



Analysis of Exoneration Clauses In Terms and Use Of The Tik Tok Application

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Abstract

One of the social media applications that has many users is the Tik Tok application. Regarding the security of personal data, it is stated that Tik Tok takes steps to ensure user information is handled securely and in accordance with its privacy policy. However, in the privacy policy there is an exoneration clause which states that Tik Tok cannot guarantee the security of user information transmitted through the Platform, so the risk of each transmission is borne by the user himself. This provision is contrary to the provisions of Article 18 paragraph (1) a of Law Number 8 of 1999 concerning Consumer Protection. This shows that Tik Tok has not been maximally responsible for maintaining the confidentiality of user data. The provisions in the terms and use of the Tik Tok application in providing protection for the personal data of Tik Tok users are in line with the provisions of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems, but not yet maximized. This is due to the existence of an exoneration clause which frees Tik Tok from its responsibility for the risk of transferring personal data of its users.

Keywords: exoneration clause, terms and use of the Tik Tok application.

A. Introduction

The issue of personal data protection is one of the important issues that has been in the spotlight recently. The widespread use of digital platforms is one of the reasons why personal data protection is important. Personal data relates to a person, so it can be used to identify that person, namely the data owner. Security of personal data is related to the concept of privacy. The idea of privacy itself is to maintain personal integrity and dignity.

The affirmation of the protection of personal data is regulated in Article 28G paragraph (1) of the 1945 Constitution, which states that "Everyone has the right to protect himself, his family, honour, dignity, and property under his control, and has the right to a sense of security and protection from network threats. to do or not to do something which is a human right." However, to protect personal data, several guidelines and measures are needed to ensure that laws and policies are in line with human rights principles. If not, it is emphasized that the created rules will limit and reduce the function of freedom and opportunity, which is digital technology's main character.

In the development of technology, social media emerged to communicate a new style. This may occur in data during interactions between social media users. This can happen if the user feels that other parties use the information or data listed or



included in the social network for purposes considered disturbing and dangerous to threaten others. Based on this, the owner of the social networking site makes a privacy policy that contains provisions on the extent to which data or information from social network users can be accessed or known by parties other than the account user himself.

One of the social media applications with many users is the Tik Tok application, where its popularity as a newcomer to social media with user growth continues to increase. Still, the application also highlights the data security aspect.

Tik Tok is an application that provides special and interesting effects that users of this application can easily create cool short videos that will attract the attention of many people who see it. The Tik Tok application is a Chinese social network and music video platform launched in September 2016. Regarding the security of personal data, it is stated that Tik Tok takes steps to ensure that user information is handled securely and under the privacy policy that Tik Tok has determined. However, although Tik Tok will protect users' personal data, for example, by encryption, We still cannot guarantee the security of user information transmitted through the platform, so the user bears the risk of any transmission.

The privacy policy in the terms and use of the Tik Tok application uses a standard agreement, in which there is an exoneration clause related to protecting personal data. The legal agreement was chosen because the deal is seen as more economical and practical. Economical in terms of time, effort, and costs incurred. For reasons of entrepreneurs, standard agreements are like private legislators (*legio particuliere wetgever*). Pitlo said that the standard agreement is a forced agreement. Mariam Darus Badruzaman noted that the standard agreement is actually an agreement whose contents are standardized on exoneration requirements and in the form of a form. Meanwhile, according to Mariam Darus Badruzaman, the exoneration clause is a clause that contains the liability of creditors. Several experts call the exoneration clause an exception clause, which is a clause that aims to limit the liability of one party to the claim of the other party if the person concerned does not or should not carry out his obligations specified in the agreement.

The exoneration clause in the standard agreement is not against the law as protecting human interests is different from other norms. However, the existing legal rules must be followed and should not conflict with the sense of community justice. Thus the law aims to guarantee legal certainty in society and must be based on justice, namely a sense of community justice. Said Sampara argued that the law's main purpose is to create an orderly society and a culture so that human interests will be protected.

In practice, some time ago, it was found that 235 million users' data from Instagram, YouTube, and Tik Tok was leaked on the internet. This data leak was reported by independent researchers led by Bob Diachenko on 1 August 2020. The leaked data includes phone numbers and email addresses. IT experts say there is no evidence of Tik Tok data leaks, but the potential for data leaks is always there. Based on the description above, the problem discussed in this study is how the analysis of the exoneration clause in the terms and use of the Tik Tok application is reviewed by the Minister of Communication and Information Number 20 of 2016 and whether the

provisions in the terms and use of the Tik Tok application have provided protection for the personal data of Tik Tok users.

Several studies related to eco-friendly clauses and the protection of personal data, among others, were conducted by Muhammad Saiful Rizal, who examined the exoneration clause in online transportation agreements. The application of the exoneration clause harms consumers by feeling insecure and comfortable in using online transportation services. Ida Ayu Maharani Chintya Anjani and I Wayan Novy Purwanto carried out another study regarding the inclusion of standard clauses, who stated that the inclusion by business actors is an exoneration clause unilaterally so that it can harm consumers.

This research is different from previous research, where the object studied is different. This study aims to analyze the exoneration clause in the terms and use of the Tik Tok application in terms of Permenkominfo Number 20 of 2016 and the provisions in the terms and use of the Tik Tok application in the protection of personal data of Tik Tok users.

B. Method

The approach method used in this research is a normative juridical approach, putting the law as a building system of norms. The system of norms in question is about principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). The research specification is descriptive-analytical because it is hoped that a clear, detailed and systematic description of the object under study can be obtained. Therefore, this research provides a detailed, systematic, and comprehensive description of everything related to the regulation of the exoneration clause in the terms and conditions and recommendations of Number 20 of 2016 on the Protection of Personal Data in.

The source of data in this study is secondary data. Secondary data is obtained through library research to get a theoretical basis in the form of opinions or writings of experts or other parties and to obtain information in the form of formal provisions and data through existing official texts. The data collection method used is library research (library research). The method of presenting data in this study uses descriptive methods, namely by explaining and describing what is according to the problems studied or the data collected in the form of descriptions. The data analysis method is a qualitative analysis method, namely non-statistical or non-mathematical analysis. The contents of the library data will be analyzed using legal principles, theories, expert opinions and existing laws and regulations.

C. Result and Discussion

1. Exoneration clause in the Terms and Use of the Tik Tok Application in terms of Permenkominfo Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems

Tik Tok terms of service, which is an agreement between Tik Tok and users, it can be seen that Tik Tok collects users' personal data in the form of user names, passwords, birth dates, ages, email addresses and/or phone numbers, as well as information included in user profiles, photos or videos of users' profiles. . The user generates such information at the time of creating an account and uploading content

to the platform. In addition, Tik Tok also collects information about the user's location based on the SIM card and/or IP address. The collection of personal data is based on the user's consent because by creating an account, the user agrees to all the clauses made by Tik Tok.

The Terms of Service is a legal agreement between the user and Tik Tok is a standard agreement, in which Tik Tok makes all clauses, while the user only has two choices, agree or disagree. If the user agrees, they can create an account and use the Tik Tok application. In contrast, if the potential user does not agree, then there is no engagement between the user and Tik Tok because the potential user does not use the application.

In general, the standard agreement will contain an exoneration clause. Including an exoneration clause in a legal agreement is usually due to an unequal position between the parties, where business actors have a stronger position than consumers. Likewise, in Tik Tok's Terms of Service, there is an exoneration clause, namely in the "Limits" provision, which states that Tik Tok is not responsible to the user if the user loses profits, the user suffers a loss due to the user's actions due to deletion, damage or failure to provide information, or the user's failure in maintaining the security and confidentiality of passwords or user account details.

An exoneration clause regarding personal data contained in the "Personal Data Security" policy which states as follows: "We take steps to ensure your information is handled securely and in accordance with this policy. Unfortunately, the transfer of information over the internet is not completely secure. Although we will protect your personal data, for example by encryption, we cannot guarantee the security of your information transmitted through the platform; so the risk of any transmission is borne by you".

The clause above indicates that when a user transmits personal data through the platform, Tik Tok cannot guarantee the security of that personal data, so all risks that arise are the user's responsibility. Thus, if user data leaks, it is the user's responsibility.

The electronic agreement between Tik Tok application users and Tik Tok is a standard agreement in which Tik Tok determines all clauses. Regarding the protection of personal data in terms of use and privacy policy, there is an exoneration clause in which Tik Tok ensures responsibility which states that Tik Tok is not responsible to the user if the user loses profits, the user suffers a loss caused by the user's actions due to deletion, damage or failure to provide information, or failure of users to maintain the security and confidentiality of passwords or user account details. However, Tik Tok also does not guarantee the security of the user's personal data information transmitted through the platform, so the user bears the risk of transmission. This is contrary to the provisions of Article 9 paragraph (3) of the Minister of Communication and Information Technology Number 20 of 2019 concerning Personal Data Protection which states that when collecting personal data with the consent of the owner, everyone who collects and collects personal and personal data must maintain such confidentiality. Furthermore, with the concentration clause, in the event of a leak of personal data, Tik Tok has released its responsibility.

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Electronic agreements are an initiative of business actors to summarize agreements to make them more effective and efficient. However, this is also based on freedom of contract, which is used excessively by business actors to gain profit for themselves so that consumers in a weaker position will be greatly disadvantaged by an exoneration clause in the agreement.

The existence of an exoneration clause in the agreement between users and Tik Tok shows that business actors have not been maximally responsible for maintaining the confidentiality of their consumer data. The exoneration clause is a means for business actors (Tik Tok) to avoid responsibilities that should be the responsibility.

The exoneration clause contained in the terms and conditions for using Tik Tok is contrary to the provisions of Article 18 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, which states that "business actors in offering goods and/or services are intended to make or make clauses standard basis in every document and/or agreement when stating the responsibility of the business actor

The exoneration clause in the terms and conditions of using the Tik Tok application states that Tik Tok cannot guarantee the security of personal data so that all risks that arise are the responsibility of the user and have complied with the provisions of Article 18 paragraph (1) of Law Number 8 of 1999 on Consumer Protection. This is because the privacy policy has an exoneration clause that states responsibility by providing full protection and responsibility for consumer personal data (Tik Tok users). Thus, in accordance with Article 18 paragraph (3) of Law Number 8 of 1999, it is null and void. The provisions of Article 18 paragraph (3) of Law Number 8 of 1999 state that "Every standard clause that has been stipulated by business actors in documents or agreements that meet the provisions as referred to in paragraphs (1) and (2) is declared null and void."

In practice, the agreement between the user (consumer) and Tik Tok is not then null and void by law. As Tik Tok users create an account and register, they have agreed to everything in the agreement. This includes the privacy policy that regulates users' personal data.

Law Number 8 of 1999 concerning Consumer Protection has protected consumers who enter into engagements or agreements through electronic contracts to remain under the provisions of laws and regulations. A standard clause in the electronic contract between consumers and business actors for the Tik Tok application must comply with applicable regulations with no responsibility from application business actors to consumers. So that consumers will get legal certainty if something happens or things that harm consumers in consuming goods and or services from application business actors.

Regulation of the Minister of Communication and Information (Permen Kominfo) Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems has also provided legal protection to consumers for the privacy of their personal data. Nevertheless, consumers must pay attention to whether their personal data used by application business actors are under the goals or interests of consumers. For this

reason, consumers must read the terms of use and the privacy policy of the Tik Tok application so that they can ask for accountability from application business actors in the event of using personal data without the consumer's knowledge.

When consumers who use the Tik Tok application service agree to the exoneration clause, the consumer automatically agrees to business actors' use of personal data. Therefore, the existence of the exoneration clause is very detrimental to Tik Tok users (consumers) as users of application services. Consumers do not get full protection for their personal data managed and used by business actors (Tik Tok application). Consumers also do not receive any liability guarantee from business actors regarding their personal data after using the application

2. Provisions in the Terms and Use of the Tik Tok Application in Providing Protection of Personal Data of Tik Tok Users

On the terms and use of the Tik Tok application, efforts have been made to protect the personal data of Tik Tok users. This is stated in the "Security Terms" clause, namely: (1) Storage of users' personal data in protected data centers in the United States and Singapore, by encrypting user data and implementing strong employee access; (2) The use of advanced and multi-layered protection to make it difficult for malicious people to enter the system with HackerOne to operate the global technology bug and vulnerability search program, and the internal team is actively working; (3) Empowering users by providing some tips to protect personal data; (4) The use of the Indonesian language in writing the terms of service; (5) The age limit for Tik Tok users is that they cannot be less than 13 years old, if they are less than 21 years old, they must get permission from their parents.

The law works as the protection of human interests. Therefore the law must be implemented. Legal protection of personal data in Indonesia is regulated in Permenkominfo Number 20 of 2016 concerning the Protection of Personal Data in Electronic Systems.

The results of the study illustrate that Tik Tok has tried to protect personal data in the provisions which include: (1) Encrypting user data and implementing employee access; (2) The use of advanced technology and multi-layered protection to make it difficult for bad people to enter the system; (3) Partner with HackerOne to operate a global bug and vulnerability search program; (4) Empowering users by providing some tips for personal data protection.

The protection of encrypted data is under the provisions of Article 15 of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems which states that personal data stored in electronic systems must be in the form of encrypted data. The use of advanced technology and the authority of Hacker One to operate a global bug and vulnerability code search program with the provisions of Article 5 of the Minister of Communication and Informatics Number 20 of 2016 concerning Personal Protection in Electronic Systems which states that electronic system operators must have internal data protection rules. In this case, Tik Tok has compiled regulations for the internal protection of personal data as a form of prevention to avoid failures in the protection of personal data that are managed properly considering aspects of the application of technology, human resources, methods, and costs as well as referring to

the provisions in this Ministerial Regulation and other regulations. other relevant laws and regulations.

Empowering users with some tips for personal data protection, such as the provisions of Article 5 paragraph (4) of the Minister of Communication and Information Technology Number 20 of 2016 which states that other preventive measures to avoid failures in the protection of personal data they manage, must be carried out by every electronic system operator, at least awareness of human resources in their environment to protect personal data in the electronic systems they manage.

The provisions in the terms and use of the Tik Tok application are to protect the personal data of Tik Tok users. This is in accordance with the provisions of the Minister of Communication and Information Technology Number 20 of 2016 concerning the Protection of Personal Data in Electronic Systems. However, it cannot be denied that the legal protection of personal data in the terms and conditions of using the Tik Tok application has not been maximized. There are still gaps that allow personal data to leak. At the same time, Tik Tok has made an exoneration proposal regarding claim responsibility regarding information transformation so that the users themselves must bear all risks.

Protection of personal data is related to the concept of privacy, which is the idea of maintaining personal integrity and dignity. The concept of data protection states that individuals have the right to determine whether they will share or exchange their personal data or not. In addition, individuals also have the right to determine the conditions for transferring personal data.

In practice, in the terms and conditions of using the Tik Tok application, users cannot bargain and only comply with the terms and conditions of Tik Tok. So that, in the end all the risk of personal data that has been given to Tik Tok will still be borne by the user. This condition has resulted in many cases of privacy violations. A person's personal data can be easily accessed and disseminated without the knowledge of the data owner.

D. Conclusion

The exoneration clause in the terms and use of the Tik Tok application is contained in the "Personal Data Security Policy" which states that Tik Tok cannot guarantee the security of information transmitted through the platform, so the user bears the risk of each transmission. This provision is contrary to the provisions of Article 18 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection. This shows that Tik Tok has not been fully responsible for maintaining the confidentiality of user data. The exoneration clause is a means for Tik Tok to avoid responsibilities that should be borne.

The provisions in the terms and use of the Tik Tok application in protecting the personal data of Tik Tok users such as the provisions of the Minister of Communication and Information Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems, but not yet maximized. This is because there is an exoneration clause that Tik Tok has taken from its responsibility for the risk of transferring the user's personal data.

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