



## Legal Protection of Personal Data of Consumers Who Shop Online

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**Abstract:** In the current technological era, developments occur in all aspects of life including trading activities, namely online shopping. Online shopping began to grow and develop into a habit for the community. Mothers' shopping habits are increasingly turning to buying and selling online for more practical reasons. For modern society, especially in Indonesia, online shopping, online shopping applications, and social media have various kinds of goods or services that they want or need. the purpose of conducting this research is to analyze the legal protection of the personal data of consumers who shop online. The research used in this paper is Juridical Sociological research and uses a descriptive qualitative research approach and uses interactive analysis techniques.

**Keywords:** Legal Protection, Personal Data, Online Shopping

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## 1. Introduction

The rapid advancement of technology that is developing today, where the internet is currently not only used as a medium of communication and information, but in various situations the internet can be used as a source of income for someone in the economy. Apart from being a person's source of income, the internet can also be a means to meet the needs of people who want to make buying and selling transactions more quickly and practically without the need to see where, when, and their current situation. All of this can be facilitated by shopping online.<sup>1</sup>

In the current technological era, developments occur in all aspects of life including trading activities. Initially trading was carried out in the conventional way, namely by meeting sellers and buyers to carry out buying and selling transactions, along with technological developments, the market as a meeting place for demand and supply underwent changes.<sup>2</sup> Buyers and sellers no longer have to meet face to face to make transactions. The emergence of the internet as a new medium has pushed this change to become more advanced. The speed, convenience, and low cost of the internet are a consideration for many people to use it, including for making transactions.<sup>3</sup>

Consumer protection is part of the law that contains principles or rules that are regulatory in nature and also contain properties that protect the interests of consumers. Meanwhile, consumer law is defined as the entire legal principles and rules governing the relationship and problems between various parties related to consumer goods and services in life. This is also stated in Law Number 8 of 1999 concerning consumer protection. (UUPK) which states that "consumer protection is all efforts that guarantee legal certainty to provide consumer protection".<sup>4</sup>

Therefore talking about consumer protection means questioning guarantees or certainty regarding the fulfillment of consumer rights. As is well known, globalization and modern economic developments have produced various types and variations of goods or services that can be consumed by the public.

Since the enactment of Law Number 8 of 1999 concerning consumer protection, Indonesian consumers have better expectations. Because the law is the foundation for consumers and consumer protection agencies to empower and protect the

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<sup>1</sup> I Ketut Pradnyaswari, Ida Ayu, Westra, "Upaya Perlindungan Hukum Bagi Konsumen Dalam Transaksi Jual Beli Menggunakan Jasa E-Commerce," *Kertha Semaya*, 8, no. 5 (2020): 759.

<sup>2</sup> Agung Gede et al., "Implementasi Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Terhadap Jual Beli Online (E-Commerce) Di Bpsk Denpasar," *Jurnal Kertha Semaya Fakultas Hukum Universitas Udayana* 5, no. 1 (1999): 1-5.

<sup>3</sup> Sjaputra Imam, *Problematika Hukum Internet Indonesia* (Jakarta: Prenhallindo, 2002).

<sup>4</sup> Made Bama Anandika Berata Bagus and Parakesit Widiatedja I.G.N, "Perlindungan Hukum Terhadap Pelaku Usaha Terkait Wanprestasi Yang Dilakukan Konsumen Dengan Cara Hit and Run," *Kertha Semaya : Journal Ilmu Hukum* 4, no. 3 (2016): 1-7.

interests of consumers and make producers more responsible.<sup>5</sup> However, on the other hand, with the enactment of the consumer protection law, it is possible for business actors in carrying out their business to commit violations that have a negative impact on consumers. Because there are still many parties who are not responsible for committing a violation of the law by looking for weaknesses in existing laws.<sup>6</sup>

Online shopping activities began to grow and develop into habits for the community. Mothers' shopping habits are increasingly shifting to online trading for more practical reasons. For modern society, especially in Indonesia, online shopping, online shopping applications, and social media have various kinds of goods or services that they want or need. It can be seen that currently most Indonesian people prefer to shop online rather than shopping at traditional markets. The rise of online shopping has resulted in the emergence of new problems in the field of law, especially consumer protection law. One of the issues that really needs attention is regarding legal protection of the personal data of consumers who shop online. According to the elucidation of article 1, paragraph 1, the UK Data Protection Act 1998 stipulates that:<sup>7</sup>

“Data is any information that is processed through equipment that functions automatically in response to instructions given for its purpose and stored with the intention of being processed. Data also includes information that forms part of relevant health, social work, educational records or that is stored as part of a relevant storage system.”

It is also explained in the UK Data Protection Act of 1998 that personal data is data related to a living individual who can be identified from the data or from data or information that is owned or will be owned by the data controller. In addition, personal data can also be linked to the characteristics of the respondent, for example, gender, age, name and so on.<sup>8</sup>

According to the ministerial regulations, Personal Data is Certain Individual Data that is stored, maintained, and kept true and protected by confidentiality. In general, personal data consists of facts relating to individuals which are very personal information so that the person concerned wants to keep it for himself and/or restrict others from spreading it to other parties or misusing it. In particular, personal data

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<sup>5</sup> Ni Made Dewi Sukmawati and I Wayan Novi Purwanto, “Tanggung Jawab Hukum Pelaku Usaha Online Shope Terhadap Konsumen Akibat Peredaran Produk Kosmetik Palsu,” *Kherta Semaya : Jurnal Ilmu Hukum* 7, no. 3 (2019): 1-14.

<sup>6</sup> Calvin Bertus, “Perlindungan Hukum Terhadap Data Pribadi Konsumen Yang Melakukan Belanja Secara Online” (2019), <http://e-journal.uajy.ac.id/21973/2/160512273.pdf>.

<sup>7</sup> Pasal 1 ayat (1). *Data Protection Act Inggris* tahun 1998.

<sup>8</sup> Lia Sautunnida, “Urgensi Undang-Undang Perlindungan Data Pribadi Di Indonesia: Studi Perbandingan Hukum Inggris Dan Malaysia,” *Kanun Jurnal Ilmu Hukum* 20, no. 2 (2018): 369-84,

describes information that is closely related to someone who will distinguish the characteristics of each individual.<sup>9</sup>

As for the types of data in the personal data protection law, there are two groupings, namely personal data that are specific and general in nature, this is stated in article 3 paragraph (1-3) of the personal data protection law. Specific personal data as referred to in paragraph (1) letter a includes:<sup>10</sup>

1. Health data and information;
2. Biometric data;
3. genetic data;
4. Sexual life/orientation;
5. Political views;
6. Crime record;
7. child data;
8. Personal financial data; and/or
9. Other data in accordance with the provisions of laws and regulations.

General personal data as referred to in paragraph (1) letter b includes:

1. Full name;
2. Gender;
3. Citizenship,
4. Religion;
5. Marital status; and/or
6. Personal Data combined to identify an individual.

According to Soerjono Soekanto Legal protection itself is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection for victims of crime as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services , and legal assistance.<sup>11</sup> Legal protection given to legal subjects in the form of instruments both preventive and repressive in nature, both verbal and written. In other words, it can be said that legal protection is a separate picture of the function of the law itself, which has the concept that law provides justice, order, certainty, benefit and peace.

According to Philipus M. Hadjon, legal protection is a collection of rules or rules that can protect one thing from another. With regard to consumers, it means that the law provides protection for the rights of customers from something that results in non-fulfillment of these rights.<sup>12</sup>

Based on the Law on Information and Electronic Transactions (UU ITE) it has provided legal protection regarding personal data, article 26, for example. In this

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<sup>9</sup> Jerry Kang, "Information Privacy in Cyberspace Transactions," *Stanford Law Review* 50, no. 4 (1998): 1193-94.

<sup>10</sup> Pasal 3 Ayat (1-3) UU Perlindungan Data Pribadi.

<sup>11</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Ui Press, 1984).

<sup>12</sup> Philipus M. Hadjon, *Perlindungan Bagi Rakyat Diindonesia* (Surabaya: PT. Bina Ilmu, 1987).

article it has been emphasized that the use of any electronic information in the media must be with the consent of the owner of the data.<sup>20</sup> paragraph (1) explains that data managers or application operators are required to prevent personal data from being accessed illegally. This prohibition is also stated in Article 51 paragraph (1) which reads:

"Everyone is prohibited from obtaining or collecting Personal Data that does not belong to him with the intention of unlawfully benefiting himself or others or causing harm to the owner of personal data."<sup>13</sup>

The Personal Data Protection Act (PDP), which was previously still in process (RUU), was officially passed into the Personal Data Protection Act (PDP) in October 2022. Before the PDP Law was passed, Commission I of the Indonesian Parliament and the government agreed to bring the PDP Bill to discussion level II in the Plenary Meeting of the DPR RI, to then be ratified as a Law (UU).

Member of Commission I DPR RI, Rizki Aulia Rahman Natakusumah, said that Personal Data Protection would be a good start in solving the problem of personal data leakage in Indonesia. Meanwhile, the Chairperson of Commission I of the Indonesian Parliament, Meutya Viada Hafid, said that personal data protection is urgently needed, considering that cyber attacks in Indonesia have become increasingly widespread. According to him, Personal Data Protection will provide legal certainty that has permanent force in protecting people's personal data in the digital realm.

The Ministry of Communication and Informatics together with Commission I of the DPR RI have agreed to bring the PDP Bill to the next level of discussion or the DPR Plenary Meeting to be ratified as a law soon. This decision was made during a working meeting between Commission I of the Indonesian Parliament and Minister of Communication and Information Johnny G. Plate, Deputy Minister of Home Affairs John Wempi Wetipo, and representatives from the Ministry of Law and Human Rights.

The discussion on the PDP Bill between the Government Panja Team and the DPR RI Commission I Panja Team has gone through very constructive discussions and debates. According to the Minister of Communication and Information, the dynamics of the discussion that has been going on will work on the substance of the bill.

The PDP Bill consists of 371 problem inventory lists (DIM), 16 chapters and 76 articles. It has gone through six extensions of the trial period, working committee meetings, as well as drafting and synchronization team meetings. The Minister of Communication and Information stated that 13 substances were produced during the discussion on the PDP Bill. The 13 substances of the PDP Bill are as follows.

1. Improving the formulation of the scope of application of the PDP Law which can reach legal actions, both within and outside the Territory of the Republic of Indonesia;
2. Refinement of the formulation of definitions and types of personal data;

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<sup>13</sup> Pasal 50 Ayat (1) UU Perlindungan Data Pribadi.

3. Improving the formulation of principles and basis for processing personal data;
4. Refinement of the formulation of the rights of personal data subjects and obligations of personal data controllers;
5. Additional provisions regarding the processing of personal data of children and persons with disabilities;
6. Additional provisions regarding the obligation to assess the impact of personal data protection;
7. Formulation of transfer of personal data within and outside the jurisdiction of the Republic of Indonesia;
8. Improving the formulation of the government's role and increasing the authority of institutions;
9. Completion of the formulation of international cooperation in the field of personal data protection;
10. Completion of the formulation of community participation;
11. Additional provisions regarding the percentage of administrative fines;
12. Adjustment of criminal prohibitions and provisions; And
13. Refinement of the formulation of transitional provisions and closing provisions, and several editorial changes and repositioning of articles and chapters.

According to Minister Johnny, Protection of Personal Data is needed to guarantee citizens' rights to the protection of people's personal data. "Protection of Personal Data raises public awareness and guarantees recognition and respect for the importance of protecting personal data."

Law Number 19 of 2016 concerning information and Electronic Transactions (formerly Law Number 11 of 2008 concerning Electronic Information and Transactions) already contains personal data protection rules, implicitly in articles 27 to 37 of this Law regulates the understanding of protection of electronic data or information, both public and private. As for matters related to the elaboration of personal electronic data, the Electronic Transaction Information Law mandates again in government regulation Number 82 of 2012 concerning the implementation of systems and Electronic Transactions.

Protection of personal data in an electronic system in the Electronic Transaction Information Law has a condition that every user without permission, article 26 of the Electronic Transaction Information Law has a requirement that every user of personal data in an electronic media must obtain the approval of the data owner concerned.

Everyone who violates this provision can be sued for losses incurred and in the explanation in article 26 of the Electronic Transaction Information Law states that personal data is one of a person's personal rights.



## 2. Research Method

The research used in this writing is Juridical Sociological research and uses a qualitative research approach that is descriptive in nature and uses interactive analysis techniques.

## 3. Personal data Who shop Online

Legal protection is "a way to protect consumers provided by law or law to prevent violations or things that can harm consumer interests. In this study, consumers who use E-commerce transactions get legal protection based on statutory provisions, namely Law Number 8 of 1999 concerning Consumer Protection (UUPK), and Law Number 19 of 2016 regarding amendments to Law Number 11 of 2016. 2008 concerning Information and Electronic Transactions (UU ITE)."<sup>14</sup>

Based on the description regarding legal protection for consumers in the above laws and regulations, namely:

### 1. Legal protection in terms of consumer protection laws

Consumers are in many ways a party whose position is weak when compared to business actors, consumers often do not have a bargaining position when dealing with business actors. It is said so because from the process to the results of the product it is done without the slightest intervention from the consumer.<sup>15</sup>

The relationship between consumers and business actors often ends in consumer losses. This can happen because, on the one hand, consumers forget their rights, on the other hand, business actors forget their obligations and responsibilities.

So that a practice of business transactions carried out by business actors and consumers, often places consumers in a weak position. From the results of previous research and thought from Hulman Panjaitan in his study of

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<sup>14</sup> Dianne Eka Rusmawati, "Perlindungan Hukum Bagi Konsumen Dalam Transaksi E-Commerce," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 7, no. 2 (2015): 193-201,

<sup>15</sup> P. H Sudjito, "Perlindungan Hukum Data Pribadi Konsumen Dalam Transaksi Belanja Online.," *Jurnal Hukum IUS QUIA IUSTUM* 27, no. 2 (2020): 183-98.

Consumer Protection Law that in the practice of trading in goods or service businesses, consumers and business actors are often in a weak and disadvantageous position when compared to business actors. Because there are several factors, including consumers are always in a weak position, also because agreements between consumers and business actors are unfair, tend to harm consumers. Contracts or agreements are made unilaterally by the business actor, so that it can be said that the consumer is forced to accept an unequal agreement.<sup>16</sup>

herefore, we need a rule that can protect the interests of consumers so that they are not harmed or treated arbitrarily by business actors. This is also in accordance with the opinion expressed by Husni Syawali and Neni Sri Imaniyati in the book Consumer Protection Law that regulation of consumer protection is carried out by:

- a. "Creating a consumer protection system that contains elements of open access and information, and guarantees legal certainty;
- b. Protecting the interests of consumers in particular and the interests of business actors;
- c. Improving the quality of goods and services;
- d. Provide protection to consumers from deceptive and misleading business practices; And
- e. Integrating the implementation, development and regulation of consumer protection with other fields of protection."<sup>17</sup>

The UUPK guarantees legal certainty to provide protection to consumers as stated in Article 1 Number (1) of the UUPK. UUPK provides protection to every consumer who feels their rights have been violated or harmed by business actors.

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<sup>16</sup> Ni Made et al., "Pelaksanaan Penyelesaian Sengketa Konsumen Oleh Badan Penyelesaian Sengketa Konsumen Di Kota Denpasar," *Kertha Semaya : Journal Ilmu Hukum* 2, no. 2 (2017): 1–8.

<sup>17</sup> Muhammad Na'im Al Jum'ah, "Analisa Keamanan Dan Hukum Untuk Pelindungan Data Privasi," *Cyber Security Dan Forensik Digital* 1, no. 2 (2019): 39–44.



Based on UUPK, it is determined in detail the consumer rights that also apply to consumers who use electronic transactions / E-Commerce. Based on the provisions of article 4 of the UUPK, in relation to consumers who use E-Commerce transactions that are violated by business actors or sellers are as follows:

- a. "Article 4 letter b, namely the right to choose goods and or services and to obtain those goods and/or services in accordance with the exchange rate and the conditions and guarantees promised. Based on Article 4 letter b, in relation to consumers who use E-Commerce transactions, the business actor or seller must provide goods according to the exchange rate and conditions as well as the guaranteed guarantee;
- b. Article 4 letter c stipulates that consumers are entitled to correct, clear and honest information regarding the conditions and guarantees of goods and/services. Business actors or sellers in E-Commerce transactions should provide clear information regarding the condition of the goods or the specifications of the goods and other information relating to the goods they are selling/trading. This is important for supplying consumers to know clearly the condition of the goods being traded so that they can finally decide whether to buy or not the goods based on the available information."<sup>18</sup>

based on the UUPK, in addition to regulating consumer rights, the obligations of business actors are also regulated as specified in article 7 of the UUPK, including those relating to legal protection for consumers who use E-Commerce transactions, namely:

- a. "The legal aspect of consumer protection in the provisions of Article 7 letter b states that business actors are obliged to provide correct, clear and honest information regarding the conditions and warranties of goods and/or services and provide explanations for use, repair and maintenance, in this case the seller is obliged to

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<sup>18</sup> Margaretha Rosa Anjani and Budi Santoso, "Urgensi Rekonstruksi Hukum E-Commerce Di Indonesia," *Law Reform* 14, no. 1 (2018): 89.

provide detailed information. clearly regarding the condition of the goods or the specifications of the goods and other information relating to the goods being sold/traded. This is important so that consumers know clearly the condition of the goods being traded so that they can finally decide whether to buy or not the goods based on the available information;

- b. Article 7 letter d states that business actors are obliged to guarantee the quality of goods and/or services produced and or traded based on the provisions of the applicable standards for the quality of goods and/or services. With regard to consumers who use E-Commerce transactions, business actors or sellers must guarantee the quality of goods and or services produced in accordance with the applicable quality standards for goods and or services and in accordance with the conditions of the goods offered.<sup>19</sup>

Based on the consumer protection aspect related to the Personal Data Protection Act, there are still many problems. The draft Law on Personal Data Protection (RUU PDP) officially became law after obtaining approval from the DPR and the government at a plenary meeting. There is great hope from the public or institutions and ministries that the PDP Law can overcome the messiness of personal data protection.

The substance of the PDP Law follows the standards and general principles of personal data protection that apply internationally. In particular, there is clarity in the formulation regarding the definition of personal data, the scope of material that is binding on public bodies and the private sector, special protection for specific data. Then adopt the principles of processing personal data, limit the legal basis for processing personal data, protect the rights of data subjects. This means that with this clause the PDP Law should be able to

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<sup>19</sup> ririn Aswandi, Putri Rofifah Nabilah Muchsin, And Muhammad Sultan, "Perlindungan Data Dan Informasi Pribadi Melalui Indonesian Data Protection System (IDPS)," *Legislatif* 3, no. 2 (2020): 167-90.

provide comprehensive legal certainty and protection in the processing of personal data in Indonesia.<sup>20</sup>

When viewed from the PDP law, the processing of personal data, as long as it does not meet the legal basis for processing (approval/consent, legal obligations, contractual obligations, public interest, personal interests, and legitimate interests), can be deemed to have violated the law. The lack of clarity regarding the phrase "unlawful" in this article will have a rubbery impact and multiple interpretations in its application.<sup>21</sup>

The approval and ratification of the PDP Bill to become a law is a concrete manifestation of the embodiment of the mandate of the 1945 Constitution. In particular, article 28 G paragraph (1) of the 1945 Constitution states, "everyone has the right to protect himself/herself, family, honor, dignity and property under power, and are entitled to a sense of security and protection from the threat of fear to do or not do something that is a human right."<sup>22</sup>

Consumer protection law in Indonesia has not optimally protected consumers because first, there is still an asymmetrical relationship between producers and consumers. Second, consumers generally do not have sufficient bargaining power against business actors. As already explained that consumer protection is intended to provide certainty, security and legal balance between producers and consumers.<sup>23</sup>

When viewed from the perspective of the consumer protection law (UUPK), in practice legal protection of consumers still creates various problems. These problems are influenced by various factors, including:

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<sup>20</sup> Rais Agil Bahtiar, "Potensi , Peran Pemerintah , Dan Tantangan Dalam Pengembangan E-Commerce Di Indonesia ( Potency , Government Role , and Challenges of E-Commerce Development in Indonesia )," no. 2004 (2020): 13–25.

<sup>21</sup> M. A. Nurdin, "Perlindungan Hukum Terhadap Data Pribadi Konsumen Pada Transaksi Elektronik," *Jurnal Ilmiah Hukum* 16, no. 1 (2019): 1–12.

<sup>22</sup> Sinta Dewi, "Konsep Perlindungan Hukum Atas Privasi Dan Data Pribadi Dikaitkan Dengan Penggunaan Cloud Computing Di Indonesia," *Yustisia Jurnal Hukum* 5, no. 1 (2016): 22–30.

<sup>23</sup> A. Sari, E. P., & Sutiyono, "Perlindungan Hukum Terhadap Data Pribadi Konsumen Pada Transaksi Belanja Online.," *Jurnal Hukum Dan Pembangunan* 49, no. 2 (2019): 123–35.

- a. Legal structure;
- b. Legal substance;
- c. Legal culture;
- d. Bureaucratic apparatus.

Broadly speaking, the obstacles or obstacles faced in the implementation of UUPK are:

- a. The level of consumer awareness of their rights is still low;
- b. Low consumer education;
- c. No party has touched on how to prepare Indonesian consumers to face the free market;
- d. Weak supervision in the field of standardization of quality of goods;
- e. Weak legislation products;
- f. The wrong perception of business actors with consumer protection will cause losses.<sup>24</sup>

Therefore a strong legal umbrella is needed for citizens in the protection of personal data, to guarantee legal certainty and guarantee all consumer rights regarding the protection of personal data.

## 2. Legal protection in terms of the Electronic Information and Transaction Law

Law No. 11 of 2008 concerning Information and Electronic Transactions regulates several provisions which are a form of legal protection for consumers who use E-Commerce transactions. The forms of legal protection are as follows:

- a. "Article 2 of the UUIITE, this law applies to everyone who commits legal acts as stipulated in this law, both within the jurisdiction of Indonesia and outside the territory of Indonesia which has legal consequences in Indonesia or outside the territory of Indonesia. which is detrimental to the interests of Indonesia;

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<sup>24</sup> A. Mahardhika, A. W., & Nuraini, "Tinjauan Yuridis Perlindungan Hukum Data Pribadi Konsumen Pada Transaksi Belanja Online.," *Jurnal Hukum Dan Peradaban* 12, no. 1 (2021): 1-14.

- b. Article 9 of the ITE Law, in this article, business actors who offer products through an electronic system must provide complete and correct information regarding contract terms, producers and products offered.

Based on the above article, complete and correct information can be described, namely:

1. Information containing the identity and status of legal subjects and their competence as producers, suppliers, organizers or intermediaries.
2. Other information that explains certain things that are a legal requirement for the agreement and describes the goods and or services offered, such as names, addresses and descriptions of goods/services.<sup>25</sup>

#### **4. Conclusion**

Based on the results discussed earlier, it can be concluded that: Legal protection is a way to protect consumers provided by law or law to prevent violations or things that can harm consumer interests. As consumers who use E-commerce transactions, they get a form of legal protection based on statutory provisions, namely the Consumer Protection Act (UUPK) and the Electronic Information and Transaction Law (UU ITE). Consumers in this case must be given various special protections which are very vulnerable to various possibilities that will harm the consumers themselves.

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<sup>25</sup> M. Rahmawati, R., & Murtanto, "Perlindungan Hukum Data Pribadi Konsumen Pada Transaksi Belanja Online.," *Jurnal Hukum Dan Peradilan* 9, no. 2 (2020): 183-96.

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