

Legal Protection of Personal Data As Privacy Rights Of E-Commerce Consumers Amid The Covid-19 Pandemic

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Abstracts :

The use of e-commerce in the midst of the COVID-19 pandemic shows an increase. This is due to the publication of several regulations that limit everyone's activities outside the home, affecting conventional trading activities online by utilizing e-commerce. Although providing benefits during the pandemic, e-commerce has a vulnerability to personal data protection. Through this paper, the authors use normative legal research methods, intending to know the concept of personal data as a right of privacy and the construction of Indonesia's positive laws in legal protection of the personal data of e-commerce consumers.

Keyword : *data privacy; e-commerce; legal protection; privacy.*

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1. Introduction

The outbreak of the Corona Virus Disease 2019 (COVID-19) affects the joints of human life. In its current development in Indonesia, it has exceeded the number of more than 100,303 cases.¹ Among them was the signing of Presidential Decree Number 11 of 2020 concerning the Determination of Public Health Emergencies for COVID-19 on March 31, 2020, then the issuance of Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerated Handling of COVID-19, which was then guided by the implementation of Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions (PSBB) which was stipulated and promulgated on April 3, 2020.²

With the existence of several PSBB regulations that limit people's activities outside the home so that meeting people's needs for buying and selling of goods becomes constrained, this actually has a positive impact on several sectors of the economy, especially the e-commerce sector, which has experienced a surge, as evidenced by the data stated by Analyzes Data Advertising (ADA) states that there is a decrease in visits to shopping centers by 50% and an increase in the use of online shopping applications by 300%.³ Simply put, e-commerce is defined as a buying and selling transaction made using computers and internet networks, conducting e-commerce transactions for both buyers and sellers can save costs and time,⁴ The World Trade Organization (WTO) states that under the situation in the midst of a pandemic like this, e-commerce is a solution for society.⁵

Although it provides significant benefits and growth during a pandemic, e-commerce or what is known in Indonesia's positive law with trading via electronic systems still has a gap against Violation of the right to use privacy as consumers and minimal personal data protection is the right of privacy.⁶ According to Prof. Graham Greenleaf in his book entitled *Asian Data Privacy on Personal Data Law, Trade and Human Rights Perspectives* states that the lack of protection of the right to privacy or personal data is not without reason, as Indonesia tends to neglect the discussion of privacy in personal data and in the Indonesian legal system. There are no specific regulations regarding the right to privacy or protection of personal data.⁷ The right to privacy over personal data is something that must be protected in electronic activities, one of which is e-commerce, because in addition to being the privacy of everyone, personal data is also

¹ Tim Komunikasi Komite Penanganan Corona Virus Disease 2019 (COVID-19) dan Pemulihan Ekonomi Jakarta. (2020). Pasien COVID-19 Tembus 100.303 Kasus, 27 Juli 2020. Diakses melalui <https://covid19.go.id/p/berita/pasien-covid-19-tembus-100303-kasus> diakses pada 28 Juli 2020.

² Hairi, P.J. (2020). Implikasi Hukum Pembatasan Sosial Berskala Besar Terkai Pencegahan Covid-19. *Info Singkat* Vol. XII No. 7 April, p. 2.

³ Aprilianti, I. (2020). Hari Konsumen Nasional, Perlindungan Data Pribadi di Tengah Pandemi COVID-19. Diakses melalui: <https://referensi.elsam.or.id/wp-content/uploads/2020/04/Hari-Konsumen-Nasional-Perlindungan-Data-Pribadi-di-Tengah-Pandemi-COVID-19.pdf>, diakses pada 29 Juli 2020.

⁴ Asmara, T.T.P dan Handayani. T. (2019). Ketidakpastian Hukum Penggunaan Kode Unik Dalam Sistem Pembayaran E-Commerce. *Jurnal Penelitian Hukum DE JURE* Vol. 19 No. 4, Desember, p.504.

⁵ World Trade Organization. (2020). Information Note: E-Commerce. Trade and the COVID-10 Pandemic, 4 Mei 2020. Diakses melalui: https://wto.org/english/news_e/news20_e/rese_04may20_e.htm diakses pada 29 Juli 2020.

⁶ Heriani, F.N. (2020). Urgensi Perlindungan Data Pribadi Konsumen di Sektor E-Commerce, 27 Februari 2020. Diakses melalui: <https://www.hukumonline.com/berita/baca/lt5e57416828b4b/urgensi-perlindungan-data-pribadi-konsumen-di-sektor-e-commerce/> diakses pada 29 Juli 2020.

⁷ Rosadi, S.D. (2018). Protecting Privacy On Personal Data In Digital Economic Era: Legal Framework In Indonesia. *Brawijaya Law Journal* Vol. 5, No. 1, p. 145.

an asset or commodity that has high economic value⁸ thus raising concerns about the monetization of consumer personal data registered in e-commerce applications, based on a Kompas poll showing a percentage of 91% of people are worried about their personal data being leaked and used by irresponsible parties.⁹ One concrete example of the violation of consumer personal data is seen from the case between PT. Tokopedia against the Indonesian Consumer Community, which is registered in the case register number 235 / Pdt.G / 2020 / PN Jkt. Pst.

In connection with legal protection measures for personal data as the right to privacy, it refers to the Legal Protection Theory put forward by Philipus M. Hadjon, which means legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on Legal provisions of arbitrariness or as a collection of rules or rules that will protect one thing from another. As for the relationship with consumers, it can be said that the law provides protection for consumer rights from something that results in the fulfillment of these rights.¹⁰ Hadjon then divides legal protection into two, namely preventive and repressive legal protection. Preventive legal protection is legal protection, whose purpose is to prevent disputes. In contrast, repressive legal protection is a legal protection that aims to resolve disputes¹¹ with legal protection provided at a normative level, especially in the field of e-commerce, which focuses on protecting personal data as a right to privacy. Reflecting on the current situation in the midst of the COVID-19 pandemic and the state of the lack of regulations in favor of protecting the personal data of e-commerce consumers, it is one of the reasons for the author to research about legal protection of personal data as the privacy right of e-commerce consumers. In this study, the author will focus on two problems. First, how is the conception of personal data, which is the right of privacy for people, as legal subjects? Second, How is the legal construction of personal data protection as an e-commerce consumer privacy, right? So starting from this problem, the author is moved to examine legal issues to examine this legal issue in connection with the tendency of a legal vacuum regarding compensation for losses suffered by consumers in the event of negligence made by e-commerce platforms, which cause the leakage of consumer personal data which is a right of privacy. Consumers as users of e-commerce services. This study aims to determine the conception of personal data as the privacy right of e-commerce consumers and find out the legal construction of personal data protection, which is a right to privacy.

2. Research methods

In line with the description in the introduction, to be able to answer the problems in this study, the author uses the normative juridical method, namely by examining library materials or secondary data which includes primary, secondary and tertiary legal materials¹² which include statutory regulations, literature review, legal theories, or previous research. The normative legal research method functions to provide juridical arguments in case of vacancies, obscurity, and conflict of norms, furthermore to maintain the critical aspects of legal science as

⁸ Makarim. E. (2003). *Kompilasi Hukum Telematika*. Jakarta: Raja Grafindo Perkasa, hlm. 3 dalam Rosadi, S.D. (2015). *Cyberlaw Aspek Data Privasi Menurut Hukum Internasional, Regional, dan Nasional*. Bandung: Refika Aditama, p. 10.

⁹ Litbang Kompas. (2020). *Perlindungan Data Pribadi Kian Urgen*. terbit di harian kompas pada 27 Juli 2020. Diakses melalui <https://epaper.kompas.id/baca/kompaspagi/20200727#page/3>. Diakses pada 28 Juli 2020.

¹⁰ Hadjon, P.M. (1987). *Perlindungan Hukum Bagi Rakyat di Indonesia*. Surabaya: Bina Ilmu, p. 25.

¹¹ *Ibid.*, p. 2.

¹² Soekanto, S. (2006). *Pengantar Penelitian Hukum*. Jakarta: Penerbit Universitas Indonesia (UI Press), p. 52.

sui generis.¹³ In this study, the authors use the statute approach, which is the approach used by examining all laws and regulations relating to legal issues or issues to be discussed.¹⁴ The laws and regulations used are related to legal issues. In this study include; Law Number 11 of 2008 concerning Electronic Information and Transactions, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Implementation of Electronic Systems and Transactions (PP PMSE), Regulation of the Minister of Communication and Information Technology Number 20 of 2016 regarding Personal Data Protection.¹⁵

In this study, the authors used the library study method (library research) namely by making an inventory of statutory regulations and legal literature. Efforts are made to obtain secondary data in the form of primary, secondary and tertiary legal materials with documentation studies, namely by studying or critically examining legal documents that have a relationship with legal issues regarding protection. Law on personal data, which is the privacy right of e-commerce consumers.

3. Results and Discussion

3.1 The conception of Personal Data as Rights

Privacy is a very complex concept; academics have struggled for several centuries to be able to define and express their thoughts about the value of privacy itself;¹⁶ conceptually, Jeffrey Reiman defined the value of privacy as the protection of freedom, moral personality, and a diverse and critical inner life¹⁷ back in 1890 Samuel Warren and Louis Brandeis first called it "The Right to Privacy" defining that privacy is the right to enjoy life and the right to be alone and this legal development is inevitable and demands Legal recognition and protection to protect privacy.¹⁸ In line with regarding privacy as a right, Alan Westin also defines privacy as the right of individuals, groups or institutions to determine for themselves when, how, and the extent to which their information is communicated to others.¹⁹ The conception of privacy as something that must be protected is supported by the opinion of Lawrence Lessig which states that every human life there is always a part of an individual's life that can be known and monitored by other parties, so that protection is needed.²⁰ In contrast, legal protection is a need that can answer this need.

Moving on from the conceptions and definitions of the right to privacy and protection, Personal data are two things that are related to one another, which is personal data which is the property of each individual that needs to be protected and is one part of human rights that is universally recognized, which has been regulated in the Universal Declaration of Human Rights (UDHR) in the provisions of Article 12 which reads: "No one shall be subjected to arbitrary interference with his privacy, family, home correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or

¹³ Diantha, I.M.P. (2016). *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media, p. 12.

¹⁴ Marzuki, P.M. (2017). *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenada Media, p. 133.

¹⁵ *Ibid.*, p. 135.

¹⁶ Solove, D.J. dalam Westin. A. (2015). *Privacy and Freedom*. New York: Ig Publishing, p. ii

¹⁷ Djafar, W. (2014). *Memerhatikan perlindungan hak atas privasi dalam pengaturan dan praktik penyadapan di Indonesia*, p. 2. Diakses melalui <http://www.elsam.or.id> pada 30 Juli 2020.

¹⁸ Warren, S dan Brandeis, L.D. (1890). *The Right to Privacy*. *Harvard Law Review* Vol. 4 No. 5, p. 1.

¹⁹ Westin, A, *Op.Cit.*, p. 3

²⁰ Rosadi, S.D. (2009). *Cyber Law Perlindungan Privasi Atas Informasi Pribadi Dalam E-Commerce Menurut Hukum Internasional*. Bandung: Widya Padjajaran, p. 46.

attacks "on this provision stipulates that no one can be intervened in terms of privacy, family, honor and reputation. Everyone has the right to be protected by law against any form of intervention or attack,

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks upon his honor and reputation.
2. Everyone has the right to protection of the law against such interference or attacks.

According to Nihal Jayawickrama in his writing entitled *The Judicial Application of Human Rights Law, National, Regional and International Jurisprudence*, the provisions of Article 17 of the ICCPR includes the phrase "arbitrary" or "unlawful" which means against the law, so that the state is not only given the obligation to protect its citizens through regulations but must also prohibit violations of privacy,²¹ recognition of the right to privacy does not stop with the UDHR and ICCPR alone, this is also regulated in the European Convention for the Protection of Human Rights (ECHR) 1950 which uses the term private life. Article 11 of the 1969 American Convention On Human Rights (ACHR) regulates things that tend to be similar to the instrument In other international and regional laws, ACHR itself states that protection of privacy is a dignity, then the Cairo Declaration on Islamic Human Rights 1990 which speaks within the Islamic world's scope, which also recognizes that privacy is a right that must be protected. In 1967 the international community through the International Law Commission (ILC) which confirmed legal protection of privacy at the level of international law, while the ILC produced a recommendation including:²²

1. Privacy is included in the basic human rights that protect a person from the actions of other harmful parties (government or other individuals);
2. Privacy is the right to be left alone and the right not to be disturbed by others, which consists of the rights:
 - a. Not bullied life personal good life his family and life in the neighborhood where he lives;
 - b. Not disturbed by physical and mental integrity or moral and intellectual freedom;
 - c. His honor and reputation are not compromised;
 - d. Not bothered by disclosing personal things;
 - e. Not being bothered by all their activities;
 - f. Freedom of correspondence with anyone is not disturbed; and
 - g. Such privacy must be limited by balancing privacy with the rights of others and being limited by the public interest, national security, and economic interests of each country to avoid criminal acts and protect public health and morals.

Protection of the right to privacy is also recognized in Indonesia, namely in the constitution, in the provisions of Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which reads, "Everyone has the right to protection of personal, family, honor, dignity, and property. Which is under its authority, and is entitled to a sense of security and protection from the threat of fear to do or not do something that is a human right ", the Constitutional Court has also stated through Decision No. 5 / PUU-VIII / 2011, that the right to

²¹ Rosadi, S.D. (2015). *CYBER LAW Aspek Data Privasi Menurut Hukum Internasional, Regional, dan Nasional*. Bandung: Refika Aditama, p. 40.

²² Litmann, M. dan Carter-Ruck, P dalam Rosadi, S. D, Op.Cit., p. 44.

privacy is part of human rights that are derogable rights and the scope of rights to privacy includes information or right to information privacy, also known as data privacy.²³

3.2 Construction of E-Commerce Consumer Personal Data Protection Law as a right of privacy

The construction of regulations regarding legal protection of personal data which is a right to privacy in Indonesia is very behind when compared to countries in the European continent, this can be seen from several regulations that were initiated first, one of which is the General Data Protection Regulation (GDPR) or GDPR 2016/679 which has now been updated with the 2018 GDPR, which is seen as a charter regulating the protection rights of personal data in the European Union, for example and a comparison of several countries in the European continent that have responded quickly to the importance of protecting personal data is Belgium, which has had regulations regarding the protection of personal data since 1992, which became known as the "Law of 1992 on privacy protection when processing personal data", then in 2018 the Belgian Government has replaced the regulations with the Belgian Law of July 2018 on protection of natural persons with regard to the processing of personal data²⁴ Apart from Belgium, the Netherlands also has regulations regarding personal data known as *Wet Bescherming Persoonsgegevens*, the rest of the Netherlands has also establishing a Personal Data Protection Authority named *Autoriteit Persoonsgegevens* (AP) which is in accordance with most Data Protection Laws which require the establishment of a supervisory authority, AP as a Personal Data Protection Authority is subject to and based on the law on the GDPR, the General Data Protection Implementation Act (*Uitvoeringswet Algemene Verordening Gegevensbescherming*) and several other regulations.²⁵ The Netherlands also has regulations regarding personal data known as *Wet Bescherming Persoonsgegevens*. The rest of the Netherlands has also formed a Personal Data Protection Authority called *Autoriteit Persoonsgegevens* (AP), which is under most Data Protection Laws which require the establishment of the supervisory authority, AP as the Authority Protection of Personal Data is subject to and based on the law in the GDPR, the General Data Protection Implementation Act (*Uitvoeringswet Algemene Verordening Gegevensbescherming*) and several other regulations. The Netherlands also has regulations regarding personal data known as *Wet Bescherming Persoonsgegevens*. The rest of the Netherlands has also formed a Personal Data Protection Authority called *Autoriteit Persoonsgegevens* (AP), which is under most of the Data Protection Laws which require the establishment of supervisory authority, AP as the Authority Protection of Personal Data is subject to and based on the law in the GDPR, the General Data Protection Implementation Act (*Uitvoeringswet Algemene Verordening Gegevensbescherming*) and several other regulations. The rest of the Netherlands has also formed a Personal Data Protection Authority named *Autoriteit Persoonsgegevens* (AP), which is in accordance with most of the Data Protection Laws which require the establishment of supervisory authority, AP as the Personal Data Protection Authority is subject to and based on the law of the GDPR, the Protection Implementation Act General Data (*Uitvoeringswet Algemene Verordening*

²³ Niffari, H. (2020). *Perlindungan Data Pribadi Sebagai Bagian dari Hak Asasi Manusia atas Perlindungan Data Pribadi (Suatu Tinjauan Komparatif dengan Peraturan Perundang-undangan Negara Lain.)* Jurnal Yuridis Vol. 7 No. 1, p. 111

²⁴ Cordier, T.D dan Dubuisson. T. (2018). *New Belgian Data Protection Law Has Come Into Force.* Diakses melalui www.lexology.com/library/detail.aspx?g=62bedd2050c47b88996987b8142f718 diakses pada 30 Juli 2020.

²⁵ *Autoriteit Persoonsgegevens, Wetten.* Diakses melalui <https://autoriteitpersoonsgegevens.nl/over-privacy/wetten> diakses pada 30 Juli 2020.

Gegevensbescherming) and several other regulations. The rest of the Netherlands has also formed a Personal Data Protection Authority named Autoriteit Persoonsgegevens (AP), which is in accordance with most of the Data Protection Laws which require the establishment of supervisory authority, AP as the Personal Data Protection Authority is subject to and based on the law of the GDPR, the Protection Implementation Act General Data (Uitvoeringswet Algemene Verordening Gegevensbescherming) and several other regulations.

Although it is said to be left behind when compared to several countries in European continent, in 2016 the form of government attention began to show a glimmer of hope for the protection of personal data in Indonesia, namely through the Ministry of Communication and Information of the Republic of Indonesia by issuing a Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems (Permenkominfo 20 / 2016), the issuance of Permenkominfo 20/2016 is a follow-up to the government on the provisions of Article 15 paragraph (3) of Government Regulation Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions, which over time has now updated the Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE) which is also an implementing regulation of Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) and Law Number 19 of 2016 which is an amendment to Law Number 11 of 2008.

Concerning the construction of personal data protection, which is the privacy right of E-Commerce consumers in the latest PP PSTE when compared to the previous PP PSTE, the latest PP PSTE regulates more broadly about economic activities in the trade sector, which is based on The provisions of Article 2 of PP PSTE stipulate that trading is a form of designation of the Private Electronic System Operator (PSEP). The PSEP itself consists of people, business entities, and the public. Currently, the most relevant form of a PSEP organizer in the form of e-commerce, and the e-commerce platform itself, e-commerce or Trading through Electronic Systems (PMSE), is included in the scope regulated in Law Number 7 of 2014 concerning Trade²⁶, the Trade Law itself has delegated authority into a Government Regulation, which is now realized by Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems (PP PMSE) which further regulates PMSE or in other words it is called e-commerce, In answering problems related to the legal construction of protection e-commerce consumer personal data needs to see the definition of personal data regulated in positive law in Indonesia, Permenkominfo 20/2016 regulates the meaning of personal data in the provisions of Article 1 number 1 which reads: "Personal Data is certain personal data that is stored, treated, and guarded the truth and protected its confidentiality. "

The meaning of personal data regulated in this Permenkominfo has the same sound as the meaning of personal data that has been previously regulated in Article 1 number 22 of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, however in Article 1 point 29 PP PSTE gives a different meaning to personal data, which reads: "Personal Data is any data about a person, both identified and/or individually identifiable or combined with other information, either directly or indirectly through Electronic and/or non-electronic systems." This difference in understanding is an inconsistency in understanding personal data so that it will create a blur of norms that end up in legal uncertainty.

²⁶ Fadhlika, Z.A. dan Holish, A. M. (2019) Mengeksistensikan Kembali Budaya Malu Dalam Praktik Penipuan Jual Beli Online Untuk Meningkatkan Perlindungan Konsumen di Era Revolusi 4.0. Jurnal Lex Scientia Law Review Vol. 3 No. 2, November, p. 156

3.2.1 Legal Protection of Personal Data as Consumer Privacy Rights E-Commerce

Legal protection of personal data regarding obligations and sanctions imposed on e-commerce platforms in the event of a violation of consumer privacy rights, the obligations of e-commerce platforms are regulated in the provisions of Article 14 PP PTSE, which states that Electronic System Operators are required to implement the principles of personal data protection in processing personal data which includes collection and processing of personal data in accordance with its purpose, and by guaranteeing the rights of the owner of personal data, which is carried out accurately, completely and in this case the e-commerce platform as PSEP is obliged to protect the personal data of its consumers from loss, misuse of access, and unauthorized disclosure, as well as alteration or destruction. Furthermore, what is meant in protecting consumer data includes obtaining and collecting, processing and analyzing, storing. In line with the provisions of Article 14 PP PSTE, PP PMSE provides obligations for e-commerce platforms as business actors. This is regulated in Article 58 paragraph PP PMSE, which reads:

- 1) Every personal data is treated as the personal property of the person or Business Actor concerned;
- 2) Every Business Actor obtaining personal data as referred to in paragraph (1) is obliged to act as a mandate bearer in storing and controlling personal data in accordance with the provisions of laws and regulations.

In the elucidation of the provisions of Article 58 paragraph (2) PP PMSE it is explained that the "mandate bearer" is the controller of personal data in accordance with its allotment. In carrying out the mandate for the storage and use of personal data, it refers to the standards for protecting personal data in accordance with evolving business practices and practices. Still related to the provisions of Article 58, Article 59 paragraph (1) and paragraph (2), it is stipulated that Business Actors are required to keep personal data in accordance with personal data protection standards or the prevalence of developing business practices, the meaning of customary business practices that develop itself is still unclear and can create multiple interpretations and are vulnerable to becoming loopholes that business actors can exploit to become disobedient. Personal data protection standards regulated in Article 59 paragraph (2) PP PMSE have eight points of protection principles, in the explanation of Article 59 paragraph (2) it is also explained that personal data protection standards take into account the existence of European data protection standards and/or APEC Privacy Frameworks. APEC Privacy Frameworks actually apply basic principles in accordance with the OECD Guidelines Governing The Protection of Privacy and Transborder Flows of Personal Data 1980. Other obligations imposed on e-commerce platforms are also regulated in Permenkominfo 20/2016 which in the provisions of Article 28 letter b, which states that every electronic system operator is obliged to maintain the truth, validity, confidentiality, accuracy and relevance as well as conformity to obtain, collect, processing, analyzing, storing,

E-commerce consumer personal data protection law construction can not released from its relationship with consumer protection law, return In guaranteeing consumer protection, there are mandated obligations by Law Number 8 of 1999 concerning Consumer Protection (PK Law), Article 4 letter a of the UUPK regulates that consumers have the right to comfort, security and safety in consuming goods and/or services, in this case, means e-services Commerce organized by e-commerce platforms must guarantee the right to privacy as a human right owned by consumers for personal data relating to the comfort and security

of consumers who use e-commerce services. Both the Consumer Protection Law and PP PMSE use the terms consumers and business actors as legal subjects, PP PMSE regulates the relationship between consumers and business actors who are traders (merchants) and trade operators through an electronic system which is a business actor providing electronic communication facilities used for trade transactions. Trading through an electronic system in Article 4 PP PMSE is a private relationship between business actors and consumers. The requirement of business actors to protect personal data of consumers' personal data as e-commerce users is also reaffirmed in the provisions of Article 26 a PP PMSE, namely protection of consumers. The provisions to protect the personal data of e-commerce consumers are sole to strengthen the position of consumers towards business actors because they are related to consumer data.²⁷

3.2.2 Responsibility Answer Law and Settlement Disput on Violation of E-Commerce Consumer Personal Data

In the event of a violation of the personal data of e-commerce consumers, it means that the consumer's right to privacy has been violated, on the one hand, the e-commerce platform means that it has been negligent, and violates the provisions that require the protection of personal data as regulated both in the provisions of Article 14 and Article 37. paragraph (1) PP PSTE, which regulates the existence of information regarding the guarantee of privacy and/or protection of personal data, this obligation is also regulated in Article 58 and Article 59 of PP PMSE. Reflecting on the violation of these obligations, there is a legal responsibility imposed on the e-commerce platform. Hans Kelsen put forward a traditional theory that analyzes legal responsibility. There are two types of responsibility, namely responsibility based on mistakes²⁸ Data leakage is the civil responsibility of the e-commerce platform as the Private Electronic System Operator. Abdulkadir Muhammad in his theory of legal responsibility, states that legal responsibility is closely related to acts against the law (tort liability) .²⁹

Reflecting on the theory of legal responsibility, during the COVID-19 pandemic, at least there were several cases of violations of personal data of e-commerce consumers, some of which were the leakage of personal data from Tokopedia consumers, which resulted in a lawsuit against the Indonesian Consumer Community (KKI) against the Minister. Communications and Information Technology of the Republic of Indonesia as defendant I and PT. Tokopedia as defendant II who is registered in case register number 235 / Pdt.G / 2020 / PN Jkt.Pst.³⁰ Looking back at the positive law, PP PMSE has regulated administrative sanctions in Article 80 in the form of written warnings, being included in supervision priorities, being blacklisted, temporarily blocking PMSE services both domestically and abroad, and revoking business licenses. That way PP PMSE still has weaknesses in the absence of sanctions that regulate the existence of compensation for losses suffered by consumers due to negligence that may be made by e-commerce platforms, so PP PMSE cannot stand alone, as is the case with PP PSTE, which is deep The provisions of Article 100

²⁷ Rongiyati, S. (2019). *Perlindungan Konsumen Dalam Transaksi Dagang Melalui Sistem Elektronik (Consumer Protection in E-Commerce)*. Jurnal Negara Hukum: Membangun Hukum Untuk Keadilan dan Kesejahteraan Vol 10 No. 3, p. 11.

²⁸ Kelsen, H. (2006). *Teori Hukum dan Negara*. Bandung: Nusa Media, p. 95

²⁹ Muhammad, A. (1999). *Hukum Perusahaan Indonesia*. Bandung: Citra Aditya Bakti, p. 50.

³⁰ Informasi Detail Perkara Nomor 235/Pdt.G/2020/PN Jkt. Pst diakses melalui sipp.pn-jakartapusat.go.id/index.php/detail_perkara diakses pada 1 Agustus 2020.

regarding administrative sanctions do not regulate any compensation. This provision is similar to Article 36, which is regulated in Pemenkominfo 20/2016. With no regulation regarding compensation in the event of an unlawful act in the form of corrupt personal data, the only reference for civil liability in Article 1365 of the Civil Code.

In the event of a dispute over personal data, on a civil basis the parties can take litigation or other dispute resolution mechanisms³¹ which in the provisions of the explanation of Article 72 paragraph (1) are explained in the form of consultation, negotiation, mediation, or arbitration, in paragraph (2) it is also possible for the parties to take the Online Dispute Resolution (ODR) which returns to the agreement of the parties. ODR itself is an alternative method of dispute resolution carried out online, without the need for face to face between the parties. As for alternative dispute resolution, such as mediation, negotiation, and arbitration, all are done online / online. Basically, ODR is the same as conventional dispute resolution. However, what distinguishes it is using the internet media.³²

Wettelijk dispute resolution over negligence of regulated e-commerce platforms more in the civil domain. A lawsuit is possible, related to consumer protection, the PK Law calls for a lawsuit either individually, or with the Community Consumer Protection Agency (LPKSM) such as KKI against PT. Tokopedia or class action as contained in Article 46 paragraph (1) letter b, apart from that the PK Law also calls for out-of-court settlement through the Consumer Dispute Resolution Agency (BPSK) which is contained in the provisions of Article 52 of the PK Law.

4. Conclusion

Privacy is a very complicated concept. Samuel Warren and Louis Brandheis first called it "The Right to Privacy", defining that privacy is the right to enjoy life and the right to be alone. This legal development is inevitable and demands recognition and protection. Law to protect privacy, while legal protection is a need that can answer this need. The definition of the right to privacy and protection of personal data are two things that are related to each other, which is personal data, which is the property of each individual that needs to be protected and is one part of human rights that is universally recognized, both legal instruments. International, regional in the form of UDHR, ICCPR, ILC,

Looking at comparisons with several countries in the Continent, the construction of personal data protection laws for e-commerce consumers is lagging. However, the government has slowly shown its concern with Permenkominfo 20/2016, the ITE Law, PP PSTE, and PP PMSE, which specifically regulate e-commerce, although there is still a vagueness of norms on the meaning of personal data regulated in PP PMSE and PP PSTE and the Population Administration Law. Although the laws and regulations in the e-commerce sector tend to lag behind e-commerce platforms' obligations, this can be seen in the provisions of 14 PP PSTE and Articles 58 to 59 PP PMSE. However, there is still a lack of substance in criminal and civil sanctions for personal data violations. Which can appear at a later date. On the other hand, consumer protection also plays an important role in protecting consumer personal data in e-commerce, especially during the COVID-19 pandemic. Moving on from the existing regulations,

³¹ Pasal 72 ayat (1) Peraturan Pemerintah Nomor 80 Tahun 2019 tentang Perdagangan Melalui Sistem Elektronik

³² Iqbal, J. (2018) Perlindungan Bagi Konsumen Online Marketplace Melalui Mekanisme Online Dispute Resolution (ODR). *Jurist-Diction* Vol. 1 No. 2, p. 572-573

it has also been regulated regarding dispute resolution, in which disputes regarding the protection of personal data in terms of the rights of e-commerce consumers can take efforts to resolve the litigation sector through a lawsuit to a court or alternative mechanisms for dispute resolution outside the court.

Suggestion

Construction of the legal protection of personal data, which is the privacy right of e-commerce consumers which is still part of human rights, shows shortcomings and inconsistencies in norms in terms of understanding personal data. The author advises the government so that in its legislative function, the government revises the meaning of personal data both regulated in the Population Administration Law and Permenkominfo 20/2016 with PP PSTE, which shows a difference in meaning. From consumer protection, the authors consider it necessary to revise the Consumer Protection Law, which has not comprehensively regulated consumer protection in e-commerce.

If the liability for damages due to losses that may befall consumers has not been regulated related to the leakage of personal data, the government may regulate it by revising the laws and regulations in the e-commerce sector and laws that contain the substance of personal data protection, as the authors hope to provide. There is also suggested that the government can quickly implement the Law on the Protection of Personal Data which is still a legal ideal in the form of a Draft Law.

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