

Legal Responsibility of Hootsuite in the Crime of MIS-Use Personal Data

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Abstract

Data protection can basically relate specifically to privacy to determine whether information about them will be communicated or not to other parties (information privacy) regarding personal information. There are many crimes that use personal data, but this is not comparable to the understanding of the public who understand that personal data is prone to misuse by irresponsible parties. This research aims to examine the protection of personal data according to Law Number 27 of 2022 concerning Protection of Personal Data (hereinafter referred to as the PDP Law). The research uses normative legal research methods with a literature review, and the approach used is a statutory and conceptual approach with primary and secondary legal materials. Based on the results of this study, personal data protection is an overall effort to protect personal data in a series of personal data processing in order to guarantee the constitutional rights of personal data subjects. The urgency of the need for protection of personal data considering that personal data is still prone to misuse in society. Thus, in an effort to maximize the protection of personal data, a "Digital Revolution" is needed as an innovation effort to be able to develop various options in the realm of personal data protection such as storing, manipulating, transmitting volumes of data in real time, extensive and complex. A digital revolution characterized by a blend of technologies that blur the lines between the physical, digital and biological fields which has enabled the birth of various emerging technological breakthroughs in the fields of Information and Electronic Transactions consisting of newly discovered data and super-sophisticated computing power.

Keywords

personal data protection;
digital revolution; crime



I. Introduction

The development of electronic information and communication system technology has become a means of communicating a new style and plays a role in the process of changing the behavior of Indonesian society. It is undeniable that technological advances produce a number of extreme situations; borderless and beyond expectations. Advances in information and communication technology are currently growing rapidly, where information is very easily spread using internet technology. Based on research from the social media management platform HootSuite and the social marketing agency We Are Social titled "Global Digital Reports 2020", which was released in January 2020, almost 64 percent of Indonesia's population is connected to the internet network, and 59 percent are social media users. Technological developments will certainly have an impact on society, both positive and negative impacts. The positive impact of technological developments is expected to make it easier for people to complete work, obtain information quickly, communicate remotely, or express opinions or thoughts through

electronic media. Normatively, Indonesia comprehensively regulates and provide legal protection in the development of information and technology as stipulated in Article 28 H paragraph (4) of the 1945 Constitution of the Republic of Indonesia which reads: " Every person has the right to have private property rights and these property rights may not be taken over arbitrarily by anyone ." Furthermore , Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which constitutionally Indonesia has regulated the protection of personal data, family, honor, dignity and property under its control, and has the right to feel safe and protected from threats of fear to do or not do something that is a human right.

From the enactment of the UUD it is intended to provide guarantees for security and safety to consumers in the use, use and utilization of goods and/or services consumed or used without discriminating against consumers in providing services which has been mandated in Law No. 8 of 1999 concerning Consumer Protection Article 7 points (b) and (g) related to the seller's obligations. Article 7 point (b) states, "Business actors provide correct, clear and honest information regarding the conditions and warranties of goods and/or services and provide an explanation of use, repair and maintenance." The goal of consumer protection is to ensure the security and safety of consumers when they purchase, consume, and utilize products and services without regard to the identities of the individuals who make up those markets.

Furthermore, it is regulated regarding the protection of personal data as regulated in the PDP Law, there are personal data controllers and personal data processors. Personal data controllers are all persons, public bodies and international organizations acting individually or jointly in determining the purposes and exercising control of the processing of personal data. Even though it has been comprehensively regulated, various cyber crimes still occur and tend to be increasingly diverse and complex. Cybercrime is the development of computer crime. Cybercrime and cyber law where this crime has violated the criminal law. With the cases that occurred in cyberspace, there have been many victims, not only among teenagers but at all ages. This requires the police unit to act immediately in dealing with cases of cybercrime , the scope of which is very broad and even unlimited.

In the context of law enforcement in force in Indonesia, cybercrime is included in the qualitative criminal category, namely an act that is seen as a crime after the existence of laws that regulate it as a crime. The basis for handling criminal acts Protection of personal data by business actors is based on Law No. 8 of 1999 concerning Consumer Protection, which later in a more concrete and comprehensive manner is also regulated in the PDP Law. Various concrete efforts have been made by the Government of Indonesia in order to protect the public in the face of rapid developments in technology and information. Based on the background described by the authors above, the article in the form of a journal compiled under the title "LEGAL RESPONSIBILITY BY HOOTSUITE IN THE CRIME OF MIS-USE PERSONAL DATA " becomes a juridical basis for special consideration in the context of regulation and criminal liability in data protection efforts for the people of Indonesia in the rapid dynamics of the development of science and technology

II. Research Methods

According to Peter Mahmud's "Legal Research, Revised Edition," the sort of legal research presented in this journal article is normative legal study or doctrinal research focused on the object of legal science in the form of behavioral coherence (act-not conduct) individuals with legal standards. To organize normative legal research, scholars

employ logical reasoning to examine statutes and judicial decisions. Both primary and secondary sources are employed in the legal process. The author takes both a legalistic and a theoretical stance. Both the method of developing the law and the method of interpreting the application of the law contained in statutory regulations will be utilized when using the statutory approach in a study. The author takes both a statutory and a conceptual approach to the law in this study.

III. Results and Discussion

3.1 Legal Protection Arrangements by Hootsuite for the Crime of Misuse Personal Data in an effort to provide legal certainty to the public

A number of countries have recognized in the form of 'habeas data', namely the right of a person to obtain security for his data and for justification when errors are found in his data. Data protection can basically relate specifically to privacy to determine whether information about them will be communicated or not to other parties (*information privacy*) regarding personal information. The digital revolution has created an innovation in the *capacity* to acquire, store, manipulate, and transmit large volumes of data in real time, and complex.

The Industrial Revolution 4.0 has brought significant changes to various aspects of human life, we can now clearly observe how these changes have become a powerful phenomenon that cannot be stopped, throughout 2018 which we have just passed, world companies and also in Indonesia are competing to competition in innovating to win market competition in the midst of increasingly tight competition. The encouragement of the development of science and technology also triggers the rate of development of the use of technological devices that occur in society. Technological developments gave rise to a term digital economy. The term digital economy (*digital economy*) was introduced by Don Tapscott in 1995 through his book entitled *The Digital Economy: Promise and Peril in the Age of Networked Intelligence*. The digital economy is an economic activity based on internet digital technology. The digital economy is also known as the *internet economy*, *web economy*, *digital-based economy*, *new knowledge economy*, or *new economy*. According to Don Tapscott, the digital economy has 12 attributes. (1) *Knowledge*. In the digital economy, *power of the knowledge* translated into superior innovations through the latest opportunities to create competitive advantage. (2) *Digitization*. Business transactions using *digital technology* and digital information. Customers as *digital customers* use *digital devices* to conduct transactions with companies selling goods and services as *digital enterprises*. (3) *Virtualization*. In the digital economy it is possible to turn physical goods into virtual goods. Intellectual capital is converted into digital capital. (4) *Molecularization*. In the digital economy, *heavy organization* in traditional organizations turn into *light organization* flexible, *M-form organization* (multidivisional organization) shifted to *E-form organization* or *ecosystem form organization* easily adaptable to the environment. (5) *Internetworking*. Using the internet network to build interconnections form an economic network. (6) *Disintermediation*. No need for intermediaries, transactions can be done directly *peer-to-peer*. (7) *Convergence*. The convergence of computing, communication, and content together forms interactive multimedia important *platforms*. (8) *Innovation*. Human imagination and creativity are the main sources of value forming *innovation economy*. (9) *Prosumption*. In the old economy the key aspect was *mass production*, while in the digital economy is *mass customization*. The distinction between producer and customer is blurred, every customer is in *information highway* can also be a producer. (10) *Immediacy*. The time difference

between ordering an item and when it is produced and shipped has shrunk drastically due to the speed of the process *digital technology*. (11) *Globalization*. According to Peter Drucker "*knowledge knows no boundaries*." There is no limit for global transactions. (12) *Discordance*. A chasm will open up between digitally savvy people and others who are technologically illiterate. All participants in the internet economy need to be technologically literate in order to thrive, which means keeping up with the rapid pace of innovation in the field of information and communication technology as it moves in the direction of increased connectivity and collaboration.

In today's digital market, a digital business model is necessary to survive. When digital technology causes shifts in the value of business transactions, it is referred to as digital disruption since it results in the emergence of new business models. Digital e - economy is based on digital technology where goods and services are traded through electronic commerce on the internet using the three pillars of the digital economy, namely:

1. Infrastructure such as hardware, software, telecommunication, network, and so on.
2. *E-business*, is a business process that uses information and communication technology to achieve company growth related to purchasing, sales and services, customer service and cooperation with business partners both individuals and companies.
3. E-commerce, is part of *e-business* as a set of technological dynamics where including the purchase and sale of products and services as well as the exchange of data, facilitates connections between businesses, consumers, and communities. Business through social media is very popular with the public today, various types of products are sold ranging from culinary, *smartphones, furniture, fashion, beauty and health products* and other products to be an example of the development of the digital economy in the era of the industrial revolution 4.0

The current development of information technology has had an impact on the goods and/or services marketing industry, which was originally carried out through conventional marketing, but now it is very common to find digital product marketing. Through the use of big data analysis, business actors can utilize data in *real time* through *targeted advertising* that is connected between *markets certain places* with social media so that consumers will be exposed to marketing of similar products when they open their social media. One of the developments that is also present in Indonesia is *Hootsuite*. *HootSuite is a social media management platform that integrates with other popular platforms like Facebook, Twitter, LinkedIn, Foursquare, MySpace, and WordPress. One of the authorized Twitter clients is HootSuite.*

Every year, Hootsuite (We are Social) releases a report titled "State of the Internet, Social Media, and E-Commerce," which provides a comprehensive overview of key statistics and developments in these areas. The data set includes information from all over the world, including Indonesia. Hootsuite typically releases its annual internet and social media trend data around February. HootSuite's main feature is content management software, which allows users to create and manage profiles on a number of different social networking sites and share material with their followers. In this scenario, the business and trade sectors have adopted IT initiatives, such as e-commerce, to improve the quality of human life.

Each year around February, Hootsuite releases a report detailing the previous year's internet and social media trends. This is because at the conclusion of the prior year, Hootsuite conducted a survey, and the results were analyzed at the start of the current year. Active Social Media Users: 191.4 million (2021: 170 million, up 12.6%) is the estimated number of Indonesians who use social media, according to data and trends provided by Hootsuite in Digital Indonesia in February 2022. With WhatsApp accounting for 80% of

all social media users in Indonesia, this statistic suggests that there are at least 50% of the country's population that is technologically savvy. This is followed by Instagram, Facebook, TikTok, and Telegram. Hoot suite's main service is a content management system that facilitates the distribution of online media across multiple social networking platforms, including but not limited to YouTube, WhatsApp, Instagram, Facebook, Twitter, Line, Pinterest, Messenger, QQ, Qzone, Tiktok (Douyin), Sina Weibo, Reddit, Douban, LinkedIn, Baidu Tieba, Skype, Snapchat, Viber, and others.

However, it should be realized that it is equivalent to the development of science and technology in the era of the industrial revolution 4.0, which does not escape the negative side which is always in harmony with positive developments. In fact, one of the *legal problems* of this problem is the protection of personal data in the use of social media, especially in the digital economy era which requires special attention. Increasing development of the national economy needs to be supported by a law that regulates limited liability companies that can guarantee a conducive business climate. So far, Limited Liability Companies have been regulated by Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Limited Liability Company Law). However, in its development, the provisions in the law are seen as unable to fulfill the flexible and dynamic nature of all legal developments and the needs of society because the economic situation and advances in science, technology and information have developed so rapidly, especially in the era of the digital economy (*digital economy*). In addition, The public's growing appetite for instant gratification, legal certainty, and a business sector built on the tenets of sound corporate governance necessitates revisions to Law No. 40 of 2007. As it grows, it needs immediate changes to its legal framework, particularly with respect to Limited Liability Companies, given the many legal loopholes that may occur in the context of the business world; good efforts made by natural legal subjects and *rechtsperson persons* in order to be held criminally responsible and to apply criminal sanctions attached to criminal liability. In the context, protection of personal data, especially in fulfilling the era of the Industrial Revolution 4.0, there is a legal loophole that the Public Company Law has not been able to accommodate various developments in the business world that are digital economy, in particular it is undeniable that nowadays there are many developments in the scope of the business world by using information technology and science, so that on this matter comprehensive and constructive regulations are needed to achieve the goals of the law itself, namely justice, benefits and legal certainty.

In the case of using personal data for commercial purposes, particularly in electronic transactions in the context of Indonesian law is still a complex discussion. A problem that is quite serious and often experienced by various countries in the world is data leakage. Data leakage in Indonesia is the biggest case among other Southeast Asian countries. At the normative level, Indonesia specifically pays attention to the protection of personal data as regulated in the PDP Law. The PDP Law is a juridical basis for handling the practice of misusing the use of personal data. The practice of using personal data in the business world is indeed dealing with the protection of one's privacy. On the one hand, business actors get economic benefits from other people's personal data. On the other hand, the data owner does not benefit from his personal data. In this condition, the protection of personal data becomes a dilemma, because if its use is strictly limited in the name of respect for human rights, it will be difficult for the business world in the field of information and communication technology to obtain resources.

Efforts to Protect Personal Data in the PDP Law as stated in Article 70 "intentionally and unlawfully obtains or collects and discloses personal data that does not belong to him, then penalties are imposed on administrators, controllers, givers of orders, beneficial

owners, and/or corporations" has set provisions for *hootsuite sanctions* as a corporation that commits a violation. Against violations committed by corporations. The existence of the PDP Law is a concrete and comprehensive effort from the government in protecting and guaranteeing the basic rights of citizens related to personal self-protection, guaranteeing that people get services from Corporations, Public Agencies, International Organizations, and the Government, encouraging growth in the digital economy and the information and communication technology industry, and support the increase in the competitiveness of the domestic industry.

3.2 Legal Responsibility by *Hootsuite* in the Crime of Mis-use Personal Data

Protection of Personal Data is included in the protection of human rights. Thus, regulation concerning Personal Data is a manifestation of recognition and protection of basic human rights. The existence of a Law on Personal Data Protection is a necessity that cannot be postponed any longer because it is very urgent for various national interests. Indonesia's international association also demands the Protection of Personal Data. Such protection can facilitate transnational trade, industry and investment.

Privacy and data protection are interrelated cyberspace management issues. Data protection is a legal mechanism that guarantees privacy. As societies and individuals increasingly adopt digital technologies, the data they generate creates opportunities for both companies and governments to increase their involvement and responsibility for keeping data secure. The existence of the PDP Law is a concrete and comprehensive effort from the government in efforts to violate personal information which is a threat to society and various *cybercrimes* with diverse and increasingly complex *patterns*. For any corporation that violates the predetermined prohibition, it can be subject to sanctions in the form of criminal sanctions, both additional penalties and fines. The PDP Law regulates the provisions for sanctions for corporations in Article 70 of the PDP Law which states that it only takes the form of a fine with a maximum provision of 10 times the maximum fine that is threatened. Apart from fines, corporations can be subject to additional penalties in the form

1. Confiscation of profits and/or assets obtained or proceeds from criminal acts;
2. Freezing all or part of the corporate business;
3. Prohibition of all or part of corporate business;
4. Closure of all or part of the place of business and/or corporate activities;
5. Carry out obligations that have been neglected;
6. Compensation payment;
7. license revocation; and/or
8. Dissolution of the corporation

Further explained in Article 72 paragraph (1) of the PDP Law regarding the confiscation and auction of assets or income carried out against convicted corporations and not sufficient to pay off criminal fines, corporations are subject to alternative punishment in the form of freezing part or all of corporate business activities for a maximum period of 5 (five years).

The PDP Law is the answer to the problem of personal data protection juridically including in regulating legal subjects, actions that can be subject to criminal responsibility and criminal sanctions inherent in every action taken by legal subjects. The PDP Law must be able to cover the personal principles of every society in the global sphere in various sectors. However, the government's protection efforts will not run optimally if they are not supported by other regulations that also dynamically follow the pattern of needs in overcoming problems in society, especially related to the existence of a digital economy that specifically places natural legal subjects *in* a public company.

IV. Conclusion

Hootsuite is an example of a key breakthrough brought forth by the 4.0 Industrial Revolution, which has affected many facets of human existence. HootSuite is a social media management platform that integrates with other popular platforms like Facebook, Twitter, LinkedIn, Foursquare, MySpace, and WordPress. There is, however, an intriguing legal question relating to the speedy advancement of science and technology, and that is the nature of public protection, in particular the protection of private information. The PDP Law has provided a concrete framework for regulating, over a wide range of legal topics and activities that may attract criminal liability and punishment in Indonesia. Law Number 40 of 2007 regarding Limited Liability Companies leaves a lot of room for interpretation, making it so that the dynamics of the industrial revolution, including a company's role in using hootsuite, cannot be regulated in a concrete way. This means that the regulation will not function as smoothly as it could.

Basically the provisions in the PDP Law are standards for Personal Data Protection in general, whether processed in part or in whole by electronic and non-electronic means, where each sector can apply Personal Data Protection according to the characteristics of the sector concerned. Adequate protection of Corporate Personal Data will be able to give the public confidence to provide Personal Data for the wider interests of society without being misused. Thus, this arrangement will create a balance between individual and community rights whose interests are represented by the state. Regulations concerning the Protection of Personal Data will make a major contribution to creating order and advancing the digital economy in society.

Consideration from the academic realm, especially for regulators, is that there is a need for regulations that are comprehensively and coherently interrelated not only in terms of personal data protection but in terms of limited liability companies, bearing in mind the complexity of cases that are increasingly diverse and in order to achieve legal objectives, namely justice, benefit and legal certainty. In the context of cybercrime and personal data protection for people in Indonesia.

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