

Consumer Personal Data Protection: Between Expectations and Reality

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Abstract. Consumer Personal Data is personal data that is often used by irresponsible parties. The data must be protected to avoid misuse of the data. The regulation is contained in Article 26 of Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Information and Electronic Transactions, and supplemented by Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems and Government Regulations Number 71 of 2019 concerning Electronic System and Transaction Operators. These laws and regulations are not sufficient to provide a legal umbrella, especially the protection of consumer personal data. This research is a qualitative research, using a normative approach, by analyzing the sources of positive legal sources in the form of laws and literature sources containing applicable legal theories and concepts. The study shows that there is a legal vacuum in the protection of consumer personal data in several applicable standard rules, this is explained by the absence of specific and comprehensive legal rules that can provide legal protection for the protection of the consumer's personal data. The conclusion of this study shows that the issuance of a personal data protection law is very urgent. This is because theoretically and the concept of the existence of existing positive law has not been able to give birth to justice and certainty as well as legal benefits that should exist in a positive legal rule.

Keywords: Personal Data law, Consumer Protection.

1 Introduction

The digital world is something that cannot be doubted, as one of the good and qualified means to help the lives of the wider community, the advancement of technology has become its own acceleration for today's world, the easy flow of data and communication makes connectivity difficult to limit. The business world is one sector that is not neglected in technological advancements, the digital business world has succeeded in capturing attention so that it quickly transforms conventional shopping culture into online shopping culture.

This is evidenced in 2017, according to statistical data from Google and Temasek, in 2017 the number of online transactions with various products in Indonesia has reached US\$ 10.9 billion or around Rp. 146.7 trillion skyrocketed 41% from the previous year's transaction figure. The development of technology and the online business world continues to experience convincing growth, conventional transactions are slowly being abandoned with Marketplace-based digital transaction settlements that provide transaction convenience and are classified as very practical compared to conventional transactions, but behind this convenience there are also some problems left behind due to the acceleration of the business world. which is so fast, it is not a step in digital business today we find cases of leaking customer personal data which are very very detrimental to consumers,

This problem is also exacerbated by the absence of a strong and definite legal umbrella regarding the protection of consumer personal data. The legal basis for protecting personal data by default can be found in Article 28G of the 1945 Constitution which has the phrase "Everyone has the right to personal self-protection". Basically, personal data is certain personal data that is stored, maintained, and kept true and confidential, in accordance with Article 1 paragraph 1 of the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Personal Data Protection.

The right to privacy through data protection is a key element for individual freedom and dignity. Data protection is a driving force for the realization of political, spiritual, religious freedom and even sexual activities. The right to self-determination, freedom of expression and privacy are rights that are essential to making us human. The collection and dissemination of personal data is a violation of privacy. someone

because the right to privacy includes the right to determine whether or not to provide personal data. Personal data is an asset or commodity of high economic value. In addition, there is a correlative relationship between the level of trust and the protection of certain data from personal life (Makarim, 2005).

Until now, Indonesia does not have laws and regulations that specifically regulate the protection of personal data, seeing the needs of the community and the pressure of the business world, Indonesia should make personal data protection an element of its own laws and regulations and not be scattered in various existing legal rules such as Currently, random locations and elements of consumer personal data protection make existing law enforcement ineffective and inefficient. So of course, the presence of the state as an element that overshadows the law becomes important in this issue. Therefore, researchers are interested in conducting this research

From the background above, the writer formulates the problem formulation as follows:

How is the protection of consumer personal data applicable in Indonesia A study of the Consumer Protection Law, the ITE Law, Government Regulation 71 2019 concerning the Implementation of Electronic Systems and Transactions and the Minister of Communication and Informatics Regulation number 20 of 2016 concerning the protection of personal data

2 Discussion

From the descriptions that have been discussed by the author one by one, it can be seen how comprehensive and many normative legal rules are attached if we look at the protection of consumer personal data in Indonesia. When we look at the basic norms of state law, namely Pancasila, it has been stated in the second principle of "Humanity Which fair and civilized" And the Fifth Precept "Social justice for all Indonesian people", the basic norms of this law emphasize social justice and civilized life which of course the protection of personal data, especially the protection of consumer personal data enters and becomes juridical values that should be realized by law. Act under it as a concrete product of the abstract moral values of Pancasila

constitutionally we see how our constitution provides guarantees to every individual for personal security and safety which means the security of a person's personal data as stated in article 26 of the 1945 Constitution as the state constitution which stipulates personal rights and rights protected by the state. this is also certainly not foreign if we look at several European countries so that many countries have made personal data a human right whose existence and security are protected by the constitution, as a form of human protection that is shaded by the highest positive law in the world. Indonesia, if we look at the protection of consumer personal data in Indonesia as described above, our focus will be divided on several special legal rules and scattered technical legal rules.

Conceptually and in the spirit of the rights and obligations of consumers, it is clearly described in the UUPK. Article 2 of the UUPK explains the legal principles inherent in every consumer protection regulation from any side, including the protection of consumers' personal data. It contains the principles of justice, the principles of security and consumer safety and certainty. Legally, meta-juridically, this principle should be the basic spirit of consumer personal data protection. Apart from that, there are also Consumer Rights which are explained in Article 4 UUPK, namely the right to security and safety in consuming goods and/or services. should follow the development of the digital industry today, namely the protection of consumer personal data. The basic and normative basis of rights and basic norms of consumer protection does exist in the UUPK but in detail the UUPK has not spread its wings to the protection of consumer personal data which we can indirectly classify that the UUPK is not strong enough to oversee the development of legal substance, especially in the realm of personal data protection. consumers, this is of course because the legal umbrella for the protection of consumer personal data is still scattered which still requires other legal rules.

The author turns to the next positive legal norm that oversees the protection of Consumer Personal data, namely the next positive legal norm is the ITE Law, of course, in value and spirit, this Law is indeed present to provide a comprehensive legal umbrella for the rate of electronic transactions that is currently rife in the last ten decades. Of course, this includes the protection of personal data, which is explained in Article 26 paragraphs 1 and 2 in a nutshell. The law provides a threat and allows a lawsuit for losses based on the ITE Law if the owner of personal data feels harmed, this is done by KKI (Indonesian Consumers Community) which filed a civil lawsuit against Tokopedia and Kominfo RI, but in mitigating and preventing legal problems this article does not yet have comprehensive legal force due to the separation of the legal principles

and rules enforced in the article explained and explained if yes Its nature requires the active role of owners of personal data who are harmed to ask for legal accountability, this has not been able to comprehensively resolve personal data problems considering that after the Tokopedia case there were other cases of personal data theft experienced by other marketplaces that occurred omission of legal action due to vacancies the law and the legal inability that exists in the protection of consumer personal data to provide legal protection for citizens who take shelter under it.

Next, we look at the next technical normative legal umbrella, namely Government Regulation number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions which in general is the latest positive norm of a series of personal data protection problems in Indonesia.

As a rule, this technical regulation answers all legal uncertainties regarding electronic transactions, in terms of personal data protection itself, this PP requires the system, in this case, is a provider that obtains approval for access to personal data of its consumers.

Therefore, the separation of various meta-juridical elements of personal data protection, especially the protection of consumer personal data in several positive legal rules in Indonesia, injures the application of the law that is studied with pure legal theory as a knife. Concrete and scientific legal analysis should be legal rules issued by the state with itself is able to provide legal services by presenting justice, certainty and benefit in the midst of society but this has not been shown by the normative legal umbrella regarding the protection of personal data, especially the protection of personal data for consumers. has not achieved its lofty ideals, has not implemented and implemented the values that are embedded and provide substantial benefits to citizens who are under the law.

Practicing on the next legal theory approach that the author uses, namely the theory of legal protection, of course, when the author examines the law relating to consumer protection, we cannot avoid how the state controls the many interests as expressed by Fitzgerald. The law aims to integrate the interests of the people who pass by. In one aspect of life, this protection can be done by limiting certain interests to create a sense of security and comfort, in the context of the normative legal umbrella for consumer personal data protection, it should provide space for consumers to get protection and regulate related parties to limit personal data management activities. In order to provide legal protection for consumers and owners of personal data in general, philosophically, law as something that inspires order is the noble ideal of the presence of a legal umbrella. protection of consumer personal data how the law can come with concrete values embedded in meta-juridical, legal protection for Philipus M Hadjon, who describes the law as having two types of legal protection, both preventive and repressive. Indonesia, but if we look at the context today, the legal umbrella for protecting personal data in Indonesia has not fulfilled these elements. The legal protection that regulates and creates order as well as the prevention and handling of problems has not been fully implemented because the meta-juridical and sacred meaning of the law has failed to be embedded in a concrete legal rule. and legal so that the special legal needs that regulate the protection of personal data and in particular the protection of consumer personal data is something that is absolute that the law must be interpreted to answer needs and be a quick response to legal needs.

Indeed, the theory of legal protection tries to maintain the purpose of the law in terms of protecting every individual who takes shelter in it, the law provides protection from arbitrary actions against the community under it. The emphasis of this thesis is to provide protection to consumers for the safety and potential of arbitrary acts of data. consumer privacy is very, very vulnerable to occur, and if you look at the context of the description of the consumer personal data protection case in the mirror with the marketplace case that occurred from early to mid-2020, the existing legal protection for consumer personal data has not been sufficient to provide legal guarantees for personal data protection. to the wider community in general and in particular to the marketplace consumers who have actually experienced these problems.

Entering the discussion of the next theory which is also closely related to the legal umbrella for consumer personal data protection, namely the Theory of Justice, when we discuss the theory of justice, we cannot change how natural laws that are natural and become the forerunners of modern legal thought today have placing the ontological and axiological law at its lowest point called justice, how the law created should actually create prosperity and modesty in the form of justice as one of the crowns that it upholds, the legal needs that are a challenge to modern law today are never tired of giving us space to create justice, including in the technology sector and consumer protection as it is today, namely justice in the legal sector of personal data protection, especially the protection of consumer personal data, which by position has a special position in the eyes of the law. On this occasion the author takes the thoughts of John Rawls in

creating justice with the two principles he stated in his book, namely the principle (principle of greatest equality of liberty) and the principle of equal liberty.

The principle of fair equality of opportunity (Principle of fair equality of Opportunity) from the two principles that inspire the theory of justice is the hope that users and organizers can participate as widely as possible in the development of science and technology, including the development of information technology that produces digital transactions so that the law becomes an aspect that oversees This is to provide the freedom to achieve as much technological progress as possible and take the potential and benefits of it, but also the law limits that freedom to achieve justice by not violating the rights and obligations of all parties, including the mechanism for implementing personal data protection. discussing the principle of fair equality of opportunity which is of course closely related to the protection of consumer personal data, of course the presence of UUPK as a special law on consumer protection also departs from implementing the principle of fair equality of opportunity in this case is how the position of consumers must be specifically and seriously protected by the state to provide protection to consumers, including providing protection for consumers' personal data as a consequence of guarding the development of the digital world which of course has an obligation to do so.

From these two principles, the author argues that justice as the crown of the law must be the main spirit in the law of personal data protection in Indonesia, especially the protection of consumer personal data whose activities are closely related to the world of digital market places and other electronic transactions. If we look at the existing legal umbrella regarding the protection of personal data in Indonesia today, of course, the theory of justice that is revealed to be a sense of justice in the midst of Indonesian society actually leaves a black hole that must be filled with ammunition for the light of justice, the spread of these rules and not yet in a rigid and detailed manner. The regulation regulates the protection of personal data, especially the protection of consumers' personal data, making the sense of justice that should be present difficult and difficult to realize the justice which is the crown of positive law is not yet visible and difficult to show if the legal certainty of personal data protection is still fragmented in various legal regulations and It is not yet detailed and rigorous, that is what has become a big job for personal data protection law in Indonesia, it is even further strengthened by a series of cases and major personal data protection problems that befell marketPlace in Indonesia, which is a proof of secrecy. Sociological way of legal needs Personal data protection, especially for consumers in the digital world, is an urgent matter in the face of national law.

Entering the next theory that the author reviews in reviewing the legal umbrella of normative personal data protection, namely the Consumer Protection Theory, this theory becomes important for the author to review because the author also concentrates on protecting consumer personal data, specifically departing from a series of personal data protection cases that harm consumers.

Consumer Protection Theory actually teaches legal people to see one interpretation of the law, how and how the law should work to provide legal protection ensuring the three legal objectives, both certainty of justice and the benefit of the law, are present as a concrete and substantive interpretation of law and examine legal protection that departs from the foundation. juridical and sociological philosophy that is illustrated and interpreted in social life.

At least there are several principles that should be the basis of consumer protection, especially in the consumer personal data protection sector which is urgent and important to be protected, regarding the principle of Contractual Liability regarding civil liability on the basis of an agreement between the personal data manager and the consumer who entrusts the personal data to be processed in such a way this is actually in positive law Indonesia is accommodated by PP 71 of 2019 concerning the implementation of electronic systems and transactions, in technical terms in the PP it has been explained that system refreshers are required to maintain the confidentiality and security of personal data and follow the mechanism contained in the PP to register them with state, at a glance When we look at this incident and read carefully the embedded meta-juridical is certainly a guarantee of legal protection but in practice on the interpretation of positive legal norms, this has not obeyed by the system organizer in this case the marketplace party whose personal data of consumers is stolen and misused but it is very unfortunate When a case of theft of personal data occurs between the government as the public sector and the holder of the highest legal authority with the system organizers blame each other, without giving birth to a solution, this is what fundamentally and clearly has hurt the principles of consumer protection contained in the consumer protection theory itself so that under the current legal umbrella, consumers are still very disadvantaged and not get solutions to concrete problems that occur, so that according to the author the existing legal umbrella that discusses the

mechanism for protecting personal data is still neglected and has not been able to provide legal protection as the ideals of the existing consumer protection theory.

Included in other accountability principles, namely the Professional Liability Principle, in this principle it is explained how the civil liability that is delegated directly from business actors in this case is the system operator to consumers whose personal data is misused or does not get a sense of security and privacy which should have been protected from the agreement of both parties. parties, in this case the system administrators actually have to be responsible for personal data problems, especially those that befall consumers, but in practice the principle of Professional Liability has not been able to run optimally because legal guarantees and supervision carried out by the government are still very inadequate, this is also due to specifications and legal acumen protection of personal data in Indonesia is not yet fully perfect due to the lack of legal certainty and specifications for losses and personal data problems that have not been accommodated in positive law. Indonesian Personal data protection.

If we examine the academic text that is closely related to this research, namely the academic text of the Personal Data Protection Bill in the draft, the spirit of the presence of a positive legal umbrella for personal data protection is the spirit of human rights that has been ingrained in constitutional rules, human rights which lead to legal protection. and respect for privacy rights is a compound, which is inherent in the breath of this personal data protection academic paper is to respect the right to privacy and maintain the existence of technological developments in order to always provide benefits and contributions to human life.

This academic text also includes several previous positive legal rules that have made legal efforts and services in providing protection to users of personal data, including the Consumer Protection Act and the Electronic Transaction Information Law, in the Consumer Protection Act itself. the drafters of academic manuscripts admit that this law does not provide legal protection for consumer personal data sharply and massively, but as a legal umbrella (Umbrella Law) the consumer protection law has laid down quite fundamental legal principles regarding the protection of consumer personal data which also be part of the general protection of personal data described by this academic paper

In addition, the ITE Law which has embedded the protection of personal data by including Article 26 paragraph (1) which requires approval in managing a person's personal data, in this case this academic text also reviews the right to privacy which is the basic breath of personal data protection, in this law. This is also the emphasis on the highest legal authority, namely the state in carrying out regulations and at the forefront of protecting the rights and security and comfort of its citizens. It is also emphasized as a fundamental norm that is included in the deepest recesses of this law, normatively this academic text wants to inform its readers that the meta-juridical spirit of the existence of an umbrella for personal data protection that departs from human rights, legal protection rights and privacy rights is already present, but without specific and qualified positive legal rules, meta-juridical values and positive legal capabilities to present legal objectives will be difficult to achieve. legal certainty that is not yet present When positive law is still floating on basic norms it will only produce legal discourse and void in presenting justice and benefits.

In addition to consumer protection theory, what the author can examine as a test stone for the effectiveness of normative research relating to the application of personal data protection law, especially for consumers, is the principle and purpose of consumer protection law itself, from any side the law provides protection if it involves consumers, the author should not Apart from the principles and objectives of consumer protection which are normatively described in the national positive law in the form of Articles two and three of Law Number 8 of 1999 concerning Consumer Protection which includes the principles and objectives of Consumer Protection itself, the principle itself is an ethical bridge between legal norms and norms. law and ethical conceptions that apply in society, therefore in this case the law of personal data protection should make the principles and objectives of consumer protection as the basis that represents the spirit of the law.

The first principle is the benefit principle. This principle is an effort in implementing consumer protection must provide the greatest benefit to the interests of consumers and business actors as a whole, in practice on the protection of personal data how the benefits of technology and digitalization can be channeled effectively and provide benefits that are both for system administrators and consumers, then the principle of justice is to provide equal opportunities to consumers and producers in granting their rights and obligations, in practice the protection of personal data is how the administration of the system and consumers are given rules to create justice for the protection of consumers' personal data, the implementation of rights and balanced obligations will create justice and concrete personal data protection

legal benefits, of course for legal practice in Indonesia, then the author enters the principle of balance which focuses on balance between system providers and consumers in order to maintain the harmonization of developing electronic transactions.

Furthermore, the principle that is the core of the legal umbrella for protecting consumer personal data is the principle of constitutional and meta-juridical consumer security and safety. This principle is the basis for protecting consumer personal data, how to create a sense of security and comfort as well as positive legal guarantees that are rigid and detailed for the use of personal data. Consumers used in electronic transactions, constitutionally the principle of security and safety is part of the human right to obtain legal guarantees of security and safety including the principle of security and safety of consumer personal data, but unfortunately the principle at the heart of this legal umbrella is not yet clear. and consistently adorn the results of the protection of consumer personal data, namely the security and safety of consumers, including the element of personal data.

Then on the last principle, namely the principle of legal certainty which focuses on legal certainty, even though consumer protection rules have been regulated in special rules but these are still general in nature and have not been able to reach the niches of the leading developments of consumer protection including protection of consumer personal data, unfortunately a thousand Also, the legal umbrella for personal data protection in Indonesia has not been able to produce solid and valid legal certainty considering that the rules are still fragmented and scattered, thus making these regulations ineffective and not providing legal certainty for the protection of consumer personal data, therefore one of the principles that have not been realized and will be a valuable input in this research is to re-instill legal certainty for the normative legal umbrella for the protection of consumer personal data which is currently still fragmented in various regulations, with the discovery of the law on personal data protection. In the special regulations, it is hoped that there will be more legal certainty in order to provide the security and safety of consumers' personal data in particular, as well as to provide justice and benefits for the protection of personal data in general.

3 Conclusion

From the problems that discuss the existing legal umbrella in the aspect of consumer protection, the writer examines the formulation of problem one, namely regarding positive law which consists of Law Number 8 of 1999 concerning Consumer Protection, Law Number 11 of 2008 which was amended by Law Number 19 2016 concerning Electronic Transaction Information, Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions and the Minister of Communications Regulation Number 20 of 2016 concerning the Protection of Personal Data in Electronic Systems, which oversees the legal umbrella for personal data protection, especially the protection of consumer personal data written The study can conclude that there is legal uncertainty in the form of aspects of resolving personal data protection problems, especially consumer personal data, the absence of legal rules dealing with dispute resolution and sanctions given for misuse of personal data, especially consumer personal data. i Indonesia still finds weaknesses in positive laws that oversee the protection of personal data in Indonesia.

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