

ANALYSIS OF LEGAL PROTECTION OF BANKING CUSTOMER DATA IN REVIEW OF LAW NUMBER 8 OF 1999 CONCERNING CONSUMER PROTECTION

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Abstract

The protection of banking customer data is increasingly important along with the advancement of information technology and the adoption of electronic banking services by the public. Although Law No. 8/1999 on Consumer Protection (UUPK) already exists, it only regulates consumer protection in general and does not specifically regulate the protection of banking customer data. In practice, the implementation of the GCPL is also limited due to the lack of sanctions for customer data breaches. Therefore, this paper examines the international standard personal data regulation that refers to the General Data Protection Regulation (GDPR) to understand more about customer data protection. This paper aims to analyze the legal protection provided to banking customer data in the context of Law No. 8/1999 on Consumer Protection. By examining the provisions of the law, this paper attempts to evaluate the extent to which the existing regulations have been able to effectively protect banking customer data. The analysis shows that although Law No. 9/1999 provides a legal basis for consumer protection in general, the specific protection of banking customer data still needs to be strengthened through more specific regulations and more effective law enforcement mechanisms.

Keywords : Legal Protection, Customer Data, Consumer Protection

1. Introduction

The development of information technology has had a significant influence on various aspects of human life, including the banking sector. This is evidenced by various new discoveries that have been developed to regulate company operations and improve industry performance. Credit card technology, online banking, mobile banking, or SMS banking are some examples of these developments. Customers can easily and conveniently conduct financial transactions from anywhere thanks to this technology. With the convenience of this technology, customers who will make transactions do not have to come directly to the bank and wait in line, and transactions carried out with the sophistication of this technology can be done anywhere and anytime

In Indonesia, banks play a crucial role in the country's economy. Banks are an important component in business and economics, a source of credit, and a gateway for transactions. In Indonesia, digital banks have become the mainstay of financial institutions in recent years. Because banks are the backbone of financial institutions, banks have a crucial role in creating a new economic environment and must participate in its transformation. In line with the goals outlined in the 1945 Constitution, which include maintaining the welfare of the general public and protecting all Indonesian citizens, the Financial Services Authority has enacted laws for Digital Banks. Article 28G paragraph (1) of the 1945 Constitution asserts that every individual has the right to be protected from interference with their privacy, honor, and property, and to feel safe and protected from threats or fears that may hinder these rights, in accordance with human rights. The foundation related to digital banks is regulated through Financial Services Authority Regulation (POJK) Number 12/PJOK.03/2021 concerning Commercial Banks which complements the previous regulation, namely Number 12/POJK.03/2018 concerning the Implementation of Digital Banking Services by Commercial Banks, which states that: "Digital Banks are Indonesian Legal Entities (BHI) that provide and

conduct business activities primarily through electronic channels without physical branches other than the headquarters, or using limited physical branches"

The development of technology has had a significant impact on the banking industry, bringing various innovations that accelerate transaction processes, improve operational efficiency, and provide easier access to financial services for the public. However, along with its benefits, this technological development also brings new challenges related to the security and privacy of customer data. According to Article 28 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (Banking Law), bank secrecy is defined as all information related to customer data, including their storage and financial transactions. This includes all forms of information obtained by banks in order to provide services to customers, such as personal identities, transaction histories, account balances, and other financial information that is considered confidential and sensitive. This is in line with Article 40 paragraph (1) of the Banking Law which states that "Banks are obliged to keep confidential information regarding customer depositors and their deposits".

As banking consumers, one of the rights that customers have is the right to confidentiality or protection of the personal data they have provided. However, in reality, there are many practices of buying and selling bank customer data that are widely spread on various social media platforms or community forums. In order to protect customers as consumers, there is a law that regulates consumer protection, namely Law No. 8 of 1999 concerning Consumer Protection (Consumer Protection Law). Consumer protection laws are designed following national development principles that emphasize the importance of legal development to provide protection to consumers. This is in line with the national development goals aimed at shaping complete Indonesian individuals, rooted in the principles of Pancasila and the constitutional values of the state as stated in the 1945 Constitution. Law No. 8 of 1999 concerning Consumer Protection provides a framework that regulates how financial institutions, including banks, must protect customer's personal information.

According to Article 1 paragraph (2) of the Consumer Protection Law, consumers refer to individuals who use goods or services available in society, either for personal, family, other people, or other living beings' needs, and not for commercial purposes. In this context, banks as business entities are required to protect their customers who are depositing consumers. Customer data has a close relationship with the Consumer Protection Law because this data is personal information owned by individuals and must be protected in accordance with existing consumer protection provisions. The Consumer Protection Law provides a framework that regulates how financial institutions, including banks, must protect customer's personal information. This includes aspects such as requirements to obtain consent from customers before collecting, using, or disclosing their personal information, the obligation to maintain the confidentiality of that information, and the customer's right to access and correct their information stored by financial institutions. Thus, the Consumer Protection Law ensures that customer rights related to their personal data are recognized and legally protected, creating a safer and more trustworthy environment for consumers to interact with financial institutions.

Law Number 8 of 1999 concerning Consumer Protection does not specifically address the protection of customer data, but the framework provided by Law Number 8 of 1999 remains relevant to ensure the compliance of banking practices with general consumer protection principles. Therefore, research related to the analysis of "Legal Protection of Banking Customer Data under Law Number 8 of 1999 concerning Consumer Protection" needs to be conducted to evaluate the implementation of the law in banking practices, especially regarding customer data protection. Findings from this research can provide valuable input to improve and enhance existing consumer protection laws, as well as provide recommendations for practitioners, regulators, and other stakeholders to enhance consumer rights protection in the continuously evolving digital era. Thus, this research will not only help ensure adequate protection for banking customers, but also contribute to improving the broader legal system to address challenges arising in the midst of rapid information technology and digitalization developments. Based on the above description, the issues can

be identified as How is the legal protection of banking customer data regulated in Law Number 8 of 1999 concerning Consumer Protection? And to what extent can the implementation of the Consumer Protection Law protect banking customer data in banking practices?

2. Method

This research examines legal theories and norms in legislation using normative research methodology. By using primary legal sources such as Law Number 8 of 1999 concerning Consumer Protection and secondary sources such as articles, journals, and books, data collected through literature research. Qualitative legal research method is used by looking at what is in line with clear theories. This research aims to provide a comprehensive understanding of consumer protection laws and regulations

3. Discussion

1. Provisions for Customer Data Protection in Law Number 8 of 1999 concerning Consumer Protection

The basis and foundation for legal protection of customers is Law Number 8 of 1999 concerning Consumer Protection. In 1998, the Indonesian government seemed to pay more attention to consumer/customer protection with the issuance of the Consumer Protection Law, and this gave great hope to consumers. This hope arose because there is already legal protection that protects consumers in protecting all consumer interests and rights, which also facilitates the government in organizing, fostering, and providing guidance to consumers in the banking world. Empowering consumers and legal clarity are the goals of consumer protection initiatives, which also seek to increase public awareness of the importance of consumer protection. These initiatives go beyond just punishment or commercial rewards, they also touch on administrative, criminal, and civil law. Empowering consumers and increasing understanding of consumer protection are the goals

Ensuring a legal balance, security, and predictability between producers and consumers is the goal of consumer protection. Article 3 of the Consumer Protection Law explains that this goal includes increasing consumer awareness, giving them the ability to make choices and demand their rights, and building a consumer protection system that includes access to information, legal certainty, and transparency. In addition, this structure encourages information exchange and accessibility. Law Number 8 of 1999 concerning Consumer Protection protects consumers based on benefit, justice, balance, and reasonableness. This is based on Article 2 of the Consumer Protection Law which states that "Consumer protection is based on benefit, justice, balance, security, and safety of consumers, as well as legal certainty." However, because every interaction involving consumers is related to their personal data, this rule does not specifically regulate consumer protection regarding what they should receive. This makes it less effective in protecting customers' personal information because it does not specifically address or regulate this issue. Instead, the Consumer Protection Law focuses on the responsibilities and rights of consumers and commercial entities that generate financial value.

Customers are users of banking services, therefore consumer protection is very important to be provided. Public trust or customers are very important for the banking industry, so consumers are a very important component. Companies and financial entities often violate consumer rights and exploit them without facing legal consequences. Lack of awareness and information of consumer society that can be used to transact without good intentions and focus on maximizing profits by effectively utilizing available resources are the causes. In Indonesia, consumers do not have a strong legal basis to obtain personal data protection because there is no strong legal basis. However, there are articles that regulate and are relevant to the protection of customer personal data reviewed from the UUPK including.

Based on Article 4 of UUPK which regulates consumer rights, although this article does not directly regulate consumer rights related to the protection of customer data, some consumer rights covered in it can be interpreted broadly to support the protection of customer data. A connected element pertains to customers' entitlement to get unambiguous and all-encompassing information on the products and/or services they want to purchase. In the context of customer data protection, this means that consumers have the right to know that their personal data will be stored and processed securely by financial institutions, and will not be misused or accessed by unauthorized parties.

Processing and secure storage of personal data is guaranteed by consumer rights to information security and confidentiality, which helps prevent misuse. In addition, this gives consumers the ability to demand financial companies that misuse data or violate data regulations. Consumer rights regulated in UUPK are based on UUD 1945 Article 5 paragraph (1), Article 21 paragraph (1), Article 27, and Article 33. Although Article 4 does not explicitly regulate customer data privacy, this article provides an important basis to support customer rights related to the security of their personal data in banking operations.

In general, the principle of accurate and clear information is important in the context of consumer protection. Although not specifically regulated in Law Number 8 of 1999 concerning Consumer Protection, this principle can be considered as part of consumer rights to obtain clear and complete information about the goods and services they use. This principle also concerns the responsibility of business actors, including financial institutions, to provide accurate, clear, and non-misleading information to consumers. Financial institutions must ensure that consumers have the knowledge to consent to the use of their data in accordance with consumer data protection laws by providing clear and transparent information on how their personal data will be used, stored, and processed. Although Article 7 specifically regulating "True Information" is not in UUPK, this principle remains relevant in the context of consumer protection in general, including in the protection of customer data in banking practices.

After examining several articles related to the protection of customer data in UUPK, it can be concluded that UUPK does not explicitly regulate the protection of customer data as consumers in banking operations. Although some articles in the law mention consumer rights that can be broadly interpreted to support the protection of customer data, there are no provisions specifically regulating the protection of customer data in banking practices. Therefore, the need for more specific and detailed regulations regarding the protection of customer data in the financial sector, including banking, becomes increasingly important considering the rapid development of information technology and the increasingly complex potential risks of data security.

2. Implementation of Customer Data Protection in Banking Practices

As an institution chosen by customers, banks must comply with laws regulating customer personal information. They are not allowed to use customer data for other purposes without the customer's permission, and must respond quickly to customer complaints. In addition, banks are required to securely store customer data, and continuously improve their administrative structure to enhance customer data protection. There are several rules as bank efforts in protecting consumers as follows:

1. Related to the type of information needed, Information usually required includes address, full name, date of birth, place of work, gender, and telephone number. This data is requested before transacting with customers.
2. Request for information, besides visiting the office directly, the needed information can also be requested through postal mail or through various electronic devices such as the internet and telephone.
3. Informing customers about the banking products and services they need information about.
4. Purpose of information usage

5. Information management methods

6. Customer requests

In the context of consumer protection, the role of Bank Indonesia as the central bank responsible for monetary policy is of great significance. Efforts that can be made by the central bank to protect consumers (customers) include the application of criminal law, civil law, and constitutional law. Banks also have an obligation to maintain the confidentiality of all customer-related information and their deposits as institutions of public trust. Banks as entities and related parties such as bank officials and executives must be aware of bank confidentiality regulations to prevent administrative, legal, and social impacts on society. Legal protection for customers is done in two ways: First, they can be legally protected against any risks of loss arising from bank policies or business operations, known as indirect protection. Second, direct protection is the defense of customers directly against potential losses due to business operations related to the bank.

To protect the security and privacy of customer information, banks must abide by the rules outlined in Law Number 8 of 1999 addressing consumer protection. The right of consumers to have accurate, truthful, and non-misleading information about the products and services they use is the fundamental tenet of the Consumer Protection Law. In terms of safeguarding customer data, banks are required to clearly and easily inform customers how their personal information will be handled and stored. In addition, the principles of personal data protection are also included in the Consumer Protection Law. Financial institutions are required to maintain the confidentiality of client information and not use it for other purposes without consumer consent.

Complaints or claims from customers regarding the use or security of their data must also be handled in a timely manner and in accordance with legal requirements. Banks must comply with applicable data protection regulations and standards set by the relevant financial supervisory authority regarding information technology and data security. This includes protection against unauthorized access to customer data and reporting requirements and actions to be taken in case of data breaches. Banks can ensure the security and privacy of customer data by complying with the Consumer Protection Law and other related regulations. This will provide adequate protection to customers when using financial services. In order to maximize the implementation of customer data protection based on the above, one of the ways is to issue policies or rules specifically regulating customer data stipulated in Law Number 27 of 2022 concerning Personal Data Protection and supervised by the financial institution, the Financial Services Authority, in the form of the issuance of Circular Letter POJK No.1/PJOIK.07/2013 concerning Consumer Protection in the financial services sector, requiring financial service providers, including banks, to maintain the confidentiality of customer data and explicitly prohibit the disclosure of personal data or information to third parties in any form.

In the event of a violation related to customer data caused by the bank such as data leaks, the forms of accountability regulated in Law Number 8 of 1999 concerning Consumer Protection can be seen. There is a principle of accountability that the bank must be responsible for data leaks of customers and mistakes made by the bank towards its customers. However, the form of accountability in this context does not require proof of fault/removing the element of fault.

In civil law, there is a concept known as loss or what we often refer to as Unlawful Acts, which is a violation against others that must have legal consequences, must be borne and judged according to the law. If we examine the regulations regarding Unlawful Acts and Article 1365 of the Civil Code which only regulates the losses suffered by individuals as a result of Unlawful Acts rather than describing the act itself. Article 1365 states "Every unlawful act, which thereby causes loss to another person, obliges the person whose fault caused the loss to compensate for the loss." There are several forms of compensation known in Unlawful Acts (PMH) namely:

- a. Nominal Damages, given when there is an intentional violation without causing substantial harm to the victim, aimed at providing compensation that is proportionate to the sense of justice.
- b. Compensation Damages, refer to payment to the victim for the amount of loss suffered as a result of the illegal act.
- c. Punitive Damages, this is compensation that is a large amount compared to the actual loss, applied in cases involving serious intent.

In their capacity as commercial entities, banks must also make up for any losses, harm, or pollution that customers may have experienced from using any goods or services that they sell or supply. Bank Indonesia is required under the rules included in Article 19 paragraphs (1), (2), (3), and (4) of the Banking Law to provide compensation to clients who encounter difficulties executing transactions as a result of system failures. A reimbursement or replacement of comparable products and/or services may be given as payment. The bank is required to return client monies in the event that they are lost. If more proof of misconduct is found, this compensation does not, however, exclude the potential of facing criminal prosecution.

The bank is deemed to have not fully and optimally fulfilled its responsibilities for maintaining the confidentiality of its customers' personal data in an effort to comply with legislation pertaining to data protection. This is because consumers continue to experience issues as a result of their data being disclosed to unaffiliated parties. The bank's responsibility in safeguarding customer data is not fully realized, as the sanctions imposed by the Financial Services Authority on banks for violations that harm consumers are considered not strict enough.

3. Comparison with International Data Protection Standards

On an international scale, the Universal Declaration of Human Rights (UDHR) includes provisions on the protection of personal data. Article 12 of the UDHR states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interview or attacks." Which means that it is important to realize that personal data is information about an individual's life that is closely related to the idea of privacy or confidentiality. individual's life and is closely related to the idea of privacy or confidentiality, which is a right that needs to be upheld and protected by regulations and laws to promote clarity, fairness, and utility. Basically, privacy is the right not to have one's rights violated and must be upheld. There are crucial steps to assess the quality of customer data protection in Indonesia by referring to internationally applicable data protection standards, such as the General Data Protection Regulation (GDPR) in the European Union.

The General Data Protection Regulation (GDPR), which is a law of the European Union, aims to protect individuals' personal information from misuse by businesses, both within and outside the European Union. As long as businesses collect and handle data from individuals in the European Union, this regulation applies to all - both EU and non-EU businesses. This regulation was first enforced in 2016 and became effective on May 25, 2018. These rules govern how companies, governments, and other organizations collect, use, and store user data. These rules also compel these entities to have procedures that allow consumers to know how they handle their data.

The Data Protection Law 95/46/EC, which previously focused on data protection for consumers in the European Union, has been revised and updated as the GDPR regulation. The lack of coverage for data usage on social media and smartphones, resulting in a lack of legal clarity and protection for the use, management, and misuse of PII, makes the law inadequate. By amending the previous law, the public will regain the right to manage and misuse data on all platforms, including social media and smartphones, as previously under business jurisdiction. The goal of this modification is to protect and provide legal clarity on the use, handling, and misuse of data on gadgets and social media.

In GDPR, there are several important aspects. One of them is the provision that regulates the types of personal information that can be deleted, such as name, IP address (location), image, photo, email, home address, social media activity, bank account information, and medical records. The availability of a notification system for deleting personal data is the second. The presence of a data management supervisor is the third. Standardization of Privacy Policy forms is the fourth.

While the Law in Indonesia does not define personal data technically, and also does not provide categorization of personal data that can be deleted. In addition, there is no system to notify the deletion of personal data, which requires a court order. The absence of specific organizations and inconsistent privacy policy standardization throughout Indonesia further adds to the ambiguity of data utilization. Therefore, a comparison between Law Number 8 of 1999 in Indonesia and the General Data Protection Regulation (GDPR) in the European Union regarding personal data rules highlights significant differences in coverage, principles, and implementation of data protection. The law in Indonesia regulates consumer data protection in general, while GDPR has a broader scope, covering all types of personal data and applying to individuals throughout the European Union. Furthermore, although the law in Indonesia may encompass general consumer protection principles, GDPR establishes stronger and more comprehensive data protection principles, such as transparency, data minimization, and accountability. Individual rights are also expanded in GDPR, providing rights to access, delete, and limit the processing of their personal data. In addition, GDPR has heavier sanctions, providing strong incentives for companies to comply with regulations. Thus, the differences between the laws in Indonesia and GDPR reflect varying levels of data protection, with GDPR setting higher and more comprehensive standards for protecting individual privacy.

4. Conclusion

The research concludes that while Law Number 8 of 1999 concerning Consumer Protection (UUPK) provides the legal framework for safeguarding consumers, there isn't a solid legislative framework in Indonesia that expressly governs the protection of consumer personal data. Although the security of client data is covered in a number of pertinent UUPK articles, there are no laws that expressly govern this in banking practices. Additionally, because authorities like the Financial Services Authority still believe that the penalties for infractions are insufficient, banks have not completely grasped their responsibilities to protect the security of consumer data. There are clear distinctions between the GDPR in the European Union and other data protection regulations in terms of scope, principles, and application. The GDPR establishes more stringent and all-encompassing requirements for safeguarding the privacy of individuals. In order to better secure banking clients and bring Indonesia's data protection laws into compliance with higher international standards, more work must be done to improve them.

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