Faculty of Law, Universitas Bojonegoro, Indonesia

Abstract. *The importance of using identity in the form of personal data in all activities related to the fulfillment of rights encourages someone to provide personal data information. Voluntary and mandatory giving is a shame for individuals who seek more profit by using someone's personal data without the permission of the owner of the personal data concerned. The scope and formulation of this research problem focuses on the use of personal data without permission which can be qualified as a criminal offense and what criminal responsibility there is for perpetrators who use personal data without permission. The method used in this writing is the juridical-normative-conceptual legal research method. Research shows that the use of personal data without permission is a criminal offense by fulfilling the elements of general criminal regulations and related special regulations below. In Indonesia, criminal responsibility for perpetrators still does not have specific regulations regarding the imposition of criminal sanctions, so that responsibility is contained in separate regulations. The separate regulations contain several aspects of the protection of a person's personal data in general. The imposition of a crime against a corporation and/or its management does not preclude the possibility of a criminal being imposed on other perpetrators who, based on the provisions of the Law, are proven to be involved in the crime. Based on this research, the government, as the protector and guarantor of citizens' rights regarding the importance of personal data, must immediately ratify the Draft Law on Personal Data Protection for the sake of legal certainty.*

Keywords: *Consumer; Corporate Evidence; Responsibility.*

1. INTRODUCTION

The issue of leaking personal data and offering transactions for leaked personal data is again spreading. This incident not only affected personal data managed by corporations but also government institutions. The public is worried and questions why these incidents often occur and it seems like there is no law enforcement. All incidents of personal data leakage seem to be resolved simply by reporting. Corporations and related agencies seem to be able to inform the public simply by issuing statements and

clarifications¹. As a result, it seems as if the perpetrator of the theft of personal data walks around freely carrying out this action and seems to feel that he is legitimately free to buy and sell personal data as his livelihood by making offers through darknet sites.

Meanwhile, a data leak incident is certainly not likely to only occur due to attacks from outside, because it may be an act of disclosure from within the organization itself. To clarify this, of course proof is needed which cannot depend solely on the statement of one party, but must also be proven by audits from other parties or related agencies. The government, through sectoral agencies in accordance with the authority granted by law, has the duties and functions and authority to supervise the protection of the public's personal data. The worry is that the public will actually think that there is no legal awareness for corporations and related agencies to protect people's personal data².

Protection of personal data is not only regulated in the European Union regional convention (General Data Protection Regulation/GDPR), but also in other regions such as Africa (African Union Convention on Cyber Security and Personal Data Protection) and also Asia. In the ASEAN Declaration of Human Rights (2012), it is explicitly stated that personal data is part of privacy, although it is not explained in more detail. In Indonesia itself, philosophically, respect for privacy should also be understood as an embodiment of the second principle of Pancasila, namely Just and Civilized Humanity. The terms privacy and personal data have also been known and included since Law No. 39 of 1999 concerning Human Rights. Furthermore, 'personal data' is also mentioned and regulated in various subsequent laws and regulations, such as, among others; Law No. 23 of 2006 jo. Law No. 24 of 2013 concerning Population Administration, Law No. 36 of 2009 concerning Health, Law No. 43 of 2009 concerning Archives, Law No. 11 of 2008 concerning Information and Electronic Transactions (Electronic Information Technology Law) and its amendments³.

In Indonesia itself, personal data protection regulations are regulated partially. These regulations are spread across several laws and regulations. The plan is that regulations regarding personal data protection will be regulated in special regulations (Personal Data Protection Law). In 2020, the Personal Data Protection Bill has been included in the National Legislation Program (*Prolegnas*).

2. RESEARCH METHODS

The type of research used in this research is normative juridical focuses on reviewing positive legal rules (Matheus & Gunadi, 2024). Normative law is a series of processes for discovering and searching for legal rules, legal principles, and legal doctrines to answer current legal issues, researched, as stated by Peter Mahmud (Marzuki, 2010). This research is of a nature analytical descriptive. It is descriptive analytical in nature because this research intends to describe and provide an overview of existing legal

¹ Edmon Makarim, 2010, *Legal Responsibilities of Electronic System Operators*, Jakarta, Raja Grafindo Persada, p. 2.

² Abdul Halim Barkatullah, 2017, *Electronic Transaction Law*, Bandung, Nusa Media, p. 15.

³ Rini Yustiani, Rio Yunanto, 2017, "The Role of Marketplaces as a Business Alternative in the Information Technology Era", *Scientific Journal of Computer and Informatics (KOMPUTA) Vol. 6 No. 2, Indonesian Computer University*, p. 44.

facts and then carry them out analysis of positive legislation which is then linked to legal theories.

In reviewing and analyzing this study, researchers used several theoretical approaches, namely:

2.1 Legal Responsibility Theory

Accountability comes from the word responsibility, which means the condition of being obliged to bear everything (if something happens, you can be sued, blamed, sued, etc.) The concept of legal responsibility relates to legal responsibility for actions carried out by a person or group that are contrary to the law invite⁴.

Usually, that is, if sanctions are directed at the perpetrator directly, a person is responsible for their own actions. In this case the subject of legal responsibility is identical to the subject of legal obligation. In general legal theory, it states that every person, including the government, must be responsible for every action, whether due to fault or no fault. From general legal theory, legal responsibility arises in the form of criminal responsibility, civil responsibility and administrative responsibility⁵.

In practical terms and use, the term liability refers to legal responsibility, namely responsibility due to errors committed by legal subjects, while the term responsibility refers to political responsibility in the form of the formation of laws carried out by legislative institutions, also referring to legal responsibility⁶.

2.2. Criminal Law Theory

In criminal law, the principle of criminal responsibility can be found in Article 2 of the Criminal Code (hereinafter abbreviated to the Criminal Code), that "criminal provisions in Indonesian legislation are applied to every person who commits a criminal act in Indonesia".

According to W.P.J. Criminal law is the totality of legal regulations that determine what actions should be punished and what penalties should be imposed⁷.

Moeljatno stated that criminal law is part of the total law in force in a country which provides the basics or rules for:

- a. determine which actions may not be carried out, are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who violates the prohibition.
- b. determine when and in what cases those who have violated these prohibitions can be subject to or be sentenced to the criminal penalties that have been threatened.

⁴ Uliandri, 2010, *Principles of Forming Good Legislation, Ideas for Forming Sustainable Laws, Cet will 2*, Jakarta, Raja Grafindo Persada, p. 249.

⁵ Hans Kelsen (a), 2007, *General Theory of Law and State, General Theory of Law and State, Basics of Normative Legal Science as Empirical Descriptive Legal Science*, Jakarta, BEE Media Indonesia, p. 81

⁶ Ibid P. 83

⁷ Hanafi, Mahrus, 2015, *Criminal Accountability System, First printing*, Jakarta, Rajawali Pers, p-16

c. Determine how the imposition of a criminal offense can be carried out if someone is suspected of having violated the prohibition⁸.

2.3 Research Conceptual Framework

To get a clear picture and avoid different meanings in interpreting a term used in this research, the researcher created a research conceptual framework as follows:

1. Law enforcement

Law enforcement is an effort to make the ideas of justice, legal certainty and social benefits a reality. So law enforcement is essentially a process of realizing ideas. Law enforcement is the process of making efforts to enforce or function real legal norms as guidelines for actors in traffic or legal relations in social and state life. Law enforcement is an effort to make legal ideas and concepts that the people hope for become a reality⁹.

2. Personal Data Leaks

Personal data leakage refers to situations where a person's personal information is misused, stolen, or obtained by unauthorized parties without the permission or consent of the data owner. Personal data may include information such as full name, address, telephone number, personal identification number (such as NIK or KTP), credit card number, medical information, or other personally identifiable information.

3. Electronic Media

Electronic media is media that uses electronics or electromechanical energy for end users to access its content. This term is in contrast to static media (especially print media), which, although often produced electronically, does not require electronics to be accessed by the end user. Electronic media sources that are familiar to general users include video recordings, audio recordings, multimedia presentations, and online content. Electronic media can be analog or digital, although new media is generally digital.¹⁰

4. Criminal Act

According to Utrecht, criminal acts "criminal acts are behavior that is against the law, the presence of a person who makes and is responsible for his behavior."

2.4 Types and Research Approaches

The type of research method used by researchers in compiling this research is the Normative research method. Normative legal research, also called Library Research, is research carried out by searching or reviewing and analyzing library materials or statutory materials, books related to the problems in this research, namely regarding Crimi-

⁸ Roeslan saleh, 2010, *Thoughts on Criminal Responsibility*, Jakarta, First Printing, Ghalia Indonesia, p-33.

⁹ Hasaziduhu Moho, 2019, *Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan*, *Jurnal Warta*, No. 59, hlm. 6.

¹⁰ Ranto, Roberto, 2019 "Judicial Review of Legal Protection for Consumers in Buying and Selling Transactions via Electronic Media." *Journal of Legal Studies*, ALETHEA 2.2 : 145-164.

nal Law, Computer Crime Law, legislation regarding consumer protection. The approach method used in this research is the Statute Approach and the Conceptual Approach, namely an approach that departs from the views and doctrines that have developed in legal science. These views and doctrines will give rise to ideas that give rise to legal understandings, legal concepts and legal principles that are relevant to the issue at hand. Understanding these views and doctrines is a basis for researchers in building legal arguments in solving the issues faced.

2.5 Research Location

The research location is the main source targeted by researchers to obtain accurate material information and legal materials by researchers, namely the Head of Criminal Investigation Unit of the Bojonegoro Regency Police.

2.6 Population, Sample and Sampling Technique

This research focuses on 2 (two) problems as mentioned in the problem formulation above, namely: legal regulation of application consumer personal data in Indonesia and legal responsibility by corporations for leaks of consumer personal data in Indonesia.

2.7 Sources, Legal Materials and Techniques for Collecting Legal Materials

Some sources of legal materials used in this research include the following:

1. Primary Legal Materials

Primary Legal Material is legal material obtained through the results of library and field research (Field research) or obtained directly in the community and researchers collect this data with sources, namely the Head of the Criminal Investigation Unit of the Bojonegoro Regency Police.

2. Secondary Legal Materials

Secondary legal materials are legal materials obtained from the results of a literature review or review of various literature or library materials related to problems or research materials such as books, legal journals and magazines.

The method of collecting legal materials used by researchers in this research in order to obtain complete source materials is by using the interview method which can be interpreted as a process of interaction and communication which is intended to carry out direct questions and answers between researchers and respondents or sources or informants to obtain information, namely to the Head of the Criminal Investigation Unit of the Bojonegoro Regency Police.

2.8 Analysis of Legal Materials

Analysis of legal materials is a research activity in the form of conducting studies or researching the results of data processing which is assisted by theories that have been obtained previously. Descriptive Analysis, which means that in analyzing the researcher the desire is to provide an overview or explanation of the research subject and object as per the research results.

3. RESULT AND DISCUSSION

3.1. The Concept of Privacy and Personal Data Protection

The right to privacy means that everyone has the right to live and not be disturbed in their private life, whether by other people or even the state. Therefore, the state has the responsibility and obligation to regulate and recognize these rights. There are reasons why these rights must be protected. The first reason is, in everyday interactions, a person has the right to close his personal life so that he can protect himself in certain circumstances. The second reason is, in living one's life, sometimes a person needs time to be alone (solitude), without interference or interaction from other humans, for this privacy is needed. The right to privacy means that everyone has the right to live and not be disturbed in their private life, whether by other people or even the state. Therefore, the state has the responsibility and obligation to regulate and recognize these rights. There are reasons why these rights must be protected. The first reason is, in everyday interactions, a person has the right to close his personal life so that he can protect himself in certain circumstances. The second reason is, in living one's life, sometimes a person needs time to be alone (solitude), without interference or interaction from other humans, for this privacy is needed. The third reason is that privacy is a right that stands alone and does not depend on anything else.

Regarding to the Protection of Personal Data, Data is raw material for information, defined as an orderly group of symbols that represent quantities, actions, objects, and so on. Data is formed from characters which can be alphabets, numbers or special symbols. Data is compiled and then processed into data structures, file structures and databases¹¹.

3.2. The Legal Politics of Personal Data Protection in Indonesia

Indonesia is a country based on law (Article 1 Paragraph (3) of the 1945 Constitution), meaning that all aspects of life in society, state and government must always be based on law. To realize a rule of law, one of the things that is needed is legal instruments that are used to regulate balance and justice in all areas of people's lives and livelihoods through statutory regulations. This shows that legislation has an important role in the Indonesian legal state. Legislative Regulations are written regulations that contain generally binding legal norms and are formed or stipulated by state institutions or authorized officials through procedures stipulated in Legislative Regulations¹². Mochtar Kusumaatmadja in the Theory of Development Law says that, "the role of law in development is to ensure that change occurs in an orderly manner. The law plays a role through the help of legislation and court decisions, or a combination of both"¹³. The state as the "driver" of government has an obligation to accommodate and protect the needs of its citizens. This can be done through the process of establishing statutory regulations. As a country with a legal system that is heavily influenced by the Civil Law legal system, written law is used as the most important source of law. Thus, written law is very much needed as a guarantor of legal certainty.

¹¹ Purwanto, (2007) Research on Legal Protection of Digital Data. Jakarta: Badan Pembinaan Hukum Nasional, p.13.

¹² Article 1 paragraph (2) Law no. 12 of 2011 concerning the Formation of Legislative Regulations.

¹³ Kusumaatmadja, Mochtar. 1975, "Legal Development in the Context of National Development", Bandung: Bina Cipta, p.4.

In addition to the statutory regulations mentioned above, the Minister of Communication and Information has issued Regulation of the Minister of Information and Communication Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems. This Ministerial Regulation covers protection for the acquisition, collection, processing, analysis, storage, display, announcement, sending, dissemination and destruction of personal data, as regulated in Article 2 Paragraph (1) of the PDP Ministerial Regulation. This Ministerial Regulation covers protection for the acquisition, collection, processing, analysis, storage, display, announcement, sending, dissemination and destruction of personal data, as regulated in Article 2 Paragraph (1) of the PDP Ministerial Regulation. This Ministerial Regulation was issued due to the urgent need for legal regulations governing the protection of personal data. The Ministry of Communication and Information is aware of the need for statutory-level regulations that specifically regulate the protection of personal data. However, it takes quite a long time to form new laws and regulations, while the need for written rules governing the protection of personal data is urgently needed. Acting Director General of Informatics Applications, Mariam Barata, in an interview with CNN Indonesia said that, "We chose to issue this regulation in the form of a Ministerial Regulation because it is the easiest to complete, because we want it as soon as possible." This Ministerial Regulation, said Mariam, was issued because the protection of personal data was urgent. Meanwhile, to issue a law, the process time will be much longer. Head of the Yogyakarta Special Region Communication and Information Service, Rony Primanto, said that personal data protection in Indonesia is still very weak. However, he is optimistic about the government's commitment to protecting the personal data of the Indonesian people. He added that data protection is indeed uncertain, but there is already Ministerial Regulation Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems, but this Regulation is only a Ministerial Regulation, not yet at the level of a Legislative Regulation, the Government needs to make this Ministerial Regulation into law.

Indonesia's enactment of Law No. 27 of 2022 concerning Personal Data Protection marks a significant step towards strengthening the protection of personal data for Indonesian citizens. However, the implementation of this law presents various challenges that the government must address. One major challenge is the significant effort and costs required to implement the PDP Law, especially involving private and corporate sectors that may have benefitted from the lack of data protection regulations. Ensuring compliance from companies and public bodies, such as financial institutions and hospitals, is crucial to prevent data misuse and leakage for profit-driven purposes. Another challenge lies in fostering public understanding of the regulations. Given Indonesia's cultural inclination towards collective society and a lesser emphasis on privacy, there is a risk of unintentional violations due to lack of awareness. Ensuring educational initiatives to raise awareness among all levels of society is essential to mitigate this risk. Moreover, the protection of children's personal data presents a specific challenge as current regulations may be deemed insufficient to prevent misuse by technology platforms. Ambiguities regarding the age at which children's data is protected and the lack of specific provisions pose potential problems for the future safeguarding of children's data from exploitation.

Despite the challenges, the implementation of the PDP Law also brings opportunities, particularly for legal practitioners. The law creates a demand for legal services related to privacy protection and personal data management, offering new business avenues and potentially attracting international clients seeking compliance with Indonesian regulations. Additionally, the law may lead to the development of certification programs

and specialized practices in personal data protection, similar to existing practices in other regions. This could enhance legal knowledge in the field and create new business opportunities for domestic support services providers and legal education institutions. Overall, while the implementation of the PDP Law poses challenges, it also holds the potential to raise public awareness, drive legal innovation, and create new avenues for legal practitioners and support services in the field of personal data protection in Indonesia.

4. CONCLUSION

Indonesia's legal framework on personal data protection has evolved over the years, encompassing regulations from various laws, including those related to archives, company documents, banking, telecommunications, information and electronic transactions, as well as specific ministerial regulations. These laws reflect the country's commitment to safeguarding individuals' personal data in different contexts, such as archives and company operations, banking secrecy, telecommunications, electronic transactions, and electronic systems. Each of these regulations outlines specific provisions for the protection, processing, storage, and destruction of personal data, ensuring that data usage is lawful, limited, and respectful of individuals' privacy rights. The newly enacted Law No. 27 of 2022 concerning Personal Data Protection further solidifies Indonesia's stance on personal data protection by defining personal data categories, establishing the roles and responsibilities of personal data controllers and processors, and outlining obligations for data controllers to ensure consent, confidentiality, and lawful data processing. Moving forward, the implementation and enforcement of these regulations, including the PDP Law, will be crucial in upholding individuals' rights to privacy and fostering trust in data handling practices. There is a need for continued effort to enhance awareness, compliance, and capacity-building among stakeholders to effectively navigate the complexities of personal data protection in the digital age. Overall, the comprehensive legal framework in Indonesia demonstrates a commitment to modernizing data protection practices and ensuring that personal data is handled responsibly, ethically, and in line with constitutional rights. By consolidating and strengthening these legal provisions, Indonesia can further advance its data protection regime and promote a safe and secure environment for data processing activities.

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