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ANTICIPATING FINANCIAL AND DATA PRIVACY RISK: ASSESSING LEGAL RIGHTS AND RESPONSIBILITIES IN ONLINE SOCIAL GATHERING IN INDONESIA

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Abstract

The industrial revolution 4.0 has given rise to online social gatherings, which offer an alternative to traditional face-to-face interactions. The agreements and arrangements between organizers and members of social gatherings are conducted through online communication media, resulting in virtual agreements. While these gatherings have numerous benefits, including convenience and accessibility, they expose members to threats such as data privacy violations and financial risks. This study highlights the need to understand and navigate the risks associated with online social gatherings and emphasizes the importance of legal protections for their members. Furthermore, this paper aims to examine the mechanism of online social gatherings, assess their potential risks, and analyze the legal protections available to members in Indonesia. The study employs empirical juridical research methods with a descriptive research type, including collecting sources from reading materials, such as books and laws and regulations, and conducting interviews. The research finds that online social gathering agreements can be classified into innominate agreements, standard agreements, and reciprocal agreements. However, in practical terms, online social gatherings may pose serious threats to members due to privacy violations and fraud-related risks. Indonesia has enacted several provisions and litigation processes to mitigate these potential risks to protect members from such harm. Maintaining a balance between the benefits and risks of online social gatherings is essential to ensure their continued positive impact on society.

Keywords: *Agreements, Legal Protection, Online Gathering, Privacy Violation, Fraud Prevention*

A. Introduction

The rapid progress in telecommunications resulting from globalization has led to the internet becoming a mainstay of national and international trade. This is a product of the dynamics of the globalization process, which has had a major impact on the industry. The era of the industrial revolution 4.0, characterized by simplicity, fast processes, low costs, and easy accessibility, has fundamentally changed the way of life and work, both nationally and

internationally.¹ This has impacted every transaction in the industrial era 4.0, as it can now be done without the need for face-to-face agreements. One such activity that has shifted from conventional to online is social gathering or known as *arisan*², which involves several people collecting goods or money with the same value and drawing lots to determine who gets it. In recent times, many social gathering activities have emerged and are being conducted online through software. As a result, members of these gatherings can interact and fulfill their rights and obligations without having to meet in person.³ This is made possible simply by using a gadget or smartphone that is equipped with social media.

The emergence of online social gatherings is initiated by organizers who offer terms and conditions to the participants, resulting in an online gathering agreement. This agreement must meet the legal requirements of Article 1320 of the Indonesian Civil Code, including the consent of individual who are bound thereby, capacity of the respective parties to conclude an obligation, a specific subject matter, and a legal cause. Firstly, participants agree to the terms of the agreement by joining the *arisan* group. Secondly, participants meet the requirements for legal capacity, being of adult age and not under guardianship. Thirdly, the subject matter of the agreement is clear, including the amount of dues, admin fees, and provisions for fines. The agreement also includes a debt agreement. Fourthly, the cause of the agreement is lawful and not forbidden by law or morality. It is worth noting that *arisan* has become a common practice in Indonesia and is not considered contrary to decency.⁴ Therefore, the online *arisan* agreement can be considered valid as long as it meets the legal requirements.

Despite its legal validity, the borderless nature of online social gatherings posed many potential risk that may threaten its member. One of the most prominent risks is privacy violation, which may include a range of threats such as hacking, illegal dissemination of personal data, data theft, and more. Hacking, for instance, is a type of cyber attack that can be used to gain unauthorized access to sensitive information. This may include personal data such as names, addresses, phone numbers, and financial information, all of which may be used for fraudulent activities or identity theft. Similarly, illegal dissemination of personal data may occur when personal information is disclosed without the member's consent, potentially resulting in harm to their reputation and privacy. In addition to privacy violation, financial risk is another potential risk associated with online social gatherings.⁵ This may include fraudulent activities such as the embezzlement of *arisan* funds by the organizer. In some cases, the organizer may take advantage of their position and abscond with the funds collected from the participants. This risk is particularly high in situations where there is no clear agreement or legal framework in place to govern the *arisan*. Furthermore, because online social gatherings are often conducted virtually, it can be challenging to track the flow of funds and ensure that they are being used appropriately. This makes it easier for organizers to misappropriate funds without being caught. These potential threats are worsened by the fact that there is no existing regulation which

¹ Syafa Adinda and Masduki Asbari, "Pancasila as the Industrial Revolution 4.0 Paradigm," *Journal of Information Systems and Management (JISMA)* 01, no. 06 (2022): 35, <https://jisma.org/index.php/jisma/article/view/211/35>.

² Muhajir Effendy, *Kamus Besar Bahasa Indonesia* (Jakarta: Kementerian Pendidikan dan Kebudayaan, 2016), 50. Based on *Kamus Besar Bahasa Indonesia*, "*arisan*" is an activity of collecting money or goods of the same value by several people and then drawing lots among them to determine who gets it. The lottery is carried out in a regular meeting until all members get their turn.

³ Asri Agustiwi, Raka Nugraha, and Dania Pratiwi, "Implementation Of Law Number 11 Of 2008 On Electronic Information And Transactions Against The Rise Of Hoax Culture During Covid-19 Pandemic In Indonesia," *Surakarta Law And Society Journal* 3, no. 1 (2020): 55–66.

⁴ Lompoh Egia et al., "Keabsahan Perjanjian Arisan Online Ditinjau Dari Pasal 1320 Kitab Undang-Undang Hukum Perdata," *Jurnal Komunitas ...* 5, no. November (2022): 47–63, <https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/51869%0Ahttps://ejournal.undiksha.ac.id/index.php/jatayu/article/download/51869/22918>.

⁵ Erlin Kusnia Dewi, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara, "Akibat Hukum Terhadap Pelaksanaan Arisan Online Berdasarkan Undang-Undang Nomor 19 Tahun 2016," *Jurnal Konstruksi Hukum* 2, no. 2 (2021): 298, <https://doi.org/10.22225/jkh.2.2.3226.296-302>.

create the lack of legal protection for the *arisan* member. They become vulnerable to fraud or scams that are not covered by legal frameworks, leaving them with little recourse in case of financial or other losses.⁶

In the period of 2020 to 2022, the Supreme Court (*Mahkamah Agung*) reported 1,155 cases under the keyword of “*arisan*”, including both conventional and online *arisan*.⁷ Some of these cases involved losses that amounted to billions of rupiah. For example, in Banjarmasin, there was a fraudulent online *arisan* group led by the wife of a police officer with over 200 participants since 2017, resulting in losses of up to 6 billion rupiah. Another online *arisan* with losses of 21 billion rupiah occurred in Sumedang, and the most staggering loss was 45 billion rupiah.⁸ In these cases, the organizers were found to be responsible for their fraudulent actions, and these cases were brought to court and decided in accordance with the applicable laws. However, for cases involving minor losses ranging from 500 thousand rupiah to 10 million rupiah, dispute resolution is typically settled through non-litigation or amicable settlement among the parties involved.

Moreover, in some cases where participants could not pay their *arisan* dues, organizers may have the authority to publicly disclose their identities on various social media platforms as a form of social punishment. This power is usually stated in the agreement between the organizer and the *arisan* members. However, this practice is risky and illegal because the unauthorized dissemination of data is punishable under the Law No. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law).⁹ Furthermore, the situation is worsened by the fact that in Indonesia, specific provisions regarding online *arisan* are not yet regulated under the ITE Law. This means that in cases of fraud and misuse of personal data, perpetrators may be charged under general criminal provisions outlined in the Criminal Code or other specific laws depending on the type of crime committed. The lack of specific legal protection for online social gathering member leaves them vulnerable to fraud or scams that are not covered by existing legal frameworks.

Given the widespread practice of online social gatherings in society, it is imperative to establish legal measures that provide adequate protection for all members involved. With the ever-evolving technological landscape, the prevalence of cybercrime presents a clear and present danger that threatens the security of individuals in many facets of their lives. The focus of this research revolves around a study previously conducted by the third author. The previous research aimed at identifying the characteristics of online *arisan*. However, this research expands upon that analysis by incorporating a discussion on the potential risks associated with the practice of online *arisan*, along with the legal protection available to mitigate those risks.

This study highlights the necessity of understanding and addressing risks in online social gatherings, emphasizing legal protections for members. The novelty of the study analyze the mechanics, risks, and legal protections for participants of online social gatherings in Indonesia. To address this pressing issue, the present study aims to investigate three key topics: (1) understanding the dynamics of online social gatherings, (2) assessing the potential risks associated with social gatherings, and (3) navigating the legal protection available for members of online social gatherings. The study utilizes an empirical judicial approach, employing both

⁶ Priskila Askahlia Sanggo and Diana Lukitasari, “Pertanggungjawaban Pidana Pelaku Penipuan Arisan Online Tentang Informasi Dan Transaksi Elektronik,” *Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 3, no. 2 (2014): 223.

⁷ Direktori Putusan, “Data Putusan Arisan,” Mahkamah Agung, 2020, https://putusan3.mahkamahagung.go.id/search.html?q=arisan&t_put=2020.

⁸ Rachmawati, “Kasus Arisan Online Dengan Kerugian Miliaran Rupiah,” Kompas.com (Jakarta, 2023), <https://regional.kompas.com/read/2022/03/06/060600678/7-kasus-arisan-online-dengan-kerugian-miliaran-rupiah-ada-yang-pelakunya?page=all>.

⁹ Lidya Puspita and Ariawan Gunadi, “Analisis Kekuatan Hukum Perjanjian Lisan Arisan Online Yang Menggunakan Media Aplikasi Facebook Messenger Dalam Pembuktian Di Pengadilan Ditinjau Dari Undang- Undang Informasi Dan Teknologi Elektronik Nomor 11 Tahun 2008 (Studi Kasus Putusan No. 106/Pdt.G,” *Jurnal Hukum Adigama* 2, no. 2 (2019): 27, <https://doi.org/10.24912/adigama.v2i2.6520>.

primary and secondary data collection methods. Primary empirical data was gathered from two online social gathering groups in Bandar Lampung, namely the “*arisan* by Icha” and “*arisan* by Siel” groups. The study also employs qualitative data analysis techniques to organize, interpret, and analyze the data collected to develop comprehensive responses to the research questions at hand.

B. Discussion

1. Understanding The Practices of Online Social Gatherings

This section aims to provide a comprehensive analysis of the legal landscape for protecting *arisan* members from potential threats. To achieve this, the discussion is divided into three main areas, namely (1) understanding the practices of online social gatherings, (2) assessing the potential risks associated with participating in social gatherings, and (3) navigating the legal protection available for members of online social gatherings. The first area focuses on elucidating the mechanisms of online social gatherings, including the classification of online *arisan* agreement, *arisan* deals, participants’ rights and responsibilities, and agreement structures. The second area identifies and examines various potential risks that may jeopardize members’ interests, which are grouped into financial risks and data privacy risks. Lastly, the third area delves into the classification of online social gatherings as a form of electronic transaction, and analyzes the legal protection available in the event of such risks arising.

a. Categorizing the Online Social Gathering Agreement According to the Provisions of the Civil Code

Online social gathering is a type of money-gathering activity conducted via the internet or social media, involving multiple parties. To avoid any legal conflicts, online social gathering agreements must adhere to certain principles that do not violate the law, public order, and decency. Such agreements must also meet the requirements of Article 1320 of the Civil Code to ensure their legal validity. Under Indonesian law, online social gathering agreements are considered unclassified agreements (*innominaat*) since they are not specifically regulated by law but are commonly practiced within the community. Article 1338 of the Civil Code states that any agreements made in accordance with the law shall be considered as laws for the parties involved (*pacta sunt servanda* principle). Such agreements cannot be withdrawn unless agreed upon by both parties or for reasons determined by law. Additionally, the content of the agreement is determined by the principle of freedom of contract, granting individuals the freedom to determine the terms and conditions of the agreement.¹⁰

Online social gathering can also be classified as a standard agreement under the theory of acceptance (*verzendtheorie*) proposed by Salim HS.¹¹ The agreement on the terms of the online social gathering agreement occurs when the organizer receives a message containing approval from members via WhatsApp social media platform. At that time, an agreement is formed without the need for a negotiation process between the organizers and the members of the online social gathering to determine the terms of the agreement. These provisions are made unilaterally by the organizers, and members can only decide whether to agree or not to carry out the provisions offered by the organizers of the online gathering.¹²

Lastly social gathering is also classified as a reciprocal agreement. Reciprocal agreement is an agreement where each party promises to perform an act in exchange for the other party's promise to perform an act. In the case of online social gatherings, the reciprocal agreement exists between the organizer and the members. The organizer promises to facilitate the

¹⁰ Brigita Shinta Bethari, “Penegakan Hukum Bagi Pelaku Tindak Pidana Penipuan Arisan Online,” *SUPREMASI: Jurnal Hukum* 4, no. 1 (2021): 79, <https://doi.org/10.36441/supremasi.v4i1.528>.

¹¹ Salim HS, *Pengantar Hukum Perdata Tertulis* (Jakarta: Sinar Grafika, 2009), 78.

¹² Dewa Sang Ayu Made Sugi Yasmarini and I Wayan Novy Purwanto, “Perlindungan Hukum Atas Kerugian Yang Diakibatkan Oleh Arisan Yang Berbasis Online,” *Kerta Wicara* 9, no. 9 (2019): 2, <https://doi.org/https://ojs.unud.ac.id/index.php/kerhawicara/article/view/57827>.

gathering and distribute the collected funds according to the agreed terms, while the members promise to pay the agreed amount and participate in the gathering. While the Civil Code of Indonesia does not explicitly mention reciprocal agreements, the principle of freedom of contract under Article 1338 allows parties to freely negotiate and agree upon the terms of their contract. As long as the terms of the agreement are not contrary to law, public order, or morality, and as long as they are agreed upon by both parties in good faith, the agreement is considered legally binding.¹³

The classification of online gatherings into specific types of agreements provides a legal basis for their validity. By being classified under the appropriate agreement type, online gatherings can be regulated and enforced by the law. This ensures that the agreements made among the parties involved in online gatherings are legally binding and can be upheld in a court of law if necessary.

b. Practice of Online Social Gathering: Mechanisms, Rights, and Responsibilities

1) Terms and Condition of Social Gathering

The terms and conditions for conducting online gatherings are primarily determined by the organizers of the gathering. In order to comply with the Civil Code, these provisions must be in accordance with the law. One important consideration is the age limit of the participants, which has been standardized by the Supreme Court through Circular Letter Number 7 of 2012. This letter provides guidelines for courts on legal formulation and duties, including the age limit for legal capacity. According to the results of the Civil Chamber Meeting on March 14-16, 2012, an individual who has reached the age of 18 or has been married is considered an adult with legal capacity to enter into agreements. Adherence to this age limit is crucial in determining the legal capacity of the parties involved in the online social gathering agreement.¹⁴

Typically, arisan groups require a minimum of 10 participants to form a gathering. In one arisan group, called “*arisan* online by Ica”, they have their own set of rules that include 16 sequential payments that need to be made until the gathering is completed. The total amount of money collected is Rp. 3,700,000, which will be deducted according to the deposit money for each serial number so that members who receive their turn to withdraw will not have to pay when they receive the money.¹⁵ Payment is made through transfer using the provided media. In case of delayed payment, a fine of IDR 20,000 will be imposed. Another example of an arisan group is “*arisan* online by Siel”, which has 10 sequence amounts with a deposit fee of IDR 200,000 per round. Each round, a determined member will draw IDR 2,000,000. If a member is late in paying the social gathering deposit, a fine of IDR 25,000 will be imposed. The gathering also requires a special fee to be paid to the organizers, the amount of which depends on the number of serial numbers held by each member. For example, the member with serial number 1 must pay IDR 100,000, while the last serial number (the last person to receive the money) only needs to pay IDR 10,000, which is a one-time payment made before the gathering starts. Once the members have made the required payment and agreed to the terms and conditions set by the organizers, they will give their approval to these conditions via WhatsApp. The WhatsApp group serves as the primary means of communication between the members and the organizers.¹⁶ The terms and conditions are usually stated clearly in the WhatsApp group to avoid any misunderstandings or disputes in the future.

2) Rights and Responsibilities

In an online social gathering, both the organizer and the members have rights and responsibilities. The organizer has the responsibility to collect the deposit money from each member and ensure that the member who gets the withdrawal receives it on time with the same

¹³ *Loc.cit.*

¹⁴ Nurkholis, “Penetapan Usia Dewasa Cakap Hukum Berdasarkan Undang- Undang Dan Hukum Islam,” *Jurnal Pemikiran Hukum Dan Hukum Islam* Vol. 8 (2017): 79.

¹⁵ The interview was conducted on 28 July 2022

¹⁶ The interview was conducted on 28 July 2022

amount as agreed upon in the agreement. The organizer also has the right to receive the first withdrawal/deposit, which can be considered as an online social gathering admin fee. However, if a member is late in sending the social gathering payment, it is the responsibility of the organizer to bail out so that the member whose turn it is to withdraw receives the money in a timely manner in the amount agreed upon.¹⁷

Some online social gathering groups, such as “*arisan* by Icha”, charge a special fee as an additional admin fee. On the other hand, “*arisan* by Siel” has a fee that needs to be paid by each member based on their serial number, with the first member paying a higher fee and the last member paying a lower fee. These fees are considered as the organizer's rights, but they also have a corresponding obligation to ensure the smooth operation of the online social gathering and the timely distribution of funds to the members. Social gathering members have a crucial obligation to deposit money according to the serial number of each member's withdrawal and pay it on time. This is to ensure that the social gathering can run smoothly and according to the agreed terms and conditions. Each social gathering member is entitled to an amount of money determined by each social gathering group, which is obtained according to the time stated on the serial number of the withdrawal. It's important to note that some online social gathering groups, such as “*arisan* by Siel”, may also set a special fee as an additional admin fee of IDR 100,000.¹⁸

In an online social gathering, each party has certain responsibilities towards the other party, and the rights and obligations of each party must be carried out reciprocally. The organizer is responsible for managing the social gathering until it is completed, while the members have the obligation to pay their fees. Both parties must fulfill their duties as outlined in the agreement. Therefore, the legal relationship between the organizers and members of an online social gathering can be described as a reciprocal agreement.¹⁹

3) Money Withdrawal Through Sequential Number Mechanism

The mechanism of money withdrawal in online social gathering can be seen from the empirical data by “*arisan* by Ica” and “*arisan* by Siel”. In this case, the social gathering organizers will explain the provisions regarding the social gathering implementation that are approved by the prospective members. During this explanation, the organizers will offer the order number of the withdrawal freely to the prospective members. If the prospective member agrees with the terms, the prospective member can choose the serial number of the draws that are still available.²⁰ This differs from conventional social gatherings, where the attraction is determined randomly using a name shuffle at the time the social gathering meeting takes place.

Once the members of the social gathering have their order number, they must send their personal data in the form of a KTP (Indonesian Citizen Identification) to the organizer. The sequence number held by each member is evidence that an online social gathering agreement has occurred after the member agrees to comply with the conditions for implementing the online social gathering. The member's name will be listed on the serial number of each member. Then, the organizers will provide legal certainty to the members of the social gathering through serial numbers, so that the online social gathering must be carried out in accordance with a predetermined order. It is important for all members to follow the predetermined order to ensure that the social gathering runs smoothly.²¹

¹⁷ Magdalena Sukaryanti Malau, Tulus Siambaton, and Uton Utomo, “Tinjauan Keabsahan Arisan Online Oleh Sekelompok Mahasiswa Dengan Perjanjian,” *Jurnal Hukum PATIK* 8, no. 1 (2019): 23, <https://ejournal.uhn.ac.id/index.php/patik>.

¹⁸ The interview was conducted on 28 July 2022

¹⁹ Malau, Siambaton, and Utomo, 27.

²⁰ The interview was conducted on 28 July 2022

²¹ Rhama Wisnu Wardhana, Edi Wahjuni, and Mataniari Diana Naiborhu, “Keabsahan Perjanjian Tidak Tertulis Dalam Arisan Online (Studi Putusan Nomor. 106/Pdt.G/2017/PN Plk),” *Jurnal Ilmu Kenotariatan* 2, no. 2 (2022): 53, <https://doi.org/10.19184/jik.v2i2.29646>.

The online social gathering agreement between the members and the organizers becomes binding once all the requirements set by the organizers are met. For instance, in the “*arisan* by Ica” group, the organizer holds the right to determine the serial number of the first drawing as an administrative cost for organizing the online social gathering. On the other hand, in the “*arisan* by Siel” group, the organizers impose a special administration fee that must be paid by the members before the first social gathering deposit payments begin. Upon payment of both of these fees, the online social gathering agreement becomes binding, creating reciprocal rights and obligations between the organizers and the members.

2. Assessing The Potential Risk Of Online Social Gatherings

Online social gatherings have become increasingly popular in recent times, especially in the wake of the COVID-19 pandemic. While these social gatherings offer an opportunity for people to stay connected and socialize, there are also potential risks that need to be considered. These risks can be grouped into two categories: financial risk and data privacy risk.

a. Financial Risks of the Online Social Gatherings

Online social gatherings may pose significant financial risks to participants. One of the most pressing concerns is the potential for fraud. Fraudulent organizers may set up fake social gathering groups, promising large returns to entice unsuspecting members to join. Once they have collected a significant amount of money from participants, they may disappear, leaving members with no way to recover their funds. Some of the concrete fraud cases can be listed, as follows:

- 1) On July 22, 2020, a case of online fraud through an online social gathering occurred in Bengkulu Regency. The victim of the online social gathering fraud was not only one person, Halima Tussadya (24) from Sawah Lebar, Bengkulu City, but also other victims such as Yuni Lestari with a loss of IDR 4.5 million, Reza Rahayu with a loss of IDR 3.6 million, and Eka Meiliyen Dharma with a loss of IDR 13,150,000. The total amount of money embezzled by the perpetrator was IDR 33 million. The three victims did not report the incident and were thus used as witnesses. The perpetrator, KD (23), a resident of Durian Demang Village, Karang Tinggi District, Bengkulu Tengah Regency (Benteng), has been detained to facilitate investigation. The authorities have also seized evidence such as three photocopies of the bank statement of the victims' BCA accounts, one screenshot of the social gathering post made by the perpetrator, three screenshots of the social gathering WhatsApp group, and one screenshot of the conversation between the victims and the perpetrator. KD is charged under article 378 and article 372 of the Criminal Code, with a maximum prison sentence of eight years.
- 2) In May 2021, Mia (42) carried out a fraudulent act using the guise of an online gathering for Lebaran in Mojokerto, East Java. This particular online gathering mechanism was slightly different, as the money withdrawal was not based on serial numbers but at a predetermined time agreed upon by all members. Over 400 people suffered losses of over 1 billion rupiah. As the organizer, Mia used the money for personal purposes, such as buying a house and two cars. She was arrested in the Sragen area, Central Java, on Saturday, 5th May 2021 while on the run with her husband and two children. She was charged with fraud under Article 378 of the Criminal Code.

In light of the two cases mentioned above, it is worth noting that fraudulent activities related to online social gatherings are only prosecuted under general criminal law, rather than specific provisions under the ITE Law. It is important to remember that the entire process of these online gatherings is conducted without face-to-face interactions. However, most cases related to online social gatherings are settled through peaceful means, such as negotiations and mediations. However, there are also many cases that end up in court. The Supreme Court has recorded at least 1,155 cases of fraud related to online social gatherings. These cases have also contributed significantly to the overall number of online transaction fraud reports received by

the Ministry of Communication and Information Technology, with a total of 115,756 reports in 2021. Although there are many trustworthy online social gatherings, such as those organized by the main sources of this research, Icha and Siel, crimes can occur at any time. Therefore, the state, as a protector of its citizens, must ensure a sufficient legal framework for protecting members of these online gatherings.

b. Data Privacy Threats from the Practice of Online Social Gatherings

Data privacy risk refers to the potential unauthorized access, use, or dissemination of an individual's personal information, which can lead to various negative consequences such as identity theft, financial loss, or reputational damage.²² In the context of online social gatherings, there are several ways in which data privacy can be compromised.

One example of data privacy risk can be seen in the case of “*arisan* by Icha”, where the organizers have a provision within their agreement that allows them to share the personal identity of a member online if they fail to pay their dues.²³ Aside from this, there is also a risk of data theft, where hackers or unauthorized individuals may gain access to the personal information of the members of an online social gathering. This can lead to various negative consequences such as identity theft, financial loss, or reputational damage.²⁴ Online social gatherings have become increasingly popular as a means of bringing people together virtually. In recent years, they have also been used as a tool for fundraising and charitable giving. However, it is important to ensure that these gatherings are conducted in compliance with the law and with proper safeguards in place to protect the members' financial and data privacy rights.

3. Legal Protection For Online Social Gathering Members

In the era of technology, online social gathering has become a popular activity that promote community building and social cohesion. Social gathering serves as a social event that strengthens social ties, and provides a means for mutual financial assistance. However, as the implementation of online social gathering is conducted virtually, it opens up a potential risk for legal violations. Therefore, legal protection for online social gathering members is essential to avoid potential disputes. Legal protection for online social gathering members can be viewed from two perspectives: preventive legal protection and repressive legal protection.

a. Preventive Legal Protection

Preventive legal protection refers to a set of measures that are taken to avoid and mitigate legal issues and conflicts before they occur. These measures are designed to anticipate potential legal problems and to minimize the risk of harm to the parties involved. One way that organizers of social gatherings can take preventive legal protection measures is by incorporating provisions in their agreements or contracts with members.²⁵ These provisions may include penalties for late payments or other violations of the law, and can serve as a deterrent to potential legal issues. However, it is important to note that such provisions may primarily benefit the organizer and not necessarily protect the rights of members. This is because organizers may have more power and resources to enforce these provisions, while members may have limited ability to negotiate or challenge them. Moreover, the practice of organizers receiving the money first may create additional risks for fraud and embezzlement, as the organizer has control over the funds.²⁶

²² Wahyudi Djafar, “Perlindungan Data Pribadi Di Indonesia: Lanskap, Urgensi, Dan Kebutuhan Pembaruan,” *Jurnal Becoss* 1, no. 1 (2019): 149.

²³ The interview was conducted on 28 July 2022

²⁴ Sekaring Ayumeida Kusnadi and Andy Usmina Wijaya, “Perlindungan Hukum Data Pribadi Sebagai Hak Privasi,” *AL WASATH Jurnal Ilmu Hukum* 2, no. 1 (April 2021): 11 <https://doi.org/10.47776/ALWASATH.V2I1.127>.

²⁵ Irfan Roidatul and Ramadhita, “Akad Arisan Online : Antara Tolong Menolong Dan Riba?,” *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam* 8, no. 1 (2020): 28.

²⁶ Ni Putu Nita Sutrisna Dewi, Komang Febrinayanti Dantes, and Muhamad Jodi Setianto, “Wanprestasi Dalam Arisan Online Yang Mengakibatkan Kerugian Terhadap Peserta Arisan Di Kabupaten Jembrana,” *Jurnal Komunitas Yustisia* 5, no. 3 (2022): 242, <https://doi.org/10.23887/jatayu.v5i3.51903>.

In regard to preventive legal protection towards the member of the online social gatherings, the author suggests several measures that can be implemented, such as:

- 1) **Creating clear and detailed agreements:** To avoid misunderstandings and disputes between the organizer and the members, a clear and detailed agreement should be established, outlining the terms and conditions of the online social gathering. This can include provisions that protect the members' financial and data privacy rights, such as guidelines for handling personal information, rules on how funds will be collected and distributed, and consequences for breaching the agreement.
- 2) **Conducting due diligence on the organizer:** Members of an online social gathering should verify the identity and credibility of the organizer before participating in the gathering. This can include conducting background checks, researching the organizer's reputation, and seeking referrals from trusted sources.
- 3) **Implementing data privacy measures:** To protect the members' personal information from unauthorized access or disclosure, the organizer should implement data privacy measures, such as secure data storage, encryption, and limited access to personal information.
- 4) **Educating members on their rights:** Members should be informed of their financial and data privacy rights, as well as the consequences for breaching the agreement.

Implementing these practical measures and seeking preventive legal protection can help online social gathering members to safeguard their financial and data privacy rights while participating in such activities. It is also important for members to be aware of potential risks and educate themselves on growing cases related to online social gathering fraud, so they can identify patterns of fraudulent activities. The author strongly suggests that members ensure they have a written agreement with the organizer, which is valid under the requirements of Article 1320 of the Civil Code.²⁷ In case of any violation of the provisions agreed upon, repressive legal protection must be pursued.

b. Repressive Legal Protection

Repressive legal protection refers to measures taken to enforce legal consequences against individuals who violate the terms of an agreement or engage in fraudulent activities. These measures can be taken through both litigation and non-litigation processes, depending on the nature and severity of the violation. In cases where a member or organizer violates the terms of the agreement, the other party can seek legal recourse through litigation. This may involve filing a lawsuit and seeking damages for any financial losses or damages incurred as a result of the violation. Alternatively, non-litigation measures may be taken, such as filing a complaint with relevant authorities or seeking mediation to resolve the dispute.

Depending on the severity of the violation, the perpetrator may also be subject to punishment under existing laws. For example, if the perpetrator engages in fraud or embezzlement, they may be subject to criminal charges and face imprisonment or fines. In addition, regulatory authorities such as the Financial Services Authority (Otoritas Jasa Keuangan) or the Ministry of Communications and Information (KOMINFO) may also take action against the perpetrator if they act under an institution and revoke their license or block their website to prevent further fraudulent activities. Furthermore, the author highlights various legal provisions that safeguard the arisan members in the event of criminal acts, depending on the nature of the offense committed, including:

1) Fraud acts

In cases where fraud acts occur, criminal charges can be pursued under the provisions of Article 378 of the Criminal Code (KUHP) under the claim of fraud. Fraud can be defined as an intentional act of deceiving or misleading someone with the aim of obtaining something of value or causing damage to another party. In the context of online social gatherings, fraud can take various forms, such as misusing or stealing funds, providing false information about the

²⁷ *Ibid.*, 245.

artisan or lottery scheme, or failing to deliver the promised rewards or prizes. If a member or organizer of an online social gathering falls victim to fraud, they can report the perpetrator to the authorities and pursue legal action against them. The legal remedies for fraud include compensation for damages, imprisonment, or fines. The severity of the punishment depends on the severity of the fraud act committed and the amount of damage caused.²⁸

In addition to criminal charges under Article 378 of the Criminal Code for fraud acts in online social gatherings, Article 28 paragraph (1) of the ITE Law can also be applied if individual members are harmed. This provision is similar to the Criminal Code's Article 378 regarding fraud acts, but with specific characteristics such as the inclusion of electronic media as evidence and an expanded jurisdiction. Moreover, Article 28 paragraph (1) of the ITE Law is also aligned with Law Number 8 of 1999 concerning Consumer Protection, which aims to promote consumer awareness and independence for better protection. Violations of Article 28 paragraph (1) of the ITE Law can result in a maximum imprisonment of six years and/or a fine of up to one billion rupiah (Rp. 1,000,000,000).

2) Data Privacy Violation

The risk to data privacy violation is also an important aspect to consider in online social gatherings. Law No. 11 of 2008 concerning Information and Electronic Transaction (ITE Law) regulates the processing of personal data, including in the context of online social gatherings. The potential violation of personal data has existed since the agreement between the artisan organizer and members was made, as the organizer collects their identities. In addition, in some cases, artisan organizers provide terms and conditions to members that allow for the dissemination of personal data on social media as a deterrent if the member fails to pay their dues. This form of social punishment through defamation is not only unethical but also illegal. In fact, it is punishable under Article 310 *juncto* Article 3 Supreme Court Regulation No 2 of 2012 and Article 26 Paragraph (1) ITE Law. Furthermore, in Article 2 it is explained that "Anyone whose rights are violated as referred to in paragraph (1) can file a lawsuit for the resulting losses under this Law." The dissemination of personal data without the consent of the owner also violates Law No. 27 of 2022 concerning Personal Data Protection Article 65 paragraph (3), which states that anyone is prohibited from intentionally and unlawfully disclosing personal data that does not belong to them. The offender can be punished with a maximum prison sentence of 5 (five) years and/or a maximum fine of IDR 5,000,000,000.00 (five billion rupiahs).²⁹

In the event of illegal dissemination of personal data without consent, the ITE Law Article 26 paragraph (3) to (5) guarantees additional protection for the members by allowing the right to be forgotten and the right to object to the processing of personal data, so that the victim of data violation can completely erase their data on the internet if it is deemed irrelevant. The submission and decision of this matter is done in the court realm.

3) Default (*breach of a contract*)

Default is a form of violation of the *pacta sunt servanda* principle contained in the provisions of Article 1338 of the Civil Code, which emphasizes that agreements made in accordance with the law are legally binding for the parties involved and should be executed in good faith.³⁰ From the interviews carried out within the *artisan* groups, it is evident that in the

²⁸ Sanggo and Lukitasari, "Pertanggungjawaban Pidana Pelaku Penipuan Arisan Online Tentang Informasi Dan Transaksi Elektronik, 226."

²⁹ Kantrey Sugiarto, "Perlindungan Hukum Bagi Pemilik Bisnis Melalui Instagram Dalam Perjanjian on Line Apabila Terjadi Wanprestasi Menurut Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum* 4, no. 2 (2019), <https://doi.org/10.33319/yume.v4i2.9>.

³⁰ F Ridwansyah, "Wanprestasi Dalam Sistem Jual Beli Online Menurut Uu No 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik" (Universitas Islam Sultan Agung, 2021), p 76. http://repository.unissula.ac.id/24586/0Ahttp://repository.unissula.ac.id/24586/1/30301800145_fullpdf.pdf.

event of a contract breach, dispute resolution primarily hinges on amicable solutions guided by the principle of good faith. The *arisan* manager will respectfully communicate the breach to the participant, resulting in a fine as stipulated by the contract. Should the participant persistently disregard the regulation post this amicable notification, the *arisan* manager might resort to legal measures, although such instances are infrequent.

Unless both parties agree to withdraw from the agreement or there are lawful reasons to do so, it cannot be terminated unilaterally. In case of default in online social gathering agreements, legal remedies such as compensation, cancellation of the agreement, and other agreed-upon legal remedies can be pursued.³¹ Negotiation or mediation methods can also be used as an alternative dispute resolution between the parties. While the results of negotiation and mediation are not binding, they can lead to an agreement that both parties should accept and follow.³² However, if alternative efforts fail to find a solution, the aggrieved party can file a lawsuit to the local court, also known as litigation. It is important to note that criminal action can only be taken if there is evidence of fraud under Article 378 of the Criminal Code (KUHP).

C. Conclusion

Based on our research and analysis, we have reached the following conclusions:

Firstly, online social gathering agreements are characterized as anonymous, standard, and reciprocal agreements according to Article 1338 of the Civil Code. The organizers of the social gatherings determine the provisions and offer them through social media to prospective members without face-to-face meetings, relying on the principle of trust for approval. The serial number of withdrawals held by each member after agreeing to comply with the applicable provisions serves as evidence of the online social gathering agreement.

Secondly, potential risks posed by online social gatherings can be classified into financial risks, such as fraud and default, and data privacy risks, including the potential unauthorized access, use, and dissemination of personal information.

Lastly, two legal protections can be given to members of online social gatherings: preventive and repressive legal protection. Preventive legal protection can be achieved by creating clear and detailed agreements, conducting due diligence on the organizer, implementing data privacy measures, and educating members about their rights. Repressive measures can be pursued through a non-litigation process, which includes negotiation and other amicable dispute settlement, or a litigation process, which can press criminal charges against perpetrators based on the type of crime they committed.

The government such as the Ministry of Communication and Informatics (Kominfo) and Financial Services Authority (OJK) are expected to provide special arrangements regarding matters that must, at a minimum, be in a digital agreement. That can be realized by forming special regulations under the law to be used as guidelines by people who enter into digital agreements.

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³¹ Tajuddin Noor and Suhaila Zulkifli, "Wanprestasi Yang Dilakukan Oleh Pengelola (Bandar) Pada Perjanjian Arisan Online (Studi Putusan Nomor 99/Pdt.G.2017/PN.Bjm)," *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah* 2, no. 3 (2021): 548.

³² Ni Putu Nita Sutrisna Dewi, Komang Febrinayanti Dantes, and Muhamad Jodi Setianto, "Wanprestasi Dalam Arisan Online Yang Mengakibatkan Kerugian Terhadap Peserta Arisan Di Kabupaten Jembrana, 127."

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