

## Corporate Responsibility For Personal Data Breach Cases



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**ABSTRACT:** Arrangements regarding the protection of personal data are part of the provisions contained in criminal law to fulfill the human rights of the Indonesian people. In Indonesia, arrangements regarding this matter are regulated in several regulations, one of which is the statutory regulations. However, the problem is when the effectiveness of these regulations is questioned by the emergence of some cases related to breach of personal data, one of which was experienced by PT Tokopedia. Departing from this background, this research aims to discuss more deeply about these problems using a case study approach.

**KEYWORDS:** Personal data; privacy; criminal law.

### I. INTRODUCTION

Law has a role in protecting the material or rights of the subject. Based on Law Number 1 of 2023, those who are legal subjects are people and corporations, which in this case have developed from the previous Indonesian Criminal Code (KUHP WvS). Along with the law that moves to follow humans, developments in law do not only reflect on the subject. In addition, rights and property belonging to legal subjects also have developments.

Today, technology is one of the factors that affect the ease of access in human life. On the other hand, technology also has an important role in the development of law. One of the relationships between the role of technology and legal phenomena is the existence of personal data. Personal data intersects with an individual's identity which is part of a series of privacy rights. The urgency of why the right to privacy is protected is because privacy is one of the factors related to domestic relations and how it relates to other legal relations such as marriage and personal relationships. If this personal data is violated, the material losses suffered will be difficult to interpret differently than if a protected right to something tangible. (Dewi S., 2017)

Considering the relationship between the right to privacy as one of the developments of legal material, on the other hand, it is a development of the existence of a new form of development of crimes against rights violations. Violation of the right to privacy can lead to various forms of new crimes, such as theft of personal data, misuse of personal data, to falsification of personal data. This crime was originally triggered through a leak or theft of personal data first. Some of the factors behind the reason hackers commit data breaches intending to steal customers' personal information can be analyzed using the elements of the fraud triangle developed by Donald Cressey, which consists of perceived pressure, opportunity, and rationalization. (Arika Artiingsih, 2016) However, the rise of this case is driven by the factor of how there is an element of anonymity from hackers that makes it difficult to find pressure and rationalization.

A new problem related to this is when a data breach occurs on a large scale and is affected by the negligence of a company. In Indonesia, such a thing occurred to a company in Indonesia, namely PT Tokopedia. PT Tokopedia is a company with one of its superior products, namely the Tokopedia shopping or e-commerce application. Tokopedia as a marketplace offers a wide range of products equipped with secure payment methods, integrated shipping services, and innovative features such as a money-back guarantee, big discounts, Cash on Delivery (COD), and free shipping to provide convenience and convenience for its users. However, from all the advantages above, it is possible for users, both producers, and consumers, to suffer losses. (Julius Perkasa, 2021) One of the unavoidable losses is if there is an error in how the company does not quickly and responsively avoid cases of personal data breaches of its users.

From a legal point of view, this will also be related to how the company's responsibility is related to cases of data breach. Therefore, the consumer protection section also needs to be reviewed further. In addition, the recognition that corporations as part of the subject of criminal acts will provide an expanded perspective considering how PT Tokopedia has to provide accountability in cases of the data breach that befell its users. Thus, the problem was found to be the topic of discussion of how PT Tokopedia is responsible for cases of data breach carried out by third parties.

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### **II. RESEARCH METHOD**

Writing this legal article used the method of writing normative law. It has the nature of research in the form of descriptive research in which this research seeks to solve problems by describing problems based on existing facts. This research approach used a case study research approach (case study). In this research, primary legal materials were used in the form of Law Number 1 of 2023 concerning the Criminal Code, Law Number 27 of 2022 concerning Personal Data Protection, and Law Number 8 of 1999 concerning Consumer Protection. Furthermore, secondary legal materials were articles and scientific research, as well as books and legal materials originating from the internet and tertiary legal materials such as the Indonesia Dictionary (KBBI). The data collection technique used library research techniques which then used data analysis techniques in the form of describing problems related to corporate responsibility related to personal data breach.

### **III. Result and Discussion**

#### **Personal Data Breach in the Perspective of Criminal Law in Indonesia**

Besides violations, crime is an offense whose regulations are formulated in the provisions of the Criminal Law. The expansion of the form of crime is not only found in real space but also in cyberspace in the form of crimes related to technology and information such as data leaks and theft. (Niffari, 2020)

In fact, the question often arises whether there is legal protection regarding such crimes in Indonesia. For the answer, there are legal regulations governing this matter, such as Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). Departing from Article 26 of the Information and Electronic Transactions Law, it is explained that there is authority for the public to file a lawsuit whether the acquisition of personal data can be carried out with their consent or not. (Edmon Makarim, 2020) However, because this is like a lawsuit, even though the Information and Electronic Transactions Law is included in regulations related to criminal matters, this is the realm of civil law.

However, in order to provide comprehensive protection to citizens, Indonesia also has some regulations that accommodate the breach or misuse of personal data. Historically, Indonesia actually adopted personal data protection through one of the international conventions, namely the International Covenant on Civil and Political Rights. However, in substance, it was not strictly regulated in this law. Besides, the ASEAN Declaration of Human Rights also mentions how everyone has the right to be free from intervention in privacy and matters relating to his personality. (Priscyllia, 2019)

From this regulation, development related to this regulation is implemented in one of the legislation in Indonesia, namely the Personal Data Protection Law. According to the legal provisions contained in the PDP Law, it is stated in Article 28G paragraph (1) that everyone has the right to personal data. Even though the existence of this law has been in effect since 2022, there was a breach of personal data that reached 91,000,000 Tokopedia application user data. (Firdaus, 2022) This is a form of response regarding how the personal data protection system is in Indonesia and the effectiveness of the law in this regard. (Herryani, 2022)

In the realm of criminal law, if the data is disclosed, they will be subject to a maximum criminal penalty of 4 (four) years. (Ahmad Ramli, 2022) On the other hand, the PDP Law also emphasizes in Article 37 that personal data managers must also provide oversight regarding the processing of personal data. In this case, the party that should carry out the oversight is PT Tokopedia.

#### **Personal Data Breach in the Perspective of Corporate Responsibility**

From the existence of a legal basis related to corporate responsibility, it is appropriate how corporations are held accountable for mistakes that harm consumer parties. This should also be conducted by PT Tokopedia. (Nelson Novaes, 2020)

The Tokopedia data breach case was caused by the actions of a third party who broke into the Tokopedia electronic system. Thus, if it refers to Article 14 paragraph (5) Government Regulations concerning the Implementation of Electronic Systems and Transactions (PP PSTE), Tokopedia only needs to provide accountability in the form of a written notification to the owner of the personal data that there has been a failure in protecting personal data. (Ramiz Afif Naufal, 2020) Article 28 of the Minister of Transportation and Information 20/2016 also states the Implementation of Electronic Systems and Transactions' obligation. In this case, Tokopedia is only limited to notifications to owners of personal data in the event of a failure to protect the confidentiality of personal data in its electronic system. In this regard, Tokopedia can be considered to have fulfilled its legal responsibility because as soon as the data leak problem was circulated, Tokopedia gave an appeal for a password change to its users. Furthermore, when the data breach was confirmed, Tokopedia also made a notification to its users. Tokopedia even immediately made improvements to the security of its electronic system. (Gilang Riyadi, 2023) However, it will be a different form of legal responsibility if the Indonesian Consumer Community (KKI) is prosecuted based on Tokopedia's position as an entrepreneur, where the Indonesian Consumer Community can demand responsibility from Tokopedia based on Law Number 8 of 1999 concerning Consumer Protection ("Consumer Protection Law"). Tokopedia is a corporate marketplace that organizes an electronic platform or system

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that brings together sellers and buyers online.(Indra Gamayanto, 2018) When viewed from a consumer protection perspective, Tokopedia can be categorized as a business actor, who trades market platform services, while sellers and buyers who use the Tokopedia platform can be categorized as users or consumers.(Fathur, 2020)

Legal responsibility for market companies in users of data breaches caused by intruders by third parties is under the consumer protection law. It can be in the form of liability with compensation sanctions as stipulated in Article 7 letters f and g and Article 19 of the Law on Consumer Protection for violations of Article 7 letters a and d of the Consumer Protection Act, as well as liability with criminal sanctions as stipulated in Article 62 paragraph (1) of the Consumer Protection Law for violations of Article 18 of the Consumer Protection Law. The authors consider that in the case of a data breach, the principle of liability based on the error of the reverse proof system is the most appropriate principle of third-party responsibility for the hacking. For Tokopedia which legally obtained the plaintiff's data was negligent and caused the data breach. It would be more appropriate to apply the principle of absolute responsibility (strict liability).(Ridho Kurniawan, 2014)

## IV. CLOSING

### Conclusion

As for departing from the discussion above, it can be concluded, as follows:

1. In the criminal law realm, the development related to the regulation of personal data is implemented in one of the laws and regulations in Indonesia, namely the Personal Data Protection Law. According to the legal provisions contained in the PDP Law, it is stated in Article 28G paragraph (1) that everyone has the right to personal data.
2. Legal responsibility for market companies in the use of data breach caused by intruders of third parties is under the consumer protection law. It can be in the form of liability with compensation sanctions as stipulated in Article 7 letters f and g and Article 19 of the Law on Consumer Protection for violation of Article 7 letters a and d of the Consumer Protection Act.

## V. SUGGESTION

Given the importance of privacy rights and personal data protection in the current technological era, the suggestion for the future is to strengthen regulations on personal data in Indonesia. Consumer protection laws in Indonesia are very behind to keep up with the ever-growing technological advances, but consumer protection laws in Indonesia are too old. The government should enact legislation that specifically regulates online marketplace providers for online consumer data and privacy. Furthermore, Tokopedia is not only obliged to improve the security of its electronic system but also needs to carry out an in-depth evaluation of the security of the previous electronic system, bearing in mind that cases of personal data breach occurred due to a security system that failed to protect users' data from hacking by third parties.

Besides, for the public, it is expected that they should also be more sensitive and adaptive regarding this issue as part of an issue that continues to experience development and be more vigilant about related data protection issues to avoid things that were originally unwanted.

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