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¹Affiliation: Faculty of Law, Universitas Muslim Indonesia, Makassar, Indonesia

*Corresponding author: Aan Aswari,
Faculty of Law, Universitas Muslim
Indonesia, Makassar, Indonesia

E-mail: aanaswari@umi.ac.id

LAW & SOCIAL POLICY | RESEARCH ARTICLE

Legal Protection Against Personal Data In Online Loan Transactions

Fataya Widi¹, Abdul Qahar², Aan Aswari^{2*}

^{1,2,3} Faculty of Law Science, Universitas Muslim Indonesia, Makassar, Indonesia. Email: aanaswari@umi.ac.id

Abstract: This study aims to determine the legal protection of personal data in online transactions and determine the legal consequences of individual data violations committed by online business entities. This study indicates that legal protection for personal data in online loan transactions is carried out through preventive measures, namely preventing disputes or legal problems. And through repressive measures, namely resolving disputes to the authorities carried out by both parties. The legal consequences carried out by online loan business entities are causing material losses and also material losses by demanding compensation. This research recommendation requires a regulation regarding the protection of personal data in a special regulation that contains a comprehensive and comprehensive and the need to establish a clear and definite legal protection institution. So as not to cause harm to either party.

Keywords: Legal Protection; Personal Data; Online Loans;

1. INTRODUCTION

The development of information technology today has spread in almost all sectors of life. (Aswari, 2020) Information, media, and communication technology have changed people's behavior and human civilization. The development of technology, information, and communication has caused world relations to seem borderless; the impact can cause social, economic, and cultural changes to change and develop quickly. The latest facts about internet users in Indonesia in 2020 reached 197 million people (APJII, 2020), making Indonesia one of the countries with high internet users. (Hidayat, 2014)

One of the developments in technology, information and communication in the current era is online loan transactions, and the growth is so fast. (Sugangga & Sentoso, 2020) (Priliyasi et al., 2019) Online loans are a financial service gaining popularity in the current digital era. These services provide convenience for the community to meet their needs, and this is a huge opportunity when digital transactions are the most critical sector. growing in Indonesia marked by the number of internet users. (APJII, 2020) Today's increase and development of online loans can be seen from the number of financial service institutions that develop their business entities on mobile systems and websites.

And Borrowing Services, the organizer is responsible for maintaining the confidentiality, integrity, and availability of users' data. In their use, they must obtain approval from the own personal data owner existing legal provisions are present as a norm: the protection given to a person's data in general. Likewise, looking at the regulations on consumer protection, it regulates data, so that the state absorbs out the legal protection of personal consumers. (Akhmaddhian & Agustiwi, 2016) The condition makes regulations to protect its people (borrowers) from bad things that may occur when making

online loan transactions, getting their rights as citizens to protect their personal data. The number of violations related to personal data on online loans is essential to study the effectiveness of the relevant laws and regulations or applicable regulations.

The phenomenon of illegal online loans has even made residents decide to commit suicide, this is a legal issue from this study, the state should provide legal protection in the form of guaranteeing its citizens to get security and a sense of security in life. In the state financial sector, illegal online loans have damaged the reputation of an ideal system and have sought to be established for the convenience of the community and its security, so that the actions taken by the Indonesian Joint Funding Fintech Association (AFPI) must again involve the Indonesian Ministry of Communication and Information, *Majelis Ulama Indonesia* (MUI) and the police to limit and eradicate illegal loan companies that are very detrimental to the community. (Catriana, 2021)

Referring to this phenomenon becomes the formulation of the problem in this study, namely, how is the form of legal protection for personal data in online loan transactions and the legal consequences of individual data violations committed by online loan business entities. The purpose of this research is to find out and analyze the legal protection of personal consumer data in online loan transactions and to find out and analyze the legal consequences of violations of the dissemination of personal data by online loan business entities. The benefits of this research consist of two benefits, namely theoretically, namely the contribution of research to the development of science, namely in the development of legal theories, legal arguments and legal principles, and other aspects related to the protection of personal data in conducting loan transactions. online and practice, namely the existence of a problem-solving-oriented contribution at the social level in overcoming various problems. In particular, the implementation of personal data protection rules on online loans so that they can help the community and the state to maintain the confidentiality of personal data better.

2. Research Method and Materials

Normative research methods or library research are research that examines studies through documents, which are sourced from scientific books related to law, legal, scientific journals and statutory regulations related to the legal issues being studied. This research allows using other materials that support this research, which obtains relevant information by the problem being studied and then inventory into a single unit to keep the research content. Types and sources of data in this study using primary data, secondary data, and tertiary data, with research techniques using study documentation collection or literature study which will then be processed and analyzed using the descriptive method because in this research it is used to search, describe, examine, explain precisely and interpret the laws and regulations relating to this research and look for the elements, characteristics, characteristics of a phenomenon.

3. Results and Discussion

A. Legal Protection Against Personal Data in Online Loan Transactions

Legal protection illustrates the ideal functioning of the legal function, protecting legal subjects according to applicable rules and norms to achieve calm and just conditions. Consumer legal protection is divided into preventive legal protection, namely legal protection provided by the government to prevent violations before the occurrence of violations and repressive legal protection, namely legal protection aimed at resolving disputes. (Hadjon, 1987) The unclear legal relationship between e-commerce actors, of which one of them acts as a consumer, leads to the unprotected

condition of consumers. It is appropriate that consumers, especially the last consumers as the biggest target in e-commerce transactions, receive protection from various harmful business behavior of producers. (Tektona, 2016)

All judicial institutions' handling of legal protection in Indonesia is included in this category of legal protection. Sanctions that are applied based on court decisions are expected to be a form of legal protection by the state that every citizen can feel. Sanctions are given as a final decision for every violation committed by citizens as a form of responsibility for all their actions. Sanctions are derivatives of regulations that follow them to deter law violations committed if they are not carried out again. In principle, the sanctions given are guidance, empowerment, and education for citizens who provide lessons and experiences to become a good thing. The trick is to change the order of values that exist in individuals in the future in the hope of becoming better citizens. (Hayat, 2015)

The second principle that underlies legal protection against acts of government is the principle of the rule of law; problems like this can be resolved in the state administrative justice system—associated with the recognition and protection of human rights that have the main place and can be linked to the objectives of the rule of law. Rechtsstaat for example, several number of primary characteristics, including the protection of human rights, the separation or division of powers of state into ensure the exercise of state power itself, and the existence of administrative justice. As for the rule of law, in principle, it contains main characteristics such as the existence of the rule of law, the existence of equality before the law (equality before the law) and the guarantee of the protection of human rights. Judging from a number of these characteristics, it is clear that there are differences between the two legal systems. In a legal state that adheres to rechtsstaatvitallear, administrative justice is essential to distinguish it from other legal systems. Meanwhile, in a state of law that attaches to the rule of law, it places the importance of equality before the law. however, even though for example rechtsstaat does not emphasize the principle of equality before the law, it does not mean that it can be interpreted that the rechtsstaat legal state does not recognize the concept of equality before the law. (Siallagan, 2016)

Support in realizing legal protection is the obligation of all components of society to try and improve the legal system as the strength of a legal state. A strong country is a country that makes the law its commander in chief; an independent nation is a nation that makes justice the foundation. (Pahlevi, 2019) Legal ideas are a challenge that must continue to be developed in a country, especially a democratic government that provides unrestricted space for citizens to actualize themselves as individuals and society, with the freedom that is organized, directed and systematic with regulatory principles. Inherent in the citizens themselves. The law does not work well without good participation from all state elements, including citizens. The law must be upheld as full force in its enforcement and justice. The law must be the commander in chief to create a strong and advanced nation. The law must be the leading force in the government system as a fortress and the main gate of the state. (Hayat, 2015)

One form of legal protection for online consumers is the protection of the security of their personal data. Based on the concept of privacy, one of the concepts of privacy is the privacy of data about a person (*privacy of data about a person*), which means that privacy rights can also bind to information about a person that is collected and used by others. (Thalib et al., 2019) A trading company through an electronic system can be in the form of an individual or a legal entity. Business actors are required to register and comply with the technical provisions of the relevant agencies. Every business actor must have and declare business ethics (business conduct or code of practices). Business actors are prohibited from requiring consumers to pay for products sent without prior agreement (inertia selling). Electronic information or documents can be used as evidence. Electronic information or documents have the same legal force value as an authentic deed. This means that the rights of consumers are obligations that business actors must fulfil. Likewise, consumer obligations are rights

that business actors will receive. When compared, the Trade Law and the Consumer Protection Law have similarities in terms of the responsibilities of business actors. Because in the consumer protection law, business actors must not only carry out business activities in good faith but also be able to create a conducive business climate without unfair competition between business actors. (Asri, 2016)

Legal protection of personal data is very much needed in conducting online loan transactions in order to achieve the legal goals themselves, namely justice, certainty and legal expediency. It can be seen in the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems contained in article 2 paragraph 1: "Protection of Personal Data in Electronic Systems includes protection against the acquisition, collection, processing, analysis, storage, display, announcement, transmission, dissemination and destruction of personal data"

Article 24 of the Regulation of the Minister of Communication and Informatics explains that:

- a. The use and utilization of Personal Data displayed, announced, received and disseminated by the Electronic System Operator must be based on Approval.
- b. The use and utilization of Personal Data as referred to in paragraph (1) must be in accordance with the objectives of obtaining, collecting, processing and/or analyzing Personal Data.

It also explains in Article 26 concerning Rights the Owner of Personal Data has the right to:

- a. For the confidentiality of his Personal Data;
- b. File a complaint in the context of resolving Personal Data disputes over the failure to protect the confidentiality of their Personal Data by the Electronic System Operator to the Minister;
- c. Gain access or opportunity to obtain historical Personal Data that has been submitted to the Electronic System Operator as long as it is still in accordance with the provisions of the laws and regulations; and
- d. Request the destruction of their Certain Individual Data in the Electronic System managed by the Electronic System Operator, unless otherwise stipulated by the provisions of the laws and regulations.

The regulation of the Minister of Communication and Information in the Electronic System as stated above can be analyzed that the protection of a person's personal data from the process of collection, acquisition, storage and so on gets protection and legal certainty from the regulation of the minister of communication. On personal data, a person must obtain approval from the data owner to always maintain confidentiality and protect his privacy rights so that irresponsible parties do not use it. The problem is that the regulations related to the protection of personal data on online loans are still general because the rules are still contained in several separate regulations and only describe the concept of personal data protection in general and the rules are only outlined in the form of a Regulation of the Minister of Communication and Information of the Republic of Indonesia and other provisions. These provisions are actually not maximal enough to protect users' personal data in electronic systems, because there are almost no criminal sanctions that really provide a deterrent effect on people or business entities who violate these regulations. Meanwhile, if viewed in the Law on Electronic Information and Electronic Transactions (UU ITE), it appears that the ITE Law is only limited to touching the subject of personal data protection and there are no further provisions on what and how the details of the implementation of personal data protection are. Meanwhile, if viewed in the Law on Electronic Information and Electronic Transactions (UU ITE), it appears that the ITE Law is also limited to touching the subject of personal data protection and there are no further provisions on what and how the details of the implementation of personal data protection are.

This is very concerning considering that the protection of personal data is a fundamental human right. However, the reality of Indonesia's data security is inversely proportional to the applicable *ius constitutum*. (Pardosi & Primawardani, 2020) information is a very decisive medium for the economic development of a country, both developing and developed countries. Information about individuals is always managed by the government and the private sector. Still, the advent of the computer era creates a more significant threat to the privacy of these individuals. The possibility of individuals suffering losses as a result of inaccuracies or information leaks will be much more significant, in the world of cybercrime the majority is done unauthorized access. (illegal access) to computer systems or networks as the first step of actions that lead to other forms of cybercrime. (Saragih & Azis, 2020) Actually activities that take place online have a significant risk because they can cause problems if the data or information is leaked so that irresponsible parties can misuse it. (Sautunnida, 2018)

Given the importance of regulations governing the protection of personal data, the government should prioritize a legal rule in the form of the Personal Data Protection Act, including the existence of an Independent Supervisory Agency in charge of overseeing aspects of personal data protection in every online loan transaction that is widely used by the public. In principle, the form of protection of personal data is divided into two forms, namely the form of data protection in the form of securing the physical data, both visible and invisible data. The second form of data protection is the existence of regulations governing the use of data by unauthorized persons, misuse of data for specific purposes, and destruction of the data itself. (Disemadi, 2021) Privacy of a person's data can be understood that the data and information are related to the life of an individual and are also closely related to the concept of confidentiality or a person's right to privacy which must be guarded and protected by laws and regulations.

In addition to various laws that impose sanctions on providers who violate the rights of online loan service users, the government must make efforts to prevent and handle various cases of crimes committed by online loan business entities, one of which is through socialization efforts carried out. By the Financial Services Authority in collaboration with the Ministry of Communication and Information in order to provide knowledge to the public about online loans from various aspects, which of course has an impact on their services to the community. Socialization is expected to prevent and minimize the public from being entangled with the leakage of personal data that is not desired by the borrower by the online loan provider which can change unilaterally. In addition, it is also necessary to coordinate with the Ministry of Law and Human Rights in this case the State Legal Development Agency (BPHN) in order to assist in providing legal counseling regarding the impact of using online loans accompanied by examples of issues that have occurred. This effort gives a vital role in the involvement of law enforcement agencies which is carried out by streamlining the function of legal sanctions, both civil sanctions, criminal sanctions and administrative sanctions. (Poernomo, 2019)

The impact of privacy violations is that privacy literacy is needed which can be a gateway to be able to maintain private personal data so that abuse does not occur. This privacy literacy is essential especially for users vulnerable to privacy threats such as in the era of network society. This privacy literacy will help users behave according to their attitudes and needs in the online world technology. However, users' misunderstanding of personal information shared on media platforms causes a violation of privacy, which is carried out to make profits by irresponsible parties. So that privacy literacy is a good step to prevent privacy violations so that psychological, physical and financial losses can be minimized. (Aryana et al., 2020)

The Ministry of Communication and Information Technology should have technology system skills by rejecting all digital service processes if they do not meet the formal requirements as stipulated in the legislation. The government has a very important role in protecting personal data, given the

urgency of regulating online loan services on personal data. The government should also make a special rule in the form of a law that regulates the protection of personal data on online loans strictly and comprehensively. Efforts to realize the protection of personal data, based on the rules that have previously been applied in other countries, there are provisions that may be used as references and need to be specifically regulated in the personal data protection law in the future by the Government of Indonesia to realize the protection of personal data comprehensively. This includes establishing an agency that specifically and has the authority to oversee the traffic of a person's data as implemented in other countries with special private data protection arrangements. For example, as implemented in the UK by the Data Protection Commissioner, which is regulated in the Data Protection Act 1998 and in Hong Kong, it is carried out by the Privacy Commissioner for Personal Data (PCPD), whose existence is regulated in the Personal Data Privacy regulation. Ordinance of 1995.³³ The establishment of a body that has special authority in supervising the traffic of personal data to ensure whether the personal data controller has kept the personal data of citizens in accordance with the standards and ensures the security of personal data. (Disemadi, 2021)

So far, Indonesia is in dire need of policies or regulations regarding the protection of personal data in one specific regulation. Rules regarding this matter are still contained separately in several laws and regulations and only reflect aspects of personal data protection in general. There should be no more separation between the interrelated rules. It is deemed necessary to have a definite and clear legal umbrella so that law enforcement officers can act in the face of the rise of online loan entities that deviate from the obligations of borrowers or consumers, especially in terms of personal data protection. With the rules that specifically and completely regulate law enforcement, law enforcement will be more certain in taking action against everything that harms the public regarding personal data which is often a problem in every case, one of which is online loans which are now more widely used by people to meet their needs.

The circulation of online crime begins with arrears in payments (default) by fintech users so that the loan providers, whether legal or illegal, act by accessing all of the user's data, which then intimidates, threatens, and contacts third parties who have nothing to do with the loan. There are also fintechs who intentionally trade personal data for promotional purposes or for their benefit. (Syaifudin, 2020) The emergence of various unlawful behaviors carried out by loan providers reflects that the government is not firm in protecting personal data to negatively impact fintech users. On the other hand, the borrower of funds before making a transaction is required to understand and agree to some of the conditions given by fintech business actors. (Priiasari, 2019) However, many borrowers still fail to agree to these terms, so personal data is at risk of being misused and involved in online crimes. Therefore, it is necessary to know that every transaction carried out, especially financial transactions, must be based on legal grounds, clear business licenses, proper procedures, and good faith from both parties so that there is no breaking of promises or in civil law referred to as default.

Thus, there needs to be awareness from every party so as not to get involved in online crime. The dissemination and misuse of consumers' personal data by loan providers without permission have led to increasing online crime cases by irresponsible persons. Thus, the threat of online crime that arises immediately from conducting fintech transactions will impact the predictive value of its development. Therefore, a regulation that really prioritizes legal protection is needed to be compared to a law that only regulates various provisions. Then, the idea arises whether the many regulations that the government has ratified, it is effective enough to be implemented because the times are increasingly sophisticated and the protection of technology user data in the financial services industry is an urgency that must be prioritized. (Suryono et al., 2019) Therefore, it is necessary to conduct further research on how effective and practical personal data protection regulation is in Indonesia.

This research will also be accompanied by a review of the Personal Data Protection Bill (RUU PDP) which the Indonesian government has not ratified. This urgency must be examined more deeply so that this research focuses on protecting the personal data of fintech users. The author argues that legal protection for online consumers is needed to facilitate consumer transactions regardless of the media chosen, in this case to eliminate existing legal obstacles, especially in terms of online personal data protection whose rules are the same as *offline* or direct loan protection.

B. Data Violations Performed by Online Loan Business Entities.

Legal consequences result from actions taken, to obtain a result expected by legal actors. The consequences in question are consequences that are regulated by law. So that legal consequences are the results caused by legal events. (Ishaq, 2009) Not all events can be said to be legal events. (Puspitarani, 2015) These events can be in the form of ordinary events in people's lives, such as giving a name to a newborn child. Still, they can also be events that have important legal consequences, for example in buying and selling transactions or leasing. as well as regarding other important events in the family environment, for example the distribution of inheritance, adoption of children for people who do not have children of their own with the right to inherit and so on, including the object of this study. (Tjukup et al., 2016)

The legal relationship between the parties in online loans arises because of an agreement, in this case an electronic agreement where the electronic (online) agreement has the same legal force in making agreements in general. The legal terms of this electronic (online) agreement are in line with the provisions of Article 1320 of the Civil Code. The use of data that is not in accordance with the designation and agreement which has been regulated in the conditions of Article 26 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions has the potential to lead to a violation of privacy and violation of the provisions in the rules of legal protection, where such actions can injure the rights of a borrower if the data falls to another party and is used against the law. (Dewi, 2016) Modern economic developments such as today in the form of information, including personal data, are very valuable assets because they have high economic value so businesses widely use them. This situation is known as a digital dossier, which collects information about a person in large quantities using digital technology that began in the early 1970s using computers until now using the internet. One of the developments in information technology is a revolution in computer technology that can store large amounts of data called cloud computing or cloud computing, which is a combination of the use of computer technology and internet-based development.

Until now, positive Indonesian law still dictates that there is only one way to give legal force and legal consequences to a deed, namely by signing a manuscript. (Mayana & Santika, 2021) However, in trading practice, especially in the electronic trading system (E-commerce) using an electronic signature attached to an electronic deed, there is a debate about the recognition, legal force and legal consequences of an electronic signature. So that if the parties agree to the agreement approved by the parties, what is the position and legal power of electronic signatures and the level of security for consumers in electronic transactions. (Slamet & Paliling, 2019)

Acts against the law can occur in the realm of criminal or civil law and are regulated in Article 1365 of the Indonesian Civil Code "Every act that violates the law and causes harm to others, obliges the person who caused the loss because of his mistake to replace the loss".

The forms of legal consequences are:

1. The birth, change or disappearance of a legal situation.
2. The birth, change or disappearance of a legal relationship. Namely the rights and obligations between the two parties that give rise to a legal relationship.

3. The birth of sanctions if an action is taken against the law.

Personal data that has been leaked is not done without reason. There is a form of violation committed by the borrower to the business entity, namely not fulfilling the agreement, by not paying the agreed amount of money without any information from the borrower. So that the business entity provides information to a third person where the actions taken are the leakage of personal data and defamation without the consent of the borrower. Where this certainly violates the rights of a borrower. With the misuse of personal data, it can be seen that there are system weaknesses, lack of supervision, so personal data can be misused and result in losses for the owner of the data. Misuse, theft, and personal data sale are violations of law in information technology. It can also be categorized as a violation of human rights because private data is part of human rights that must be protected.

The problem of personal data security cannot be taken lightly because private data is often an easy target for *cybercriminals* or irresponsible cybercriminals. (Indriyani, 2017) Misuse of personal data is an act that fulfills the elements of a criminal act such as the element of the crime of theft and the aspect of a criminal act of fraud and other criminal acts both in terms of objective elements and subjective elements. With the fulfillment of these elements, administrative sanctions, civil sanctions and criminal sanctions are not sufficient to accommodate the criminal act of misuse of personal data, which is a perfect form of crime. In addition, it is undeniable that the article regarding defamation in the Electronic Information and Transaction Law can be considered a “rubber article” because there are no clear parameters and there are many actions that can be classified as acts of defamation.

The result of an unlawful act is a loss for the victim. The loss must be compensated by the person or business entity charged by law to compensate for the loss. The direction of Indonesian Civil Law, including the direction for rules relating to unlawful acts, regulates losses and compensation. According to the author, the consequences arising from an illegal act will manifest in the form of payment for the borrower whose personal data has been leaked from the borrower's actions who commits a violation related to personal data.

4. Conclusion

The form of legal protection for personal data in online loan transactions is Preventive Legal Protection, namely the protection provided by the government to prevent a violation before the occurrence of a violation. As well as Repressive Legal Protection, namely the final protection in the form of sanctions. The legal consequences of personal data violations committed by online loan business entities are losses for victims (borrowers) who own personal data, namely material and immaterial failures. It is recommended that the government regulate the protection of personal data in a special regulation that comprehensively and comprehensively regarding the protection of personal data on online loans. Establishing a clear and definite legal protection institution in further action on this issue is necessary. It is also recommended that people who carry out online loan activities find out things related to online loan transactions. And there should be a form of cooperation between all parties, both in terms of regulators (government) to the community. To avoid an act that is detrimental to the party who has a legal relationship through an agreement that causes legal consequences that are detrimental to one of the parties.

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