

RESPONSIBILITIES FOR DATA PROCESSING OF ONLINE TRANSPORTATION APPLICATION USERS

Haryono Kuswanto^{1*}, Abdul Gani Abdullah¹, Ahmad Sudiro¹

¹Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia

*email: kuswanto.haryono@yahoo.com

Abstract.

The development of online transportation raises the question about the data processing of online application users. The data is passed on to the driver to run the service. Problems arise when the information is misused in violation of the law by drivers outside the context of providing services. This research aims to discuss online transportation application companies' responsibilities for the unauthorized use of user's data. This research is normative legal research. It uses secondary data. The study found that the application company should be responsible for ensuring the confidentiality of the data. Furthermore, the application company should share responsibility for the misuse of data obtained from the application enterprise.

Keywords: Data Processing, Online Transportation, Criminal Liability

1 INTRODUCTION

Internet in the era of globalization is a virtual-based information technology media¹ in people's lives, such as the occurrence of trade transactions of goods and services online. Online transactions are becoming a new culture that is increasingly popular and liked. Over time the means of communication became one of the economic activities of trade.

Business actors make a breakthrough in online trading that functions explicitly to spread, buy, sell, and market goods are known as e-commerce. E-commerce involves consumers, manufacturers, service providers, and intermediary traders using computer networks for billing and payment, distribution network management, and legal aspects.²

According to the Organization for Economic Cooperation and Development (OECD), e-commerce transactions as businesses are carried out via the internet.³ Viewed from the perspective of the parties involved in e-commerce activities, there are several categories of e-commerce (1) B2B, or Business to Business. In this category, providers and buyers of products or services are business entities, (2) B2C, or Business to Consumer. In this category, buyers of products or services are ordinary consumers, (3) The emerging e-commerce category, facilitated by the flexible nature of the internet, is C2C (Consumer to Consumer).⁴

The current regulation for e-commerce activities is the Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions jo. the Republic of Indonesia Law No. 19 of 2016 regarding Amendments to the Law of the Republic of Indonesia No. 11 of 2008 concerning Electronic Information and Transactions (EIT Law), and Indonesian Government Regulation No. 82 of 2012 concerning Electronic System Operations and Transactions (GR 82/2012). In its development, it was also governed by Law No. 7 of 2014 concerning Trade (Trade Law) and Government Regulation No. 80 of 2019 concerning Trade through Electronic Systems (GR 80/2019).

It is not only a matter of trust but, it raised obligations.⁵ This condition causes confusion and an increasing burden on the responsibilities of online intermediary service providers. Without the exception of the explicitly explained obligations, online intermediary service providers are more vulnerable to being held accountable by their users because they are still vulnerable to the responsibility of any unlawful acts committed by their users. It can limit the development of business and creative industries because people are afraid to expose themselves to the risks of operating an online intermediary service provider.

This research aims to discuss online transportation application companies' responsibility in the unauthorized use of users' data by transporter drivers.

2 THEORETICAL CONCEPT

Responsibility, according to the Indonesian dictionary, is a state of being obliged to bear everything. Obligated to bear and take responsibility, bear everything, and bear the consequences. Legal responsibility is human awareness of intentional or unintentional behavior or actions. According to scholars, responsibility also means acting as an expression of awareness of the obligation—understanding legal responsibility.

According to Ridwan Halim, legal responsibility is due to further implementing the role, whether it is a right and obligation or power. In general, legal responsibility is defined as an obligation to do something or behave in a certain way, not to deviate from existing regulations.⁶ In addition to Ridwan Halim, Purbacaraka also believes that "legal responsibility comes from the use of facilities in applying each person's ability to exercise their rights and/or carry out their obligations." Furthermore, he stressed that every implementation of obligations and every use of rights, both inadequately or adequately carried out, must be accompanied by accountability and power exercise.

According to the law, responsibility results from the consequences of a person's freedom about his actions relating to ethics or morals in carrying out an act. According to the Quarterly Point, liability must have a basis, which causes the emergence of legal rights for someone to kneel to others and things that give birth to other people's legal obligations to provide responsibility.⁷ In general, the principle of responsibility in law can be distinguished as follows:⁸

1. Liability based on fault

The principle of responsibility states that a person can only be held legally liable if there is an element of wrongdoing. The injured party is charged to prove that the person has made a mistake. Things that need to be explained are the definition of wrongdoers, which is known as the principle of vicarious liability and corporate liability in the legal doctrine.⁹ Vicarious liability implies that the employer is responsible for losing other parties caused by people or employees under his supervision. Corporate liability has the same meaning as vicarious liability. According to this doctrine, the institution that houses a group of workers is responsible for the labor they employ.

2. Absolute responsibility (strict liability)

This principle defines error not as a determining factor. Still, some exceptions make it possible for someone to be released from responsibility because of circumstances outside of a human will.

3. Limitation of liability

This limitation of liability principle is very much liked by business actors to be included as an exoneration clause in the standard agreement it makes. In a film print washing agreement, for example, it is determined, if the film that is to be washed or printed is lost or damaged

(including due to an error of the officer), then the consumer has limited to compensation only ten times the price of a new roll of film.

The concept of criminal liability is not only related to legal matters but also concerns issues of moral values or general morality held by society or groups in the community, and this is done so that criminal liability is achieved by fulfilling justice.¹⁰ Criminal liability is a form of determining whether a suspect or defendant is responsible for a crime that has occurred. In other words, criminal liability is a form that determines whether a person is acquitted or convicted.

Criminal responsibility means that every person who commits a crime or is against the law, as formulated in the law, must be responsible for the actions according to their mistakes. A person who commits a criminal act will be held accountable for the crime with a crime if he has an error, someone has an error when doing an act viewed from the community's point of view shows a normative theory of the mistakes made by that person. Criminal liability is applied by punishment, which aims to prevent criminal acts by enforcing legal norms to protect the community. Resolve conflicts caused by criminal acts; restore balance; bring a sense of peace in society; popularize the convicted by holding coaching to become good people and free the guilty, guilty convicts.

Two terms refer to accountability in the legal dictionary, namely liability, and responsibility. Liability is a broad legal term that designates almost all the characteristics of risk or responsibility, which are inevitable. It depends on all actual or potential characters of rights and obligations such as losses, threats, crime, costs, or conditions that create the duty to carry out the law -invite. Responsibility means things that can be accounted for by an obligation and includes decisions, skills, abilities, and abilities, including responsibilities for the laws implemented. In understanding and practical use, the term liability refers to legal liability, that is, accountability due to mistakes made by legal subjects, while the term responsibility refers to political accountability.¹¹

In criminal law, an action against a person who commits an offense or an act of a criminal offense, criminal law principles are required. One of the criminal law principles is the legal principle *nullum delictum nulla poena sine praevia lege poenali* or legality principle. This principle becomes the basic unwritten principle in a criminal prosecution of people who have committed a criminal offense "not convicted if there is no mistake." This basis is about the accountability of someone for an act that has been done, meaning that someone can only be held accountable if someone is making a mistake or committing an act that violates the laws and regulations. This legality principle implies no illegal or criminal action if it has not been stated before in statutory regulation. The purpose of this is that a person can only be held liable if the act has been regulated. No one can be punished or held accountable if the regulation arises after a criminal act. To determine the existence of a criminal offense, one must not use the word with many meanings. The criminal law rules are not retroactive. The government shall not also issue regulations that may raise an ethical issue in the community.¹² This will cause an in-effectiveness of the regulations

Black's Law Dictionary defines corporate crime as "a crime committed either by a corporate body by its representatives acting on its behalf, Including price-fixing and consumer fraud."¹³ It stated that "corporate crime is a criminal offense committed by a corporation or its

representative and therefore can be charged to a corporation due to the activities of its employees or employees, such as; price-fixing, consumer fraud."¹³

Freda Adler said corporate crime as "... criminal act committed by one more employees of a corporation that is attributed to the organization itself" (corporate crime is a criminal act committed by an employee or more than something that is associated with the corporation alone).¹⁴ Corporate crime is a crime committed by an actor who has strong economic power and is usually shaped by his position in the corporation, both as a director, manager, and so on, to achieve its profits and objectives.

Corporate crime is one of the discourses that arise with economic and technological activities. Corporate crime is not a new item but an old item that always changes packaging. No one can deny that the development of the times and civilization's progress and technology are accompanied by crime and its complexity. The existence of a legal entity or business entity with the term "corporation" in the field of criminal law has been accepted and recognized as a legal subject. Corporations can be accounted for what they did. The problem that often arises is the corporation's criminal liability because criminal liability is an error (*schuld*) on the perpetrators. It becomes a matter of how to construct corporate wrongdoing, and therefore criminal liability may be held against it.¹⁶ Such liability may also be imposed for a partnership, possibly in a public-private partnership.¹⁷ Under such circumstances, a partnership can be treated as a corporation.

The responsibility of a legal entity as an actor in information technology was regulated in the EIT Law. It can be found in Article 52 paragraph 4 of the EIT Law. The Article stated that "In terms of criminal acts as referred to in Article 27 to Article 37 of the EIT Law committed by corporations convicted with basic crimes plus two-thirds." The elucidation of the Article stated: "This provision is intended to punish any act against the law that meets the elements referred to in Article 27 through Article 34 committed by corporations (corporate crime) and/or by management and/or staff with capacity for (a) Representing the corporation, (b) Making decisions in the corporation, (c) Carrying out supervision and control in the corporation and (d) Conducting activities for the benefit of the corporation."

It has been stated above that criminal liability must first be fulfilled objective requirements, that is, the act must be a crime according to applicable law. In other words, for criminal liability, the principle of legality must first be fulfilled. There must be an exact legal basis/source (source of legitimacy), both in the field of material/substantive criminal law and formal criminal law.¹⁸ Corporations in carrying out all legal actions will also cause a liability. In connection with the responsibility or ability to be responsible as a subject of criminal offenses in the information technology field, it must first be explained the need for an ability to be accountable and criteria for determining the ability to be responsible for corporations as perpetrators of criminal acts in the information technology field.

The construction of corporate responsibility in criminal acts in information technology shows acceptance of functional behavior (*functionnel daderschap*), where the actions of the corporation's functional management are considered to be the actions of the corporate organization. Regarding Wolter's *functioneel daderschap* contained in his book Edy Yunara, entitled "Corruption and Corporate Criminal Liability (following a case study) that functional treatment (*functioneel daderschap*) is a work of judicial interpretation. The judge interprets the crime so that the punishment meets the community's requirements. If we accept the concept of

functioneel ouderschap, the ability to take responsibility is still valid in accounting for corporations in criminal law.¹⁶ Because a corporation's existence is not formed without a purpose and achieving its goals. The corporation is always realized through natural human actions. The responsibility of a person acting for and on behalf of a corporation is constructed as its responsibility. The corporation becomes the subject of criminal acts.¹⁶ Characteristics of functional behavior, namely the physical actions of one (who do or make it), produce functional actions against the other.¹⁹

To believe the judge's functional interpretation must go through 3 stages, including the first stage, which interests are to be protected by the legislators, the second stage, which person in this criminal case can carry out and commit a criminal offense. Who is in a stable position as to whether or not the crime is committed? It is necessary if the judge has determined that a reasonable explanation literally (*normale, letterlijk uitlag*) does not provide satisfactory results. In the third stage, the proof is asked, is there enough valid evidence (*wetig bewijs*) to prove that the defendant did it concerning the first and second stages.¹⁹ Corporate responsibility in criminal acts in information technology is not only in those who carry out illegal activities in information technology directly but also for each party involved indirectly. They can also be convicted of the same crime as criminal acts in the information technology field.

In Sultan Remy Sjahdeini's book on Corporate Criminal Liability, a corporation can be liable for criminal liability only if it meets all of the following elements the organizational structure has a position as the directing mind of the corporation, (2) the criminal act is carried out within the framework of the aims and objectives of the corporation (as referred to in the articles of association of the corporation), (3) the criminal act is carried out by the perpetrators (the perpetrators) or by the order of the governor performing the framework of duties in the corporation, (4) the crime was committed by the perpetrators or the perpetrators with the intention of providing benefits to the corporation both financial and non-financial benefits, (5) the perpetrators (the perpetrators) or the criminal order issuer has no reason justification or excuse for being forgiven from responsibility an offense and (6) For crimes that require the existence of an act (*actus reus*) and an element of error (*mens rea*), the two elements (*actus reus* and *mens rea*) do not have to be present in one person only if the act was carried out by several people as a group in the criminal act.²⁰ In other words, the *mens rea* of the crime is found in people who are different from those who commit *actus reus* from the crime, but they are a group in realizing the crime's implementation.

One of the most important elements so that a criminal offense committed by a corporation's management can be subject to criminal liability. Suppose the act is carried out only benefits the culprit personally and does not benefit the corporation. The action cannot be categorized as a criminal offense committed by the corporation represented by the management. A legal person (corporation) can be convicted only if the natural person committing the act has a leading position in the corporation based on (a) The authority of that person to represent the corporation, (b) an authorization to make decisions for and on behalf of the corporation and (c) an authorization to exercise control within the corporation.²⁰ The EIT Law has adopted these three elements, but the EIT Law adds one more element as the fourth element, namely "carrying out activities for the benefit of the corporation."

3 RESEARCH METHOD

The research method used by the author is the normative legal research method. This study focuses on the regulation of data processing responsibilities of online transportation application

users. It is based on the consideration that the growing development of online transportation applications at this time, but the regulations governing data processing as part of the services provided are still minimal. This research is analytical descriptive, namely revealing the laws and regulations relating to the research object's legal theories, namely researching and analyzing criminal responsibility data processing companies processing data applications online transportation.¹⁹

4 RESULT AND ANALYSIS

The protection of privacy and personal data greatly affects the development of the digital economy in a country, without exception Indonesia. This protection is a determining factor for online trust, which is essential in digital transactions. Privacy and personal data become important because users on the network will not carry out a digital transaction if they feel the security of privacy and personal data are threatened. One of the protection of privacy and personal data is how this data will be processed including, data from users. If the information is distributed to irresponsible parties, it will potentially cause financial losses. Threats arising from the weak protection of privacy and personal data directly correlate with online economic growth transactions.²¹

Personal data defined in Article 1 number 1 of Permenkominfo No. 20 of 2016, concerning Protection of Personal Data in Electronic Systems. Personal data is interpreted as "certain individual data which is stored, maintained, and maintained truthfully and is protected by confidentiality." Thus, it can be concluded that personal data is specific individual data in the form of personal identity, codes, symbols, letters, or digits of someone who is personally guarded and protected by confidentiality.

Protection of personal data is scattered in several laws and regulations, namely the EIT Law, PP PSTE, and Permenkominfo 20/2016. PP PSTE is the government's latest regulation in 2019 despite regulating the rules relating to personal data protection. Still, in my opinion, the author is not enough if only regulated by government regulations that are hierarchically under the law, so that the rules at the level of the law governing the protection of personal data should be prioritized and resolved immediately.

Although PP PSTE has arranged the expansion of personal data protection, according to the authors, it is still not fully effective given the absence of application of criminal sanctions against violators. Furthermore, the government needs to immediately harmonize drafting the Draft Law on the Protection of Personal Data to avoid overlaps or conflicts between rules. Other provisions that can be used are Articles 15, 16, and 26 of the Electronic Information and Transaction Law (UU-ITE), especially regarding the electronic system provider. In Article 16, some provisions require the operation of electronic systems to maintain the confidentiality of information. Even in Article 26 of the EIT Law provisions, it is stipulated that the use of information relating to a person's data must have the approval of the person concerned.

When service users provide personal data to use services from electronic-based transportation business actors, service users have the right to know the use of such data. Furthermore, electronic transportation business actors who have the personal data of service users also need to provide, maintain, and request approval of service users' data to use service users' data. But in reality, business actors often neglect or deliberately use the personal data of service users for a particular purpose without the service user's consent. Of course, service users' legal certainty needs to be guaranteed concerning the use of service users' data.

Obligations of online transportation application companies can be explicitly held accountable for criminal liability relating to violations of the provisions on personal data protection obligations that are expressly regulated by the EIT Law, which constitutes the legal umbrella for information and electronic transactions. Still, the EIT Law does not provide enough certainty of law enforcement and application of the provisions criminal penalties for negligence on protecting personal data committed by online transportation application companies.

Article 26 of the EIT Law explains, "Unless otherwise specified by legislation, use, any information through electronic media relating to a person's data must be done with the approval of the person concerned. (2) Any person whose rights are violated as referred to in paragraph (1) may file a claim for damages incurred under this Law." Article 38 of the EIT Law states, "Everyone can file a lawsuit against the party that organizes Electronic Systems and/or uses Information Technology that causes harm." This Article explains that service users can file lawsuits against electronic system providers that can harm service users, following the legislation's provisions.

Based on this, it can be seen that the new EIT Law provides space for the application of civil compensation provisions. Still, mistakes or negligence in protecting personal data have not been accommodated with the EIT Law's criminal provisions. According to the author's opinion, the EIT Law needs to be equipped with criminal provisions for all matters related to errors or negligence committed by online transportation application companies to protect personal data without service users. It entangled the company, and the perpetrators who use or make personal data can be used.

Online transportation application companies' obligation to prevent or not participate in facilitating information becomes an easy means. A loophole to carry out criminal actions can indeed be done with preventive measures. In law enforcement, online transportation application companies that do not comply with the legal provisions in protecting personal data will also be trapped as long as it can be proven in the concept of punishment where there are provisions for inclusion and assistance.

Provisions regarding participating in and helping to do can be seen in Article 55 (participated in doing) and Article 56 of the Criminal Code (helping to do):

Article 55 of the Criminal Code

(1) Convicted as a person who commits a criminal offense:

1e. People who do, who order to do, or participate in doing that;

2e. People who, by giving, agreement, misuse of power or influence, violence, threat or deception, or giving an opportunity, effort or information, deliberately persuade to do something.

(2) Concerning the persons mentioned in sub 2e that may be held accountable to them are only acts which are deliberately persuaded by them, as well as with their consequences.

Article 56 of the Criminal Code:

Convicted of someone who helped commit a crime:

(1) Whoever deliberately helps to commit the crime;

(2) Whoever intentionally gives the opportunity, effort, or information to commit the crime.

Committing in Article 55 of the Criminal Code can be interpreted as jointly carrying out. There are at least two people who committed and those who participated in committing a crime. Here it is requested that the two persons all carry out an act of conduct, so do the crime element or element. For example, it is not permissible to only carry out preparatory actions or actions that are only helpful, because if so, then the person who helped was not included as a person who did the same but was punished as "helping to do" in Article 56 of the Criminal Code.

In connection with participating in Article 55 of the Criminal Code, an online transportation application company may be assumed to be impossible because it requires the "activeness" of the online transportation application company in a criminal event. Article 56 of the Criminal Code, the person who "helps to do" if he deliberately assists, at the time or before (so not afterward) the crime was committed. Suppose the assistance is given after the crime has been committed. In that case, the person commits an act of "conspiracy" or "illegal" in violation of Article 480 of the Criminal Code or criminal events mentioned in Article 221 of the Criminal Code. The elucidation of Article 56 of the Criminal Code said that the "intentional" element must be present. People who accidentally do not know have given an opportunity, effort, or information to commit the crime are not punished. The "intention" to commit the crime must arise from the person assigned the assistance, opportunity, effort, or information. If the intention appears from the person who gives his help, that person is guilty of "persuading to do." In Article 56 of the Criminal Code, online transportation application companies are very likely to fulfill the element of "helping to do" where errors or negligence in taking measures to protect personal data can lead to the facilitation of a criminal act committed by a criminal in a criminal event.

In the criminal application concept for "helping to do," then when the main criminal act committed by a criminal, say in this case, the driver is proven guilty of committing a criminal act. The online transportation application company can also be examined to ascertain whether there has been an inclusion or assistance in a criminal act.

5 CONCLUSIONAND RECCOMENNDATION

The research concluded that the application company should be responsible for ensuring the data's confidentiality and share responsibility for the misuse of data obtained from the application enterprise. It is recommended that:

a. Revise the EIT Law by adding 1 article to Chapter VII of the EIT Law concerning prohibited acts, namely Article 35A, with the following formulation:

Article 35A

"Any person who uses or makes use of any information through electronic media that involves a person's data without the consent made by the person concerned."

b. Revise the EIT Law by adding 1 article to Chapter XI of the EIT Law regarding criminal provisions, namely Article 51A, with the following formulation:

Article 51A

"Every person who fulfills the elements as meant in Article 35A shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 6,000,000,000.00 (Six Billion Rupiah) "

6. ACKNOWLEDGEMENT

We thank Universitas Tarumanagara for all the assistance.

7. CONFLICT OF INTEREST

No conflict of interest.

8. REFERENCES

- [1] Badan Pembinaan Hukum Nasional Kementrian Hukum dan HAM RI. *National Law Development, Communication, Information and Tecnology Sector*. Jakarta: BPHN; 2020.
- [2] Suparmi, Ninik. *Problematics in Cyberspace & Antisipation for its Regulation*. Jakarta: Sinar Grafika; 2009.
- [3] OECD, "Electronic Commerce (Glossary of Statistical Terms)." Retrieved from <http://stats.oecd.org/glossary/detail.asp?ID=4721>, accessed on 22 July 2018
- [4] Shim, Simon S.Y. et al. *Business to Business E-Commerce Frameworks*. San Jose: San Jose University; 2000.
- [5] Widjaja, Gunawan. (2017). "The Importance of Comprehensive Trusts Law in Indonesia." *International Journal of Applied Business and Economic Research*. 2017;15(19);149-155.
- [6] Halim, Ridwan. *State Administrative Law in Question and Answer*. Jakarta: Ghalia Indonesia; 1998.
- [7] Notoatmojo, Soekidjo. *Health Ethics and Law*. Jakarta: Rineka Cipta; 2010.
- [8] Triwulan, Titik and Shinta Febrian. *Legal Protection for Patient*. Jakarta: Prestasi Pustaka; 2010
- [9] Kristiyanti, Celina Tri Siwi. *Consumen Protection Law*. Jakarta: Sinar Grafika; 2009.
- [10] Kelsen, Hans. *General Theory on Law and State*. (translation). Jakarta: PT. Raja Grafindo Persada; 2006
- [11] Hanafi, Mahrus. *Criminal Liability System*, 1st ed. Jakarta: Rajawali Pers; 2015.
- [12] Widjaja G, Sijabat HH. Rules-Raised Ethical Issues During The Covid-19 Pandemic In Indonesia. *SRP*. 2021; 12(1): 623-632. doi:10.31838/srp.2021.1.90.
- [13] Garner, Bryan A. *Black's Law Dictionary*, 7th Ed. St. Paul Minnesota: West Group; 1999.
- [14] Adler, Freda Adler. *Criminology*, 2nd Ed. The Shorter Version. USA: McGraw-Hill Inc, 1995.
- [15] Mulyadi, Mahmud. *An article in the Interest of Criminal Law and Criminology and the Impressions of Friends' Messages Welcoming Prof. H. Muhammad Daud, SH*. Jakarta: Gramedia Pustaka Utama.
- [16] Yunara, Edy. *Corruption and Corporate Criminal Liability, including case studies*. Bandung: PT. Citra Aditya Bakti.
- [17] Widjaja, Gunawan. "Implementation of Public-Private Partnership in Indonesia." *International Journal of Economic Research*. 2017;14(15):235-245.
- [18] Arief, Barda Nawawi Arief. *Issues of Law Enforcement and Criminal Law Policies in Crime Management*. Bandung: Citra Aditya Bhakti; 1996.
- [19] Sahetapy, J.E Sahetapy. *Corporate Crime*. Bandung: Eresco; 1994.
- [20] Sjahdeini, Sultan Remy. *Corporate Crime Liability*. Jakarta: Grafiti Press; 2006.
- [21] Syarpani. "Juridical Review of Personal Data Protection in Electronic Media" *Jurnal Beraja Niti*. 2014;3(6);7.