

## **TIKTOK PHENOMENON: EXONERATION CLAUSE VS. PERSONAL DATA PROTECTION**

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### **ABSTRAK**

Kerugian yang dialami oleh konsumen dalam menyetujui perjanjian klausul eksonerasi mengenai ganti rugi terhadap penggunaan Aplikasi TikTok tersebut dapat diketahui pada kasus kebocoran data pribadi pengguna Aplikasi TikTok. Penulisan ini untuk mengetahui dan memahami syarat dan ketentuan perlindungan data pribadi pada aplikasi TikTok yang mengandung klausula eksonerasi dan untuk mengkaji lebih dalam mengenai upaya hukum yang dapat ditempuh jika mengalami kerugian akibat klausula eksonerasi dalam syarat dan ketentuan perlindungan data pribadi pada aplikasi TikTok beserta upaya hukum yang dapat ditempuh oleh pengguna Aplikasi TikTok. Metode penelitian yang digunakan penulis adalah yuridis-normatif dengan menganalisa peraturan perundang-undangan, yang berlaku dan erat kaitannya dengan permasalahan penelitian. Sehingga mendapatkan hasil penelitian upaya hukum yang ditempuh pengguna kepada perusahaan TikTok jika mengalami kerugian akibat klausula eksonerasi dalam syarat dan ketentuan data pribadi pada aplikasi TikTok melalui jalan damai. Bila terdapat persetujuan dari pihak berperkara dapat dibawa ke BPSK baik dengan cara konsiliasi, mediasi maupun arbitrase. Apabila tidak dapat terselesaikan, langkah penanganan selanjutnya melalui peradilan umum. Dapat disimpulkan pengaturan akses data pribadi dalam syarat dan ketentuan Aplikasi TikTok bertentangan dengan ketentuan yang terdapat pada Permenkominfo Nomor 20 Tahun 2016 tentang Perlindungan Data Pribadi dalam Sistem Elektronik beserta Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

**Kata Kunci :** Klausula Eksonerasi, Data Pribadi, Perlindungan, TikTok

### **ABSTRACT**

*The losses experienced by consumers in agreeing to the exoneration clause agreement regarding compensation for the use of the TikTok Application can be found in cases of leakage of personal data of TikTok Application users. This study aims to discover the terms and conditions of personal data protection on the TikTok application, which contains an exoneration clause, and examine the legal remedies when somebody experiences a loss. The authors use the juridical-normative method by analyzing the laws and regulations related to the research topic. Thus, the authors can get research results on the legal remedies to take if the users experience losses due to the exoneration clause in the terms and conditions of personal data on the TikTok application. If there is an agreement between the litigants, the case can be submitted to BPSK/Badan Penyelesaian Sengketa Konsumen (Indonesian Consumer Dispute Settlement Agency), either by conciliation, mediation, or arbitration. If the case cannot be resolved, the*

*general court will handle it. This research reveals that the regulation of personal data access in the terms and conditions of the TikTok Application contradicts the provisions contained in the Indonesian Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems and the Indonesian Law Number 8 of 1999 concerning Consumer Protection.*

**Keywords:** *Exoneration Clause, Personal Data, Protection, TikTok*

## **BACKGROUND OF STUDY**

Indonesia is rich in population and has abundant natural and human resources. In addition, Indonesia also has vibrant oil and natural gas resources to meet the needs of the country and its population.<sup>1</sup> The fulfillment of these human needs brings income to the population in Indonesia, who mostly use the latest applications related to legal clauses. The use of information technology in Indonesia shows a significant increase from year to year. It results in an increasingly diverse range of existing services and products. The convergence of these various technologies is called telematics (telecommunication, media, and informatics).<sup>2</sup> The development of information technology can be seen in the emergence of various types of activities based on this technology, such as e-government, e-commerce, and various other cyberspace-based activities. Communication in cyberspace through the presence of the internet has changed the way humans communicate because the internet can break down boundaries between countries.

Humans have various needs in life. These needs function to maintain human survival. Therefore, fulfilling these needs is an essential condition for humans to survive in this world. The better these needs can be met, the more prosperous the life will be. One of these needs is the need for technology.<sup>3</sup> The development of technology has made many users active on social media, which has led to an interest in using it to benefit the economy. Since the *PSBB/Pembatasan Sosial Berskala Besar* (large-scale social restrictions) policy was enacted, many people who should have been active outside then switched to doing activities at home, such as studying and working at home.<sup>4</sup> It has been going on for several months. People turn to social media applications to entertain themselves in people's saturation during activities at home with a lack of entertainment access. Along with technological advances, Indonesian people use many types of media to obtain information in images, videos, and text. Some widely known internet social media applications are TikTok, Instagram, Youtube, and Twitter applications. These applications are booming in Indonesia because they are used to pass the time while at home. People use social media to watch Korean dramas, play online games, make creative videos and then upload them.<sup>5</sup> Accessing social media is very easy. With the development of the digital era, people can use smartphones and

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<sup>1</sup> Rizal, M. S. (2019). Perbandingan Perlindungan Data Pribadi Indonesia dan Malaysia. *Jurnal Cakrawala Hukum*, 10(2), 218-227.

<sup>2</sup> Maulana, A. (n.d). Tingkat Kejahatan Cyber Di Indonesia Sudah Gawat, <http://tekno.liputan6.com/read/2019078/tingkat-kejahatan-cyber-di-indonesia-sudahgawat>, Akses 6 Maret 2014.

<sup>3</sup> Rahardjo, S. (2000). *Ilmu Hukum*, Bandung: Citra Aditya Bakti, p. 124.

<sup>4</sup> Sulasih, E. S. (2020). Ketidakefektifan Penerapan Pembatasan Sosial Berskala Besar (PSBB) di Daerah Khusus Ibukota Jakarta. *Binamulia Hukum*, 9(1), 67-82.

<sup>5</sup> Sampurno, M. B. T., Kusumandyoko, T. C., & Islam, M. A. (2020). Budaya media sosial, edukasi masyarakat, dan pandemi COVID-19. *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 7(5), 529-542.

laptops to access social media. Social media applications provide different facilities and criteria. However, each application has the same function: to share information with other users.<sup>6</sup>

Information technology has changed people's lifestyles globally and significantly. This lifestyle causes changes in the socio-cultural, economic, and legal framework. Although the use of the internet in society is still deficient compared to Indonesia's total population, electronic information and communication systems have been implemented in almost all sectors of life in society. In the end, this has resulted in the creation of a new market that has encouraged the development of the community's economic system, from a traditional economy based on the manufacturing industry to a digital economy based on information, intellectual creativity, and science, which is also known as the Creative Economy.<sup>7</sup>

The use of the internet in various fields of life makes things easier and creates several problems, including legal issues. One of the legal problems that arise is related to the personal data protection (the protection of privacy rights).<sup>8</sup> Often when someone makes a transaction or registers in an organization or mailing list on the internet, he/she must send specific personal data. Then the internet user receives various junk mails in his/her inbox, which most likely stems from the leak of personal data.<sup>9</sup> Sending junk mail is a violation of personal data in a mild form because personal data is often used for other more serious crimes, such as account break-ins, extortion, or other interests by irresponsible parties known as hackers.

The phenomenon of music video applications such as TikTok and Musically has the potential to violate the Indonesian Law Number 44 of 2008 concerning pornography. This law states that everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography. In addition to violating the Pornography Law, harmful content contained in the application also has the potential to violate the Indonesian Information and Electronic Transactions Law (In Indonesia: *UU ITE/Undang-Undang Informasi dan Transaksi Elektronik*). According to the law, this kind of live video streaming can be classified as a prohibited act, especially article 27 paragraph 1, if there is a negative content. The article subjects everyone who intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency, such as personal data. It is also regulated in the Indonesian Minister of Communication and Informatics Regulation Number 20 of 2016 and Indonesian Law Number 8 of 1999 concerning Consumer Protection.

According to Indonesian Government Regulation Number 52 of 2000 concerning Telecommunications Operations, which is the implementing regulation of Indonesian Telecommunications Law, the internet is classified as a multimedia service. It is identified as a

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<sup>6</sup> Rahmanda, B., & Benuf, K. (2021). Perlindungan Hukum Hak Cipta Musik yang Diupload di Aplikasi Tiktok. *Law, Development and Justice Review*, 4(1), 29-44.

<sup>7</sup> Makarim, E. (2010). *Tanggung Jawab Hukum Penyelenggara Sistem Elektronik*, Jakarta: Raja Grafindo Persada, p. 2.

<sup>8</sup> Disemadi, H. S. (2021). Urgensi regulasi khusus dan pemanfaatan artificial intelligence dalam mewujudkan perlindungan data pribadi di Indonesia. *Jurnal Wawasan Yuridika*, 5(2), 177-199.

<sup>9</sup> Sitompul, A. (2001). *Hukum Internet, Pengenalan Mengenai Masalah Hukum Di Cyberspace*, Bandung: PT.Citra Aditya Bakti, p. 25.

telecommunications service provider that offers information technology-based services. It shows that internet regulation is included in Telecommunications Law. This law regulates several matters relating to the confidentiality of information. Article 22 states that any person is prohibited from carrying out any unlawful, illegal, or manipulation: (a) access to telecommunications networks; and/or (b) access to telecommunications services; and (c) access to special telecommunications networks. Violators of these provisions are subject to a maximum imprisonment of six years and/or a maximum fine of Rp. 600 million. Furthermore, Article 40 states that anyone is prohibited from wiretapping information transmitted through telecommunications networks. Those who violate these provisions are subject to a maximum imprisonment of 15 years. This law also regulates the obligation of telecommunications service providers to keep the information sent and or received by the customers through the telecommunications network and or telecommunications services provided secret (Article 42 paragraph (1)). Organizers who violate these obligations are subject to a maximum imprisonment of two years and/or a maximum fine of Rp. 200 million. Based on the description above, the formulations of the problem in this study are: 1) Do the terms and conditions on the Tiktok application contain an exoneration clause?; 2) What are the terms and conditions of *Permenkominfo/Peraturan Menteri Komunikasi dan Informasi* (Indonesian Minister of Communication and Informatics Regulation) Number 20 of 2016 regarding personal data from electronic systems?; 3) What legal remedies to take if TikTok users experience a leak of personal data due to the exoneration clause?. The purpose of this research is to analyze the exoneration clause in TikTok terms and conditions; to analyze how these terms and conditions are reviewed from *Permenkominfo* Number 20 of 2016; to analyze legal remedies that can be taken if a TikTok user experiences a personal data leak due to an exoneration clause in the terms and conditions of the TikTok application user.

## **RESEARCH METHOD**

This research uses normative juridical research to solve the problem formulation. Normative juridical research is library research to obtain legal material for analysis. In this study, this method analyzes applicable legal regulations to the exoneration clause in the terms and conditions of the TikTok application for its users, reviewed by the Indonesian Minister of Communication and Information Regulation Number 20 of 2016. Normative Legal Research includes research on legal principles, legal synchronization, legal history, and legal comparisons. The legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials have binding force, including the Indonesian Minister of Communications and Information Technology Regulation Number 20 of 2016. The research consists of two steps: collecting legal materials and analyzing legal materials. The step of collecting legal materials begins with an inventory of legal materials. Classification is carried out to focus more on basic and important legal materials. Furthermore, legal materials are systematized to make it easier to understand. The analysis step in this study uses a deductive syllogism because it begins with general provisions obtained from laws and regulations related to the research topic.

## RESULTS AND DISCUSSION

### 1. Analysis of the Exoneration Clause in the Terms and Conditions of the Tiktok Application

As regulated in Article 1, number 17 of Indonesian Law Number 19 of 2016 concerning Electronic Information and Transactions (Information and Electronic Transactions Law), electronic contracts are agreements between two parties on electronic media. It is expressly regulated in Article 1313 of the Indonesian Criminal Code, where a contract is defined as an action taken by one or more people who must bind themselves to one or more people. In other words, the contract is the source of an engagement.<sup>10</sup> Thus, based on the contract definition above, the electronic contract is deemed to have fulfilled the requirements based on Article 1313 of the Criminal Code.<sup>11</sup> The terms of the contract's validity are stated in Article 1320 of the Criminal Code, which is divided into subjective and objective conditions.<sup>12</sup> Subjective requirements, including: 1. It is considered competent in making contracts (age enough and not mentally ill), which in this context must be someone who has the authority to produce a contract according to the law. 2. There is the word "agree" on the will. There must be a common opinion regarding what matters are regulated in the contract so that the contract will automatically be considered valid by law. In contrast, the objective requirements include 1. Certain things or objects mean that the origin must be clear and allowed by applicable law in designing a contract. 2. Legalizing a cause means that there must be a logical and clear reason based on the law currently in force in carrying out a contract. Therefore to make a contract, it must meet the above elements. To not be harmed by their efforts, many business actors include clauses that can indirectly transfer their responsibilities. Examples include the clause 'Items that have been purchased cannot be exchanged again. The parking attendant will not be responsible if a helmet is lost'.

Article 1 number 10 of Indonesian Law Number 8 of 1999 concerning Consumer Protection (In Indonesia: *UUPK/Undang-Undang Perlindungan Konsumen*) explains standard clauses, each norm, and provisions where they have been designed and determined in advance by only one party (business actor) which is embodied in a document or a binding agreement. Besides that, the users must agree with it. Although the *UUPK* does not explain the exoneration clause, broadly, the exoneration clause can be interpreted as a special provision, in this case, the business actors release their responsibility for consumer losses because of the implementation of an agreement default.<sup>13</sup> Based on the explanation before, it can be concluded that the formation process of the standard clause has been designed and determined in advance by only one party

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<sup>10</sup> Fuady, M. (2008). *Pengantar Hukum Bisnis Menata Bisnis Modern di Era Globalisasi*, Bandung, PT Citra Aditya Bakti, p. 10.

<sup>11</sup> Malinda, D. (2019). *E-Contract pada PT. Go-Jek Indonesia dalam Perjanjian dengan Mitra Usahanya Menurut Syirkah 'Inan (Analisis Klausula Eksenorasi dalam Kontrak Baku)*. UIN Ar-Raniry Banda Aceh, p. 36.

<sup>12</sup> Saliman, A. R. (2005). *Hukum Bisnis Untuk Perusahaan Teori dan Contoh Kasus*, Jakarta: Kencana, p. 40.

<sup>13</sup> Pradnyani, I. G. A. R., Puspawati, I.G.A., & Sutarna, I.BP. (2018). Perjanjian Baku Dalam Hukum Perlindungan Konsumen, *Jurnal Kertha Semaya*, 6 (2), p. 5.

(business actor) and is not focused on the substance of the contract. In comparison, the exoneration clause is carried out by only one party to discharge the responsibilities.<sup>14</sup>

The terms and conditions of using personal data in the TikTok application can be classified as an electronic contract because it contains the word "agreement" and is also electronically based. Those terms and conditions are: 1) The type of personal data that the TikTok application uses and the way the TikTok application uses personal identity data, including email address, name, business name, cellphone number, location; 2) Accessing personal data of TikTok application users with a description of the website that is processed, collected, and used; 3) Be aware of usage restrictions in a non-intrusive manner by blocking or restricting websites from the TikTok application; 4) Do not use the website for any unlawful activity; 5) Do not use other people's data to access or use the TikTok application website; 6) Ownership of the website so as not to make copyright notices and the like; 7) Access to the TikTok application is at the user's own risk because TikTok does not fully guarantee its security access; 8) Applicable laws, jurisdictions, and other additional provisions; 9) The entire agreement that has been agreed upon forms an agreement between the user and TikTok relating to the user's data security website; 10) There are restrictions for users of the TikTok application in the use of names from registered personal data; 11) Restriction of name changing time for TikTok application users; and 12) The application user has agreed to the entire contents of the TikTok user's data clause.

Provision number 7 explains that the Tiktok application has the authority not to guarantee the safety, and the user bears security and the risk fully. Furthermore, provision number 9 interprets that Tiktok has an agreement that has been approved between users regarding the security of personal data usage. Provision number 11 limits the time for changing names for TikTok application users, which is one form of using standard clauses in electronic contracts. It can be seen in the standard clause elements, where the formation has been designed and determined in advance by only one party (business actor). In the case of personal data security, provisions number 7 and number 9 implicitly are forms of the unilateral statement from the TikTok application and have weakened or cornered the position of its users because there is no room for users to negotiate the contents of the personal data security contract.

Furthermore, provision number 10 states that the users have agreed with the entire contents of the clause on the personal data of the TikTok even though there is no unequivocal "agree" statement from the users. If a user wants to use TikTok, then she/he must agree to the terms. So that the clause automatically overrides the consumer's right to comfort as regulated in Article 4 point 1 of the *UUPK*. Then the consumer will be greatly harmed by the standard clauses in the security of personal data above because, inevitably, they have to agree on the substance of the contract. After all, the user does not have the authority to fix the contract clauses.<sup>15</sup> Moreover, it has also been regulated in the Minister of Communication and Information of the Republic of Indonesia Regulation Number 20 of 2016 concerning the Protection of Personal Data in Electronic

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<sup>14</sup> Astari, I.A.L., & Sutarna, I.BP. (2019). Pertanggung Jawaban PT Go-Jek Terhadap Penetapan Klausula Eksonerasi. *Jurnal Kertha Semaya* 7(3), p. 8.

<sup>15</sup> Muaziz, M.H. & Busro, A. (2015). Pengaturan Klausula Baku Dalam Hukum Perjanjian Untuk Mencapai Keadilan Berkontrak, *Jurnal Hukum Law Reform*, 11(1), p. 79.

Systems. Thus the terms and conditions of users of the TikTok application regarding personal data in the electronic system have standard clauses according to the Article 1, number 10 of the *UUPK*, which reads: "*Klausula Baku adalah setiap aturan atau ketentuan dan syarat-syarat yang telah dipersiapkan dan ditetapkan terlebih dahulu secara sepihak oleh pelaku usaha yang dituangkan dalam suatu dokumen dan/atau perjanjian yang mengikat dan wajib dipenuhi oleh konsumen*" (Translate: Standard Clauses are any rules or conditions and conditions that have been prepared and determined in advance unilaterally. by business actors as outlined in a document and/or agreement that is binding and must be fulfilled by consumers).

Provisions number 7 and number 9 also contain an exoneration clause because these provisions can release the business actor's responsibilities. It is also confirmed by Article 18 paragraph (1) letter a. The TikTok application cannot transfer its obligations to be responsible for running its business. The clause which states that the TikTok application provides a unilateral statement by not fully guaranteeing the security of the user's data or changing the restricted name is a form of using the exoneration clause because it has been deemed transferring the obligation to be responsible for consumers. This problem is also further exacerbated by the sentence "*tidak menjamin resiko keaamanan data pribadi pengguna aplikasi TikTok*" (Translate: does not guarantee the risk of personal data security for TikTok application users) so that this clause has ruled out the right to obtain factual and clear information for consumers as regulated in Article 4 letter d of the *UUPK* which reads: "*hak untuk didengar pendapat dan keluhannya atas barang dan/atau jasa yang digunakan*" (Translate: the right to be heard and complaints regarding the goods and/or services used). The sentence also states that the TikTok company is reluctant to take responsibility and ignores its obligations if there is a loss to consumers.

For example, if a user has registered using personal data, but later the application suddenly experiences a leak of personal data. In this case, the TikTok application can arbitrarily release its responsibility. So it is very clear that this is detrimental to users and is a form of transferring responsibility. On the one hand, users have lost data security due to data leaks, and on the other hand, users have spent much time on these activities. The clauses on the personal data terms and conditions of the TikTok application users above have ruled out the statement of Article 1320 of the Indonesian Criminal Code regarding the legal requirements for a contract, especially on "legalization of a cause". This provision expressly means that there must be a logical and clear reason when executing a contract based on positive law. Therefore, there is a prohibition when it is found that the contract is contrary to the Law. The TikTok application obviously provides standard clauses and contains exoneration clause on the personal data of its users. It is contrary to applicable law, such as Article 18 paragraph (1) letter a of the *UUPK*, and the Indonesian Minister of Communication and Information Regulation Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems, which do not allow entrepreneurs to provide standard clauses and exoneration clauses. Standard and exoneration clauses in the personal data terms and conditions of TikTok application users prove that the TikTok application is not aware of the current legal provisions, particularly *UUPK*. Article 18 paragraph (1) does not allow the exoneration clause to defend the rights of consumers who feel aggrieved because they can not negotiate the substance of the personal data security contract. It is also under Article 26 Regulation

of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems.<sup>16</sup>

## **2. Analysis of the Terms and Conditions of Personal Data for TikTok Users**

This study analyzes the personal data access settings specified in the TikTok terms and conditions, whether it is contrary to the International Law and the Indonesian Minister of Communication and Information Technology Regulation Number 20 of 2016 concerning Personal Data Protection in Electronic Systems. The definition of Personal Data According to *Permenkominfo* (Indonesian Minister of Communication and Information Technology Regulation) Number 20 of 2016, article 1 paragraph (1) is "*Data perseorangan tertentu yang disimpan, dirawat, dan dijaga kebenaran serta dilindungi kerahasiaannya*" (Translate: Specific individual data that is stored, maintained, and kept true and protected by confidentiality).

Article 2 paragraph (1) reads: "*Perlindungan Data Pribadi dalam Sistem Elektronik mencakup perlindungan terhadap perolehan, pengumpulan, pengolahan, penganalisisan, penyimpanan, penampilan, pengumuman, pengiriman, penyebarluasan, dan pemusnahan Data Pribadi*" (Translate: Protection of Personal Data in Electronic Systems includes protection against the acquisition, collection, processing, analysis, storage, appearance, announcement, transmission, dissemination, and destruction of Personal Data). Article 26 reads: "*Pemilik Data Pribadi berhak: a. atas kerahasiaan Data Pribadinya; b. mengajukan pengaduan dalam rangka penyelesaian sengketa Data Pribadi atas kegagalan perlindungan kerahasiaan Data Pribadinya oleh Penyelenggara Sistem Elektronik kepada Menteri; c. mendapatkan akses atau kesempatan untuk mengubah atau memperbarui Data Pribadinya tanpa mengganggu sistem pengelolaan Data Pribadi, kecuali ditentukan lain oleh ketentuan peraturan perundang-undangan; d. mendapatkan akses atau kesempatan untuk memperoleh historis Data Pribadinya yang pernah diserahkan kepada Penyelenggara Sistem Elektronik sepanjang masih sesuai dengan ketentuan peraturan perundang-undangan; dan e. meminta pemusnahan Data Perseorangan Tertentu miliknya dalam Sistem Elektronik yang dikelola oleh Penyelenggara Sistem Elektronik, kecuali ditentukan lain oleh ketentuan peraturan perundang-undangan*" (Translate: The Owner of Personal Data has the right to: a. on the confidentiality of his Personal Data; b. file a complaint in the context of resolving Personal Data disputes over the failure to protect the confidentiality of their Personal Data by the Electronic System Operator to the Minister; c. get access or opportunity to change or update their Personal Data without disturbing the Personal Data management system, unless otherwise stipulated by the provisions of laws and regulations; d. gain access or opportunity to obtain historical Personal Data that has been submitted to the Electronic System Operator as long as it is still in accordance with the provisions of the laws and regulations; and e. request the destruction of his/her Certain Individual Data in the Electronic System managed by the Electronic System Operator, unless otherwise stipulated by the provisions of the laws and regulations).

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<sup>16</sup> Rimenda, K., Westra, I.K., & Priyanto, I.M.D. (2013). Pelaksanaan Larangan Klausula Eksonerasi Berdasarkan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen Pada Usaha Layanan Jasa Di Kota Denpasar, *Jurnal Kertha Semaya*, 1(9), p.10.

In implementing the provisions, it must follow the principles of good Personal Data protection, which include: 1) Respect for Personal Data as privacy; 2) Personal Data is confidential under the Approval and/or based on the provisions of laws and regulations; 3) Based on the Agreement; 4) Relevance to the purpose of acquisition, collection, processing, analysis, storage, display, announcement, delivery, and dissemination; 5) Eligibility of the Electronic System used; 6) Good faith to immediately notify the Personal Data Owner in writing of any failure to protect Personal Data; 7) Availability of internal rules for the management of Personal Data protection; 8) Responsibility for Personal Data that is in the control of the user; 9) Ease of access and correction of Personal Data by the Personal Data Owner; and 10) Completeness, accuracy, validity, and up-to-date Personal Data.<sup>17</sup>

By accessing or using the Tiktok Application, there is a binding agreement with TikTok that the user accepts and agrees to comply with these terms. Users' access and use of the Tiktok application are also subject to the Privacy Policy and Tiktok application policy. Suppose a user accesses or uses the Service in a jurisdiction in which special additional provisions apply. In that case, the user must agree to the terms of the privacy policy of the TikTok application. The enactment of the terms and conditions based on the principles regulated by *Permenkominfo* Number 20 of 2016 should also apply to the TikTok application because it is related to personal data in the electronic system.

### **3. Legal remedies for a TikTok user who suffers a loss due to an exoneration clause in the terms and conditions of a TikTok, such as leakage of the user's data**

Referring to Article 1 point 1, *UUPK* defines users as all individuals who use products/services in the community for personal needs, relatives, and other people. There is a prohibition on being traded. In other words, the customer is the final customer/user of an item.<sup>18</sup> It is different with intermediate users/customers who utilize an item purchased directly through the manufacturer, then resell the item to the customers; TikTok users are referred to as the final customers/users because they are no longer trading the services offered by TikTok. Article 1313 of the Indonesian Criminal Code generally leads to a legal relationship. There is an agreement between the user of the TikTok application and the TikTok application itself, which was born from a personal data security agreement.

Suppose there is a problem between the two parties, such as the user feeling aggrieved about the exoneration clause in the TikTok personal data security. In that case, the TikTok application user has the right to sue and ask for compensation from the TikTok and the third party that creates losses for TikTok users who are harmed. Referring to the statement of the personal data security clause of the TikTok application, it clearly emphasizes that the TikTok company admits that users have agreed about the limitations in using the TikTok and previously approved

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<sup>17</sup> Peraturan Menteri Komunikasi dan Informatika Nomor 20 Tahun 2016 Pasal 2 ayat (2)

<sup>18</sup> Fadhly, F. (2013). Ganti Rugi Sebagai Perlindungan Hukum Bagi Konsumen Akibat Produk Cacat, *Jurnal Arena Hukum*, 6 (2), p. 243.

them. So that if the TikTok application user feels aggrieved by the user's data clauses, the user has the right to ask for accountability from the TikTok application and take legal action.

The *UUPK* has made provisions so that there is a degree of harmony between the user of goods and the producer, but producers still commit fraud in running their business.<sup>19</sup> For example, the provision of standard and an exoneration clause in securing personal data on the TikTok application. Because the TikTok application is not entirely responsible for the leakage of personal data of the users, users feel very disadvantaged. The solution is to settle compensation through peaceful means. If this method has not found an answer, the users can take legal action to resolve problems fairly. The handling of consumer cases is clearly and firmly stated in the *UUPK*.<sup>20</sup> As explained in Article 45 paragraph (1) of the *UUPK*, users or customers who feel the loss from the treatment of automatic producers are allowed to sue the producers through the affiliated institution to handle the disputes between users and producers. Besides that, users can also bring the case to the judiciary, especially in the general court. It means that the *UUPK* has allowed consumers to ask for their rights in the form of compensation under Article 4 point 8. More specifically, Article 45 paragraph (2) of the *UUPK* provides a statement that handling cases of users of goods/services may use court media or outside the court depending on the will of each disputing party.

The option that can be offered to deal with this case is the Consumer Dispute Settlement Agency (In Indonesia: *BPSK/Badan Penyelesaian Sengketa Konsumen*). The presence of *BPSK* becomes the medium for overcoming simple cases outside the court,<sup>21</sup> as stated in the provisions of Article 1 number 11 of the *UUPK*. In its practice, *BPSK* provides leeway for users of goods/services in determining how to solve their cases, either through arbitration, conciliation, or mediation.<sup>22</sup> To explain the details, the author refers to the Decree of the Indonesian Minister of Industry and Trade number 350/MPP/Kep/12 of 2001, as follow: (a) Conciliation is a procedure for resolving cases of users of goods/services outside the court, which is bridged by *BPSK* so that they can unite each other. Each group in litigation where the solution depends on each party's wishes, as stated in Article 1 point 9 of the *KMPP/Keputusan Menteri Perindustrian Dan Perdagangan* (The Decree of the Indonesian Minister of Industry and Trade). The case must be accompanied by a passive attitude Assembly, considering its role is only limited to uniting each litigant group and explaining the legal substance of the *UUPK*; (b) Mediation. It is an effort to settle consumer cases outside the court where the focus is more on *BPSK* (accompanied by an active working assembly), whose function is to provide advice after each litigation party is given the freedom to choose the solution as described in the Article 1 point 10 of the *KMPP*; and (c) Arbitration is a procedure for handling cases of users of goods/services outside the court where each litigating party releases and completely trusts *BPSK* as formulated in Article 1 point 11 of

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<sup>19</sup> Samosir, A. (2018). Penyelesaian Sengketa Konsumen yang Dilakukan Badan Penyelesaian Sengketa Konsumen (BPSK), *Jurnal Hukum Legal Standing*, 2 (2), p. 136.

<sup>20</sup> Wiranatha, I.N.O., & Purwanto, I.W.N. (2019). Perlindungan Hukum Terhadap Konsumen Terkait Pemberian Uang Kembali yang Tidak Sesuai di Alfamart, *Jurnal Kertha Negara*, 8(1), p. 11.

<sup>21</sup> Kurniawan. (2011). Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (BPSK) di Indonesia (Kajian Yuridis Terhadap Permasalahan dan Kendala-Kendala BPSK)", *Jurnal Hukum dan Pembangunan*, 41(3), p. 337.

<sup>22</sup> Atuti, H.D. (2015). Kendala Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (BPSK), *Jurnal Mimbar Justitia, Fakultas Hukum*, 1(2), p. 581.

the *KMPP*. It means that the Assembly is active in uniting each litigant if they can not reach an agreement.

The three alternatives for handling the cases above are needed if the users of the TikTok application feel aggrieved by the standard and exoneration clauses in the user personal data security on the TikTok application. They will be given the freedom to decide what measures to handle each case. It can be mediation, conciliation, or arbitration. After determining the effort, the users of the TikTok application who are harmed and the TikTok application must comply with the established procedures, and it must be made in writing. After deciding what measures to use in handling cases between users of the TikTok application and the TikTok application, the *BPSK* will begin to follow up on the case. The explanation in Article 55 of the *UUPK* states that there is a time limit for issuing the Council's decision, which is no later than twenty-one days after the claim is received. Suppose the users and the TikTok company have made mediation and conciliation efforts, but the solution method is still declared unsuccessful, especially regarding compensation. In that case, the *BPSK* cannot continue handling the case through this kind of effort. Thus, the next handling step is through the general court, with non-litigation legal remedies. This non-litigation legal remedy means asking TikTok company to be responsible for immediately resolving cases or filing a lawsuit to the court as criminal, administrative, or civil sanctions.

## **CONCLUSION**

Based on the discussion before, it reveals that the personal data access settings specified in the terms and conditions of the TikTok Application conflict with the provisions contained in the Indonesian Minister of Communication and Information Regulation Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems and Indonesian Law Number 8 of 1999 concerning Consumer Protection. The terms and conditions of personal data security on the TikTok application use standard clauses that contain an exoneration clause in electronic contracts. Legal remedies that consumers can take if they experience losses due to the exoneration clause in the terms and conditions of personal data security on the TikTok application are the peaceful way. If this method has not found an answer, the user can also take legal action through a court institution or outside the court. If there is agreement from each litigant, it can be brought to *BPSK* either through conciliation, mediation, or arbitration. If it does not work, the next step is through the general court, with non-litigation legal remedies. It means asking TikTok company to be responsible for immediately resolving cases and filing a lawsuit to the court with criminal, administrative, or civil sanctions.

This study suggests the TikTok company not to override its users' interests when making terms and conditions of personal data security because *UUPK* prohibits the inclusion of standard clauses and exoneration clauses. It is also regulated in the Indonesian Minister of Communication and Information Regulation Number 20 of 2016 regarding the protection of personal data of electronic system users. In addition, by making this scientific article, it is hoped that if users feel aggrieved by the provisions on personal data security in the TikTok application, they can take legal action because it is regulated in the *UUPK* and *Permenkominfo* Number 20 of 2016.

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