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LEGAL CERTAINTY OF PERSONAL DATA PROTECTION IN BUYING AND SELLING USER ACCOUNTS

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ABSTRACT

The Over the Top (OTT) service users are required to create a user account. However, the personal data used to complete the registration is vulnerable to trespass. Thus, this study aims to analyze the legal protection of the personal data used to create a user account. This study applies the normative approach in addition to the statute and conceptual approaches. In the end, this study concludes that the OTT service provider also prohibits the user account ownership transfer. By banning the account transfer, its data will remain intact, and the user can control whoever permitted to access the data in the user account.

INTRODUCTION

Along with the development of the internet as a means to communicate and carry out any kinds of transaction, the Over the Top (hereafter, OTT) services are also developed. OTT is a service that can only be accessed online by utilizing the data network. The OTT service provider in Indonesia is also known as the Electronic System Operator (hereafter, ESO) since the provider employs and operates electronic systems.

A user account is fundamental to access any websites or services on the internet. In every user account, the ESO provides licenses to use the technology made by the ESO through the user account. To have a user account, a user candidate is required to sign up and agree to the terms and conditions default made by the ESO, so that the user candidate can agree only to the listed terms and conditions. In other words, if the user candidate chooses to disagree with the given terms and conditions, the candidate may use another ESO.

The data used to operate the service must be protected both by the ESO and by the user, given the service can only be accessed online through internet

protocols that are highly vulnerable to leak. Additionally, the user's negligence may result in the loss to the ESO, other users, or the user him/herself. The vulnerability is because the ESO uses the user data as a marketing strategy to the third party and, at the same time, to prevent the improper use of the license. Based on the background elucidated above, this study aims to analyze the legal protection of personal data used to register a user account. To the extent, this study is expected to contribute a reference to the academic field in terms of personal data protection on the internet.

RESEARCH METHODS

This study applies the normative approach included in the laws and regulations regarding buy and sell, personal data protection, and privacy. Moreover, this study employs two approaches: the statute approach as the law approach and the conceptual approach (Susan and Budirahayu, 2018). The conceptual approach is used to study the cyber legal theory, agreement, transaction, jurisdiction, and other legal concepts that are applicable to solve the current issue. The statute approach, furthermore, is applied to relate both the national and the international law and regulation to the point analyzed in this study (Tsai et al., 2019).

RESULT AND DISCUSSIONS

Buying and Selling User Accounts in Indonesia

The selling of user account of social media in Indonesia is rapidly developed, mainly after the electronic trade and marketing become widely known. It has been noticed that most of the user account buyers prefer to buy user accounts than to create new accounts to promote their products since creating new accounts and gaining an abundance of followers take longer than buying the new ones do. Hence, it can be said that the user account business in Indonesia is highly profitable. In the real case, for example, one Instagram user, Gusti Dama Adiputra, sold his 18-thousand-followers Instagram account to an entrepreneur from Sanur, Bali, for 1.4 million rupiahs (Antons, 2018).

The screenshot displays a Tokopedia product listing for an Instagram account. The main product image shows the Instagram logo. The price is listed as Rp 850,000. The listing includes a table of payment options (SIMULASI CICILAN) and a list of similar products (INFORMASI PENJUAL).

Stok Produk Kosong
3x Bunga 0% Rp 283.334
6x Bunga 0% Rp 141.667
12x Bunga 0% Rp 70.834
18x Bunga 0% Rp 47.223
24x Bunga 0% Rp 35.417

INFORMASI PENJUAL

Jurahan Akun
DKI Jakarta

+ favoritkan

Kirim Pesan

Figure 1. Buying and selling user accounts through Tokopedia platform

Buying and selling user accounts are usually completed by taking advantage of e-commerce platforms, such as Tokopedia and OLX, or social media platforms, for instance, Facebook and Instagram. In selling a user account, the seller provides technical details, including the number of the followers (for Instagram), the number of posts, the number of friends (for Facebook), the number of contacts (for e-mail), and so on. These details are essential to be clearly shown to determine the price of each user account – the more the number of each feature, the higher the cost of the account (Hermana and Silfianti, 2011). Figure 2 below shows an example of a user account that has been sold. The data of the account, the same as other promoted accounts, is written in a google document along with its website. In other words, the buyer can check every user account to verify whether the friends or followers are real or merely a social bot.



Figure 2. A sold user account
Source: www.instagram.com/riamurniawati7837/

A social bot is an artificial intelligence that automatically controls a social media account. This bot runs by depending on the network; however, unlike other bots, a social bot somehow can reassure other users that the followers are real people (Boojihawon and Ngoasong, 2018).

Data Akun Instagram Di Jual - By Gudang Marketing

No	Username	Followers	URL	Niche	Harga /Foll	Harga Total	Status Stok
1	sindamarinda9355	3200	https://www.instagram.com/sindamarinda9355/	fashion	Rp80	Rp256.000	sold
2	siskaaryanti8142	2400	https://www.instagram.com/siskaaryanti8142/	fashion	Rp80	Rp208.000	sold
3	riamurniawati7837	3080	https://www.instagram.com/riamurniawati7837/		Rp80	Rp246.400	sold
4	sikasukmawati2801	3171	https://www.instagram.com/sikasukmawati2801/		Rp80	Rp253.680	sold
5	sindatarmawati9052	2910	https://www.instagram.com/sindatarmawati9052/		Rp80	Rp200.800	
6	lindaalirah	3339	https://www.instagram.com/lindaalirah/		Rp80	Rp266.800	sold
7	renialirah	2800	https://www.instagram.com/renialirah/		Rp80	Rp224.000	sold

Figure 3. The Google Drive containing promoted user accounts
Source: docs.google.com/spreadsheets/d/1dyU60Qn6L1DtSYcpLI-iagMzzYMzCbXMqjQclVtOFMQ/edit#gid=0

In brief, it might be more comfortable for the sellers to advertise their user accounts if they use a static profile. In other words, if the new owner changes the profile after the transaction is completed, the followers might remove the account from their following list as they do not recognize the account.

The Legal Engagement of Buying and Selling User Accounts

In buying and selling user accounts, the seller promotes the product, which is the user account, by providing the details, including the number of the followers, the number of the posts, and so on. The buyer, on the other hand, may accept the offering as promoted and close the deal. In other words, buy and sell user accounts is considered as a private electronic transaction that involves customer to customer (C2C), where the buyer has no relationship with the ESO.

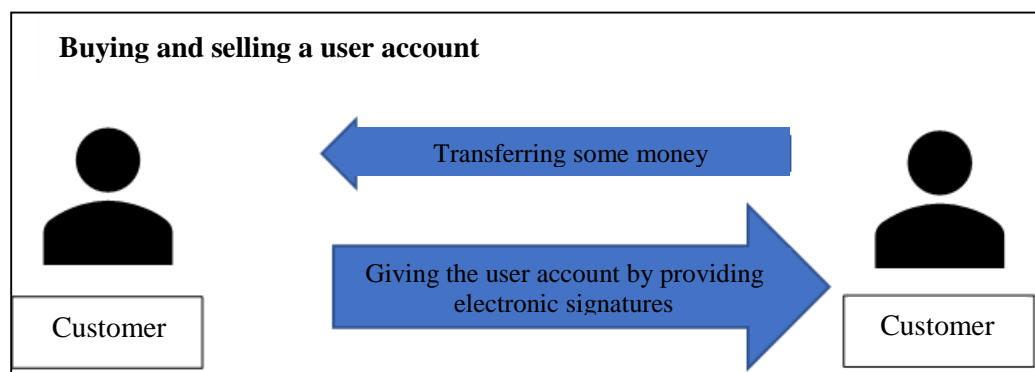


Figure 4. Customer to customer (C2C) relationship

A user account is sold by sending an electronic signature of the previous account owner, which includes a username and a password. Furthermore, the electronic signature is fundamental to sign in to the system and access the user account.

The Validity of Buy and Sell Agreement of User Account in Indonesia

The legal source of a contract in Indonesia is the Indonesian Civil Code Book Three. Article 1233 of the Civil Code states that “obligations are born from contract or from legislation.” The definition of cooperation, however, is not mentioned in the Indonesian Civil Code Book Three. According to legal science, “engagement” can be interpreted as a relationship between two or more people in the matter of assets where one party is entitled to performance. In contrast, the other party is obligated to fulfill the summoned performance.

In the Electronic Information and Transactions (EIT) Law article 1, Paragraph 17, electronic contracts are defined as the agreement made through electronic systems. According to the EIT Law article 1 Paragraph 5, the electronic system is “a set of electronic devices and procedures that serve to prepare, collect, process, analyze, store, display, announce, send, and/or disseminate Electronic Information” (Prakoso and Setyaningati, 2018).

In the electronic contracts, according to the Government Regulation No. 71 of 2019 on Electronic System and Transaction, the Electronic Contract is valid if: (a) there is an agreement of the parties; (b) performed by a competent legal

subject or authorized representative in accordance with the provisions of regulations; (c) there are certain things; and (d) transaction object must not conflict with the laws, morality, and public order. Thus, it can be affirmed that the stringent requirements for electronic contracts are similar to conventional agreements, as mentioned, which makes the degree of both electronic contracts and conventional contracts equal.

Buying and selling user accounts is an electronic transaction in the private sphere that involves interpersonal (customer to customer). The legal terms of the transaction are following the legal terms of agreements in Article 1320 Indonesian Civil Code, namely: (1) there must be consent of the individuals who are bound thereby; (2) there must be capacity to conclude an agreement; (3) there must be a specific subject; and (4) there must be an admissible cause. Additionally, the consent as the primary condition for a valid agreement is considered absent if the agreement is granted by error, obtained by duress or by fraud, as exclaimed in Article 1321 Indonesian Civil Code (Voigt and Von dem Bussche, 2017). The Government Regulation No. 71 of 2019 stipulates that an electronic transaction occurs when the parties reach an agreement, that is when the bidding transactions sent by the Sender has been accepted and approved by the Recipient. Moreover, the contract can be made by either action receipt indicating approval or act of acceptance and/or use of the object by Electronic System User.

Both parties would have agreed to buy and sell a user account, seen from the agreement made by sending a message to the seller that the buyer has decided to buy a specified user account. Besides, the ability to act in law is the second subjective condition for the establishment of a legal agreement between the parties. The ability to act, in many ways, is somehow related to the issue of authority to act in law. In practice, the personal status of each party involved in online transactions is rather tricky to know and ascertain whether the person concerned is legally prowess or not. Legal prowess, additionally, includes in one of the subjective aspects of the validity of an agreement. If the subjective elements are not fulfilled, then the agreement can be canceled. Therefore, as long as both parties do not file for cancellation of the agreement, the engagement they do is still valid, according to the contract law.

Causations Allowed

Referring to Article 1335 Indonesian Civil Code article 1337 BW, an agreement shall not be enforceable nor permissible if it is without a cause, or concluded pursuant to a fraudulent or implausible cause, prohibited by law, or violates good conduct, or public order. The cause of this agreement, by Hamaker as quoted by Hernoko, is a consequence that is intentionally caused by canceling a contract, which is called as the objective aim. Meanwhile, the subjective purpose that is also called the motive is the aim or cause or desire that comes from within each party (Abrams et al., 2019).

In buying and selling user accounts, whether the seller or the buyer can be subject to criminal penalties for buying and selling user accounts, given both parties carry out the thing that is prohibited by the EIT Law Article 30, 34, and

35. In other words, one of the conditions is not fulfilled in buy and sell user accounts, which agrees does not have a binding legal force (Antons, 2018). In this case, the contract might be canceled for the conditions as stipulated in Article 1320 BW are not entirely followed. From the four terms, the former two are subjective, while the latter two are the objective conditions. The non-fulfillment of the subjective elements results in the cancellation of the agreement, while the non-fulfillment of the objective ones will cause the contract to be null and void. In brief, buying and selling user accounts does not meet the objective condition as mentioned; thus, it is null and void.

Buying and Selling User Accounts as a Defect in the OTT Service Agreement

In a reciprocal agreement, both the active and passive sides will present. The active side will provide the right for creditors to fulfill their achievement; meanwhile, the passive side is the burden of obligations for the debtor. These achievements and contra-achievements will always rise in reciprocal agreements. However, if default in the agreement arises, such as when a party does not carry out the obligations, negative impacts will follow (Allen, 2016).

The debtor is declared negligent if he/she does not fulfill or late in fulfilling his/her achievements as he/she should be. In the terms and conditions of creating a user account, there is a clause where the user is not allowed to sell, give, or lend the account. This is because the ESO follows the principles or protocols to protect the users' personal data, besides using the data as a means for targeted advertising, where when other people use the user account, the data have gotten previously is no longer relevant. Moreover, the more data considered irrelevant, the worse the reputation of the ESO to the users. This, in consequence, will undoubtedly affect and harm the OTT service providers.

The OTT service providers, however, have prepared and anticipated such problems by making the fulfillment clause no longer valid in the standard contract. Therefore, when one obligation of the user in the agreement is not fulfilled, then it can already be considered a default, which can be followed up by the termination of the contract and the suspension of the user account. However, it is also possible for the OTT service providers to use the right to file a lawsuit following the Article 1267 BW.

Acts Against the Law in Buying and Selling User Accounts

In the act against the law, there is a requirement that stated that in general, the plaintiff must be able to prove that the loss suffered is a result of the act against the law committed by the defendant. According to Article 1365 Indonesian Civil Code, the liability is considered as liability based on fault, which by referring to Article 163, Article 283 Rbg, or Article 1865 of the BW, is "any one who claims to have any right or who refers to a fact to support such right, or who objects to another party's right, shall prove the existence of such right, or such fact." From Article 1365 of the BW, several required conditions are simultaneously are sufficient conditions for the liability as stipulated in Article 1365 Indonesian Civil Code, namely written evidence, the evidence presented by witnesses, the inference, the confession, and the oath.

If further analyzed, the buy and sell user accounts can be categorized as an act against the law. The EIT Law stipulates the activity of buying and selling user accounts, which is in Article 30, Paragraph 1, 34, and Article 35. Moreover, Article 30 Paragraph 1 stipulates, "Any Person who knowingly and without authority or unlawfully accesses Computers and/or Electronic Systems of other Persons in any manner whatsoever," which can be related to buy and sell user accounts, given the buyer can access the purchased account without authority. In the terms and conditions agreed when making a user account, it is mentioned that the user account is created only to use by the one who signs up and cannot be transferred or sold to other users. An example is taken from the terms of use made by Instagram: "You are responsible for any activity that occurs under your screen name," "You may not use the Instagram service for any illegal or unauthorized purpose. International users agree to comply with all local laws regarding online conduct and acceptable content," "You must not, in the use of Instagram, violate any laws in your jurisdiction (including but not limited to copyright laws)." In other words, the access made by the buyer of a user account is unauthorized and is one of the elements of Article 27 Paragraph 1, although the transaction has been completed.

Furthermore, Article 34 of EIT Law is addressed to the user account seller, since the access right is sold to be used unauthorisedly by another party. In brief, Article 34 stipulates, "Any Person who knowingly and without authority or unlawfully produces, sells, causes to be used, imports, distributes, provides, or owns: computer passwords, access codes, or the like to make Electronic Systems accessible with the intent to facilitate acts as intended by Article 27 through Article 33." In other words, a user account who sells his/her account may be subject to a criminal offense in that article, since he/she is included in the elements stipulated in Article 35 of EIT Law.

In buying and selling user accounts, ESO makes an electronic information system to keep the users' data private and authentic by providing electronic signatures in the forms of username and password along with the SSL provider encryption guaranteed by the third party, so that the data given by the user can be received accordingly by the ESO. However, the security provided by the ESO can be manipulated by other parties if the parties know the username and password. This weakness is taken for granted by those involved in buying and selling user accounts where the seller provides the username and password so that the buyer can access the account. In consequence, the electronic information input by the buyer is not in accordance with the output. In other words, the information seems to be made by either the seller or the old user.

The purpose of a lawsuit for an act against the law is to place the plaintiff to the original state before the occurrence of the act so that the compensation provided is the reliance loss. If the user is against the written law, such as does not carry out legal obligations determined by the law, namely Article 30, 34, and 35 of EIT Law, which causes harm to ITT service providers, the act is then considered as Unlawful Act (Hermana and Silfianti, 2011).

The Results of the User Account Transfer

In this case, the buyer does not have a legal engagement with the OTT service

provider, given the buyer never agreed to the legal contract provided by the OTT service provider when creating a user account. Following this term, the OTT service provider is not obliged to fulfill every one of the buyer's rights, including the provision of a user account to the new user. On the other hand, the new user is not subject to the legal agreement made by the OTT service provider; thus, the user account cannot be withdrawn or deleted by the OTT service provider.

These consequences are because the OTT service provider must fulfill several principles, namely, the principle of security, the principle of data quality, and the principle of individual participation. The principle of security refers to the selling of user account, where there is a gap that can threaten personal data input. The principle of data quality, moreover, points out when the user account is transferred so that the new user cannot change any information that the accuracy and the data quality will decrease. The last one, the principle of individual participation, attributes to when a user account has been transferred, the user loses the authority to control personal data in the user account. Therefore, the OTT service provider is obligated to delete or withdraw the user account (Rumata and Sastrosubroto, 2018).

In the agreement law, in principle, a void condition is permanently retroactive until the agreement is made. Article 1265 of the BW stipulates that "A void condition is a term, which if met would cause the obligation to become void and retribute the parties as though the obligation has never existed." Thus, the agreement has no legal consequences; the parties do not need to make an achievement, and those who have made an achievement are considered to have completed unrequired payments. In the case where a user account has been transferred, a void condition in terms of use is automatically fulfilled. After the agreement is canceled, everything will be returned to its original state or retroactive. Hence, the OTT service provider has the right to delete or withdraw the user account, and the user is no longer allowed to use the service of the provider (Sujata et al., 2015).

The service provider, furthermore, can also sue the seller/old user if suffering from losses due to the acts against the law following the Article 1365 of the BW, which stipulates that, "a party who commits an illegal act which causes damage to another party shall be obliged to compensate therefor." The liability, according to the previous article, is emphasized on the liability based on fault, so if the article is used as a basis for a lawsuit, the losing party shall prove the existence of the act causing the loss. In the act against the law, there is a condition that states if, in general, the plaintiff must be able to prove the loss suffered is a result of the unlawful act committed by the defendant (Lim, 2013).

In brief, it can be affirmed that when the old user account sells the account that is not wholly-owned, there is a violence of the statute law in the form of does not carry out the legal obligations specified in the EIT Law. Therefore, in consequence, the OTT service provider can file a lawsuit if they feel disadvantaged.

CONCLUSION

A user account has a central function since it has a significant role as the

“container” for one’s personal data on the internet. In protecting personal data, a user account must follow the principles of personal data protection. By following the laws, the user account shall understand that to transfer the ownership of a user account must not be done. This principle has been adopted by the ESO in the terms and conditions agreement so that both the ESO and the user cannot transfer a user account along with its personal data without consent. With the ban, the personal data will remain intact, and the user will still be able to control who and what can access the personal data input.

The OTT services implement those principles and obligations in a legal agreement agreed by every user before using the OTT service. In the legal contract, the prohibition to buy and sell user accounts is clearly stated. On the other hand, the EIT Law also indirectly prohibits the transfer of user accounts through Article 30, Article 34, and Article 35 of EIT Law. A user is considered committing an act against the statute law if he/she does not carry out the legal obligations as mentioned in those articles or other acts resulting in any losses to the OTT service provider.

REFERENCES

- Abrams, M., Abrams, J., Cullen, P., Goldstein, L., 2019. Artificial Intelligence, Ethics, and Enhanced Data Stewardship. *IEEE Secur. Priv.* 17, 17–30.
- Allen, A.L., 2016. Protecting one’s own privacy in a big data economy. *Harv. L. Rev. F.* 130, 71.
- Antons, C., 2018. Copyright Law in Indonesia: From a Hybrid to an Endogenous System?, in: *Copyright, Property and the Social Contract*. Springer, pp. 73–88.
- ASTUTIK, D., HARYMAWAN, I., NASIH, M., 2018. The Effectiveness of Social Media and Press Release Transparency to Detect Indications of Financial Fraud. *Editor. Board* 1507.
- Boojihawon, D.K., Ngoasong, Z.M., 2018. Emerging digital business models in developing economies: the case of Cameroon. *Strateg. Chang.* 27, 129–137.
- Brough, A.R., Martin, K.D., 2019. Critical roles of knowledge and motivation in privacy research. *Curr. Opin. Psychol.*
- Flyverbom, M., Deibert, R., Matten, D., 2019. The Governance of Digital Technology, Big Data, and the Internet: New Roles and Responsibilities for Business. *Bus. Soc.* 58, 3–19.
- Hermana, B., Silfianti, W., 2011. Evaluating e-government implementation by local government: digital divide in internet based public services in Indonesia. *Int. J. Bus. Soc. Sci.* 2.
- Lim, M., 2013. The Internet and everyday life in Indonesia: A new moral panic? *Bijdr. tot taal-, land-en volkenkunde/Journal Humanit. Soc. Sci. Southeast Asia* 169, 133–147.
- Lytras, M., Visvizi, A., 2018. Who uses smart city services and what to make of it: Toward interdisciplinary smart cities research. *Sustainability* 10, 1998.
- Prakoso, A.E.J., Setyaningati, C.N., 2018. Law Protection for Procurement Officers: Legal Protection against the Procurement Instrument of Goods and Services, in: *IOP Conference Series: Earth and Environmental Science*. IOP Publishing, p. 12128.

- Rumata, V.M., Sastrosubroto, A.S., 2018. The Indonesian Law Enforcement Challenges over Encrypted Global Social Networking Platforms, in: 2018 International Conference on Computer, Control, Informatics and Its Applications (IC3INA). IEEE, pp. 199–203.
- Sujata, J., Sohag, S., Tanu, D., Chintan, D., Shubham, P., Sumit, G., 2015. Impact of over the top (OTT) services on telecom service providers. *Indian J. Sci. Technol.* 8, 145–160.
- Susan, N., Budirahayu, T., 2018. Village Government Capacity in the Implementation of Village Law No. 6 of 2015 in Indonesia, in: *Sustainable Future for Human Security*. Springer, pp. 17–27.
- Tennakoon, H., 2016. *Information Security and Privacy in Social Media*.
- Tsai, M.-J., Tao, Y.-H., Yuadi, I., 2019. Deep learning for printed document source identification. *Signal Process. Image Commun.* 70, 184–198.
- Voigt, P., Von dem Bussche, A., 2017. *The eu general data protection regulation (gdpr)*. A Pract. Guid. 1st Ed., Cham Springer Int. Publ.