

# Legal Protection vs. Nuisance Messages in Online Transportation Application Services: the Right to Object as a Solution?

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## Abstract

Nuisance messages, a form of unsolicited communication, often occurs between drivers and users of online transportation application services. The transmission of such messages represent a violation of privacy, infringing upon users' autonomy to control the information they receive and potentially causing both psychological and physical harm. Despite the fact, Indonesian law lacks explicit normative regulations addressing nuisance messages. Facing this condition, online transportation application services must ensure user safety by providing a mechanism for users to object and avoid receiving such messages. This study aims to address two primary questions. Firstly, what forms of legal protection are currently available against nuisance messages under Indonesian positive law? Secondly, how can online transportation application service providers implement the right to object in order to optimize the protection of user privacy and personal data? This study employed a juridical-normative method with descriptive analysis to address the questions. The results indicate that Indonesian positive law can only refer to whether messages are sent in good faith and whether spam messages are sent in bulk. These can cause misinterpretation for providers and users. However, nuisance messages sent during the provision of a service demonstrate bad faith on the part of the driver. Therefore, to protect users, online transportation application services should implement a right to object through an electronic contract, thereby granting users greater control and balance.

**Keywords:** nuisance messages, online transportation application service, right to object.

## A. Introduction

Nowadays, online transportation application services have become primary needs for society. Their growing popularity has reached approximately 75%, around 21.7

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million users in Indonesia.<sup>1</sup> Furthermore, the total number of users from various online transportation application services from 2022 to 2023 has amounted to 2.019.000, with Go-Jek leading at 957,000 users, followed by Maxim with 892,000 users, and Grab with 170,000 users.<sup>2</sup> In addition to providing economic benefits, these services also collects user's personal data, which they regard as valuable assets. Without access to personal data, the online transportation applications would operate ineffectively. Consequently, a larger number of users necessitate a more extensive collection of personal data, thereby imposing a responsibility on providers to ensure the protection of this data. However, it appears that such responsibility has only been superficially addressed, as various violations of personal data protection continue to occur within online transportation application services. These violations include GPS location fraud, digital wallet balance theft, and physical assault against users. The drivers are often the perpetrators of these issues, resulting in significant losses for users.<sup>3</sup>

The handover of personal data to the drivers has added problems in several instances, particularly when the drivers misuse the user's private phone numbers to contact them after the completion of an order.<sup>4</sup> For example, there have been cases where a user having previously used the service of a driver from an online transportation application, receives unsolicited messages on WhatsApp. In one instance, a female user received a message from the driver requesting to get acquainted, while in other cases, users have received inappropriate or rude messages.<sup>5</sup>

A specific incident illustrating this phenomenon occurred on 29 September 2022,<sup>6</sup> when a female user received sexually harassing messages from a driver. In addition, she was charged a delivery fee despite the service not being completed.<sup>7</sup> There was also a similar case involving a female passenger who received threatening

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<sup>1</sup> Yuni Astutik, "21,7 Juta Masyarakat Indonesia Pakai Transportasi Online," accessed on June 5, 2024, <https://www.cnbcindonesia.com/tech/20200317150135-37-145529/217-juta-masyarakat-indonesia-pakai-transportasi-online>.

<sup>2</sup> Erlina F. Santika, "Aplikasi Transportasi Online Terbanyak Diunduh RI 2023, Gojek Juaranya," accessed on May 5, 2024, <https://databoks.katadata.co.id/datapublish/2024/01/23/aplikasi-transportasi-online-terbanyak-diunduh-di-ri-2023-gojek-juaranya>.

<sup>3</sup> Media Indonesia, "Pengguna Jasa Transportasi Online Rentan Jadi Korban," accessed on June 6, 2024, <https://mediaindonesia.com/humaniora/258049/pengguna-jasa-transportasi-online-rentan-jadi-korban>.

<sup>4</sup> Media Indonesia.

<sup>5</sup> Audi Eka Prasetyo, "Apa yang Harus Go-Jek dan Startup Transportasi Lainnya Lakukan untuk Melindungi Privasi Pengguna?" accessed on June 6, 2024, <https://id.technasia.com/talk/privasi-pengguna-go-jek>.

<sup>6</sup> Adie Wiera Hernawan, "Kurang Ajar Sekali Oknum Driver Ojol Ini, Baru Dapat Customer Malah Ngechat Nggak Senonoh," accessed on August 17, 2024, <https://yoursay.suara.com/news/2022/09/28/175429/kurang-ajar-sekali-oknum-driver-ojol-ini-baru-dapat-customer-malah-ngechat-nggak-senonoh>.

<sup>7</sup> Adie Wiera Hernawan.

messages via WhatsApp, in which the driver threatened to kill her following cancellation of an order.<sup>8</sup>

The violation of personal data protection is characterized by the phenomenon of nuisance messages. According to the Black's Law Dictionary, an unsolicited message is defined as one that is received without submission or request, deriving from the term "unsolicited".<sup>9</sup> The Oxford Dictionary further defines it as an unintended or sometimes unwanted acts.<sup>10</sup> David E Sorkin expands on this definition by emphasizing that unsolicited communication is determined by the lack of interconnectedness between the parties involved, indicating that the recipient has not consented to receive such communication.<sup>11</sup>

The nature of nuisance messages is a significant issue that warrants attention, as it intersects with the violation of privacy through the unethical use of service user's personal data. Despite the lack of sufficient elements to categorize these problems as trivial, the issue arising from nuisance messages cannot be seen as unimportant. They represent a clear infringement of privacy rights, which are integral to human rights. Makarim identifies three principles of human rights in this regard: (1) the right of non-infringement to private life, (2) the right of non-disclosure to sensitive information, and (3) the right of control over the use of personal data by external parties.<sup>12</sup> It is safe to argue that personal rights are closely linked to individual's dignity. Therefore, when a person has rights, they are empowered to live their life with dignity.<sup>13</sup>

Nuisance messages are both intrusive and disruptive, placing users at a disadvantage by limiting their ability to control the extent of restriction or approval regarding the use of their information by external parties. The Information Commissioner's Office (ICO) has also highlighted nuisance messages as a misuse of personal information, particularly in the business context of online transportation application services, as they imply illegal behavior.<sup>14</sup>

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<sup>8</sup> Herdi Alif Al Hikam, "Viral! Penumpang Maxim Diancam Dibunuh Driver Online," accessed on October 21, 2024, <https://finance.detik.com/berita-ekonomi-bisnis/d-5687955/viral-penumpang-maxim-diancam-dibunuh-driver-online>.

<sup>9</sup> Black's Law Dictionary, "Unsolicited," accessed on May 9, 2024, <https://thelawdictionary.org/?s=unsolicited>.

<sup>10</sup> Oxford Dictionary, "Unsolicited," accessed on May 9, 2024, <https://www.oxfordlearnersdictionaries.com/definition/english/unsolicited?q=unsolicited..>

<sup>11</sup> David E Sorkin, "Technical and Legal Approaches to Unsolicited Electronic Mail," *University of San Francisco Law Review* 35, no. 2 (2001): 328.

<sup>12</sup> Diah Puspitasari (et.al.) "Urgensi Undang-Undang Perlindungan Data Pribadi Dalam Mengatasi Masalah Keamanan Data Penduduk," *Journal of Administrative and Social Science* 4, no. 2 (2023): 196, <https://doi.org/10.55606/jass.v4i2.403>.

<sup>13</sup> Eko Riyadi, *Hukum Hak Asasi Manusia Perspektif Internasional, Regional, dan Nasional* (Jakarta: PT Raja Grafindo Persada, 2018), 30.

<sup>14</sup> ICO, "One in Three Young People Falling Prey to 'Text Pests' as ICO Calls for Victims to Come Forward," accessed on June 6, 2024, <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/08/one-in-three-young-people-falling-prey-to-text-pests-as-ico-calls-for-victims-to-come-forward/>.

Furthermore, the act of sending nuisance messages poses a significant threat to privacy among individuals using online transportation application services. Drivers may exploit general data (such as full name and gender) or specific data (including health information, genetic data, and personal financial data) for personal motives. This issue is exacerbated by the absence of an effective mechanism for the optimal deletion of user data,<sup>15</sup> leading many users feel loss of privacy due to the lack of specific procedures implemented by online transportation application services to protect consumer personal data.<sup>16</sup> Although consumer awareness of privacy issues is increasing, many individuals remain unaware of how to protect themselves, especially considering that some breaches can occur due to individuals with authorized access.<sup>17</sup>

In tracing the legal protection against the nuisance messages, Indonesia has established relevant provisions in several legal frameworks, including Article 65 paragraph (1) and (3) of the Law Number 27 of 2022 on Personal Data Protection (PDP Law), Article 17 paragraph (2) of the Law Number 1 of 2024 on the Second Amendment to the Law Number 11 of 2008 on Electronic Information and Transaction (EIT Law), and Article 44 paragraph (2) of Government Regulation Number 71 of 2019 on Electronic System and Transaction Provider (the Government Regulation Number 71 of 2019). However, the provisions in the EIT Law and the Government Regulation Number 71 of 2019 only implicitly address issue related to good faith and spam messages. Consequently, both regulations lead to varying interpretations, resulting in ineffective enforcement, particularly concerning nuisance messages.

The right to object could serve as a viable solution for establishing control for users of online transportation application services when they receive nuisance messages. The right may be construed as a part of the rights of personal data subjects stipulated in the General Data Protection Regulation (GDPR) applicable to each individual in European Union territory. The GDPR was established in 2017 and started to come into force in 2018 as the most restrictive regulation on personal data protection.<sup>18</sup> The regulation has successfully changed the views of many commercial companies in Europe, even the tech giants such as Google and Amazon, to stringent

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<sup>15</sup> Wahyudi Djafar, Bernhard Ruben, and Blandina Lintang, *Perlindungan Data Pribadi di Indonesia* (Jakarta: ELSAM, 2016), 2.

<sup>16</sup> Wahyudi Djafar, Bernhard Ruben, and Blandina Lintang.

<sup>17</sup> Venka Anant (el.al.) "The Consumer Data Opportunity and the Privacy Imperative," (Risk Practice McKinsey & Companies-2020), 4-8.

<sup>18</sup> GDPR, "What is GDPR, the EU's New Data Protection Law?" accessed on June 6, 2024, <https://gdpr.eu/what-is-gdpr/>.

their personal data protection policies.<sup>19</sup> Furthermore, GDPR could be enacted across countries. It enables the home state of a person in the European Union to impose high fines on companies processing the data of their nationals in case the personal data is left unprotected.<sup>20</sup>

The right to object is established under Article 21 of GDPR and encompasses three main aspects: (1) public interests, (2) official authority, and (3) legitimate interests.<sup>21</sup> Given that nuisance messages fulfill the legitimate interests of the online transportation application services, users have the right to contact the provider and articulate their objections to the drivers' behavior, which infringes upon their privacy and violates their personal data protection rights. In this context, incorporating the right to object within the privacy policy section of the electronic contract will help ensure a balance of rights and responsibilities between the parties involved.

This study employed the juridical-normative method to address the aforementioned background above in a descriptive-analytical character. The focus of the research shall be on the doctrines and legal principles, as well as legal comparison. The scope of discussion shall comprise legal principles, legal system, and comparison of law.<sup>22</sup> All the sources utilized in this study include literary studies from primary, secondary, and tertiary data. Furthermore, the discussion is divided into two parts.

The first part focus on introducing nuisance messages from the privacy point of view, as well as analyzing how the EIT Law and the Government Regulation Number 71 of 2019 can protect against nuisance messages through provisions on good faith and spam messages. It is also followed by analyzing of the elements viewed as fulfilling bad faith in nuisance messages sent by drivers of online transportation application services. In the second part, there is an elaboration on the implementation of the right to object within the electronic contract in accordance with the GDPR, with a focus on analyzing the legitimate interests of both users and providers of the online transportation application services.

## **B. Infringement of Privacy Through Nuisance Message and Its Forms of Protection in the EIT Law and the Government Regulation Number 71 of 2019 Perspective**

### **1. Nuisance Message as a Form of Infringement of Privacy**

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<sup>19</sup> Hunton Andrews Kurth, "CNIL Fines Google and Amazon 135 Million Euros for Alleged Cookie Violations," accessed on June 7, 2024, <https://www.huntonak.com/privacy-and-information-security-law/cnil-fines-google-and-amazon-135-million-euros-for-alleged-cookie-violations>.

<sup>20</sup> GDPR.

<sup>21</sup> Christopher Kuner (et.al.) *The EU General Data Protection Regulation A Commentary* (United Kingdom: Oxford University Press, 2020), 509.

<sup>22</sup> H. Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2015), 24.

As previously discussed, nuisance messages pose a significant threat to privacy protection. Warren and Brandeis elaborate on the distinction between privacy and the right to privacy. They assert that privacy is a part of people's psychology, in the form of pain and happiness, and benefits are included in the mind, emotion, and feeling.<sup>23</sup> The increasing development of innovation and business necessitates legal recognition of thoughts and abstract feelings to ensure comprehensive protection of individual privacy.<sup>24</sup> The statement affirms the urgency of individual privacy protection by attaching the right to privacy or the right to be let alone. The recognition of the right to privacy becomes an important part of the protection of the minds, sentiments, and emotions of individuals. It enables them to determine the extent of capability they have in communicating those matters to other people.<sup>25</sup>

The law has been instrumental in protecting individuals from disturbances in the external environment. Self-protection is crucial since privacy can be seen as the home for individuals.<sup>26</sup> It is a space where individuals can protect themselves, where no one can be present without the consent of the host. Guarantee to such essence has been stipulated in Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights 1966, where states are mandated to protect their nationals from arbitrary acts to a person, families, home, and correspondence. Each person shall be entitled to have complete legal protection. The term privacy in Article 12 becomes an umbrella provision associated with the protection of families, residences, correspondence, honor, and reputation.<sup>27</sup>

Article 28G paragraph (1) of the 1945 Constitution of Indonesia affirms the protection of the personal self, families, honor, and properties, while also ensuring security from the fear of threats associated with either acting or not acting on something, as a human right. The term "personal self" signifies the presence of privacy for individuals as a human right that the state must protect. Then, it is given to individuals to obtain protection and safety from threatening fear through nuisance messages. It is a part of the right to privacy in one unity with human rights.

On Alan Westin divides the form of privacy into the following classifications:<sup>28</sup>

1. Solitude: Individuals often seek to distance themselves from groups in order to attain freedom from external interventions. In this context, a person finds value in their relationship with themselves, unencumbered by outside influences.

<sup>23</sup> Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* 4, no. 5 (1890): 195, <https://doi.org/10.2307/1321160>.

<sup>24</sup> Samuel D. Warren and Louis D. Brandeis.

<sup>25</sup> Samuel D. Warren and Louis D. Brandeis.

<sup>26</sup> Daniel J. Solove, "A Taxonomy of Privacy," *University of Pennsylvania Law Review* 154, no. 3 (2006): 549.

<sup>27</sup> Sinta Dewi Rosadi, *Pembahasan UU Pelindungan Data Pribadi* (UU RI No. 27 Tahun 2022), (Jakarta: PT Sinar Grafika, 2023), 8.

<sup>28</sup> Alan Westin, *Privacy and Freedom* (New York: Ig Publishing, 1967), 55-57.

2. Intimacy: Individuals occupy the smallest unit within a group and are allowed to cultivate close relationships with two or more groups. Examples of such relationships include those between spouses, family members, and friends.
3. Anonymity: Individuals may be present in public spaces while still maintaining a degree of anonymity, allowing them to navigate social interactions without revealing their identities.
4. Unwanted intrusion: This form highlights how individuals disclose and impose restrictions on their privacy rights. The effectiveness of these restrictions often depends on the respect or disregard shown by those in their surroundings when such boundaries are established.

According to the four classifications, each type of privacy exists independently. However, identification of nuisance messages reveals a connection between solitude and unwanted intrusion. The sending of nuisance messages represents an act of privacy intrusion from other parties to the solitudes of a person individual. The intrusive act involves an attack on a person's life by damaging the mind up to the point of influencing the daily activities of the victims, be it in the form of uneasy feelings or agitation.<sup>29</sup> Intrusive acts tend to become hindrances for individuals in achieving peace, attaining identity, and forming a personal space to express themselves fully. Besides, the act may show an ugly truth that they cannot restrict or choose whom they can get close to or what type of information they can receive during their lifetime.

## **2. Legal Protection Against Nuisance Messages in the View of the Electronic Information and Transaction and the Government Regulation Number 71 of 2019 in Indonesia**

The development of the cyber law regime in Indonesia has established regulations governing various patterns of social behavior and cybercrimes through the use of information technology. One such regulation addresses on nuisance messages in Article 17 paragraph (2) of the EIT Law. It states that Parties conducting Electronic Transaction as referred to in paragraph (1) must maintain good faith in interacting and/or exchanging Electronic Information and/or Electronic Documents during the execution of the transaction.

Although the article does not explicitly mention nuisance messages, the term "good faith" is implicitly directed to both the sender and receiver, requiring them to uphold values of morality, appropriateness, and justice in society in their interactions or exchanges of information through electronic messages.

The concept of good faith has its origins in Roman law and was subsequently adopted by civil law countries through the development of a legal principle known

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<sup>29</sup> Daniel J. Solove, "A Taxonomy of Privacy."

as *ius gentium*. It requires the parties engaged in a contract to maintain good faith,<sup>30</sup> which has been established as a fundamental principle in international contract law, as exemplified by Article 1.7 of the UNIDROIT.<sup>31</sup> Thus, Mauna considers good faith as a general principle of law with universal character.<sup>32</sup> Despite its various definitions, however through Article 1338 paragraph (3) of the Indonesian Civil Code and Decision of *Hoge Raad* states that good faith must be executed following appropriateness and decency.<sup>33</sup>

Therefore, presenting the electronic contract as an objective standard for assessing good faith is crucial in electronic transaction, as it implies a binding agreement between two parties, as referred in Article 1313 of the Indonesian Civil Code. The article defines an agreement as an act of one or more persons bind between providers and users. This process establishes a legal relationship between the providers and users. Moreover, according to Article 1338 paragraph (1) of the Indonesian Civil Code, all agreements made validly shall apply as the law for the relevant parties. They must comply with all rights, obligations, and provisions as they might do so to the law and perform it in good faith. It means that as long as the parties agree to the electronic contract provided in the application services, they are obligated to uphold its terms and conditions in good faith (*bona fides*), which entails honesty, objectivity, compliance to the fair and reasonable standard, and the absence of fraudulent intent.<sup>34</sup>

Meanwhile, in online transportation application services, users are placed as the weakest party. They have no choice due to the standardized electronic contract. In practice, consumers face difficulty understanding the contract, although in online transportation services the form of electronic contract is based on user approval or disagreement.<sup>35</sup> In this way, it is important to strengthen user's rights by embedding clauses that require full control over user's personal data through electronic contracts so that the rights and obligations of the parties in online transportation application services are balanced.

Then, in viewing the presence of regulation for the nuisance messages, it is also stipulated in Article 44 paragraph (1) of the Government Regulation Number 71 of

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<sup>30</sup> Ery Agus Priyono, "Peranan Asas Itikad Baik Dalam Kontrak Baku (Upaya Menjaga Keseimbangan Para Pihak)," *Diponegoro Private Law Review* 1, no. 1 (2017): 19.

<sup>31</sup> Ery Agus Priyono, 14.

<sup>32</sup> Olsen Peranto, "Itikad Baik Dalam Ketentuan Pasal 27 ayat (2) UU No. 2 Tahun 2020, Perlukah di Permasalahkan?" *Jurnal Rechts Vinding* (2020): 2.

<sup>33</sup> Ery Agus Priyono, 20.

<sup>34</sup> Ghansam Anand (et.al.) "Legal Implications on Cancellation of Agreements Made Prior to Custody for Good Faith Land Buyers," 265.

<sup>35</sup> Kukuh Tejomurti (et.al.) "Legal Protection for Urban Online Transportation Users Personal Data Disclosure in the Age of Digital Technology," *Padjadjaran Jurnal Ilmu Hukum* 5, no. 3 (2018): 494, <https://doi.org/10.22304/pjih.v5n3.a5>.

2019 that the delivery of electronic information must be conducted correctly in a non-interfering manner, the explanatory section of the article further described that the provision is meant to protect the Electronic System Users from the delivery of interfering Electronic Information (spam).

According to the description elaborated above, the use of the term “spam” present certain weaknesses. First, spam is a type of unsolicited messages and also a part of the nuisance messages. It is definitively a form of unsolicited message, often in the form of advertisements, junk e-mails, or telemarketing. The whole bundles of electronic messages are sent “massively.”<sup>36</sup> Spam messages are generally divided into two parts, namely Unsolicited Commercial E-mails (UCE) and Unsolicited Bulk E-mails (UBE).

The two types refer to unsolicited messages sent “repeatedly,” yet specifically for UBE, the delivery of the message may also have other specific purposes, such as containing violent content or political activities, instead of only focusing on the commercial side.<sup>37</sup> By putting the spam word, both the PSTE providers and users are prone to misinterpret whether the protection to messages shall only apply to the repeated delivery of messages or will also cover the whole nuisance messages. This absence of clarity in the use of word leads to legal uncertainty.

Second, if the meaning of the nuisance messages only covers spam messages, the explanation of articles does not explicitly categorize spam within the scope of UCE or UBE, and this shall be considered a vacuum of law. Albeit Article 44 paragraph (2) of the Government Regulation Number 71 of 2019 regulates provisions on the delivery of electronic information through minister regulation, the model of drafting for the regulation should have explained the category of spam, either commercial or non-commercial, and the attributes that shall be regulated therein.

In several other countries, spam has attained its regulation by arranging a comprehensive provision on unsolicited commercial e-mail messages, as appears in the SPAM Control Act 2007 in Singapore and the Spam Act 2003 in Australia. To find out more about SPAM regulation in two countries above, it is necessary to explore the contents as follows:

**Table 1.** Singapore and Australia Regulation of SPAM

Regulation Attributes	Provision	
	SPAM Control Act 2007	SPAM Act 2003
<b>Definition of unsolicited electronic message</b>	An electronic message is unsolicited if the recipient did not:	A person must not send, or cause to be sent, a commercial electronic message

<sup>36</sup> Alan Schwartz and Simson Garfinkel, *Stopping Spam* (United States: O'Reilly and Associates, 1998), 1.

<sup>37</sup> Alan Schwartz and Simson Garfinkel, 12.

	(a) request to receive the message; or (b) consent to the receipt of the message	
<b>Definition of commercial electronic message</b>	An electronic message, where, having regard to: (a) The content of the message (b) The way in which the message is presented; and (c) The content that can be located using the links, telephone numbers, or contact information (if any) set out in the message The purpose of the message is to offer, advertise, or promote a supply goods or services	
<b>Validity of electronic message</b>	The act does not apply unless an electronic message has a Singapore link or Australian link (the sender and receiver must be within or coming from Singapore's or Australia's territory)	
<b>Prevention</b>	Use the unsubscribe facility to prevent every unsolicited commercial electronic message	This regulation has three main requirements: (1) consent, (2) accurate sender information when sending to end-user, (3) unsubscribe facility in such emails <sup>38</sup>

Referring to the examples that are already aware of the importance of regulating UCE spam, despite the delivery of messages may open business advantages on one side, it might also uncontrollably raise unwanted behavior, along with the threat of crimes. The law becomes urgent in determining transformational steps for spam messages in the business processes, particularly in Indonesia. Based on the transformational law theory, the digital revolution is affecting all sides of people's lives, forcing the establishment of a concept, capable of comprehensively collaborating legal and non-legal elements.<sup>39</sup>

The transformational theory sets up the motivation to create a law capable of providing a better direction of change and development. In that sense, the UCE model of regulation can be considered to protect dangerous messages with UCE spam context. This means that Indonesia needs a specific regulation (*sui generis*) as a manifestation of an agile transformation of law.

<sup>38</sup> Francisco Jose Aranda Serna, "The Legal Regulation of Spam: An International Comparative Study," *Journal of Innovations in Digital Marketing* 3, no. 13 (2022): 9, <https://doi.org/10.51300/jidm-2022-44>; see Rules 2 and Schedule 2 of Spam Act 2003.

<sup>39</sup> Ahmad M Ramli and Tasya Safiranita Ramli, *Hukum Sebagai Infrastruktur Transformasi Indonesia* (Bandung: PT Refika Aditama, 2022), 25.

### **C. Violation of Nuisance Messages Against Good Faith in the Online Transportation Application Service**

#### **1. It is an unlawful act or a breach of contract**

The use of online transportation application services may cause legal action. An electronic transaction will require the full consciousness of both the drivers and the users to enter into a legal act. The drivers shall be entitled to gain outcomes after completing the service to escort passengers. In contrast, the users are entitled to receive services and must provide outcomes (payment). Before the legal act, the two parties must first express consent to enter into electronic contracts.

Since the contract is sourced from the application service, all violations committed to it may cause a breach of contract or unlawful act (*onrechtmatige daad*). If the service contract stipulates a prohibition clause to send nuisance messages or commit nuisance acts in the transaction, either to drivers or users, then non-compliance to it shall be construed as a default. However, when an act of sending nuisance messages is not stipulated in the contract, and if such an act is found as not contrary to Article 1365 of the Indonesian Civil Code, then it shall not be construed as an unlawful act

#### **2. From the side of the perpetrator, the delivery of the message indeed occurred due to deliberate fault**

Viewing from civil law aspect, the legal position of online transportation application services can almost be compared to the legal position of a commissioner (intermediary) because the function of those companies is an intermediary to bring together service providers and users.<sup>40</sup> However, in application, an agreement between companies services and driver are a partnership agreement with a standard type, therefore in the event there is a loss, the causality relationship is more common between the passenger and the driver.<sup>41</sup>

The driver who commits a deliberate fault is born from unlawful acts, as referred to in Article 1365 of the Indonesian Civil Code, which requires an element of fault (*schuld*) against an unlawful act. The emergence of fault is the fruit of deliberation. The element of deliberateness shall be applied to an act if it fulfills the following criteria: consciousness, arising consequences from the act, and the act is committed with the belief of ascertainment that it will result in consequences.<sup>42</sup> This element of deliberateness is contrary to the norm of decency.

The assessment of nuisance messages must not only be directed to the element of deliberateness of the drivers. On the contrary, it also needs to be proven against objective aspects. From the point of view of Subekti, the dimension of objective

<sup>40</sup> Pujiyono and Umi Khaerah Pati, "Legal Protection for the Loss of the Passenger of Online Transportation," *Yustisia* 8, no. 2 (2019): 223, <https://dx.doi.org/10.20961/yustisia.v8i2.34156>.

<sup>41</sup> Pujiyono and Umi Khaerah Pati.

<sup>42</sup> Munir Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer* (Bandung: PT Citra Aditya Bakti, 2005), 47.

elements considers that the performance of an agreement must pay attention to the norms of appropriateness and decency,<sup>43</sup> means that all act must be running on the right track. Ridwan Khairandy gives a perspective, that good faith contains three forms: firmness in keeping promises, prohibition not to take advantage of actions that mislead one of the parties, and the obligation to act with honor and honesty.<sup>44</sup>

In delivering the nuisance message by the drivers, a contradiction to the value of decency occurred when the drivers sent indecent, violent, and threatening messages. In other words, the execution of nuisance messages using personal data in the form of name, address, and phone number, surely reflects an act of misuse of user's information. Moreover, committing a crime after sending messages is contrary to the norm of decency.

As an outlook, here are some of the cases of nuisance messages that have occurred in the online transportation application services:

**Table 2.** Cases of Nuisance Messages and Legal Consequences

No.	Case Example	Legal Consequences
1.	A user received a threat from a driver when she used a Grab application. The case started when she ordered the service to go to work. However, when the driver arrived at the pick-up location, he violently and emotionally responded to the user, eventually leading to the user's cancellation of the order. Several minutes after the cancellation, the driver sent a threatening short message that he would rape her. Even after his driver account was suspended, the case continued. The user got several people sending terror messages through WhatsApp and got her photos distributed without consent on Facebook. <sup>45</sup>	<b>PDP Law:</b> Article 65 paragraph (2) and (3) in conjunction with Article 67 paragraph (2) and (3)  <b>EIT Law:</b> Article 29 in conjunction with Article 45B  <b>Indonesian Criminal Code and Law on Indonesian Criminal Code:</b> Article 336 of the Indonesian Criminal Code and Article 449 of Law on the Indonesian Criminal Code
2.	A Go-Jek driver committed a sexual assault on a female student, named NR, 17 years old. The	<b>EIT Law:</b> Article 29 in conjunction with Article 45B

<sup>43</sup> Barnabas Dumas Manery, "Makna dan Fungsi Itikad Baik Dalam Kontrak Kerja Konstruksi," *SASI* 23, no. 2 (2017): 141, <https://doi.org/10.47268/sasi.v23i2.101>.

<sup>44</sup> Ghansam Anand (et.al.) "Legal Implications on Cancellation of Agreements Made Prior to Custody for Good Faith Land Buyers," *Padjadjaran Jurnal Ilmu Hukum* 9, no. 2 (2022): 264, <https://doi.org/10.22304/pjih.v9n2.a6>.

<sup>45</sup> Wahyu Gilang Putranto, "Diancam Diperkosa Driver dan Fotonya Disebar di Facebook," accessed on May 24, 2024, <https://www.tribunnews.com/nasional/2020/03/12/viral-cerita-penumpang-ojek-online-diancam-diperkosa-driver-dan-fotonya-disebar-di-facebook?page=all>.

	<p>case occurred when NR ordered from the Go-Jek application service after school. During the trip, the driver talked about sex and even invited NR for intercourse. When they arrived at the location, the driver groped NR's breasts and buttocks. Besides that, after the driver had gone, NR got a message from the driver said:</p> <p>“What is the matter, miss? Why are you afraid? Are you shy? It is okay; It is proof that you need to learn.” After that incident, NR feels afraid and traumatized.<sup>46</sup></p>	<p><b>Indonesian Criminal Code and Law on Indonesian Criminal Code:</b> Article 289 Indonesian Criminal Code and Article 415 letter b of Law on Indonesian Criminal Code</p>
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From the two cases above, the online transportation services provider as the controller must maintain confidentiality and supervision of each party involved in processing personal data under its own control.<sup>47</sup> Therefore, the user as the subject of personal data has the right to obtain before the data collection stage that carried out in the form of transparency of information on the collection, processing, transfer, and storage of personal data. This form of protection can be realized through privacy policies that explain in detail how the rights and obligations of providers, users, and riders during the use of personal data on the service.<sup>48</sup>

The presence of privacy policies proves that the providers guarantee users trust because they contain various explanations of the company's steps about data handling practice. For example, the Grab and Gojek applications explicitly state that the provider will use user data for application service needs and send data to affiliates, partners, and agents in the privacy provisions.<sup>49</sup> As the principle of data protection, representing privacy policies have also become a direction to fulfilled the principle of transparency which requires that any information addressed to the public or to the data subject must be concise, easily accessible, and easy to understand, clear and plain language, and appropriate visualization be used.<sup>50</sup>

Thus, to strengthen data protection from external violations such as nuisance messages, the providers must protect and ensure the security of personal data as stipulated in Article 24 GDPR, the controller have responsibility to implement

<sup>46</sup> Septina Arifiani, “Layanan Ojek Online: Driver Ojek Dituding Lakukan Pelecehan Seksual Kepada Siswi,” accessed on May 24, 2024, <https://news.solopos.com/layanan-ojek-online-driver-ojek-dituding-lakukan-pelecehan-seksual-kepada-siswi-690842>.

<sup>47</sup> Article 36 and 37 of the Law Number 27 of 2022 on Data Protection Law.

<sup>48</sup> Julia B. Earp (et.al.), “Examining Internet Privacy Policies Within the Context of User Privacy Values,” *IEEE Transactions on Engineering Management* 52, no. 2 (2005): 227.

<sup>49</sup> Grab and Gojek, “Privacy Policies,” accessed on August 22, 2024, <https://www.gojek.com/id-id/terms-and-condition/privacy-policies>, <https://www.grab.com/id/terms-policies/privacy-notice/>.

<sup>50</sup> Recital 58 of the General Data Protection Regulation.

appropriate technical and organizational measures to ensure and to be able to demonstrate that processing is performed in accordance with GDPR.

Furthermore, Article 35 points a and b of the PDP Law requires the controller to protect the security of personal data through two steps, which compiling and implementing operational technical measures to protect personal data and determining the level of security of personal data by taking into accounts the nature and risks of personal data that must be protected while processing. The articles as aforementioned are indicator for the online application transportation service to implement technical measures such embedded the right to object in privacy policy at the contract electronic for application services.

#### **D. Implementation of Right to Object as the Effort to Optimize Protection over Personal Data of Users from Nuisance Messages in Online Transportation Application Service**

##### **1. General Explanation of Right to Object**

The right to object is one of the rights of subjects of personal data, regulated under Article 21 (1) of GDPR, by giving a chance for them to object to further processing of their data in certain situations. Article 6 (1) (e) (f) of GDPR restricts the enactment to only apply to processing activities for tasks executed for public interests or the execution of official authority and the legitimate interest of the controller or the third party.<sup>51</sup> While for direct marketing, the owner of personal data may object absolutely.<sup>52</sup> This means that GDPR regulates two different approaches within one provision. A subject of personal data may at any time propose an objection as long as data processing is made for direct marketing. However, other than that situation, they will need reasons that become the basis to stop the data processing. Before the GDPR came into force, the right to object was a single independent provision stipulated in Article 14 of Directive 95/46/EC on submitting objections by subjects of personal data with legitimate and convincing reasons unless provided otherwise by national laws.<sup>53</sup>

Tracing down to several regulations in Indonesia, there are no clear explanations for the right to object. PDP Law does not provide separate and detailed provisions as other rights. Nonetheless, the presence of Article 8 of PDP Law directs the data controller to end, erase, and/or destroy personal data processing if there are unfulfilled conditions as referred to in Article 16 paragraph (2) of PDP Law.<sup>54</sup> Then from the Article 16 paragraph (1) of the Government Regulation Number 71 of 2019

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<sup>51</sup> Christopher Kuner (et.al.) *The EU General Data Protection Regulation A Commentary*.

<sup>52</sup> Article 21 (3) General Data Protection Regulation.

<sup>53</sup> Directive 95/26/EC is a regulation concerning protection of personal data protection in Europe enacted in 1995 and replaced by GDPR in 2016.

<sup>54</sup> Sinta Dewi Rosadi, *Pembahasan UU Pelindungan Data Pribadi*.

implicitly stipulates such provision in the obligation to erase the information and/or irrelevant electronic documents if collected without consent, which consent has been revoked, or obtained and processed unlawfully, and has exceeded its expiration date. Also, Article 20 of Regulation of Minister of Communication and Informatics Number 20 of 2016 on Personal Data Protection in Electronic Systems requires the system provider to allow the owner of personal data to ask for the erasure of his certain data according to the provisions of the rules and regulations.

Therefore, each regulation above has developed its red thread with the right to object. The assessment of indirect conditions on why the data must be erased will require reasoning based on the legitimate interests of the controller and data subjects. Nevertheless, as a consequence, the controller will still be able to process the data as long as the processing fulfills the requirements and/or qualifications of the existing law or is capable of erasing data if the processing does not fulfill the requirement mentioned above.

The urgency to enact the right to object was also highlighted in the handling of the *Costedja Gonzalez v. Google Inc.* case on 13<sup>th</sup> May 2014. The European Court of Justice (ECJ) judge declared that Google must erase the link to all pages containing the names of Costedja Gonzalez on the La Vanguardia site.<sup>55</sup> The ECJ bears Article 12 and Article 14 of Directive 95/46/EC into consideration, which further resulted in a decision that the data subject has a legitimate interests to object to the disclosure of its data, despite no loss may be inflicted from there.<sup>56</sup> Thus, the right to object becomes the manifestation of control over the processing of personal data<sup>57</sup> since, in certain situations, the data subject is given a chance to prove first that the data must be revoked without due regard to lawful and legitimate data processing.<sup>58</sup> However, the right to object must pay attention to the legal basis of the processing, and what kind of interests are being violated during the processing.

## **2. Actualization of Right to Object in the Protection Against Nuisance Messages in Online Transportation Application Services**

Nowadays, online transportation application services massively collect personal data for multi purposes such as providing services, selling user data to third parties, and sending targeted advertise services.<sup>59</sup> In other words, the online transportation providers will consequently have the right to collect the personal data of the users,

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<sup>55</sup> LBH Pers, *Hak Atas Penghapusan Informasi di Indonesia (Orisinalitas dan Tantangan Dalam Penerapannya)* (Jakarta: LBH Pers, 2018), 6.

<sup>56</sup> Sinta Dewi Rosadi, 55.

<sup>57</sup> Christopher Kuner (et.al.)

<sup>58</sup> Christopher Kuner (et.al.)

<sup>59</sup> Clare Y. Cho and Kristen E. Busch, "Online Consumer Data Collection and Data Privacy," *Congressional Research Service* (2022): 2.

including names, addresses, or phone numbers as general data, even specific data containing sensitive information also has a fundamental impact on users such as financial account, personal data details, health information, and others.<sup>60</sup> This collection activity will be sent to the driver as a third party based on the legitimate interests of the service. At the same time, the driver can keep and use the user's data information for personal interests such as sending nuisance messages.

Meanwhile, Article 59 paragraph 2 point (h) and (g) Government Regulation 80 of 2019 on Trading Through Electronic Systems (the Government Regulation Number 80 of 2019) stipulates that personal data must be processed in accordance with the rights of the data subject. The party that stores personal data must have a proper security system to prevent leakage or any unlawful processing or utilization of personal data and responsible for unexpected losses or damage to personal data. Thus, online transportation application services are obliged to pay attention to protecting user's personal data from unlawful acts such as nuisance messages through data protection mechanism that must pay attention to the rights of personal data.

To answer the issue, the provider might alternatively present the right to object in the standard electronic contract. According to Articles 21 (1) and (4) of GDPR require the enactment of the right to object to only be directed into two provisions: (1) based on the interests regulated in Article 6 (1) (e)(f) and (2) it must be made at the first communication.

Referring to the two requirements stipulated in the GDPR, the exercise of the right to object to the online transportation application service needs to review the legitimate interests of the application itself, along with the electronic contract and contents of the privacy policy. First, legitimate interest may be the primary basis of data processing. Article 8 of the Protection of Personal Data of the European Union of Fundamental Charter mandated that each data must be processed fairly for a specific purpose of the relevant party or several legitimate interests.<sup>61</sup> Referring to Article 6 (1) (f), processing may be considered necessary for the legitimate interests of the controller or the third party, unless if the interest is superseding the fundamental rights and freedom of the data subjects that need personal data protection, notably, if the subjects are children.

According to Article 20 paragraphs (1) and (2) of PDP Law, each controller is obligated to have a basis for processing, including the fulfillment of other legitimate interests in the provision. However, PDP Law does not explain the meaning of legitimate interests in detail, its Article 20 paragraph (2) point (f) only pays attention to the purpose, needs, and balance between the interests of the controller and the

<sup>60</sup> Classification of personal data are stipulated in Article 4 paragraph (2) and (3) on Personal Data Protection Law.

<sup>61</sup> Lin Kyi (et.al.), "Investigating Deceptive Design in GDPR's Legitimate Interest," *CHI* 23 (2023): 3.

rights of the personal data subjects. Since the provisions are still general, the controller shall be obligated to assess the extent of processing that will affect the rights and freedom of the data subjects. Besides that, the controller must also review whether the processing will harm the personal data subjects.<sup>62</sup>

Using legitimate interests as a basis must become a traffic sign for providers and users in using personal data within the services. Suppose the controller wants to send and show user's data to the drivers to provide an escort service facility. In that case, the provider must ensure that the handover of the users' data shall not override their fundamental rights, freedom, and interests. Notably, if the users are children or referring to Recital 75 of GDPR, if the processing results in:<sup>63</sup>

- a) incapability of exercising rights (including rights to data protection);
- b) loss of control over the use of personal data; and
- c) inflicting social or economic loss.

Thus, before it is exercised, it is important to ensure that the legitimate interests have been assessed through three aspects, namely their purpose, needs, and balance.<sup>64</sup> Irene Kamara and Paul de Hert explained that to determine a legitimate interest. One must refer to three elements, namely the legitimacy of interests of the controller, the purpose that is intended to be achieved, and the balance of interests which is in contrast with the interests of the controller and the data subjects.<sup>65</sup>

Second, stipulating the right to object through the clauses in the electronic contract must be seen as a code in the online transportation application service. It headed off from the view of Lawrence L. Lessig that code becomes a determinant that creates harmonization between law, norms, architecture, and the market in the cyber world. The presence of code may change the condition of the cyber world.<sup>66</sup> Based on Article 18 paragraph (1) of EIT Law defines the validity of electronic transactions contained in the electronic contract binds on the parties, this condition will lead the parties to accept all terms and conditions in privacy policy at the electronic contract as a standard form (take it or leave it). It will become important since Article 52 point c of the Government Regulation Number 80 of 2019 stipulates that the agreement will happen if the parties accept the terms and conditions of the offer sent by the party submitting the offer, which is accepted and agreed upon by

<sup>62</sup> Valentin Rupp and Max von Grafenstein, "Clarifying 'Personal Data' and Anonymisation in Data Protection Law: Including and Excluding Data from the Scope of the GDPR (More Clearly) Through Refining the Concept of Data Protection," *Computer Law and Security Review* 52 (2024): 2, <https://doi.org/10.1016/j.clsr.2023.105932>.

<sup>63</sup> ICO, "What is the 'Legitimate Interests' Basis?" accessed on May 30, 2024, <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/lawful-basis/legitimate-interests/what-is-the-legitimate-interests-basis/>.

<sup>64</sup> ICO.

<sup>65</sup> Irene Kamara and Paul De Hart, *The Cambridge Handbook of Consumer Privacy* (UK: Cambridge University Press, 2018), 322.

<sup>66</sup> Lawrence L. Lessig, *Code Version 2.0.* (New York: Perseus Group, 2006), 5.

the party receiving the offer. Thus, implementing the right to object as a clause in the privacy policy of the electronic contract will ensure the providers bear responsibility by accommodating user's requests to erase their account if nuisance messages occur when using their services.

To ensure that the implementation of the right to object becomes an essential and mandatory aspect, Article 21 (4) of GDPR mandates that clause be stipulated no later than the first time of communication with the data subjects. Then, the provision on legitimate interests must be explicitly informed to the data subjects. Contents must be elaborated clearly and separated from other information<sup>67</sup> as follows:

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<sup>67</sup> Article 21 (4) *General Data Protection Regulation*.

**Figure 1.** Legitimate Interests (LI) in the Privacy Policy of Uber Application<sup>68</sup>

HOW WE USE ORDER RECIPIENT DATA	THE DATA WE USE								Scope	EU GDPR Legal Basis
	User profile	Identity Verification Photos	User content	Demographics	Location data	Transaction data	Usage data	Device data		
To provide our services. User use data to provide, personalise, maintain, and improve our services	Create and update accounts (CN) Enable services and features (CN) Enable user matching (CN / LI) Enable dynamic pricing (CN) Process payments (CN) Personalize user accounts (CN) Perform our internal operations (CN)	✓ ✓ ✓ ✓ ✓ ✓ ✓	✓ Does not apply to EU/UK and Switzerland	Consent (C) Necessity (CN) Legitimate Interest (LI) Legal Obligation (LO)						
For safety and security. We use personal data to help maintain the safety, security, and integrity of our services and users.	Verify users' identity and/or age (CN) Detect unsafe behavior (LI) Prevent and detect fraud (LI) Enforce Community Guidelines (LI) Report unsafe incidents (LI) Determine user ratings and deactivations (LI) Prevent and resolve conflicts between users (LI)	✓ ✓ ✓ ✓ ✓ ✓ ✓								
For customer support.	Investigate and address concerns (CN) Monitor and improve support (LI)	✓ ✓								
For research and development.	Develop and Improve (LI) services/features	✓ ✓								
To enable communications between users.	Enable communications between users (CN)	✓							✓	
For marketing.	Promote User products and services, including restaurant/merchant products and services (LI) Promote User partners and third-party ads (C) Measure the effectiveness of Uberads and third party ads (LI)	✓ ✓ ✓								
For non-marketing communications.	Deliver receipts (CN) Updates regarding terms or services (CN / LI) Inform users of political processes (LI / C)	✓ ✓ ✓		✓ ✓ ✓						
For legal proceedings and requirement	Investigate and address claims/accusations (LI) Satisfy legal requirements (LO)	✓ ✓								

Stipulation of the right to object in the privacy policy of the electronic contract enables the users to erase, destroy, and/or revoke consent for data processing previously granted to the controller, in the event of misuse. It will include the case of nuisance messages sent by the drivers. Users must have a specific reason according to the situation he faces. It means the service provider must re-evaluate the nuisance message activities before granting the objection. The European Data Protection Board (EDPB) determines the situations that may be proposed on such grounds, namely wrong allegation, hate speech, hoax, or violation of privacy.<sup>69</sup>

This condition also applied to the service provider to immediately erase personal data, as mandated in Article 43 paragraph (1) letters c and d of PDP Law. The controller of personal data must erase the processing of personal data in case the subject of the data requests for it and/or the data was obtained unlawfully. Meanwhile, the refusal of erasure by the controller in that regard shall be imposable by administrative sanction following Article 57 paragraph (1) of PDP Law. Aside from erasing personal data, if a nuisance message is inflicting losses on the users according to Article 26 paragraphs (2) and (3) of EIT Law, the users may submit a claim over the suffered losses. As long as the driver sent the nuisance messages without consent, and the erasure request is based on the court stipulation.

<sup>68</sup> Uber, "Privacy Policy," accessed on June 9, 2024, [https://www.uber.com/global/en/privacy/overview/?ulclick\\_id=6df63283-cd33-4673-915f-6ab434140f31](https://www.uber.com/global/en/privacy/overview/?ulclick_id=6df63283-cd33-4673-915f-6ab434140f31).

<sup>69</sup> Candidate 9011, "The Balancing of Interests," 24.

## E. Conclusion

Nuisance messages have become complex issues can be examined from both the regulatory perspective in Indonesia and the specific context of the online transportation application industry. The act of sending nuisance messages constitutes a violation of personal data protection and an infringement of privacy. Given that such communications occur without the recipient's consent, this act is construed as intrusive. Since users cannot control the communication and information they receive, there should be restrictions in place. The EIT Law and the Government Regulation Number 71 of 2019 have guaranteed protection against nuisance messages. However, the implementation is multi-interpretation. This behavior is viewed as lacking appropriateness and decency, which contributes to legal uncertainty, as the terminology used to describe it is often inconsistently interchanged with "spam".

To address this issue, Indonesia needs to clarify the definition of nuisance messages, notably in relation to spam messages, through specific regulations. As a point of comparison, Indonesia can observe Singapore and Australia, both of which have established regulations governing UCE Spam. The urgency of this matter is underscored by the fact that nuisance messages in online transportation application services violates the principle of good faith. These messages fulfill the elements of an unlawful act or breach of contract, demonstrating fault due to negligence and causing losses to users. Not only in terms of financial impact but also in terms of their overall privacy and well-being.

This study proposes online transportation application services to accommodate internal protection by enacting the right to object as stipulated in Article 8 of PDP Law and Article 16 of the Government Regulation Number 71 of 2019. This right shall enable them to refuse the processing of their data if nuisance messages are sent by the driver to users. This right is also regulated in Article 21 of GDPR, which mandates that each personal data subject may refuse the processing of their data upon certain legitimate interests. Hence, when such a right to object is stipulated in an electronic contract, the relevant providers shall be obligated to erase the personal data of their users. It only applies, however, if the exercise of such right by the users is followed by an explanation that the nuisance messages have infringed their privacy.

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