

## Protection of Consumer Data on Digital Services in The Perspective of International Law and National Law

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**Abstract.** The Covid-19 pandemic has implications for the community, namely the use of digital services to fulfill daily needs. This research aims to find the legal aspects of consumer data on digital services in the international law and national law, and how it is applied in Indonesia. This research uses analytical descriptive method with a juridical normative approach. The result of this research show that international law has various regulations in the form of hard law and soft law that regulate the protection of consumer data in digital service activities, including Article 17 of the International Covenant on Civil and Political Rights (ICCPR) 1966. Consumer protection in the national legal system is guaranteed by Article 4 Law Number 8 of 1999 concerning Consumer Protection, however, consumer data protection in digital services has not been optimally implemented because the law does not yet cover data protection. The guarantees stipulated in the Consumer Protection Law are information about goods and services, not information regarding consumer data. Data obtained from digital services is sometimes misused or transferred to other unauthorized parties. Encouraging the renewal of national provisions regarding consumer protection given the current developments in the digital era that make consumer data vulnerable.

Keywords : law protection, data, consumer, digital, services

### 1. Introduction

Economic globalization and free trade dominate various business activities today. Business activities are carried out by anyone, both in the city and in the region, all of which aim to seek profit that is none other than the result of selling goods / services to consumers. In the current digital era, business transaction activities are increasingly unlimited, parties can carry out business transactions without being limited by space and time. The development of digital business transactions is increasing rapidly, especially since the global world has been hit by the Covid-19 pandemic. Pandemic conditions that limit each individual to carry out activities as they should, make digital services the only choice for individuals to fulfill their daily needs and carry out various other business transaction services. On the one hand, the development of technology in business transactions during the pandemic period is one of the solutions for the fulfillment of people's daily lives. But on the other hand, big problems arise related to the protection of consumer rights, especially in terms of consumer data inputted into digital services. There are quite a lot of consumers whose level of awareness of their rights, knowledge

of technology, education and generally do not care about data protection, placing consumers as victims of data misuse.

At present, there are many studies on the protection of consumer data, including research from (1) Kaneez Fatima Sadriwala entitled "Consumer Protection in Digital Age"; (2) Research from Brendan van Alsenoy, entitled "Regulating Data Protection, The Allocation of Responsibility and Risk among Actors Involved in Personal Data Processing" ; (3) Sinta Dewi Rosadi entitled "Protecting Privacy on Personal Data in Digital Economic Era : Legal Framework in Indonesia"; (4) Juliane Kokott and Christoph Sobotta who reviewed the distinction between privacy and data protection in the jurisprudence of the CJEU and the ECHR ; and (5) research from Francesca Bignami, namely Privacy and Law Enforcement in the European Union: The Data Retention Directive conducted by Francesca Bignami .

Research by Kaneez Fatima Sadriwala entitled "Consumer Protection in Digital Age". The research is aimed at finding out the use of internet and penetration of social media and the second one to understand the level of awareness among the consumers regarding their protection and trust on companies, product and services. [1] His research is good but it is aimed specifically at researching consumer protection in Oman. Another research is Brendan van Alsenoy's research entitled "Regulating Data Protection, The Allocation of Responsibility and Risk among Actors Involved in Personal Data Processing" . The thesis as to determine whether EU data protection law should maintain its current distinction between controllers and processors as the basis for allocating responsibility and risk. Specifically, it will determine whether it will be possible to modify the current approach, which would increase legal certainty, without diminishing the legal protections enjoyed by data subjects. The thesis concludes that while the GDPR introduces Considerable improvements, a number of Recommendations can still be made. [2] The research was good and was specifically aimed at the study of EU data protection law.

Subsequent research was by Sinta Dewi Rosadi entitled "Protecting Privacy on Personal Data in Digital Economic Era : Legal Framework in Indonesia" His research argued that although there is existing laws in the privacy on personal data, however, those legal framework still developed in very sectoral nature. It is submitted that the most suitable regulatory concept for Indonesia is a combination regulatory concept, or hybrid concept., which protect Indonesian's and foreigner parties' interests privacy on personal data. [3] Subsequent research is The distinction between privacy and data protection in the jurisprudence of the CJEU and the ECHR conducted by Juliane Kokott and Christoph Sobotta . This research is also linked to the jurisprudence of the CJEU and the ECHR. [4] Other related researches are Privacy and Law Enforcement in the European Union: The Data Retention Directive conducted by Francesca Bignami. [5] This research is also devoted to the protection of privacy in the European Union.

From the various studies mentioned above, it is only devoted to the study of personal data protection in certain regions, and so far there has been no study of consumer data studies on digital services in relation to the legal system in Indonesia. Therefore it is necessary to conduct research studies related to legal protection for consumer data of digital services which are also linked to international and national law. This also cannot be separated from the fact that business transactions in digital services more increase in Indonesia who appear the data misuse.

Previous author's research is related to Legal Protection of Social Media User Privacy Data According to International and National Law. Starting from the importance of legal protection on consumer data, especially now associated with the development of digital services, the purpose of this study is to find the legal aspects of consumer data on digital services in the international law and national law , and how it is applied in Indonesia.

## 2. Method

In this study, researchers used the following methods:

### 1. Approach Method

The approach method used is a normative juridical approach, which is a study that emphasizes research on library material or secondary data, which includes: [6]

- a. Primary legal materials, namely legislation, international conventions, international customary law, principles of international law, decisions of the International Court of Justice, and doctrines that apply in the law of international human rights.
- b. Secondary legal materials, namely materials that can help analyze and understand primary legal materials, such as research results, scientific works in the form of books, journals, papers and other literature whose substance is relevant to this research.
- c. Tertiary legal material, which is material that provides information about primary and secondary legal materials, such as legal dictionaries ( *Black's Law Dictionary* ).

This research examines and examines secondary data relating to privacy data protection , and at this stage grammatical interpretation is carried out, namely interpreting the words of the relevant legislation, systematic interpretation of the law by linking one law with the law other laws, authentic legal interpretation that can be done by looking at the explanations of the legislators themselves.

### 2. Research Specifications

The research carried out is analytical descriptive, which describes national and international legal instruments associated with legal theories and their practice related to the object of research. [7] The description concerns the facts systematically in the form of secondary data on primary legal material, namely the law, secondary data of secondary legal material, namely the opinions of experts (doctrine) relating to the implementation of privacy protection of social media users , as well as secondary data on legal material. tertiary like legal dictionary.

### 3. Data collection technique

In this study data collection techniques were carried out in two stages, namely:

- a. Library research (*library research*), in this case the researchers conducted a study of secondary data primary legal materials in the form of legislation, as well as other related regulations. In addition, it also examines secondary data of secondary legal material in the form of scientific works of experts in the field of law and is supported by research on secondary data on tertiary legal materials.
- b. The field research (*field research*), in this case only as supporting data in research to support and complement the study of literature, by conducting a structured interview (*guided interviews*) with relevant parties.

### 4. Data Analysis

All data obtained analyzed on a juridical qualitative. In thing this analysis do with pay attention hierarchy regulation legislation for regulation legislation of the no contradictory with regulation Other legislation and achieved it certainty law.

## 3. Result and Discussion

A. The legal aspects of consumer data on digital services in the international law and national law.

The use of digital services in various fields to meet daily needs is growing rapidly, especially since the Covid-19 pandemic. The situation that forces each individual to remain at home provides digital access as the only option that can be utilized. The thing that is a challenge in the legal field is related to the protection of data for consumers who carry out these digital transactions. The form of digital agreement is in the form of consumer approval with one click (single click) or two clicks (double click). By making these clicks consumers provide access to data and information belonging to consumers to digital service operators.

Providing consumer information data is a must in using digital services. This phenomenon then needs to be studied in terms of its legal basis both in international law and in national law. Aspects of international law related to consumer data can be preceded by legal protection in various international conventions. The universal Declaration of Human Rights is one of international instrument that protects a person's privacy rights. Privacy arrangements in the first international instrument are included in Article 12 of the UDHR, namely:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor attacks upon his honors and reputation. Everyone has the right to protect against attacks". Substantially, the privacy regulation in Article 12 of the UDHR provides very broad protection because it includes the right to: [8]

1. Physical privacy

Physical privacy is the protection of privacy related to his place of residence.

2. Decisional privacy

Decisional privacy is the protection of privacy against the right to determine his own life including the life of his family.

3. Dignity

Dignity is protecting one's self-esteem including one's reputation and reputation.

4. Informational privacy

Informational privacy is the privacy of information which means the right to determine how a person performs and saves his privacy data.

International Covenant on Civil and Political Rights (ICCPR) 1966

Regulations regarding privacy within the ICCPR are set out in Article 17, which contains:

- 1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, to unlawful attacks upon his honor and reputation.
- 2) Every one has the right to the protection of the law against such interference or attacks.

The scope of privacy settings in the ICCPR, namely: [9]

1. Protection of privacy for family and home (family and home) .
2. Protection of privacy against the way someone corresponds.
3. Privacy protection against citizen searches or searches carried out by the Government.
4. Protection of honor and reputation.
5. Protection of privacy data (personal information).

In addition to international instruments, privacy data protection is also regulated in special instruments to protect privacy data, namely:

1. OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data, 1980
2. Council of Europe Convention for the Protection of Individuals with regard to the Processing of Personal Data, 1981
3. EU Data Protection Directive, 1995
4. United Nations General Assembly Resolution concerning the Right to Privacy in the Digital Age, 2014
5. Resolution of Madrid in the International Conference of Data Protection and Privacy Commissioners

While national instruments in protecting data privacy in Indonesia are listed in various provisions including:

1945 Constitution

Constitutionally, the guidelines for regulating privacy data protection are based on the mandate in the opening of the 1945 Constitution in which this is implied as stated in the second and fourth paragraphs of the Preamble to the 1945 Constitution.

Opening of the second paragraph of the 1945 Constitution which states that:

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"And the struggle for the Indonesian independence movement has come to a happy time, tranquil safely, to lead the Indonesian people to the front gate of the independence of the Indonesian state, which is independent, united, sovereign, just and prosperous".

The implicit meaning of the word fair and prosperous in the second paragraph is justice that is intended for all Indonesian people. In addition, the implementation of state objectives is mandated in the fourth paragraph of the Preamble to the 1945 Constitution which states that:

"Then than that to form a Government of the Republic of Indonesia that protects all the people of Indonesia and all of Indonesia's bloodshed and to advance the general welfare, ...".

Protection of privacy data other than based on the second and fourth paragraphs of the Preamble, there is also a strong foundation contained in the body of the 1945 Constitution, namely first in Article 1 Paragraph (3) of the 1945 Constitution which states that the state of Indonesia is a legal state . The formulation of the article becomes the basic foundation that in the event that any activity including activities in social media must be given legal certainty in order to fulfill the element as a state of law. Then the formulation of the next article is in Article 28 G of the 1945 Constitution which states that:

"Every person has the right to protection of his personal, family, honor, dignity, and property under his control, as well as the right to a sense of security and protection from the threat of fear of doing or not doing something which is a human right".

Based on these provisions, the 1945 Constitution does not explicitly mention privacy and protection of privacy data, in this case included in the scope of protection of human rights.

#### Law Number 39 of 1999 concerning Human Rights

In Article 29 paragraph (1) the 1999 Human Rights Law recognizes the right of everyone to the protection of their personal, family, honor, dignity and property. As well as information regarding Article 14 Paragraph (2) and Article 32 related to protection of information and personal privacy data.

#### Constitution of electronic information and transaction

In Law 19 of 2016 concerning Amendments to Act 11 of 2008 concerning ITE regulated on the protection of privacy data and privacy rights in Article 26 paragraph 1, therefore the use of any privacy information and data through electronic media carried out without the consent of the owner of the data is a violation of rights privacy.

#### Law Number 36 of 1999 concerning Telecommunications

In the Law on Telecommunications, among others is regulated in Article 22 related to the prohibition of unauthorized access, then Article 40 in the case of wiretapping of information, as well as speaking the confidentiality of the privacy data of telecommunication service users regulated in Article 42 paragraph (1), the last said criminal sanction is in Articles 56 and 57.

#### Law Number 8 of 1999 concerning Consumer Protection

Article 4 Law Number 8 of 1999, Consumer rights are:

- the right to comfort, security and safety in consuming goods and / or services;
- the right to choose goods and / or services and to obtain the said goods and / or services in accordance with the exchange rate and conditions as well as the promised guarantee;
- the right to correct, clear, and honest information regarding the condition and guarantee of goods and / or services;
- the right to have their opinions and complaints heard about the goods and / or services used;
- the right to get advocacy, protection, and proper consumer protection dispute resolution efforts;
- the right to receive consumer guidance and education;
- the right to be treated or served correctly and honestly and not to discriminate;

- the right to get compensation, compensation and / or replacement, if the goods and / or services received are not in accordance with the agreement or not as it should be; rights regulated in the provisions of other laws and regulations.

On the other hand, the obligations of business actors (in this case, online sellers) are:

- have good intentions in carrying out their business activities;
- provide true, clear and honest information regarding the condition and guarantee of goods and / or services and provide an explanation of the use, repair and maintenance;
- treats or serves consumers properly and honestly and is not discriminatory;
- guarantee the quality of goods and / or services produced and / or traded based on the prevailing provisions on the quality of goods and / or services;
- provide opportunities for consumers to test, and / or try certain goods and / or services and provide guarantees and / or guarantees for goods made and / or traded;
- provide compensation, compensation and / or compensation for losses resulting from the use, use and utilization of traded goods and / or services;
- provide compensation, compensation and / or replacement if the goods and / or services received or used are not in accordance with the agreement.

Law Number 8 of 1999 provides protection to consumers who carry out an engagement or agreement through an electronic contract so that it remains in accordance with statutory provisions.

The responsibility for supervision and protection has been affirmed in Article 30 paragraph (1) of Law no. 8 of 1999 states that "Supervision of the implementation of consumer protection and the application of statutory provisions shall be carried out by the government, the community and non-governmental consumer protection organizations".

Menkominfo Regulation No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems

Article 1 Number 1 states that Personal data is certain personal data that is stored, maintained and maintained for the truth and protected in its confidentiality. Protection of personal data in electronic systems includes protection against the acquisition, collection, processing, analysis, storage, appearance, announcement, transmission, dissemination and destruction of personal data. The implementation of personal data protection in electronic systems must be based on the principle of respect for personal data as privacy.

Each owner of personal data has the right to his data in an electronic system. These rights are regulated in Article 26, namely: the right to confidentiality of his personal data; filing a complaint in the context of resolving personal data disputes over failure to protect the confidentiality of his personal data by the electronic system administrator to the minister; get access or opportunity to change or update his personal data without disturbing the personal data management system, unless otherwise provided by the provisions of laws and regulations; get access or opportunity to obtain historical personal data that has been submitted to the electronic system operator as long as it is still in accordance with the provisions of laws and regulations; and request the destruction of certain individual data belonging to them in an electronic system managed by an electronic system operator, unless otherwise stipulated by the provisions of laws and regulations. Users of electronic systems have an obligation to maintain the confidentiality of the personal data they collect, collect, process and analyze; use personal data according to user needs only; protect personal data and documents containing such personal data from misuse; and is responsible for the personal data that is in his control, either as an organization under his / her authority or individually, in the event of an act of abuse.

B. Implementation of International and National Provisions in Protecting consumer data on digital services.

International provisions related to the protection of consumer data on digital services users so far have not been implemented optimally, given the international provisions that exist, the Universal Declaration of Human Rights is still limited to normative juridical provisions in the international arena that cannot be optimally enforced. ICCPR in this case has not been able to reach optimal legal protection in the protection of privacy data, this can be seen from the existence of cases of data misuse users that cannot be prevented or handled optimally.

The existence of national provisions in Indonesia regarding privacy data protection is still spread in various national provisions. This also resulted in the implementation of legal protection for privacy data of social media users has not run optimally. The current weaknesses of Indonesia do not have specific privacy data protection laws.

From the various definitions proposed for "privacy", a number of polarizations have emerged, essentially placing privacy as a claim, right, or individual right to determine what information about himself (himself) can be conveyed to others. Privacy has also been identified as a measure of an individual's control over a number of elements of his personal life, which includes: (i) personal information; (ii) confidentiality of his personal identity; or (iii) parties who have sensory access to that person / person. The protection of data is the fundamental rights human rights.<sup>1</sup>

In general there are three aspects of privacy, namely: [10]

1. Privacy regarding someone's personal ( *Privacy of a Person's Persona* )

The right to privacy is based on the general principle that everyone has the right to be left alone ( *the right to be let alone* ).

2. Privacy of data about someone ( *Privacy of Data About a Person* )

Privacy rights can also bind to information about someone collected and used by others. In short, this privacy is called personal data.

3. Privacy of one's communication ( *Privacy of Person's Communications* )

In certain situations, the right to privacy can also include *on-line* communication .

The digital age has triggered an explosion in the growth of personal data created, stored and transmitted on computers and mobile devices, broadband and internet sites and media. Information has given birth to a new ethic that every party who has information has an instinct to always distribute it to other parties.

Advances in technology also pose serious threats to personal privacy and information security. In the information age, the protection of the right to privacy has evolved into issues related to the collection, use and dissemination of personal data in information systems. New technology has sparked the collection of personal information by governments and corporations in a database that is both broad and deep. Personal information is usually used for tax, health, employment, criminal and nationality track records and includes identification technology used for making ID cards, fingerprints, and DNA mapping. Data privacy is also an asset or commodity of high economic value. Certain parties find new value in data, so the data is treated like a tangible asset. This new era of data management is commonly referred to as Big Data. The explosion of data has become increasingly massive in line with the increasing use of smart phones, which are capable of producing primary data, including recorded notes, pictures, e-mails, comments on social media, and notes on the use of various applications.

Consumers do not get full protection for their data that is managed and used by the application business actor. Consumers also do not get a guarantee of responsibility from business actors regarding their personal data after using the application. This makes consumers threatened for their comfort and

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safety in using these services. Because many misuse occurs due to consumer personal data used by irresponsible people.

Potential violations of privacy rights over personal data are not only in on-line activities but also in off-line activities. The potential for online privacy violations of personal data, for example, occurs in mass collection of personal data (digital dossier), direct marketing (direct selling), social media, implementation of the e-KTP program, implementation of e-health programs and cloud computing ( cloud computing). Digital dossier, which is a collection of large amounts of a person's personal data using digital technology, has been started since 1970 by the government, especially in European countries and the United States.

Government regulation can be realized through steps to form law in the field of privacy data protection, not only in the use of social media but in various fields involving data transmission in internet or digital telecommunications. In the national legal system, Indonesia itself has a weakness, namely the absence of laws protecting personal data. This is certainly a challenge for the government in providing legal certainty for the community, especially in terms of protecting the privacy of social media users.

International regulation in this case namely the aspect of international law in the field of protection of personal data so far has been seen in various international conventions related to the protection of personal data which also begins with the recognition of human rights. This is because the protection of personal data enters the scope of the regulation of human rights.

#### **4. Conclusion**

Based on the results of the study, it can be seen that in the international provisions consumer data protection has been spread in various international conventions including the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*, and also United Nation Guidance. The provisions of the consumer protection law in Indonesia need to be renewed considering the development of digital business transactions is rapidly developing following technological developments. therefore, the current consumer protection provisions have not been able to optimally fulfill the protection of consumer rights in the era of digital transactions

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