

The Misuse of Personal Data as a Form of Perfect Crime in a Criminal Law Perspective

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Abstract. *This study aims to find out the arrangements regarding legal protection for the use of personal data in an effort to provide legal certainty to the public and the role of law enforcement officials in preventing criminal acts of misuse of personal data in the future from a criminal perspective. Legal reform through normative juridical research methods. Based on the results of the research, it shows that in order to create legal certainty, it is necessary to establish a law that regulates specifically, clearly, structured and comprehensively regarding the protection of personal data and harmonizes existing laws and regulations that regulate the protection of personal data. As well as a clear mechanism related to coordination between law enforcers. In this regard, the researcher proposes that there is a need to establish norms governing criminal sanctions in their enforcement as a deterrent effect as well as the reconstruction and reformulation of norms in the current regulations on personal data protection.*

Keywords: *Crime; Law; Norms.*

1. Introduction

The rapid development of technology and information has led to changes in the needs and lifestyles of people who are increasingly dependent on technology. Technological developments in everyday life can be felt in various activities. With the misuse of personal data, it can be seen that there are system weaknesses. Lack of supervision, so that personal data can be misused and result in losses for the owner of the data. Misuse, theft, sale of personal data is a violation of law in the field of information technology and can also be categorized as a violation of human rights. Because personal data is part of human rights that must be protected.

According to the law, what is meant by personal data is data about individuals who are identified or can be identified individually or combined with other information, either directly or indirectly through electronic or non-electronic systems.

While protection of personal data is the entire effort to protect personal data in

the process of personal data processing, in order to guarantee the constitutional rights of personal data subjects. The PDP Law, among other things, regulates the matter of criminal threats against acts that are prohibited in the use of personal data, for example thieves, spreading using personal data that is not theirs, including falsifying personal data.

This act is punishable by imprisonment ranging from 4 years to a fine of billions of rupiah. The details are as follows:

Article 67 paragraph (1)

1. Any person who intentionally and unlawfully obtains or collects personal data that does not belong to him or her to benefit himself or another person which can result in loss to the owner of the data shall be subject to imprisonment for a maximum of 5 years and/or a fine of up to Rp. 5 billion.
2. Any person who intentionally and unlawfully discloses personal data that does not belong to him shall be subject to a maximum imprisonment of 4 years and/or a maximum fine¹
3. Anyone who intentionally and unlawfully uses personal data that does not belong to him shall be subject to a maximum imprisonment of 5 years and/or a maximum fine of IDR 5 billion.

With the misuse of personal data, it can be seen that there are system weaknesses, lack of supervision, so that personal data can be misused and result in losses for the owner of the data. The fundamental difference between this paper and evidence. Based on the problems above, it is important to pay attention to legal protection.

Misuse of personal data is an act that fulfills the elements of a criminal act such as the elements of the crime of theft and elements of the crime of fraud and other crimes both in terms of objective elements and subjective elements. With the fulfillment of these elements, administrative sanctions, civil sanctions and criminal sanctions are not sufficient to accommodate the criminal act of misusing personal data which is actually a perfect form of crime.

Crime is a human act that violates or is contrary to what is determined in the rule of law, specifically an act that violates the prohibitions stipulated in the rule of law and does not comply with or against orders that have been stipulated in the rule of law that applies in the community where the person concerned resides.

¹ Herlambang, IT (2019). Victims of Banking Crimes in a Legal and Victimological Perspective. State and Justice, 8(1).

Based on the problems above, it is important to pay attention to legal protection and certainty in the use of technology so that it can run optimally. Based on the background explanation above, the problems to be studied are:

1. How to regulate legal protection for misuse of personal data as a perfect form of crime in an effort to provide legal certainty to the public?
2. What is the role of law enforcement in preventing criminal acts of using personal data in the future from the perspective of criminal law reform.

The discussion regarding the misuse of personal data is not new, therefore there are several previous studies related to or close to the title and issues raised that support this research, including:

1. Mohammad Ramabayu Sutan Hassanudin Yussuf, University of 17 August 1945 Surabaya in 2019 with the title: Legal Protection of User Personal Data²Financial Technology Fund Loan Application.
2. Masitoh Indriyani, Nilam Andaria Kusuma Sari, Satria Unggul WP, Airlangga University in 2017 with the title: Protection of Privacy and Personal Data of Online Consumers in the Online Marketplace System.

The fundamental difference between this paper and the two scientific papers mentioned above lies in the object of research regarding legal protection, where the first research is related to the legal consequences of misusing personal data of users of fintech-based loan applications, while the second research is related to online consumer privacy settings in the online marketplace system. . Meanwhile in this paper, the author will examine legal protection for misuse of personal data and the role of law enforcement in preventing criminal acts of using personal data.

2. Research Methods

This paper uses the normative legal research method because the focus of the study departs from norms, regulations, legal theories and therefore has the task of systematizing positive law.

3. Results and Discussion

Along with the rapid development of technology in the business world, online trading in particular, does not escape matters, especially regarding the protection of personal data. The importance of using identity in the form of personal data in

² Diantha, IMP, & SH, M. (2016). Normative Legal Research Methodology in Justification of Legal Theory. Jakarta: Prenada Media.

all activities related to fulfilling the right to encourage someone to provide personal data information. Voluntary and compulsory giving is a disgrace to 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 the research problem focuses on the use of personal data without permission which can be qualified as a crime and how criminal responsibility is for perpetrators of using personal data without permission. The method used in this paper is the juridical-normative-conceptual legal research method.

Research shows that the use of personal data without permission is a criminal act by fulfilling the elements of general criminal regulations and related special regulations below. In Indonesia, criminal responsibility for perpetrators does not yet have specific regulations regarding the imposition of criminal sanctions, so that accountability is contained in separate regulations. Separate regulations contain several aspects of protecting one's personal data in general. Each legislation related to misuse of a person's personal data has its own differences such as the form of activity, legal subject and accountability can be criminal or administrative sanctions. Corporations can be used as one of the legal subjects for criminal acts of misuse of personal data. Criminal imposition of corporations and/or management does not rule out the possibility of criminal imposition of other actors who, based on the provisions of the law, are proven to be involved in the said crime. Based on this research, the government as the protector and guarantor of citizens' rights to the importance of personal data should immediately pass the Personal Data Protection Bill for legal certainty.

Acts of misuse of Personal Data that fall into the qualifications of criminal acts regulated in the Criminal Code, namely: 1. Article 263 of the Criminal Code regarding document falsification. This article is specifically used in relation to the misuse of personal data in the form of paper documents such as family cards, identity cards, driver's licenses, birth certificates, savings books, marriage books, authentic deeds, notes or certificates of debt, letters of credit, proof of interest, diplomas, and all things that are confidential in the form of paper documents. A person who writes a letter that can give rise to a right, agreement or debt relief, or which is intended as evidence of something with the intention of using or ordering other people to use the letter as if the contents were true. If a loss occurs due to forgery of letters or the said person deliberately uses a fake or forged letter as if it were genuine even though the use of the said letter does not cause any harm, he is subject to imprisonment for a maximum of 6 (six) years; 2. Article 362 of the Criminal Code regarding theft to own personal data by taking it against the law.

From a subjective point of view, taking part or all of another person's personal data without permission is an unlawful act for self-benefit. Meanwhile, from an

objective point of view, someone who is involved in this case has unlawfully intended to possess other people's personal data. Thus, it can be said that taking other people's personal data either in whole or in part with the intention to own it is an unlawful act that is categorized as a criminal offense punishable by imprisonment of five (5) years or a fine of up to Rp. 900,000.00 (nine hundred rupiah). Based on the HOGE RAAD decision known as Electriciteits - arrests or electrical arrests, intangible objects that have a certain value,

Article 374 of the Criminal Code concerning embezzlement with weighting because it is committed by people whose control over goods is due to a work relationship or because of searching or because they get paid for it. From a subjective point of view, the perpetrator did it intentionally and under his awareness. From an objective point of view, a person has controlled another person's personal data unlawfully either in part or in whole but what is in his power is not because of a crime, the perpetrator³ threatened with imprisonment for a maximum of five (5) years in prison; 4. Article 378 of the Criminal Code regarding fraud, to deceive other people by using or taking advantage of the use of other people's identities.

From a subjective point of view, the use of other people's personal data without permission is an unlawful act for self-benefit. Meanwhile, from an objective point of view, someone involved in this case has committed both fraud and injury to someone else's personal identity. Thus, it can be said that using other people's personal data without the knowledge and permission of the owner of the personal data is an unlawful act that is categorized as a criminal offense. the offender is subject to imprisonment for a maximum of four (4) years.

The law mentioned above does not specifically mention the perpetrators of misuse of personal data with corporate subjects, but if you look at the definition of a corporation in article 1 of Perma 13 of 2016 concerning procedures for handling criminal cases by corporations in conjunction with Perja Number PER-028/A /JA/10/2014 Concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects, an organized group of people and/or assets, whether a legal entity or not a legal entity, can be called a corporation. The law mentioned above mentions the subject of "legal entity", so that in the misuse of personal data by legal entities it can be done by corporations. Corporations can become subjects of criminal acts, if those committed by people are based on work relationships or based on other relationships.

According to Article 1 of Perma 13 of 2016 concerning procedures for handling criminal cases by corporations jo Perja regarding guidelines for handling criminal

³ Latumahina, RE (2014). Legal Aspects of Personal Data Protection in Cyberspace. Journal of GEMA ACTUALITA, 3 (2). 14-25.

cases with corporate legal subjects, an organized group of people and/or wealth that is either a legal entity or not a legal entity can be called a corporation. The law mentioned above mentions the subject as "legal entity", so that in the misuse of personal data by legal entities it can be done by corporations. Corporations can become the subject of a criminal act, if it is committed by a person based on a work relationship or based on another relationship, whether carried out individually or jointly acting for and on behalf of the corporation both inside and outside the corporate environment,

Corporate performance more criteria for actions that can be held criminally responsible for the corporation, with the following qualifications:

- a. As a form of action based on the decisions of corporate management who commit or participate in committing.
- b. All forms of good deeds, doing or not doing by someone for the benefit of the corporation either because of their work and/or other relationships;
- c. All forms of actions that use human resources, funds and/or all forms of support or other facilities from the corporation.
- d. All forms of acts committed by third parties at the request or order of the corporation and/or corporation management;
- e. Any form of action that benefits the corporation;
- f. All forms of action received/usually accepted by the corporation;
- g. Corporations that actually accommodate the proceeds of criminal acts with corporate legal subjects, and/or. All other forms of action that can be held accountable to the corporation according to law.

The actions of corporate management can also be held criminally responsible, in the corporate work it states that:

1. everyone who commits, who participates in committing, who orders to do, who recommends to do, or helps to commit a crime.
2. everyone who has control and authority to take steps to prevent the crime but does not take the steps that should be and realizes that they will accept a considerable risk if the crime occurs;
3. it is enough for everyone who has knowledge of the existence of a sizable risk if he knows that the crime was committed by a corporation; and/or
4. all other forms of action that can be held accountable to the corporate administrator according to law Judges can impose penalties on corporations or management, or corporations and management, unfortunately corporations can only be prosecuted for fines and additional penalties and/or disciplinary action.

Criminal imposition of corporations and/or management does not rule out the possibility of criminal imposition of other actors who, based on the provisions of the law, are proven to be involved in the said crime. Administrators who misuse personal data can be subject to criminal penalties by referring to Act No. 36 of 1999 concerning Telecommunications, Act No. 11 of 2008 concerning Information and Electronic Transactions, Act No. 24 of 2013 Population Administration. Perja corporation categorizes additional criminal charges or disciplinary measures that can be imposed on corporations and corporate management who are perpetrators of misuse of personal data based on the provisions that form the basis of punishment in the form of:

- a. Payment of compensation for state financial losses;
 - b. Confiscation or elimination of profits derived from criminal acts;
 - c. Repair of damage resulting from a crime;
 - d. The obligation to do what is done without rights;
 - e. Placing the company under amnesty for a certain period of time;
 - f. Closing or freezing part or all of the company's activities for a certain period of time;
 - g. Revocation of part or all of certain rights; h. Revocation of business license;
 - h. Confiscation of evidence or corporate assets/assets; and/or.
 - i. Other actions in accordance with the provisions of the law in force.
- Penalty fines that are not paid immediately then the assets / assets of the corporation are confiscated in accordance with applicable laws and regulations.

4. Conclusion

There are two parties that are able and have the opportunity to carry out mass surveillance, namely the private sector and the government. Private parties can come from online service and content providers, internet service providers or internet infrastructure owners. Protection of privacy data as part of respecting the right to privacy must begin by providing legal certainty. Therefore, guarantees for the protection of privacy data must be placed in a legal instrument that has the highest power, namely the constitution, because the Constitution or the Constitution is the highest legal instrument in a country.

5. References

Anggraeni, SF (2018). Polemic on Personal Data Ownership Regulations: The Urgency for Harmonization and Legal Reform in Indonesia. *Journal of Law & Development*, 48(4).

Aprilia, ML, & Prasetyawati, E. (2017). Legal Protection of Gojek User Consumer

Personal Data. Pulpit of Justice, 90-105. <https://doi.org/10.30996/mk.v0i0.2202>.

Bakhri, Syaiful, (2018). State Science in the Struggle of Philosophy, History and the State of Law, Depok: Raja Grafindo.

Dewi, S. (2016). The Concept of Legal Protection of Privacy and Personal Data Associated with the Use of Cloud Computing in Indonesia. Yustisia Law Journal, 5(1), 35-53. <https://doi.org/10.20961/yustisia.v5i1.8712>h. 35.

Diantha, IMP, & SH, M. (2016). Normative Legal Research Methodology in Justification of Legal Theory. Jakarta: Prenada Media.

Gunawan, Y., & Kristian. (2015). The Development of the Concept of a State of Law and a State of Pancasila Law. Bandung: Refika Aditama.

Herlambang, IT (2019). Victims of Banking Crimes in a Legal and Victimological Perspective. State and Justice, 8(1). <http://research.unisma.ac.id/index.php/negkea/article/view/4481>.

Katrin, DD (2015). The Role of the Police in Law Enforcement Against Perpetrators of Premeditated Murder. POENALE: Journal of Criminal Law, 3(3).

Latumahina, RE (2014). Legal Aspects of Personal Data Protection in Cyberspace. Journal of GEMA ACTUALITA, 3 (2). 14-25. <http://dspace.uphsurabaya.ac.id:8080/xmlui/handle/123456789/92>.

Marbun, SF, & Mahfud, MD Moh, 2006. Fundamentals of State Administrative Law, Yogyakarta: Liberty.

Na'im Al Jum'ah, M. (2019). Security and Legal Analysis for Privacy Data Protection. Cyber Security and Digital Forensics, 1(2).

Rani, M. (2014). Protection of the Financial Services Authority Against the Confidentiality and Security of Bank Customer Personal Data. Journal of the Straits, 2(1).

Ravena, HD, & SH, M. (2017). Criminal Policy: (Criminal Policy). Jakarta: Prenada Media.

Ravena, HD, & SH, M. (2017). Criminal Policy: (Criminal Policy). Jakarta: Prenada Media

Regards, MF (1994). Indonesian Military Court. Bandung: Mandar Maju.

- Rosadi, SD, & Primary, GG (2018). The Urgency of Privacy Data Protection in the Digital Economy Era in Indonesia. *Veritas et Justitia*, 4(1).
- Rosana, E. (2014). Legal Compliance as a Form of Community Legal Awareness. *Tapis Journal: Binocular Journal of Islamic Political Aspirations*, 10(1).
- Roza, D., & Arliman, L. (2018). The Role of Local Government in Protecting Children's Rights in Indonesia. *Legal Matters*, 47(1).
- Sautunnida, L. (2018). The Urgency of Personal Data Protection Law in Indonesia: A Comparative Study of British and Malaysian Laws. *Kanun Journal of Law*, 20(2).
- Setiadi, HE, & SH, M. (2017). *The Integrated Criminal Justice System and Law Enforcement System in Indonesia*. Jakarta: Prenada Media.
- Tarigan, B., Noah, M., & Alwan, A. (2013). The Role of the National Police in Eradicating Narcotics Abuse (Case Study of the Pancurbatu Polsekta). *Mahupiki Journal*, 3(01).
- Wulan Sari, F. (2015). Legal Protection of Customers' Personal Data in the Implementation of Internet Banking Services Related to Act No. 10 of 1998 concerning Amendments to Act No. 7 of 1992 concerning Banking.
- Zulfadli, M., Abdullah, K., & Nur, F. (2017, February). Responsive And Just Law Enforcement As An Instrument Of Social Change To Form The Nation's Character. In *Proceedings of the National Seminar on the Association of Social Sciences Scholars*, 2, 265-284.