

## E-Consumer Privacy Policy on the Online Marketplace System

Muhammad chusnul khitam<sup>1</sup>, Suisno<sup>2</sup>, Fajar Seto Nugroho<sup>3</sup>

[muhchusnul@unisla.ac.id](mailto:muhchusnul@unisla.ac.id), [suisno72@unisla.ac.id](mailto:suisno72@unisla.ac.id),  
[dawnsetonugroho88@gmail.com](mailto:dawnsetonugroho88@gmail.com)

Law Faculty University Of Islam Lamongan  
Law Faculty University Of Islam Lamongan  
Law Faculty University Of Islam Lamongan

### Abstract

How should the protection of privacy and personal data in Indonesia be responsive to anticipate changing trends from the traditional economic era to the digital economic era? Rapidly developing information and communication technology is changing the way people run business and/or carry out transactions. Thus, transactions which are known as "e-transaction", "e-commerce" and "e-business" have emerged. Indonesia is now in the era of the digital economy. This claim is supported by the condition of Indonesian society which makes the internet and cell phones a commodity, and these commodities are used by traders and sellers to signify electronic transactions via the internet network. This requires that the laws governing these activities can follow or even anticipate developments into the Digital Economy Era.

**Keywords: Digital Economy Era, protecting privacy and personal data.**

### Introduction

The main driver for the emergence of the Digital Economy is the internet. The internet has become a global market where economic actors meet.<sup>1</sup>Not only that, the internet also allows for more efficient communication and information distribution patterns to market a product more widely compared to the traditional economy. Information technology that is increasingly cheaper, faster, better and easier to use allows various organizations and individuals to be more connected wirelessly which then becomes the center of economic and social activities.<sup>2</sup> Technological developments have encouraged the shift from the traditional economic era, which can

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<sup>1</sup>Sivarasa Rasiah, Malaysian Bar Association in Greenleaf, Graham, Asian Data Privacy Laws, Oxford University Press, UK, 2014, p. 324.

<sup>2</sup>Thomas M. Lenard, Daniel B. Britton, et.al., The Digital Economy Fact Book, The Progress & Freedom Foundation Washington, DC, 2006, p. 1



also be called the "pre-digital" era, to the Digital Economy era. Thus, legal protection for privacy and personal data is required to adapt.

In the pre-digital era, protection of privacy and personal data from violations by the government or other parties could be achieved with a divergent legal regulation pattern, where privacy and personal data regulations were placed in different laws. This claim is supported by practices that occur in the world. <sup>24</sup> In this phase, individuals throughout the world who want their privacy rights protected can implement their own self-protection mechanisms. Important notes containing privacy and personal data can be hidden in cupboard drawers or in safes. This kind of self-defense mechanism will be difficult to implement in the next era, namely the Digital Economy Era.

Several service industries such as e-commerce, media and entertainment and financial services are part of this industry. The base of the pyramid are sectors that are not affected by digitalization, or are very little affected by digital technology. Examples of this industrial sector are the agricultural industry, or public services such as household assistants, rubbish cleaning services, hairdressers, where the majority of business actors do not use computers significantly.<sup>3</sup>

The nature of activities in the 2nd and 3rd level industries of the pyramid means that individuals who wish to carry out economic activities digitally provide their privacy and personal data to other parties. This privacy and personal data can easily be transferred back to other parties. Not only personal records, the individual's behavior online becomes more exposed to other parties. Thus, increasing legal protection becomes very important in the Digital Economy Era. Without stronger legal protection, it is impossible to hope for this world to become a privacy paradise.<sup>4</sup> Traditional methods as a self-defense mechanism are no longer possible.

Files regarding a person's health, finances, travel and consumption will be very difficult to store all in one physical room. Correspondence and communication records can even be found and accessed from any part of the world, because they are

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<sup>3</sup>Id., p. 5-7.

<sup>4</sup>Stephen J. Schulhofer, *Supra* no 24, p. 241.



recorded on the internet or telecommunications provider's data base. This phenomenon is called "Cloud Storage". Data owners no longer know where their personal data is stored physically, but digitally their personal data can be accessed throughout the world. In such circumstances, protecting privacy and personal data independently is a difficult challenge.<sup>5</sup>

### **Research Methods**

This research uses normative legal research methods or what is known as doctrinal legal research. Based on the doctrinal legal research method, the data collection technique used is a literature study. The type of approach used in this research is a statutory approach because this research examines and examines regulations regarding the settlement of theft crimes with elderly perpetrators and a conceptual approach that departs from views to doctrines that develop in legal science as a foothold for building legal arguments in resolving the legal issues at hand.<sup>6</sup>

The research source used as the main reference material in this research is secondary data in the form of legal materials, where the legal material itself is then further categorized into primary, secondary and tertiary legal materials.<sup>7</sup> The research source used as the main reference material in this research is secondary data in the form of legal materials, where the legal material itself is then further categorized into primary, secondary and tertiary legal materials.<sup>8</sup>

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<sup>5</sup>Id., p. 240.

<sup>6</sup> David Tan, "Legal Research Methods: Exploring and Reviewing Methodology in Carrying Out Legal Research," *Nusantara: Journal of Social Sciences* 8, no. 8 (2021): 2463–2478.

<sup>7</sup> Abdurrakhman Alhakim and Egia Ginting, "Analysis of the Formation of the Job Creation Law at the Planning and Drafting Stages Based on the Law on the Formation of Legislative Regulations," In *Combines-Conference On Management, Business, Innovation, Education And Social Sciences* 1, no. 1 (2021): 284–96.

<sup>8</sup> Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (November 30, 2022): 289, <https://doi.org/10.37253/jjr.v24i2.7280>.



## **Privacy Protection of Data as an element that binds individuals and economic society.**

Until now, there is still uncertainty regarding the protection of privacy and personal data, because Indonesia does not yet have legal instruments that are suitable for the digital era. A legal instrument for privacy protection for personal data in the digital economy era must at least meet several criteria:

### **1. Protection of Privacy and Personal Data That Has an International Character**

Data in the Digital Economy era does not move physically to predictable destinations as happens in the Traditional Economy. In an economic relationship between individuals and private companies, physical storage of privacy and personal data will be difficult to find if transactions are carried out digitally. Cornered data storage places can no longer be limited by the scope of national jurisdiction, because they can be cross-border. This data can also be accessed by someone from a country other than the country that owns the data. Thus, for reasons of effectiveness in protecting privacy and personal data, it must also be supported by regulations that are cross-border in nature. Such rules include the rule that the transfer of personal data outside the country's territory must require special approval, and can only be done to countries that have equivalent privacy and personal data protection.

Several international legal instruments regulate internationally recognized privacy and personal data principles. These principles are the foundation for modern national data protection laws. One of the international instruments that protects privacy and personal data was issued by the Organization for Economic Co-operation and Development (OECD). This international organization issued Privacy Guidelines which are not legally binding but have long been recognized as guidelines for creating privacy protection norms for OECD member countries.



Apart from the OECD, the Council of Europe (CoE) has adopted the European Convention for the Protection of Human Rights (ECHR) in 1950. In 1981, the CoE adopted the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (DP Convention).<sup>9</sup> This Convention applies to the automated processing of personal data in both the private and public sectors.

Protection of personal data and privacy in the European Union has been recognized as a basic right in The European Union Charter of Fundamental Rights. As a derivative of the Charter, the European Union has new personal data protection legislation in 2016 which is used to protect personal data in the digital era. The European Union legislation is known as The General Data Protection Regulation (GDPR) which was adopted based on Regulation 2016/679. This regulation is essentially a step to strengthen the fulfillment of the basic rights of the people of the European Union in the digital era and will directly impact the drive for business development in the digital era. As a further step, namely in the law enforcement sector, the European Union established The Police Directive based on Directive 2016/680 which protects individuals in the processing of personal data which has elements of criminal offenses and the application of criminal sanctions for personal data violations committed against data subjects. .<sup>10</sup>

## **2. Privacy Protection Of Data As An Element That Binds Individuals And Economic Society**

The right to privacy and personal data is a right that has an international character due to its unclear status in national legal protection. In national legal protection there are two things that can be debated. Privacy on the one hand is a right that creates a distance between individuals and society. On the other hand, especially in the Digital Economy Era society, privacy is also a right that can link individuals to society. With the protection of privacy and personal data, individuals will have the confidence to participate in becoming a digital economic era society.

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<sup>9</sup>Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, 28 January 1981

<sup>10</sup>Oliver Diggelmann, Maria Nicole Cleis, How the Right to Privacy Becomes a Human Right, Human Rights Law Review, 2014, Vol.14, p. 458



Protection of privacy and personal data in the Digital Era is experiencing a strengthening trend in various countries.<sup>11</sup> This is because the protection of privacy and personal data is far from adequate when compared to the rapid development of internet and communications technology. It doesn't just stop within the national legal framework, strengthening the protection of privacy and personal data is also needed in a cross-border framework. In this case, technological developments and recent cases regarding wiretapping are driving the need for a stronger legal framework for protecting privacy and personal data. Technological developments, for example developments known as the Internet of Things (IoT), seriously threaten a person's privacy and personal data. In IoT technology, a device can be designed in such a way as to constantly monitor every user activity, even collect sensitive user data, and connect via an internet connection.<sup>12</sup> This technology allows someone to remotely access the device user's personal information, because it is connected via the internet. Apart from that, the case of Edward Snowden who leaked National Security Agency (NSA) documents was recently revealed. This case gave rise to a lot of discussion about the right to privacy in the Digital Era. The relationship between personal data, interception and privacy protection is a major highlight in the Digital Era.<sup>13</sup> In subsequent developments, especially in the context of the Digital Economy, the relationship between personal data, interception and privacy protection has become a determining factor in market players' confidence in carrying out activities in the digital market.

Not only at the country level, equal privacy and personal data regulations are also promoted between regions (between regions and other countries), for example the existence of the "Transatlantic Trade of Personal Data" between the European Union and the United States. In this scheme, a person's personal data can be transferred from the European Union to America, and vice versa, as long as both

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<sup>11</sup>Lidiya Mishchenko, *The Internet of Things: Where Privacy and Copyright Collide*, Santa Clara computer and high technology law journal, Year 2016, Volume33, pp.114-115.

<sup>12</sup>Zhao, Bo, *The Internationalization of Information Privacy: Towards a Common Protection*, Groningen Journal of International Law 2014, Vol. 2, p.13.

<sup>13</sup>Carly Nyst, *The Right to Privacy in the Digital Age*, Journal of Human Rights Practice, 2017, Vol. 9, p. 117



countries have equal protection.<sup>14</sup> In this kind of framework, trade relations between the European Union and the United States in the digital era are greatly influenced by legal regulations for the protection of privacy and personal data. Equal protection is a prerequisite that must exist so that the exchange of personal data can take place. If the exchange of personal data is hampered, it will not only be government interests that will be hampered, but even greater economic interests. In various industries,<sup>15</sup> For example, this framework, the exchange of personal data is very important for the sustainability of the financial system. The existence of a Law on the Protection of Personal Data is a necessity that cannot be postponed any longer because it is very urgent for various national interests. Indonesia's international community also demands protection of personal data and information. This protection can facilitate transnational trade, industry and investment.

## **Conclusion**

Indonesia already has privacy and personal data protection regulations spread across various laws and regulations, for example Law no. Law No. 36 of 2009 concerning Health regulates the confidentiality of patients' personal conditions, while Law No. 10 of 1998 concerning Banking regulates privacy and personal data regarding depositors and their savings. Apart from that, regulations for the protection of privacy and personal data are also contained in Law Number 36 of 1999 concerning Telecommunications, Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2006 concerning Population Administration which has been amended by Law No. . 24 of 2013) and Law Number 11 of 2008 concerning Electronic Information and Transactions (as amended by Law Number 19 of 2016), as well as various other regulations. Indonesia also has a Personal Data Protection Law which is currently still in the intra-ministerial discussion stage and is expected to be

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<sup>14</sup>Emily Linn, A Look into the Data Privacy Crystal Ball: A Survey of Possible Outcomes for the EU-US Privacy, *Vanderbilt Journal of Transnational Law*, 2017, Vol. 50, p. 1358.

<sup>15</sup>See David Cole , Federico Fabbrini , Bridging the transatlantic divide? The United States, the European Union, and the protection of privacy across borders, *International Journal of Constitutional Law*, 2016, Vol.14, p.221



proposed soon in the 2018 National Legislation Program. Convergence on Personal Data Protection is important for Indonesia and has not yet been implemented, even though this convergence is important to provide equal protection of privacy and personal data. with other countries. It is hoped that the arrangements that will be drawn up in the Draft Law will place Indonesia on par with countries with advanced economies, which have implemented laws regarding the protection of privacy and personal data.

Until now, there is still uncertainty regarding the protection of privacy and personal data, because Indonesia does not yet have legal instruments that are responsive to the community's need for stronger protection. Existing legal instruments in the digital economy era. A legal instrument for the protection of privacy and personal data in the digital economy era must meet at least 3 criteria: (1) have an international character; and (2) is an element that binds individuals and economic society. First Characteristic, protection of privacy and personal data must also be supported by arrangements that cross national borders. Such rules include the rule that transfers of privacy and personal data outside the country's territory must require special approval, and can only be done to countries that have equivalent privacy and personal data protection. Second Characteristic, in the context of the Digital Economy Era, the protection of privacy and personal data must also include the protection of personal rights. In other words, apart from having to be negative rights which require the state not to do something so that the right is fulfilled, they must also be positive rights where the fulfillment of the right can only be carried out with the active role of the state. The era of the digital economy with all its special characteristics and rapid development cannot require the country to just remain silent, but to do something more. Third characteristic, protection of privacy and personal data can increase individual confidence in participating in society in the digital economic era.



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