

Forms of Loss in Personal Data Protection Law, and Understanding Their Relationship with Article 1365 of the Indonesian Civil Code on Compensation

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Since the enactment of Law No. 27 of 2022 on Personal Data Protection (“**PDP Law**”) on October 17, 2022, discussions have arisen concerning its provisions, particularly disputes stemming from breaches of data privacy protection, leading to losses for relevant parties. The PDP Law requires all entities responsible for personal data, including controllers, processors, and other parties involved in the data processing, to conform to the regulations outlined in the PDP Law within a period of two years from its enactment. The PDP Law is not only aimed at safeguarding the rights of personal data subjects or owners but also aims to hold accountable those responsible for any errors made in the processing of personal data.

Further, the PDP Law recognizes the potential losses suffered by victims in the event of a breach of personal data protection. It explicitly states that any unlawful acquisition, collection, or falsification of other individuals' personal data can lead to significant losses for those affected, and thus it also offers avenues for the recovery of such losses through criminal proceedings or dispute resolution mechanisms.

Recovery of Losses Resulting from Personal Data Breaches

Although the PDP Law does not provide a detailed explanation of what constitutes a loss, it does state that the violator of an individual's personal data may be subject to criminal sanctions, such as imprisonment and/or a fine. On the other hand, corporations that violate an individual's personal data may face other criminal penalties, including payment of compensation for losses.

This provision provides an alternative route for individuals impacted by personal data breaches and encountering losses to seek recompense via criminal proceedings. Nevertheless, as the requirement for compensation hinges on a judgment from a criminal court, the affected party must actively present and validate the suffered losses.

This carries implications for the claimed losses, as they must be adequately addressed within the framework of the criminal investigation and prosecution process aimed at seeking compensation.

Other than the above, any individual who has suffered losses due to a personal data breach can file a civil lawsuit based on tort, according to Article 1365 Indonesian Civil Code (“**ICC**”) to pursue compensation. According to the ICC, losses can be either material or immaterial. Therefore, anyone who feels harmed by the violation of his/her personal data can claim damages based on PDP Law in conjunction with Article 1365 of the ICC.

Losses that can be claimed in a civil suit based on the provision in the PDP Law in conjunction with Article 1365 ICC must be specific and quantifiable. This is evident from previous court decisions, such as Supreme Court Jurisprudence No. 864K/Sip/1973 in conjunction with Supreme Court Jurisprudence No. 459K/Sip/1975, which state that a claim for compensation must be detailed and clearly specify the type and amount of loss suffered. This means that victims of personal data protection violations need to demonstrate and substantiate the incurred losses, whether material or immaterial, in the civil lawsuit to pursue compensation for their losses.

Recent Case of Personal Data Infringement

There have been numerous issues surrounding the safeguarding of personal data lately. These issues have finally landed in the hands of the judiciary and need to be resolved through the court. However, we could not yet find any criminal court granting the victim of a personal data breach compensation for losses. From the civil perspective, one case concerned a civil lawsuit filed in relation to an e-commerce company's alleged failure to properly store and protect the confidentiality of personal data and privacy rights of user accounts as intended.

Unfortunately, after examining the facts and evidence presented during the trial, the civil suit filed on the basis of the personal data breach was declared inadmissible since the court saw that authority to adjudicate the case should be the State Administrative Court instead of the District Court, as regulated under Supreme Court Regulation No. 2 of 2019 on the Guidelines for Resolving Disputes Over Government Actions and The Authority to Adjudicate Unlawful Acts by Government Bodies and/or Officials, because the plaintiff involved a government agency in the lawsuit. Aside from the court decision, the plaintiff also proposed losses in the form of material and immaterial damages, which were not examined in the proceeding.

This instance demonstrates an attempt made by victims of breaches in personal data protection to secure compensation for the damages they endured. Nevertheless, the response and perspective of the court towards such compensation claims, whether in criminal or civil cases, has yet to be observed based on existing cases. Other than the above, there is a civil lawsuit in which an individual has filed a case against a telecommunication company. The lawsuit is based on tort, as the individual claims that the company illegally tapped into their communication through one of its features.

The first instance and appeal court both rejected the lawsuit on the grounds that it was premature since the individual claimed that the telecommunication provider committed the tapping and thus the courts stated that a criminal decision should have been handed down against the telecommunication provider elaborating on the illegal tapping allegedly committed by the provider.

Conclusion

Apart from the mechanism for recovering losses for victims of personal data breaches that have been provided by PDP Law through criminal and civil channels, the implementation of this loss recovery mechanism has not been proven effective in recovering losses for victims of personal data breaches. However, the fact that PDP Law has provided an opportunity for victims of personal data breaches to obtain recovery for losses needs to be addressed properly by parties responsible for personal data, including controllers, processors, and other parties involved in the data processing.

On the other hand, the victims of a violation of personal data should raise the awareness of the parties responsible for personal data, including controllers, processors, and other parties involved in the data processing, to make sure that a compensation claim would not be initiated.

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The article above was prepared by Dentons HPRP's lawyers

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