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 Nagoya University



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 Sultan Agung Islamic University

*Democracy In Digital Era : Law,
 Governance, Sosial And Economic
 Perspective In Asia, Australia And
 Dutch*



September 23-24, 2020
 Imam Assafel Buiding, Faculty of Law, Unissula
 Kaligawe Rd KM 4 Semarang, Central Java

THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

THEME : DEMOCRACY IN DIGITAL ERA: LAW, GOVERNANCE, SOCIAL AND ECONOMIC PERSPECTIVE IN ASIA, AUSTRALIA AND DUTCH

Keywords: *Digital Media, Political and Governance Institutions, Electoral Processes, People Representation, Digital Disinformation, Democracy, Digital Economic, Social issue*



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UNSW Australia



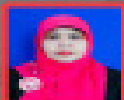
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This agenda aims to provide insights in theory and practice:

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2. To discuss the challenges and practical aspect of Democracy and Governance in a Digital Era.

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KATA PENGANTAR

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Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "*Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch*" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

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Legal Protection Of Personal Data Based On Electronic Transactions In The Era Of The Digital Economy

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ABSTRACT

The Digital Economy as a support for economic growth in Indonesia has spread to almost all aspects of life. The rapid development of the digital economy has the potential to pose risks and challenges in the future. The increasing use of digital technology in electronic transactions has made information no longer limited to a medium for transactions and communication, but a source of profit in the economy. Information in the form of someone's personal data is not necessarily used properly, it can even be misused by unauthorized parties. Facing this, the importance of protecting personal data in electronic transactions, by strengthening digital-based security systems to mitigate the risk of crime in the digital economy era. This study uses normative legal research methods, with a legal approach and a conceptual approach. The results of this study indicate that the form of personal data protection in electronic transactions, namely in the form of regulations / legal arrangements that are still guided by the ITE Law, although the ITE Law has not specifically regulated personal data and the form of personal data monitoring can be carried out by two parties, namely the private sector and government as a form of legal protection.

Keyword: Digital Economy, Personal Data, Electronic Transactions.

A. Introduction

The constitutional obligation of the State contained in the Preamble of the 1945 Constitution, paragraph 4 states that the Indonesian government is obliged to protect the entire Indonesian nation and all Indonesian bloodshed and to promote public welfare, educate the life of the nation and participate in implementing world order based on independence, eternal peace and justice. social. In the context of the development of information and communication technology, the goal of a state is manifested in the form of protecting the personal data of every citizen or citizen of Indonesia.

The use of the internet has changed human outlook in business, industry, and transportation activities. The activity which was originally carried out physically has now shifted to e-commerce. The use of the internet has changed human outlook in business, industry and transportation activities. The activity which was originally carried out physically has now shifted to e-commerce. With the change in people's lifestyles,

the e-commerce market will rise significantly.¹

Various digital technology-based applications currently exist in an effort to improve the community's economy which have begun to be applied in various financial transactions.² This shows that the use of electronic transactions in the digital era, on the one hand, can improve the general welfare, and on the other hand allows the freedom to use people's personal data access.³

The phenomenon that has emerged now is that there are many complaints about personal data without consent for commercial purposes, for example, insurance, credit cards, pulse suction patterns, customers cannot unregister, receive unwanted content, unsecured credit with SMS spam, or broadcast SMS.

The pattern of violations can be caused by the Government or private / private companies. For example: appears when the E-KTP (Electronic KTP) and tapping of communication devices without coordination; leakage of 23 million Telkomsel subscribers in 2011 as well as data on credit cards that were traded. This shows the negative impact of the digitalization era, namely freedom of access, although there are also positive impacts, for example a number of government agencies / institutions that are starting to actively use social media, for example YouTube and Twitter. Through cyberspace, between agencies / institutions can establish two-way communication with the community.

In the results of a survey conducted by the Information Society Development and Empowerment Institute (LPPMI), it was stated that as many as 62.5 percent of existing organizations would use this technology, although there were also those who wanted to form new organizations or outsource the implementation of cloud computing to third parties who each percentage amounted to 18.75 percent. From the above background, it is necessary to know and analyze the forms of legal protection of personal data as well as forms of monitoring of personal data in electronic transactions in the Digital Economy Era. In a healthy business activity there is a balance of legal protection between consumers and producers. The absence of balanced protection causes consumers to be in a weak position.⁴

B. Research Methods

This study uses a juridical-normative approach to the essence of laws and regulations with an analysis of a legal approach and a conceptual approach. Data analysis used a qualitative descriptive method. Accurate data / information collection with primary data as support / support and secondary data from literature studies. Primary data were obtained by means of an observational survey of the parties involved. Meanwhile, secondary data is obtained by conducting literature studies, either through reference books, seminar papers, legal regulations and research results related to research material. The data analysis used in this research is descriptive qualitative, by analyzing the data / information obtained through descriptive research with literature research which is then arranged systematically and described qualitatively.⁵

C. Basis of Theory

Warren and Brandeis simply define personal data as the right to privacy which is the "right to be let

1. Anis Mashdurohaturun & Nilna Kamaliya, Legal Protection Of Consumer Reviews In Social Media Based On Local Wisdom Values, International Journal of Advanced Science and Technology Vol. 29, No. 6, (2020), pp.1511

2. Andi Aina Ilmih, dkk, *Legal Aspects of The Use of Digital Technology Through Sharia Online Transactions in Traditional Markets in Increasing Community Economy*. International Journal of Law Reconstruction, Volume 3, Issue 2, September 2019, p.116.

3. Sri Endah Wahyuningsih, *The Implementation of Punishment Theories in the Verdict of Narcotics Case by Judge in Indonesia*, TEST Engineering and Management, ISSN 0193-4120, Mach-April 2020, P 2797

4. Anis Mashdurohaturun, Fuji Lestari, and Ukie Tukinah, Consumer Protection Of The Listing Of Standard Clause In E-Commerce Transactions Based On The Value Of Pancasila Justice, International Journal of Advanced Science and Technology Vol. 29, No. 6, (2020), pp.1520.

5. Anis Mashdurohaturun, Kurnia Halomoan, & Gunarto, *The Urgency Of The Public Policy Of The Construction Service Cooperatives In Realizing The Welfare Of The Community Based On Justice Value*, Hamdard Islamicus, Vol. 43 No. 1 (2020), pp.356.

alone”. Their definition is based on two levels: (i) personal honor; and (ii) values such as individual dignity, autonomy and personal independence.⁶

This idea is then justified and acknowledged by the existence of several lawsuits which then provide justification for the need to protect the right to privacy, especially on the basis of morality. Given that in this era of the fourth revolution, data has become (the determinant / controller) in almost every business, social and government decision.⁷

The meaning of electronic transactions is defined as a form of legal action based on computers, computer networks, and / or other electronic media (Article 1 number 2 of Law Number 11 of 2008 in conjunction with Law 19 of 2016). Electronic information is one or a set of electronic data, including but not limited to writing, sound, images, draft maps, photos, Electronic Data Interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, processed numbers, access codes, symbols, or performances that have meaning or can be understood by those who are able to understand them⁸.

In the Encarta Dictionary, digital economy means “business transactions on the internet.” The digital economy also means that the use of information technology extensively includes the use of software, hardware, applications, and telecommunications in every aspect of the economy.

In the view of Islamic law, electronic transactions (e-commerce) can be accepted by scholars. This is because there are many advantages besides the form of clarity that can be understood together. This is also reinforced by several fatwas which protect in

“different forms” in this transaction. Rules that can be applied relate to al-dādat and ‘urf. Just say in this case, for example “al-‘ādatu muhkamātun.” (Habits commonly used by the community, can make legal traditions).

The use of internet facilities based on legal subjects involved in conducting legal relationships can be grouped into: (1) Business to business; (2) business to customer; (3) customer to customer; (4) Customer to business; and (5) customer to government. [Ahmadi Miru, 2011, Contract Law and Contract Design, Jakarta: Rajawali Pers, p. 143] According to Islamic law related contracts (sharia agreements) can only be done through the internet, through the mechanism of trade contracts via the internet (e-commerce) both those that are business to business e-commerce and business to consumer e-commerce.⁹

The legal arrangement for Personal Data is contained in various legal provisions as follows: (i) Law No.43 of 2009 concerning Archives; (ii) Act No. 8 of 1997 concerning Companies; (iii) Law No.10 of 1998 concerning Banking; (iv) Act No.39 of 1999 concerning Human Rights; (v) Act No.23 of 2006 concerning Population Administration; (vi) Act No. 14 Year 2008 on Freedom of Information; (vii) Act No.11 of 2008 concerning Information and Electronic Transactions in conjunction with Law No. 19 of 2016; and (viii) PP. 82 of 2012 concerning the Operation of Electronic Systems and Transactions.

D. Discussion

1) Forms of Legal Protection for Personal Data in Electronic Transactions in the Digital Economy Era

6. E. Bloustein, *Privacy as An Aspect of Human Dignity: an Answer to Dean Prosser*, dalam New York University Law Review Vol. 39 (1964).

7. Wahyudi Djafar, *Hukum Perlindungan Data Pribadi di Indonesia: Lanskap, Urgensi dan Kebutuhan Pembaharuan*, materi dalam kuliah umum “Tantangan Hukum dalam Era Analisis Big Data”, Program Pasca Sarjana Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 26 Agustus 2019.

8. Herwin Sulistyowati, Sri Endah Wahyuningsih, *Legal Analysis of Crimes in Contracts Validity in the Digital Era*, UNIFIKASI : Jurnal Ilmu Hukum, p-ISSN 2354-5976, e-ISSN 2580-7382 Volume 07 Nomor 01.2020, <https://journal.uniku.ac.id/index.php/unifikasi>. p.110.

9. Andi Aina Ilmih, A.Zulkarnain, *Ideal Electronic Contract Model As A Form of E-Commerce Disputes Settlement*, Jurnal Pembaharuan Hukum , Volume VI, No.1, Januari-April 2019, p.81

An Electronic Contract (E-contract) is made through an electronic system. “Electronic system” is a series of devices and electronic procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and / or disseminate electronic information.¹⁰ Current contract developments can be found in electronic transaction activities (e-commerce) using available technology. Almost every day electronic transaction activities occur in one country or between countries in order to improve the economy and achieve public welfare.¹¹ This of course is closely related to personal data of a person or society, which is used in electronic transaction activities.

Many data breaches occur because of poor implementation or lack of security controls in both private companies and government organizations. This also happens to the public in Indonesia who easily tell others, where he lives, his birth date, and all his kinship relationships. In addition, it is also a common practice in Indonesia to submit KTP (identity card) and other personal identities, in which a person’s personal data is contained, to a third party, for example when entering a place or building.

In the contemporary context, social media users in Indonesia, generally openly state their real residence (home address); date, month and year of birth; phone number; also kinship with parents or siblings. This shows that there is still a large awareness problem to protect privacy or personal data, as part of personal property.

As for the importance of personal data that must be safeguarded, it can be seen from various aspects, namely:

1. Human Rights Aspect

The right to privacy is a right guaranteed by Article 28 G of the 1945 Constitution. This right is not explicitly stated in the Constitution, but has been confirmed through several court decisions including the Constitutional Court decision no. 50 / PUU-VI / 2008 concerning Case Review of Law Number 11 Year 2008 concerning Electronic Information and Transactions. The right to privacy is also guaranteed by the ICCPR (International Covenant of Civil and Political Rights)

2. Consumer Protection Aspect

The rapid development of personal data has resulted in increased use of consumer personal data. This use must be regulated and limited so as not to harm consumers. Examples of some uses of personal data that can harm consumers are telemarketing and profiling.

3. Harmonize personal data rules

Currently, the regulation of personal data is still scattered in several sectoral regulations such as Banking, Telecommunications, ITE Law, Health Law, etc. The Personal Data Law will serve as an umbrella for these various regulations. The goal is to harmonize personal data rules and avoid overlapping rules. Apart from that, the personal data law is also needed to regulate the latest issues such as big data and anonymization.

4. Untuk memfasilitasi perdagangan antar negara

Countries in the EU and some ASEAN countries prohibit the transfer of personal data to countries

10. Serfiani, *Buku Pintar Bisnis Online dan Transaksi Elektronik*, Gramedia Pustaka Utama, Jakarta, 2013, p.99.

11. Andi Aina Ilmih, A.Zulkarnain, Op.Cit, p.79

that do not have equivalent personal data protection. The existence of the Personal Data Law is an effort to catch up with the legal backwardness of personal data in Indonesia. If the flow of information between countries is hampered, it will also hamper trade between countries. This is especially important in the context of the ASEAN Economic Community.

Jerry Kang,¹² there are two forms of protection for personal data, namely: 1). The form of data protection is in the form of safeguarding the physical data, both invisible data and invisible data; 2) Another form of data protection is in the form of regulations governing unauthorized use of data by other people, misuse of data for certain purposes, and destruction of the data itself. Regarding the form of data protection in electronic transactions, there is more emphasis on regulatory / legal aspects that govern the use of a person's personal data. This is confirmed by the birth of various regulations governing personal data.

The form of legal protection for personal data is regulated in various legal regulations and policies, including:

- a. Article 26 paragraph (1) of the ITE Law (Law No.11 of 2008 jo Law No. 19 Th.2016) states that: the use of any information via electronic media when it comes to a person's personal data must obtain the consent of the person concerned.
- b. UU No. 43/2009 concerning Archives, in Article 3 letter (f) describes the purpose of archiving, namely as a guarantee of the safety and security of archives as evidence of responsibility in the life of society, nation and state.
- c. PP No. 82/2012 concerning Electronic Systems and Transactions, including among others: a) Protection from unauthorized use of data; b) Protection by electronic system operators; c) Protection of access to information; and d) Illegal Interference Protection.
- d. Law No.23 of 2006 regarding Adminduk, in Article 1 point 22, recognizes personal data as individual data that must be stored, maintained and maintained for the truth and protected in its confidentiality. More details are regulated in Presidential Regulation No. 67 of 2011 concerning National Identity Card Based on National Identity Number.

In the current national regulations, there is Law Number 11 of 2008 concerning Electronic Information and Transactions in conjunction with Law Number 19 of 2016, hereinafter referred to as the ITE Law, and PP Number 28 of 2012 concerning the Implementation of Electronic Systems and Transactions. With these two legal regulations, the Ministry of Communication and Information (Kemenkominfo) can register and collect data for e-commerce business actors through a series of profiling processes and databased reports so that consumers / communities avoid fraud by irresponsible persons.

The ITE Law regulates personal data in Article 41, Article 41A, Article 42, Article 43, Article 44, and Article 44A. The exclusion article is if it is for tax purposes, for settlement of bank receivables, for judicial purposes in criminal cases, as well as at the request, approval or power of attorney of the depositing customer,

¹². Jeffrey Kang, 1999, "Information Privacy in Cyberspace Transaction" Stanford Law Review Vol.50.

where the bank may violate the provisions regarding bank secrecy, of course, with certain procedures.

2. Forms of Supervision of Personal Data in Electronic Transactions

Electronic transactions, through the various concepts, contents and forms offered, attract consumers to bind themselves to electronic contracts (e-contracts). In this electronic transaction, it will contain personal data of the parties, for example between sellers / consumers and electronic service providers, although sometimes the problem is that consumers do not know the impact that can be caused by using personal data through electronic transactions. In business circles, rarely do parties sue their opponents to court. This was stated by Stewart Maculay,¹³ who had conducted research on entrepreneurs in Wisconsin, United States.

The information security approach can go through three approaches namely: First is the Technology Approach; second, the Social Culture-Ethics Approach; and third, the Legal Approach.¹⁴ The form of legal protection for the security of personal data through statutory regulations also needs to be supported through efforts to monitor the use of one's personal data as a form of protection of citizens' personal data.

The form of monitoring of personal data can be done through: 1). Private parties, which can come from online content and service providers, internet service providers or internet infrastructure owners. The motivation can be because you want to know the behavior of people in electronic transactions or other information that can benefit the company. 2). State parties are usually represented by law enforcement agencies or intelligence agencies. This reconnaissance is usually carried out to monitor potential criminal acts, terrorism, or even to monitor government opposition (activists, journalists, etc.). As Snowden has pointed out, surveillance does not only apply in one territory, but also across territories.

One example of a global form of mass surveillance carried out by the 'Five Eyes' includes: the United States government-owned NSA, Canada's Communications Security Establishment (CSE), the United Kingdom's Global Communications Headquarters, the Defense Signals Directorate (DSD)) Australian government agencies, and the government of New Zealand with the Government Communications Security Bureau (GCSB).¹⁵

E. Conclusion

From the discussion above, conclusions can be drawn as follows: The form of personal data protection in electronic transactions is in the form of regulations / legal arrangements that are still guided by the ITE Law, although the ITE Law does not specifically regulate personal data. The form of monitoring personal data as a form of legal protection in the Digital Economy Era, can be carried out by two parties who are able and have the opportunity to carry out mass surveillance, namely the private sector and the government. The private sector can come from online content and service providers, internet service providers or internet infrastructure owners while the state party is usually represented by law enforcement agencies or intelligence agencies.

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