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Legal Protection of Consumer Personal Data in E-Commerce Transactions During the Covid-19 Pandemic Period

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Abstract: The development of globalization has rapidly contributed to the acceleration of improvement in information technology along with the Covid-19 Pandemic which changed people's habits to reduce physical contact and conduct online activities, one of which is by shopping through several e-commerce platforms. There is a need for legal protection of consumer particular data as an effort to prevent leakage and misuse of consumer personal data. This research was conducted using the juridical-normative legal research method with literature study. As a result of the investigation, the protection of consumer personal information is regulated by the Government Regulation of the Republic of Indonesia Number 80 of 2019 concerning Trade Through Electronic Systems, and misuse of consumer personal data is a violation of consumer rights. That's why all e-commerce conditions apply to protect consumer personal information and government oversight is required to ensure that the management of consumer private information is used only for transaction purposes.

Keywords: E-Commerce Transactions, Legal Protection, Consumer Personal Data.

1. Introduction

Social welfare is a goal to be achieved in the implementation of economic development, considering economic development based on economic democracy with the principles of cohesion, fair efficiency, sustainability, environmental awareness, and independence. And national economic unification to achieve this goal.

In line with the goals of the Republic of Indonesia as stated in the Preamble to the 1945 Constitution, the 4th paragraph, mentions "...to assemble an Indonesian government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to encourage social welfare, educate the nation's life, and participate in carrying out global peace based on freedom, eternal peace, and social justice" where one of the goals of the state is welfare.

Welfare is an organized system of social services and institutions aimed at achieving satisfactory standards of living and health, as well as individual and social relationships that enable them to develop to their full potential and improve their well-being in harmony with the needs of the family, as well as society. The purpose of welfare is to ensure human economic needs, standards of health and decent living conditions, get equal opportunities with other citizens, increase the degree of self-esteem as high as possible, freedom of thought and activity without interference in accordance with human rights. [1]

In fulfilling the needs of the community, it is necessary to have trade transactions involving at least two parties, namely consumers and business actors. Consumers are all individuals who use the goods and services available in the community for themselves, their families, other people, other living things, and not a commodity of goods (trade).

Referred to the elucidation of Article 1 point 2 of Law Number 8 of 1999 concerning Consumer Protection, that the "consumer" referred to consumer protection law is the final consumer, with the elaboration of the article as follows: "In the economic literature the terms end consumer and consumer are known. Among. End consumers are end users or beneficiaries of a product, while intermediate consumers are consumers who use a product as part of the process of another product. The definition of consumer in this law is the final consumer." Meanwhile, business actor is any person or entity in business, both in the form of a legal or not a legal entity who build and established or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or collectively through agreements to take part business activities in several model of economic fields. [3]

Talk about importance and role of business actors in economic development in Indonesia is due to the business activities carried out by business actors that will contribute to improving the welfare of the community. As for its development, trade transactions must always adapt to the dynamics of community demands according with the highly rapid progress of information, science, and communication technology which requires almost all human life aspects, especially the economic aspect, must adapt to the current digitalization era by utilizing technological advances.

The era of digitalization has had a major impact on various fields, where in terms of economic activity, which is marked by the shift of retail businesses (physical stores) into e-commerce in various online business platforms that offer various benefits and benefits to both business actors and entrepreneurs. consumers who going to have essential impact on the increasing number of economic activities, especially in buying and selling goods and services that switch to e-commerce systems.

According to Schneider, electronic commerce or e-commerce can be interpreted as shopping through the internet. However, e-commerce also includes various other activities such as conducting trade and internal business processes in companies that support buying, selling and other planning activities, and in general e-commerce can be divided into 5 (five) categories based on the entities participating in the transaction and process. business, namely: [4]

- a. Business to customer (B2C), is business entities that sells both goods and services to consumers or individuals.
- b. Business to business (B2B) is business entities that sells goods or services to other business entities.
- c. Business process, which is an organization or business entity that handles and uses information to identify consumers, suppliers and employees. In addition, it is also used to share information with consumers, suppliers, employees and other business partners.
- d. Customer-to-customer (C2C), providing a marketplace as a forum that facilitates the meeting of online sellers and buyers.
- e. Business to government (B2G), is business entity that sells products, both goods and services to the government.

Given the increasing number of total Indonesian internet users, it is not surprising that electronic commerce is currently shaping up to be one of the most advanced business fields in Indonesia, with growth expected to continue to accelerate over the next few years. The law must be able to reach technological developments where electronic trading transactions will have legal impacts, especially on consumers. The urgency of consumer legal protection is that legal protection corresponds to the philosophy of national development and, together with law enforcement agencies, protects itself using technology, consumer awareness, abilities, and independence. This action taken to protect consumers from the negative effects and increase consumer dignity.

One of the negative effects on consumers in electronic transactions is the leakage of consumer personal data that has been misused by irresponsible individuals. This is extremely dangerous for affected consumers as their personal information is clearly stated by name, gender, religion, nationality, or individual. Information combined to identify an individual.

The processing of personal data must comply with the provisions, that is the existence of legal permission from the owner of personal data for one or more specific purposes, which is communicated to the owner of personal data. E-commerce business actors must guarantee their rights protection of personal data owners to protect the security of personal information from loss, misuse, unauthorized access, and disclosure, tampering or destruction of personal information. 35

The obligation of business actors to guarantee consumer personal data as regulated in Article 58 paragraph (2) and Article 59 paragraph (1) of Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems, that every business entities obtains personal data is obliged to act as a mandate bearer in storing and controlling personal data in accordance with the provisions of laws and regulations, and Business Actors are required to store personal data in accordance with personal data protection standards or the prevalence of developing business practices. For this reason, this study will examine the forms legal protection that may be given to customers in digital commerce transactions. 32

The research method that used in this paper is juridical-normative law research that contained library materials including primary legal paper such as the 1945 Constitution, Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013

concerning Amendments to Law Number 23 Year 2006 concerning Population Administration, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 8 of 1999 concerning Consumer Protection, Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection Personal Data in Electronic Systems, Government Regulations Number 1 of 2019 concerning the Implementation of Electronic Systems and Transactions, and Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems. Beside several regulations as mentioned before, this research contained secondary legal materials such as legal books, scientific journals, previous legal studies, and another legal material, and also third legal materials that include Great Dictionary of the Indonesian Language and diverse source from encyclopedia.

The problem formulations that can be discussed in this study are as follows:

- 1) What is the legal foundation for protecting customer personal data in electronic commerce transactions?
- 2) How is the juridical analysis of customer legal protection according to customer personal data in electronic commerce transactions?

2. Analysis and Discussion

2.1. Legal basis for protecting consumer personal data in e-commerce transactions

Constitutionally, it is an obligatory for state to protect the personal data including the privacy of the public. This protection is regulated in first paragraph Article 28G paragraph of the 1945 Constitution of the Republic of Indonesia, that everyone has the right to protect themselves, their family, honor, dignity and personal property, and has the right to a sense of security and protection from the threat of fear to do or not do something which defined as human right.

Protection of personal data is also regulated in Article 2 letter c of Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, that every resident has the right to obtain protection of Personal Data.

Personal data based on Article 11 point 22 of Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, is certain personal data that is stored, maintained, and kept the truth and kept confidential.

Meanwhile, Personal Data definition based on Article 1 number 27 of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, that Personal Data is certain individual data that is stored, maintained, and kept the information and its confidentiality protected.

In electronic systems, the protection of personal consumer data is regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, where based on Article 26 paragraph (1) of the Law that unless stipulated otherwise by the legislation, the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned. In the explanation section of Article 26 paragraph (1), that in the use of information technology, protection of personal data is one part of personal rights (privacy rights). Personal rights have the several essences:

- a. The right to privacy is the right to have a private life and not be interfered with.
- b. Personal rights are right to communicate with others without undesirable surveillance
- c. Privacy rights are the right to control access to information about an individual's personal life and data.

The derivative regulations of Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions which specifically arrange the protection of personal data are Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems which contains provisions concerning the

rights of personal data owners, obligations of personal data users, obligations of electronic system operators, and dispute resolution.

Based on Article 2 paragraph (2) of the regulation, that the protection of personal data in the electronic system includes protection against the acquisition, collection, processing, analysis, storage, appearance, announcement, transmission, dissemination, and destruction of personal data. In enforcing those provisions, it ought to be primarily based totally at the concepts of appropriate private facts protection, which include:

- a. recognition of personal data as privacy;
- b. personal data is personal according with the approval and/or primarily based totally at the provisions of the legislation;
- c. based on confirmation;
- d. relevance for collection, collection, processing, analysis, storage, display, presentation, distribution, and distribution;
- e. the feasibility of the digital system used;
- f. good intention to notify the owner of personal data for any trouble/error of personal data protection immediately;
- g. availability of internal rules for the management of personal data protection;
- h. responsibility for personal data that is in the control of the user;
- i. ease of access and correction of personal data by the owner of personal data; and
- j. integrity, accuracy, and validity and up-to-date of personal data.

16 There are exceptions in the protection of customer personal data, which is based on Article 21 paragraph (1) of the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems, that displays, announces, transmits, disseminates, and/or opens access to personal data in the electronic system can only be processed with the approval unless otherwise definite by the provisions of the legislation; and after verification of its accuracy and suitability for the purpose that personal data was collected before.

In addition, based on Article 23 paragraphs (1) and (2) of the Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems, that for the purposes of law enforcement processes, electronic system operators are required to provide personal data contained in electronic systems, or personal data generated by the electronic system upon a legitimate request from law enforcement officials based on the provisions of laws and regulations, where the personal data in question is personal data that is relevant and in accordance with the needs of law enforcement.

Likewise in Article 29 of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, that for the purposes of the criminal justice process, Electronic System Operators are required to provide information contained in the Electronic System or information generated by the Electronic System at a valid request from the investigator for certain criminal acts in part with the authority defined in the law.

2.2. Juridical analysis of consumer legal protection against consumer personal data in e-commerce transactions

The increasingly rapid development of globalization has contributed to the acceleration of information technology progress along with the Covid-19 pandemic which has changed people's habits to reduce physical contact and carry out activities online, one of which is shopping through several e-commerce platforms. There is a need for legal protection of consumer personal data as an effort to prevent misuse and leakage of customer personal data.

According to Satjipto Raharjo, the feature of regulation is to guard a person's pursuits with the aid of using allocating a electricity to him to behave within the context of that interest. The allocation of this electricity is performed in a measurable manner, within the feel that its breadth and intensity are determined. [5] Legal safety is an attempt to guard a person's pursuits with the aid of using allocating a Human Rights electricity to him to behave within the context of his pursuits. [6]

Mechanism of legal protection are divided into two forms, as follows: [7]

- a. Means of Preventive Legal Protection

This precautionary legal protection gives legal subjects the opportunity to present an objection or statement before a formal decision is finalized. The purpose is to prevent conflict. Preventive legal protection makes a lot of sense for a state's actions based on freedom of action, as the existence of preventiv¹⁷ legal protection encourages the state to make prudent decisions at its discretion. increase. In Indonesia, there are no specific regulations regarding preventive legal protection.

b. Repressive legal protection aims to resolve disputes.

Legal protection in this category includes legal protection processing by Indonesian General and Administrative Courts. The principle of legal protection against national behavior is based on and derives from the concept of recognition and protection of human rights.

The term customer, or "consumer" in this context, is derived from and translated from the words "consumer" (English-America) or consumer / consumer (Dutch). Already used. [8] According to Az. Nasution's Consumer Protection Law, consumer law includes regulatory principles or rules and also has the ability to protect the interests of consumers. [9]

Consumer law, on the other hand, is defined as general principles and legal rules that regulate relationships and issues between various parties related to consumer goods and / or services in social life. [10] On the other hand, the definition of consumer protection under Article 1, Paragraph 1 of Consumer Protection Act No. 8 of 1999 is "every effort to ensure the legal certainty of consumer prote²⁰on".

The Consumer Protection Act aims to provide a strong legal basis for government and non-governmental consumer protection agencies to make effor¹² to empower consumers through the development and education of consumers. Based on Article 3 of Law Number 8 of 1999 concerning Consumer Protection, it reads as follows: "Consumer protection aims to:

- a. increase con⁹sumer awareness, ability, and autonomy to protect themselves;
- b. developing the dignity of consumers by preventing them from negative access to the use of goods and/or services;
- c. developing the ability of consumers in choosing, determining, and demand⁶ing their rights as consumers;
- d. create a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information;
- e. raise awareness of business actors regarding the importance of consumer protection so as to grow an honest and responsible attitude in doing business;
- f. improve the quality of goods and/or services that establish the cohesion of the business to producing goods and/or services, health, comfort, security, and safety of consumers.

In general, it's miles regarded that there are 4 primary rights of consumers, specifically the proper to safety), the proper to be informed, the prop²⁸ pick and the proper to be heard. [11] Meanwhile, the rights of consumers that must be fulfilled are based on Article 24 of Law Number 8 of 1999 concerning Consumer Protection, where the article mentions: "Consumers' rights include:

- a. the right to comfort, security, and safety in consuming goods and/or services;
- b. the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees;
- c. the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services;
- d. the right to have their opinions and complaints heard on the goods and/or services used;
- e. the right to proper advocacy, protection and effort to resolve consumer disputes;
- f. the right to receive consumer advice and information;
- g. the right to be treated or provided in a fair and honest manner, not in a disc²¹riminatory manner;
- h. the right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly;
- i. rights to comply with the provisions of other laws and regulations.

The²³ ove rights of each consumer can be explained as follows:

- a. The right to comfort, security and safety in consuming goods and/or services;
Consumers have the right to purchase products that are convenient, safe and secure. Therefore, consumers must be protected from all health, life and property threats through the use or consumption of products (such as food). Therefore, each product should be aimed at increasing

consumer comfort, safety and security in terms of both material composition, structure and quality

- b. The right to select goods and / or services and receive these goods and / or services in accordance with exchange rates and promised terms and guarantees;
The right to choose is intended to give consumers the freedom to choose certain products according to their needs. This freedom of choice means that there is no element of coercion or deception from business actors.
- c. The right to clarify and modify information is intended to give consumers the correct image of the product. This is because this information can be used by consumers to select products according to their needs / needs and avoid losses due to product misuse.
- d. The right to have their opinions and complaints heard on the goods and/or services used;
This right to be heard is the right of the consumer so as not to be further harmed, or the right to avoid being harmed. This right can be in the form of questions about various matters relating to certain products if the information obtained about the product is inadequate, or in the form of a complaint regarding the losses that have been experienced due to the use of a product, or in the form of a statement/opinion about a government policy that related to consumer interests. This right can be conveyed either individually or collectively, either directly or represented by a particular institution, in Republic of Indonesia for example through Indonesian Consumers Foundation (YLKI).
- e. The right to get advocacy, protection, and efforts to resolve consumer protection disputes properly;
Business actors certainly understand about goods and/or services, while on the other hand, consumers do not understand the process carried out by business actors at all. So that the position of consumers is weaker than business actors. Therefore, consumers need to receive proper advocacy, protection, and dispute resolution efforts.
- f. The right for consumer advice and education.
Consumers have the right to advice and education regarding the consumption of good products and services. Producers and economic operators are obliged to provide accurate and enlightening information so that consumers are more mature to meet their needs and, conversely, do not take advantage of the weaknesses of consumers, especially women and children.
- g. The right to be treated or provided in a fair and honest manner, not in a discriminatory manner.
Equal treatment is a human right. Business players need to provide the same service to all consumers, regardless of their idealism, religion, ethnicity, wealth, or social status.
- h. The right to have compensation and/or replacement if the goods and/or services received are not in accordance with the agreement or not properly;
The right to compensation is intended to recover from damage caused by the use of goods or services that do not meet consumer expectations. Of course, in order to realize this right, you must follow certain procedures, both amicably (outside the court) and legally resolved.
- i. Other rights that regulated in the provisions of other laws and regulations;
In accordance with its position as a consumer based on the applicable laws and regulations. The existence of this provision opens the possibility of developing ideas about new rights of consumers in the future, in accordance with the times.

The factors that can cause consumer personal data to be potentially misused are due to excessive data access and not in accordance with the interests of online shopping, misuse by irresponsible persons carried out by selling personal data with the intent and purpose of making a profit. also because internet security is increasingly vulnerable, making it easy to infiltrate and abuse. Therefore, the legal protection of the personal data of consumers who conduct electronic trading transactions can be done in two forms, namely:

1. Preventive Legal Protection

Preventive forms of legal protection for consumer personal data conducting electronic trading transactions can be realized through the application of terms of condition to each e-commerce transaction for the benefit of both parties (consumers and business actors) as a guarantee from business actors to consumers to protect personal data. , so the regulation aims to protect consumer's personal data and in part to reduce the potential for crime in the online shopping sector. In addition, there is a need for supervision from the government to ensure that the management of consumer personal data is only used for transaction purposes, where personal

data violations in the e-commerce sector are currently caused by excessive data access and not in accordance with interests in electronic transactions.

2. Repressive Legal Protection

The form of repressive legal protection⁴ has been regulated in several laws and regulations, one of which is Article 36 paragraph (1) of the Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems. So, anyone who collects, gathers, processes, analyzes, stores, displays, publishes, sends, and / or distributes personal data without permission or contrary to this ministerial ordinance or other legal and regulatory provisions is subject to administrative sanctions under laws and regulations in the form of:

- a. verbal warning;
- b. written/penned warning;
- c. temporary suspension of activities; and/or
- d. announcements on sites in public domain network (online websites).⁵

In addition to administrative sanctions, based on Article 26 paragraph (2) of Law Number 11 of 2008 concerning Information⁵ and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, that anyone who has infringed their rights to personal data may claim any loss incurred under this Act. Based on this article, victims of personal data leakage who have suffered loss or damage due to unauthorized use of personal data may¹⁶ claim damages in court.

It is further regulated in Article 32 paragraph (1) and (2) 36 paragraph (1) of the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems, in order to resolve the dispute through court (or other alternative arbitration) efforts that can resolve the dispute regarding the breach of confidentiality of personal data, each owner of personal data and the operator of the electronic system shall file a proceeding for the breach. In future, the failure of protecting confidentiality of personal data and claims are merely civil claims and are submitted in accordance with the law.

3. Conclusion

Based on the discussion of this research, the conclusions that can be conveyed are as follows:

- 1) Constitutionally, state (in this context Republic¹¹ of Indonesia) should protect the privacy and personal data of the public. This obligation is regulated in Article 28G paragraph (1) of the 1945 Constitution³³ of the Republic of Indonesia. Protection of personal data is also regulated in Article 3, 2 letter c of Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Regulation Administration, that every single person (Indonesia citizen²⁶) has the right to procure protection of personal data. In the digital system (electronic based), the protection of consumer's personal data is regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, where based on the explanation section of Article 26 paragraph (1) of the Law that in the use of information technology, protection of personal data⁴ one part of personal rights (privacy rights). The protection of consumers' personal data is also regulated in the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems which contains provisions regarding the rights of personal data, obligations of personal data users, obligations of electronic system operators, and dispute²⁵ resolution. The several exceptions in the protection of consumer personal data itself based on Article 21 paragraph (1) and Article 23 paragraph (1) and (2) of the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems, and Article 29 of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions.
- 2) Factors that can cause consumer's personal data to be potentially misused are due to excessive data access and not in accordance with the interests of online shopping, misuse by irresponsible persons carried out by selling personal data with the intent and purpose of making a profit. This is because

internet security is increasingly vulnerable, making it easy to infiltrate and abuse. There are two ways to legally protect consumer personal data. namely: 1) Legal protection with preventive approach by applying terms of conditions to every e-commerce transaction that aims to protect consumer personal data and in purpose to reduce the risk of crime in the online shopping sector, and the need for supervision from the government to ensure that the management of consumer personal data is only used for transaction purposes, and 2) repressive legal protection as regulated in Article 36 paragraph (1) of the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in the System Electronic, Article 26 paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, and Article 32 paragraph (1) and (2) 36 paragraph (1) Regulation of the Minister of Communications ation and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems.

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