

LEGAL PROTECTION OF PERSONAL DATA OF SHOPEEPAY LATER LOAN USERS

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Abstract

Shopee Pay Later, which is a credit facility, is also a type of Fintech, or Financial Technology. The term Fintech lending is also called Fintech Peer-to-Peer Lending, which is a payment method with an online lending system without having a bank account. The researcher employed the empirical legal research method to identify cases related to the lack of consumer protection for Shopee Pay Later application users. One such case involved Fitri Yeni Prihandono's sister, who had her account hacked. This act contravenes Article 30 Paragraph 3, in conjunction with Article 46, Paragraph 3 of Law Number 11 of the Year 2008, in conjunction with The 2016 Indonesian Law Number 19 on Information and Electronic Transactions. In its development, Shopee has an obligation to its consumers in terms of consumer protection, as stipulated in Article 4, in conjunction with the provisions of Article 46, Paragraph 3 of Law Number 11 the Year 2008, as amended by Law Number 19 of 2016 concerning Information and Electronic Transactions. Article 62 of Law No. 8 of 1999 on Consumer Protection. Shopee's actions have the potential to compromise the security of the network, in contravention of the provisions set forth in POJK No. 77/POJK.01/2016 concerning Information and Technology-Based Lending and Borrowing Services, which serves as the foundation for the regulation of the Pay Later system.

Keywords: Fintech; Consumer Protection; Pay Later; Shopee.

Abstrak

Shopee Pay Later yang merupakan fasilitas kredit juga merupakan salah satu jenis Fintech, atau Financial Technology. Istilah Fintech lending disebut juga dengan Fintech Peer-to-Peer Lending, yang merupakan metode pembayaran dengan sistem pinjaman online tanpa memiliki rekening bank. Penelitian menggunakan metode penelitian hukum empiris untuk mengidentifikasi kasus-kasus yang berkaitan dengan kurangnya perlindungan konsumen bagi pengguna aplikasi Shopee Pay Later. Salah satu kasus yang terjadi adalah kasus yang menimpa saudara Fitri Yeni Prihandono yang akunnya diretas. Perbuatan tersebut bertentangan dengan Pasal 30 Ayat 3 jo. Pasal 46 ayat 3 Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik juncto Undang-Undang Republik Indonesia Nomor 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik. Dalam perkembangannya, Shopee memiliki kewajiban terhadap konsumennya dalam hal perlindungan konsumen, sebagaimana diatur dalam Pasal 4, juncto ketentuan Pasal 46 ayat 3 Undang-Undang Nomor 11 Tahun 2008, sebagaimana telah diubah dengan Undang-Undang Nomor 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik. Pasal 62 Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen. Tindakan Shopee berpotensi membahayakan keamanan jaringan, bertentangan dengan ketentuan yang diatur dalam POJK No. 77/POJK.01/2016 tentang Layanan Pinjam Meminjam Uang

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Berbasis Teknologi Informasi dan Komunikasi, yang menjadi landasan pengaturan sistem Pay Later.

Kata kunci: **Fintech; Perlindungan Konsumen; Pay Later; Shopee.**

INTRODUCTION

Nowadays, all activities in life are inseparable from electronics, including buying and selling. Buying and selling now is not only conventional, where sellers and buyers can carry out transactions using a digital method or what we know as e-commerce. The presence of e-commerce transactions makes it very easy and helps various parties. With the presence of e-commerce, there are various digital payment methods in e-commerce transactions. Especially in the Shopee application, there are several payment methods, namely payment through Shopeepay, ShopeepayLater, Bank Transfer, Credit Card and Cash On Delivery (COD). Reported from the Antara website in the first half of 2021, from January to mid-year, Shopee became the top e-commerce platform with a total of visits from the web of 126.99 million and through the application as many as 834.52 million from June to August with a total average of 961.51 million.¹

In 2019, many e-commerce startups offered a pay-later payment feature, known as "post-pay" or the buy-now-pay-later system. Shopee is one of the many e-commerce startups that offer this pay-later feature. Shopee cooperates with PT. Commerce Finance. The use of transactions through Shopee Paylater according to the results of the DailySocial survey from the databoks page in 2022 "consumers used the Shopee Paylater service the most throughout 2021. The percentage reached 78.4%."²

The large number of Shopee Paylater users is certainly because the activation requirements are very easy, only using an ID card that is uploaded as a verification requirement by Shopee and there are several other requirements, namely: (a) The account has been verified and registered (b) The account has been at least 3 months old, (c) The account is often used for transactions d. The application used has been updated to the latest version (IT 22AD).

Shopee Paylater facilitates seamless payment for Shopee services by utilizing loans provided by PT. Commerce Finance. These loans cover the costs associated with goods checkout and other electronic payments on the Shopee platform. Both Shopee and PT. Commerce Finance assign varying credit limits to users, ranging from hundreds of thousands to tens of millions of rupiah. These limits are subject to

¹ Nanien Yuniar, "Shopee, E-Commerce Peringkat Teratas Di Indonesia," Antara, October 2021.

² Cindy Annur, "Shopee Paylater, Layanan Paylater Paling Banyak Digunakan Pada 2021," databoks, January 2022.

adjustment based on the user's consistent bill payment record. Shopee Paylater users are assigned payment due dates on either the 5th or 25th of each month.³

Shopee Paylater users are provided with a comprehensive agreement outlining the loan amount, applicable fees, and associated terms and conditions upon activation of the SPayLater feature within the application. By reading and acknowledging the agreement, users signify their acceptance of its entirety. While the existence of such agreements is not a novel concept in Indonesia, the activation of this payment method represents an evolution of the agreement acceptance process, aiming to enhance user convenience for Shopee Paylater. However, this also raises concerns regarding consumer protection in the legal realm.

Shopee Paylater's structure goes beyond a traditional bilateral agreement between Shopee and its users, as it incorporates a P2P (Peer-to-Peer) lending agreement. P2P lending is a financial service that leverages an internet-based electronic system to connect lenders and borrowers. In this context, the Shopee Paylater agreement serves as a loan agreement between Shopee and Shopee Paylater users, facilitated by a non-bank entity. This agreement establishes a binding obligation for borrowers to fulfill their repayment commitments to the lender. Failure to comply with these obligations, or breach of contract, may result in penalties, as outlined in the agreement, amounting to 5% of the total outstanding balance.⁴

A concerning incident occurred in Bekasi, where a woman with the Shopee account @tianyapriyanti suffered a loss of Rp 3.4 million without her prior knowledge. The incident began on April 4, 2021, when she was contacted by an individual claiming to be a Shopee representative during the 4.4 Mega Sale Shopping Day event, held from March 8 to April 4, 2021. Tianyapriyanti asserted that she had never shared her OTP code with anyone, yet her Shopee account was compromised by an unauthorized individual. The perpetrator exploited the SPayLater method to make unauthorized purchases without the account owner's awareness. Tianyapriyanti shared her story on [mediakonsumen.com](https://www.mediakonsumen.com), expressing her frustration with Shopee's inability to refund her SPayLater application due to repeated purchase cancellation requests from the seller.

The aforementioned incident exemplifies the need to address emerging challenges posed by the evolution of technology-based financial services and their impact on society. In response, the government, in collaboration with the Otoritas Jasa Keuangan (OJK), has introduced regulations to address these concerns. The issuance of POJK No. 77/POJK.01/2016 regarding Technology-Based and Information-Based Lending Services serves as a crucial step towards mitigating

³ GISL, "Denda Shopee Paylater 2023 : Penjelasan & Cara Bayar Denda," Idekredit, 2023.

⁴ GISL.

risks, regulating, and overseeing the development of electronic payment systems, particularly in the realm of fintech lending, within the scope of OJK's authority.⁵

RESEARCH METHOD

The research methodology for this study will encompass a normative legal approach, incorporating both conceptual and statutory frameworks. The conceptual approach will involve a critical analysis of the core concepts of consumer protection and contractual agreements. This in-depth exploration will provide a clear understanding of the legal dynamics among the parties involved in the Shopee application, particularly in the context of the Shopee Paylater feature. Furthermore, the statutory approach will entail a systematic examination of applicable regulations pertaining to consumer protection, specifically within the domain of technology-based financial services.

RESULT AND DISCUSSION

Shopee Paylater falls under the category of Peer-to-Peer (P2P) lending, where loans are facilitated through non-bank intermediaries. Upon activating ShopeePay Later, users are presented with clear terms and conditions that stipulate that Shopee provides technology-based loans through a dedicated P2P platform and that these loans cannot be utilized on other applications.⁶

POJK No. 77/2016, Article 18, defines contractual relationships in P2P lending as solely encompassing the agreements between the P2P Lending Organizer, the lenders, and the borrowers. However, this overlooks the fact that Shopee, in addition to acting as an agent for lenders and representing their interests, also functions as a business entity engaged in a legal relationship with borrowers as consumers. Shopee's provision of loan disbursement services from lenders, as the organizer, entails the imposition of service fees. This indicates that Shopee's services are profit-driven, aligning with the characteristics of a business enterprise. Therefore, excluding the legal relationship between Shopee as a business entity and borrowers as consumers from the P2P lending regulations stipulated in POJK No. 77/2016 is an oversight.

Privacy is an inherent and fundamental right for all individuals.⁷ In the realm of e-commerce, particularly in the context of ShopeePay Later, safeguarding

⁵ I Gusti Made Karmawan, "Dampak Peningkatan Kepuasan Pelanggan Dalam Proses Bisnis E-Commerce Pada Perusahaan Amazon.Com," *ComTech: Computer, Mathematics and Engineering Applications* 5, no. 2 (December 2014): 748, <https://doi.org/10.21512/comtech.v5i2.2237>.

⁶ "Pengaturan Transaksi Elektronik Dan Pelaksanaannya Di Indonesia Dikaitkan Dengan Perlindungan E-Konsumen," n.d.

⁷ Urgensi dan Kebutuhan Pembaruan and Wahyudi Djafar, "Hukum Perlindungan Data Pribadi Di Indonesia," n.d.

personal data privacy is of paramount importance. Sensitive personal data that plays a critical role in ShopeePay Later transactions must be adequately protected under the law. This is especially crucial as such personal data is highly sensitive and its unauthorized disclosure could result in substantial financial or security harm to users.⁸

Online systems are often vulnerable to personal data breaches, particularly those involving sensitive financial or medical information routinely provided by consumers to banks, retailers, insurance agencies, and credit card companies. This has raised concerns among consumers who engage in online transactions without adequate security measures. Consumers, as the requesting parties, are often required to provide comprehensive personal or corporate information before initiating transactions. It is understandable that producers need to assess consumer credibility to determine whether they are genuine buyers, similar to the registration processes for social media platforms, job portals, and email services.⁹

The Constitution of the Republic of Indonesia guarantees individuals the right to recognition, protection, equal treatment before the law, and legal certainty, as stipulated in Articles 28D Paragraph (1), 28E Paragraph (3), and 28G Paragraph (1). Individuals also have the right to enter into contracts and express their opinions freely, provided they do not contravene the law. Additionally, individuals have the right to protection for themselves, their families, their honor, their dignity, and their property under their control, and they have the right to security that safeguards them from various threats that could hinder them from exercising or refraining from exercising their human rights. Consequently, personal data must be protected by the state, as it constitutes a fundamental human right enshrined in Article 12 of the Universal Declaration of Human Rights.¹⁰

Committed to safeguarding user data privacy, Shopee has assembled a dedicated team known as Shopee Tech Team. This team consists of experts in software engineering and technology, data analysts and data scientists (data team), and regional teams that function as data analysts to enhance company performance and address current and future personal data-related issues.

Shopee's Privacy Policy for Spaylater Users

Shopee has implemented a comprehensive privacy policy to regulate the collection, use, and disclosure of user data. This policy aims to protect user privacy

⁸ dan Kebutuhan Pembaruan and Djafar.

⁹ A.M.D dan Gultom, E Mansyur, *Yberlaw Aspek Hukum Teknologi Informasi* (Bandung, 2005).

¹⁰ Indra Rahmatullah, "Pentingnya Perlindungan Data Pribadi Dalam Masa Pandemi Covid-19 Di Indonesia," *ADALAH* 5, no. 1 (February 2021): 11-20, <https://doi.org/10.15408/adalah.v5i1.19811>.

in compliance with relevant data protection regulations. It ensures that Shopee handles user data with utmost care and responsibility, preventing any unauthorized use and solely utilizing it for legitimate service-related purposes. Users who choose to withhold their consent for Shopee to manage their personal data will be unable to access the Shopee platform. Shopee commits to transparent communication and will notify users of any changes to the privacy policy through the dedicated privacy policy page on the platform, which may be subject to modifications at any time.¹¹

Shopee's commitment to data privacy protection is evident in the establishment of the Shopee Tech Team, a specialized group tasked with safeguarding user data. This team comprises experts in software engineering and technology, data analysis, and data science, along with regional data analysts. The Shopee Tech Team plays a crucial role in enhancing company performance and addressing emerging challenges, including personal data concerns, both in the present and in the future.

Shopee's data collection practices encompass various purposes, including:

1. Facilitating the processing of applications, transactions, and communication among parties.
2. Protecting the personal safety and rights of users and other stakeholders.
3. Enabling marketing and advertising, software updates, and communication via phone calls, emails, or text messages and similar channels.
4. Conducting audits and service surveys, research activities, risk and/or credit assessments, business asset transaction activities, and facilitating user interactions on the Shopee platform.
5. Storing, maintaining, and backing up user personal data in case of force majeure, regardless of whether it occurs within or outside the user's jurisdiction.
6. Complying with legal proceedings and providing user personal data without consent when mandated by applicable legal requirements and regulations in the relevant jurisdiction, including government requests or company investigations in cases of suspected criminal activity or violations.

User personal data is accessible only to a select group of authorized employees who possess the necessary privileges or access rights to utilize and manage the data. Shopee will dispose of or anonymize personal data when it is no longer in use or required and there is no valid basis for retaining it. Furthermore, Shopee may utilize, process, disclose, and/or transfer User personal data to third parties located both within and outside Indonesia without obtaining User consent to eliminate any uncertainties. Third parties receiving User data are obligated to

¹¹ Shandi Patria Airlangga, "Hakikat Penguasa Dalam Negara Hukum Demokratis," *Cepalo* 3, no. 1 (September 2019): 1, <https://doi.org/10.25041/cepalo.v3no1.1783>.

adhere to applicable data privacy laws and regulations when collecting, using, storing, or transferring such data. Third parties are only authorized to collect, use, store, or transfer such data for legitimate purposes associated with Shopee transaction activities and are prohibited from disclosing User personal data to other unauthorized parties without the written consent of both the User and Shopee.¹²

Shopee also employs Google as a third-party service provider, specifically Google Analytics, which utilizes cookies, small text files stored on the User's device. Google will utilize the provided information to assess and compile website activity reports for the operator and internet usage. Third parties and Shopee provide downloadable applications or software sites for the use of Shopee services. These applications may independently access and enable third parties to recognize the User's name, User ID, User IP address, and other information such as cookies that have been installed for the User by third-party software applications or websites.

However, there is no assurance of the security of personal data and/or other information belonging to the User that is provided to third parties. Shopee also assumes no responsibility for the content, security settings (or lack thereof), and other activities on linked sites. Consequently, if the User accesses such sites, they do so at their own risk. This is because the various linked sites have their own independent policies and varying security settings. Therefore, Shopee has no control over the sites owned by third parties that are linked to Shopee.¹³

CONCLUSIONS

The recent data breach affecting Shopee users, particularly those utilizing the SPay Later feature, highlights critical legal implications. This incident constitutes a violation of Article 30(3) in conjunction with Article 46(3) of Law No. 11 of 2008 as amended by Law No. 19 of 2016 concerning Information and Electronic Transactions. Shopee has a legal responsibility to protect its consumers' data and privacy, as mandated by Articles 4 and 62 of Law No. 8 of 1999 on Consumer Protection. Furthermore, Shopee's actions contravene the network security provisions outlined in POJK No. 77/POJK.01/2016 regarding technology-based and information-based lending services, which serves as the foundation for the regulations governing the pay later system.

The use of SPay Later has raised concerns about Shopee's data disclosure practices. There have been instances of Shopee sharing consumer personal data

¹² Sania Puspita Anggraini and Hardian Iskandar, "Perlindungan Hukum Konsumen Dalam Pembayaran Menggunakan Sistem Paylater," *PLENO JURE* 11, no. 1 (April 2022), <https://doi.org/10.37541/plenojure.v11i1.701>.

¹³ Made Ayu Gita Lestari and Dewa Gde Rudy, "Keabsahan Shopee Paylater Sebagai Financial Technology Dalam Hukum Positif Indonesia," *Kertha Semaya: Journal Ilmu Hukum* 10, no. 4 (March 2022): 772, <https://doi.org/10.24843/ks.2022.v10.i04.p05>.

with third-party partners, despite the existence of data protection regulations such as Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Personal Data Protection in Electronic Systems. The effectiveness of these regulations in safeguarding consumer privacy in the context of electronic systems remains to be fully evaluated.

Consumers facing SPay Later-related disputes have several recourse options: (1) Seeking Legal Advice: Consult with a legal aid organization for guidance; (2) Contacting Shopee: Notify Shopee directly about the issue; (3) Pursuing Mediation or Out-of-Court Settlement: Attempt to resolve the matter through mediation or an out-of-court settlement with Shopee; (4) Issuing a Formal Warning Letter: Send a formal warning letter to Shopee if they fail to address your concerns; (5) Filing a Complaint with the Financial Services Authority (OJK): Report Shopee's actions to the OJK for investigation; (6) Reporting to the Police: File a police report if you suspect account hacking.

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