

# Legal Aspects of Self Impersonation Activities In Related To Intended Personality and Identification Rights Violations sebagai Penulis

*by Daniel Hendrawan*

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**Submission date:** 12-Feb-2022 04:44AM (UTC+0700)

**Submission ID:** 1760341759

**File name:** IJMCR\_R0360130136.pdf (607.13K)

**Word count:** 5152

**Character count:** 27870

## Legal Aspects of Self Impersonation Activities In Related To Intended Personality and Identification Rights Violations

Christian Andersen<sup>1</sup>, Mutia Ainun Nissa<sup>2</sup>, Daniel Hendrawan<sup>3</sup>

<sup>1,2,3</sup>(Faculty of Law/Maranatha Christian University, Suria Sumantri 65 Bandung, Indonesia)

**ABSTRACT :** The exchange of personal data in Indonesia is still a hot issue, especially in matters concerning identity impersonation. This happens because there are no regulations specifically regulated to deal with the impersonation that occurs in Indonesian society. The purpose of this article is to examine and understand how appropriate arrangements are made to deal with impersonation activities carried out by the community for negative things that are detrimental. The writing of this thesis discusses legal certainty in dealing with detrimental impersonation and legal protection of the exchange of personal data involving identity impersonation actors. The research method used is normative juridical, namely research that is focused on examining the application of rules or norms in law. The research is descriptive analytical, which is a study that examines the symptoms and legal events that are the subject of research and then performs an analysis based on the facts in the form of secondary data obtained. The approach taken is a legal approach and a conceptual approach. This writing uses library research techniques and uses secondary data in the form of primary and secondary legal materials. Based on this research, the results obtained: In Indonesia, the regulation regarding impersonation is deemed inappropriate because there are different elements between identity theft and impersonation. This causes errors in interpretation in handling cases regarding impersonation. The accountability of a digital platform is also considered insufficient, because the protection provided by a digital platform is only limited to certain people or it can be said that a digital platform only protects some of its users.

**KEYWORD:** Impersonation, Identity Theft, and Digital Platform

### I. INTRODUCTION

Mobile phones have been around and have been a means of communication for people for more than twenty years and have undergone many changes in form and function, not to mention the presence of the Internet on mobile device beside personal computers, which has made people more and more interested in using these two devices. The Internet is an open global communications network that connects thousands of computer networks, via public and private telephone lines. Individually, the network of components is managed by government agencies, universities, commercial organizations, and volunteers. <sup>1</sup>

The internet is like a new world with unlimited breadth because, there is a lot of information in the form of text, images, photos, graphics and others in digital form that can be accessed by the public without having a range of time or distance. can share and respond to or interact with fellow users without restrictions. In it, the Internet packs information and also means of communication into several types with different functions, generally the internet provides its services in the form of a web or application, and the types most commonly used by the public are in the form of blogs, wikis and social networks. In general, blogs are used as a place for users to share written works, for example, such as stories, journals, or news stories, while wikis are generally accessed by users to search for or share knowledge or encyclopedias related to something, and finally social networks are usually used. by users for communication or means of self-presentation. Examples of successful social networks are Facebook, Whatsapp, Line, Twitter and the most widely used by Netizens all over the world, Instagram, all of which are products of the sophistication of the Internet called social media. Social media is a medium to socialize with each other and is done online which allows humans to interact with each other without being limited by space and time. <sup>2</sup>

<sup>1</sup>AbdoelGafar, "Penggunaan internet sebagai media barudalampembelajaran", JurnalIlmiah Universitas Batanghari Jambi Vol.8 No. 2 Juli 2008, pp 38

<sup>2</sup><http://www.unpas.ac.id/apa-itu-sosial-media/>, accessed on Desember,5th 2020, Time 22.37 Western Indonesian Time

Indonesia, although not all people and territories use the sophistication of mobile phones and are also accessible to the internet, however it is now common the usage of Internet in Indonesia, according to APJII (Association of Indonesian Internet Service Providers) in its survey results revealing that internet users in Indonesia until the second quarter of 2020 reached 73.7 percent of the total population, which according to the Central Statistics Agency numbered around 266 million people.<sup>3</sup> Indonesia is also known to be one of the largest markets and a country with potential for growth and development of digital platform-based aspects<sup>4</sup> Indonesia as a state of law, the Government created regulations that regulate this information technology in Law Number 11 of 2008 concerning Information and Electronic Transactions which was later updated to Law Number 11 of 2016 concerning Information and Electronic Transactions.

Social media crimes that are now rife on the Instagram platform are referred to as the phenomenon of Love scammers or fraud under the guise of love. The fraud of this phenomenon is taken from the word scammers in English which means fraud. Scams are things or acts of manipulation or deception, which are carried out by a business entity or individual by manipulating something to gain the trust of others which is carried out only for profit.<sup>5</sup> So the background of this fraud is a fraud under the guise of love that plays tricks on and damages the emotional and psychic of its victims. The perpetrators carry out this mode by creating an impersonate account or impersonator account by stealing other identities regarding photos, names, addresses, and personal data belonging to other people, then approaching the victims who are usually the opposite sex and flirting with sweet words and then inviting the victims to have a romance with the perpetrator, or inviting the victim to do a job together. The authors are interested in researching this issue with the identification of problems:

1. What is the legal protection for the exchange of personal data involving impersonators of identity?
2. What is the responsibility of the digital platform in identifying impersonator accounts?

## II. THEORETICAL REVIEW

**Introduction.** Researchers are interested in raising this problem because when talking about problems contained in online interaction, in some countries, legislation regarding impersonation accounts has been created, because in some of these countries, cases of impersonation are cases that are fairly common and include illegal acts, as written in one of the foreign articles, namely "Most state laws also provide that the impersonation of public official is a criminal act".<sup>6</sup> The regulations regarding impersonator accounts have been regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions in Article 35 in conjunction with Article 50 paragraph 1 which reads "Everyone intentionally and without rights or against the law manipulates, creates, changes, removes, destruction of Electronic Information and/or Electronic Documents with the aim that the Electronic Information and/or Electronic Documents are considered as if the data were authentic." And "Everyone who fulfils the elements as referred to in Article 35 shall be sentenced to a maximum imprisonment of 12 (twelve) years and a maximum fine of Rp. 12,000,000,000.00 (twelve billion rupiahs)". The government has also regulated the protection of personal data in protecting the privacy of the Indonesian people who use the internet and digital platforms, which is regulated in Government Regulation No. about a person either identified and/or can be identified separately or in combination with other information either directly or indirectly through Electronic and/or non-electronic Systems". Then in Article 90 Letter b of the 2019 Government Regulation concerning the Implementation of the Electronic Transaction System, namely "the role of the government is to protect the public interest from all kinds of disturbances as a result of misuse of Electronic Information and Electronic Transactions that disrupt public order, in accordance with the provisions of laws and regulations".

Government Regulation No. 71 of 2019 concerning the Operation of Electronic Systems in Article 91, namely "Information Technology and Electronic Transactions as referred to in Article 90 letter a includes: a. policy determination; b. policy implementation; c. infrastructure facilitation; d. promotion and education; and e. supervision." The use of personal data is also according to Article 26 paragraph 1 of the Law of the Republic of

<sup>3</sup><https://jabar.suara.com/read/2020/11/12/220008/jumlah-pengguna-internet-indonesia-di-2020-naikjabartertinggi#:~:text=%22Saat%20ini%20penetrasi%20pengguna%20internet,9%2F11%2F2020>. Accessed on Oktober 23th, 2021, Time 15.00 (Western Indonesian Time)

<sup>4</sup>Samsudin I dan Muslihudin M. "Implementasi Web Government Dalam Meningkatkan Potensi Produk Unggulan Desa Berbasis Android", Information System and Technology Journal 1, pp 10

<sup>5</sup>YuniRetnowati, "LOVE SCAMMER : KOMODIFIKASI CINTA DAN KESEPIAN DI DUNIA MAYA", Journal Komunikologi Volume 12 Number 2, September 2015, pp 69

<sup>6</sup> Can be found at <http://law.jrank.org.com>

Indonesia No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions which reads "Unless otherwise stipulated by laws and regulations, the use of any information through the media Electronic data relating to a person's personal data must be carried out with the consent of the person concerned." The pattern of the perpetrators carrying out their actions in cyberspace makes it easy for victims to trust the perpetrators, because the limited area and time makes the victims feel they are in a long distance relationship with their lover. This makes the perpetrators more active in manipulating victims who have been psychologically affected, and when the victim is deemed to have successfully entered the trap, the perpetrator will ask the victim for a sum of money whose nominal value is considered quite large by giving any reason or even by deceiving the victims with sentences and sentences, threatening words. This makes the victims unable to resist and reject the perpetrators, usually the victims are also ashamed to report, because the disturbed psyche makes what the victim does it seems as if the victim has a relationship and also sends a sum of money on the basis of his own will, and also Often the perpetrator uses the victim's weaknesses that have been explored by the perpetrator as a tool to make the victim feel afraid to reject the perpetrator's will.

The love scammers case carried out by this impersonator account caused a lot of complaints among social media users, which caused this case to garner a lot of attention, because apparently a case like this is not a new fraud case that has occurred in cyberspace. According to an article report written by the founder of anti-scammer love, where the loss of scammer victims in Indonesia in 2017 reached Rp. 1,990,604,000 of the 55 victims and all of them were women. 5 of the victims were the result of the Nigerian perpetrators and the other 50 victims were the result of local or Indonesian perpetrators themselves. Meanwhile, in 2016 there were 19 women with a total loss of IDR 2,680,000,000.<sup>7</sup>

This case has also been personally experienced by one of the author, starting in 2014 the author received a message on Instagram from several men who claimed to be in a relationship with the author, but the author did not feel that he knew the man, after having conversations with the victims, the author received information that it turns out that all this time the man was communicating with an impersonator account using an identity including the author's name and photo. The victims informed that he had sent the impersonator account a sum of money and also credit, which if totalled the nominal was quite large with the intensity of regular deliveries. A few years later, in 2020 the author again received a similar message from several different men who stated that they were also in a relationship with the author and had sent some money to someone who claimed to be the author, it was known that the perpetrators had actually spread the author's personal data in the form of a birth certificate. who knows where the perpetrator got from as an alibi to trick the victim into believing that the perpetrator is indeed the author.

This has disturbed comfort, threatened safety and has damaged the author's reputation due to fraud and misuse of identity which has also caused material and immaterial losses to several victims. Finally, the author conducted a search on the impersonator account, then collected some information about the perpetrator in the form of the original account, telephone number, and also the identity of the perpetrator. From 2014 to 2020, the perpetrators have created 2 Instagram accounts, changed phone numbers 4 times, created 3 whatsapp accounts, 1 line account, and one online game account to operate love scammers mode. Besides that, the perpetrators also created 1 other Instagram and 1 ask.fm account with the username @Princessmickey to make threats and also hate speech in the form of insults to the author. On the Instagram platform, the author found an account under the name "@yessyardilah" which turned out to be using the impersonator account. She is a 24-year-old woman, who claims to be domiciled in Jakarta. However, the author has difficulty reporting this case because the domicile of the perpetrator is not accurate, while one of the requirements for submitting this case to a legal institution must be a clear locus delicti and the difficulty of persuading witnesses to cooperate in giving testimony. The author has also reprimanded the original account and the account used by the perpetrator as a tool for love scammers and impersonating the author's identity, but the account is still operating with an increasing number of victims, the author's photos uploaded to the impersonator account are still exists and is not deleted.

Impersonation or impersonate itself according to the linguistic dictionary means imitating or impersonating someone else. Then Impersonation according to the 7th Edition of the Oxford Advanced Learner's Dictionary, International Student's Edition, on page 748, defines "impersonation" as follows: "To pretend to be somebody

<sup>7</sup> Accessed on September 20<sup>th</sup>, 2021 at [Kerugian Korban "Scammer" Di Indonesia Tahun 2016 Mencapai Milyaran Rupiah Halaman 1 - Kompasiana.com](https://www.kompasiana.com), time 20.00 (Western Indonesian Time)

in order to trick people or to entertain them.”<sup>8</sup> Impersonation or impersonate itself according to the linguistic dictionary means imitating or impersonating someone else. Then Impersonation according to the 7th Edition of the Oxford Advanced Learner’s Dictionary, International Student’s Edition, on page 822, defines “impersonation” as follows: “To pretend to be somebody in order to trick people or to entertain them.”<sup>9</sup> Actually, not all impersonation is considered a crime, because there are types of impersonation that are not illegal acts, for example, parody. Parody in Greek comes from the word *parodia*. The Big Indonesian Dictionary defines parody as a literary or artistic work that intentionally imitates the style, words of another author or creator with the intention of seeking an amusing effect.<sup>10</sup> The presence of the internet along with digital platforms makes this a tool that functions to provide all kinds of community creativity, apart from parody, Cosplay is impersonation which is not considered an illegal act. Cosplay is a kind of activity for manga or anime fans carried out by individuals or groups by making or wearing costumes, dressing up or dressing using accessories to imitate certain characters from anime, manga games, literature, popular films and icons or idol groups.<sup>11</sup>

### III. FINDINGS

After reviewing several regulations regarding impersonation in several states in the United States, it has made the author realize that apparently the State of Indonesia still does not have a definite definition and also regulations regarding the crime of impersonation which is carried out both conventionally and in cyberspace which is driven by an impersonation account. The crime of impersonation carried out by impersonation accounts in cyberspace in many countries like in America already has the term catfishing, the Indonesian state still recognizes the term this phenomenon as identity theft which has been regulated in Article 35 of Law number 19 of 2016 concerning changes to the Act. Law number 11 of 2008 which reads: “Every person intentionally and without rights or against the law manipulates, creates, changes, deletes, destroys Electronic Information and/or Electronic Documents with the aim that the Electronic Information and/or Electronic Documents are considered as if the data is authentic” this means that any type of manipulation or recognition of any information belonging to another person becomes as if it is private property, but this Law only specifies that these actions occur only in cyberspace. The presence of this law serves as a protective shield for the identity and personal data of Indonesian citizens whose confidentiality must be protected and their authenticity is also protected, because the use or exchange of personal data to be carried out by someone outside the legal owner must be based on the approval as stated in the law. listed in Article 26 of Law number 11 of 2008 namely:

1) “Unless stipulated otherwise by laws and regulations, the use of any information through electronic media concerning a person’s personal data must be carried out with the consent of the person concerned.

2) Any person whose rights are violated as referred to in paragraph (1) may file a lawsuit for the losses incurred under this Law.

If someone violates the provisions of these regulations, Article 51 of the Law of the Republic of Indonesia No. 11 of 2008 has regulated several sanctions, namely:

1. Everyone who fulfills the elements as referred to in Article 35 shall be sentenced to a maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp. 12,000,000,000.00 (twelve billion rupiah).

2. Everyone who fulfills the elements as referred to in Article 36 shall be sentenced to a maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp. 12,000,000,000.00 (twelve billion rupiah).

The explanation regarding the impersonation of these regulations is still considered inaccurate, because impersonation itself based on the linguistic dictionary is imitation, where this imitation does not only include the leaking of personal data or identity theft, but also impersonation carried out in cyberspace, especially by impersonation account users. Personal data that is taken illegally is also used as fraud, harassment, bullying, bullying, stalking, hackers and so on.

<sup>8</sup>The 7th Edition of the Oxford Advanced Learner’s Dictionary, International Student’s Edition, pp 748

<sup>9</sup>The Deluxe Ninth Edition of the Black’s Law Dictionary, pp 822

<sup>10</sup>Kamus Besar Bahasa Indonesia. Jakarta: Balai Pustaka, 2002, pp 831

<sup>11</sup>Naufal Adhi Pramana dan Achmad Mujab Masykur, “COSPLAY ADALAH JALAN NINJAKU”, Jurnal Empati, Volume 8 (Nomor3), pp 170

<sup>25</sup> Fraud has been regulated in Article 378 of the Criminal Code Book II which reads:

"Anyone with the intention of unlawfully benefiting himself or another person, by using a false name or false dignity, by deceit, or a series of lies, moves another person to hand over something to him, or to give a debt or write off a debt, is threatened with for fraud with a maximum imprisonment of four years"

Some of the regulations that can be applied include:

<sup>20</sup> 1. Article 30 paragraph 1, paragraph 2, and or paragraph 3 of Law No. 11/2008 concerning Information and Electronic Transactions (ITE):

<sup>3</sup> a. Any person intentionally and without rights or against the law accessing other people's Computers and/or Electronic Systems in any way.

b. Everyone intentionally and without rights or against the law accesses a Computer and/or Electronic System in any way with the aim of obtaining Electronic Information and/or Electronic Documents.

c. Any person who knowingly and without rights or unlawfully accesses a Computer and/or Electronic System in any way by violating, breaking through, exceeding, or breaking into the security system

<sup>1</sup> 2. Article 32 paragraph 1 of Law No. 11/2008 concerning Information and Electronic Transactions (ITE); "Every person intentionally and without rights or against the law in any way alters, adds, reduces, transmits, damages, removes, transfers, hides an Electronic Information and/or Electronic Documents belonging to other people or public property."

<sup>1</sup> 3. Article 22 of Law No. 36 of 1999 concerning Telecommunications; "Everyone is prohibited from committing acts without rights, illegal, or manipulating:

a. access to telecommunications networks; and or

b. access to telecommunications services; and or

c. access to special telecommunications networks.

4. Article 38 of Law No. 36 of 1999 concerning Telecommunications; "Everyone is prohibited from doing actions that can cause physical and electromagnetic disturbances to the operation of telecommunications"

<sup>30</sup> 5. Article 40 of Law No. 36 of 1999 concerning Telecommunications; "Everyone is prohibited from conducting wiretapping activities on information that is channelled through telecommunication networks in any form"

In addition to hacking or wiretapping, personal data leakage can occur as a result of stalking or stalking, where impersonating perpetrators have observed and followed their victims so that the perpetrators memorize the pattern of life of the perpetrator, ranging from habits, daily work and the scope of friends of the victim. But, unfortunately the Indonesian state again does not have a special law regarding this action, so there is still a legal vacuum. The Instagram platform has also provided a policy by providing a report feature or reporting on content or accounts that are considered a threat or cause harm, by pressing the "report" feature on the photo or account you want to report. But, unfortunately the perpetrators of this impersonator account usually have many backup accounts that are used if the other accounts can no longer be used, so it is very difficult to close and identify other accounts with different names. The report feature on the platform does not immediately work to quickly delete and block access from the reported account, besides that the platform is also considered unable to provide features and policies to limit and identify whether the photo or identity is really the user's real identity, so the account is impersonator. can easily post any content or create an account using someone else's fake identity.

Currently Instagram is a product that is included in Facebook, here are some terms and policies from Facebook and Instagram:

1. Statement of rights and responsibility (SRR): this provision regulates what users must agree to

2. Data use policy: this provision regulates the information received by Facebook and how Facebook uses the information

3. Community standards (Cs): provisions regarding what is not allowed and how to report violations

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Although it has been protected by Law No. 11 of 2008 concerning Information and Electronic Transactions, the explanation regarding impersonation of the regulation is still deemed inappropriate, because Impersonation itself based on the linguistic dictionary is imitation, where this imitation does not only include the leakage of personal data or identity theft. Of course, but in impersonation carried out in cyberspace, especially by impersonating account users, personal data taken illegally is also used as fraud, harassment, bullying, stalking, hackers and so on. Impersonation acts in several countries have been regulated in legislation, because in some countries cases of impersonation are cases that are fairly common and many crimes originate from impersonation activities. In California, the impersonation account rules include criminal acts involving users on behalf of another person to cause harm to another person or obtain an improper advantage. The following contains the California Penal Code Section 529 PC. "by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in a country jail not exceeding one year, or imprisonment pursuant to subdivision (h) Of section 1170, or by both that fine and imprisonment".

#### IV. CONCLUSION

As the author has explained, several countries have regulated the impersonation or duplication of identity such as in the United States and some of its states to classify these acts as illegal acts that can be criminalized, while the Indonesian state itself has regulated similar things in Article 35 of Law No. 11 of 2016 concerning Information and Electronic Transactions. The law regulates acts that are carried out intentionally and without rights against the law, namely: "Every person intentionally and without rights or against the law manipulates, creates, changes, deletes, destroys electronic information and/or electronic documents with the aim of making the electronic information and/or electronic documents appear as authentic data" The regulation is intended to explain that the creation or duplication of such accounts is included in the creation of electronic information with the aim of making the account or information appear genuine, especially if the account was created or the action was carried out with the aim of claiming to be an individual or institution. otherwise, the act is included in the act of creating and manipulating electronic information.

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In the example of duplication in the second part, in accordance with Article 51 of Law Number 11 of 2016 concerning Electronic Information and Transactions, it can be threatened with criminal penalties, namely: ) years and/or a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah). As a result of the dissemination of information in the current digital era of information and communication technology, which is so fast, global in nature, and across national borders, it becomes a new challenge that causes an increased risk of violation of privacy rights. Regulations in Indonesia that regulate personal data are contained in at least 32 laws. Some of them are the Law of the Republic of Indonesia Number 36 of 2009 concerning Health, which regulates data and patient health conditions or patient medical records. Then the Law of the Republic of Indonesia Number 10 of 1998 concerning Banking which regulates customer personal data and transactions carried out, Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, Law of the Republic of Indonesia Number 19 of 2016 concerning Information and Electronic Transactions, Law Number 44 of 2008 concerning Porography and the latest Regulation of the Minister of Communication and Informatics Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems, but these regulations have not specifically and comprehensively regulated the principles of personal data protection as a citizen's constitutional right .

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Therefore, the author argues that the absence of a special regulation on the protection of personal data privacy in Indonesia has several impacts, one of which is the distrust of investors and companies in terms of data storage in Indonesia. On the other hand, if there is a special regulation regarding the privacy of personal data, it can have a positive impact, for example from an economic perspective, supporting Indonesia as a center for business and investment as well as global data management and a reliable and conducive data management industry in terms of data storage such as cloud computing that can develop in Indonesia. Indonesia. The absence of legal rules that comprehensively regulate the protection of the privacy of personal data increases the potential for violations of a person's constitutional rights. From this the author assumes that in Indonesia itself, the protection and prevention of cases of impersonation, theft of personal data and/or the exchange of personal data is still referred to as a crime that has an element of fraud and causes losses in the form of defamation for victims of these negative impersonation activities. The government must immediately ratify the Personal Data Protection Bill because it is felt that the current regulations still widely regulate impersonation activities and there are several different elements that can lead to misunderstandings in carrying out impersonation activities. The author also concludes that impersonation activities can be said to be negative when someone imitates or exchanges his personality with another person for his personal interest by deceiving or defaming the other person's name. Meanwhile, impersonation is not troubling if it is used as a means of performance or entertainment only, such as playing a

character in a drama, cosplay, film, or other means of entertainment. From this the author assumes that in Indonesia itself, the protection and prevention of cases of impersonation, theft of personal data and/or the exchange of personal data is still referred to as a crime that has an element of fraud and causes losses in the form of defamation for victims of these negative impersonation activities. The government must immediately ratify the Personal Data Protection Bill because it is felt that the current regulations still widely regulate impersonation activities and there are several different elements that can lead to misunderstandings in carrying out impersonation activities. The author also concludes that impersonation activities can be said to be negative when someone imitates or exchanges his personality with another person for his personal interest by deceiving or defaming the other person's name. Meanwhile, impersonation is not troubling if it is used as a means of performance or entertainment only, such as playing a character in a drama, cosplay, film, or other means of entertainment.

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