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Liability For Processing Personal Data At Private Universities Related to Personal Data Protection Based On Indonesian Law

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Abstract: *Technological advances are like two sides of a coin that have several conditions that are not only beneficial but need to be aware of the dangers, one of which is data leakage. Data leakage does not always occur intentionally, it can occur due to the negligence of a software itself due to the weakness of its device security system. Personal data is crucial in this era of digitalization, which all of them need, including in educational institutions such as private universities. Foundations and Private Universities have a legal relationship as stipulated in the Foundation Law adjusted to the agreement made by both. Foundations and Private Universities have their respective portions in terms of their duties, functions, authorities, and responsibilities including in the management of personal data if there is a data leak who is the data controller and data processor. The type of research used is doctrinal law through the search for library materials and secondary data consisting of primary documents, secondary legal documents and non-legal documents. The research conducted will later examine the relevant legislation that regulates associated with the legal issues raised whether appropriate or not in its implementation. The results showed that based on the legal relationship, the Foundation as a controller of personal data and the Cooperative as a personal data processor. Both have their respective portions of responsibility and if there is a data leak, the responsibility is borne by the foundation stakeholder as the controller of personal data and the corporation as the beneficiary.*

Keyword: *Foundations, Private Universities, Data leakage.*

INTRODUCTION

The Constitution has regulated the human rights of its citizens in such a way that it is the responsibility of a State, one of which is the protection of personal data. Digitalization is increasingly inevitable, even all fundamental things today are almost all using technology, including the data processing system in an educational institution. Technological developments must of course be accompanied by a responsive legal umbrella because the sophistication of technology should not defeat the rule of law. On the other hand,

technological developments should also not be hampered just because the rule of law is not accommodating enough. Personal data itself according to Article 1 of Law Number 27 of 2022 concerning Personal Data Protection (UU PDP) is "data about an individual who is identified or can be identified individually or combined with other information either directly or indirectly through electronic or non-electronic systems."

It is important to understand the classification of what constitutes personal data to avoid misunderstanding in the public, which consists of: a. specific personal data and b. general personal data. Specific personal data include a. health data and information; b. biometric data; c. genetic data; d. crime records; e. child data; f. personal information data; and/or g. other data in accordance with the provisions of laws and regulations. Meanwhile, general personal data are a. full name; b. gender; c. citizenship; d. religion; e. marital status; and/or f. personal data that is combined to identify a person. Personal data that is combined to identify a person. (Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi, n.d.)

Technology and informatics are the most advanced and developed fields in this century followed by opportunities and challenges in it. Opportunities are increasingly wide open through various technological inventions and innovations that can facilitate people's lives. However, like two sides of a coin, these opportunities are followed by challenges in the form of threats to personal data protection. Indonesia really needs to be aware of this considering the large number of internet users, especially social media, which is prone to personal data. Based on a survey conducted by Data Reportal, in 2023, there will be a total of 167 million social media users. 153 million are users over the age of 18, which is 79.5% of the total population. Not only that, 78.5% of internet users are estimated to use at least 1 social media account. ("DIGITAL 2023: INDONESIA," 2023) Implementation carried out by Indonesia by making a legal product in the form of Law Number 27 of 2022 concerning Personal Data Protection. The passing of the PDP Law is a complement to previous legal products that also aim in the field of personal data, for example Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

Personal data on the internet is like mushrooms on a wet field in the rainy season, which is very easy to spread, obtain, and misuse for people who have bad intentions. Currently, every time we open an account, it is not uncommon to require face and identity verification in the form of an ID card. The use of personal data in the institutional world is also very important to pay attention to security because even from the beginning of the registration process, students have submitted their personal data to the institution where they register. Private universities or PTS are generally and certainly affiliated under the auspices of a foundation. Even though it is private, the government tries to apply fairly between public and private universities even though PTS is in many ways required to be more independent in institutional management, funding, cooperation, etc. Of course, by continuing to prioritize the objectives of the institution. Of course, by continuing to prioritize academic goals that are nonprofit, so that private universities must be under the auspices of a foundation. A foundation is a legal entity that aims to be non-profit (Chatamarrasjid Ais, 2002). The unification agreement of private universities can be categorized as a legal relationship in the nature of a merger. In the unification of private universities, there is no acquisition or purchase of shares from the unified private universities. The unification agreement of private universities aims to improve the quality of education and there are no personal rewards or benefits. After the unification of private universities has been approved by the Ministry of Education and Culture of the Republic of Indonesia, legal consequences arise for universities, lecturers, administrative staff, students, and alumni (Aribawa M. Y, 2021).

The successful management of a private university will also depend on the foundation that oversees it, not just on officials at the faculty and university levels. Many aspects are

important so that PTS and Foundations run properly, of course cooperation and synergy between the two are needed.

Foundations and Private Universities have their respective portions in terms of their duties, functions, authorities, and responsibilities including in the management of personal data who is the data controller and data processor. Personal Data Processor is any person, public body, and international organization that acts individually or jointly in processing personal data on behalf of the personal data controller (Satiadi, 2023). However, the problem is that there is currently no rigid regulation regarding corporate liability in the event of a personal data leak. The liability regulated in the next article only regulates administrative sanctions for both personal data controllers and personal data processors in the form of written warnings, temporary suspension of personal data processing activities, deletion or destruction of personal data and/or administrative fines of up to 2 percent of annual revenue or annual receipts for variable violations. Although the administrative sanctions have been stipulated, it has not been explained who is responsible. This is what we will discuss further in a specific discussion that will classify foundations and private universities in their portion of responsibility for processing personal data as well as how the legal umbrella in Indonesia is currently.

METHOD

The type of research that the author uses to compile the article is normative legal research or also known as doctrinal legal research. (Jonaedi Efendi and Johnny Ibrahim, 2016). This type of research is carried out through searching library materials and secondary data consisting of primary documents, secondary legal documents and non-legal documents. The research carried out will later examine the relevant regulations that regulate the legal issues raised whether they are appropriate or not in their implementation.

The statutory approach (Statue Approach) and conceptual approach (Conceptual Approach) will be used in this legal research. (Jonaedi Efendi dan Johnny Ibrahim, 2016) The statutory approach (Statue Approach) is also referred to as an approach to legislation or legal products that focus on legal issues or problems raised in this case regulations relating to personal data leaks. This approach also examines how consistent a statutory regulation is in its formation to its implementation. Conceptual approach is a conceptual approach used when researchers do not depart from existing legal rules. Therefore, the author provides an analysis of the legal relationship between foundations and private universities and how liability in the event of data leakage based on related legislation.

RESULTS AND DISCUSSION

Legal Relationship Between Private Universities and Foundations in Relation to Personal Data Processing

Higher education institutions have their own markets and competitions in attracting new prospective students with the advantages offered ranging from accreditation, facilities, and facilities and infrastructure. Nowadays, Private Universities (PTS) are no longer underestimated and can often outperform State Universities (PTN). The stigma that PTN students are superior to PTS began to be broken when students from PTS could prove themselves in the race and show high fighting power and competitiveness as well. Higher Education is currently faced with increasingly complex competition, especially with the significant increase in the number of Private Universities from year to year, of course it can be agreed that, universities that have a competitive advantage will be increasingly in demand by the community, otherwise those that do not have a competitive advantage will be increasingly abandoned. Colleges that have a competitive advantage are colleges that are able

to create loyalty for their stakeholders and are able to create a stigma of satisfaction or loyalty for stakeholders in the long run (in the long run).(Sartika D, 2014)

However, there are some things that make PTN and PTS can no longer be generalized such as internship opportunities under the auspices of the Ministry of Education and Culture because not all PTS have the same opportunity. The difference between PTN and PTS is also very prominent when the process of registering prospective new students, the PTN registration mechanism is considered more difficult and accommodated into one through the Ministry of Education and Culture. Unlike the case with PTS, the registration mechanism is directly through the relevant institutions and generally opens several channels ranging from report cards, academic and non-academic achievements and so on. One of the main reasons why prospective new students prefer PTN is from an administrative perspective that will be issued for registration to tuition payments when they are accepted. As a result of PTS having to manage its own planning and funding together with the Foundation, it certainly requires more funds, one of which is income from students. The legal relationship between the Foundation and Private Universities is generally contained in the Foundation Regulation or called a statute with an explanatory clause in it. One example is the statute owned by Galuh University in Article 1 which states that the Galuh Ciamis Education Foundation is the legal entity that organizes Galuh University. So from here we can clearly conclude that the legal relationship between the Foundation that stands as the responsible party has ordered the Private Universities to carry out their duties and authority to carry out institutional activities. In connection with the legal relationship between the foundation and private universities in the sector of running fields such as finance and information technology, as the statute regulates it can form institutions. This is as stated in the Galuh University statute which states that "In carrying out its duties, the Foundation Management can form institutions: Internal Audit and Supervision Agency (BPAI), Pension Fund Management Agency (BPDP), and other institutions"(Peraturan Yayasan Pendidikan Galuh Ciamis Nomor 1 Tahun 2017 Tentang Statuta Universitas Galuh, n.d.) Therefore, it is possible that based on this legal relationship, the foundation gives delegation of authority to PTS to establish a personal data management institution and is fully responsible for it.

Competition between private universities is also interesting to look at because it is not uncommon for PTS to lose the competition in the sense that they do not get the number of students as expected and this condition is repeated, so mergers or restructuring usually occur. Law Number 16 of 2001 in conjunction with Law Number 28 of 2004 concerning Foundations has actually regulated the possibility of mergers or in other words mergers. The Foundation Law has provided a forum for foundations that want to restructure in the form of a merger, especially Article 57 paragraph (1) of the Foundation Law(Undang-Undang Nomor 28 Tahun 2004 Tentang Yayasan, n.d.; Undang-Undang Republik Indonesia Nomor 16 Tahun 2001 Tentang Yayasan, n.d.). Mergers can be done as long as they fulfill the conditions that there is an element of inability of the foundation to continue carrying out its activities without the support of other foundations, the foundation that receives the merger and the one that joins its activities are similar, and the merging foundations have never been involved in acts that violate the Articles of Association of the foundation, the principles of public order and decency. Foundations can only be merged with foundations that have similar activities so that for example there is a foundation that is engaged in orphanages only, it cannot be merged with a foundation that focuses on education(Serfiyani C. Y, 2020). This is due to the provisions in Article 57 paragraph (2) of the Foundation Law, unless the foundation that has activities in the field of orphanages in its Deed and Articles of Association states that it has several fields of activity besides orphanages, namely education.

The method of consolidation or dissolution of PT has been mentioned in UUPT but not regulated in the Foundation Law for the consolidation of the Foundation(Serfiyani C. Y,

2020). The consolidation method can actually be applied by foundations managing private universities in the future. Regulation of the Minister of Education and Culture No. 7/2020 on the Establishment, Change, Dissolution of State Universities and Establishment, Change, Revocation of Licenses of Private Universities (Permendikbud 7/2020) also does not regulate the way of consolidation between private higher education institutions. Several foundations or several private universities with equally weak positions can merge into one to form a new, stronger entity. Consolidation does not require there to be one entity that is in a stronger position because the entities that unite themselves by merging form a new entity.

The acquisition method cannot be done in restructuring between foundations because the ownership of foundations is not based on share ownership as in a PT so there are no shares that can be taken over. Foundations do not even have members. The Foundation Trustees Meeting is the highest power holder, not the GMS as in a PT. The founder of the Foundation is not the owner of the Foundation (N, 2017). The Foundation Trustee as the highest organ of the Foundation has five kinds of authority, among others, making a decision on the merger or dissolution of the foundation as in Article 28 paragraph (2) of the Foundation Law (Serfiyani C. Y, 2020).

The legal relationship between foundations and private universities is certainly in accordance with the agreement that has been agreed upon. Therefore, the legal relationship between foundations and private universities is based on their formation structure as stated in their statutes as long as they do not undergo acquisitions, mergers or consolidations.

Roles and Responsibilities of Foundations and Universities in the Event of a Data Breach

The legal relationship between foundations and universities has been as mentioned but what if there is a data breach or data leak which is clearly detrimental to the victim who will be responsible in this case. Data Breach or commonly known as data leakage is a disclosure of confidential information either intentionally (intentional threats) or unintentionally (inadvertent threats) to unauthorized parties (Long Cheng; et.al, 2017). Not all data leaks are caused by deliberation because our technology cannot fully control there are data leaks that occur due to the weakness of a personal data security system so that configuration errors occur. Data leakage in Indonesia is not a rare thing, even state institutions have experienced it, so this is indeed a very crucial thing to consider. The case of the leak of one of the marketplaces, namely on May 1, 2020, it was reported that 91 million Tokopedia user data was offered in a hacker forum for US \$5,000 so that Tokopedia and the Ministry of Communication and Information were sued by the Indonesian Consumer Community (KKI) for IDR 100 billion (Zuhri Mahrus, 2020). The lawsuit was filed because there was a sale of personal data which clearly caused harm to the victim and indicated that Tokopedia had not protected personal data from unauthorized access and disclosure (Fathur, 2020).

The leadership structure of the foundations and PTS when examined clearly all decision making is based on the Foundation's decision (S, 2010). Through such a line of thinking in the context of personal data liability, it can be said that the Foundation is a controller of personal data while PTS is a personal data processor. The obligation of the Personal Data Controller based on the PDP Law is that it is obliged to have a basis for processing personal data, which includes: (Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi, n.d.)

- 1 The explicit lawful consent of the personal data subject for 1 (one) or more specified purposes that has been communicated by the personal data controller to the personal data subject;
- 2 Fulfillment of an agreement obligation in the case where the personal data subject is a party or to fulfill a request of the personal data subject at the time of agreeing;
- 3 Fulfillment of a legal obligation of a personal data controller by statutory provisions;

- 4 Fulfillment of the protection of the vital interests of a personal data subject;
- 5 Performance of duties in the context of public interest, public service, or the exercise of the authority of a personal data controller based on laws and regulations; and/or
- 6 Fulfillment of other legitimate interests by taking into account the purposes, needs, and balancing interests of the personal data controller and the rights of the personal data subject.
- 7 Therefore, the foundation as the Controller of personal data must obtain the consent of the child's parents and/or guardians in accordance with the statutory provisions in the processing of children's personal data and be specially organized. Personal data controllers shall protect and ensure the security of the personal data they process, by preparing and implementing technical operational measures to protect personal data from interference with the processing of conflicting personal data and determining the security level of personal data by taking into account the nature and risks of the personal data to be protected. Personal data controllers shall maintain the confidentiality of personal data in performing personal data processing. Personal data controllers shall prevent personal data from being accessed unlawfully by using security systems for the personal data being processed and/or processing personal data using electronic systems in a reliable, secure, responsible manner (Law Number 27 of 2022 concerning Personal Data Protection, n.d.). Meanwhile, private universities as personal data processors shall perform personal data processing based on the order of the personal data controller. The personal data processor shall obtain written consent from the personal data controller before involving other personal data processors in performing personal data processing. The provisions on the obligations of personal data controllers stipulated in Articles 29, 31, 35, 36, 37, 38, and 39 shall also apply to personal data processors.

Personal Data Processing Liability Under Indonesian Law

Data leakage cases are very troubling to the public because in this all-technology era, almost all lines of life use personal data for registration so that when there is a data leak to sell the data, it will cause unrest. The importance of public awareness of the security of their respective personal data by not easily submitting their personal data without reading the applicable terms and conditions. When a data leak occurs, the personal data controller is obliged to submit a written notification no later than 3 x 24 hours in the event of a failure to protect personal data to the subject of personal data and the institution (Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi, n.d.) The notification should at least contain the personal data disclosed, when and how the personal data was disclosed, and the handling and recovery efforts for the disclosure of personal data by the personal data controller. Can data leakage be interpreted as a failure of personal data protection? Personal data protection failure in the Explanation of Article 46 paragraph (1) of the PDP Law is defined as the failure to protect one's personal data in terms of confidentiality, integrity, and availability of personal data, including security breaches, whether intentional or unintentional, that lead to the destruction, loss, alteration, disclosure, or unauthorized access to personal data transmitted, stored, or processed (Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi, n.d.).

Indonesia's existing regulations are sufficient in accommodating the interests of personal data protection and handling when data leaks occur in the future. These laws and regulations include Law No. 19/2016 on the Amendment to Law No. 11/2008 on Electronic Information and Transactions (ITE Law), Article 40 of Law No. 30/1999 on Telecommunications, Article 6 of Law No. 14/2008 on Public Information Disclosure, Regulation of the Minister of Communication and Information Technology No. 20/2016 on the Protection of Personal Data in Electronic Systems (Permen PDPSE) and in relation to

trade through electronic systems (e-commerce) is through Government Regulation No. 71/2019 on the Implementation of Electronic Systems and Transactions (PPPSTE). The regulation is a manifestation of the State's responsibility in accommodating privacy protection as implicitly mandated by the Constitution through Article 28 G paragraph (1) (Delpiero M; et.al, 2021)

One of the cases regarding data leakage can be seen from the data leakage case of one of the online marketplaces in decision Number 235/PDT.G/2020/PN.JkT.PST, one of the reasons for the lawsuit in the case is article 15 paragraph (1) of the ITE Law which explains that electronic system operators are required to organize reliable and secure electronic systems and are responsible for the operation of electronic systems as they should. However, it should be noted that article 15 paragraph (1) will not apply if the electronic system organizer can prove the existence of force majeure, and/or the fault / negligence of the electronic system user. Various literature reveals that the weakness of the ITE Law is the absence of rigid mechanisms and institutions that handle data leaks. The Ministry of Communication and Information does not yet have clarity on its responsibility to manage such matters.

Article 2 Paragraph 2 of Law No. 27 of 2022 on Personal Data Protection explains that "This Law shall not apply to the processing of Personal Data by natural person in private or household activities." [3] This article was submitted for judicial review to the Constitutional Court because it was considered contrary to the 1945 Constitution of the Republic of Indonesia. This was also due to the assessment that the article regulates the exemption of the applicability of the PDP Law to the processing of personal data by natural persons in private or household activities..

Although liability for data leaks can be imposed on stakeholders who play a role in the foundation, placing the blame on individual corporations is not easy. Fault, which is an important factor in holding accountable, must be interpreted normatively, not only looking at the mental relationship between the perpetrator and his actions (Chairul Huda, 2015). Such behavior must be assessed as wrongful based on the applicable norm system. So the error is a form of error seen from the point of view of criminal law norms, namely intentional error and negligence. Article 49 of Law No. 1 of 2023 concerning the Criminal Code states that criminal offenses committed by corporations can be imposed on the corporation itself, management who have functional positions, commanders, controllers, and / or beneficial owners of the Corporation.

When it comes to personal data processors, the form of responsibility in the event of a personal data leak is not specifically regulated. However, both personal data controllers and personal data processors who violate the aforementioned obligations are subject to administrative sanctions in the form of written warnings, temporary suspension of personal data processing activities, deletion or destruction of personal data and/or administrative fines of up to 2 percent of annual revenue or annual receipts for variable violations (Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi, n.d.) In the context of foundations and PTS, liability can be imposed on foundations as data controllers and corporate beneficiaries as stipulated in the National Criminal Code on corporate liability.

CONCLUSION

Technological developments must of course be accompanied by a responsive legal umbrella because the sophistication of technology should not defeat the rule of law. On the other hand, technological developments should also not be hampered just because the rule of law is less accommodating. Personal data itself according to Article 1 of Law Number 27 of 2022 concerning Personal Data Protection (UU PDP) is "data about individuals who are

identified or can be identified individually or combined with other information either directly or indirectly through electronic or non-electronic systems.”

Competition between private universities is also interesting to look at because it is not uncommon for PTS to lose the competition in the sense that they do not get the number of students as expected and this condition is repeated, so mergers or restructuring usually occur. Law Number 16 of 2001 in conjunction with Law Number 28 of 2004 concerning Foundations has actually regulated the possibility of mergers or in other words mergers. The Foundation Law has provided a forum for foundations that want to restructure in the form of a merger, especially Article 57 paragraph (1) of the Foundation Law. Mergers can be carried out as long as they fulfill the conditions that there is an element of inability of the foundation to continue carrying out its activities without the support of other foundations, foundations that receive mergers and those that join their activities are similar, and the merging foundations have never been involved in acts that violate the Articles of Association of the foundation, the principles of public order and decency..

The leadership structure of the foundation and PTS when examined is clear that all decision-making is based on the foundation's decision. Through such a line of thinking in the context of personal data liability, it can be said that the Foundation is the controller of personal data while PTS is the processor of personal data. Both controllers and processors each have their portion in their roles and responsibilities when a data leak occurs. Personal data controllers are obliged to maintain the confidentiality of personal data in processing personal data. Personal data controllers are obliged to prevent personal data from being accessed unlawfully by using security systems for the personal data being processed and/or processing personal data using electronic systems in a reliable, secure, responsible manner.

Meanwhile, private universities as personal data processors are obliged to process personal data based on the orders of the personal data controller. However, both personal data controllers and personal data processors who violate the aforementioned obligations are subject to administrative sanctions in the form of written warnings, temporary suspension of personal data processing activities, deletion or destruction of personal data and/or administrative fines of up to 2 percent of annual revenue or annual receipts for variable violations. In the context of foundations and PTS, liability can be imposed on foundations as data controllers and corporate beneficiaries as stipulated in the National Criminal Code regarding corporate liability.

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