

# Legal Liability of Marketplace Companies Against Leaking of User Data Due to Third Party Breaking According to Law Number 8 of 1999 Concerning Consumer Protection (Case Example: Tokopedia User Data Leaking in 2020)

Julius Perkasa<sup>1\*</sup> Jeane Neltje Saly<sup>1</sup>

<sup>1</sup>Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia

\*Corresponding author. Email: juliusperkasasalim@gmail.com

## ABSTRACT

Tokopedia as a marketplace company experienced a leak of user's personal data due to burglary by a third party in 2020. In this regard, the Indonesian Consumer Community demands legal accountability against the Ministry of Communication and Information of the Republic of Indonesia related to the guarantee of Electronic System organizers on each component and the integration of all Electronic Systems operate properly, including Hardware, Software, experts, governance, and security for the personal data leakage event, including on Tokopedia. The problem is how is the legal responsibility of marketplace companies for user data leaks caused by burglary by third parties in the case of Tokopedia data leakage and how their accountability is viewed from the Consumer Protection Act. The method used is normative legal research. Tokopedia can be categorized as a business actor and its users are categorized as consumers. The position of the two in consumer protection law will have a different impact on the legal liability of Tokopedia in cases of data leaks that occur, so that liability issues arise. failure to protect the confidentiality of personal data to its users and improve the security system of the platform. Meanwhile, Tokopedia's legal liability under the Consumer Protection Law will be even wider, which includes civil and criminal legal liability.

**Keywords:** consumer protection, data leaking, legal liability

## 1. INTRODUCTION

According to Aristotle, humans are considered as social creatures (zoon politicon) that are natural, namely humans want to group and aspire to others even though the association does not always benefit humans themselves. Humans always have dependence on other humans, and need the role of other humans in carrying out their daily lives and also to maintain their survival. Not a few people live in groups to achieve their common goals and interests. Human needs are quite diverse, such as the need to relate to other people, health needs, educational needs, and security needs. One way for humans to meet their needs, is to interact. This interaction can be done directly (face to face) or indirectly. By communicating, humans can relate to each other both individually and in groups in everyday life. The essence of communication is the process of expression between people.

Interaction can occur with anyone, anytime and anywhere in order to meet these human needs. One form of interaction

that arises to meet the needs of each individual, is the sale and purchase transaction. One of the places or containers for buying and selling transactions is the market. The market is a place for interaction between individuals and other individuals in bargaining for goods and is also a place for economic activity to see the relationship between society and economic activity, besides that, it is a place for social, cultural, physical contact, as well as the behavior of individuals in the market. . This results in social, economic, cultural changes, and so on. A market is not only crowded by residents of the area concerned, but also visited by residents from other areas.

Humans have been buying and selling goods and services from the past even before humans themselves know currency. In this modern era, where everything is so practical and efficient, the development of technology and information is running very rapidly, making it easier for producers and consumers in buying and selling transactions because they do not have to meet face to face. Buying and selling transactions without having to meet face-to-face are usually called online buying and selling or e-commerce

which is a result of the times and globalization in this modern era. E-Commerce explicitly means trade or transactions carried out in cyberspace. E-commerce is an activity of buying, selling, servicing and marketing of products and services offered through electronic media and more often through the internet. There are many types of e-commerce that are developing in the world, but not all types of e-commerce are able to develop in Indonesia. One type of e-commerce that is currently the most in demand and growing rapidly in Indonesia is the e-commerce type of marketplace.

Marketplace itself is a gathering place between business actors and consumers on a website, or which along with its development, many have developed in the form of applications. Marketplace can be classified as an electronic system operator in the Government Regulation of the Republic of Indonesia Number 80 of 2019 concerning Trading Through Electronic Systems. The advantage of selling on the marketplace is that the seller does not need to create a personal website or online store and all other activities such as website management have been taken care of by the platform. Several marketplaces currently exist in Indonesia, including Shopee, Tokopedia, Zalora, Lazada, Bukalapak and many more. One type of marketplace that is quite popular among the people in Indonesia is Tokopedia. Tokopedia was founded on August 17, 2009 with the vision of building a better Indonesia through the internet, Tokopedia has become one of the most popular marketplaces among various people in Indonesia because Tokopedia is a mobile application via the internet. This application is an online shopping forum that focuses more on internet media so that it is easier for people to shop, and sell directly, just look for them on their cellphones. The Tokopedia platform offers a wide range of products, equipped with secure payment methods, integrated delivery services, and innovative features such as a money back guarantee, large discounts, Cash On Delivery (COD) and free shipping so as to provide convenience and convenience for its users. However, from all the advantages above, it is possible for users, both producers and consumers, to experience losses.

In creating a Tokopedia account, a verification process is required to enter personal data such as user name, email, full name, date of birth, gender, cellphone number and password that need to be verified before creating an account on this Tokopedia platform. The personal data of these users, which is important personal information, should be protected at all costs, but man-made technology certainly has weaknesses in the system. Information technology is now being transformed into a double-edged sword, because in addition to improving human welfare, progress and civilization, information technology has also become a powerful instrument against illicit behavior.

Citing CNN Indonesia news on Saturday, May 2, 2020, it was stated that Tokopedia had user data leaks hacked by third parties, with a very large amount of user data information being hacked, which is estimated at 91,000,000 (Ninety-one million) buyer accounts and 7,000,000 (seven million) merchant accounts, Tokopedia also revealed that the total active account users on its platform had reached

91,000,000 accounts. Tokopedia account information that has been successfully hacked is sold on the internet by the hacker through the dark web. Data sold by hackers, in the form of user ID, email, full name, date of birth, gender, mobile phone number and password that is still encrypted. The Indonesian Consumer Community (KKI) asked Tokopedia and the Ministry of Communication and Information (Kominfo) to disclose the results of an investigation related to the leakage of Tokopedia user data. However, neither the Kemenkominfo nor Tokopedia have described in detail the results of the investigation into the Tokopedia data leak, even though the Kemenkominfo has collaborated with the National Cyber and Crypto Agency (BSSN) to evaluate the Tokopedia data leak case.

Then, KKI filed a lawsuit regarding the mistake of Tokopedia as an e-commerce platform that caused the leakage of millions of users personal data and one of the demands from KKI was to ask Tokopedia to pay an administrative fine of Rp. 100,000,000,000 (one hundred billion Rupiah) which was deposited into the state treasury. on the legal basis of Article 14 paragraph (5) of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions in conjunction with Article 2 paragraph (2) letter f and Article 28 letter c of the Regulation of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems. However, the lawsuit filed by KKI was rejected by the Central Jakarta District Court because the district court was not authorized to hear the case.

Leakage of user data in e-commerce is not a new thing in Indonesia, either caused by the users themselves or service providers. Indonesia has several laws and regulations that regulate the protection of personal data, including the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems ("Permenkominfo 20/2016") and Law Number 11 of 2008 concerning Protection of Personal Data in Electronic Systems. Electronic Information and Transactions in conjunction with Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions ("UU ITE").

Land procurement is regulated under Law No. 2 of 2012 When referring to the regulations in Permenkominfo 20/16 and the ITE Law, Tokopedia can be positioned not as the owner of personal data, but as the manager of other people's personal data, in this case the data of users of the Tokopedia platform. Based on the two regulations above, the manager of personal data belonging to another person who fails to provide notification can be given administrative sanctions including written warnings, administrative fines, temporary suspension, and termination of access.

According to Law Number 8 of 1999 concerning Consumer Protection ("Consumer Protection Law"), a business actor is any individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia. Indonesia, either alone or jointly through agreements to carry out business activities in

various economic fields. Whereas consumer is every person who uses goods and/or services available in the community, both for the benefit of oneself, family, other people, and other living creatures and not for trading. When referring to the definition above, Tokopedia as a marketplace company, can be categorized as one of the business actors, where its own business activity is the provision of an e-commerce platform that can bring together sellers and buyers online. Meanwhile, consumers from Tokopedia are every seller (merchant) and buyer, who use the Tokopedia platform to make buying and selling transactions online.

Leakage of user's personal data stored in Tokopedia can cause losses in the future for users or consumers of Tokopedia. It is possible that consumer personal data sold by Tokopedia hackers via the dark web, can be misused by the party who ultimately buys the data. But on the other hand, Tokopedia as a business actor who experienced user data breaches by other parties also suffered losses, including the loss of user trust in the platform services provided and demands against Tokopedia from users and/or other parties affected by the data loss. In addition, Tokopedia user data leaks were not carried out intentionally by Tokopedia, but through hacking by third parties. So, when referring to the description above, it is important to know the extent of the accountability of marketplace companies that are business actors against leakage of user data caused by burglary by third parties, in accordance with the Consumer Protection Act.

### **1.1. Formulation of the problem**

Based on the background described, the main problem is:

1. How is the implementation of the legal responsibility of marketplace companies for user data leakage caused by burglary by third parties in the case of Tokopedia data leakage?
2. What is the legal responsibility of marketplace companies for user data leakage caused by burglary by third parties in terms of Law Number 8 of 1999 concerning Consumer Protection?

### **1.2. Research Methods**

#### **1.2.1. Type of Research**

The type of research in this legal research is "normative legal research. Normative legal research is research that provides a systematic explanation of the rules governing a particular category of law, analyzes the relationship between regulations, explains areas of difficulty and perhaps predicts future development.

#### **1.2.2. Characteristics of Research**

Characteristics of legal research has a distinctive character, namely "normative, practical and prescriptive in nature. As a prescriptive science, jurisprudence studies the purpose of

law, values of justice, validity of the rule of law, legal concepts, and legal norms.

#### **1.2.3. Research Approach**

In relation to normative research, the approach used is as follows:

- a. "The case approach
- b. Legislative approach (statute approach)
- c. Historical approach (historical approach)
- d. Comparative approach
- e. Conceptual approach (conceptual approach)"

The approaches used from the several approaches above are the "statutory approach" and the case approach (the case approach). The statutory approach is an approach taken by examining all laws and regulations related to the legal issues being handled.

#### **1.2.4. Types and Sources of Legal Materials**

Types of legal materials can be divided into 3 (three), namely primary legal materials, secondary legal materials, and tertiary legal materials. In this study, the authors use legal sources, namely:

- a. "Primary Law Material

The primary legal materials used consist of statutory regulations, official records, minutes of making legislation and judges' decisions. In this study, the primary legal materials used are:

- 1) Civil Code ("KUHPPerdata");
- 2) Law Number 8 of 1999 concerning Consumer Protection ("Consumer Protection Law");
- 3) Law Number 11 of 2008 concerning Information and Electronic Transactions j.o Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions ("UU ITE");
- 4) Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems ("Ministry of Communication and Information Technology 20/2016");
- 5) Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions ("PP PSTE");
- 6) Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems ("PP PMSE").

- b. Secondary Legal Material

The main secondary legal materials are textbooks because textbooks contain the basic principles of legal science and classical views of scholars who have high qualifications.

- c. Non-Legal Material.

Non-legal legal materials are materials that provide instructions or explanations for primary and secondary legal materials. In this study, the tertiary legal materials used

include the Indonesian Language Dictionary and the Internet.”

### *1.2.5. Legal Material Collection Techniques*

The technique of collecting legal materials is intended to obtain legal materials in research. “The technique of collecting legal materials that supports and relates to the presentation of this research is document study (library study). Document study is a tool for collecting legal materials which is carried out through written legal materials using content analysis.

### *1.2.6. Legal Material Analysis Techniques*

This study uses "data analysis techniques with deductive logic, deductive logic or processing legal materials in a deductive way, namely explaining something general and then drawing it into more specific conclusions.

## **2. BACKGROUND**

### *2.1. Tokopedia User Data Leak*

This case began when a hacker with an account named Whysodank first published the results of his hack on Tokopedia on an internet forum called RaidForums on Saturday, May 2, 2020 (the twenty of March two thousand and twenty). The hack occurred on March 20, 2020 (March twenty two thousand and twenty). RaidForums is one of the sites often used by hackers to sell their hacked data.) RaidForums was founded in March 2015. The site is a marketplace to sell a variety of leaked data and serve as a place or forum for discussions about hacking.

Then, on the same day, a twitter account with the user account name @underthebreach tweeted on social media twitter about the hacking of 15,000,000 (fifteen million) Tokopedia user data by marking the official Tokopedia account.

On Saturday, May 2, 2020 (May two thousand and twenty), Tokopedia, through Nuraini Razak, Tokopedia's VP of Corporate Communications, admitted that there was an attempt to steal user data. Then, the next day, on Sunday, May 3, 2020, Whysodank announced that he had sold all the personal data of 91,000,000 (ninety one million) Tokopedia users on an illegal selling forum called EmpireMarket, using the ShinyHunters account name. The following is

The latest data from the hackers invalidates the previous hacking data claim which states that there are only tens of millions of user accounts. Then, the Hackread site uploaded the hacked results of 91,000,000 (ninety one million) Tokopedia accounts and revealed that the leaked accounts were sold for US\$5,000 or around Rp. 74,000,000,- (seventy four million Rupiah). The data sold by the hackers are in the form of: user ID, email, full name, date of birth, gender, cellphone number and password that is still encrypted. Tokopedia, which at that time had acknowledged that there was an attempt to steal user data, ensured that

important information such as passwords were protected. On May 3, 2020, Tokopedia had time to inform users directly that Tokopedia was conducting an investigation into the issue of circulating data leaks and gave an appeal to users to take preventive action by changing the user account password.

Then, later on May 12, 2020, Tokopedia CEO William Tanuwijaya also sent an open notification letter via email to all Tokopedia users. to notify all Tokopedia users that there is a data leak. After hearing the news of the data leak, the Indonesian Consumer Community (KKI) did not remain silent. KKI asked Tokopedia and the Ministry of Communication and Information of the Republic of Indonesia (Kemenkominfo RI) to submit the results of investigations related to the leakage of Tokopedia user data to Tokopedia consumers or in other words, users from Tokopedia. According to the KKI, the RI Ministry of Communication and Information or Tokopedia, they were very slow in informing the results of the investigation into the data leak case. In fact, the Indonesian Ministry of Communication and Information has involved the National Cyber and Crypto Agency (BSSN) to evaluate the case of the Tokopedia data leak.

KKI also filed a lawsuit against the Indonesian Ministry of Communication and Information and Tokopedia. KKI claimed to have received several complaints regarding the control of the personal data of the Tokopedia account owner without the account owner's consent. The personal data is in the form of full name, account name, residential address, email, date of birth, gender and telephone number. The complaint is submitted because consumers as Tokopedia users are worried about the occurrence of unlawful acts that cause losses in the future.

One of the demands from KKI was to ask Tokopedia to pay an administrative fine of Rp. 100,000,000,000,- (one hundred billion Rupiah) which was deposited into the state treasury no later than 30 calendar days after the decision of the case was final and binding, and to ask Tokopedia to submit an apology and statement. responsibilities published in three Indonesian print media, namely Bisnis Indonesia, Kompas, and 96 Jakarta Post

### *2.2. Implementation of Marketplace Company Legal Liability Against User Data Leaks Due to Burglary by Third Parties in Tokopedia Data Leak Cases*

Implementation is a series of processes regarding the actualization of ideas carried out by humans for their special interests. These ideas are embodied in concepts, policies and innovations that are realized in the form of actions so as to produce implications in the form of knowledge, skills, as well as behavior possessed by a person. In a simple sense what is meant by implementation is an implementation or application, but implementation can also be interpreted as a process carried out in the context of evaluating the aspects that are subject to it. There are many different types of public utilities. The activities involved in the leakage of Tokopedia's personal data are included in the scope of the

implementation of the electronic system as regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions in conjunction with Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (“UU ITE”), Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems (“Permen Kominfo 20/2016”), Government Regulation Number 71 of 2019 concerning Operation of Electronic Systems and Transactions (“PP PSTE”), as well as Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems (“PP PSME”).

The implementation of Tokopedia's legal liability for user data leakage is as follows:

- a. Tokopedia gave mass appeals to its users to change passwords when the issue of data leakage was first circulated via email;
- b. Tokopedia made mass notifications on behalf of Tokopedia CEO William Tanuwijaya via email to users. In essence, the email provides a statement about the occurrence of user data leakage to address the user's concerns and also ensure that there is no sale of the personal data;
- c. Tokopedia as PSE has also communicated and collaborated with the government, including the Ministry of Communication and Information (“Kemenkominfo”) and the National Cyber and Crypto Agency (“BSSN”) to investigate and protect the personal data of Tokopedia users;
- d. Tokopedia also appointed a world-class cyber institution that specializes in cybersecurity to assist with investigations and assist with the steps needed to protect personal data.
- e. Tokopedia improves its security system by implementing an OTP code system. Tokopedia requires each user to enter an active user's mobile number, to be given an OTP code every time they enter the Tokopedia application, with the aim of increasing account security. OTP code or one-time password is usually used in almost all applications. This is very useful for protecting users from unwanted problems, such as theft or misuse of the account.). According to Article 4 paragraph (1) Land Procurement Law, land for public interest is used for the construction of:

KKI prosecution against the Kemenkominfo and Tokopedia based on the mistake of Tokopedia as the PSE which has failed to store and protect the confidentiality of personal data and the privacy rights of its user accounts and the error of the Ministry of Communication and Information which is considered to have failed in supervising the operation of Tokopedia's electronic system needs to be reviewed. In this regard, what must be asked is whether it was Tokopedia who committed the unlawful act or another party who was not responsible for causing losses to other parties? If it turns out to be the other party, then the party who must be responsible is the party that caused the loss. KKI's claim would be more appropriate if it was directed to a third party who hacked, stole and exploited the personal data of Tokopedia users without permission, excepting also, where

the electricity is to be used exclusively in operations incident to the working of metalliferous mines and mining claims, mills, or reduction and smelting plants, and the transmission lines and distribution systems are owned by the consumer or where several consumers severally own their individual distribution systems and jointly own, in their own names or through a trustee, the transmission lines used in connection therewith and transmit such electricity, whether generated by themselves or procured from some other source, over such transmission lines and distribution systems without profit, and to be used for their private uses for the purposes aforesaid in places outside the limits of incorporated cities, towns and villages, and not for resale or public use, sale or distribution.

### ***2.3. Legal Liability of Marketplace Companies Against User Data Leaks Due to Burglary by Third Parties in accordance with Law Number 8 of 1999 concerning Consumer Protection***

The data leak in the Tokopedia case was caused by the actions of a third party breaking into Tokopedia's electronic system, so when referring to Article 14 paragraph (5) of PP PSTE, Tokopedia only needs to provide accountability in the form of a written notification to the owner of personal data that there has been a failure in personal data protection. Article 28 of the Minister of Communication and Informatics 20/2016 also states that the obligation of PSE, or in this case Tokopedia, is only up to notification to the owner of personal data if there is a failure to protect the confidentiality of personal data in its electronic system. In this regard, it can be said that Tokopedia has fulfilled its legal responsibilities because as soon as the data leak issue circulated, Tokopedia gave an appeal for password changes to its users, and when the data leak was confirmed, Tokopedia also made a notification to its users. Even Tokopedia immediately made improvements to the security of its electronic system. However, it will be a different form of legal liability if the prosecution of KKI is carried out on the basis of Tokopedia's position as a business actor, wherein KKI can claim liability from Tokopedia based on Law Number 8 of 1999 concerning Consumer Protection (“Consumer Protection Law”). Tokopedia is a marketplace company that organizes a platform or an electronic system, which brings together sellers and buyers online. When viewed from the perspective of consumer protection, Tokopedia can be categorized as a business actor, who trades marketplace platform services, while sellers and buyers who use the Tokopedia platform can be categorized as users or consumers.

Tokopedia as a business actor has failed to guarantee the convenience of consumer rights as stated in Article 4 of the Consumer Protection Law, which states that one of the rights of consumers is the right to comfort, security, and safety in consuming goods and/or services. This is marked by Tokopedia's failure to maintain the confidentiality of its users' personal data, where such personal data is required in the utilization of the electronic system provided by Tokopedia. In the position of Tokopedia as a business actor

that provides a marketplace platform for its consumers, the obligation to have good intentions as referred to in Article 7 letter a of the Consumer Protection Law can be interpreted that business actors are required to carry out their business activities in good faith, i.e. carefully, comply with the laws and regulations, applicable laws and policies, and with full responsibility. Meanwhile, the quality assurance of goods and/or services produced and/or traded as referred to in Article 7 letter d of the Consumer Protection Law needs to be realized by Tokopedia by providing reliable and safe and responsible electronic security systems. These two things are closely related to the principle of consumer protection, which includes the security and safety of consumers in the use, use and utilization of goods and/or services that are consumed or used, as intended in Article 2 of the Consumer Protection Law. Tokopedia as a business actor and also PSE does not carry out the obligation of prudence in maintaining the security of protecting the personal data of its users. Prudence referred to here is the necessity to pay attention to all aspects that have the potential to cause harm, both for themselves and for other parties. Tokopedia is a technology company that has a fairly large reputation in Indonesia. In addition, Tokopedia also holds a very large amount of user personal data, so Tokopedia has a high obligation of prudence. Regarding the obligations of business actors to provide compensation, compensation and/or compensation for losses suffered by consumers as regulated in Article 7 letters f and g of the Consumer Protection Law, it is re-explained in Article 19 of the Consumer Protection Law. In the article it is explained that the compensation provided by business actors to their consumers can be in the form of refunds or replacement of goods and/or services of a similar or equivalent value, or health care and/or compensation in accordance with the provisions of the applicable laws and regulations. The provision of compensation does not eliminate the possibility of criminal charges based on further evidence regarding the element of error. Compensation can be avoided if the business actor can prove that the error is the consumer's fault. The element of error that occurred in the Tokopedia data leak was the negligence of Tokopedia in maintaining the confidentiality of its users' personal data. The real losses experienced by users due to Tokopedia's negligence are immaterial losses, such as feelings of anxiety, worry, and loss of security because personal data is scattered in cyberspace. This feeling disturbs the peace of Tokopedia users. This feeling is also based on material losses that may arise in the future, namely in the form of fraud through social media, misuse of personal data for criminal acts and/or other actions that harm various parties, threats of cybercrime attacks and threats of other unlawful acts. which can harm Tokopedia users.

Next, turn to the privacy policy or commonly referred to as Tokopedia's terms and conditions. Tokopedia has the following terms and conditions: "To the maximum extent permitted by applicable law, Tokopedia (including the Parent Company, directors, and employees) is not responsible, and the User agrees not to hold Tokopedia responsible for any damage or loss (including but not limited to on-loss of money, reputation, profits, or other

intangible losses) resulting directly or indirectly from hacking actions carried out by third parties to User accounts." Further regarding compensation: "Users will release Tokopedia from claims for compensation and keep Tokopedia (including the Parent Company, directors, and employees) from any claims or demands, including reasonable legal fees, made by third parties that arise in the case of Users violates this Agreement, improper use of the Tokopedia Service and/or the User's violation of the law or the rights of third parties. In other words, Tokopedia has made a policy regarding the limits of responsibility that will be given by Tokopedia as a business actor in the losses that may be experienced by consumers related to personal data provided by consumers to Tokopedia in the use of Tokopedia services. The principle of responsibility used by Tokopedia is the principle of responsibility with limitations (limitation of liability principle), which is one of the principles that business actors really like to include as a standard clause or an exoneration clause.

The Consumer Protection Law provides protection to consumers who enter into engagements or agreements through electronic contracts so that they remain in accordance with statutory provisions. The existence of standard clauses contained in electronic contracts between consumers and business actors in this online application must be in accordance with applicable regulations with no transfer of responsibility from application business actors to consumers. So that consumers will get legal certainty if something happens or things that harm consumers in consuming goods and or services from application business actors. Tokopedia as a business actor can be said to have violated Article 18 paragraph (1) letter a of the Consumer Protection Law, which states that

"Business actors in offering goods and/or services intended for trading are prohibited from making or including standard clauses in every document and/or agreement when stating the transfer of responsibility for business actors."

In this regard, Tokopedia may be subject to criminal sanctions in accordance with Article 62 paragraph (1) of the Consumer Protection Law, namely: "Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion Rupiah Article 19 of the Consumer Protection Law has emphasized that the responsibility of business actors arises when consumers experience losses, so Article 19 adheres to the principle of liability based on fault, where this principle sees the assumption that if business actors do not make mistakes, then consumers will not experience a loss or in other words, if the consumer suffers a loss, it means that the business actor has made a mistake. This article has also shown the proof system used, namely the reverse proof system. This is relevant to Article 28 of the Consumer Protection Law which states that "Proof of the presence or absence of an element of error in a criminal case as referred to in Article 19 paragraph (4), Article 20, and Article 21 is the burden and responsibility of business actors without closing the

possibility for the prosecutor to prove it." The provisions of Article 19 are developed in Article 23 of the Consumer Protection Law, which states: "Business actors who refuse and/or do not respond and/or do not fulfil compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through the Consumer Dispute Settlement Agency or file a lawsuit to the judiciary at the consumer's domicile." Based on the formulation of Article 23, the author is of the opinion that the Consumer Protection Act also adheres to the presumption of liability principle. This principle implies that the defendant is considered responsible until finally the defendant can prove that he is innocent, so the burden of proof is on the defendant.

The author is of the opinion that in the case of data leakage caused by burglary by a third party, the principle of responsibility based on error with a reverse proof system is appropriate to be applied to the third party concerned. In this case, it is sufficient for the aggrieved party to prove that there was a loss on his part caused by the unauthorized use of his personal data, so that it is the defendant who must prove that he is not the one at fault in the incident. As for the parties who legally obtained the plaintiff's personal data, in this case Tokopedia, which was negligent and caused the data to leak and be misused by third parties, it is more appropriate to apply the principle of absolute responsibility (strict liability). The negligent party can become a co-defendant, if it is not himself who misuses the plaintiff's personal data. The author is of the opinion that in the case of data leakage caused by burglary by a third party, the principle of responsibility based on error with a reverse proof system is appropriate to be applied to the third party concerned. In this case, it is sufficient for the aggrieved party to prove that there was a loss on his part caused by the unauthorized use of his personal data, so that it is the defendant who must prove that he is not the one at fault in the incident. As for the parties who legally obtained the plaintiff's personal data, in this case Tokopedia, which was negligent and caused the data to leak and be misused by third parties, it is more appropriate to apply the principle of absolute responsibility (strict liability). The negligent party can become a co-defendant, if it is not himself who misuses the plaintiff's personal data.

The principle of absolute responsibility does not question the presence or absence of errors, but the producer is directly responsible for the losses incurred. In other words, absolute liability is the responsibility without fault and without exception. Another reason that can be used as a basis for applying the principle of strict liability in consumer protection is to look at the purpose of the protection itself. The word protection means making it easy for consumers to maintain and or obtain what is their right. By imposing the principle of strict liability, what is expected of consumer protection can be achieved because the consumers who will be protected will be able to easily maintain or obtain their rights. So that in consumer protection of personal data, the author is of the opinion that it is necessary to apply the principle of strict liability.

### **3. CONCLUSION AND SUGGESTIONS**

#### **3.1. Conclusion**

1. The implementation of Tokopedia's legal responsibility in overcoming the leakage of user data caused by third parties is to make mass notifications regarding the failure to maintain the confidentiality of users' personal data, in accordance with article 14 paragraph 5 pp pste and article 28 permen kominfo 20/2016, on behalf of tokopedia ceo, william tanuwijaya, via email to all tokopedia users. Tokopedia has also communicated and collaborated with the government, including the ministry of communication and information and the bssn to investigate and protect personal data. In addition, as soon as the data leak is confirmed, tokopedia immediately fixes the platform's security system using the otp code system
2. Legal responsibility for marketplace companies in user data leaks caused by intruders by third parties is appropriate consumer protection law, can be in the form of liability with compensation sanctions as regulated in article 7 letters f and g as well as article 19 of the consumer protection law for violations of article 7 letters a and d of the consumer protection law, as well as liability with criminal sanctions as regulated in article 62 paragraph (1) of the consumer protection law for violations of article 18 of the consumer protection law. The author is of the opinion that in the case of data leakage, the principle of liability based on fault with a reversed proof system is the most appropriate principle of responsibility for third parties who carry out hacking, while for Tokopedia which legally obtained the plaintiff's personal data, which has been negligent and caused data leakage, it would be more appropriate to apply the principle of absolute responsibility (strict liability).

#### **3.2. Suggestion**

Given the importance of the right to privacy and protection of personal data in the current technological era, the suggestion for the future is to strengthen regulations on personal data in Indonesia. Consumer protection laws in Indonesia are too lagging behind to keep up with the advancements in technology that are constantly evolving but consumer protection laws in Indonesia are too old. The government should stipulate laws and regulations that specifically regulate online marketplace providers for online consumer data and privacy. Then, Tokopedia is not only obliged to improve the security of its electronic system, but also needs to conduct an in-depth evaluation of the previous electronic system security, considering that the occurrence of personal data leakage cases is due to system security that has failed to protect users' personal data from hacking by third parties.

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