

Protecting Consumers' Personal Information in Vietnam Today

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Abstract: In the context of an increasingly strong economic transformation, the legal framework for protecting consumer rights in general and protecting consumers' personal information in particular is of special importance. There is an urgent need to research into and build a solid, comprehensive, and feasible legal mechanism to ensure safety and confidentiality of consumers' personal information, and contributing to promoting the synchronous and stable development of society. This article focuses on clarifying related concepts, analyzing the current state of legal regulations, highlighting advantages and obstacles in the practical implementation of laws on protecting the use of consumer data. On this basis, the author proposes a number of solutions, namely the enhancement of consistency and uniformity in the content of these legal documents, more research into and development of a law on personal information protection, synchronization of content and legislative techniques of specialized legal documents, the addition of a unified definition of personal information and protection, supplement current legal regulations to expand the application of personal information protection activities focusing on the network environment, and to those who are children, reducing unnecessary cost, increase the penalties for criminal activity, raising consumer awareness and making individuals more knowledgeable about the law.

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1. Introduction

Protecting consumer rights is a key factor ensuring the sustainable development of society. In fact, many countries already brought in laws to protect the legitimate rights and interests of consumers, including the right to protect personal information.

Personal information is peculiar to each person and can be used to identify a specific individual. Personal information of consumers is information that businesses collect through commercial activities, buying and selling goods and services, or through market survey activities of businesses, associated with determining the identity of a person. Consumers have specific data such as name, age, gender, home address, phone number, occupation, medical and financial information, bank account and card numbers, security pin codes, and even physical parameters, preferences, and habits. Individuals are often required to provide personal information to entities providing goods and services to facilitate the performance of consumer transactions. In contrast, business entities can exploit collected data for advertising, marketing, communications, and customer care activities, increasing their competitive advantage over other entities. Many people may worry about the collection of such information regarding the leakage and misuse of their data to third parties for illegal profit. Due to the sensitive and private nature of personal information technology, this issue is of special importance. If their personal information is leaked, consumers can suffer serious consequences, affecting their privacy and work.

Vietnamese law sets out several regulations to protect consumers' personal information, but being scattered across many specialized legal documents, the laws lack systematicity, and often contradict and overlap, while the best protection requirements and interests of consumers are not met (Nguyễn Thị Vân Anh, 2013). Meanwhile, the domestic and international context is undergoing many changes, with socio-economic development, especially in the sphere of science and technology and international integration. An appropriate and effective legal mechanism to ensure the safety and confidentiality of consumers' personal information is critical; this contributes to a healthy business environment and strengthens confidence in the goods and services market.

This article applies a number of different research methods, specifically descriptive statistics, comparison and contrast, analysis and synthesis to scrutinize the law of personal information protection in Vietnam.

2. Literature review

Protecting consumers' rights in general and their personal information in particular has received a lot of attention from legal scientists. Trần Thị Hồng Hạnh (2018) pointed out typical violations of the law on protection of industrial goods in Vietnam today and described the negative effects of data breach. Ngô Vĩnh Bạch Dương (2019: 19-28) commented that there are many different documents in Vietnam which refer to the protection of consumers' personal information, but the regulations and their enforcement are insufficient. In addition, Nguyễn Văn Cương (2020, 2022) affirmed that the effectiveness and efficiency of adjusting the law on industrial safety protection in Vietnam still has many shortcomings, such as the absence of a common document that defines data protection. Trần Thị Thu Phương (2020) proposed the need to clearly define what protecting consumers' personal information means in order to implement the mechanism, especially regarding sensitive information. Additional research is needed in this area.

Privacy is a fundamental human right. Perceived privacy includes four categories: (i) privacy of personal information; (ii) privacy of body; (iii) privacy of communication, and (iv) privacy of residence (Chu Hồng Thanh, 2020).

Personal information belongs to each individual and can be used to determine the identity of a specific person. The right to privacy is always associated with an individual. Therefore, in order to protect this right, one must first protect their personal information, and vice versa (Trần Thị Thu Phương, 2020). In this context, personal information privacy is seen as the storage of personal data such as credit information, medical or government records, etc. whose protection is to prevent the risk of personal information being stolen, exploited, disclosed, and used for illegal purposes. Hence, the law on consumer protection has concretized and built a mechanism to ensure the safety and confidentiality of personal information, in both traditional and E-commerce transactions (Nguyễn Ngọc Quyên & Nguyễn Thị Việt Hà, 2022). Even when a consumer gives personal information but has not made a transaction, the seller still has to ensure the consumer's privacy. If data protection is violated, sanctions for violating privacy laws may be applied to the parties involved.

Consumers make up the majority in society; in any economy, they hold a very important position in the process of leading and steering the market. Therefore, recognizing and protecting their rights becomes even more fundamental, contributing to the common good.

The protection of consumer rights is expressed in many different aspects, but all aim to ensure that consumers can exercise their legitimate rights, with measures and institutions in place giving effective protection, and creating opportunities for consumers to exercise their legitimate rights (Trần Văn Biên, 2009). They should have peace of mind in a healthy and safe business environment. Consumers must not only be guaranteed for the safety of their lives and health, but also the safety and confidentiality of their information when making transactions and using goods and services. In addition, they have the right to request legal protection in cases, such as when the goods they purchase cause harm to themselves, the surrounding environment, or when their personal information is not secured, leaked, stolen, illegally bought, sold, used, etc., seriously affecting their private life, work, health, and property.

The theory of asymmetric information

Asymmetric information is a situation in which one party in a transaction holds more complete and better information than the other party. Information imbalance makes it difficult for subjects participating in transactions to make wise decisions, even making choices that are detrimental to themselves and lead to market failure.

In relationships with other traders and organizations, consumers are often in a weaker position due to asymmetry in many aspects. These include access to information; contract negotiations; the ability to defend oneself in a dispute; or one's level of market understanding. When doing business, consumers usually must provide their personal information, choose appropriate products and services. With the aim of creating competitive advantage, businesses often closely guard their customer databases. However, for many reasons, consumers run the risk of losing information security (Nguyễn Thị Thu Vân, 2017). After all, they are the weaker party compared to businesses. Enterprises that collect and manage consumer data also do not have the adequate tools to monitor the data protection.

3. Current legal status and law enforcement practices protecting consumers' personal information in Vietnam

3.1. Current status of laws protecting consumers' personal information

Vietnam lacks consensus or a unified legal document on personal information protection, and current legal regulations are not recorded centrally or systematically. Rather, they are scattered across numerous legal documents relating to a specific field.

In particular, the protection of consumer information is stipulated in the Law on Consumer Protection 2010 and 2023 in which consumers are guaranteed information safety and security when participating in transactions and using products, goods, and services provided by organizations and individuals. In addition, the 2013 Constitution was introduced which expanded individual privacy rights. Newly developed or amended legal documents have institutionalized the most general provisions of the Constitution, marking the development of the law on personal information protection. These include the 2015 Civil Code, the Law on Telecommunications, the Law on Posts, the Law on E-Transactions, the Law on Information Technology, the Law on Credit Institutions, the Law on Civil Status, the Law on Residence, the Law on Judicial Records, the Law on Children, the Law on Intellectual Property, the Law on Competition, the Law on Pharmacy, the Law on Medical Examination and Treatment, the Law on Statistics, the Law on Lawyers, the Criminal Code, the Law on Cybersecurity and other legal documents. The introduction of concepts related to and regulations on personal information and associated protection, regulations on methods to protect personal information as well as sanctions for handling personal information have significantly contributed to a legal framework in this area to be guaranteed in practice.

However, due to dispersion in many different legal documents, conflict and overlap between legal regulations still exist. It is very difficult to determine the relationship and priority order of application of these legal documents (Nguyễn Văn Cường, 2020).

The current legal regulations lack consistency in terminology (Ministry of Industry and Trade, 2022a). Science and technology developments allow identity authenticating and people identifying based on their unique biological characteristics, such as fingerprints, voice, facial, handwriting, and the iris. Consumers can use biometric data to conveniently carry out operations, such as logging in, making payments, and authenticating transactions etc., without the need to remember their passwords. Businesses can use biometrics to manage their accounts and identify customers, thereby providing better and faster services.

According to Article 2 of Decree No.13/2023/ND-CP on Personal Data Protection, biometric data is classified as sensitive personal data. Therefore, if a business collects and uses consumers' biometric data, could current legal regulations on protecting consumer's personal information be applied? As in comparison to address, phone number, and occupation, the level of sensitivity of an individual's biological data is much higher, is it necessary to stipulate stricter measures to ensure consumer data security in this case? Due to possible different

interpretations, the applicability of the Law on Consumer Rights Protection 2023 and the Decree No.13/2023/ND-CP may cause some obstacles.

A unified definition of personal information has not been developed yet (Ministry of Industry and Trade, 2022b). The term personal information appears in more than 300 legal documents, but only seven have a definition or interpretation. However, the definition of personal information recorded in the above-mentioned legal documents is not completely consistent in terms of content and legislative techniques. This leads to discrepancies in the scope and boundaries of personal information, making it difficult to determine what is included in consumer personal information, and under what circumstances it is protected. This is also the basis for determining the responsibilities of business entities when collecting, processing, storing, and using personal information as per the law.

Specifically, personal information in the Law on Cyber Information Security 2015 is brief and generally defined as “information associated with determining the identity of a specific person” (regardless of whether that individual has self-disclosed or not). Decree No.52/2013/ND-CP on E-commerce carries more detailed explanation, specifically that personal information is “information that contributes to identifying a specific individual, including name, age, home address, phone number, medical information, account numbers, information about personal payment transactions, and other information that the individual wishes to keep confidential”, so the definitions may differ. On the other hand, Decree No.52/2013/ND-CP stipulates that “personal information ... does not include work contact information and data that individuals have self-published in the media”. While the Law on Cyber Information Security 2015 and Decree No.52/2013/ND-CP both use the phrase “individual information”, the Law on Protection of Consumers in 2010 and 2023 (which are the main consumer protection laws), both use the phrase “information of consumers” to contain “technical information” of consumers, without clarifying what personal information of consumers is. In practice, it is difficult to determine what the information of consumers is and what comes under personal information.

Current legal regulations do not fully cover consumer protection activities in different environments. The scope of application of the regulations protecting consumer’s personal information in the law on protection of consumer rights includes the virtual and physical environment. However, current legal regulations are mainly applied to personal information protection activities in cyberspace (as noted in Article 17 of the Law on Cyber Information Security in 2015) and do not address the issue of personal information. Protecting the latter happens both online and offline, hence the area of consumer’s personal information needs to be fully addressed.

The Consumer Protection Law does not fully reflect the actual requirements of collecting and processing personal information. The acts of accessing, collecting, storing, and using personal information needs the consent of each individual. The 2023 law does not regulate the age of the consumer, so this is not a factor in personal information collection. An issue arises where the consumer is a child, so who gives consent for collecting and processing information where a child is associated with a transaction?

In the context of the rapid development of information technology, methods such as storing records, encrypting information, and using passwords may be insufficient to meet the needs of protecting personal information. In addition, certain legally binding requirements need to be imposed. Personal information regulations are lacking with regards to the Internet which increases exposure to violations of the law, such as the Internet of things (IoT), artificial intelligence (AI), virtual reality (VR), augmented reality (AR), I-cloud, big data, etc.

Protecting consumer information in general can be unnecessarily costly. Article 3 of the 2023 Consumer Rights Protection Law provides an official explanation of consumer information. In a broad sense, it includes not only consumer personal information but also information about the process of purchasing and using products, goods and services and other data related to transactions between consumers, individuals, and business organizations (i. e, personal and non-personal information). At the same time, Article 15 in the law also recognizes that consumer personal information and non-personal data are equally protected with the same standards and levels. However, this regulation may incur unnecessary costs for businesses and individuals. International practice shows that countries often only focus on regulations covering the obligation to protect personal information (i.e., information from which a specific individual's identity can be determined) originating from the sensitive nature of this information as well as the inviolable rights of individuals to privacy, and personal and family confidences.

The penalties applied for violating the law on consumer personal information protection are still light and not deterrent enough in terms of criminal, civil and administrative sanctions. Regarding *criminal sanctions*, provisions of Clause 1, Article 159 of the 2015 Criminal Code relate to infringing the confidentiality or security of another person's correspondence, telephone calls, telegrams, and other forms of private information exchange, as well as personal information. Punishment is in the form of a warning (if the violator has already been disciplined or administratively sanctioned and who continues to violate); a fine of VND 20-50 million; a non-custodial reform, or a suspended sentence of up to 3 years.

For civil sanctions, the right to privacy and the right to personal information protection is civil rights. Article 11 of the 2015 Civil Code affirms that when the civil rights of an individual or a legal entity are violated, one has the right to protect oneself according to the provisions of this code, other relevant laws or request the agency to: (1) recognize, respect, protect and ensure their civil rights; (2) force the termination of infringing acts; (3) enforce public apologies and corrections. It should be noted that there are currently no specific regulations on liability for compensation for entities that commit violations in the collection and use of personal information.

For administrative sanctions, these are still the most commonly applied. However, fines are still perfunctory and not commensurate with the profits that businesses gain from violations. Hence many businesses accept being fined in order to keep reaping the profits from their violations. This shows that current sanctions are insufficient to deter and educate individuals and organizations violating consumer rights. For example, Decree No.15/2020/ND-CP on Sanctioning Administrative Violations in the Fields of Postal, Telecommunications, Radio Frequency, Information Technology and Electronic Transactions stipulates sanctions for handling. For not having any measures in place to protect users' private and personal information, fines range from VND 20 million to VND 30 million (Clause 1, Article 100). A fine of VND 20-30 million is levied for disclosing confidential personal information that does not warrant criminal prosecution (Clause 2, Article 101). A fine of VND 30-50 million is applied for disclosing online information confidential to businesses or illegally disclosing private information relating to users of telecommunications services (Clause 4, Article 102). A fine of VND 50-70 million for illegal trading or exchanging private information of telecommunications service users (Clause 5, Article 102). Thus, the highest fine for newly committed acts is only VND 70 million while the profits generated are far higher than the fines imposed. The lack of a strong enough deterrent is a reason for the rise in consumer rights violations.

3.2. The mechanism to help consumers protect their rights

Firstly, researching and building a database system on consumer rights protection

Clause 4, Article 75 of the Law on Consumer Rights Protection 2023 recognizes that one of the responsibilities of the Ministry of Industry and Trade is to build and maintain a national information database on consumer rights protection. This can deal with consumer requests and complaints, and provide feedback for consumer rights protection agencies and organizations.

However, this solution also has shortcomings. Connecting server data to a database system belonging to state management agencies has cost implications for the state budget on security grounds, and there is still a risk that information will be leaked. In case a consumer's personal information is illegally accessed and exploited which negatively impacts that individual, it is difficult to pinpoint responsibility. If consumers themselves want to be proactive in protecting their rights, from a civil or administrative perspective, should they complain or sue?

Secondly, the complaint and legal mechanisms

Protecting personal information is a civil right. Individuals who want to protect their personal information need to follow the conditions and procedures on protecting civil rights specified in Article 11 of the 2015 Civil Code; hence, filing a lawsuit is considered an effective method. However, the reality shows that consumers rarely resort to this method. This may be due to the complex procedures involved, the length of time it takes to resolve cases, or the high costs incurred while the value of violation cases is low. Violation of consumer rights is often undervalued; in addition, it is important to note that consumers themselves are unaware of their rights and obligations regarding the protection of personal information.

Currently, agencies and organizations still agree that consumers are the weaker party in business transactions, and protecting the weak is the basis for enforcing the law. Protecting consumer rights contributes to stabilizing the social order and, to a certain extent, creates balance in civil exchanges. Consumers are often in a passive state, in many cases not daring to speak up or make requests that are not appropriate to the nature of the case, leading to lengthy and ineffective resolutions. There is a poor understanding of the law and weak consumer skills, coupled with partial recognition of the order and procedures relating to personal information protection, a lack of special mechanisms and tools designed for consumers to protect their rights and overcome their inferiority in business transactions.

For example, not having an effective mechanism to resolve consumer complaints and disputes with traders allowing consumers to protect themselves means they encounter certain obstacles when deciding how to resolve resultant disputes.

3.3. Current law enforcement practices for protecting consumers' personal information in Vietnam

Recently in Vietnam, cases of violation of consumers' rights to privacy of personal information in commercial activities have increased in both quantity and

severity, especially in the realm of e-commerce (Nguyễn Thị Thu Hằng, 2019). This shows that the work of ensuring the security of consumers' personal information still faces many difficulties and challenges.

The illegal use and sales of consumer information in Vietnam is common, and it is alarming when the data are widely sold. For example, just typing the keyword "buy customer data" into web browsers will yield thousands of results of service packages for sales with different prices. Consumer consultation, support hotlines, and a system for dealing with consumer issues and complaints to the Department of Competition and Consumer Protection (Ministry of Industry and Trade) have received a lot of attention. A lot of correspondence reveals that consumers are deceived when making online purchases or through social networking sites. It seems that consumers' personal and transactional information may be collected and used for fraudulently, intentionally delivering poor quality goods in the name of the seller. When this happens, the delivery party and the seller often deny all responsibility, and do not assist in resolving the matter. The consumer's personal information can be used to counterfeit credit cards for appropriating money from bank accounts or making purchases.

Even in traditional transactions, there are many cases where a consumer's personal information is disclosed to third parties, stolen, or illegally exploited for profit. In some cases, the data are also distorted and shared widely which causes severe consequences for consumers, the state, and society. These privacy violations not only damage property but also potentially harm the spiritual life of consumers, creating fear when making consumer transactions.

The current legal regulations on protecting consumers' personal information are inadequate, and there are legal loopholes (Lê Thị Giang, 2018). Moreover, state institutions and consumer rights protection organizations are still lax, taking on a rather vague role in carrying out the functions of inspection, supervision, and handling cases that violate security regulations; there is a lot of overlap and unknown jurisdictions, slow processing and inconsistency about how to handle violations. In many cases individuals, businesses, or consumers themselves are unaware of privacy rules and do not pay attention to security of personal information. The less consumers care about privacy, the easier it is for others to illegally exploit information for maximum commercial benefits. The emergence of new forms of doing business, especially electronic transactions, sharing services on digital technology platforms, and technological complexity makes it harder to detect and deal with illegal violations of consumers' personal information.

4. Suggested solutions

A comprehensive solution is needed to effectively protect consumers' personal information. This involves guidelines, policies, laws, law enforcement mechanisms and the participation of everyone, including consumers themselves.

Firstly, because the regulations on protecting consumer's personal information are scattered throughout many documents in different fields, a number of requirements are needed to effectively implement the law on protection of consumers' personal information. Consistency and uniformity in the content of these legal documents are needed. In addition, there needs to be specific and clear regulations on the relationship and priority order of the application of legal regulations. The regulations on protecting consumers' personal information in the Law on Protection of Consumer Rights 2023 should be considered a specialized one, and prioritized over those on protection of personal information in general.

Secondly, research into and development of a law on personal information protection in Vietnam is needed. Conflict and overlap due to regulations on personal information protection scattered across specialized legal documents lead to difficulties and obstacles in the application process. These issues can be resolved by having a general law on personal information protection. It needs to be concretized from basic concepts, recognizing the principles of personal information protection, the legal status of the subject of personal information and the individuals themselves. It should clarify the institutions and methods of personal information protection as well as the limits in different information environments.

Many countries, such as Japan and South Korea, have developed laws on the protection of personal information. They show that the promulgation of a general legal document to protect such information is beneficial, bringing positive effects, contributing to maintaining people's trust in the security and safety of personal information in the digital economy. This could be a good example for Vietnam to follow.

Thirdly, it is necessary to deal with inconsistencies, and to synchronize content and legislative techniques of specialized legal documents. In addition, specific guidance is needed to safeguard personal information. It is consumers themselves who can achieve high efficiency.

Fourthly, it is necessary to add a unified definition of personal information and protection of that information, in addition to clarifying the concept of the rights to privacy. On the other hand, the Law on Consumer Rights Protection 2023 should

specifically explain the term “consumer’s personal information” to ensure consistency in understanding this term for guidance when examining the documents after the law takes effect.

Fifth, on the basis of research and adopting the contents of the laws on information technology and cyber information security relating to the collection and use of personal information for transactions in cyberspace to amend, supplement current legal regulations to expand the application of personal information protection activities focusing on the network environment as well as in other environments. The physical environment is the traditional one for consumer transactions that contributes to creating a solid legal basis, and improving the effectiveness of law enforcement on consumer rights protection.

Sixth, the law on protecting consumer data in Vietnam needs to supplement regulations on protecting personal information of consumers who are children, and appropriate methods with regards to the internet.

Regarding children, it is necessary to require individuals and organizations to have a personal information protection policy in place to ensure the safety and security of children’s data. On the other hand, it is necessary to clearly stipulate the limits of personal information that can be made public. If a child provides personal information, there should be restrictions on what information can be collected based on age. Current legal documents only provide some methods to protect personal data such as storing records, encrypting information, or using passwords. With the robust development of science and technology, it is necessary to continue to add new methods to meet the protection of personal information today.

In addition, the law on personal information protection in Vietnam must also supplement regulations on personal information protection on the internet, along with social benefits, including the construction and development of smart cities, e-government, and utilities for each individual. There needs to be regulations to ensure people and organizations in the business of managing data and personal information guarantee people’s privacy, such as regulations on handling personal information, managing people’s social network accounts after they die, and so on.

Seventh, the Law on Consumer Rights Protection recognizes that personal and non-personal information of consumers have the same standards and levels of protection, which will incur unnecessary costs. It is necessary to issue a list of personal information according to essential field groups to classify personal data associated with protection levels; from there, standards and regulations for protecting consumer’s personal information can be developed.

Eighth, it is necessary to impose more stringent sanctions on the behavior of individuals and business organizations that violate regulations on protecting consumer data, specifically to increase the penalties for criminal activity in order to establish order, and discipline in the consumer goods and services market.

It is necessary to specifically stipulate the liability for compensation for damages caused by the illegal collection and use of personal data, and clarifying the underlying conditions. Increasing fines from an administrative perspective also makes businesses and individuals more responsible when collecting, using, and storing consumer information, ensuring data protection is implemented in practice.

Ninth, solutions to strengthen the protection of consumer rights and personal information are needed by raising consumer awareness and making individuals more knowledgeable about the law. At the same time, consumers need to be encouraged and motivated to protect their own rights and those of their loved ones. Failure to speak up against violations means individuals and business organizations at fault escape punishment and continue to carry out similar acts.

Lawmakers should consider giving consumer protection organizations the right to monitor, object, and initiate lawsuits and ask state agencies for support (Ngô Vĩnh Bạch Dương, 2019). On the other hand, the Law on Consumer Rights Protection also needs to be really clear on the handling methods, order, and procedures of the complaints process related to protecting consumer personal information, reducing procedures, creating favorable conditions for the complaint mechanisms in the courtroom.

5. Conclusion

Based on the study of basic concepts, assessment of the current legal status, and law enforcement practices on protecting consumer data in Vietnam today, this article recommends ways to improve the law and its effectiveness in enforcing the protection of consumers' personal information, thereby ensuring individuals can live in a safe environment, where their legitimate rights and interests are considered important. This is very important given that ensuring the safety and confidentiality of consumer personal information in traditional and e-commerce transactions is increasingly becoming a concern.

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