

APPLICATION OF CRIMINAL OFFENDERS MISUSE OF NATIONAL IDENTIFICATION NUMBERS FOR PHONE CARD REGISTRATION IN MAKASSAR CITY

Sri Buyung*, Marilang, Ashabul Kahfi

Universitas Islam Negeri Alauddin Makassar, Indonesia

*Correspondent Email: sribuyung88@gmail.com

Abstract

The research aims to investigate the protection of privacy rights for SIM card users under the registration system and identify obstacles faced by individuals misusing others' National Identification Numbers (NIK) without consent. This study employs a combination of normative legal research and empirical legal research, focusing on telecommunications businesses in Makassar City, South Sulawesi Province. Data collection involves primary and secondary sources. The findings indicate that despite the absence of specific laws on starter pack registration, Indonesian citizens are protected by constitutional, administrative, ITE (Information and Electronic Transactions), and personal data protection laws. However, obstacles exist in enforcing criminal offenses related to NIK misuse, including outlet registration by actors lacking buyer identities due to fierce competition and public preference for instant solutions without considering the consequences of using others' NIK for SIM card registration.

Keywords: Card; Application; Criminal.

Abstrak

Penelitian ini bertujuan untuk menyelidiki perlindungan hak privasi pengguna kartu SIM di bawah sistem registrasi dan mengidentifikasi kendala yang dihadapi oleh individu yang menyalahgunakan Nomor Induk Kependudukan (NIK) orang lain tanpa persetujuan. Penelitian ini menggunakan kombinasi Riset Hukum Normatif dan Riset Hukum Empiris, dengan fokus pada bisnis telekomunikasi di Kota Makassar, Provinsi Sulawesi Selatan. Pengumpulan data melibatkan sumber primer dan sekunder. Temuan tersebut menunjukkan bahwa meskipun tidak ada undang-undang khusus tentang pendaftaran paket perdana, warga negara Indonesia dilindungi oleh undang-undang dasar, administrasi, ITE (Informasi dan Transaksi Elektronik), dan undang-undang perlindungan data pribadi. Namun, terdapat kendala dalam penegakan tindak pidana terkait penyalahgunaan NIK, antara lain pendaftaran outlet oleh pelaku yang tidak memiliki identitas pembeli karena persaingan yang ketat dan preferensi publik terhadap solusi instan tanpa mempertimbangkan konsekuensi penggunaan NIK orang lain untuk pendaftaran kartu SIM.

Kata Kunci: Kartu; Aplikasi; Kriminal.

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INTRODUCTION

Indonesia is a country that adheres to a parliamentary presidential system in which the president holds the highest power in carrying out a sovereign system of government and governance¹ and Indonesia is a state of law, based on the sound of Article 1 Paragraph (3) of the 1945 Constitution after the third amendment passed November 10, 2001. The affirmation of this constitutional provision means that all aspects of life in society, state and government must always be based on law.

Law is a norm that governs all public behavior. For this reason, the law in Indonesia also aims to regulate Indonesian citizens in their behavior so as not to harm or interfere with public interests. According to Utrecht, the law is the set of guidelines for the orderly life of a society and should be obeyed by the members of the society in question. This shows that the Indonesian state is trying to make the law as a regulator of the lives of its citizens in order to achieve a prosperous life.²

Law and Justice cannot be separated from the interaction of human life itself. It is very difficult to separate these two things in life. The purpose of law is to realize Justice, expediency and legal certainty, according to G.W.Paton, the rights granted by law not only contain elements of protection and interests but also the element of will (the element of will) on the other hand, the regulation on consumer protection is categorized as follows:

1. Burgerlijk Wetboek (BW), the Civil Code.
2. Wetboek van Strafrecht (WvS), the Book of Criminal Law.
3. Wetboek van Koophandel (Wvk), the Book of Trade Law.³

In the modern era like today, the role of Information Technology in everyday life is certainly very influential, this is inseparable from our activities which are often supported by information technology itself which is able to answer the demands of work faster, easier, cheaper and saves time. The development of information and communication technology has been so fast that it affects every aspect of human life.

One of the functions of government is to provide public services as a form of government services for the welfare of society. Bureaucracy is a government tool to realize effective, fair, transparent and responsible public services. Both are actually built on the basis of a civilized society (civil society) because it is supported by an educated life, a fair economic order, and good interaction between people and the government, namely in the largest public service.⁴

¹ Ingrid Chaminra, Rahman Syamsuddin, *Tinjauan Yuridis Peraturan Daerah Rencana Pembangunan Jangka Menengah Kabupaten Enrekang*, Vol 3 No 1 2021, hlm 2

² Mutmainnah J, Rahman Syamsuddin, Abd. Rais Asmar, *Kekuatan Sidik Jari Sebagai Alat Bukti Petunjuk Dalam Mengungkap Tindak Pidana Pencurian* Universitas Islam Negeri Alauddin Makassar. *Jurisprudentie* Vol. 2 No. 3 Desember 2017 hlm 18

³ Apriana, Ashabul Kahpi, *Perlindungan Hukum Terhadap Data Privasi Konsumen dalam Registrasi Pelanggan Jasa Telekomunikasi*. Vol 3 No 1 2021, Hlm 2

⁴ Ahkam Jayadi, *Membuka Tabir Kesadaran Hukum*, Jurnal Ilmu Hukum UIN Alauddin Makassar, *Jurisprudentie* Vol. 4 No. 2 Desember 2017 hlm 18

In its position, the government is obliged to provide opportunities and employment, while the community must meet the requirements and obligations as a workforce.⁵

It is undeniable that information and communication technology is the spearhead of the globalization era that is now sweeping almost all over the world. This condition makes the birth of a new world that is often called the global village, in which it is inhabited by citizens called network citizens (netizens).

Utilization of Information Technology in addition to providing a positive impact of course on the other side can have a negative impact. The positive and negative impact of the use of information technology should be like two sides of a coin that must be distinguished but can not be separated. Its meaning on the positive side, of course, can be used to develop and achieve the national goals aspired by the Indonesian nation.⁶ As the nature of law and justice can be judged by jurists and by laypeople which means that in the community of life it will always occur interrelation with the problems of law and Justice.⁷

Pemerintah melalui Kementerian Komunikasi dan Informatika, mengumumkan perihal re-registrasi obligation for Cellular Telecommunications customers (prepaid cards), by requiring customers to submit a population identity number (NIK) in accordance with e-KTP, and family card number. Referring to the No. 14 of 2017, which is used as a reference for the implementation of this policy, does not clearly state the purpose and purpose of re-registration. Solely only said by the ministry, that this is necessary because many SIM cards are misused. The lack of guarantees of personal data and privacy in general in Indonesia, has become a potential threat to the enjoyment of the right to privacy of citizens.

The reason is based on a press release from the Ministry of Communications and Information Technology (Kemenkominfo). Registration needs to be done in order to provide protection to users. Related to the misuse of mobile phone numbers by irresponsible parties. Like scams and hoaxes. The legal basis for prepaid card registration is contained in the regulation of the Minister of Communications and Information Technology number 14 of 2017 on amendments to the regulation of the Minister of Communications and Information Technology number 12 of 2016 potential threats to the right to privacy of citizens, from the SIM Card registration process, as a result of the lack of guarantees for the protection of personal data of citizens, can technically be drawn from the registration process itself. Although the collection of NIK data and family card numbers is carried out centrally by the government, by sending SMS to certain numbers, the data validation process is still carried out by the operator. This means that the First party who will collect and process all customer (personal) data, is the service provider. In addition, technically the work of "SMS", all messages sent by customers, will also first go to the Short Message Service Center (SMSC) managed by the operator.

In addition, the contract between the user and the operator is only related to telecommunications services, but the operator actually cooperates with third parties to market products. The increasing number of offers of financial products and/or services through SMS and telephone carried out by third

⁵ Ashabul Kahpi, *Pengupahan : Tinjauan Terhadap Permasalahan Ketenagakerjaan Di Indonesia* : Jurisprudentie, Volume 5 No. 7, <http://scholar.google.co.id/>. 27 januari 2021

⁶ Samsul Wahidin, *Hukum Pers*, Pustaka Pealajar, Yogyakarta, 2011, hlm.153

⁷ Feby Reski Utami, Hamsir, *Penyelesaian Tindak Pidana Ringan berdasarkan Penyesuaian Batasan tindak pidana ringan dan jumlah denda*, Vol 3.No.1 2021, hlm 2

parties has led to conditions that can unsettle the community. which can be taken, namely via SMS or through the operator's online service.

But in practice with the enactment of the obligation for the public to register simcard is not without its constraints. As is known, apparently until this moment there are still very many Indonesian citizens who do not have e-KTP. This will be a problem because one of the requirements for registration is to include the number listed on the KTP and the Family Card whose NIP is listed there. As a result, many people will not be able to use or get a SIM Card for their cell phones.

From October 31, 2017 to February 28, 2018, the government through MOCI Regulation No. 14 of 2017 concerning the Second Amendment to MOCI Regulation No. 12 of 2016 concerning the registration of telecommunications service customers, re-registered cellular phone SIM cards. It is known that there have been 323 million SIM cards that have been re-registered by the owner with the support of KK and KTP data.

The amount of data that is very large is certainly very sensitive especially if there are reports of alleged data leaks. The government through the Indonesian Telecommunications Regulatory Agency (BRTI) immediately responded to information about 50 numbers registered in the mobile prepaid number registration process that use the same data. The media confirmed the event. However, this is an act of misuse of NIK, not a data leak. BRTI also conducts searches. News circulated about the misuse of population identification numbers (NIK) and Family card numbers (KK) of people who register prepaid cards. Director General of Dukcapil Zudan Arif Fakhrulloh emphasized that there was no data leak from his side. What has been identified is the existence of irresponsible persons who disseminate NIK and KK numbers to social media so that there is abuse of the use of NIK and KK numbers for registration by irresponsible parties. In addition, consciously or not, many families are uploaded on social media by their own owners and there are some telephon card sellers (pulse counters) who use other people's NIK without their knowledge.

The Ministry of Communications and Information Technology (Kominfo) confirmed the news of the misuse of population identification numbers (NIK) and Family card numbers (KK) of people who register prepaid cards. The media confirmed the event. However, this is an act of misuse of NIK, not a data leak. Kominfo seeks to provide protection to the public against the registration process. The success of prepaid registration is considered to provide legal protection for the community from criminal acts such as fraud, terrorism, extortion, crime on the internet, and so on.⁸

Kominfo through the chairman of BRTI reminded that everyone, including outlets or outlets, is strictly prohibited from registering using someone else's NIK and KK without rights. Ramli also emphasized that operators should be firm and quick to stop numbers that are reported or Numbers that are registered with an unreasonable amount for one NIK and no KK. Kominfo asks operators to supervise the circulation and distribution of their mobile cards and ensure outlets under their responsibility to register and activate their prepaid cards correctly, with rights in accordance with the law. In response to this, Kominfo also continues to coordinate with the Director General of Dukcapil.

The existence of sanctions for irresponsible parties who disseminate someone'S NIK and KK information does not make people who run telecommunication service provider outlets afraid of such

⁸Ahmad Budiman, *Perlindungan Data Pribadi dalam Kebijakan Registrasi Kartu Prabayar*, Vol.x.No.6//puslit/Maret/2018,hal.26

things and many make people resa about it because it concerns the right to privacy now and in the future.

METHOD

Research that uses empirical juridical approach means research that emphasizes the facts that occur in the field. While research that uses normative juridical approach means to examine the legislation and regulations with legal theories regarding the application of the rules. This research approach is also called doctrinal legal research because this research is carried out or aimed only at regulations written in laws and regulations or other legal materials, as a librarian researcher or document researcher because this research is mostly done on secondary data that is in the library.

RESULT AND DISCUSSION

1. Application of criminal abuse of NIK for card registration based on Law No. 11 of 2008 concerning information and Electronic Transactions

Electronic transactions are legal acts carried out using computers, computer networks, and/ or other electronic media. The implementation of electronic systems is the utilization of electronic systems by state officials, people, business entities, and/or the public. Based on Law No. 11 of 2008 article 1 Item 2. And Article 1 Item 6. Legal protection serves to realize the goals of the law based on Justice, expediency, and legal certainty, legal protection is a protection given to legal subjects who here are mobile card users with the rule of law. Hadjon has explained that legal protection is the protection of dignity, dignity, and recognition of human rights owned by legal subjects based on the legal provisions of arbitrariness.⁹

- a. Legal protection includes two things::
- b. preventive legal protection, legal protection in case of objection or to express an opinion before a government decision that has the purpose of preventing disputes. Preventive legal protection has an element of prudence, so that the government is encouraged to be careful in making decisions based on discretion.
- c. repressive legal protection, legal protection for Dispute Resolution and conducted by the General Court and Administrative Court in Indonesia. The principle of legal protection against government actions derives from the concept of recognition and protection of human rights.¹⁰

Indonesia in 2016 has issued regulations in the form of regulation of the Minister of Communications and Information Technology number 20 of 2016 on the protection of personal Data in electronic systems, this protection is regulated in Law Number 11 of 2008 on information and electronic transactions, namely Article 1 Item 2 of the ITE Law stating that electronic transactions are legal acts carried out using computers, computer networks or other electronic media. In the electronic registration of mobile cards, users and mobile operators have entered into a legal relationship that is poured through a form of agreement or contract that is also carried out electronically and in accordance with Article 1 Item 17 of the ITE Law is referred to as an electronic contract, namely an agreement contained in

⁹ Philipus M Hadjon, 1987. *Perlindungan Bagi Rakyat Indonesia*, PT. Bima Ilmu, Srabaya. h.1-2

¹⁰ Soerjono Soekamto, 1984. *Pengantarr Penelitian Hukum*, Ui Press, Jakarta, h.133

electronic documents or other electronic media. however, this is considered not to meet the need for data Protection seeing so many technological developments that exist and focus on data as the main source. The current regulation is also considered insufficient to provide a deterrent effect against parties who are not responsible for the personal data of the Indonesian people, while the Ministerial Regulation only provides administrative sanctions instead of criminal sanctions.

Legal regulations regarding the protection of personal data in Indonesia are still not codified and spread to several sectoral regulations, these regulations, among others, are contained in Law Number 24 of 2013 jo. Law No. 23 of 2006 on Adminduk, Law No. 19 of 2016 jo. Law No. 11 of 2008 on ITE Law, Government Regulation No. 28 of 2012 on the implementation of electronic systems and transactions, Minister of communication and Information Regulation No. 20 of 2016 on the protection of personal Data in electronic systems.

2. What are the obstacles in the application of criminal offenders misuse of NIK for card registration

The implementation of service tasks in the organizational structure does not always go well as we expect, sometimes in the implementation of legal observers experience obstacles or inhibiting factors.

a. Business Actors

In the business world, the term producer is known as opposed to the term consumer, but in the consumer protection law, the term producer is not used but the term business actor. Understanding business actors in consumer protection law is:

"Business actors are any individuals or business entities, both in the form of legal entities and non-legal entities that are established and domiciled or carry out activities within the jurisdiction of the Republic of Indonesia, either alone or together through agreements on the implementation of business activities in various economic fields"

The definition of business actors above is a very broad understanding because it includes all forms of business activities, so that consumers will be easier to determine and hold accountable or make claims for compensation if harmed by business actors due to the use of products. In conducting various business activities can not be separated from the ways and tricks to launch or line up products or sales. This also raises many ways to launch their business no matter even though it is illegal. Like a counter outlet business that does not escape this.

In normative law, the law has mandated that all types of internet package cards or starter packs in the registration must be based on the family card and the buyer'S NIK, but in this case not a few of the outlets that provide products such as using someone else's family card to register the card on the consumer. This is because buyers do not bring their own family cards, such as business actors who open pulse counter businesses with the initials MI and KJ who claim that they have to do this because many compaitors have done this and the dominant customer wants to buy if the starter card or data quota has been registered first to receive it. The lack of public knowledge of the rights they know as consumers can harm their own, for that business actors must have good faith to consumers to provide rights to consumers as users of goods and/or services.

As a business actor must carry out its obligations as a business actor, including providing clear and accurate information and in good faith to consumers.

b. Public Awareness Factors

The Department of Population and civil registration as a service provider always strives to provide good services for service users. However, it still lacks attention from the public due to lack of awareness and knowledge of the importance of making KK and KTP directly as an orderly population administration. Most people prefer the services of brokers than to take care of themselves because they do not want to bother in the management. In fact, the current government management has tried not to make it difficult for the community. And the apathetic nature of some people is what then becomes the cause of ignorance about how the procedure for handling ID cards and KK. It can be seen from the results of the author's interview which states that the rules regarding card registration have spread to every community's ears, especially in urban areas, but it is not directly proportional to the public awareness of the importance of card registration with a self-owned population identification number, because in addition to being safe with things that are feared also comply with the rules mandated by the ITE Law and the Indonesian telecommunications Registration Agency letter number 326/BRTI/IX/2015 concerning telecommunications service providers and the community.

A student has experienced the incident of buying a card that has been registered that is not based on his or her own identity and not long ago there was an incoming call on the number requesting or charging payment, something like this became an event or the result of buying a card that was registered carelessly or not in accordance with personal identity. For this reason, according to the author, buyers are also expected to comply with existing regulations so that they can avoid events that can cause anxiety themselves later.

c. Ministry of communication and information

The Ministry of communication and Information Technology (Kominfo) appealed to the public to remain careful to maintain individual identities so that they are not given to people who are not entitled. Likewise, when asking for help to register a prepaid card for NIK and NO data.KK is not distributed to unauthorized parties. Do not let it be recorded, photographed, photocopied except at outlets owned by direct operators.

The Ministry of Communications and Information Technology (Kominfo) responded to the case experienced by Aninda Indrastiwi, a user of Indosat Ooredoo. The victim reported that his NIK and KK used more than 50 unknown numbers to re-register the SIM card. Head of the Public Relations Bureau of Kominfo Noor Iza stated that data theft during the registration process is possible, especially if SIM card users are not careful in providing their identity.

The man who is often called Noor stated that the case experienced by Aninda was not a data leak from the government or operators. But it may happen when the user gives his identity to another party. Therefore, it is currently working with the police to find perpetrators who abuse the victim's identity. "Kominfo is in the process of cooperating with the police. There's been communication with the police. Need to sit down together for this case,"he said by telephone. Kominfo asked the public to remain careful to maintain individual identities so that they are not given to people who are not entitled.

Likewise, when requesting assistance for prepaid card registration so that NIK and KK data are not shared with unauthorized parties.

"What is happening now is that the news is the abuse of NIK and KK used by registration without rights and not a data leak. Do not let it be recorded, photographed, photocopied except in outlets owned by direct operators," he explained. Related to Aninda's case, Noor said he had followed up by communicating with the victim. An unknown number using Aninda's identity has also been blocked. Report to law enforcement the victim himself had claimed to have reported this incident to the authorities. Unfortunately, Noor does not know whether Aninda and Kominfo will make joint legal efforts to find the perpetrators.

Previously, Aninda reported her identity theft via Twitter to Indosat Ooredoo and Kominfo. Deva Rachman, head of Corporate Communications Indosat Ooredoo, confirmed the report yesterday and promised to turn off the unclear numbers on the victim'S KK and NIK.

d. Law Enforcement Officers

Police revealed the misuse of population data for registration of SIM Card Polrestabes Makassar through Subdit Jatanras Ditreskrimum managed to uncover cases of misuse of personal or population data both NIK (population identification number) and KK (Family Card) Personal Data was used for registration of SIM cards or mobile cards from various providers.

Investigators arrested one suspect with the initials MN (35 years), a resident of Gowa, South Sulawesi, in the case of a fake Gojek order. MN is known as the person who registered thousands of starter cards or sim cards from all cellular operators and then supplied them to the fictitious Gojek order suspects.

Not only Axis cards, Mn suspects also sell active starter cards of other operator brands. "There are four (registered starter packs) in front of me, from Telkomsel, Axis, IM3, and XL," said Pol investigator Luki Hermawan, he explained, Mn suspects could access population data through illegal databases skrip.id purchased through Tokopedia. With the capital of the data, the suspect then registered the starter pack with a tool called modem pool connected to a laptop containing thousands of population data. One identity can be used to register approximately 16 starter packs.

CONCLUSION

Although there is no law that regulates in more detail and specifically regarding the protection of personal data, especially the registration of starter packs/quotas, but the people of indonesia do not need to worry because data protection is regulated in the Constitution of the unitary state of the Republic of indonesia in 1945, administrative law, ITE Law, and personal data protection law in electronic systems.

The application of rules regarding the regulation of Prime Card Registration there are several obstacles, namely the counter Outlet business actors who register who do not have the identity of the buyer due to the intense business competition conducted by other outlets and the second obstacle is a matter of public awareness or the dominant buyer wants to quickly get the instant does not want to wait or complicated so as not to think about the impact of registration of cards purchased based on the registration of other people's resident cards.

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