



Protection of personal data in online loan transactions in Banda Aceh City

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Abstract

Online loan services, or financial technology lending (fintech lending), have emerged as a rapid alternative to address the economic requirements of the community. This advancement also presents significant concerns, notably the widespread exploitation of personal data by negligent entities. Article 65, paragraph (1) of the Personal Data Protection Law stipulates: "It is prohibited for any individual to unlawfully acquire or collect personal data not belonging to them for personal or third-party gain, which may cause detriment to the data subject. The issue is that this online loan service provides convenience and rapid access to funds without intricate bureaucratic procedures. Nonetheless, beneath that convenience, significant concerns emerge over personal data protection, particularly in instances of identity theft for illicit loan applications. The unauthorised use of ID card numbers, phone numbers, and selfies to apply for online loans without the consent of the data owner. This research seeks to elucidate the efficacy of legal safeguards for personal data proprietors in instances of identity exploitation inside online lending services. The employed study methodology is empirical juridical, utilising a sociological legal approach. The utilised data comprises both primary and secondary sources. Primary data was gathered using structured interviews, while secondary data was obtained via literature review. Subsequently, the data were analysed qualitatively using deductive reasoning to address the research problem formulation. The research findings indicate that the efficacy of legal protection for personal data in online loans is not attributable to a deficiency of regulations, but rather to inadequate enforcement and oversight, as legal protection relies not solely on the presence of rules, but also on their implementation. In Aceh, inefficient legal protection is mostly attributed to inadequate inter-agency coordination, limited public literacy, insufficient oversight, and low public awareness, exacerbated by the swift advancement of technology.

Keywords: Online loans, legal protection, personal data, privacy rights

Introduction

Personal data protection is related to the concept of privacy. The concept of privacy itself is the idea of maintaining personal integrity and dignity. ^[1] The right to privacy is the individual's ability to determine who holds information and how that information is used. The right to privacy, as expressed thru the protection of personal data, is a key element for the freedom and dignity of the individual inherent to them. The reason privacy is classified as a fundamental human right is that it protects individuals who need to develop their personalities by providing a space for themselves. Edmon Makarim argues, based on several expert opinions, that there are three important principles regarding personal rights, namely: (a) the right not to have one's private life disturbed by others; (b) the right to keep sensitive information about oneself confidential; and (c) the right to control the use of one's personal data by other parties. ^[2]

Law Number 27 of 2022 on Personal Data Protection (hereinafter referred to as the PDP Law). Article 1, paragraph 1 states that "Personal Data is data about an individual that is identified or can be identified either alone or in combination with other information, either directly or indirectly thru electronic or non-electronic systems." Meanwhile, Article 1, paragraph 2 mentions that "Personal Data Protection is the entire effort to protect an individual's personal data in the processing of personal data to guarantee the constitutional rights of the personal data subject." The protection of personal data, in its meaning, is intended to

guarantee constitutional rights; therefore, the protection of personal data is part of the constitutional rights of citizens.

Regulations regarding the protection of personal data are specifically mentioned in the Electronic Media Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law). Article 26 paragraph (1) states that: "Unless otherwise provided by law, the use of any information thru electronic media concerning a person's personal data must be done with the consent of the person concerned."

The collection and dissemination of personal data constitute a violation of someone's privacy because the right to privacy includes the right to decide whether or not to provide personal data. Personal data is an asset or commodity of high economic value. As regulated in the PDP Law Article 65 paragraph (1) regarding the prohibition on the use of personal data. A piece of data is considered personal data if it is related to an individual, thereby making it possible to identify that person, who is the data owner. ^[3] The purpose of this research is to explain the effectiveness of legal protection for personal data owners in cases of identity misuse in online loan services.

Research Method

This is empirical juridical research. Empirical juridical research, also known as sociological legal research, is a type of legal research that examines law conceptualized as actual

behavior as an unwritten social phenomenon experienced by everyone in their community life.^[4] The data source in empirical legal research comes from field data. Field data is data obtained from respondents and informants, including experts as sources.^[5] The data collection technique in this research is thru direct field research using interview techniques, specifically non-directive interviews conducted directly with respondents and informants deemed capable of providing accurate information regarding the research conducted. This research is located in the Legal Area of Banda Aceh City. This research uses data analysis that will be conducted qualitatively, which means analyzing by understanding and organizing the collected data, aiming to develop a theory based on secondary data.

Results and Discussions

The theory of legal effectiveness is used to help explain the effectiveness of legal protection in cases of identity theft in online lending services. One of the rapidly developing innovations is online lending services or financial technology lending. The presence of this service provides convenience for the public in obtaining financing access quickly and practically. However, behind this convenience, various legal issues arise, especially related to personal data protection. In practice, identity theft often occurs without the consent of the data owner, resulting in both material and immaterial losses for the victim.^[6]

Personal data breaches thru theft are becoming more frequent with the advancement of information technology and the digitization of public services. This action not only causes financial losses but also non-material impacts such as betrayal of privacy, loss of a sense of security, and decreased public trust in data management institutions. Therefore, the success of legal mechanisms in protecting against personal data theft has become a crucial topic within the framework of contemporary law, especially concerning the enforcement of human rights. Philipus M. Hadjon states that legal protection is the protection of human dignity and honor as well as the recognition of human rights possessed by legal subjects.^[7] In the context of online loans in Aceh, the misuse of personal data such as the dissemination of contacts and intimidation, clearly constitutes a violation of human rights, particularly the right to privacy. Legal protection for victims of personal data theft in Indonesia is regulated thru various laws and regulations that form a positive legal framework. This framework aims to provide guarantees for the protection of individual rights over their personal data and to establish mechanisms for law enforcement against violations that occur. Law Number 27 of 2022 on Personal Data Protection (PDP Law) is an important milestone in the development of data protection law in Indonesia. The PDP Law was born as a response to the increasingly complex challenges of the digital era, where personal data has become an important asset in various aspects of life, ranging from economic activities and governance to daily social interactions. Before the advent of the PDP Law, regulations regarding personal data were scattered across various sectoral regulations such as the ITE Law, the Population Administration Law, and several other technical regulations, which unfortunately often did not provide comprehensive and thorough protection for personal data as a fundamental right of every citizen. Therefore, the PDP Law was introduced as a regulation that specifically and comprehensively governs how personal data must be

managed, protected, and processed within the scope of national law.^[8]

The PDP Law clearly defines personal data as data about an individual that is identified or can be identified either alone or in combination with other information, whether directly or indirectly thru electronic or non-electronic systems. This definition is important because it emphasizes that personal data is not just static information but also includes dynamic data that, when combined with other elements, can reveal a person's specific identity. Conceptually, the effectiveness of legal protection against personal data theft can be assessed by its capacity to prevent violations, uphold the rights of data subjects, and impose strict and proportional sanctions on offenders. Law Number 27 of 2022 on Personal Data Protection clearly regulates the prohibition of unlawful processing of personal data, the responsibility of data controllers in ensuring data security, as well as administrative and criminal sanctions for such violations.

In the realm of law enforcement, protection against personal data theft is closely related to the performance of law enforcement officers in prevention, enforcement, and the restoration of rights for victims. Therefore, the effectiveness of legal protection is not only assessed from a normative perspective but also from the dimensions of institutional, legal culture, and implementation at the field level.^[9] The concept of personal data protection emphasizes that everyone has the right to determine their own fate, whether they will share data or not, and if data sharing is done, they also have the right to set the conditions to be met within a community.^[10]

Legal protection against the misuse of personal data by illegal online loan operators can be implemented if the categorization of the processed data is specific data, as explained in Article 4 of the PDP Law, which states that personal data is divided into two categories, namely general data and specific data. In the practice of financial technology or online loans, it falls under the category of specific personal data controllers, as the loan providers can access personal financial data, while general data is only used as a requirement for loan applications. Indirectly, the loan providers can detect personal financial data such as bank accounts, e-wallets, e-money, etc., allowing them to know the installments or arrears we have. Articles 65 and 66 of the Personal Data Protection Law clearly state the prohibition of personal data misuse: the prohibition of obtaining, collecting, disclosing, using, and creating false personal data that does not belong to oneself with the intent to benefit oneself or others, which can result in harm to the personal data subject.

The Financial Services Authority Regulation or POJK No. 77 of 2016 explicitly states that to have a legal standing as a legal online loan provider, the requirement that must be met by the online loan provider is the obligation to register and obtain a license from the Financial Services Authority (OJK). The obligation to register and obtain a license from the OJK is regulated in Article 7 of POJK No. 77 of 2016, which states that, "The provider is obliged to submit registration and licensing to the OJK." Article 26 of the Financial Services Authority Regulation No. 77 POJK.01/2016 states that the provider is obliged to maintain the confidentiality, integrity, and availability of personal data, transaction data, and financial data it manages from the time the data is obtained until the data is destroyed.

The legal protections that can be implemented include: ^[11] Protection provided by the government by enacting laws to protect and guarantee the rights of the community against the misuse of personal data by illegal online loans:

1. Article 65 of the Personal Data Protection Law: "Prohibition on obtaining, collecting, disclosing, using, and creating false personal data that does not belong to oneself with the intent to benefit oneself or others, which may result in harm to the personal data subject."
2. Article 32 of the ITE Law: "Any person intentionally and without right or unlawfully in any way transfers or transfers Electronic Information and/or Electronic Documents to the Electronic System of another person who is not entitled."
3. Article 29 of Law No. 19 of 2016 on Electronic Transaction Information: "Any person intentionally and without right sends Electronic Information and/or Electronic Documents containing threats of violence or intimidation directed personally."
4. Article 7 and Article 26 of POJK regarding the implementers of Article 1 of the Consumer Protection Law, who are not licensed or registered with OJK and are obliged to keep personal data confidential, if these regulations are not implemented, administrative sanctions may be imposed in the form of fines, blocking, or freezing by OJK and Kominfo until acted upon by the Police thru imprisonment.

The practice of online loans in Indonesia is supervised by the OJK. If the OJK detects any violations or suspicious actions related to online loan activities, the OJK has the authority to follow up and even dissolve the loan service if a violation is found. ^[12] If data misuse is found by irresponsible individuals, those individuals can be sanctioned, and the online lending service can also be sanctioned, ranging from administrative sanctions to criminal sanctions. ^[13] In accordance with the provisions of Article 57, paragraph 2 of Law Number 27 of 2022 on Personal Data Protection, the administrative sanctions that can be imposed include written warnings, business activity restrictions, and/or license revocation. In more serious situations, the agreement between the lending institution and the borrower can be annulled thru the district court.

The Aceh Financial Services Authority, specifically the Division of Supervision of Financial Services Business Actors, Education, and Consumer Protection of OJK Aceh, explained that the development of online loans in the Aceh region shows a significant upward trend. He stated that "the high demand from the community for access to financing is due to the ease of obtaining money, borrowers forget about the interest rates set by the companies. This ease will be the main factor in the increased use of online loan services, but it also opens up opportunities for the misuse of personal data, especially by illegal platforms." ^[14]

OJK emphasized that the reporting step is both a preventive and repressive effort to minimize the potential losses that may arise from the misuse of personal data. A source from OJK Aceh explained that one of the recommended complaint channels is thru the website (sipasti.ojk.go.id), which is the PASTI Task Force (Task Force for the Eradication of Illegal Financial Activities). ^[15] Reporting can be done thru the official website provided by the Task Force, allowing the public to easily submit complaints in a systematic and well-documented manner.

Normatively, Indonesia has various regulations governing the protection of personal data, including Law Number 27 of 2022 on Personal Data Protection, the Electronic Information and Transactions Law, and regulations from the OJK related to fintech lending services. These regulations emphasize that the use of personal data must be based on the consent of the data owner and used in accordance with the agreed-upon purpose. In addition, electronic system operators also have the obligation to maintain the security and confidentiality of users' personal data. The effectiveness of that legal protection is still not optimal. He revealed that "there are still many people who fall victim to illegal online loans due to a lack of understanding regarding personal data security." In fact, there are cases where victims never applied for a loan, but suddenly they are being charged by certain parties. This emphasizes that the public should only apply for online loans to companies registered and licensed by OJK to ensure security. ^[16]

Legal protection of personal data can essentially be divided into two forms, namely preventive protection and repressive protection. Preventive protection aims to prevent violations thru clear regulations, information transparency, and supervision of service providers. In this case, the OJK plays an important role in supervising legally operating fintech platforms. Meanwhile, repressive protection is carried out thru law enforcement against violators, whether thru administrative, civil, or criminal sanctions. ^[17] The low public awareness in protecting personal data also affects the effectiveness of legal protection. Many users unknowingly grant access to their personal data, such as phone contacts and location, to online loan applications without understanding the potential risks that may arise. This situation is exacerbated by the low level of digital literacy among the public. ^[18]

Identity theft in online loan services can cause various losses, both financial and non-financial. Victims can suffer losses in the form of debts that were never incurred, psychological pressure due to intimidation, and reputational damage due to the dissemination of personal data. In some cases, the victim's personal data is even disseminated to other parties without permission. Efforts have been made to enhance legal protection for personal data. The OJK continues to strengthen oversight of fintech lending and educate the public. In addition, the government has also enacted the Personal Data Protection Law as a concrete step in providing more comprehensive legal protection. However, the implementation of these regulations still requires time and support from various parties.

The main issue in the effectiveness of legal protection for personal data in online loans does not lie in the lack of regulations, but rather in the weak implementation and supervision. The theory of legal effectiveness was proposed by Lawrence M. Friedman. According to Friedman, the legal system consists of three main objectives: legal structure, legal substance, and legal culture. ^[19] These three elements must operate synergistically for the law to function effectively in society.

Legal Structure

The legal structure is related to institutions that implement and enforce the law, such as the police, courts, and regulatory bodies like the Financial Services Authority. In the context of online loan cases in Aceh, the legal structure plays an important role in monitoring and taking action

against perpetrators of personal data abuse. However, in practice, the effectiveness of the legal structure still faces obstacles. Many cases of illegal online loans are difficult to address because the perpetrators are outside Indonesia's jurisdiction or use false identities. This is in line with Soerjono Soekanto's opinion, which states that the success of law enforcement is influenced by five factors, one of which is the law enforcement officers themselves.^[20] If the law enforcement officers do not have adequate capacity or support, then law enforcement will not function optimally. Furthermore, according to Satjipto Rahardjo, law does not only depend on written rules but also on the ability of the authorities to realize justice in society.^[21] In the case of online loans, technological limitations and inter-agency coordination become the main obstacles in law enforcement against cybercriminals.

Legal Substance

The substance of the law refers to the applicable norms or regulations. Indonesia has comprehensive regulations, such as Law Number 27 of 2022 on Personal Data Protection and the ITE Law. Normatively, these regulations have provided a strong legal basis for protecting the personal data of the public. The existence of legal regulations does not always guarantee their effectiveness. According to Hans Kelsen, law is a system of norms that regulates human behavior, but its effectiveness greatly depends on the implementation and compliance of society with those norms.^[22] Thus, even if the substance of the law is adequate, if it is not implemented well, the goals of the law will not be achieved. A similar opinion was also expressed by Jimly Asshiddiqie, who stated that good law must be followed by consistent enforcement in order to provide certainty and justice.^[23] In the context of online loans, there are still many illegal platforms that do not comply with regulations, thereby reducing the effectiveness of the existing legal substance.

Legal Culture

Legal culture is a factor related to the awareness and behavior of society toward the law. In the case of online loans in Aceh, the legal culture of the community is still relatively low, especially in terms of awareness of protecting personal data. According to Lawrence M. Friedman, legal culture is the most determining element in the effectiveness of the law because it is directly related to the public's attitude toward the law itself. Without legal awareness, even good rules will not be effective. Based on an analysis using Lawrence M. Friedman's theory and supported by expert opinions, the author argues that the effectiveness of legal protection for personal data in online loan cases in Aceh is still not optimal. This is due to the imbalance between legal structure, legal substance, and legal culture. The author believes that the legal substance in Indonesia is actually quite strong with the existence of the Personal Data Protection Law. However, the main weakness lies in the legal structure that has not yet been able to effectively prosecute offenders, as well as the low legal culture of society.

Furthermore, efforts to improve legal effectiveness should focus on strengthening the legal culture thru public education, as well as enhancing the capacity of law enforcement officers in handling technology-based crimes. Without improvements in both aspects, legal protection for personal data will remain difficult to achieve optimally.

Conclusion

To sum up, legal protection against identity misuse in online loan services in Indonesia has been normatively supported by quite comprehensive regulations. These regulations explicitly prohibit the misuse of personal data. However, the effectiveness of this legal protection has not been optimal, as the main issue does not lie in the lack of regulations. Efforts to strengthen legal protection should be focused on two aspects: enhancing the capacity of law enforcement officers in handling technology-based crimes, and strengthening the legal culture thru continuous education and socialization to the public.

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