

URGENCE OF DATA PROTECTION REGULATION UPDATES FOR CONSUMERS AS USERS OF ONLINE LOAN APPLICATIONS

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Abstract: The rapid growth in the use of online loan applications makes protecting consumer data a crucial issue. Current online loan application data protection regulations need to be updated to ensure consumers' personal data is protected from potential misuse. This study aims to analyze the urgency of updating data protection regulations for users of online loan applications through a normative-juridical approach. The results of the study found that more comprehensive new regulations were needed to keep pace with the rapid development of technology in the financial sector. The findings of this study emphasize the importance of protecting personal data in applications that offer online loan services, especially with the increasing number of cases of breaches of personal data. The results of the study conclude that updating personal data protection regulations is very important to ensure the security and safety of consumer data in applications that offer online loan services.

Keywords: application; online loans; personal data protection; regulation; privacy;

Abstrak: Pesatnya pertumbuhan penggunaan aplikasi pinjaman online membuat perlindungan data konsumen menjadi isu krusial. Regulasi perlindungan data pengajuan pinjaman online saat ini perlu diperbarui untuk memastikan data pribadi konsumen terlindungi dari potensi penyalahgunaan. Penelitian ini bertujuan untuk menganalisis urgensi pembaharuan regulasi perlindungan data bagi pengguna aplikasi pinjaman online melalui pendekatan yuridis-normatif. Hasil penelitian menemukan bahwa diperlukan regulasi baru yang lebih komprehensif untuk mengimbangi pesatnya perkembangan teknologi di sektor keuangan. Temuan penelitian ini menekankan pentingnya perlindungan data pribadi dalam aplikasi yang menawarkan layanan pinjaman online, terlebih dengan semakin banyaknya kasus pelanggaran data pribadi. Hasil penelitian menyimpulkan bahwa pembaharuan regulasi perlindungan data pribadi sangat penting untuk menjamin keamanan dan keselamatan data konsumen di aplikasi yang menawarkan layanan pinjaman online.

Kata kunci: aplikasi; perlindungan data pribadi; pinjaman online; privasi; regulasi

INTRODUCTION

Protection of personal data in online loan services is still a problem that needs to be addressed in Indonesia. As in other countries, Indonesia regularly updates the regulations that have been used to regulate and oversee the implementation of online lending services. This is done so that regulations related to online loan services increasingly represent appropriate and effective regulatory and supervisory actions. Of the various regulations governing the operation of online loan services, one of the most recent regulations issued by OJK in 2022 is a new breakthrough in regulating and supervising online loan services. The OJK (Financial Services Authority) regulation number 10/POJK.05/2022 has regulated the protection of consumer rights in online loan services, especially personal data, which was not previously regulated in OJK regulation number 77/POJK.01/2016. The latest regulation states in more detail regarding terms of access and use of personal data, stipulation of data periods and even provisions for data destruction [1], [2]. However, other data management provisions such as archiving are not implicitly explained in these regulations. As stated in the regulations, however, the scope of personal data that is defined only relates to personal data in the context of the financial services sector and the archiving procedure is not very clear. So that the indecision in this regulation at the same time states that regulation and supervision are not yet fully comprehensive in terms of the complete data life cycle coverage and also personal data [3].

The procedure for archiving personal data in Indonesia for the purposes of public administration that is stored by the government has been determined

through law on archiving, but archiving that occurs within the scope of private corporations as online loan service providers has not been clearly regulated in any regulations in Indonesia. Even though personal data archived by corporations is just as important as personal data archived by the government [4], [5]. This fact is a legal loophole that cannot be taken lightly. Because if you look at the facts, the majority of legal and illegal online loan services currently offer their services through websites and mobile applications [6], [7]. While the protection of personal data in online loan services through mobile applications is currently not comprehensively regulated by the Indonesian government, the most cases of personal data breaches are found in various mobile applications that offer online loan services. For example, violations in terms of archiving can occur because organizers archive data by simply storing it rather than protecting data from unauthorized access. So, incidents such as access to consumer contact list data that do not fit their purpose by online loan service providers. Such incidents can occur even with the permission of the data owner. Access that is carried out after obtaining legal permission from the consumer as the owner via his personal smartphone occurs so that the organizer can access only the consumer's contact list data or all contacts stored on his personal smartphone [8], [9]. This happens through requests for data access permissions to applications that are often not specifically stated. Easily, consumers who see this usually agree to requests for permission for access to read contacts for the smooth running of online loan services, but usually it is not included how far the access is and for how long. As for access to other personal data such as location, photos, and stored files, it can al-

so be done quickly in this way. Once again, of course the organizers will ask for access in advance and do not include a clear purpose of the access. So that in the end, the act of using personal data without conscious consent is carried out to achieve the goals of the organizers, such as debts that can be repaid quickly [10]–[13]. Based on these two cases, it is clearly stated that proper archiving is a crucial data management step in securing consumers from unilateral and ill-understood agreements [14]. Thus, a properly regulated filing provision is needed, so that it has an impact on proper filing practices.

If viewed from several references related to the implementation of online lending services, the Indonesian Fintech Association (AFTECH) has actually developed a code of ethics regarding personal data protection and data confidentiality in the financial technology sector that must be carried out by all service provider participants which was launched since last year 2021. However, AFTECH also has not provided explicit guidance regarding archiving in the document [15]. Meanwhile, if you look at practices in European countries, these countries have adopted a regulation called the General Data Protection Regulation (GDPR). Explicitly, the GDPR has contained regulations regarding filing where this can be done whenever needed, even though in practice it can only be done in the European region [16]. Meanwhile, from references in the form of research, in various research results prior to the release of OJK regulation number 10/POJK.05/2022, only a few studies reviewed the importance of archiving as one of the phases of data management which is quite important in protecting consumers and their personal data [17]. On the other hand, apart from OJK regu-

lations, law number 27 of 2022 has also been released which regulates and oversees personal data protection practices in a more comprehensive manner. The regulation has regulated all matters regarding the management of personal data, except for provisions on the duration of archiving which are not expressly stated so that data can be destroyed intentionally due to the unilateral decision of the service provider in determining the duration limit of the archive or the archive retention schedule. This will have an impact on the elimination of evidence, so that access history becomes impossible to obtain due to the destruction of personal data without the knowledge of consumers.

Furthermore, if there is destruction of data that consumers do not want and other cases of breach of personal data, consumers as victims will seek any regulations related to risk mitigation. In some studies, this becomes something serious. Risk mitigation is a term that is rarely found procedurally, but is commonly found in definitions and prevention instructions, both risks related to business processes and personal data [18]. So that in research it is often stated that current regulations can only regulate and supervise at the downstream level, and as a whole do not yet have sufficient legal force to be used to protect consumers when compared to other regulations, then ending in recommendations updating regulations to become law-level - law so that law enforcement becomes effective [19]–[22]. Meanwhile, when compared with GDPR regulations, current regulations in Indonesia have not been used effectively to regulate administrators and third parties who work with organizers. Unlike the GDPR, which is able to make these arrangements while still prioritizing consumer rights in managing their own personal data [23]. So, don't be

surprised if regulations in Indonesia currently still lack law enforcement power because they are not strict and comprehensive in regulating and supervising online loan services [24].

Therefore, the research implementation is aimed at providing an understanding of the importance of regulatory reform that regulates and oversees the protection of personal data in online loan services offered through mobile applications. This is done through a comprehensive review of regulations related to the protection of personal data in online loan services, especially from the point of view of the data life cycle and the application of the principles of personal data protection according to the privacy by design framework [3], [25]. The results of the research are expected to trigger the renewal of regulations related to personal data protection in online loan services offered through mobile applications, so that new regulations can be used effectively to regulate and monitor comprehensively at each phase of the data life cycle and also continue to prioritize consumers by implementing privacy principle.

METHODS

The research method used in this study is a juridical-normative research method. The research analyzes and interprets the applicable legal regulations and compares them with personal data breach cases. The primary legal materials used in this research are laws of the Republic of Indonesia and OJK regulations. Regulatory discussions are carried out in a comprehensive manner from a data protection point of view. Therefore, regulations are reviewed for the arrangement of stakeholder categories. Another review is

the regulation of the level of support for data protection at each phase of the data life cycle. Furthermore, the level of support is demonstrated by identifying the principle of privacy by design that has been applied to each regulation and data life cycle phase [3], [26]. The research is also accompanied by a discussion of secondary material based on a systematic literature review related to personal data protection in applications that offer online loan services including scientific journals published in scientific articles on the internet [27]. Literature was obtained by tracing scientific article publishers in the previous 5 years or from 2017 to 2022.

RESULTS AND DISCUSSION

Based on the search for primary materials, it was found that 2 laws and 4 OJK regulations were used to regulate and supervise data protection in online loan services. Several regulations indirectly regulate online lending services and fintech lending, but regulations are still being reviewed to obtain a more comprehensive perspective on one or all of the components related to personal data protection in online loan applications. Regulations such as OJK regulation number 38/POJK.03/2016 need to be reviewed and discussed because banks can play a role as a stakeholder in the financial technology ecosystem. Meanwhile the discussion will be divided into three, namely stakeholder involvement in regulations; relationship between the regulations and the principles of privacy by design; and new regulatory considerations regarding personal data protection in online loan applications.

Stakeholder Involvement in Regula-

tions

Based on the regulations that have been reviewed, it was found that various stakeholders from the online lending ecosystem are regulated in these regulations. According to the review results shown in Table 1., several regulations regulate and oversee more fintech startups, IT-related companies and traditional financial institutions. This can be seen in the regulations of OJK Regulation Number 77 /POJK.01/2016, OJK Regulation Number 4 /POJK.05/2021, and OJK Regulation Number 10 /POJK.05/2022 which indeed regulate the implementation of financial services using information technology. The stakeholders most commonly found in several categories are non-banks or other financial institutions, because these non-bank institutions are indeed not regulated by the limits of their role in the

online lending ecosystem category. In addition, another financial institution can be said to have various stakeholder roles. Meanwhile, the regulation that regulates having and managing many stakeholders in almost every category is OJK Regulation Number 77 /POJK.01/2016, because the regulation is made according to its purpose. Although, these regulations do not regulate how investors apply to the online lending ecosystem. This applies to other regulations where several clearly defined roles are not regulated by stakeholder categories such as law makers, financial customers and investors. This lack of role assignment indicates a weakness that is quite influential in the implementation of online loan services in general and the protection of personal data specifically for these services.

Table 1. Stakeholder roles in the online lending ecosystem according to regulation in Indonesia

Regulation	Fintech startups	IT-related companies	Traditional financial institutions	Law makers	Financial customers	Investors	Others
OJK Regulation Number 77 /POJK.01/2016 [2]	Non-bank	Non-bank	Non-bank, Lender	OJK, Government	Borrower		Electronic certifiers
OJK Regulation Number 38 /POJK.03/2016 [28]			Bank				
OJK Regulation Number 4 /POJK.05/2021 [29]	Non-bank	Non-bank	Non-bank				
OJK Regulation Number 10 /POJK.05/2022 [1]	Non-bank	Non-bank	Non-bank, Lender		Borrower	Shareholders	Association
Law Number 11 of 2008 [30]		Provider					Association, Electronic certifiers
Law Number 27 of 2022 [18]				Public agency, Government			People, Legal entities, International organizations

Table 2. Principle of Privacy by Design [31]

1	Proactive not Reactive; Preventative not Remedial
2	Privacy as the Default Setting
3	Privacy Embedded into Design
4	Full Functionality — Positive-Sum , not Zero-Sum
5	End-to-End Security — Full Lifecycle Protection
6	Visibility and Transparency — Keep it Open
7	Respect for User Privacy — Keep it User-Centric

Table 3. Indonesia's regulatory strength in regulating privacy in an online lending cycle

Regulation	Creation	Processing	Storage	Usage	Archiving	Destruction
OJK Regulation Number 77 /POJK.01/2016 [2]	1,2,7	2	2,3,5,7	3,4,6,7		
OJK Regulation Number 38 /POJK.03/2016 [28]		3,5	3,5	2,3,5,6		
OJK Regulation Number 4 /POJK.05/2021 [29]	1,2,5,7	1,2,5,7	1,2,5,7	1,2,4,5,7	1,2,5	
OJK Regulation Number 10 /POJK.05/2022 [1]	1,2,5,7	2,5	2,5,7	2,3,5,7	1	2,4,5,7
Law Number 11 of 2008 [30]	5,7	5	3,5,7	3,5,7	5	
Law Number 27 of 2022 [18]	5,6	5,7	5,7	3,4,5,7	1,5,7	2,4,5,7

Relationship between the Regulations and the Principles of Privacy by Design

Identification of privacy by design principles contained in regulations is carried out more specifically according to the phases of the data life cycle. The privacy by design principle that you want to find is stated in Table 2. On the other hand, Indonesia's regulatory strength in regulating privacy in the online loan cycle is shown in Table 3.

Regulatory mapping looks uneven across the data lifecycle. This happens because the regulations released before 2022 have not really thought about the importance of protecting data in the process of making, archiving and even destroying it. Only in 2022, this awareness will be raised in OJK regulations number 10 of 2022 and law number 27 of 2022. On the other hand, the majority of regulations adhere to the fifth principle, namely full lifecycle protection. This can be seen from the regulations that ensure that all data is stored and used safely. While few regulations adhere to the sixth principle, namely openness. Whereas OJK regula-

tions number 77 of 2016 and number 38 of 2016 apply visibility and transparency while continuing to apply verification to data usage.

In Table 3. we can see that current regulations in Indonesia are not perfect in terms of privacy, so several considerations must be made so that the application of regulations can be effective

New Regulatory Considerations Regarding Personal Data Protection in Online Loan Applications

Having previously discussed how each regulation can apply the principle of privacy by design. This section provides considerations of regulations that can be combined so that they can be implemented concurrently. Because even though not all privacy by design principles are stated in the regulations, at least, if regulation and supervision are to be carried out effectively by using existing regulations, it can be done by applying the right regulations or by using Table 4. As one of the considerations establishment of new regulations. The table states the reg-

ulatory mapping according to the data cycle phase.

Table 4. Proposed combination of regulations for each phase of the data life cycle

Data Cycle Stage	Regulation	Privacy by Design
Creation	OJK Regulation Number 4 /POJK.05/2021 [29] OJK Regulation Number 10 /POJK.05/2022 [1] Law Number 27 of 2022 [18]	1,2,5,6,7
Processing	OJK Regulation Number 4 /POJK.05/2021 [29] OJK Regulation Number 38 /POJK.03/2016 [28]	1,2,3,5,7
Storage	OJK Regulation Number 77 /POJK.01/2016 [2] OJK Regulation Number 4 /POJK.05/2021 [29]	1,2,3,4,5,7
Usage	OJK Regulation Number 77 /POJK.01/2016 [2] OJK Regulation Number 4 /POJK.05/2021 [29]	1,2,3,4,5,6,7
Archiving	OJK Regulation Number 4 /POJK.05/2021 [29] Law Number 27 of 2022 [18]	1,2,5,7
Destruction	OJK Regulation Number 10 /POJK.05/2022 [1] Law Number 27 of 2022 [18]	2,4,5,7

In the table of regulatory considerations, it can be seen that there are still one or more privacy by design principles that have not been stated in the regulations. As in the destruction phase, the principle that has not been stated is the first principle, namely being proactive or pre-ventive. This principle is very important in terms of risk management and mitigation, so that no data is collected haphazardly, but the aims and objectives are determined in advance. In addition, at

the creation, archiving and destruction phase, there is not a single regulation that states the third privacy, which is embedded in the design. This principle is important in managing electronic systems or applications to make consumer privacy an integral part of each part of the system. Furthermore, at the phases of creation, processing and archiving, there is no regulation that states the fourth principle, namely privacy that is regulated fairly. This means that at these three phases, there is no control over personal data so that it can be managed fairly or does not benefit only the organizers and consumers. And the last and most important thing is that only at the creation and use phase does the sixth principle specifically state, namely transparency and visibility. So that transparency regarding how personal data is managed openly and conveyed as it is can only be carried out and proven at the phase of creation and usage only. Therefore, the step of combining regulations is a pretty good way. But it would be nice to consider a combination of these regulations as a consideration for establishing or updating regulations that are more appropriate and effective in managing data in applications that offer online loan services, especially in protecting personal data.

CONCLUSION

Based on the results stated in the previous section, it can be concluded that current regulations have not been able to be used to regulate and oversee the management and protection of personal data in applications that offer comprehensive online loan services. Meanwhile, if the current regulations are combined, they cannot be applied more thoroughly in regulation and supervision. Another reason is the lack of control over the process

of data transactions between stakeholders involved in an online lending ecosystem because currently it is not sufficient legally enforceable if it is only issued in regulations at the level of law. In addition, regulation and supervision will be inefficient because it uses more than one regulator with different capabilities.

Therefore, it is better to form a regulation that contains the principles of privacy by design in a comprehensive manner. New regulations must be used to regulate not only business processes for online lending services, but also data management processes at every phase of the data life cycle without exception and continue to prioritize users or consumers as data owners.

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