

Privacy Protection Against Unauthorized Capture of Potraits Processed in The FotoYu Application

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Abstract. FotoYu, as a digital platform, connects photographers with yusers through an artificial intelligence system called RoboYu, which scans facial features to identify matching portraits. Although this innovation provides convenience, it also raises serious privacy concerns, as personal portraits can be accessed or purchased without the owner's consent. This study aims to examine the legal protection of portraits taken without permission and processed through the FotoYu application. The research employs a normative juridical method; and using statutory, conceptual, and case approaches. Data were obtained through a library study of primary, secondary, and tertiary legal materials and analyzed descriptively and qualitatively. The results show that FotoYu's practice potentially violates Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE Law) and Law Number 27 of 2022 concerning Personal Data Protection (PDP Law), particularly the obligation to obtain explicit consent from data subjects as stipulated in Article 20 of the PDP Law. The inaccuracy of the RoboYu system and the absence of a proper consent mechanism create risks of data misuse and privacy violations. Although the PDP Law provides both preventive protection mechanisms (through principles of transparency and consent) and repressive mechanisms (through administrative, civil, and criminal sanctions), implementation remains ineffective due to the absence of an independent supervisory authority as mandated by Article 58 of the PDP Law. Therefore, the establishment of such an authority and the strengthening of regulatory enforcement are essential to ensure the protection of privacy rights in the digital era.

Keywords: Privacy, Potrait, Personal Data Protection, FotoYu

Abstrak. FotoYu sebagai platform digital mempertemukan fotografer dengan pengguna (yuser) menggunakan teknologi kecerdasan buatan RoboYu yang memindai wajah untuk menemukan potret. Meskipun memberikan kemudahan, sistem ini menimbulkan persoalan serius terkait privasi karena potret dapat diakses atau dibeli tanpa persetujuan pemiliknya. Penelitian ini bertujuan untuk mengkaji perlindungan hukum atas pengambilan potret tanpa izin yang kemudian diproses dalam aplikasi FotoYu. Jenis penelitian yang digunakan adalah yuridis normatif dengan pendekatan peraturan perundang-undangan, konseptual, dan kasus. Data diperoleh melalui studi pustaka terhadap bahan hukum primer, sekunder, dan tersier, lalu dianalisis secara deskriptif-kualitatif. Hasil penelitian menunjukkan praktik FotoYu berpotensi melanggar Undang-Undang Nomor 19 Tahun 2016 tentang Informasi Teknologi dan Elektronik serta Undang-Undang Nomor 27 Tahun 2022 tentang Perlindungan Data Pribadi (UU PDP), khususnya kewajiban memperoleh persetujuan eksplisit dari subjek data sebagaimana diatur dalam Pasal 20 UU PDP. Ketidaktepatan sistem RoboYu serta absennya mekanisme persetujuan menimbulkan risiko penyalahgunaan data pribadi dan pelanggaran hak privasi. UU PDP sebenarnya telah menyediakan mekanisme perlindungan preventif berupa asas transparansi dan persetujuan, serta represif melalui sanksi administratif, perdata, hingga pidana. Namun, implementasinya belum efektif karena lembaga pengawas independen sebagaimana diamanatkan Pasal 58 UU PDP belum terbentuk. Oleh karena itu, pembentukan otoritas pengawas serta penguatan regulasi sangat diperlukan untuk menjamin perlindungan hak privasi masyarakat dalam era digital.

Kata Kunci: Privasi, Potret, Perlindungan Data Pribadi, FotoYu

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INTRODUCTION

Running as a sport has experienced rapid growth in Indonesia in recent years, particularly in the post COVID-19 pandemic period. This activity is no longer perceived merely as a form of physical exercise, but has evolved into a modern lifestyle that emphasizes health, social interaction, and self expression. The significant increase in participant numbers at events such as the Jakarta Marathon, Pocari Sweat Run, Jogja Marathon, and Bromo Marathon demonstrates the high level of public enthusiasm for running activities.¹ On the other hand, advances in digital technology have also driven the growth of photography trends, including street photography, which has become increasingly popular among urban communities. This form of photography documents human activities in public spaces in a spontaneous manner; however, candid practices frequently give rise to ethical and legal concerns, as they intersect with the sphere of individual privacy.²

Street photography is fundamentally guided by ethical principles, including respect for the subject's privacy by obtaining prior consent, compliance with legal restrictions at the location of photography, preservation of the subject's dignity, and caution in the publication of portraits, particularly when the subject's face is clearly identifiable. These principles are essential to ensure that photographic practices remain aligned with respect for individual rights.³ One form of street photography that has developed is the documentation of running events. This phenomenon has been further reinforced by the emergence of the FotoYu application in mid 2024, an artificial intelligence based photography marketplace that utilizes facial recognition technology and location data. FotoYu enables participants to easily locate and purchase their personal photographic

¹ Tiara Adinda, *5 Event Lari Top di Indonesia dengan Pemandangan yang Indah*, terdapat dalam, <https://rri.co.id/olimpik/1280847/5-event-lari-di-indonesia-dengan-pemandangan-yang-indah>, diakses tanggal 25 mei 2025 Pukul 16.00 WIB

² Sahal Farhian, "Analisis Yuridis Pelindungan Hukum Terhadap Orang yang Dipotret dalam Karya Fotografi untuk Penggunaan Komersial Menurut Undang - Undang Nomor 28 Tahun 2014 Tentang Hak Cipta", *Skripsi*, Fakultas Hukum, Universitas Sumatera Utara, 2024, p. 3.

³ Jakarta Street Photography, *Kode Etik Street Photography*, terdapat dalam <https://jakartastreetphotography.com/2024/04/08/kode-etik-street-photography/> diakses tanggal 27 Juli 2025 Jam 22.00 WIB

documentation, while simultaneously creating economic opportunities for photographers.⁴

This practice has generated concern because many images of runners are captured without their consent, particularly those of individuals who are not users of the FotoYu application. Nevertheless, such photographs may still appear and be commercialized on the platform, thereby creating the perception of a violation of privacy rights. Another associated risk lies in the potential for algorithmic inaccuracies, which may result in the misidentification and display of images of individuals whose facial features resemble those of registered users.⁵ These concerns have also been articulated by a journalist in an article published on *magdalene.co* (8 July 2025). The author argues that the presence of photographers who capture subjects without consent generates discomfort and simultaneously creates opportunities for the misuse of portraits, whether by individual photographers or through the FotoYu system itself. This situation underscores the importance of photographic ethics and the need for robust legal protection of individual privacy.⁶

The right to privacy is guaranteed under Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia and is further reinforced by Law of the Republic of Indonesia No. 19 of 2016 concerning the Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (the ITE Law), as well as the Personal Data Protection Law (PDP Law). Facial images constitute biometric data, which must be processed on the basis of the explicit consent of the data subject. In this context, FotoYu, as a personal data controller, is legally obligated to ensure data security, transparency, and compliance with applicable laws and regulations. In the event of violations involving the unauthorized capture and commercialization of portraits,

⁴ Greenforcerun, *Siap-Siap Dapatkan Foto Kerenmu di Fotoyu, Begini Caranya...*, terdapat dalam <https://www.greenforcerun.id/run/4/news/3299/siap-siap-dapatkan-foto-kerenmu-di-fotoyu-begini-caranya?> diakses pada 21 Juli 2025 14.15 WIB

⁵ Sultratop, *Tren Fotografer Pelari di Kendari: Antara Cuan dan Pengabaian Privasi di Ruang Publik*, terdapat dalam <https://sultratop.com/tren-fotografer-pelari-di-kendari-antara-cuan-dan-pengabaian-privasi-di-ruang-publik/> diakses pada 26 Mei 2025 15.00 WIB

⁶ Magdalene, *Tren Fotografi Lari: Ada Peluang Ekonomi, Ada Pelanggaran Privasi*, terdapat dalam <https://magdalene.co/story/minimnya-privasi-di-balik-foto-olahraga-fotoyu/>, diakses pada 28 Juli 2025 jam 16.50 WIB.

FotoYu may be held legally accountable.⁷ The PDP Law serves as a legal safeguard for individuals whose personal data rights have been infringed or compromised. Pursuant to Article 4 of the PDP Law, personal data are classified into two categories: specific personal data and general personal data.⁸ In the context of the commercialization of portraits through the FotoYu application, facial images that are capable of directly identifying an individual are classified as biometric data. Accordingly, the use and processing of such portraits must comply with the provisions set forth in the PDP Law.⁹

In this context, FotoYu acts as a personal data controller and is therefore obligated to comply with the principles stipulated in Article 16 paragraph (2) of the PDP Law when processing personal data, to ensure the security of personal data belonging to data subjects, and to maintain transparency in its personal data usage policies. In the event of a privacy violation, such as the unauthorized capture and commercialization of portraits, FotoYu, as the personal data controller, may be held legally accountable. Based on the foregoing discussion, this study examines “Privacy Protection Against Unauthorized Capture of Portraits Processed in the Fotoyu Application”.

METHODOLOGY

This study employs normative juridical research, which draws primarily upon legislation as its principal source of legal authority. The research applies three approaches: a statutory approach, which examines relevant laws and regulations; a conceptual approach, which analyzes legal doctrines and theoretical frameworks; and a case approach, which reviews cases related to the practice of photograph capture within the FotoYu application. The research relies on primary legal materials,

⁷Danrivanto Budhijanto, *Hukum Telekomunikasi, Penyiaran & Teknologi Informasi: Regulasi & Konvergensi*, PT Refika Adhitama, Bandung, 2013.

⁸Rima Adhelia Pertiwi, “Kelemahan Perlindungan Data Pribadi dalam Pelanggaran Hak Privasi Bukan Pengguna Aplikasi Getcontact Atas Publikasi Nama dan Nomor Telepon”, *Skrripsi*, Fakultas Hukum, Universitas Islam Indonesia, 2025, p. 8.

⁹Hukum Online, *Contoh data pribadi umum dan data pribadi spesifik dalam UU PDP*, terdapat dalam <https://www.hukumonline.com/berita/a/contoh-data-pribadi-lt636e12170b9c0>, diakses pada 1 agustus 2025, jam 01.02 WIB.

including the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, the Personal Data Protection Law, Law No. 28 of 2014 on Copyright, and Law No. 19 of 2016 concerning the Amendment to Law No. 11 of 2008 on Electronic Information and Transactions. Secondary legal materials consist of books and scholarly articles, while tertiary legal materials include legal dictionaries. The legal materials are analyzed using a qualitative descriptive method. The analysis involves an in-depth examination of the legal materials through interpretation, elaboration, and discussion of findings relevant to the issues under study. The results of the analysis are then presented in the form of a descriptive narrative.

RESULT AND DISCUSSION

Privacy Protection Against Unauthorized Capture of Portraits Processed in the Fotoyu Application

The development of digital technology has given rise to new phenomena, one of which is the digital commercialization of photographic portraits. The FotoYu application, owned by PT Super Giga Generasi, operates as an artificial intelligence based photography marketplace. FotoYu connects photographers or content creators with users, referred to as *yusers*, and is supported by the RoboYu system, which employs facial recognition technology to automatically scan and identify portraits belonging to the *yusers*.¹⁰ Despite the convenience it offers, this system raises privacy concerns, as visually similar portraits may appear in other *yusers*' accounts and may even be purchased without the consent of the individuals depicted. This situation gives rise to a tension between commercial interests and the individual right to privacy.

In practice, RoboYu does not operate with complete accuracy, which may result in portraits of other individuals appearing in a *yuser*'s account. This situation may allow a person to access or even purchase portraits that do not belong to them.

¹⁰ FotoYu, *Apa Itu FotoYu?* terdapat dalam <https://www.fotoyu.com/how-it-works> , diakses tanggal 26 Agustus 2025, Pukul 15.32 WIB.

Although FotoYu formally prohibits the purchase of portraits belonging to other individuals, in practice such portraits remain accessible and are therefore susceptible to misuse. This concern was highlighted in a case disclosed by an individual during a public discussion forum entitled “*Photography Marketplaces and Privacy Rights in Public Spaces*,” held at Campus 3 of the Faculty of Law, Universitas Negeri Sebelas Maret, on 28 February 2025, as reported by *joglosemarnews.com* on 1 March 2025. As a novice runner, the individual initially expressed satisfaction with the presence of photographers who documented his running activities, particularly as he was also a FotoYu user. However, over time, he began to develop concerns regarding the protection of his personal data, given that FotoYu users are able to purchase portraits that do not belong to them. This practice creates a significant risk of portrait misuse by unauthorized parties. He further stated that he had conducted an experiment by purchasing portraits that were not his own and was able to do so successfully.¹¹

The possibility that an individual’s portrait may be accessed or even purchased by another party indicates that FotoYu, as a Personal Data Controller, has failed to fulfill its obligation to protect and ensure the security of the Personal Data under its control, as stipulated in Article 35 of the PDP Law. In practice, photographers as content providers frequently upload their photographs to the FotoYu application, where the images are processed without verification of whether the individuals depicted are registered users (*yuser*) or not. Such practices potentially constitute a violation of the obligations imposed on Personal Data Controllers under Article 20 of the PDP Law, which requires that any processing of personal data including facial portraits be based on the valid and explicit consent of the data subject.

Non-compliance with these obligations has generated significant debate, as many runners perceive their right to privacy to be disregarded. For instance, in an interview cited by *Sultratop.com* on 31 July 2025, a runner expressed discomfort at being photographed without consent and voiced concerns that the images might be

¹¹ Joglosemarnews, *FH UNS-Mafindo Bahas Marketplace Fotografi, Pengguna dan Fotografer FotoYu Harus Saling Melindungi*, terdapat dalam <https://joglosemarnews.com/2025/03/fh-uns-mafindo-bahas-marketplace-fotografi-pengguna-dan-fotografer-fotoyu-harus-saling-melindungi/>, diakses tanggal 23 Agustus 2025, Pukul 23.58 WIB.

disseminated on social media and become the subject of sexist commentary. Similar complaints were raised by other runners who reported feeling uneasy about being photographed repeatedly and increasingly disturbed when photographers responded to their objections with dismissive remarks such as, “Just cover your face if you do not want to be photographed.” This case demonstrates that unauthorized photography practices not only give rise to legal implications in the form of privacy violations, but also result in tangible harm, including feelings of insecurity and a disruption of runners’ comfort in public spaces.¹²

The cases arising from the practical use of the FotoYu application reveal the existence of serious legal loopholes. On the one hand, the platform offers tangible benefits to runners by facilitating the documentation of personal moments; on the other hand, the practice of photographing individuals without consent and the possibility for third parties to purchase such portraits pose a real and substantial threat to individual privacy rights. This situation illustrates a clear tension between the commercial interests of photographers and the platform and the fundamental rights of the individuals depicted. Accordingly, it is essential to examine the statutory provisions specifically governing personal data protection in order to ensure that the privacy rights of photograph subjects remain adequately safeguarded amid the rapid development of digital technologies.

In the *Kamus Besar Bahasa Indonesia (KBBI)*, a portrait is defined as an image produced using a camera.¹³ Moreover, portraits are legally recognized as photographic works under Law No. 28 of 2014 on Copyright and, at the same time, constitute biometric data pursuant to Article 4 of the PDP Law. Biometric data are inherently sensitive, as they enable the unique identification of individuals and therefore require a heightened level of legal protection. In this context, the use of portraits without consent within systems such as FotoYu constitutes an infringement of the rights of personal data subjects. The PDP Law confers a number of rights upon personal data subjects, including:

¹² Sultratop, *Loc. Cit.*

¹³ Kamus Besar Bahasa Indonesia (KBBI).

1. The Right to Obtain Information Regarding Personal Data Processing (Article 5)

This provision provides a legal guarantee that Personal Data Subjects are entitled to obtain clear and transparent information concerning the identity of the party requesting the data, the underlying legal basis or legitimate interest for such processing, the purpose for which the data are used, as well as the accountability of the party responsible for managing and processing the data.¹⁴ This provision reinforces the principles of transparency and accountability in the processing of personal data. Transparency aims to ensure that data subjects are able to understand who is responsible for their data and for what purposes the data are processed. Accountability, on the other hand, requires personal data controllers and processors to be able to justify and take responsibility for their actions in the event of misuse or violations involving personal data. Accordingly, Article 5 serves as a form of preventive protection of privacy rights, as it strengthens the bargaining position of data subjects in exercising control over their personal information.

2. The Right to Rectify Inaccurate or Erroneous Personal Data (Article 6).

This provision affirms that Personal Data Subjects have the right to complete, update, and rectify their personal data in the event of errors or inaccuracies in the data processing activities.¹⁵ This right is of particular importance, as inaccurate or incomplete personal data may result in harm, including misunderstandings, misuse, or discrimination against individuals. Personal data controllers and processors are obligated to ensure that the data used are accurate, valid, up to date, and consistent with the purposes of processing. Where inaccuracies occur, data subjects are entitled to submit requests for correction or updating, and data controllers are required to act upon such requests without undue delay. This mechanism reflects both preventive and corrective (repressive) forms of protection, as it seeks to prevent potential harm

¹⁴Pasal 5 Undang-Undang Nomor 27 Tahun 2022 tentang Pelindungan Data Pribadi.

¹⁵Pasal 6 Undang-Undang Nomor 27 Tahun 2022 tentang Pelindungan Data Pribadi

at an early stage while also providing remedial measures when errors arise in the processing of personal data.

3. The Right to Erasure of Personal Data When It Is No Longer Relevant (Article 8)

This provision affirms that individuals, as data subjects, retain full authority over their personal data. Accordingly, any processing of personal data must be conducted on the basis of the data subject's consent and expressed intent. In other words, where a data subject considers themselves to be adversely affected or no longer wishes their personal data to be processed, they are entitled to require the cessation of such processing.¹⁶ This right encompasses the ability to request the deletion or destruction of personal data that has been collected and disseminated. Based on the cases discussed above, objections to the unauthorized capture of portraits that are subsequently commercialized through the FotoYu application may invoke Article 8 of the PDP Law as a legal basis for data subjects to request the removal of portraits uploaded to the FotoYu platform. In such circumstances, the personal data controller is legally obliged to delete or destroy the personal data upon the request of the data subject. Accordingly, Article 8 of the UU PDP functions as a pivotal legal instrument that affirms the protected status of data subjects while simultaneously restricting data controllers from acting arbitrarily in the use of other individuals' personal data.

4. The Right to Withdraw Consent to Data Processing (Article 9)

This provision demonstrates that primary control over personal data remains with the individual as the data owner, rather than resting solely with the personal data controller. Accordingly, this right provides a safeguard for privacy protection and serves to prevent the potential misuse of personal data.¹⁷ From the perspective of the data subject, consent may be withdrawn where the processing of personal data is deemed no longer relevant, excessive, or likely to cause harm. Conversely, data controllers are obliged to establish

¹⁶Pasal 8 Undang-Undang Nomor 27 Tahun 2022 tentang Pelindungan Data Pribadi.

¹⁷Pasal 9 Undang-Undang Nomor 27 Tahun 2022 tentang Pelindungan Data Pribadi.

mechanisms that are accessible, simple, and transparent, enabling data subjects to withdraw their consent without undue obstacles. Once consent has been withdrawn, the data controller must cease all data processing activities, unless there exists another valid legal basis, such as a statutory obligation or a legitimate contractual interest.

5. The Right to Object to Automated Processing, Including Profiling (Article 10). This provision protects data subjects from the potential misuse of algorithm-based and artificial intelligence driven systems capable of classification, prediction, and even identity determination without human involvement. Article 10 constitutes a safeguard against the risks of discrimination and injustice arising from automated decision making processes.¹⁸ Within the context of modern digital systems, algorithmic decisions frequently contain latent or unrecognized biases. Consequently, data controllers are required to ensure meaningful human intervention in order to prevent adverse effects or harm to data subjects.¹⁹

The case of the FotoYu application provides a relevant illustration of the application of Article 10 of the PDP Law. For instance, where an individual's facial image is automatically associated with or assigned to another user's account solely because an algorithm detects a perceived similarity despite the absence of the individual's consent such a situation raises serious legal concerns. Decisions made entirely by automated facial recognition systems, without human oversight or intervention, may therefore constitute a violation of the rights of the data subject.

Article 10 paragraph (1) affirms that every individual has the right to object to automated decisions, including profiling, where such decisions give rise to legal consequences or produce significant effects. In this context, the existence of significant effects is evident, namely the loss of control over personal data, the potential misuse of identity, and violations of privacy. Where no

¹⁸Pasal 10 Undang-Undang Nomor 27 Tahun 2022 tentang Pelindungan Data Pribadi

¹⁹Evelyn A. P. Manurung, et.al., "Tinjauan Yuridis Perlindungan Data Pribadi Berdasarkan UU NO.27 Tahun 2022." *Jurnal Hukum Saraswati*, Edisi No. 02 Vol. 04, Intitusi Bisnis dan Teknologi Indonesia Denpasar, 2022, p. 144.

mechanism for lodging objections is provided, the data controller may be deemed to have breached its legal obligations and the fundamental principles of personal data protection as enshrined in the PDP Law.²⁰

6. The Right to Bring Legal Action and Claim Compensation in the Event of a Violation (Article 12)

This provision affords repressive legal protection by guaranteeing data subjects the right to obtain remedies when their privacy rights have been infringed. The protection granted is not limited to the cessation of processing or the deletion of personal data, as provided under Article 8, but also extends to compensation in the form of damages for both material and immaterial losses arising from such violations.²¹

This provision is particularly relevant to the practice of photographing runners without their consent and subsequently uploading and commercializing those images through the FotoYu application. Where a runner considers their privacy to have been violated, Article 12 paragraph (1) of the PDP Law may serve as the legal basis for initiating a claim. As illustrated by the cases discussed above, runners, as data subjects, may seek compensation for immaterial damages, including feelings of embarrassment, psychological distress, discomfort, or harm to reputation. Furthermore, where the unauthorized use of the portrait results in economic consequences, the data subject is also entitled to claim material damages.

In the FotoYu case, these rights become particularly salient due to the processing and commercialization of portraits without the consent of their owners. Data subjects are, in principle, entitled to request the deletion of their portraits, to object to automated processing, and to seek compensation through legal action where they have suffered harm. Legal protection for personal data under the PDP Law may be examined from two complementary perspectives::

²⁰Predderics Hockop Simanjuntak, “Perlindungan Hukum Terhadap Data Pribadi pada Era Digital di Indonesia: Studi Undang-Undang Perlindungan Data Pribadi dan *General Data Protection (GDPR)*” *Jurnal Esensi Hukum*, Edisi No. 02 Vol. 6, Fakultas Hukum Universitas Gadjah Mada, 2024, p. 113.

²¹Pasal 12 Undang-Undang Nomor 27 Tahun 2022 tentang Pelindungan Data Pribadi

1. Preventive Protection

Preventive protection is afforded through the requirement of explicit consent from the data subject prior to any processing of personal data. In addition, the PDP Law establishes fundamental principles such as transparency, accountability, due care, and protection that must be observed by personal data controllers, as stipulated in Articles 3 and 16. The rights conferred upon data subjects also form an integral component of preventive protection, as they grant individuals full control over their personal data. Through these mechanisms, practices such as covert photography and the commercialization of portraits without consent can, in principle, be prevented, provided that the regulatory framework is properly observed and consent is genuinely treated as the primary legal basis for all personal data processing activities.

2. Repressive Protection

Repressive protection is provided through the imposition of sanctions in the event of a violation. The PDP Law stipulates administrative sanctions under Article 57, which include written warnings, temporary suspension of activities, orders for data deletion, and the imposition of administrative fines.²² In addition to administrative sanctions, the law also provides for civil remedies in the form of claims for compensation both material and immaterial that may be brought by data subjects who have suffered harm.²³ Furthermore, the UU PDP establishes criminal sanctions under Article 67, including imprisonment of up to five years and fines of up to five billion rupiah for serious violations, such as the unauthorized disclosure of personal data or the unlawful use of biometric data. These repressive mechanisms function as a last line of protection when preventive measures fail to avert violations.

The implementation of the PDP Law in Indonesia continues to face significant challenges, as the Personal Data Protection Supervisory Authority (Lembaga

²²Asep Mahbub Junaedi, "Urgensi Perlindungan Data Pribadi dalam Era Digital: Analisis Undang-Undang Nomor 27 Tahun 2022", *Jurnal Inovasi Hasil Penelitian dan Pengembangan*, Edisi No. 2, Vol 5, Hukum Keluarga Islam Pasca Sarjana UIN Syekh Nurjati Cirebon, 2025, p. 251.

²³Gunawan Widjaja, et.al., "Urgensi Pembentukan Lembaga Pengawas Pelindungan Data Pribadi Di Indonesia Berdasarkan Pasal 58 Juncto Pasal 59 Dan Pasal 60 Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi" *Jurnal Riset Ilmiah*, Edisi No. 4, Vol. 1, Fakultas Hukum Universitas 17 Agustus 1945 Jakarta, 2024, p. 238.

Pengawas Pelindungan Data Pribadi/LPPDP), as mandated by Article 58 of the UU PDP, has yet to be established. The absence of this supervisory body has resulted in suboptimal oversight and complaint-handling mechanisms, thereby preventing the full realization of the protections promised by the UU PDP for the public. By way of comparison, Singapore has long established a comprehensive personal data protection regime through the Personal Data Protection Commission (PDPC), which operates under the Ministry of Communications and Information (MCI).²⁴

The PDPC is vested with broad authority to oversee private-sector compliance with the Personal Data Protection Act (PDPA), to handle public complaints, to impose administrative sanctions, and to conduct public education initiatives. Since its establishment and up to 2023, the PDPC has addressed more than 228 cases of personal data breaches. The existence of the PDPC underscores the critical importance of an independent supervisory authority endowed with comprehensive powers, extending beyond mere administrative functions to include robust law enforcement capabilities. Singapore's experience thus offers a valuable reference for Indonesia in expediting the establishment of the Personal Data Protection Supervisory Authority (LPPDP), so that personal data protection may be implemented more effectively and meaningfully.²⁵

The phenomenon of trading digital portraits through the FotoYu platform reveals the existence of a serious legal gap. On the one hand, the application serves a legitimate function in documenting personal moments and providing a creative marketplace for photographers. On the other hand, the practice of photographing individuals without their consent and the possibility that such portraits may be purchased by third parties constitute clear infringements of privacy rights. Although the PDP Law provides a relatively comprehensive legal framework through both preventive and repressive safeguards, its effectiveness remains limited due to the absence of an independent supervisory authority. Accordingly, FotoYu, as a digital platform, should ensure that

²⁴ Diana Setiawati, et.al., “*Optimizing Personal Data Protection in Indonesia: Lesson Learned from China, South Korea, and Singapore*”, *Indonesian Comparative Law Review*, Edisi No. 2, Vol. 2, *Financial and Economic Law Department, Asia University Taiwan*, 2019, p. 97.

²⁵ Filal Khair, et.al., “*Data Protection Impact Assessment (DPIA) sebagai Instrumen Kunci Menjamin Kepatuhan UU PDP 2022 di Indonesia*”, *Jurnal Hukum, Politik dan Humaniora*, Edisi No. 2, Vol. 2, Universitas Esa Unggul, 2025, p. 247.

all processing of portrait data is carried out on the basis of the explicit consent of the data subject, while the state must urgently establish the Personal Data Protection Supervisory Authority (LPPDP) as the designated oversight body. Furthermore, protective mechanisms should also extend to individuals who are not users of the application but whose portraits are nonetheless processed by the system. Through these measures, the protection of citizens' privacy rights can be more effectively safeguarded amid the rapid advancement of digital technologies.²⁶

Legal Responsibility for the Unauthorized Capture and Processing of Portraits within the FotoYu Application

The concept of legal responsibility fundamentally refers to the obligation borne by a legal subject to assume all consequences arising from unlawful conduct.²⁷ In civil law, there are two principal categories that serve as the basis of liability, namely fault-based liability (liability based on fault) and liability without fault. Fault-based liability requires the existence of an element of fault on the part of the responsible party, whether in the form of intent or negligence, which results in harm. By contrast, liability without fault commonly referred to as risk-based liability or strict liability allows a party to be held legally responsible without the need to prove the existence of fault.²⁸ In principle, where an individual engages in conduct that causes harm to another party, the actor bears an obligation to provide compensation for the loss incurred.²⁹

The PDP Law introduces two principal concepts within the framework of personal data protection, namely the Personal Data Controller and the Personal Data Processor, as defined in Article 1 of the UU PDP. A Personal Data Controller refers to any individual, public body, or international organization that, either individually or jointly, determines the purposes of and exercises control over the processing of

²⁶ *Ibid.*

²⁷ Al Satria Diah, "Tanggung Jawab Hukum Platform E-Commerce atas Kebocoran Data Pribadi dalam Perspektif UU No. 27 Tahun 2022", *Jurnal Kajian Hukum dan Kebijakan Publik*, Edisi No. 2 Vol. 2, Fakultas Hukum Universitas Esa Unggul, 2025, p. 1091.

²⁸ Shidarta, *Hukum Perlindungan Konsumen Indonesia*, PT Grasindo, Jakarta, 2000 hlm 59.

²⁹ Titin Apriani, "Konsep Ganti Rugi Dalam Perbuatan Melawan Hukum dan Wanprestasi Serta Sistem Pengaturannya dalam KUHPerdota", *Jurnal Ganec Swara*, Vol. 15 No.1, 2021, p. 933.

personal data. Meanwhile, a Personal Data Processor is a party that carries out personal data processing activities on behalf of the Personal Data Controller.³⁰

From the perspective of PDP Law, the respective positions of photographers and FotoYu must be examined comparatively in order to determine which party effectively functions as the Personal Data Controller. Article 1 point 4 of UU PDP defines a Personal Data Controller as the party that determines the purposes and exercises control over the processing of personal data. In practice, FotoYu satisfies the criteria of a controller, as it determines how personal data are processed, stored, categorized, and even monetized through its application system. FotoYu does not merely provide data storage facilities; it also deploys the RoboYu automated search algorithm, which significantly expands the scope of data processing activities. Consequently, FotoYu clearly occupies a position of authority in determining both the direction and control of personal data processing. This interpretation is consistent with the principles of data protection law under the European Union's General Data Protection Regulation (GDPR), which similarly defines a controller as the entity that determines the purposes and means of data processing.³¹

In this context, photographers function merely as third party content providers who submit portraits to the FotoYu system without possessing the authority to control how such portraits are processed once uploaded. Their position more closely approximates the concept of a processor under the GDPR, namely a party that processes data on the instructions of the controller. However, within the framework of the UU PDP, the role of photographers is even more limited, as they lack direct access or control over the data processing mechanisms once the portraits enter the system. Accordingly, the primary responsibility for personal data protection rests with FotoYu as the Personal Data Controller, while photographers act solely as external parties supplying input in the form of portraits. This relationship underscores that the protection of personal data must be ensured through FotoYu's internal policies and stringent regulatory

³⁰Pasal 1 Undang-Undang No. 27 Tahun 2022 tentang Pelindungan Data Pribadi.

³¹ Predderics Hockop Simanjuntak, *Loc.Cit.*

measures, given that FotoYu is the entity that determines how personal data are handled within its digital ecosystem.

As a service provider and Personal Data Controller, FotoYu bears responsibility for safeguarding and ensuring the security of the personal data it processes. One manifestation of this responsibility is the imposition of contractual obligations on photographers, which they are required to comply with. These measures are intended to protect and ensure the security of personal data, as contemplated under Article 35 of the PDP Law. Prior to registering as part of the FotoYu platform, photographers referred to as creators must first agree to a set of terms and conditions established by FotoYu, thereby subjecting themselves to the obligations stipulated therein. However, the creator guidelines do not explicitly require that the capture of portraits be preceded by the explicit consent of the data subject, as mandated under Article 20 paragraph (2) of the UU PDP, which requires explicit consent for the processing of personal data. Instead, FotoYu's provisions merely emphasize that uploaded content must not infringe copyright, violate applicable laws, or contravene user guidelines. In the event that a photographer breaches these provisions, FotoYu may impose sanctions ranging from the removal of content to the suspension or permanent blocking of the creator's account.³²

In this context, photographers cannot be regarded as Personal Data Controllers; nevertheless, they continue to bear moral and legal responsibilities to respect the privacy of the individuals depicted. Photographers must recognize that every image captured, stored, and uploaded is not merely an artistic expression but also implicates the personal rights of the individual concerned. Accordingly, professional ethics and the legal framework governing personal data protection require that all photographic activities be grounded in valid and explicit consent from the subject of the photograph. This obligation is reinforced by Article 26 of the Electronic Information and Transactions Law (UU ITE), which stipulates that any use of a person's personal data through electronic media must be carried out with the consent of the individual

³² FotoYu, *loc. cit.*

concerned. In this manner, the right to privacy remains safeguarded even where photographers do not exercise full control over subsequent data processing once the image has been incorporated into the platform's system.

In practice, photographers frequently capture images of runners without ascertaining whether the individuals concerned are registered FotoYu users. This situation is further exacerbated by the absence of an effective supervisory mechanism on the part of FotoYu to ensure that uploaded photographs originate solely from subjects who are genuinely FotoYu users. As a result, there exists a substantial risk of violations of Article 20 of the PDP Law. As expressed by Aurelia Gracia, she articulated her discomfort with the extensive photographing carried out by photographers despite the fact that she had never provided consent for her portrait to be taken.³³ Similar concerns were raised by another runner, Kiki, who, as discussed previously, also expressed unease at being photographed without her prior consent.³⁴ These testimonies constitute concrete evidence that FotoYu, as the Personal Data Controller, has failed to discharge its responsibility to conduct comprehensive oversight of the content captured by photographers. Consequently, FotoYu may be deemed to have breached its obligations under Article 20 of the UU PDP and to have failed to comply with the personal data protection principles governing data processing as stipulated in Article 16 paragraph (2) of the UU PDP.

According to Hans Kelsen, in his theory of legal responsibility, an individual is deemed legally responsible for an act if they are obliged to bear the legal consequences, including sanctions, as a result of conduct that violates applicable legal norms or regulations.³⁵ Based on this theory, the actions of the photographers can fundamentally be considered unlawful acts for which accountability may be sought. From a civil law perspective, Article 1365 of the Indonesian Civil Code (KUHPer)

³³ Magdalene, *loc. cit.*

³⁴ Sultratop, *loc. cit.*

³⁵Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Disertasi dan Tesis*, Buku Kedua, Rajawali Pres, Jakarta, 2009, p. 7.

governs torts which states:³⁶ *“Every unlawful act that causes harm to another person obliges the person whose fault caused such harm to compensate for the loss.”*

This article emphasizes that any act causing harm to another person obliges the perpetrator to provide compensation.³⁷ The implementation of this provision requires the fulfillment of the elements stipulated therein. The following outlines the application of the elements of Article 1365 of the Indonesian Civil Code (KUHPer) in the context of unauthorized portrait capture and processing within the FotoYu application:

1. Element of Conduct, this element encompasses both active and passive actions by an individual that may give rise to legal consequences for others.³⁸ In the present case, the photographer engaged in active conduct by photographing runners in a public area and uploading the images to the FotoYu platform without obtaining consent from the subjects. Consequently, the element of conduct is satisfied, as the photographer actively performed an action that resulted in legal repercussions affecting the privacy of another individual..
2. Element of Unlawfulness, the photographer, in this context, does not function as either a Personal Data Controller or Processor; therefore, the element of unlawfulness can be analyzed under Article 26 paragraph (1) of the Electronic Information and Transactions Law (UU ITE), which states:³⁹ *“Unless otherwise stipulated by legislation, any use of information through electronic media that pertains to an individual’s personal data shall require the prior consent of the data subject.”*

This provision implies that any utilization or distribution of an individual’s portrait via digital media must be preceded by explicit consent from the person involved. According to Article 4 of the PDP Law, a portrait constitutes personal data with specific characteristics. Thus, the photographer’s act of capturing and uploading portraits to the FotoYu application constitutes a violation of Article

³⁶Pasal 1365 Kitab Undang-Undang Hukum Perdata.

³⁷Andreas Andrie Djatmiko, *et.al.*, “Implementasi Bentuk Ganti Rugi Menurut *Burgelijk Wetboek* (Kitab Undang-Undang Hukum Perdata) Indonesia”, *Jurnal Penelitian Hukum*, No. 1, Vol. 2, Universitas Bhineka PGRI, 2022, p. 5.

³⁸Subekti, *Pokok-Pokok Hukum Perdata*, Intermedia, Jakarta, 2019, p. 49.

³⁹Pasal 26 Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik

26 paragraph (1) of the UU ITE.⁴⁰ Accordingly, the element of unlawfulness is fulfilled.

3. Element of Loss, the loss experienced by the subjects of the photographs falls under the category of immaterial harm, as it pertains to violations of privacy rights and personal dignity. The unauthorized capture and subsequent dissemination of portraits through a commercial application induce feelings of discomfort, embarrassment, and psychological distress for the individuals depicted. Moreover, such acts have the potential to cause material losses if the portraits are utilized for promotional, advertising, or other commercial purposes without providing compensation to the subjects.
4. Element of Causation, the causality element under Article 1365 of the Indonesian Civil Code emphasizes the necessity of a cause and effect relationship between the perpetrator's conduct and harm. The photographer's act of photographing runners without consent and uploading the images to the FotoYu platform constitutes the direct cause of the immaterial losses experienced, including infringements on privacy, and discomfort endured by the subjects. Absent of this conduct, the harm would not have occurred, establishing the photographer's actions as the primary cause of the resulting damage.⁴¹ Based on this analysis, it can be concluded that the element of causation is satisfied, as there exists a direct and rational link between the photographer's conduct and the legal consequences that ensued.

The existence of a disclaimer and a complaint mechanism within the FotoYu application does not, in itself, negate the unlawful nature of the conduct in question. Although the application formally includes a statement asserting that its content does not violate any legal provisions and provides a channel for objections from parties who consider themselves harmed, such measures do not satisfy the substantive obligations stipulated under Personal Data Protection Law particularly Article 20 paragraph (2), which requires a lawful basis for the processing of personal data,

⁴⁰Pasal 4 Undang-Undang Nomor 27 Tahun 2022 tentang Pelindungan Data Pribadi.

⁴¹Subekti, *Op.Cit.* p. 46.

including the explicit consent of the data subject. In this context, the disclaimer functions merely as a formal administrative measure and cannot substitute for the prior obligation to obtain consent before the collection and uploading of portraits. Similarly, a complaint mechanism that operates *ex post facto* does not eliminate the violation that has already occurred at the stage of data collection and processing without consent. Accordingly, the presence of a disclaimer and complaint feature does not preclude the fulfillment of the element of unlawfulness under Article 1365 of the Indonesian Civil Code.

CONCLUSION

Personal Data Protection Law encompasses two forms: preventive and repressive. Preventive protection is provided through the explicit consent of the personal data subject prior to processing (Article 20) and the application of the principles of transparency, accountability, prudence, and protection (Articles 3 and 16) to ensure individual control over their data. Meanwhile, repressive protection is provided through administrative sanctions (Article 57), civil sanctions in the form of compensation, and criminal sanctions (Article 67) with a maximum prison sentence of five years and a fine of five billion rupiah. Both mechanisms serve as prevention and law enforcement efforts against violations of personal data privacy. Taking and processing photos without permission through the FotoYu application creates legal liability for both the photographer and FotoYu. Photographers are required to obtain the consent of the photograph subject as stipulated in Article 26 of the ITE Law, and violations can result in civil (Article 1365 of the Civil Code) and criminal (Article 67 of the Personal Data Protection Law) liability. Meanwhile, FotoYu, as the controller of personal data, is also obligated to monitor photographers' uploads and may be subject to administrative sanctions (Article 57 of the Privacy Law) and criminal sanctions (Article 67 of the Privacy Law) for negligence. Therefore, both parties have legal responsibilities, both civil, criminal, and administrative, to protect the privacy rights of photograph subjects.

FotoYu, as the personal data controller, is obliged to process personal data in accordance with the provisions and obligations stipulated in the PDP Law. This includes implementing an explicit consent mechanism before photos are published or processed within its application, as well as strengthening its consent verification system, content moderation, and a transparent privacy policy to ensure that each portrait has obtained the valid consent of the photograph subject. Furthermore, photograph subjects who do not wish to have their portrait taken and processed through the FotoYu system must expressly express their refusal by signaling to the photographer that they do not want their portrait taken. In such cases, the photographer is obligated to respect the photographsubject's wishes as a form of respect for the right to privacy and personal data protection. Photographers must ensure clear consent from photographsubjects before taking or uploading portraits. Meanwhile, FotoYu, as the personal data controller, needs to strengthen its consent verification system, content monitoring, transparent privacy policy, and provide easily accessible reporting channels. Furthermore, photographsubjects must be more vigilant in protecting their personal data and promptly report any misuse of their portraits. By implementing the principles of caution, responsibility, and openness as stipulated in the PDP Law, the risk of privacy violations can be reduced and digital portrait management can take place ethically and in accordance with legal provisions.

COMPETING INTEREST

There is no conflict of interest in the publication of this article.

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