



Legal protection of personal data of banking customers in Indonesia: Human rights perspective

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ARTICLE INFO

Keywords:

Banking;
Human Rights;
Legal Protection;

Article history:

Received May 2, 2024;
Revised May 6, 2024;
Accepted May 22, 2024;
Online Jul 30, 2024.

ABSTRACT

The digital era has rapidly transformed various sectors, including the banking sector. The use of the internet in banking transactions has made transactions easier, faster, and more efficient. However, the efficiency of these transactions comes with risks. The implementation of banking activities in Indonesia is accompanied by the precautionary principle, as the government is obligated to provide direction and guidance on economic growth and create a healthy business climate. Mobile banking has experienced a significant increase in Indonesia, with banks like Bank BRI, Bank BNI, Bank Mandiri, and Bank BCA experiencing significant increases in users. However, the rise in mobile banking users is also accompanied by threats related to data leakage. The banking sector has experienced rampant cyber attacks in 2024, indicating that customer data security is vulnerable to hacking and misuse. This study aims to discuss the nature of legal protection for personal data of banking customers from a human rights perspective and the model of legal protection for banking customer data in Indonesia.

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1. Introduction

The rapid evolution of the digital era has spurred significant changes across various sectors, including banking. With the integration of information technology, services like mobile banking and internet banking have revolutionized banking transactions, making them more convenient, swift, and efficient for customers (Cleveland, 2016). However, this efficiency comes hand in hand with heightened risks (Benami & Carter, 2021).

The implementation of banking activities in Indonesia, of course, is accompanied by the application of the precautionary principle, this is due to the obligation for the government to provide direction and guidance on economic growth (banking) and create a healthy climate for the development of the business world. Regarding the use of banking services that are very

close to information technology, namely mobile banking, based on data quoted from the *Bisnis.com* page which uses a sample of the largest state-owned and private banks in Indonesia, it was recorded to have experienced a very significant increase, including Bank BRI which has a number of mobile banking user customers as of December 2023, this data has increased annually when compared to 2022 which recorded as many as 23.8 million mobile banking users, this was also experienced by Bank BNI which experienced an increase in users from 13.6 million users in 2022 to 16.2 million users as of December 2023, besides that Bank Mandiri also experienced the same thing, as of December 2023, Bank Mandiri mobile banking service users were declared to grow by 45% compared to the same period in 2022, then Bank BCA as one of the largest private banks in Indonesia also experienced the same thing, namely an increase in mobile banking users by 30.3 million as of December 2023, this data increased compared to 2022 in the same period which recorded the number of mobile banking users as many as 26.6 million users. (Laras, 2023b)

The increase in the number of mobile banking users is certainly accompanied by threats related to the leakage of banking customer data, this can be interpreted that customer personal data in the banking sector is not in a safe state, this can be proven by the rampant cyber attacks in the form of trojan viruses in 2024 as quoted through the *bisnis.com* page, The page states that based on data compiled from Checkpoint Research 2022, it is stated that in 2022, every week the banking sector experienced at least 1,131 cyberattacks every week, indicating that the security of banking customer data is very vulnerable to hacking and misuse, this can be proven by data on losses in the banking sector released by the IMF in 2020, which reported that at least the banking sector in the world suffered losses of US \$ 100 billion caused by cyber attacks targeting the banking sector. (Laras, 2023a)

Moh Hamzah Hisbulloh's 2021 research highlighted the concerning rise in cases involving the leakage of personal data, often exploited for commercial gain by individuals or specific groups. This issue is described as a looming threat that demands attention, given the significant harm and privacy violations associated with personal data breaches. It is emphasized that the utilization of personal data must be accompanied by robust privacy safeguards. However, the absence of comprehensive legal frameworks for personal data protection in Indonesia has resulted in numerous incidents of data leaks. (Hisbulloh, 2021)

Furthermore, Aditama Candra Kusuma and Ayu Diah Rahmani's 2022 study noted that legal measures against data hackers are outlined in existing telecommunications and banking laws. They underscored the necessity of enacting the Personal Data Protection Bill, which, once passed, would provide a legal foundation for safeguarding personal data and ensuring legal recourse for victims. Considering Bank Indonesia's pivotal role as the central bank, stringent measures are deemed essential to maintain and regulate the security of its data. (Kusuma & Rahmani, 2022)

Based on the initial data that has been described, it is interesting to discuss further in a scientific paper in the form of a legal journal with the title: LEGAL PROTECTION OF PERSONAL DATA OF BANKING CUSTOMERS IN INDONESIA: HUMAN RIGHTS PERSPECTIVE.

This research differs from previous studies in that it not only addresses the legal protection of banking customers' personal data but also explores the nature of this legal protection from a human rights perspective.

Therefore, this article explores the following research questions; What is the nature of legal protection for personal data of banking customers from a human rights perspective? And What is the model of legal protection for banking customer data in Indonesia nowadays?

The theoretical benefits of this study include gaining an understanding of the essence of legal protection for banking customers' personal data from a human rights perspective, as well as examining the current legal protection model for banking customer data in Indonesia.

Practically, this research aims to educate on the regulations in Indonesia concerning the personal data of banking customers.

2. Method

This research uses normative research methods, normative legal research is also known as doctrinal research methods, which are legal research methods that are conceptualized and developed on the basis of doctrine. (Watkins, 2017) The approach used in this legal research is the statutory approach or statute approach and conceptual approach. This research utilizes both primary and secondary data. The primary data comprises the 1945 Constitution and relevant banking and personal data protection laws. Secondary data is sourced indirectly from texts, books, and various documents. The data collection method used in this research is document study, and it employs a descriptive analysis approach to legal materials.

This study aims to know and understand the nature of legal protection of banking customers' personal data from a human rights perspective and a legal protection model for banking customer data in Indonesia nowadays.

3. Analysis and Results

3.1. Examining the Human Rights Perspective on the Legal Safeguards for Protecting Personal Data of Banking Customer

Warren and Brandeis introduced the notion of privacy in their seminal article, "The Right to Privacy," published in the Harvard Law Review. They argued that with the rise of technology, society has become increasingly cognizant of individuals' entitlement to lead undisturbed lives. Warren posited that privacy is a fundamental right that all individuals possess, entitling them to safeguard their personal lives from unwanted intrusion. (Bratman, 2001)

To effectively cultivate connections with others, it is crucial to keep certain aspects of one's personal life hidden in order to maintain a specific position. Additionally, everyone requires solitude at some point in their lives, as privacy becomes a necessity. Privacy itself is an independent right that does not rely on other rights; however, it can be forfeited if one chooses to disclose private matters to the public. Furthermore, privacy encompasses a person's entitlement to maintain intimate relationships, such as marriage and family, without the intrusion of others. This concept is often referred to as the right against disclosure. Lastly, another reason why privacy should be legally protected is due to the difficulty in quantifying the harm caused. The impact on one's personal life surpasses physical loss, and any compensation for the victim should reflect this. (Solove, 2002)

Alan Westin defines privacy as the assertion of individuals, groups, or institutions to control the disclosure of information about themselves, determining when, how, and to what extent such information is shared with others. The right to privacy is considered an inherent entitlement of all individuals, safeguarding their dignity. Personal data encompasses details regarding an individual's attributes, such as their name, age, gender, education, profession, address, and familial role. It is a matter of sensitivity for everyone, constituting a fundamental aspect of privacy that necessitates protection across various facets of life. (Austin, 2019)

Personal data, as delineated in various international instruments like the OECD Guidelines and the Data Protection Convention of the Council of Europe, encompasses any information pertaining to identified or identifiable individuals. Alternatively, personal data can be understood as any data representing the private and confidential markers of an individual, presented in the form of identity, codes, symbols, letters, or numbers. (Phillips, 2018)

Jerome J. Shestack suggests that while traditional religions may not explicitly use the term "human rights," the field of theology provides a foundation for understanding human rights as deriving from a higher, divine law rather than from the authority of the state. (Shestack, 2017)

Certainly, the theory assumes the acknowledgment of principles underlying human rights, such as those articulated in the Universal Declaration of Human Rights (UDHR). The UDHR emerged in response to the atrocities of World War II, notably the devastating atomic bombings of Hiroshima and Nagasaki in August 1945. It was embraced by representatives from 217 nations, with 8 countries abstaining; notably, no nation rejected its adoption or application. (Rahman, 2020)

Central to the concept of human rights is the notion of equality. This principle asserts the inherent dignity and worth of all individuals, irrespective of their differences. It underscores that every human being possesses equal rights by virtue of their humanity. This principle is exemplified in concepts like "equal pay for equal work," enshrined in the UDHR as the right to equitable employment. In essence, the principle of equality lies at the core of human rights, ensuring that individuals are treated with fairness and respect regardless of their backgrounds or characteristics.

Karel Vasak proposed a framework for understanding the evolution of human rights, inspired by the French Revolution's motto of liberty, equality, and fraternity. This framework divides human rights development into three generations, each corresponding to a component of the slogan. The first generation, embodying "freedom," encompasses civil and political rights, safeguarding individuals from arbitrary rule. The second generation, reflecting "equality," consists of economic, social, and cultural rights, ensuring conditions for individuals to fully develop their potential. Finally, the third generation, associated with "fraternity," encompasses the rights advocated by developing nations aiming for a more equitable global economic order and international law. (Domaradzki et al., 2019)

The evolution of human rights within the Indonesian constitution, particularly highlighted by the Second Amendment to the 1945 Constitution in 2000, signifies a significant progression. Notably, this amendment explicitly incorporates human rights concerns into Articles 28 A to 28 J. This development underscores a thorough and protracted dialectical process in the conceptualization of human rights in Indonesia.

The inclusion of human rights provisions in the constitution reflects a steadfast commitment to upholding legal principles and advancing human rights endeavors. Furthermore, the comprehensive range of human rights addressed in the constitution demonstrates a concerted effort to address the dignity and requirements of human rights protection. These provisions extend to various realms, including personal, familial, communal, and citizenship contexts, thereby reflecting a holistic approach to safeguarding human rights in Indonesia. (Tibaka & Rosdian, 2017)

Soedjono Sumobroto and Marwoto emphasized that the 1945 Constitution introduced the concept of human rights ingrained within society. They argued that the human rights enshrined in the constitution are rooted in the fundamental philosophy and worldview of the nation, Pancasila. Consequently, the promotion of human rights in Indonesia aligns with the embodiment of Pancasila principles in the nation's affairs. Essentially, Pancasila serves as a core human rights principle embedded within the national identity. (Nugroho & Abdullah, 2020)

Danrivanto Budhijanto elucidated that safeguarding personal rights or private rights leads to enhanced human dignity, fosters better interpersonal relationships within communities, bolsters individual autonomy to manage and possess belongings, promotes tolerance, reduces instances of discrimination, and restrains governmental authority.

Meanwhile, Edmon Makarim contended that, based on various expert viewpoints, he derived three crucial principles regarding personal rights: (Makarim, 2021) a) The entitlement to privacy in one's personal life without interference from others; b) The privilege to maintain the confidentiality of sensitive information pertaining to oneself; c) The authority to oversee the utilization of one's personal data by external entities.

In the fourth amendment to the Constitution of the Republic of Indonesia Year 1945, there is a dedicated section called "Human Rights" in Chapter XA, comprising 10 articles specifically addressing human rights, along with Article 28 from the previous chapter on "Citizens and Residents," making a total of 11 articles on human rights from Articles 28 to 28J. Regarding safeguarding personal rights, the Constitution of the Republic of Indonesia Year 1945, Article 28G paragraph (1) ensures that individuals have the right to protection for themselves, their families, their honor, dignity, and property under their control. Moreover, it guarantees individuals a sense of security and protection from threats that may impede their exercise of human rights. (La Juwi et al., 2023)

Article 17 of Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights) addresses limitations on the authority of law enforcement officers to conduct secret surveillance of individuals (citizens). The article states that: a) Individuals' personal, family, home, or correspondence matters, as well as their honor and good name, shall not be arbitrarily or unlawfully interfered with, b) Everyone has the right to legal protection against such interference or attack.

In essence, this article safeguards individuals' privacy and dignity against arbitrary or unlawful intrusion by law enforcement, and ensures that individuals have access to legal recourse in case of such interference or attack. (Arifin, 2017)

According to Satjipto Rahardjo, legal protection entails safeguarding human rights that have been violated by others. It serves to ensure that all rights recognized by law are accessible to the community. Rahardjo emphasizes that law should not only be flexible and adaptive but also predictive and anticipatory. Laws are particularly crucial for those who lack social, economic, and political power to attain social justice independently.

Legal protection encompasses efforts to guarantee rights fulfillment and provide support to ensure the security of witnesses and/or victims. Protecting victims of crime is essential for the welfare of society as a whole. This protection involves various measures, such as offering restitution, compensation, medical services, and legal aid.

For individuals who are legal subjects, legal protection comes in both preventive and enforcement forms, which can be conveyed orally or in writing. (Ratnasari & Prabandari, 2022).

According to Satjipto Rahardjo, legal protection entails safeguarding human rights that have been violated by others. The primary aim of this protection is to enable individuals to fully enjoy all the rights guaranteed by law. Similarly, Hadjon outlines legal protection for the people through two main aspects: (Mandjo & Sarson, 2021): a) Preventive Legal Protection: This aspect involves measures to allow the public to voice their objections or opinions before a government decision is finalized and becomes definite. It essentially provides opportunities for individuals to express their concerns or viewpoints prior to the implementation of any decision. b) Repressive Legal Protection: This form of legal protection primarily focuses on resolving disputes that have already arisen. It entails mechanisms and procedures aimed at addressing conflicts or violations of rights that have occurred, with the goal of providing remedies or resolutions to affected parties.

The Banking Law of 1998, specifically Article 1 Paragraph 28, defines "bank secrets" as encompassing all information concerning customers and their deposits within the banking sector. Accordingly, under Article 40 of the Banking Law, banks are obligated to maintain strict confidentiality regarding any customer-related information and data, except in circumstances pertaining to tax matters, bank debts, legal proceedings, and matters concerning heirs. (Fahrurrozi, 2020)

Moreover, if we consider the clauses within Banking Law concerning bank confidentiality in connection with human rights, it becomes apparent that data safeguarding is inherently tied to fundamental human rights. Several nations have acknowledged data protection either as a

constitutional entitlement or in the concept of 'data habeas', affirming an individual's right to ensure the security of their data and rectify inaccuracies therein. The gathering and dissemination of personal data infringe upon an individual's privacy, as privacy rights encompass the prerogative to determine the disclosure of personal information. Personal data constitutes a valuable asset with significant economic implications. By aligning it with legal safeguards, it becomes evident that regulations concerning bank confidentiality and human rights safeguard the personal data of banking clientele, as outlined in Articles 28A to 28J of the 1945 Constitution and provisions within Banking Law. This underscores the existence of both preventative and punitive legal mechanisms consistent with the essence of legal protection, which, when intertwined with human rights, constitutes an indispensable and foundational entitlement.

3.2. Current Model of Legal Protection of Personal Data of Banking Customers in Indonesia

Before delving into the discourse surrounding the legal safeguards for safeguarding the personal data of banking clients in Indonesia nowadays, it's essential to grasp the fundamentals of data protection. This understanding sheds light on why and when it becomes imperative to protect personal data. Personal data protection becomes necessary when individuals engage in interactions, necessitating them to shield aspects of their lives to safeguard their standing to a limited extent within society. Additionally, individuals seek moments of seclusion in their lives, thereby requiring privacy. Privacy, as a distinct authority, doesn't solely hinge on freedom; it's a right that becomes obscured when personal matters are made public. Personal data encompasses an individual's authority in regulating familial connections, including the formation of marriages and families, where outsiders may not have insight into personal relationships, as articulated by Warren in the right to privacy. Another argument advocating for the legal protection of privacy is the difficulty in predicting the resultant harm. The perceived loss outweighs physical loss significantly since it impacts an individual's personal activities. In the event of personal data loss, accountability for the loss must be borne by the victim. (Rössler, 2018)

The Banking Law establishes legal protections for customer personal data, particularly in the banking sector. It emphasizes trust in customers and the safeguarding of customer privacy. Bank secrets, as defined in Article 1 (28), encompass all information pertaining to depositors and their deposits. Article 40 underscores the obligation of banks to maintain confidentiality regarding such information, except under specific permissible circumstances.

Nevertheless, the Banking Law also delineates exceptions to the duty of confidentiality. These exceptions are outlined in Articles 41, 41A, 42, 44, and 44A. (Christiani & Kastowo, 2019) Some of these articles may grant exemptions concerning taxation, as per guidelines issued by the Board of Bank Indonesia at the request of the Minister of Finance. These exemptions may relate to the submission of bank notes to the State Collection and Auction Board, matters of criminal investigation, and the application process for legal heirs of deceased depositors. Certain provisions within Banking Law articles may offer tax exemptions, as per directives from the Board of Bank Indonesia upon the Minister of Finance's request. These exemptions pertain to cases where banknotes are surrendered to the State Collection and Auction Board due to criminal involvement, as well as situations involving the legal heirs of deceased depositors.

Bank secrecy is utilized as a means of legal safeguarding for customers, encompassing two distinct categories: preventive and repressive legal protection. These are outlined as follows:

a. Preventive Legal Protection, Internal banks indirectly offer customers legal protection against any potential losses stemming from the bank's business operations, particularly concerning the handling of customers' personal data, in line with the precautionary principle. (Romanosky & Acquisti, 2009) Banks must adhere to specific regulations regarding the protection of customers' personal data, as outlined in Bank Indonesia Regulation Number 7/6/PBI/2005. These regulations, encompassed in Articles 9-11, emphasize transparency in disclosing bank product information and the use of customer personal data. Additionally, the Banking Law, particularly

Article 40(1), mandates banks to maintain the confidentiality of customer information, except in cases specified in subsequent articles of the law.

Article 9(1) of the regulation requires banks to obtain written consent from customers before providing or disseminating their data to third parties for commercial purposes, unless otherwise permitted by law. Moreover, banks must elucidate the purpose and implications of sharing customers' personal data when seeking approval, as stipulated in Article 9(2) of PBI 7/6/PBI/2005.

The form of implementation of Article 9 of this PBI is stated in a sentence that reads: By signing this form: 1. The Bank will only use my personal data as a customer contained in this application form for internal bank purposes and the customer's personal data. Will not be given and/or disseminated to other parties outside the bank's legal entity, except as stipulated in the applicable laws and regulations. 2. If in the future the bank will provide and disseminate my personal data as a customer to other parties outside the bank's legal entity for commercial purposes, the bank will ask for written consent in advance from me (a statement document will be made later).

The bank's Customer Service department is required to guide potential customers through completing a detailed customer data form, which includes an explanation of consent regarding the use of personal data. Consent to use personal data is implicit, meaning failure to opt out implies consent. This grants the bank authority to utilize all customer data for various purposes, including marketing bank products or products from affiliated parties, in accordance with relevant laws.

As per Article 10 of the PBI, banks must seek approval for personal data usage both before and after customers engage in transactions related to bank products. Personal data may be utilized internally by the bank or, on a case-by-case basis, shared with external parties for commercial purposes, subject to written guarantees as stipulated in Article 11 of the PBI.

b. Repressive Legal Protection Repressive legal protection, namely legal protection made to resolve a dispute that can cause a loss. This protection is classified as direct protection provided to depository customers against the possibility of loss from business activities carried out by the bank. (Nurulhaq et al., 2023) The existence of this compensation is a form of civil repressive protection. Meanwhile, forms of criminal repressive protection to banks represented by members of the Board of Commissioners, Board of Directors, bank employees or other Affiliated Parties may be subject to imprisonment of at least 2 (two) years and a maximum of 4 (four) years and a fine of at least Rp.4,000,000,000.00 (four billion rupiah) and a maximum of Rp.8,000,000,000.00 (eight billion rupiah).

This is regulated in Article 47 paragraph (2) of the Banking Law "Members of the Board of Commissioners, Board of Directors, bank employees or other Affiliated Parties who deliberately provide information that must be kept confidential according to Article 40, shall be threatened with imprisonment of at least 2 (two) years and a maximum of 4 (four) years and a fine of at least Rp.4,000,000,000.00 (four billion rupiah) and a maximum of Rp.8,000,000,000,00 (eight billion rupiah)"Based on the discussion above, it can be stated that the existence of compensation sanctions is a form of civil repressive protection, while the existence of imprisonment sanctions of at least 2 years and a maximum of 4 years and fines of at least Rp. 4 billion and a maximum of Rp. 8 billion is a form of criminal repressive protection. The bank has direct responsibility if there are complaints submitted by customers who feel dissatisfied or feel disadvantaged for banking services.

Basically, the bank has a customer complaint service system, including customer complaint services related to the use of customer personal data. Regarding customer complaint services, it is regulated in the Financial Services Authority Regulation Number 18/POJK.07/2018 concerning Consumer Complaint Services in the Financial Services Sector (POJK No.18/POJK.07/2018). Article 1 point 7 POJK No.18/POJK.07/2018 defines complaint services as services provided by Financial Service Institutions (PUJK) to seek the resolution of

complaints in the financial services sector. These consumer complaints include bank customer complaints related to bank confidentiality violations by the bank. Furthermore, the function or unit of the Complaint Service is regulated in Article 27 POJK No.18/POJK.07/2018 which stipulates that the Complaint Service has at least the following duties: a) receiving, handling and resolving Complaints submitted by Consumers and/or Consumer Representatives, b) setting performance targets, monitoring, evaluating, and reporting performance related to the Complaints Service, c) report to the Board of Directors of PUJK regarding the Complaint Service process, as well as provide recommendations for improvement and development of the Complaint Service process, d) prepare and submit reports on Complaint Services to the Financial Services Authority through the Board of Directors of PUJK, e) prepare materials for handling complaints that will be included in the annual report, website and/or other media officially managed by PUJK, and f) become a liaison for handling Complaints submitted by Consumers and/or Consumer Representatives to the Financial Services Authority and/or other authorities.

The responsibility of the bank as stipulated in Article 27 POJK No.18/POJK.07/2018 above is expected to pay more attention to customer complaints related to the use of customer personal data properly

4. Conclusion

Warren defines privacy as a fundamental right inherent to every individual, essential for enjoying life and requiring protection. It encompasses personal data, including characteristics like name, age, and occupation, which individuals are sensitive about and must safeguard from various intrusions. Banking laws recognizing bank secrets as related to human rights underscore the fundamental nature of data protection. Some countries even enshrine data protection as a constitutional right or through concepts like 'data habeas', allowing individuals to secure and rectify inaccuracies in their data. The collection and dissemination of personal data violate privacy, which extends to the right to control the sharing of personal information. Such data is increasingly valued as an economic asset.

Banks must ensure legal protection in line with regulations regarding customers' personal data. These regulations, such as Articles 9-11 of Bank Indonesia Regulation Number 7/6/PBI/2005 and Article 40(1) of the Banking Law, mandate confidentiality regarding customer information unless specific circumstances outlined in the law apply.

Repressive legal protection refers to measures taken to address disputes that may result in losses, offering direct safeguards to depositors against potential harm from bank activities. The significance of this study involves grasping the core principles of safeguarding banking customers' personal data from a human rights standpoint, while also scrutinizing the prevailing legal framework governing the protection of banking customer data in Indonesia.

Although this research can be completed, it faces several challenges, including time constraints and limited access to literature and legal resources. As legal regulations are dynamic and can change at any time, there are significant opportunities for future research in this area.

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