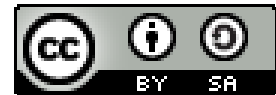




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PROVIDER'S RESPONSIBILITY FOR DATA PERSONAL CONSUMER ASSOCIATED WITH PRIME CARD REGISTRATION

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Abstract

To minimize starter packs, the Government, through Regulation of the Minister of Communication and Information Number 12 of 2016 jo. Regulation of the Minister of Communication and Informatics Number 14 of 2017 concerning the Registration of Telecommunications Service Customers requires consumers to send personal data to the operator as a National Identity Number and Family Card Number or biological mother's name. However, this condition needs to be addressed appropriately, bearing in mind that the use of personal data by irresponsible parties without approval or authorization or because electronic system failures are prone to occur. The problems in this research are further examining the legal relationship between the provider and the consumer, the provider's responsibility to the consumer's data regarding starter pack registration, and the legal remedies consumers can take when personal data protection fails. The method used in this research is normative, carried out by reviewing existing laws and regulations and the literature related to the research topic. This study's results indicate a legal relationship between providers and consumers marked by registration recruitment. The provider, in this case, is the party that formulates the agreement, while the consumer only agrees and follows the agreed terms. Furthermore, the operator has responsibility for the telecommunications services it provides, including maintaining legitimacy, truth, accuracy, and relevance, as well as suitability to obtain, collect, analyzing, process, display, store, post, send, disseminate, to destroying personal data by the provisions legislation. And suppose there is a failure to protect the confidentiality of personal data. In that case, consumers can file legal remedies through complaints, civil lawsuits through court and alternative dispute resolution, or prosecution of providers.

Keywords: *Consumer, Provider, Registration*

A. Introduction

The existence of guarantees in the form of legal protection for the public who become consumers of cellular telecommunications services (from now on referred to as consumers) is the main thing that must be considered in the operation of telecommunications. As the operator of telecommunications services, the provider becomes a party whose existence cannot be separated in the operation of cellular telecommunications. Providers, in this case, have a role in strengthening national unity and integrity, supporting economic development, expediting government activities, etc. Of course, this must also be perpendicular to the guarantee of good service delivery to the public as consumers who enjoy cellular telecommunications services.¹

¹ Shandi Patria Airlangga, "Hakikat Penguasa Dalam Negara Hukum Demokratis," *Cepalo* 3, no. 1 (2019): 1–10, <https://doi.org/10.25041/cepalo.v3no1.1783>.

The starter card is essential for each consumer to enjoy the provider's telecommunications services. So to minimize the occurrence of SIM card misuse, the presence of the Government as the party that guarantees that the operation of cellular telecommunications can run well is deemed necessary. In this regard, the Government, through the Regulation of the Minister of Communication and Information Number 12 of 2016 jo. Regulation of the Minister of Communication and Informatics Number 14 of 2017 concerning Registration of Telecommunications Service Customers requires that every consumer register himself (from now on registration) by sending personal data to the provider to ensure the validity of the consumer with his demographic data.²

When registering, consumers are required to send their National Identity Number (from now on referred to as NIK), Family Card Number (from now on referred to as KK Number), or biological mother to the provider via a short message in the form of a *Short Message Service* (from now on referred to as SMS) or via the available service contact center. Such conditions must also be adequately addressed. This is because the data that must be sent during registration is personal data whose confidentiality must be protected. Consumers in this case have the right to get the best possible service, including protection of the confidentiality of privacy and personal data that is included when registering. Providers must uphold the interests of consumers who are under their responsibility.

Providers of cellular telecommunications services must be responsible for the privacy and personal data sent and received by consumers. Everyone's privacy and personal data are fundamental rights guaranteed by the State Constitution, the 1945 Constitution of the Republic of Indonesia (from now on referred to as the 1945 Constitution). This is important, bearing in mind that in enjoying products in the form of goods and services, consumers have the right to feel safe, comfortable, and safe, as emphasized in Law Number 8 of 1999 concerning Consumer Protection (from now on referred to as the Consumer Protection Law).

Protecting personal data is essential, bearing in mind that every change or development in technology also has a negative side that can be seen from the level of progress of the community. Also included in the electronic system are several weaknesses, one of which is electronic system interference. Disruption of this electronic system has the potential to become an opportunity for irresponsible parties to seek profits behind this. As a result of the electronic system disturbances that occur, it is not uncommon to find the use of personal data obtained without the permission/approval of the data owner concerned.³ Utilization of personal data by irresponsible parties can occur because of: the provider, parties outside the provider, or because of the failure of the electronic system being held.⁴

Indonesian people, on average, experience incoming calls every month at least 10 (ten) times. If this condition is allowed to continue, then consumers have the potential to be vulnerable to losses. So there needs to be seriousness and responsibility of various parties, especially providers as providers of cellular telecommunications services. One of the forms of use of personal data by irresponsible parties is in the form of information or promotions containing terror or fraud (spamming) via telephone and/or SMS. Generally the personal data is obtained not with the permission/approval of the authorization. The calls also vary, such as: calls from providers, insurance offers, and other things that lead to fraud. When percentage the details are as follows: as many as 41% are dominated by calls from financial services and

² Pasal 5 Peraturan Menteri Komunikasi dan Informatika Nomor 12 Tahun 2016 jo. Pasal 1 Angka 1 Peraturan Menteri Komunikasi dan Informatika Nomor 14 Tahun 2017 tentang Registrasi Pelanggan Jasa Telekomunikasi

³ <https://inet.detik.com/law-and-policy/d-5089108/kronologi-bocornya-data-denny-siregar-Sampai-pelaku-dibekuk> accessed on 03 March 2021. Also see what happened to Aninda Indrastiwi whose data personally used to carry out more than 50 (fifty) registrations for starter packs with different numbers by irresponsible parties. <https://www.cnnindonesia.com/technology/20180305204703-213-280691/kominfo-akui-pencurian-nik-dan-kk-saat-registrasi-kartu-sim> accessed on 03 March 2021

⁴ Jogyanto, H. M., *Sistem Teknologi Informasi Pendekatan Terintegrasi: Konsep Dasar, Teknologi, Aplikasi, Pengembangan, dan Pengelolaan*, Yogyakarta: Andi, 2009, hlm. 536-538

financing institutions, 20% are from providers and insurance, 10% are fraud, and the other 9% are intended to disrupt.⁵

The use of personal data by irresponsible parties through telephone calls and SMS related to fraud is also confirmed by Telkomsel, one of Indonesia's providers. It has received over 13 (thirteen) a thousand fraud reports from its customers. Telkomsel receives complaints from the public in the form of fraud through the *My Telkomsel application* by using a *Time Password* (OTP). This mode is done via SMS by asking for application verification code information. Among the cases was the retrieval of personal information/data up to the theft of credit from this mode.⁶ Protecting personal data in this context is an important matter that must be pursued so that the legal relationship between providers and consumers can run well. Even though ISO 27001 has been established as a security standard in the provision of telecommunications services, anxiety about the security of personal data still haunts the public as consumers. One of the reasons for this is that there is no law-level regulation that specifically regulates personal data until now. To obtain further information related to the abovementioned matters, it is necessary to conduct further research regarding the legal relationship between Providers and Consumers. *Second*, the provider's responsibility for personal consumer data regarding starter pack registration. *Third*, legal remedies that consumers can take when there is a failure to protect the confidentiality of personal data.

This research uses a descriptive type with a normative juridical approach. This research was carried out by tracing legal principles, conceptions, views, statutory regulations, and laws relating to problems in research. Then the research results were presented in the form of a presentation. This study uses secondary data in the form of primary, secondary, and tertiary legal materials, which are then analyzed qualitatively.

B. Discussion

1. Legal Relations Between Providers and Consumers

As referred to in Law Number 36 of 1999, Telecommunications is sending, receiving, and transmitting any information in the form of images, writing, sounds and sounds, signs and signals via radio, optical, wire systems, or electronic systems. Providers in telecommunications services are domiciled as providers of cellular telecommunications services in the form of individuals, state-owned enterprises, regionally-owned enterprises, cooperatives, the private sector, government agencies, and state defense and security agencies.

Providers as business actors who carry out business activities by providing services on telecommunications network access to service customers have a direct relationship with consumers. Business actors and consumers in conducting relations are basically to carry out business or economic transactions.⁷ Transactions carried out can be in the form of: using services, financial transactions such as credit, etc., or purchasing goods. The transactions referred to can be realized properly when there is an agreement between the two parties. This agreement between the two parties signifies a legal relationship between business actors and consumers. The legal relationship between the provider as the telecommunications provider and the consumer as the user of cellular telecommunications services can be seen from the existence of an ongoing registration agreement. The provider as the telecommunications service provider

⁵Truecaller dalam <https://inet.detik.com/telecommunication/d-4355107/orang-indonesia-terima-telepon-spam-10-kali-sebulan> diakses pada 03 Januari 2021

⁶The report was submitted by Tuty R. Afriza who is *Vice President of Digital Experience and Business Insight* at <https://kumparan.com/kumparantech/telkomsel-hasil-13-000-laporan-penipuan-mytelkomsel-jadi-incaran-1541552861065381802> accessed on January 03 2021

⁷Wahyu Sasongko, *Ketentuan-Ketentuan Pokok Hukum Perlindungan Konsumen*, Bandar Lampung: Penerbit Universitas Lampung, 2016, hlm. 60

in this case is the party that makes it, while the consumer only agrees and follows the agreed terms.⁸

This agreement between the provider and the consumer, when viewed from the theory of contract law, is included in the standard agreement. Where the provider in this case makes a draft agreement in the form of a form which is then given to the consumer for agreement.⁹ This is intended to help expedite the course of cellular telecommunications services to all parties.¹⁰

In this context, in order to ensure that telecommunications operations run well, there is also government intervention. Consumers apart from agreeing to the registration agreement provided by the provider, must also send personal data in the form of NIK, KK number or birth mother's name to the provider via short message in the form of SMS or via the available service contact center. Personal data is data that shows a code, symbol, identity, letter or number that is personal as a personal marker of a person.¹¹

The personal data sent by the consumer and has been received by the provider is then validated with population data located in the data center at the Ministry of Home Affairs of the Republic of Indonesia, the Directorate General of Population and Civil Registration (hereinafter referred to as the Directorate General of Civil Registration). After being validated, the registration process is declared successful and consumers of cellular telecommunications services can access the telecommunications network provided by the provider.

Registered consumers are deemed to have agreed to the terms and conditions for the use of telecommunication services with all the legal consequences that arise. This legal event then indicates the existence of a legal relationship between the provider and the consumer in the provision of telecommunication services. This starter pack registration can also be seen as a legal act that creates legal consequences for both parties, namely providers and consumers. Then there are rights and obligations attached to each party.¹²

2. Provider Responsibility for Consumer Personal Data Regarding Prime Card Registration

Personal data is a human right which is the basic right of every person. Recognition and protection of it is a logical consequence of the rule of law.¹³ However, the situation is inversely proportional to the absence of a law-level regulation that specifically regulates personal data. In Indonesia, the legal rules governing personal data are still sectoral and partial.¹⁴ Whereas in ensuring public protection, human rights should be formulated in the form of legal instruments.¹⁵ This legal provision is intended to regulate discipline and solve various problems in society.¹⁶

In order to minimize the occurrence of losses for consumers, the fulfillment of consumer rights is the responsibility of the provider. This is very important to protect the interests of

⁸ Ahmadi Miru, *Hukum Kontrak & Perancangan Kontrak*, Jakarta: PT. Raja Grafindo Persada, 2007, hlm 39

⁹ Lukman Santoso Az, *Aspects of Covenant Law: A Comprehensive Study of Theory and Its Development*, Yogyakarta: Media Pustaka Publisher, 2019, p. 128

¹⁰ Gouzali Saydam, *Sistem Telekomunikasi Di Indonesia (Edisi Revisi)*, Bandung: Alfabeta, 2006, hlm. 84

¹¹ Fanny Priscyllia, "Perlindungan Privasi Data Pribadi Perspektif Perbandingan Hukum," *Jatiswara* 34, no. 3 (2019): 239–49, <https://doi.org/10.29303/jatiswara.v34i3.218>.

¹² Ucock Parulianth Simamora, "Restrukturisasi Perjanjian Kredit Dalam Perhatian Khusus (Studi Kasus Pada PT Bank Rakyat Indonesia, Tbk Cabang Bandar Jaya Unit Haduyang Ratu)," *Cepalo* 1, no. 1 (September 12, 2019): 1–10, <https://doi.org/10.25041/cepalo.v1no1.1750>.

¹³ Sri Rahayu Wilujeng, "Hak Asasi Manusia-Tinjauan dari Aspek Historis Dan Yuridis", *Jurnal Humanika* Vol 18 No 2 (2013): 1-10, <https://doi.org/10.14710/humanika.18.2>.

¹⁴ Edmon Makarim, *Pengantar Hukum Telematika: Suatu Kompilasi*, Jakarta: PT RajaGrafindo Persada, 2015

¹⁵ Rudi Natamiharja, "A Case Study on Facebook Data Theft in Indonesia," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 12, no. 3 (2018): 206, <https://doi.org/10.25041/fiatjustisia.v12no3.1312>.

¹⁶ Afrizal Vatikawa and Amnawaty Amnawaty, "Medical Record Data Counterfeiting by Doctors in Indonesia Reviewed from the Ethics, Discipline, and Legal Aspects," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 12, no. 3 (2018): 224, <https://doi.org/10.25041/fiatjustisia.v12no3.1324>.

consumers so as not to occupy a position that is vulnerable to loss.¹⁷ In the context of the responsibility of the provider as the provider of electronic-based telecommunications services, the provider is responsible for the consumer's personal data regarding the registration of the starter pack. This is due to the fact that not only financial performance and good product marketing are the only benchmarks for the company's success, but corporate responsibility is also an inseparable part.¹⁸

Provider with respect to the above, at least can be charged with responsibility in the form of:

- a. Perform certification of managed electronic systems with provisions in accordance with laws and regulations.
- b. Maintain the validity, accuracy, correctness and relevance and suitability for the purposes of obtaining, collecting, analyzing, processing, disseminating, sending, posting, displaying, storing and destroying personal data.
- c. Provide notification to consumers and/or data owners in writing in the event of a system failure, provided that:
 1. accompanied by reasons for the failure of personal data protection
 2. can be done electronically if the consumer and/or data owner has given consent when obtaining and collecting personal data
 3. if the failure that occurs has the potential to harm consumers and/or data owners, acceptance by the person concerned must be ensured
 4. notification is sent to the data owner no later than 14 (fourteen) days after it is known that there is a system failure.
- d. There are internal rules that are justified by laws and regulations regarding personal data.
- e. There is an audit track record of the operation of managed electronic systems.
- f. Provide choices to data owners regarding whether or not personal data can be used and/or displayed to third parties.
- g. Provide access to modify or update personal data to data owners (unless laws and regulations specify otherwise).
- h. Carry out the destruction of personal data in accordance with statutory regulations.
- i. Provide a *contact person* who is easy to contact.

The rationale for the imposition of provider liability if it is related to the legal context of consumer protection, includes:¹⁹

- a. *Contractual liability*, where the provider is civilly responsible for the losses suffered by consumers as users of cellular telecommunications services based on contracts or agreements after utilizing and/or consuming the goods they provide.
- b. *Product liability*, where the provider is civilly responsible directly for the losses suffered by consumers after utilizing and/or consuming the products they produce. This responsibility is based on *tortius liability*. With which the elements of action, error, against the law, loss must be fulfilled, and there is a causal relationship between the act and the loss that arises.
- c. *Professional liability*, which is civilly responsible for consumer losses after utilizing and/or using the services they have provided.
- d. *Criminal liability*, where the provider is criminally responsible for the legal relationship that takes place between the business actor and the state.

¹⁷ Anisa Nurlaila Sari, "Analisis Hukum Terhadap Tanggung Jawab Jasa Tukang Gigi Menurut Peraturan Menteri Kesehatan Nomor 39 Tahun 2014 Tentang Pembinaan Pengawasan Dan Perizinan Pekerjaan Tukang Gigi," *Cepalo* 2, no. 1 (2019): 21, <https://doi.org/10.25041/cepalo.v2no1.1759>.

¹⁸ Sunaryo Sunaryo, "Corporate Social Responsibility (Csr) Dalam Perspektif Pembangunan Berkelanjutan," *Masalah-Masalah Hukum* 44, no. 1 (2015): 26, <https://doi.org/10.14710/mmh.44.1.2015.26-33>.

¹⁹ Edmon Makarim, *Tanggung Jawab Hukum Penyelenggara Sistem Elektronik*, Jakarta: Rajawali Pers, 2010, hlm. 376-377

The responsibility of providers as business actors can also be applied in the *interactive justice approach*. This *interactive justice approach* is closely related to unlawful acts as a legal consequence that respects one's external freedom.²⁰ The essence of *interactive justice* is compensation for losses arising from a person's relationship with another party. The application of *interactive justice* is generally in the context of contract law, tort, and criminal law.²¹ Legal accountability in *interactive justice* in this context can be applied by examining data and information sent by consumers to consumers through providers and the use of such data and information by providers. This legal relationship certainly gives birth to legal consequences in the form of rights and obligations on each party that are interrelated.

Responsibility arises as a result of the actions of the provider and other parties outside the provider but there is still a connection with the provider which brings harm to consumers. This concept of responsibility is not only limited to actions caused by one's own actions, but also towards the actions of other people or items under their supervision and responsibility. Legal liability in this context arises when without the consent of the data owner and/or consumer, the information and data is conveyed to other parties. So that the provider in this case is not only responsible for his own actions, but also for those caused by other parties but is still under the supervision and responsibility of the provider.

3. Legal Remedies That Can Be Taken by Consumers When There Is a Failure to Protect the Confidentiality of Personal Data

Consumers whose legal interests are harmed in relation to the protection of personal data, can first submit a complaint to the Minister of Communication and Informatics of the Republic of Indonesia (hereinafter referred to as the Minister) regarding failures in protecting their personal data. This complaint is made by consumers as an alternative dispute resolution effort in a mutually beneficial manner.

Consumers can make complaints within a maximum period of 30 (thirty) days since the failure to protect the confidentiality of their personal data is known. Complaints submitted must also be accompanied by supporting evidence. With respect to the complaint submitted, the minister/team appointed to resolve the dispute must respond to the complaint (at least stating that the complaint is complete or incomplete) after receiving the complaint no later than 14 (fourteen) working days. Consumers can then file a lawsuit if deliberation or other alternative dispute resolution is deemed unable to resolve the dispute. Consumers are legally justified in filing lawsuits against business actors through judicial institutions within the general judiciary or through alternative dispute resolution institutions. Claims that can be filed by consumers as intended are claims that are justified by laws and regulations. The lawsuit filed must contain elements of unlawful acts which include:²²

- a. there is an action;
- b. the act as intended is against the law;
- c. there is an error;
- d. there is a loss;
- e. there is a relationship between the act and the loss incurred.

Consumers can do a number of ways in the mechanism of filing a lawsuit. Where consumers can file a lawsuit against the provider by:

- a. the person or heir concerned;
- b. together with groups of consumers who both suffer losses;
- c. through consumer protection agencies that are justified by laws and regulations;
- d. through the government and/or related agencies.

²⁰ Afif Noor and Dwi Wulandari, "Landasan Konstitusional Perlindungan Data Pribadi Pada Transaksi Fintech Lending Di Indonesia," *Jurnal Ilmiah Dunia Hukum* 5, no. 77 (2021): 99, <https://doi.org/10.35973/jidh.v0i0.1993>.

²¹ Richard W. Wringht dalam Edmon Makarim, *Tanggung Jawab Hukum ...*, *Op.cit.*, hlm. 14

²² Munir Fuady, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*, Bandung: Citra Aditya Bakti, 2013, hlm. 10-11

Consumers apart from filing lawsuits through the courts, can also settle disputes outside the court through alternative dispute resolution institutions.²³ The alternative dispute resolution referred to that can be taken by consumers includes:

- a. consultation;
- b. mediation;
- c. conciliation; atau
- d. expert judgment.

Consumers who fail to protect the confidentiality of personal data by the provider in addition to the above can also make efforts to resolve disputes out of court through arbitration. Arbitration itself is an out of court dispute resolution that can be taken by the parties with an arbitration agreement made by the parties in writing. Consumers in this case can carry out arbitration processes through the Consumer Dispute Settlement Agency (hereinafter referred to as BPSK). BPSK is one of the institutions outside the court which in resolving disputes applies the principle of arbitration.²⁴ The position of BPSK itself is strengthened by the Consumer Protection Law which mandates BPSK as a means that can be used by consumers in resolving their disputes. The process of resolving disputes through arbitration in principle focuses on a *win-win solution*.²⁵ The settlement process of this kind is not like the case in court which boils down to winning and losing, so that it is quite attractive to various parties.²⁶

Punishment is made possible by law as an effort that consumers can take in addition to civil lawsuits and/or through alternative dispute resolution. In addition to the matters mentioned above, consumers can also pursue criminal law remedies when experiencing losses. Consumers are legally justified in suing criminally if there is a failure to protect the confidentiality of personal data against business actors and their management.

Providers in telecommunications services are responsible for protecting the confidentiality of personal consumer data. Providers may be imprisoned for a maximum of 2 (two) years and a fine of up to Rp. 200,000,000.- (two hundred million rupiah) if there is a failure to protect the confidentiality of personal consumer data for which they are responsible. In addition, providers can be threatened with criminal penalties if they are found not to meet the standards required by laws and regulations in carrying out their business activities. Providers are threatened with imprisonment for 5 (five) years at the longest or a fine of up to Rp. 2,000,000,000.- (two billion rupiahs) if legally and convincingly proven to have committed the crime.

C. Conclusion

Based on the abovementioned conclusions, conclusions can be drawn from the form. *First*, a registration agreement marks the legal relationship between the provider and the consumer. The provider, in this case, is the party that formulates the agreement in the form, while the consumer only agrees and follows the agreed terms. In addition to filling out the form provided by the provider, consumers are also required to send personal data to the provider, in the form of NIK, biological mother's name, or KK number, via text message or service contact center available as a sign of registration.

This starter pack registration creates rights and obligations for providers and consumers in providing telecommunication services.

²³ Gunawan Raka, "Dualisme Kewenangan Peradilan Dalam Sengketa Perbankan Syariah Pasca Keputusan Mahkamah Konstitusi Nomor 93/Puu-X/2012," *Cepalo* 2, no. 1 (September 12, 2019): 55–66, <https://doi.org/10.25041/cepalo.v2no1.1762>.

²⁴ Rahmi Rimanda, "SEBAGAI LEMBAGA QUASI YUDISIAL DI INDONESIA Terkadang Dapat Merugikan Konsumen . Ketatnya Persaingan Dapat Mengubah Perilaku Kearah Konsumen Yang Cenderung Menempatkan Konsumen Pada Posisi Yang Lebih Lemah . Konsumen Konsumen Dan Kerugian Konsumen Yang Te" 4, no. 42 (2019), <https://doi.org/10.23920/jbmh.v4n1.2>.

²⁵ Priyatna Abdurrasyid, *Arbitrase dan Alternatif Penyelesaian Sengketa*, Jakarta: Fikahati Aneska, 2002, hlm. 2.

²⁶ Tri Setiady, "Arbitrase Islam Dalam Perspektif Islam Dan Hukum Positif," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 9, no. 3 (2016): 340–52, <https://doi.org/10.25041/fiatjustisia.v9no3.604>.

Second, the provider is responsible for maintaining the legitimacy, accuracy, correctness, confidentiality, and suitability to obtain, collect, analyze, process, disseminate, post, display, store, and destroy as laws and regulations permit. This legal responsibility is not limited to the acts committed by the provider but also by other parties still under their supervision and responsibility.

Third, consumers who fail to protect the confidentiality of their data can take legal remedies in the form of complaints to the Minister through the district court by filing a lawsuit against the law or through alternative dispute resolution institutions and punishing the provider.

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