



Published Privacy Rights via Short Messages

Muhammad Akbar Fhad Syahril¹.

ARTICLE INFO

Keywords:

Protection; Violation; Privacy; Rights.

How to cite:

Syahril, Muhammad Akbar Fhad. (2021). Published Privacy Rights via Short Messages. *Amsir Law Journal*, 3(1), 11-19.

DOI:

10.36746/alj.v3i1.45

ABSTRACT

Short messages in the form of advertisements are increasingly being accepted by the public through their cell phones. The public never specifically gave the phone number to the party sending the advertising message. This is considered to be even more annoying because the short message advertisement violates the principles of consumer protection. This study aims to determine and analyze the extent of privacy violations against the spread of spam information via short messages. This study uses the empirical normative method, namely research conducted with the approach of legal norms or substances, legal principles, legal postulates, and legal comparisons, using a conceptual approach. The results show that short messages in the form of offers that are not directly related to the services used by cellular subscribers must be a concern for customer convenience.

Copyright © 2021 ALJ. All rights reserved.

1. Introduction

The development of electronic media and the development of global life have resulted in the Indonesian nation is also required to become a society that lives more modernly with the development of a global life that is completely advanced and modern by using various electronic devices and unlimited internet networks, the development of global life brings a fairly large flow to the life of the Indonesian people, one of the things that are happening in the rapid development of social media used by the Indonesian people, very diverse social media, types and needs to be offered to Indonesians.²

Fraudulent crimes committed by humans through electronic media are crimes that often occur nowadays so that crimes that occur can only be committed by people who master and understand sophisticated technology, and they use this sophisticated technology to commit fraudulent crimes. making the number of victims of fraud where victims do not

¹ Faculty of Law in Andi Sapada Institute of Social and Business Sciences, Parepare, Indonesia. E-mail: akbar9.a9@gmail.com

² Pradjonggo, Tjandra Sridjaja, 'Efektifitas Undang-undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik Terhadap Maraknya Pelanggaran Hukum Pidana Media Sosial', *LIKHITAPRAJNA. Jurnal Ilmiah.Fakultas Keguruan Dan Ilmu Pendidikan*, Vol 15, p. 61.

understand and master technology or electronic media so that it is difficult to hold the perpetrators accountable.³

Law Number 11 of 2008 concerning Electronic Transaction Information, this is a new starting point in the use of electronic media to prevent criminal acts and can be used as a guide in all electronic activities. This regulation will provide criminal threats and can reduce the number of fraud crimes or terror ads that become spam which can violate the right to privacy, which is misleading.

With the enactment of Law Electronic Transaction Information, a new study is created in the law on cyberspace, namely the law in cyberspace, of course, the existence of this new field has an impact on legal changes in terms of criminalization behavior in cyberspace. the online world. In the past, it was difficult to prove actions that could harm the online world. The existence of Law Electronic Information and Transactions is undoubtedly very helpful. The Indonesian technology industry has violated privacy and ethics, in other words duplicating customer privacy. Privacy began to be disturbed. If you often receive messages from unknown cell phone numbers.

This study refers to several examples of previous research as a guide for current research. Taken in the form of a journal, including the importance of understanding the application of privacy in the era of information technology in this paper discusses privacy protection which is very important in the current internet era and of course as an important consideration for people who have the aim of conducting research using the Internet. However, the rapid development of society poses challenges related to privacy due to the increasing need for self-disclosure at both the interpersonal and organizational levels. There needs to be a special law regulating privacy in Indonesia. Various developed countries already have special regulations related to personal data protection, but until now Indonesia does not have this regulation.

Then the journal on legal protection against privacy from spamming based on Law Electronic Information and Transactions, research discusses spamming as an act of spreading unwanted/requested electronic messages and without the recipient's consent violates privacy and is against the law in the form of data use personal without consent that results in losses. Spamming violates a person's privacy because everyone has the right to be left alone. Spamming also violates the privacy of personal data, that data about themselves should not be automatically available to other individuals and organizations, and if the data about themselves is owned by other people, that individual must have great control over that data and its use.

Departing from previous research, it is deemed urgent to be studied further, where the use of information and communication technology media has a positive impact, of course, on the other side. Has opened new opportunities in the form of facilities for criminals to use them as instruments in committing criminal acts with new dimensions and modes in the field of information and communication technology utilization. Short messages or short message service in the form of online loan advertisements and the like are increasingly being accepted by the public through their cellphones. The public has never specifically provided the telephone number to the party sending the advertising message. This condition is considered to be increasingly disturbing because the short message advertisement violates the principles of consumer protection.

³ Pomounda, Ika, 'Perlindungan Hukum Bagi Korban Penipuan Melalui Media Elektronik (Suatu Pendekatan Viktimologi)', *Jurnal Ilmu Hukum Legal Opinion*, Vol 3 (2015), p. 4.

2. Method

This research method uses empirical normative research, namely research conducted with the approach of legal norms or substances, and legal comparisons. Legal research that combines normative legal research and social/empirical legal research. In this type of research, researchers research by combining the two types of research mentioned above in a study.⁴ The approach used is conceptual, namely an approach that provides an analytical point of view towards solving problems in legal research, which is seen from the legal aspects and concepts behind it, and can even be seen from the values contained therein. norming a regulation related to the concept used. The research conducted is descriptive-analytic, namely describing, analyzing, concluding the problem which is the object of the research. The author only concentrates on describing the two streams that are the object of study in this paper.⁵

3. Violation Against Spread of Spam Information Through Short Messages

In this modern era, we are given the convenience, of course, with many benefits that can be obtained from current technological advances. The use of information technology has also experienced rapid development, such as in the field of communication. Nowadays communication is becoming a complex thing that can change human behavior.

The Ministry of Communication and Informatics (Kominfo) revealed indications of leakage of personal data of telecommunication company customers or mobile operators. Regarding the indications, Kominfo reminded that mobile operators investigate the issue internally.⁶ Advances in information technology need to be balanced with the availability of legal instruments to prevent new crime, frauds, and negative externalities. Technology has been widely used in everyday life, one of which is information and communication technology in other forms of electronic media. Apart from having a large positive impact, information and communication technology also has a negative side. Various crimes can be committed using information technology, theft of corporate data via the internet and fraud through electronic media. Therefore, a law is needed to regulate it.⁷

Almost all consumers or mobile subscribers receive instant message spam. In the absence of prior consent from consumers regarding the availability of receiving short message advertisements. The term Don't Call Register, meaning that telecommunication services are not allowed to send short messages, either in the form of offers to customers who have stated that they do not agree to send short messages from communication services or such as online spam loans.

The law initially protected the interests of the state, society, and the private sector from cybercrime. Then there are three categories covering laws, those related to insult, blasphemy, and online threats. The law ensnares not only authors but also those who distribute, transmit, or make content electronically accessible.⁸ Apart from content, there is also data that is private. Data can be said as personal data if the data can be used to identify or identify someone. Privacy is the ability of a person or group of individuals to defend their life and

⁴ Nawī, Syahrudin, *Penelitian Hukum Normatif Versus Penelitian Hukum Empiris*, Makassar: PT. Umitoha Ukhuwah Grafika, (2017), p. 9.

⁵ Purwanda, S., & Dewi, M. N. K. (2020). The Effects of Monism and Pluralism on Legal Development of a Nation. *Amsir Law Journal*, 2(1), 21-26.

⁶ See website in <https://aptika.kominfo.go.id/2020/07/data-pelanggan-terindikasi-bocor-kominfo-minta-operator-investigasi/>, date accessed 1 March 2021.

⁷ Kaligis, O. C., *Penerapan Undang-undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik Dalam Prakteknya*, Jakarta: Yarsif Watampone, (2008), p. 1.

⁸ Siahaan, Andysah Putera Utama, 'Pelanggaran Cybercrime Dan Kekuatan Yurisdiksi Di Indonesia', *Jurnal Teknik Dan Informatika*, Vol 5, (2018), p.7.

private affairs from the public, where a person controls the flow of information about himself. Another explanation for privacy is the individual's right to determine the extent and whether a person is willing to open up to others.⁹

In the application of laws and regulations in the field of electronic transactions through Law Number 11 of 2008 concerning Electronic Information and Transactions, from the time this law was promulgated until now, it is proven that the application of this law is effective against the law, which cannot be separated. from a law enforcement issue which is a process that involves many things. Therefore, the success of law enforcement is certainly very much influenced by these things, at least several factors influence law enforcement, including the following:

- 1) The legal factor itself;
- 2) Law enforcement apparatus factors, namely the parties who form or implement the law;
- 3) A Factor of means or facilities that support law enforcement;
- 4) Community factors, namely the environment in which the law applies or is applied. And last; and
- 5) Cultural factors, namely as a result of work, creativity, and taste based on human initiatives in life.¹⁰

This error occurred due to the dissemination of information and electronic documents to many people or various parties either via short messages or the internet network. Short messages containing advertisements sent without prior approval from the owner of the number, of course, violate Article 26 of Law Number 19 of 2016 concerning Amendments to Law Electronic Information and Transactions. In the use of information technology, the importance of protecting personal data is part of personal rights. Personal rights are explained as follows:

- 1) Personal rights are the right to enjoy a private life and be free from all kinds of disturbances;
- 2) Personal right is the right to be able to communicate with other people without being spies; and
- 3) Personal right is the right to monitor access to information about a person's life and personal data.

Apart from personal rights, there are also human rights related to data protection, there are basic rights that form the basis of the existence of human rights itself, namely the right to privacy. This statement is in line with the concept of human rights itself which is built on privacy as its foundation.¹¹

Data protection is also a fundamental human right. Where several countries have recognized data protection as a constitutional right, namely the right of a person to obtain data security and to justify if errors are found in the data.¹² If a person's data is used without the permission of the person concerned, then the person whose rights have been violated

⁹ Witri, and Joni Andre Ramadhani, 'Pentingnya Memahami Penerapan Privasi Di Era Teknologi Dan Informasi', *Jurnal Teknologi Komunikasi Dan Pendidikan*, Vol 12, (2019), p. 4.

¹⁰ Soekanto, Soerjono, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Yogyakarta: Genta Publishing, (2008). p. 8

¹¹ Pramudito, Anjas Putra, 'Kedudukan Dan Perlindungan Hak Atas Privasi Di Indonesia', *Jurist-Diction*, Vol 3, (2020).p.1400

¹² Dewi, Sinta, 'Konsep Perlindungan Hukum Atas Privasi Dan Data Pribadi Dikaitkan Dengan Penggunaan Cloud Computing Di Indonesia', *Yustisia Jurnal Hukum*, Vol 5 (2016), p. 26

can file a lawsuit for the losses incurred. Meanwhile, in matters relating to the translation of personal electronic data, the Information and Electronic Transactions Law mandates it again in Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions.

The meaning of personal data is contained in Article 1 number 29 of Government Regulation Number 82 of 2012 concerning Electronic Transactions and System Operation, also in Article 1 of Government Regulation Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions. Protection of personal data is of course an important thing for consumers themselves in conducting online transactions because personal data is related to the security of the consumers themselves. Due to the weak position of consumers, it must be protected by law.¹³

Protection of personal data in electronic systems includes protection from unauthorized use, protection by electronic system administrators, and protection from illegal access and interference. Regarding the protection of personal data from unauthorized use, Article 26 of the Law on Electronic Information and Transactions requires that the use of any personal data in electronic media must have the consent of the owner of the data concerned.¹⁴ Law Electronic Information and Transactions, article 26 states that:

- 1) The use of all information via electronic media relating to a person's data must be done with the consent of the person concerned.
- 2) (2) Anyone whose rights as referred to in paragraph (1) are violated can file a lawsuit for losses incurred under this Law.

In its explanation, Article 26 of the Law on Information and Electronic Transactions states that personal data is one part of a person's rights. When viewed from a legal context, privacy is the right of right to be let alone. Meanwhile, Indonesian legal guidelines for maintaining privacy are sourced from the Information Technology Law paragraph 19 which states that privacy is an individual's right to control the use of information about one's identity either by himself or by other parties.

The Indonesian telecommunications regulatory body as an institution has the authority to set service quality standards and must act quickly and decisively. At least with the existence of the Indonesian telecommunications regulatory body, it can follow the rules applied by the Financial Services Authority in treating consumers who receive financial services. The Financial Services Authority restricts financial business actors from conveying information via short messages to consumers, which can only be done on Monday to Saturday, excluding national holidays.

Spamming is the delivery of information to display advertising news and other purposes that cause inconvenience to users. Spam usually comes unsolicited and often unwanted by recipients. Spamming can cause an impact or loss for the recipient, both material and material. Spamming can certainly interfere with privacy, where a cell phone number is the same as a residential address. When there is information from strangers who visit our homes without being asked, and never give their consent, it certainly makes us very uncomfortable. Spamming violates privacy because it sends information that violates privacy,

¹³ Kristiyanti, Celina Tri Siwi, *Hukum Perlindungan Konsumen*, Jakarta: Sinar Grafika, (2011). p 13.

¹⁴ Latumahina, Rosalinda Elsina, 'Aspek Hukum Perlindungan Data Pribadi Di Dunia Maya', Vol 3, (2014), 14–25.

in the form of unwanted information and also violates property. The violation of privacy in question has to do with dimensions and aspects of privacy itself.¹⁵

With this action, the telecommunications service business actors have violated Article 23 paragraph 2 letters a and b of the Ministry of Communication and Information Technology Number 9 of 2017 concerning the Implementation of Content Providing Services on Cellular Cellular Networks. The sanctions and sanctions related to privacy are also quite clear in Article 29 which emphasizes violations of the right to privacy with a minimum sentence of 3 years and a maximum of 7 years. Every data must have a value, whether in the form of personal value, strategic value or economic value that can be measured in money for a person or even an organization. In addition, data is sensitive, adding to, or decreasing, data changes can have a significant impact on data integrity. The greater the value of the data, the more important it is to protect the data. The purpose of data protection is to maintain and protect confidentiality, integrity, accessibility because in principle only authorized persons can access information, including changing, adding, reducing, or deleting data.¹⁶

In line with the provisions in the 1945 Constitution, the Universal Declaration of Human Rights (UDHR) 1948 also stipulates in Article 12 that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”, which means that no one can arbitrarily interfere with his personal affairs, his family, his household or his correspondence relationships, nor is it allowed a violation of his honour and his good name. Everyone deserves legal protection against such interference or violations.

In simple terms, it means that a violation of privacy is a form of abuse of access to personal data belonging to customers or other people who violate the law that violates individual privacy rights by distributing personal data without the permission of the person concerned. In essence, the Ministry of Communication and Information Technology must issue regulations that protect privacy and consumers' rights to reject short messages in the form of spam or annoying advertisements.

The Indonesian telecommunication regulatory body must regulate the provision of policies to consumers not to approve services, regulate prohibitions on short message offers and/or content restrictions included in service offerings, time limits for offers to consumers who agree to receive text messages and impose sanctions. for breaking this rule. Network operators in this case who move mobile weaving are obliged to keep the data and/or identity of customers confidential because it is very private. Telecommunication service providers are also required to have certification, at least ISO 27001 for information security in the management of customer data, especially.

Article 4 of the provisions of Law Number 8 of 1999 concerning Consumer Protection, consumers have the following rights:

- 1) The right to comfort, security and safety in consuming goods or services;

¹⁵ Rahmatullah, Tansah, 'Perlindungan Hukum Terhadap Privacy Dari Spamming Berdasarkan Undang-Undang No. 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik', *Jurnal Hukum Media Justitia Nusantara*, Vol 4.11 (2015), p. 110.

¹⁶ Sitompul, Josua, *Cyberspace, Cybercrimes, Cyberlaw: Tinjauan Aspek Hukum Pidana* (Jakarta: Tatanusa, 2012). p. 232.

- 2) The right to choose goods and/or services, as well as to obtain these goods and/or services in accordance with the exchange rate and conditions, as well as the promised guarantee;
- 3) The right to clear and honest information regarding the condition and guarantee of goods and/or services;
- 4) The right to have their opinions and complaints heard about the goods and/or services used;
- 5) Right to advocacy, protection, and proper consumer protection dispute resolution efforts;
- 6) The right to receive consumer guidance and education;
- 7) The right to be treated or served properly, honestly and non-discriminatory;
- 8) The right to get compensation, indemnity or replacement, if the goods and/or services received are not in accordance with the agreement or not as it should be; and
- 9) These rights are regulated in the provisions of other laws and regulations.¹⁷

The issues of consumer comfort, safety, and security are paramount in consumer protection. Goods or services whose use does not provide comfort, let alone a feeling of insecurity that can endanger the safety of consumers are not suitable for distribution in the community. Then to be able to guarantee that the goods or services are used are comfortable, safe, or do not endanger consumers, consumers are given the right to choose the goods or services they want based on clear, correct, and honest information disclosure. If there is a detrimental deviation, the consumer has the right to be heard, to receive advocacy, guidance, fair treatment, compensation to compensation.¹⁸

Such is the case that has bothered the public as a consumer for a long time. The rise of short messages that include consumer cellphones in the form of online loan advertisements from unknown numbers, even though the public has never specifically provided a telephone number to the party sending the advertising message, nor have they permitted cellular operators to allow messages. ad sender who then becomes spam. It is very unfortunate because then this condition is disturbing, where not only once but five to ten similar messages from different numbers in a day are received by consumers, and this spam is of course very violating the principles of consumer protection.

If we examine Law Consumer Protection Article 29 paragraph 1 which confirms that the government is certainly responsible for fostering consumer protection that guarantees the rights of consumers and business actors as well as the implementation of consumer obligations. and business actors.¹⁹ Furthermore, the guidance for consumers is intended so that consumers can know their rights as consumers, in this case, cellular subscribers. In the current era of technological advances, consumer development must be increased considering that consumer education and training is an effort to protect consumers from fraud via short messages.

Meanwhile, the Indonesian telecommunication regulatory body on its website in mid-2020 stated that it received all forms of consumer complaints who often received fraudulent short messages and advertisements. The Indonesian Telecommunication Regulatory Body stated that it received all forms of public news about annoying and of course unwanted messages or calls, such as requests for money transfers, messages for winners of quizzes or

¹⁷ Widjaja, Gunawan, *Hukum Tentang Perlindungan Konsumen* (Jakarta: Gramedia Pustaka Utama, 2000). p. 29

¹⁸ Duha, Novanema, T Azwar, And Windha Windha, 'Penipuan Short Message Service (SMS) Terhadap Konsumen Provider Telepon Seluler Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen', *Transparency*, 2.1 (2013). p. 3.

¹⁹ Susanto, Happy, *Hak-Hak Konsumen Jika Dirugikan, Cetakan Pertama* (Jakarta: Visimedia, 2008).

sweepstakes, online gambling, or incoming money loans via text message from an unknown number.

4. Conclusion

Violation of privacy is a form of abuse of access to personal data of others who violate laws that violate individual privacy rights by distributing personal data without the permission of the person concerned. Meanwhile, for instant messages in the form of offers that are not directly related to the services used by customers or are spam in nature, operators must be concerned, especially regarding customer convenience, such as the customer's willingness to want to or not. accept the offer in short messages or with words. other people spam.

References

Books with an Author:

- Celina Tri Siwi Kristiyanti. (2011). *Hukum Perlindungan Konsumen*. Jakarta: Sinar Grafika.
- Gunawan Widjaja. (2000). *Hukum Tentang Perlindungan Konsumen*. Jakarta: Gramedia Pustaka Utama.
- Happy Susanto. (2008). *Hak-Hak Konsumen Jika Dirugikan, Cetakan Pertama*. Jakarta: Visimedia.
- Josua Sitompul. (2012). *Cyberspace, Cybercrimes, Cyberlaw: Tinjauan Aspek Hukum Pidana*. Jakarta: Tatanusa.
- O. C. Kaligis. (2008). *Penerapan Undang-undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik dalam Prakteknya*. Jakarta: Yarsif Watampone.
- Soerjono Soekanto. (2008). *Faktor-faktor yang Mempengaruhi Penegakan Hukum*. Yogyakarta: Genta Publishing.
- Syahrudin Nawi. (2017). *Penelitian Hukum Normatif Versus Penelitian Hukum Empiris*. Makassar: PT Umitoha Ukhuwah Grafika.

Journal articles:

- Andysah Putera Utama Siahaan. (2018). 'Pelanggaran Cybercrime Dan Kekuatan Yurisdiksi Di Indonesia', *Jurnal Teknik Dan Informatika*, Vol 5.
- Anjas Putra Pramudito. (2000). 'Kedudukan Dan Perlindungan Hak Atas Privasi Di Indonesia', *Jurist-Diction*, Vol 3.
- Ika Pomounda. (2015). Perlindungan Hukum Bagi Korban Penipuan Melalui Media Elektronik (Suatu Pendekatan Viktimologi, *Jurnal Ilmu Hukum Legal Opinion*, Vol 3.
- Novanema Duha, T Azwar, and Windha Windha. (2013). 'Penipuan Short Message Service (SMS) Terhadap Konsumen Provider Telepon Seluler Ditinjau dari Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen', *Transparency*, 2(1).
- Rosalinda Elsinah Latumahina. (2014). 'Aspek Hukum Perlindungan Data Pribadi di Dunia Maya', Vol 3.

- S. Purwanda, & Dewi, M. N. K. (2020). The Effects of Monism and Pluralism on Legal Development of a Nation. *Amsir Law Journal*, 2(1).
- Sinta Dewi. (2016). 'Konsep Perlindungan Hukum Atas Privasi dan Data Pribadi Dikaitkan dengan Penggunaan Cloud Computing Di Indonesia', *Yustisia Jurnal Hukum*, Vol 5.
- Tansah Rahmatullah. (2015). 'Perlindungan Hukum terhadap Privacy dari Spamming Berdasarkan Undang-Undang No. 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik', *Jurnal Hukum Media Justitia Nusantara*, Vol 4(11).
- Tjandra Sridjaja Pradjonggo. 'Efektifitas Undang-undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik Terhadap Maraknya Pelanggaran Hukum Pidana pada Media Sosial', *LIKHITAPRAJNA. Jurnal Ilmiah.Fakultas Keguruan Dan Ilmu Pendidikan*, Vol 15.
- Witri and Joni Andre Ramadhani. (2019). 'Pentingnya Memahami Penerapan Privasi di Era Teknologi Dan Informasi', *Jurnal Teknologi Komunikasi Dan Pendidikan*, Vol 12.

Conflict of Interest Statement:

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

Copyright © 2021 ALJ. All rights reserved.