

Research on Inadequacies of the Law in Consumer Protection Activities in Vietnam

Thao Tong Thi Phuong*, Nhung Nguyen Thi Hong**

*(Thai Nguyen University of Technology, Vietnam

Email: tongthiphuongthao@tnut.edu.vn)

** (Thai Nguyen University of Technology, Vietnam

Email: nguyenhongnhung@tnut.edu.vn)

Abstract:

Personal information is an important type of data, through which individuals can be identified and distinguished in society, protection of personal information is also a moral right recognized by both international and Vietnamese laws Male recognition and protection. However, in recent years, in Vietnam, many cases of consumers' personal information kept by business entities have been illegally distributed, bought, sold, and transferred. This raises concerns of consumers and the whole society while the law on the protection of personal information in our country currently has many shortcomings. The article analyzed the content, pointed out the basic limitations of the law on protecting the personal information of consumers in Vietnam today, and proposed directions and solutions to overcome them.

Keywords —personal information data, consumers, protection, collection, distribution, processing

I. INTRODUCTION

The right to privacy, including the right to protection of personal information is one of the fundamental human rights enshrined in the 1948 Universal Declaration of Human Rights of the United Nations General Assembly United Nations. Everyone has the right to the protection of the law against such infringements [1].

Personal information is the type of information whose holder can identify a particular person. Commonly mentioned personal information includes: full name, date of birth, residential address, work address, personal phone number, email, bank account number, credit card number, number identity card, and information in medical records [2]. This information, when accessed by the business, can become the most commercially valuable data source through communication, promotion, marketing, and competitive activities in the market. Therefore, businesses want to capture,

collect, use, analyze and exploit the personal information of existing customers and potential customers. However, on the other hand, to ensure private life and necessary freedom, individuals do not want their personal information to be exposed and fall into the hands of people with personal information who do not know they will use that information. In other words, each individual very much does not want his information to fall into the hands of strangers. Therefore, they often have a request to control (or seek to control) the spread of personal information related to themselves.

Responding to that concern, in recent decades, laws in many countries around the world have established standards on the access and use of personal information in transactions between individuals and businesses or between individuals with public authorities and Vietnam is no exception.

In Vietnam, the introduction of Ordinance No. 13/1999/PL-UBTVQH dated April 27, 1999, on the protection of consumers' interests and then

specifically, perfected by the Law on Protection of Consumer Rights. 2010 marked the birth of a national consumer protection legal system, covering all aspects of the interests of individuals and organizations participating in the market, especially the right to be protected for personal information. With the role of social management, our State has gradually developed and promulgated legal regulations to protect the rights and interests of individuals, organizations, and society. However, compared with the requirements of practice, with the increasing demand for information exchange in the society, the very rapid development of information technology in the Industrial Revolution 4.0, the legal regulations regarding the protection of personal information in our country, there are still some limitations and shortcomings that need to be further developed and perfected.

II. OBJECT AND SCOPE OF THE STUDY

Within the scope of this study, the author delves into the research and analysis of the legal provisions for the protection of consumers' personal information in important laws such as the 2015 Civil Code, and the Law on Protection of People's Rights consumption in 2010, the Law on Cyber Information Security in 2015, the Law on Cyber Security in 2018, and related documents. Based on the content of analysis and research, the study makes comments on the inadequacies of the law in consumer protection activities, thereby proposing solutions to contribute to perfecting the law on protecting the personal information of consumers in Vietnam today.

This paper is made based on the synchronous use of research methods. Statistical methods are used to list the provisions of the law on this content, from which to have an overview of the research problem, based on the listed legal provisions, the assumes using the method of analysis and comparison to identify their inadequacies, then synthesize and propose solutions to remove them; at the same time, approach the research content in terms of considering it as one of the basic human rights enshrined in the 2013 Constitution.

III. CURRENT STATUS OF THE LAW ON THE PROTECTION OF PERSONAL INFORMATION OF CONSUMERS IN VIETNAM

A. The current law on protecting the personal information of consumers in Vietnam

The illegal use of consumers' personal information is happening more and more, but the number of cases detected and thoroughly handled is not much. In Vietnam, the law prohibits the sale of personal information of consumers, but much personal information of these subjects is still widely sold to third parties, the most typical recent case is The fact that a series of Facebook user information is publicly sold by many objects to units, organizations, and individuals for product marketing. Many businesses use this information to call, text, and send emails for different purposes, many of which show signs of breaking the law, even defrauding consumers. These are all acts of buying and selling the personal information of consumers on the internet without the permission of the information owner, violating the law on protecting consumers' interests. On some websites such as "datakhachhang.net", "fulldata.org", "danh sach khachhang.com", "cungcapdata.com", etc. the most advertised products are personal information about name, age, and position, phone numbers of business directors nationwide, VIP customers buy luxury apartments, buy insurance, cars, gold, silver, securities...

In the report on the reception and settlement of complaints in 2019 published by the Department of Competition and Consumer Protection [3], accounting for the highest percentage of the groups of complained acts is the group of " Protection of consumer information", accounting for 34% of the 568 complaints filed with the Bureau. In particular, the complaint content mainly focuses on the illegal collection of consumer information by the enterprise, not recognizing the consumer's request to correct information, leading to the continued use of this information for another purpose, infringing on the rights of consumers. It can be seen that the illegal collection, theft, and use of consumers' personal information is taking place more and more

with many sophisticated forms and increasing levels of violations, seriously infringing on consumers. The right to protect the personal information of consumers in our country today.

Personal information protection under the law of consumers in Vietnam is regulated in several main contents as follows:

Firstly, regulations on the right to collect, store and handle personal information of consumers

The collection and storage of information in the consumer purchase and sale relationship comes from the purchase and sale of goods in civil transactions, so the obligation to provide information is one of the jobs that the parties involved must comply with performed [4]. In many cases, consumers must provide some of their personal information such as name, age, identity card number, and address to establish the transactions they wish to perform. Through which individuals, business organizations have the right to collect personal information of consumers related to the performance of goods purchase and sale activities and service provision. For example, customers need to provide information about their full name, phone number, and home address before the parties can sign a contract of sale and warranty for goods. Along with the explosion of e-commerce, the collection of consumer personal information is not only done directly but also takes place in the cyber environment. The collection and use of personal information of consumers are governed by the provisions of the Law on Information Technology 2006, Law on Cyber Information Security 2015, Decree No. 52/2013/ND-CP dated May 16, 2013, on e-commerce and system of guiding documents. According to Article 17 of the Law on Commercial Security and Article 21 of the Law on Information Technology, the collection, processing and use of personal information shall be carried out when satisfying the following conditions: i) Consent of the subject of personal information; ii) Must notify the subject of personal information about the scope and objectives of the income and use of such information; iii) Only use personal information that has been collected for other purposes than the original target after obtaining the

consent of the subject of personal information; iv) Not to provide, share, or distribute personal information that they have collected, access, or control to third parties unless otherwise agreed by the subject of such personal information or at the request of a competent state agency authorization.

Thus, the information provided belongs to a person's private life, personal secrets, and family secrets, so in the conclusion of a contract, the business entity who receives this information can be responsible for keeping the information confidential and not used for its purposes or other illegal. The process of collecting, storing, and processing the personal information of consumers is carried out by many different methods, but not arbitrarily, but must comply with regulations.

Second, the consumer's responsibility to provide personal information.

Consumers are the ones who decide whether or not to share information about themselves with everyone and each person. Therefore, to protect their privacy and avoid the risks of leaking and falsifying information published to everyone, consumers must first comply with the legal provisions on liability. responsibility to provide and protect their information. Personal information can be identity card number, residential address, bank account number, phone number, etc. The information is only disclosed by the consumer to another entity but does not transfer rights related to the information. That is for them, so consumers are still subject to personal information and have full rights protected by law.

For transactions conducted through cyberspace, the law allows an individual to have the right to require the organization or individual that stores his/her personal information on the network environment to check, correct, or cancel the information. In addition, business entities are only allowed to share a person's private information when they agree and must provide personal information that such organization or individual has collected and stored at the request of that person. The consumers have the right to refuse to provide or request these organizations and individuals to stop disclosing their information to third parties and

have the right to claim compensation for damages caused by violations during the illegal collection, processing, and use of personal information. According to Clause 1, Article 16 of the Law on Information Security, one of the principles of online personal information protection: *“Individuals protect their personal information and comply with the law on the provision of personal information when using online services.”* In addition, consumers must inform relevant state agencies, organizations, and individuals when detecting acts of organizations and individuals trading goods and services infringing upon their legitimate rights and interests to apply timely handling and prevention measures to avoid unwanted consequences.

Third, the responsibility of state management agencies in the protection of consumers' personal information.

According to Article 34 of Decree No. 99/2011/ND-CP detailing and guiding the implementation of several articles of the Law on Protection of Consumer Rights, the decentralization of state management of consumer rights protection use is defined as follows:

- Central: The Ministry of Industry and Trade is the state management agency in charge of protecting consumers' interests at the central level, in addition, 2 units are assisting the Minister of Industry and Trade, namely the General Department of Competition and Consumer Protection and the General Department of Market Management. In addition, under the provisions of the 2018 Cybersecurity Law, the Ministry of Public Security also has several law enforcement responsibilities regarding the protection of personal information in general (including the right to protect the personal information of consumers use).

- Local-level: Provincial-level People's Committees are responsible for exercising state management rights over the rights to protect consumer and information technology interests in the locality. The Department of Industry and Trade and the Department of Information and Communications are the agencies that help the Chairman of the People's Committee and the People's Committee of the province to exercise the right to state management of information

technology and the rights to protect consumers in the locality. It can be seen that the regulations on the system of state management agencies on the protection of consumer's market have been initially completed.

Fourth, the mode of handling the trespass behavior of the user's personal information.

The law on the protection of consumer's personal information regulates the relationships arising between the subjects participating in the collection, storage, protection, and processing of information are collected from consumers, and at the same time requires the subjects to participate in complying with the law and the sanctions to handle violations, including:

- Administrative sanctions: are applied when a subject commits a law violation but the legal consequences are not enough legal grounds for criminal prosecution. Clause 4, Article 65 of Decree No. 98/2020/ND-CP stipulates administrative sanctions in commercial activities, production and trading of counterfeit and banned goods, and protection of consumers' interests from VND 20,000,000 to VND 30,000,000 for one of the acts of collecting personal information without the prior consent of the consumer, forcing the consumer to agree to his or her personal information being stolen, share, divulge or use for advertising and other commercial purposes, using the consumer's personal information, not by the stated purpose and scope.

In addition, the person with sanctioning competence can apply additional sanctions to violators such as suspending e-commerce activities for 6 to 12 months in case of repeated violations or repeated violations and request the implementation of remedial measures to force the return of illegal profits obtained when performing these violations.

Not only regulated in commercial activities, production, and trading of counterfeit and banned goods and protection of consumers' interests, for the fields of the post, telecommunications, radio frequencies, information technology. The protection of consumers' information rights is also clearly mentioned by Decree No. 15/2020/ND-CP stipulating penalties for administrative violations in

the fields of post, telecommunications, radio frequency electricity lines, information technology, and electronic transactions.

- Civil punishment: the consumer's information rights are inalienable of the range of each individual and organization because, besides the administrative sanctions, the victim has the right to apply protection methods civil rights to prevent and remedy violations of the law on consumer's information protection. According to the provisions of the 2015 Civil Code, applicable civil punishment are recognition, respect, protection, and protection of civil rights; must stop the infringement; must apologize, public corrections; perform an obligation; must compensate for the damage; annul a particular illegal decision of a competent agency, organization or person; other requirements as prescribed by law.

- Criminal punishments: This sanction is applied to law violations with high danger to society, with criminal signs. Article 159 of the Penal Code 2015 provides for the crime of infringing upon the secret or safety of another's correspondence, telephone, telegram, or another form of exchanging private information; Article 288 on the crime of illegally giving or using the information on computer networks and telecommunications networks. In addition, Section 2, Chapter XXI of this Code regulates crimes in the field of information technology and telecommunications networks to contribute to protecting the interests of consumers. The provisions of the criminal law on sanctions for handling violations of consumers' information rights have implicitly acknowledged that these are acts of serious infringement on the legitimate rights of individuals, creating conditions for maximum promotion of consumers' human rights.

B. Inadequacies of the law protecting personal information of consumers in Vietnam

The legal system to protect consumers' personal information in Vietnam is built with many legal documents, in many fields, creating a solid legal basis for the application and enforcement of the law. However, regulations on the protection of information of consumers have some limitations and personal shortcomings as follows:

Firstly, the legal regulations on the protection of consumers' personal information are scattered in many different documents such as the Law on Information Technology, Law on Commercial Security, Law on Pharmacy, Law on Civil Aviation, etc., which set requirements to ensure uniformity in the provisions of these documents to the application of the law. In addition, regulations to protect consumers' personal information only focus on collecting, processing, storing, and using personal information in the cyber environment without specific regulations on the protection of consumers' personal information in the physical environment while this is the traditional environment where many synthetic activities related to the personal market of consumers take place daily.

In addition, the definition of personal information is not consistent among relevant legal documents (shown in both regulatory content and legislative technique). For example, the definition of "personal information" in the Law on Cybersecurity is brief, while Decree No. 52/2013/ND-CP of the Government on e-commerce is specific, detailed, and has some difficult points to assess compatible with the provisions of the Law on Network Information Security; The Law on Protection of Consumer Rights 2010 uses the phrase "consumer information" (Article 6) to contain the personal information of consumers, while the Law on Cybersecurity and Decree No. 52 /2013/ND-CP again used the phrase "personal information".

Secondly, the law on protecting the personal information of consumers does not have any regulations on the age of consumers, so the collection of personal information is not limited to the age of the information provider, if this person is a child, the business entity needs to get someone's consent because in a civil transaction it is necessary to meet the behavioral capacity requirements.

In addition, it is necessary to put in place mechanisms to control the situation of cross-border transfer of personal information and to encrypt personal information in the current situation of digital technology development.

Thirdly, the level of handling for individuals with information protection information in Decree No. 15/2020 / ND-CP has not yet responded to the

request to fight against the violation of the law. Meanwhile, acts of infringing on consumers' personal information take place in more sophisticated and complex ways, but the restrictions applied are still light, not enough to deter violators' offenses in this area. Currently, Decree No. 98/2020/ND-CP stipulating administrative sanctions in commercial activities, production and trading of counterfeit and banned goods, and protecting the interests of consumers has regulated penalties for administrative violations of consumers' personal information in the e-commerce environment (Clause 4, Article 65), but when comparing, the authors find that there is any inconsistency between the provisions of Decree No. 98/2020/ND-CP and Decree No. 15/2020/ND-CP.

Decree No. 185 and Decree No. 15/2020/ND-CP on sanctioning administrative violations in the field of information technology (Decree No. 15), although there is not too much difference in the level of fines for the implementation of performing the same violation (for example, unreasonable collecting personal information) the remedial measures are not the same. Specifically, Clause Article 84 of Decree No. 15 stipulates as follows: "A fine of between VND 20,000,000 and 30,000,000 shall be imposed for one of the following acts: a) Using the agreed personal information for improper purposes when collected or without the consent of the subject of personal information; b) Providing or sharing or disseminating the collected, accessed and controlled personal information to third parties without the consent of the personal information owner; c) Illegally collecting, using, disseminating and trading other people's personal information", however, the remedial measure is only forcible cancellation of personal information due to violations.

Fourthly, the 2015 Penal Code has not clearly defined the scope of legal linkages for the current personal information market but specifies the scope of safety or security of correspondence, telephone, credit signs or images of another's private communications (Article 159) and the unauthorized distribution or use of information on computer networks or telecommunications networks (Article

288). In addition, for these crimes, only individuals who commit crimes must bear penal liability, while the law has not yet provided for the responsibility of commercial legal entities when committing violations. Therefore, this is also one of the limitations of the current legal status of the protection of the personal information of consumers in Vietnam.

Fifthly, there is no regulation on the right to be forgotten in necessary cases (a kind of valuable human power that the law on the protection of personal information of many countries has stipulated).

Sixthly, there is no specific regulation on liability to compensate for damage to the subject who commits wrongdoing in the collection and use of personal information. This is also a legal void that needs to be addressed.

C. The solution to perfect the law on protecting customers' personal information in Vietnam

Based on analyzing the current situation of legal regulations on the protection of personal information of consumers, pointing out the problems and inadequacies in practical application, the authors would like to propose solutions to improve the law on the protection of consumer's personal information:

Firstly, it is necessary to develop a Law on Protection of Personal Information based on inheriting several provisions for the protection of personal information already in the Law on Information Technology 2006, the Law on Cyber Information Security in 2015, Decree No. 52/2013/ND-CP on e-commerce, but more comprehensively regulates the protection of personal information (not only limited to the protection of personal information in "cyberspace"), especially the more fully stipulates who is responsible if there is a violation in the process of handling personal information; ensure transparency and fairness in handling personal information.

Secondly, it is necessary to supplement regulations on the collection and processing of personal information related to children, specifying more clearly the responsibilities of the subjects involved in the process of collecting, storing,

processing, exploitation, and transfer of personal information, the transfer of personal information across borders, along with strict restrictions, state management responsibility for personal information protection to handle many inadequacies in practice personal information protection practices, contributing to maintaining people's trust in the security and safety of personal information when participating in the digital economy. The Law on Protection of Personal Information also needs to stipulate an international cooperation mechanism in the protection of personal information in the context of the Fourth Industrial Revolution and the integration process that are having a very strong impact on Vietnam and major partner economies of Vietnam.

In ASEAN, Malaysia enacted the Personal Data Protection Law in 2010, Singapore enacted the Personal Data Protection Act of 2012, and the Personal Data Protection Regulation in 2014 (Personal Data Protection Regulations 2014). Thailand promulgates the first law on personal data protection ("Personal Data Protection Act", 2019, officially effective from May 27, 2020) [5].

In Northeast Asia, South Korea first promulgated the Law on Protection of Personal Information in 2011 and since then, this law has been continuously amended and supplemented in 2013, 2014, 2015, 2017, and the second time most recently in February 2020 to serve the development of Korea's digital economy [6].

Thirdly, increase the level of administrative fines for subjects who commit violations (for enterprises with violations, the fines can be determined according to revenue or size of violating enterprises) to ensure deterrence and general prevention. For example, in 2016, the European Union issued the General Data Protection Regulation (GDPR) [7], which took effect on May 25, 2018. GDPR details the responsibilities of the subject that collects and processes personal information, including those who directly perform the work of collecting and handling personal information in the enterprise. The scope penalty can be up to 4% of the revenue of the financial year prior to the violation. Currently, the administrative sanctions applied to handle the field of personal information protection of consumers are

specified in documents such as the 2012 Law on Handling of Administrative Violations and several related documents. But the number of cases of infringing on consumers' right to protect personal information in recent years has increased both in number and level of cases, showing that these sanctions are still light, while profit from the action left the law More than the fine level, more subjects decision receive the penalty to be able to earn a larger profit.

Fourthly, supplement the basis for criminal prosecution for acts of illegally collecting, using, exploiting, and transferring personal information, causing serious consequences or carried out on a large scale, from that supplement the relevant criminal offense provisions in the current Penal Code (with sanctions applicable to both individuals and commercial legal entities that commit violations) to raise the spirit of self-discipline to obey the law, deter bad actors in society minimize violations of legislation to protect consumers' personal information.

IV. CONCLUSIONS

The act of infringing on personal information causes many extremely dangerous and huge consequences, not only for the victim but also negatively affecting security, order, and social safety. On the basis of the main contents of Vietnam's law on the protection of consumers' personal information, the authors analyzed and pointed out the limitations and inadequacies of the legal system; then suggest effective solutions. These solutions are not only meaningful in the field of consumer protection but also contribute to creating fair and healthy competition among market participants, creating sustainable values for customers, economic development of the country, stabilizing social order, creating conditions for the protection of human rights in general and the right to privacy in particular.

ACKNOWLEDGMENT

Authors would like to express our sincere thanks to Thai Nguyen University of Technology (Thai Nguyen, Vietnam) for the financial support of this research.

REFERENCES

- [1] United Nations, *Universal Declaration of Human Rights*, 1948.
- [2] N. V. Cuong, *Current status of the law on personal information protection in Vietnam and directions for improvement*, Legislative research journal, December 2020, vol.12.
- [3] Department of Competition and Consumer Protection, *Report on the results of receipt and settlement of complaints in 2019*.
- [4] C. X. Quang, *Protection of personal information in consumer transactions*, Competition and Consumer Bulletin, pp.15-tr18, vol. 47, 2014.
- [5] Robert Walters, et. al (eds.), *Data Protection Law: A Comparative Analysis of Asia-Pacific and European Approaches* (Singapore: Springer, 2019) at 197.
- [6] <http://koreanlii.or.kr/w/index.php/Recent_amendments_to_PIPA>.
- [7] European Parliament, *General Data Protection Regulation*, April 2016.