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Protection of Children Personal Data in Digital Financial Services in Indonesia

Aloysius Bernanda Gunawan¹

¹ Business Law, Bina Nusantara University, Indonesia, ab.gunawan@binus.ac.id

Corresponding Author: ab.gunawan@binus.ac.id

Abstract: This paper delves into the imperative factors for safeguarding children's personal data in digital banking services, highlighting the legal nuances and operational intricacies involved. As the banking sector increasingly integrates digital solutions, the protection of minors' data emerges as a critical concern, necessitating a thorough examination of the regulatory landscape and its practical implications. Focusing on Indonesia, the study scrutinizes national regulations on children's data protection within digital banking, juxtaposing these with international benchmarks, notably the General Data Protection Regulation (GDPR) framework adopted by European countries. This comparative analysis aims to unearth effective strategies and regulatory mechanisms that can fortify children's data privacy in the banking domain. Central to the discussion are the principles of consent, data minimization, and age verification, which are evaluated for their effectiveness in safeguarding young users' data. The paper assesses the technical and procedural measures that banks must implement to comply with these regulatory demands, ensuring the confidentiality and integrity of children's data. Challenges such as aligning technological advancements with stringent data protection standards are addressed, underscoring the pivotal role of various stakeholders, including regulatory bodies, banking institutions, and guardians, in cultivating a secure digital banking ecosystem for minors. Conclusively, the research proposes a set of recommendations aimed at refining Indonesia's legal framework regarding children's data protection in digital banking. By synthesizing insights from international practices, the study advocates for a holistic approach encompassing legislative reforms, technological enhancements, and educational initiatives to bolster the defenses around children's personal data in the digital financial landscape.

Keyword: Data Protection, Children, Digital Banking.

INTRODUCTION

The rapid development of digital technology has brought significant transformation in various sectors, including the banking sector. The emergence of digital banking services offers greater convenience and accessibility for customers, including children. However, on the other hand, this digitalization also raises concerns regarding data security, especially children's personal data.

Children's personal data is information that can identify a child, such as name, address, telephone number and biometric data. Protection of children's personal data is crucial because they do not yet have sufficient capacity to understand and consent to the collection and use of their data.

This research aims to understand and evaluate how digital banking in Indonesia protects children's personal data. It is hoped that this research can contribute to improving the protection of children's personal data in the digital era and encouraging more responsible digital banking practices.

As an integrated business ecosystem is formed and supported by digital financial services, legal risks related to child protection emerge. Children as part of the vulnerable age generally have several risks that need to be taken into account, including sexual exploitation and financial exploitation.¹ In more detail, the two forms of exploitation above can take the form of identity theft, bullying, sexual harassment, conventional fraud and money mulling² all of which involve children. Even Europol calls money mulling part of cybercrime and part of money laundering.³ Because of that, since 2022 Europol has seriously carried out outreach about the dangers of money mules.

Looking at the normative basis regarding the age of children, when referring to Law No. 1 of 2023 concerning the Criminal Code article 150, a child is someone who is not yet 18 years old.⁴ Problems arise when children aged 17 years are able to have an ID card in accordance with Law No. 23 of 2006 concerning Population Administration, and therefore have complete access to banking services. The existence of a legal gap between these two laws can form the phenomenon of Children Facing Banking System (CFBS) or bancopaedo. CFBS appears when children who are mentally immature and do not have strong literacy in digital financial services then have problems and end up facing aspects of law enforcement carried out by banks and non-bank financial services, such as the use of debt collectors to collect children's debts.

In line with the increasing use of digital financial services among children, it is important for governments and related institutions to develop policies and regulations that can protect them from potential exploitation. This includes limiting access based on age, parental supervision, integrated and periodic assessments of financial services that children can access, as well as effective digital financial literacy education for children.

METHOD

The use of technology in financial services is nothing new, but advances in information and communications technology in the last two decades have brought significant changes to the way financial services are offered and accessed. Fintech, which combines the words "financial" and "technology", refers to technological innovations aimed at improving and automating the use and provision of financial services. This sector includes not only new start-up companies innovating in financial services, but also traditional financial companies adopting digital technologies to improve their services.⁵ Digital financial services include a variety of products, services and technologies that enable consumers and businesses to access

¹ "Child Financial Exploitation: A Guide for Parents, Carers and Professionals | Catch22," accessed March 15, 2024, <https://www.catch-22.org.uk/resources/child-financial-exploitation-a-guide/>.

² "Kenali Apa Itu Money Mule Dan Cara Menghindarinya - PT Bank Multiarta Sentosa Tbk | Bank MAS," accessed March 15, 2024, <https://bankmas.co.id/id/blog/apa-itu-money-mule/>.

³ "Money Muling | Europol," accessed March 15, 2024, <https://www.europol.europa.eu/operations-services-and-innovation/public-awareness-and-prevention-guides/money-muling>.

⁴ Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana" (2023).

⁵ "110 Top Fintech Companies & Startups To Know In 2024 | Built In," accessed March 15, 2024, <https://builtin.com/fintech/fintech-companies-startups-to-know>.

financial services through digital platforms. This includes e-payments, digital banking, digital insurance, online loans, online investments, and more. Fintech, on the other hand, refers to companies or start-ups that utilize the latest technology to create or improve financial products and services as a form of creative destruction to dominate the market.⁶ Although fintech offers many benefits to consumers, such as ease of access and lower transaction costs, challenges also arise, including those related to regulation, data security and privacy.⁷

The development of financial technology (fintech) in Indonesia has recorded significant growth in the last decade. The emergence of fintech startups has changed the financial landscape in the country, driving innovation, financial inclusion and competition with traditional financial players. The beginnings of fintech in Indonesia began with the emergence of e-money and mobile banking services in the 2000s. Along with the development of technology and the internet, various new fintech services have emerged, such as peer-to-peer lending, online lending, payment gateways and crowdfunding. The government, through the Financial Services Authority (OJK) and Bank Indonesia (BI), has begun to regulate this sector to encourage innovation while ensuring the security and stability of the financial system, including by regulating digital money as an extension of electronic money.⁸ Bank Indonesia Regulation no. 19/12/2017 concerning the Implementation of Financial Technology provides a legal basis for the development of fintech in Indonesia. Since then, the fintech industry in Indonesia has experienced significant growth.⁹

Currently, there are more than 200 fintech startups in Indonesia that offer various financial services, such as:

1. Digital payment: GoPay, OVO, Dana, ShopeePay, LinkAja
2. Online lending: Kredivo, Akulaku, Home Credit, FinAccel (Kredivo), Investree
3. Online investment: Bibit, Ajaib, IPOTFund, Bareksa, Ajaib Sekuritas
4. Crowdfunding: Kitabisa, Gandeng Tangan, LandX, Koinworks

The emergence of fintech initially raised concerns for traditional banks. However, over time, banks have begun to see fintech as an opportunity to innovate and improve their services. Several banks are starting to invest in fintech startups, collaborate with fintech startups, and even acquire fintech startups. This shows that banks are starting to adapt to the digital era and see fintech as partners, not as competitors. Banks in Indonesia have responded to the growth of fintech with various strategies, including the formation of digital business units, collaboration with fintech startups, mergers, and acquisitions. Some banks have chosen to work with fintech startups through incubation programs or strategic partnerships. This collaboration allows banks to expand their services and reach wider market segments.¹⁰

The massive development of digital financial services means that many children can easily access the available wealth. Several banks and financial institutions have developed special savings products for children that can be operated via mobile applications. This service is designed to teach children about the importance of saving from an early age in a fun and interactive way. Children can use digital financial services in their daily activities,¹¹

⁶ "MENGENAL LEBIH DEKAT 'FINANCIAL TECHNOLOGY,'" accessed March 15, 2024, <https://business-law.binus.ac.id/2016/05/31/mengenal-lebih-dekat-financial-technology/>.

⁷ Alessandro Acquisti, Curtis Taylor, and Liad Wagman, "The Economics of Privacy," *Journal of Economic Literature* 54, no. 2 (2016): 442–92, <https://doi.org/10.1257/jel.54.2.442>.

⁸ Bank Indonesia, "Peraturan Bank Indonesia Tentang Uang Elektronik," 2018.

⁹ Bank Indonesia, "Peraturan Bank Indonesia No. 19/12/2017 Tentang Penyelenggaraan Teknologi Finansial" (2017).

¹⁰ Rizky P.P Karo Karo and Laurenzia Luna, "Pengawasan Teknologi Finansial Melalui Regulatory Sandbox Oleh Bank Indonesia Atau Otoritas Jasa Keuangan Berdasarkan Perspektif Keadilan Bermartabat," *Transparansi: Jurnal Ilmiah Ilmu Administrasi* 2, no. 2 (2019): 116–25, <https://doi.org/10.31334/transparansi.v2i2.547>.

¹¹ The Children's Society, "Child Financial Exploitation," 2022, https://proceduresonline.com/trixcms1/media/12618/explainer_child-financial-exploitation.pdf.

such as buying food in the school canteen, managing pocket money, or even buying online items that children often play in online games.

Several schools and campuses have started to adopt digital payment systems, enabling children to use digital financial services for daily transactions in the school environment. At this school or campus, children are required to open a savings account which can be used to make payment transactions with the school such as debiting school fees or tuition fees.

RESULTS AND DISCUSSION

In Indonesia, the definition of a child's age has been regulated in various laws and regulations. Determining this age is important, because it relates to the rights and protection of children, including in terms of education, employment, and protection from violence and exploitation. Each law has a different emphasis depending on the context of the desired protection, ranging from civil rights to social protection. Law no. 23 of 2002 concerning Child Protection which has been amended by Law no. 35 of 2014 states that a child is someone who is not yet 18 years old, including children who are still in the womb. This definition is the most widely used and refers to the international standards applied in the Convention on the Rights of the Child which was ratified by Indonesia through Presidential Decree No. 36 of 1990.

From the population administration side, Article 63 of Law No. 23 of 2006 concerning Population Administration confirms that Indonesian citizens and foreigners who have permanent residence permits who are 17 (seventeen) years old or have been married or have been married are required to have an electronic KTP (KTP). -el). The KTP as intended is valid nationally. Residents who already have an e-KTP, continued Article 63 Paragraph (5) of this Law, are required to carry it when traveling and in Paragraph (6) it is stated that residents only have 1 (one) e-KTP. The Population Identification Number (NIK) is also included on the family card and when you reach the age of 17 you can make an KTP with the same NIK.

In terms of legal responsibility, Law No. 1 of 2023 concerning the Criminal Code in article 150 states that a child is not yet 18 years old. Meanwhile, Law no. 11 of 2012 concerning the Juvenile Criminal Justice System states that a child is under 18 years of age at the time of committing a crime. This law provides special protection for children in conflict with the law, by prioritizing a restorative justice approach which aims to restore children's conditions without having to go through a formal judicial process.

The implication of this age limit is the state's obligation to provide legal protection for children. States have an obligation to ensure that child protection regulations are implemented effectively. This includes ensuring that educational institutions, social protection institutions, as well as law enforcement officials understand and implement relevant regulations with a view centered on the best interests of children. Apart from that, it is also necessary to protect children's rights. Recognition of children as individuals who have the right to special protection has broad implications for various aspects, ranging from the right to education, protection from violence and exploitation to the right to participate in social and cultural life. Regulations governing the age of children help ensure that children receive protection and fulfill these rights in accordance with their age and development.

The continued exposure of various digital financial services to child users opens up opportunities for child financial exploitation (CFE). CFE or what is usually called money mulling is defined as an activity that uses financial services owned by children to move money obtained from illegal activities.¹² The forms of activities carried out can take various forms using different currencies and using various digital financial services.

¹² "Understanding Child Financial Exploitation (CFE): Resources and Information | Crimestoppers."

The process of grooming children who are victims of CFE follows the pattern that often occurs in crimes against children.¹³ Children who become victims are usually targeted by the perpetrators first through social media or online games. After being persuaded, these children will be tempted by money, crypto, gifts or goods in online games. If children are tempted by this lure, the perpetrator will usually test the children's courage to take small actions such as withdrawing money that is sent to the child's account in larger and larger amounts. Without these children realizing it, they have committed criminal acts. In the final phase, these children will enter the perpetrator's network and receive physical threats or debts calculated arbitrarily by the perpetrator.

This financial exploitation of children will give rise to the Children Facing Banking System (CFBS). Mapping the problem of Child Financial Exploitation in terms of positive law in force in Indonesia can be seen from three sources of positive law, namely Law no. 4 of 2023 concerning Development and Strengthening of the Financial Sector (UU PPSK), Law no. 27 of 2022 concerning Personal Data Protection (UU PDP) and Law no. 35 of 2014 concerning Child Protection (UU PA). Digital financial service activities are provided by banks and non-banking financial institutions. Financial services provided by banks such as e-wallets and financial services provided by non-banking institutions such as vouchers provided by online game providers. These digital financial services can then be categorized as positive, negative, or ethical or unethical activities based on positive legal sources that apply in Indonesia.

To determine the classification of digital financial services, an assessment is required. From this assessment, the *rechtsvacuum* or legal vacuum that needs to be immediately filled with legal regulations that can be issued by Bank Indonesia Regulations or related state institutions will be known. The gap that exists between understanding digital financial services and the alignment of the PPSK Law, PDP Law and PA Law creates a knowledge gap which can be overcome by increasing literacy for both financial service providers and children.

The General Data Protection Regulation (GDPR), which came into effect on May 25, 2018, underscores the necessity for specific protection of children's personal data, particularly in the context of online interactions and processes. As digital footprints expand, the vulnerabilities of young users become increasingly apparent, necessitating stringent protective measures to safeguard their privacy and personal information.

Under the GDPR, the approach to handling the personal data of children is cautious and requires a higher standard of consent. In the United Kingdom, the regulation stipulates that children aged 13 or over can give their own consent for the processing of their personal data in relation to Information Society Services (ISS) directly offered to them. However, for those under this age threshold, the consent must be provided by a parent or guardian, unless the service in question is an online preventive or counseling service designed specifically for younger individuals.

This provision is crucial as it recognizes the maturity and understanding required to comprehend the implications of data consent. It also acknowledges that children under 13 generally lack the capacity to make informed decisions about their data. Therefore, if an ISS is to process the personal data of a child under 13, it must verify that the consent has indeed been given by the child's legal guardian. This verification process must employ reasonable efforts and available technology to ensure its accuracy, thereby adding a layer of security and legitimacy to the consent process.

Moreover, the GDPR explicitly demands additional safeguards when children's data is utilized for marketing purposes or for creating personality or user profiles. These activities pose significant risks as they could manipulate or unduly influence the vulnerable young

¹³ “Child Financial Exploitation: A Guide for Parents, Carers and Professionals | Catch22.”

minds. Entities engaged in such processing activities are required to take extra precautions to ensure that the children's data is handled with the utmost care and respect for their privacy and developmental needs.

One of the most critical aspects of the GDPR concerning children is the prohibition of decisions based solely on automated processing, including profiling, that have legal or similarly significant effects on children. This rule is in place to prevent any potential abuse or discrimination that might arise from automated decision-making processes. The regulation allows exceptions only under stringent conditions where adequate measures are in place to protect the child's rights and interests.

Additionally, the GDPR emphasizes the importance of delivering age-appropriate privacy notices to children. This ensures that the information about data processing is accessible and understandable to the younger audience, enabling them to grasp the essentials of what happens to their personal data. It also highlights the importance of the right to have personal data erased, particularly when the processing is based on consent given in childhood. This right is crucial as it allows for the correction of potentially uninformed or unintended consent given at a young age.

In summary, the GDPR sets a robust framework for the protection of children's personal data, recognizing the special status of minors in the digital world. It mandates a careful, measured approach to obtaining consent, requires additional precautions when using children's data for sensitive purposes, and ensures that children are adequately informed about their privacy rights. These measures collectively aim to foster a safer digital environment where the rights and privacy of children are vigorously protected.

CONCLUSION

The document concludes by offering a series of recommendations for enhancing the legal framework in Indonesia to better protect children's personal data within digital banking environments. It stresses the importance of adopting a comprehensive approach that integrates legislative reforms, technological upgrades, and educational initiatives. Drawing from international practices, the document advocates for a robust set of regulatory mechanisms that effectively safeguard the privacy of young users' data, emphasizing the pivotal roles of regulatory bodies, banking institutions, and guardians in establishing a secure digital financial landscape for minors.

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