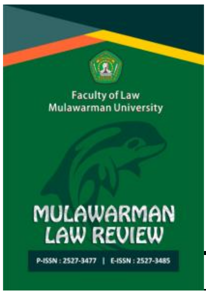

MulawarmanLawReview

Volume 9 Issue 1, Juni 2024
ISSN Print: 2527-3477, ISSN Online: 2527-3485

Publisher: ***Faculty of Law, Mulawarman University, Indonesia.***

Liability of Business Actors for the Protection of Consumer Personal Data

Fuad Hasan

Faculty of Law, Universitas Indonesia, Indonesia. E-mail: fuad129@gmail.com

ABSTRACT

The Consumer Protection Law does not expressively verbis state the protection of consumer personal data as part of consumer rights that must be protected by business actors. The existence of cybercrime and the negligence of business actors can cause leakage of consumer personal data to be something that needs to be anticipated. This paper aims to discuss the application of the PDP Law to consumer protection of personal data and how the form of liability of business actors in the perspective of the PDP Law in ensuring consumer protection. This paper uses normative research with a conceptual approach, a statutory approach, and a case approach. This paper also concluded that the handling of consumer disputes related to personal data breaches should be handled in parallel by applying the PDP Law and the Consumer Protection Law. Business actors should protect consumers' personal data based on the provisions prohibiting disclosing personal data unlawfully. The application of the principle of absolute accountability or strict liability is intended so that business actors can be fully responsible for the interests of consumers. In the event that there is negligence on the part of the business actor, resulting in a violation of the protection of consumers' personal data. Business actors cannot escape responsibility for any reason because they have neglected to protect consumers' personal data.

Keywords: *Consumer Protection, Business Actors, Personal Data Protection*

Citation: Hasan, Fuad. 2024. "Liability of Business Actors for the Protection of Consumer Personal Data". *Mulawarman Law Review* 9 (1): 12-28. **https://doi.org/10.30872/mulrev.v9i1.1305**.

INTRODUCTION

Citizens who enter public service cannot be separated from their civil rights as stated by Karel Vasak as the first generation of Human Rights.[1] The Constitution guarantees freedom of thought and expression for everyone in society. Even before the release of the Universal Declaration of Human Rights by the United Nations in 1948,[2] The 1945 Constitution of the Republic of Indonesia (1945 Constitution) first regulated the recognition and protection of human rights. After the amendment to the 1945 Constitution, the right to privacy also included the protection of personal data and became part of the constitutional rights of citizens. The provisions for guaranteeing the protection of personal data are contained in Indonesia's Constitution which states that

[1] Satya Arinanto, (2008), *Hak Asasi Manusia dalam Transisi Politik di Indonesia,* Jakarta: Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, h. 78.

[2] Moh. Mahfud MD, (2011), *Membangun Politik Hukum, Menegakkan Konstitusi,* Jakarta: Rajawali Pers, *h. 203 see* Tarigan, J. P, (2017), *Akomodasi Politik Hukum di Indonesia terhadap Hak Asasi Manusia Berdasarkan Generasi Pemikirannya.* Jurnal Konstitusi, 14(1), h. 168-187.

every person has the right to protection for the protection of his/her self, family, honour, dignity and property under his or her control, and has the right to a sense of security. and protection from the threat of fear of doing or not doing something that constitutes a human right. Apart from constitutional protection, Indonesia's participation as a party to the International Covenant on Civil and Political Rights (ICCPR) is also strengthened by Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights as the Indonesian government's commitment to protecting the privacy and personal data of its citizens. [3]

A good law is a law that has the maximum benefit for humans. If the existing law is unable to solve social problems in the social life of the community, nation and state, or if the law because of its rigid procedures fails to achieve substantive justice, then at that time the community's needs will be resolved by establishing progressive legal rules.[4] Personal data protection stems from the importance of protecting human rights, especially individual privacy rights. In an era of increasingly sophisticated and connected technology, individual personal information can be easily collected, sent, and stored by various parties, both by individuals and by companies and governments. Without adequate protection, individuals' personal information may be exposed, used without permission, or misused by irresponsible parties. In the digital era of Industrial Revolution 4.0, an era that emphasizes digital economic patterns, access to information stored digitally in Big Data.[5] With Big Data, opportunities can be opened for business actors so they can determine business strategies and innovations related to processing, analyzing, and storing consumer data with high volatility quickly and efficiently. because, if business actors can process and utilize the information available in large, varied, complex, and fast quantities, they can gain great benefits from it. The challenge for consumer protection is how consumer personal data can be protected in the context of business activities or transactions in the digital era. By providing personal information as a condition for carrying out business processes or transactions, the responsibility and obligation of business actors in protecting personal information from consumers becomes greater. In some cases, leakage of consumer personal data, whether due to cybercrime or negligence by business actors, which causes consumer personal data to leak, is something that needs to be anticipated.

In 2020, there was a hack on Tokopedia that leaked around 91 million accounts from Tokopedia consumers in the form of personal data in the form of full names, places of birth, telephone number, gender, and email.[6] Then the latest is that there is an alleged leak of consumer data at Bank Syariah Indonesia,[7] A hacker group called LockBit

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[3] Djafar, W, (2019), Hukum perlindungan data pribadi di indonesia: lanskap, urgensi dan kebutuhan pembaruan. In Seminar Hukum dalam Era Analisis Big Data, Program Pasca Sarjana Fakultas Hukum UGM (Vol. 26), h. 6.

[4] Orin Gusta Andini, "Progressive Legal Framework for the Regulation of Sexual Violence Crimes in Indonesia," *Jurisprudentie* 10, no. 1 (2023): 37–46, https://doi.org/10.24252/jurisprudentie.

[5] Pujianto, Agung, Awin Mulyati, dan Rachmawati Novaria, (2018), *Pemanfaatan Big Data Dan Perlindungan Privasi Konsumen Di Era Ekonomi Digital,* Majalah Ilmiah BIJAK *15.2*, h. 128.

[6] Herryani, MRTR, & Njoto, H. (2022), Perlindungan Hukum Terhadap Kebocoran Data Pribadi Konsumen Online Marketace, *Transparansi Hukum*, *5*(1), h. 114.

[7] Moh. Khory Alfarizi, 15 Juta Data Nasabah BSI Diduga Bocor, Pakar Siber: Hati-hati Serangan Phising ke Pemilik Rekening, 15 Juli 2023, https://bisnis.tempo.co/read/1726521/15-juta-data-nasabah-bsi-diduga-bocor-pakar-siber-hati-hati-serangan-phising-ke-pebangun-rekening

allegedly managed to hack into Bank Syariah Indonesia (BSI) customer data and disseminate it on the internet black market or dark web. They also made an offer of Rp 295.61 billion to BSI to have the customer data returned. BSI has confirmed the cyberattack and has conducted an evaluation and temporarily shut down some of its services. LockBit claims to have stolen around 1.5 terabytes of internal BSI data, including 15 million BSI user data. This leak could cause losses to consumers and has the potential for carding, phishing, and scamming attacks on consumers as account owners for their applications or accounts. This information can be used by irresponsible parties to commit fraud or other crimes, which can harm consumers.[8]

Law number 8 of 1999 concerning Consumer Protection (Consumer Protection Law) does not explicitly mention the protection of personal data as part of consumer rights that must be protected by business actors. The general regulatory scope of the Consumer Protection Law basically covers consumer protection regarding the use of goods and/or services[9] The non-inclusion of personal data protection in the Consumer Protection Law leaves a hole for business actors as data controllers who seem to separate their obligations to manage data from the provision of goods and/or services to consumers. PDP Law offers special protection to individuals' personal information collected and processed by third-party entities, such as companies or organizations. It includes regulations on the collection, use, storage, and deletion of personal data. On the other hand, the Consumer Protection Law generally focuses more on consumer protection in commercial transactions, including rights such as product safety, clear and honest information, and dispute resolution. While both aim to protect individuals, the focus and scope of protection of the two laws are different. Therefore, in the case of Tokopedia and Bank Syariah Mandiri, the obligation to protect consumers is not only to provide goods and services but also to protect consumers' personal data.

However, in the Explanation of the Consumer Protection Law, it is stated as follows: "Besides that, the Law on Consumer Protection is basically not the beginning and end of the law that regulates consumer protection, because until the formation of this Law on Consumer Protection there have been several laws who's the material is to protect the interests of consumers. So it can be concluded that consumer protection also includes the protection of personal data managed by business actors.

Before the promulgation of the PDP Law, there were several laws and regulations that regulated the protection of personal data related to consumer interests. Some of these regulations include Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE Law), Government Regulation Number 80 of 2019 concerning Trading via Electronic Systems, Government Regulation Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions, Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 20 of 2016

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[8] Marcelliana, Vanesha, et al. (2023), Penerapan Perlindungan Konsumen Terhadap Nasabah PT. Bank Syariah Indonesia dalam Kasus Kebocoran Data Nasabah, *Deposisi: Jurnal Publikasi Ilmu Hukum* 1.2, h. 183.

[9] Suwandono, A, (2016), Implikasi Pemberlakuan Undang-Undang Otoritas Jasa Keuangan Terhadap Perlindungan Konsumen Jasa Keuangan Dikaitkan Undang-Undang Perlindungan Konsumen*, Jurnal Persepektif, 21(1).*, h. 2.

concerning Protection of Personal Data in Electronic Systems, Regulation where the Financial Services Authority Number

6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector, and so on. Based on the provisions of Article 75 of the PDP Law, all provisions of laws and regulations governing Personal Data Protection are declared to remain in effect as long as they do not conflict with the provisions of this Law. However, the PDP Law is still in the transition period and currently does not have derivative regulations.

It can be understood that the application of the Consumer Protection Law does not imperatively require the protection of personal data so it becomes a problem when there is a violation of consumers' data. The regulations related to personal data protection as mentioned above still partially regulate the rights of data owners, but have not regulated the obligations of personal data controllers and personal data processors in processing the personal data of consumers. The legal relationship between consumers and business actors is based on an agreement that gives rise to legal consequences for the parties. The legal consequences are in the form of reciprocal rights and obligations between the parties. The type of agreement most often encountered in society is a sale and purchase agreement for goods and/or services.[10] Apart from what is agreed between the parties, the rights and obligations of consumers and business actors based on the Consumer Protection Law are also attached to it. In the context of consumer personal data, a personal data protection regime is also attached. So that the obligation to maintain data for consumer personal data managers and consumer personal data processors becomes obligatory after this PDP Law comes into force.

Based on this background, this paper aims to discuss the application of the PDP Law to consumer protection of personal data and how the form of liability of business actors in the perspective of the PDP Law in ensuring consumer protection. This paper will analyze regulations related to consumer protection, namely Law Number. 8 of 1999 concerning Consumer Protection which discusses what scope is protected under the Consumer Protection Law, and Law Number 27 of 2022 concerning Personal Data Protection. that Personal data protection and consumer protection both have great urgency in today's digital era, although personal data protection and consumer protection have different focuses, they are interrelated and important in ensuring individual rights are protected in an increasingly advanced digital economy.

METHOD

This research is normative legal research with an exploratory descriptive research typology. The approach that the author takes in this legal research uses a statutory approach and a conceptual approach. In the statutory approach, the author refers to the review of laws and regulations governing consumer protection, namely Law Number 8 of 1999 on Consumer Protection and Law Number 27 of 2022 on Personal Data Protection. In the conceptual approach, the author conducts a review of the issues

[10] Putri, Wahyu Suwena, dan Nyoman Budiana, (2018), *Keabsahan Kontrak Elektronik Dalam Transaksi E-commerce ditinjau dari hukum perikatan*, Journal of Legal Analysis 1.2, h. 300-309. In R. Setiawan SH, 1999, *Principles of Engagement Law*, Putra A Bardin, Bandung, h.51.

discussed. The research data are collected and analysed from various primary legal materials, secondary legal materials, and tertiary legal materials available. Data collection is carried out by literature study of books, articles, journals, research results, and other laws and regulations. Data analysis is carried out descriptively and qualitatively in discussing the formulation of research problems.[11]

DISCUSSION

The Application of The Protection Data Personal Law to Consumer Protection of Personal Data

In an increasingly connected digital ecosystem, personal data has become increasingly vulnerable to privacy breaches. Personal data protection ensures that individuals' personal information is not misused or accessed without their permission. As businesses collect large amounts of data from consumers without adequate protection, this personal data can be used for unintended purposes, such as aggressive ad targeting or even identity fraud. In consumer transactions, there is often an imbalance of power between consumers and companies. Personal data protection gives consumers more control over their personal information, thereby strengthening their position in the transaction. Strong data protection can increase innovation towards the development of new services and technologies for businesses. It also strengthens consumers' trust in businesses that manage their data. Personal data protection is increasingly governed by laws and regulations in many jurisdictions. Compliance with these regulations is not only a legal obligation, but also an important factor in building a business reputation and avoiding sanctions that may arise from data breaches.

Nonet and Selznick through responsive legal theory place law as a means of responding to social provisions and public aspirations,[12] respond to the legislative body as a lawmaker to anticipate the needs of society in accommodating the protection of personal data and the scope of what this includes[13] The right to protection of personal data develops from the right to respect private life "the right to private life".[14] Thus, this person is the main holder of the right to protect personal data.[15] Warren and Brandeis call it control over one's information,[16] in "The Right to Privacy" it is explained that "Privacy is the right to enjoy life and the right to be left alone and this development of

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[11] Soerjono Sukanto, (1986), *Pengantar Penelitian Hukum,* Universitas Indonesia Press, Jakarta, h. 69.

[12] Silaban, M. Bakti Saleh, Idham, and Erniyanti Erniyanti, (2022), Analisis Yurudis Proses Penyidikan Tindak Pidana Kekerasan Seksual Menurut Hukum di Indonesia: Analisis Teori Hukum Positif dan Teori Hukum Responsif, *Kajian Ilmiah Hukum dan Kenegaraan 1.2*, h. 75.

[13] Philippe Nonet & Philip Selznick, (2003), *Hukum Responsif, Pilihan di Masa Transisi.* Penerjemah Rafael Edy Bosco. Ford Foundation-HuMa, Jakarta, h.34.

[14] European Union Agency for Fundamental Rights and Council of Europe, Supra no 5. 37

[15] Sinta Dewi Rosadi and Garry Gumelar Pratama, (2018), Perlindungan Privasi dan Data Pribadi dalam Era Ekonomi Digital di Indonesia*, Law Journal, Vol. 4 Number 1, Padjadjaran University*, h. 93. See Saragih, LK, Budhijanto, D., & Somawijaya, S, (2020*),* Perlindungan hukum data pribadi terhadap penyalahgunaan data pribadi pada platform media sosial berdasarkan undang-undang republik indonesia nomor 19 tahun 2016 tentang perubahan atas undang-undang nomor 11 tahun 2008 tentang informasi dan transaksi elek, *JOURNAL OF LAW DE' RECHTSSTAAT*, 6(2), h. 125-142.

[16] Kulhari, Shraddha. (2018), *Data protection, privacy and identity: A complex triad,* Building-Blocks of a Data Protection Revolution: The Uneasy Case for Blockchain Technology to Secure Privacy and Identity, h. 23.

the law was inevitable and demanded of legal recognition."[17] Data subjects (individuals) basically have full control over information about themselves.[18] With this, the state is obliged to be present to protect individuals including personal data as stated in Article 28G Paragraph (1) of the 1945 Constitution.

The national regulatory framework for comprehensive personal data protection is regulated in the PDP Law. The regulation of the rights of personal data owners in the PDP Law makes the General Data Protection Regulation (GDPR) in the European Union a reference, although the substance of personal data protection in the GDPR is actually more related to applicable issues of race, ethnicity, politics, health, gender, and sexuality.[19] Before the promulgation of the PDP Law, regulations related to personal data information in Indonesia were still partially regulated in several sectoral laws and regulations.[20] The principles in the PDP Law generally regulate personal data criteria, personal data controllers and processors, personal data protection obligations, prohibitions on personal data protection, and so on. In this way, personal data controllers and managers can guarantee the security of personal data and the comfort of personal data owners, so that personal data is not misused by unauthorized parties. In line with this, the Consumer Protection Law explains that consumers have the right to comfort, security, and safety in consuming goods and/or services as well as rights regulated in other statutory provisions as stated in Article 4 letters a and letter i of the Law. Consumer Protection, namely as long as the consumer carries out his obligations as stated in Article 5 of the Consumer Protection Law. The rights stipulated in the provisions of other laws and regulations as referred to in Article 4 letter i of the Consumer Protection Law, can also include the rights stipulated in the PDP Law including the protection of consumer personal data or the rights stipulated in other *laws* and regulations as it is also explained in the Elucidation of the Consumer Protection Law which states that there are laws *governing* consumer protection, *in several laws whose material protects the interests of consumers.* Thus, the PDP Law can complement what is limited in the Consumer Protection Law, especially regarding the management or control of consumer personal data by businesses that manage consumer personal data.

The protection provided under the Consumer Protection Law is the protection of a product produced by business actors in the form of goods and/or services. On the other hand, the term product in Consumer Law is still general, partial, and not comprehensive, so it does not guarantee certainty and gives rise to many different interpretations

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[17] Samuel Warren and Louis D. Brandeis, (2015), The Right to Privacy, *Harvard Law Review ol. 4, 1890*, h. 1. see Sinta Dewi Rosadi, (2015), *Cyber Law: Aspek Data Privasi Menurut Hukum Internasional, Regional, dan Nasional*, cetakan pertama, Refika Aditama: Bandung, h. 23.

[18] Faiz Rahman, (2021), Kerangka Hukum Perlindungan Data Pribadi dalam Penerapan Sistem Pemerintahan Berbasis Elektronik di Indonesia, *Jurnal LEGISLASI INDONESIA Vol 18 No. 1*, h. 81-102 see Bart van der Sloot. (2017), "Legal Fundamentalism: Is Data Protection Really a Fundamental Right?". In Ronald Leenes, et al (Eds).. Data Protection and Privacy: (In)visibility and Infrastructures. Switzerland: Springer International Publishing, h. 5.

[19] Article 9 EU GDPR "*racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person person's sex life or sexual orientation*". See also The Conversation.com, Indonesia really needs a personal data protection law https://theconversation.com/indonesia-sebuah-memerlukan-undang-undang-perlindungan-data-personal-92607

[20] Pratana, I.W.A.W, (2021), Urgensi Pengaturan Mekanisme Pemanfaatan Data Pribadi Dalam Rancangan Undang-Undang Perlindungan Data Pribadi, *Lex Generalis Law Journal, 2(8)*, h. 701-721.

regarding what products are protected, and in particular to the application of statutory provisions related to consumer protection of certain services. Therefore, the handling of consumer dispute cases in certain sectors needs to be complemented or attached to other sectoral laws in accordance with the type of goods and services respectively. Such as banking services with the Banking Law, *e-commerce* with the ITE Law, telecommunications with the Telecommunications Law, and others. So based on this, in legal protection for consumers against business actors who carry out business activities to provide services to consumers, then control or manage consumer personal data, can apply the PDP Law to consumer dispute lawsuits in the event that the consumer case involves actions from business actors that result in leakage of personal data which is a different object focus with the term product in the Consumer Protection Law. Therefore, the handling of consumer disputes related to personal data breaches should be handled in parallel by applying the PDP Law and the Consumer Protection Law. Another reason why the handling should be done in parallel is because the PDP Law applies during the transition period, namely until October 17, 2024, as a full legal product in Indonesia as stated in Article 74 of the Transitional Provisions of the PDP Law. During the transition period, the PDP Law does not yet have derivative regulations.

Compensation in the PDP Law is regulated in Article 12 where the Personal Data Subject has the right to sue and receive compensation for violations of the processing of Personal Data about him in accordance with the provisions of laws and regulations. Because there is no implementing regulation regarding the procedure for compensation for violations, it can parallel use the compensation mechanism by applying the Consumer Protection Law. The Consumer Protection Law provides protection for both consumers and business actors in accordance with their rights and obligations. Consumers can defend their rights by demanding compensation based on Article 4 and Article 5 of the Consumer Protection Law regarding consumer rights and obligations. However, The Consumer Protection Law only categorizes several forms of producers that can be sued, namely business actors in general as mentioned in Article 19, advertising business actors in Article 20, importers in Article 21, other business actors in Article 24, and producers of goods whose use is sustainable in Article 25 Consumer Protection Law.

This is why the provisions of laws and regulations related to personal data protection can complement consumer dispute resolution, especially in comprehensive personal data protection. Because the legislation before the PDP Law existed, it did not yet regulate criminal sanctions. The protection of personal data as regulated in the ITE Law, namely in Article 26, is not imperative, the protection of personal data is civil in nature through lawsuits, that is, if it is violated, compensation can be sued. Likewise, in the derivative regulations, namely Government Regulation Number 71 of 2019, the sanctions imposed in Article 100 paragraph (2) of Government Regulation Number 71 of 2019 are also in the form of administrative sanctions, including "written warnings, administrative fines, temporary suspension, termination of access, and/or removed from the list" when business actors who control consumer data fail to safeguard consumer personal data.

Referring to Government Regulation Number 71 of 2019, in Article 14 paragraph (5), when a business actor fails to safeguard personal data, the business actor is required to notify the data owner of the leak of consumers' personal data in writing. The provisions in Article 14 paragraph (5) are also the same as the provisions in Article 46 of the PDP Law, but even further the PDP Law regulates the mechanism when there is a failure in protecting personal data by requiring written notification no later than 3 x 24 (three times two twenty-four) hours to consumers as Personal Data Subjects and institutions that will be established based on the PDP Law which contains: "Disclosed Personal Data; when and how Personal Data is disclosed; and efforts to handle and recover from disclosure of Personal Data by the Personal Data Controller." If it is violated, you will receive administrative sanctions as stated in Article 57 paragraph (1) of the PDP Law, from written warnings to administrative fines. However, this provision cannot necessarily eliminate the element of blame on business actors for their failure to protect consumers' personal data.

In the event of personal data leaks occurring and resulting in loss to consumers, the responsibility of business actors will not be separated from them as stated in Article 19 paragraph (1) of the Consumer Protection Law which states "that business actors are responsible for providing compensation for damage, pollution and/or consumer losses resulting from consuming goods and/or services produced or traded.[21] The same provisions regarding compensation are also contained in the PDP Law, Article 12 paragraph (1) states "that Personal Data Subjects have the right to sue and receive compensation for violations of the processing of Personal Data about themselves in accordance with the provisions of statutory regulations." The rules related to lawsuits and requests for compensation under the PDP Law are regulated in a Government Regulation, but until now the Government has not issued the Government Regulation. The absence of procedures for compensation for violations of the PDP Law can also be overcome by handling in parallel by applying the PDP Law along with the Consumer Protection Law.

The application of sanctions for violations of the Consumer Protection Law and the PDP Law consists of administrative sanctions and criminal sanctions. Administrative sanctions in the form of payment of compensation determined by the Consumer Dispute Resolution Agency (BPSK) use the provisions of the Consumer Protection Law, whereas in the PDP Law, administrative sanctions are imposed by institutions established based on the PDP Law, which until now this institution has not been established. Meanwhile, criminal sanctions consist of imprisonment and fines as stated in Article 60, Article 62, and Article 63 of the Consumer Protection Law and are limited to product form categories mentioned in the Consumer Protection Law. Apart from that, the Consumer Protection Law does not concretely determine whether business actors fulfill the elements of a criminal act in consumer protection, considering that criminal prosecution is an alternative, namely that it can be carried out against business actors. Regarding these criminal sanctions, there are similarities between the Consumer Protection Law

[21] Setyawati, DA, Ali, D., & Rasyid, MN, (2017), Perlindungan Bagi Hak Konsumen dan Tanggung Jawab Pelaku Usaha Dalam Perjanjian Transaksi Elektronik, *Syiah Kuala Law Journal, 1(3)*, h. 44.

and the PDP Law, namely that they are ultimum remedium.[22] The existence of criminal sanctions is the last option in resolving disputes. At least there are provisions that are imperative for business actors to be more concerned about their obligations to protect personal data from consumers. Therefore, when resolving consumer disputes related to personal data, only use the Consumer Protection Law. Do not provide sanctions that can have a deterrent effect on perpetrators of violations of personal data protection.

Liability of Business Actors Based on the Perspective of the PDP Law in Ensuring Consumer Protection

In principle, consumer protection law is always related to other legal fields, as explained previously, because in each field there is one party, namely the consumer, for example, in banking services there is a bank with customers, in e-commerce there is a marketplace with consumers, and so on, so that Consumer protection law cannot be limited only to the Consumer Protection Law. The Consumer Protection Law outlines several forms of responsibility for business actors, especially for services, including:[23] a.) Responsibility is based on a contract (contractual liability), namely the responsibility of professional service providers and commercial service providers who have a direct relationship between consumers and service providers with measurable rights and obligations. In terms of responsibility based on contracts (contractual liability), consumers can sue business actors based on breach of contract, broken promise, or default. However, if it is not agreed, it is possible that the liability lawsuit may be closed; b.) Responsibility is based on unlawful acts (tort liability), namely the responsibility of professional service providers who have a direct relationship between consumers and service providers with immeasurable rights and obligations. This responsibility is called professional responsibility which uses direct responsibility (strict liability).

In banking services or digital economy-based business transactions, agreements are usually used in the form of standard contracts. A standard contract does not occur on the basis of a proportional relationship between the parties, but the agreement occurs in such a way that one of the parties has prepared standard terms in the form of an agreement that has been provided. According to Mariam Darus Badrulzaman, with the wider use of standard contracts, business actors will achieve efficiency in terms of costs, energy, and time.[24] That way, business actors can reach more consumers, and each consumer can access all the latest information on an ongoing basis, and can encourage the creativity of business actors effectively and accurately, with the dissemination of information conveyed continuously, so as to create high efficiency, cheap and informative, and can increase consumer satisfaction through fast, easy and safe service.[25]

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[22] Fithri, et. al, (2021), Asas Ultimum Remedium/The Last Resort Principle Terhadap Pelaku Usaha dalam Hukum Perlindungan Konsumen*, DOKTRINA: JOURNAL OF LAW 4.1*, h. 72.

[23] BPHN, (2020), *Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang tentang Perlindungan Konsumen*, h. 83.

[24] Mariam Darus Badrulzaman, (1994), *Aneka Hukum Bisnis*, Bandung: Alumni, h. 46.

[25] BPHN, (2020), Op. Cit, h. 63. See Budi Agus Riswandi, (2003), *Hukum dan Internet Indonesia*, UII Press, Yogyakarta, h. 115-116.

In the mechanism, consumers are required to register electronically or digitally, through an application, whether registration is entered into a database on banking services, marketplaces, online transportation, and others. In e-commerce transactions, the interaction between parties is not direct, but through electronic media such as the internet. When a consumer wants to buy goods from a website, the seller or merchant will offer an agreement containing terms and conditions as in a conventional sale and purchase agreement. However, the terms and conditions tend to have the characteristics of a standard clause, where the contents of the agreement have been determined unilaterally by the seller or merchant. Consumers do not have the ability to change the contents of the agreement because the website that displays it does not provide the option to change it. Consumers are faced with a standard clause, where business actors receive consumer personal data information by entering the consumer's device. Consumers must also agree to all forms of regulations, both terms and use and privacy policies that have been determined by business actors through the application, where this agreement automatically becomes a standard agreement. Albert J. Marcella Jr. and Carol Stucki call it the collection and use of personal information for marketing purposes, namely collecting personal information online for business activity purposes. If personal data is not managed properly, it can violate consumers' privacy rights and also be a form of disregard for the principles of trust built between consumers and business actors.[26]

Article 18 paragraph (1) a of the Consumer Protection Law states that "Business actors in offering goods and/or services intended for trade are prohibited from making or including standard clauses in every document and/or agreement if they state the transfer of responsibility of the business actor." With the existence of standard clauses, consumers are faced with no choice, in order to be able to carry out transactions, they must agree to the terms of service (terms and conditions of service) provided by the service provider, even though they have to submit personal information to the service provider as their business actor. Therefore, business actors are obliged to protect consumers' personal data.

In the end, personal data must be protected by the provisions of the PDP Law which requires business actors as data controllers or managers to protect consumers' personal data. The terms and conditions of service must also contain a clause stating the responsibilities of business actors when obtaining and controlling personal data based on Article 23 of the PDP Law, that "Agreement clauses in which there is a request for processing of Personal Data that does not contain explicit valid consent from the Data Subject The person is declared null and void by law."

Preventing violations of personal data protection requires firmness in the rules and how to enforce these rules, as mentioned in the previous discussion, imperative provisions can provide firmness to the objectives of the PDP Law in protecting personal data. There have been several incidents that have become an issue of personal data leakage, such as the alleged leak of user data on bhineka.com. up to 1.2 million users on the dark web

[26] Indriani, M, (2017), Perlindungan Privasi Dan Data Pribadi Konsumen Daring Pada Online Marketplace System*, Justitia Jurnal Hukum, 1(2).* See Albert J. Marcella Jr. and Carol Stucki, (2003), *Privacy Handbook: guidelines, exposures, policy implementation, and international issues*, New Jersey: John Wiley & Sons, Inc, h. 198.

by hackers.[27] Then there is the alleged leak of around 21 million Thai Lion Air and Malindo Air passenger or consumer data regarding personal data in the form of names, addresses, telephone numbers, dates of birth, complete passenger ID card information, passport numbers, and passport validity dates.[28] Apart from that, there is an alleged leak of around 91 million Tokopedia consumer data carried out by hackers,[29] thus causing a lawsuit by consumers represented by the Indonesian Consumers Society (KKI). What is interesting is that the panel of judges rejected Tokopedia's lawsuit by KKI as stated in the decision of the Central Jakarta District Court Number 235/PDT.G 2020/PN.Jkt.Pst regarding the lawsuit of the Indonesian consumer community against PT Tokopedia and the Minister of Information and Communication of the Republic of Indonesia as defendants. On the grounds that the panel of judges at the Central Jakarta District Court does not have jurisdiction, and the case should be submitted to the State Administrative Court (PTUN). Even though the object of the PTUN is a decision from state administrative officials (Beschikking) in accordance with article 1 number 12 of Law 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, the court's decision does not target the focus of the problem at hand. there are consumer disputes related to the protection of personal data.

In the event of a failure to protect the confidentiality of the Personal Data it manages, the Company as a business actor should not be able to simply abdicate its responsibility to protect the data and claim to be a victim. In the aforementioned case, Bhineka, Lion Air as the data controller was spared from the obligations that should be attached to the controller of consumers' personal data. In general, data controllers should maintain the personal data security infrastructure of their service users. So in the case of PT Tokopedia and the legal events of Lion Air's subsidiaries described above, when referred to the PDP Law, Article 65 Paragraph (2) regulates that there is a prohibition on disclosing Personal Data that does not belong to him. and regarding sanctions that have been regulated in the provisions of Article 67 Paragraph (2). The sanctions given are not only administrative sanctions but criminal sanctions so it is hoped that data controllers will be more careful in protecting consumer personal data.

Regarding the responsibility of business actors in carrying out their business activities using an electronic system, in the event of a leak of personal data either due to hacking or negligence, this can be seen when consumers agree to the terms of service provided by the business actor. By agreeing to these provisions, an agreement has occurred between consumers and business actors, so that rights and obligations have arisen between them. The emergence of legal relations related to liability can theoretically be divided into two, namely:[30] a.) Liability is based on mistakes, this arises from default,

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[27] Roy Franedya, CNBC Indonesia, 1,2 Juta Data Pengguna Dikabarkan Bocor, Bhinneka Minta Maaf, in https://www.cnbcindonesia.com/tech/20200512164725-37-157971/12-juta-data-user-dikabarkan-bocor-bhinneka-minta-maaf

[28] Purnami, IAGAC, Singarsa, FH, and Salain, MSPD, (2020), Perlindungan Hukum Data Pribadi Konsumen Dalam Platform E Commerces, *Kertha Village Journal*, Vol. 9 No. 11, h. 81-91.

[29] Fathur, Muhammad, (2020), Tanggung Jawab Tokopedia Terhadap Kebocoran Data Pribadi Konsumen, *National Conference on Law Studies (NCOLS). Vol. 2. No. 1*, h. 46.

[30] Mamarama, Yunia, (2017), Perbuatan Melawan Hukum oleh Produsen terhadap Makanan Daluwarsa." *lex et societatis 5.3*, h. 13 in Dewi, Eli Wuria, (2015), *Hukum Perlindungan Konsumen*, Yogyakarta, Graha Ilmu, h. 70

unlawful acts, and careless actions. b.) Responsibility based on risk, this arises as a risk that must be taken by a business actor based on his activities.

One of the principles of protecting personal data is accountability as stated in Article 3 letter g of the PDP Law. In the explanation of the Article, it is stated that "all parties related to the processing and monitoring of Personal Data act responsibly so as to guarantee a balance of the rights and obligations of the parties involved, including the Personal Data Subject." Business actors have an obligation to protect consumers' personal data based on provisions prohibiting disclosing personal data unlawfully. Unlawful acts in criminal law are often referred to as Wederrechtelijk[31] or acts against the law. Meanwhile, unlawful acts in civil law are often called Onrechtmatige daad, which refers to Article 1365 of the Civil Code. That "Every unlawful act that brings loss to another person, requires the person whose fault it was to cause the loss, to compensate for the loss."

According to Rosa Agustina, unlawful acts must meet the following requirements:[32] firstly, the act is contrary to the legal obligations of the perpetrator, secondly, the act is contrary to the subjective rights of other people, thirdly it is contrary to morality, fourthly, it is contrary to propriety, thoroughness and prudence. The nature of unlawful acts in criminal law is public in nature, meaning that there are public interests that are violated (as well as individual interests), whereas legal acts in the civil context are private in nature and only personal interests are violated.

As with the Consumer Protection Law, criminal sanctions in the PDP Law have the same nature, namely they are based on unlawful acts. However, Article 65 and Article 67 of the PDP Law determine the elements that can be punished, namely the violation of unlawful leakage of consumers' personal data, which is a form of criminal unlawful act. As stated in Article 65 of the PDP Law, "(1) Every person is prohibited from unlawfully obtaining or collecting Personal Data that does not belong to him with the intention of benefiting himself or another person which could result in loss to the Personal Data Subject; (2) Every Person is unlawfully prohibited from disclosing Personal Data that does not belong to him; (3) Every person is prohibited from unlawfully using Personal Data that does not belong to him." If it is done intentionally and against the law according to Article 65, it can be punished under Article 67 of the PDP Law.

In acts against criminal law, there are forms of action to determine fault so that liability can be imposed, including intent (opzet or dolus) and negligence. Deliberation is an intention aimed at an act that is prohibited or required by law.[33] Meanwhile, negligence is a form of error that is lower in degree than intentional, where the consequences are not intended by the perpetrator,[34] In criminal law doctrine, negligence is divided into

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[31] Apriani, T. (2019), Konsep Perbuatan Melawan Hukum Dalam Tindak Pidana. *Ganec Swara, 13(1)*, h. 43-49.

[32] Sari, I, (2021), Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata*., Jurnal Ilmiah Hukum Dirgantara, 11(1).* see Rosa Agustina, (2003), *Perbuatan Melawan Hukum*, Pasca Sarjana Universitas Indonesia, h. 17.

[33] Rais, Moh Ikhwan, (2017), Tinjauan Hukum Delik Pembunuhan, Delik Penganiayaan Yang Menyebabkan Kematian Dan Delik Kealpaan Menyebabkan Kematian, *Jurnal Yustisiabel 1,* h. 86 in Lamintang, (1984), *Dasar-Dasar Hukum Pidana Indonesia*, Bandung, Sinar Baru, h. 265.

[34] Kanter, EY, (1982), *Asas-Asas Hukum Pidana disertai Pembahasan Beberapa Perbuatan Pidana Yang Penting*, Jakarta: PT Tiara Ltd, h. 92.

unconscious negligence (onbewuste schuld) and conscious negligence (bewuste schuld). Where in this element the most important factor is that the perpetrator was able to predict the consequences of his actions or the perpetrator was not careful.[35]

One of the legal developments related to product liability that is oriented toward law responsive to consumer interests is the elimination of horizontal contractual relationship requirements so that consumers are not only buyers who have a legal relationship but also product users, this is protected by the doctrine of strict product liability.[36] In his dissertation, Inosentius Samsul stated that the Consumer Protection Law adheres to the principle of responsibility based on error with modification, firstly based on the presumption of guilt/negligence (presumption of negligence) and secondly the principle of always being responsible with a reverse burden of proof (presumption of liability principle). Not yet fully embracing strict liability.[37]

Article 19 paragraph (1) of the Consumer Protection Law adheres to the presumption of guilt when connected to the context of the formulation of Article 1365 of the Civil Code, which explicitly contains the basis for responsibility due to error or negligence, whereas Article 19 of the Consumer Protection Law does not contain a redaction of error. Then, based on Article 19, Article 22, and Article 23 of the Consumer Protection Law, the burden of proof on whether or not there is an element of error in a claim for compensation is imposed on business actors. However, there is also an opinion that the concept of stirrup liability can also be seen based on Article 1367 of the Civil Code, a person is not only responsible for losses incurred due to unlawful acts he commits but also for people who are under his responsibility.[38] This form of strict liability can be compared with the Dutch model of liability, namely liability based on fault with a reverse burden of proof (schuldaansprakelijkheid met omkering van de bewijslast).[39]

In some countries, the concept of strict liability is not recognized in the form of services but is determined by defective products. However, the concept of strict liability in the form of services is known in the Philippines. In Article 99 of the Philippines Consumer Law, responsibility for defective services. The Service provider of the Service is responsible for compensation, regardless of fault, for damage caused to the consumer due to defects related to the provision of the service, as well as insufficient or insufficient information regarding its results and dangers.[40] The service is defective if it does not provide the security that consumers can expect, taking into account the relevant circumstances, including but not limited to:[41]

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[35] Apriani, T. (2019), Konsep Perbuatan Melawan Hukum, *Ganec Swara, 13(1*), 43-49.

[36] Samsul, Inosentius, (2003), Disertasi dengan judul: Prinsip Tanggung Jawab Mutlak Dalam Hukum Perlindungan Konsumen), h. 181. see William L. Proser, (1966), "The Fall of the Citadel (Strict Liability to the Consumer)", *Minnesota Law Review, Vol. 50*, h. 817.

[37] Ibid, Samsul, Inosentius, (2003), h. 166

[38] Hertanto, Ari Wahyudi, (2011), Urgensi Pengaturan Strict Liability dalam Rancangan Amandemen Undang-Undang Perlindungan Konsumen, *Jurnal Hukum dan Pembangunan 41.1*, h. 17.

[39] Handayani, et. Al, (2019), Liability Without Fault Dalam Penyelesaian Sengketa Lingkungan Hidup Di Indonesia, *ADHAPER: Jurnal Hukum Acara Perdata 4.2,* h. 9.

[40] The Consumer Act of the Philippines No. 7394 https://lawphil.net/statutes/repacts/ra1992/ra_7394_1992.html

[41] Ibid.

a. the manner in which the service is provided.
b. the result of the hazard being reasonably foreseeable;
c. time of providing the service.

If we can adapt the concept above, then strict liability for personal data management services by business actors can make personal data protection regulations into a form that imperatively provides guarantees for the accountability of business actors providing services for managing or processing consumers' personal data if a violation occurs towards this.

In practice, the doctrine of strict liability is often used to sue corporations, not only for liability for absolute consumer protection without looking at the mental attitude or mens rea of the perpetrator. The criminal liability model in the PDP Law can also apply accountability in criminal acts in the environmental sector for corporate business actors as referring to Law Number 32 of 2009 concerning Environmental Protection and Management (Environmental Law) which also regulates the principle of absolute responsibility (strict liability), but only limited to the obligation to pay compensation (civil) not in the form of criminal liability.[42] What is different from the Environmental Law is that in the event that a criminal act as stated in Article 67 of the DPD Law is committed by a corporation, the only penalty that can be imposed is a fine of a maximum of 10 (ten) times the maximum fine threatened, while compensation is a criminal offense. addition to the PDP Law. However, criminal liability can be imposed on management, control holders, givers of orders, and beneficial owners as stated in Article 70 of the PDP Law.

The concept of strict liability can indeed be felt to be unreasonable if applied to service products. Because a service always involves "conduct" and not a "product", the court will be asked to evaluate the defendant's conduct if strict liability is applied to the service.[43] The function of having a form of guarantee or protection for records on a product is to evaluate a product and not the behavior of the manufacturer, in this case the manufacturer's negligence. However, when it comes to protecting personal data, negligence is not a reason to abstain from liability. Absolute responsibility or (strict liability) as a special form of tort (act against the law), in principle requires the perpetrator to be directly responsible for losses arising from acts against the law (liability without fault).[44] In the event that there is negligence on the part of the business actor, for example, if there is hacking, a failure in the information technology system so that consumer personal data can be compromised. Business actors cannot escape responsibility for any reason. Because they have neglected to protect consumers' personal data.

The application of the principle of strict liability is intended so that business actors can be fully responsible for the interests of consumers because the business actor should bear the burden of losses between consumers as victims and business actors.

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[42] Kurniawan, R, (2014), Pertanggungjawaban Pidana Korporasi Berdasarkan Asas Strict Liability (Studi Pembaharuan Hukum Pidana Lingkungan Hidup). *Jurnal Yuridis*, *1(2)*, h. 153-168.

[43] William C. Powers Jr., (1984), Distinguishing between Products and Services in Strict Liability, *North Carolina Law Review 62, no. 3*, h. 420.

[44] Gunawan, Johannes, (2018), Kontroversi Strict Liability Dalam Hukum Perlindungan Konsumen." *Veritas et Justitia* 4.2, h. 274-303.

Accountability arrangements for the protection of personal data in the PDP Law can provide guarantees for consumers of a sense of comfort and security in carrying out their business activities or making transactions with business actors who are also protected by the Consumer Protection Law.

CONCLUSION

In legal protection for consumers against business actors who carry out business activities to provide services to consumers, then control or manage consumer personal data, apply the PDP Law to consumer dispute lawsuits in the event that the consumer case involves actions from business actors that result in leakage of personal data which is a different object focus with the term product in the Consumer Protection Law. The handling of consumer disputes related to personal data breaches should be handled in parallel by applying the PDP Law and the Consumer Protection Law.

Business actors have an obligation to protect consumers' personal data based on the provisions prohibiting disclosing personal data unlawfully as stated in Article 65, Article 67, and Article 70 of the PDP Law. As with the Consumer Protection Law, criminal sanctions in the PDP Law have the same nature, namely they are based on unlawful acts. The application of the principle of absolute accountability or strict liability is intended so that business actors can be fully responsible for the interests of consumers. In the event that there is negligence on the part of the business actor, resulting in a violation of the protection of consumers' personal data. Business actors cannot escape responsibility for any reason because they have neglected to protect consumers' personal data.

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