

LEGAL STUDY ON PERSONAL DATA PROTECTION BASED ON INDONESIAN LEGISLATION

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Abstract

Personal data protection is an effort to protect individual privacy rights, which includes the need to protect a person's privacy as well as the protection of their personal data. The type of research in this study is normative juridical, which focuses on the review of positive legal norms. To find out about the protection of personal data regulated in Indonesian Legislation and to find out the obstacles to personal data protection in law and their solutions. In Indonesia, Personal Data Protection has been regulated in Law Number 27 of 2022 concerning Personal Data Protection, Law Number 11 of 2008 concerning Electronic Information and Transactions, and the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Protection of Personal Data on Electronic Systems, and has obstacles in the application of this Law such as the overlap of the old law with the new one, and preventing a legal expert from adopting which Law. In the current technological era, the significance of addressing security factors in the processing of personal data using various technologies has become increasingly critical. While electronic systems have enhanced data security, it is undeniable that the risk of data theft by irresponsible parties still exists. Therefore, regulations or laws are necessary to provide protection for personal data.

Keywords: Data Protection Law, Personal Data Protection, Indonesian Legislation

INTRODUCTION

In the era of the Industrial Revolution 4.0, technology has advanced rapidly, particularly in information technology. The internet facilitates social communication and the quick retrieval of current information. It has become crucial in various aspects of modern life, including business. All countries around the world have utilized the internet for national interests such as national defense and public security. However, with the expanding use of the internet, social boundaries have become blurred, creating opportunities for various criminal acts such as criminalization and harassment. Specifically, in the context of cybercrime, such as hacking into accounts or social media, these actions often violate societal norms, especially in Indonesia. Consequently, this can lead to breaches of personal data that threaten individual privacy.

Personal data protection is an effort to safeguard the right to individual privacy, which includes the need for the protection of personal privacy and data. According to the EU General Data Protection Regulation, personal data is any information relating to an identified or identifiable individual. An identifiable person is one who can be identified, directly or indirectly, particularly by reference to an identifier such as a name, location data, an identification number, an online identifier, or one or more factors specific to the genetic, physical, physiological, mental, economic, cultural, or social identity of that person (Mutiara, 2020).

Data protection laws explain for personal data of individuals in both structured manual data storage systems and automated data processing systems. Therefore, the law must position the individual at its center and ensure that personal data is protected, regardless of where the data is processed, whether within or outside its jurisdiction. This personal data protection encompasses the right to privacy, a universal concept familiar in many countries, whether in the form of written laws or unwritten moral rules (Wulansari, 2020). In this context, personal data as a privacy right must be protected by law, especially through legislation. According to Article 26 of Law Number 19 of 2016 concerning Electronic Information and Transactions, privacy is the individual's right to regulate the use of personally identifiable information, whether by oneself or others. The use of information via electronic media related to personal data must be carried out with the consent of the person concerned.

With the enactment of Law Number 27 of 2022 concerning Personal Data Protection, Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which details personal data protection, has been fulfilled. Additionally, Law Number 11 of 2008 concerning Electronic Information and Transactions also serves as a regulation governing cyber law in Indonesia. Although the general criminal provisions and special criminal provisions in Indonesia can accommodate some cybercrimes, the Law Number 11 of 2008 concerning Electronic Information and Transactions was specifically designed to anticipate cybercrimes. The Law Number 11 of 2008 concerning Electronic Information and Transactions regulates personal data security in electronic systems, providing legal certainty, justice, and security for both operators and users of information technology. Furthermore, the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Protection of Personal Data on Electronic Systems, established on November 7, 2016, and effective from December 2016, strengthens the legal framework for Personal Data Protection in Indonesia.

Although laws have been enacted, there are still weaknesses in the strength of stored Personal Data Protection. This is evident from the recent data breach case at BPJS. When collecting personal data, the public has a right to privacy that must be protected, maintained, and ensured its security.

Considering the prevalent issues mentioned above, it is evident that these matters are not to be underestimated. Although the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Protection of Personal Data on Electronic Systems has been issued, Personal Data Protection remains vulnerable. Under this regulation, personal data such as ID number, family card numbers, and user phone numbers are sent for synchronization with data from Directorate General of Population and Civil Registration, Ministry of Home Affairs of the Republic of Indonesia, which includes names, ages, family details, addresses, and other information. This vulnerability indicates that Personal Data Protection still needs improvement.

Resolution of violations against Personal Data Protection in Indonesia still relies on sectoral and partial regulations, such as Law Number 17 of 2023 concerning Health which regulates the confidentiality of patients' personal conditions and Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which regulates customer personal data. Therefore, Indonesia needs regulations that can accommodate and formulate new approaches to Personal Data Protection. With the enactment of Law Number 27 of 2022 concerning Personal Data Protection, the resolution of Personal Data Protection violation cases is now accommodated in this law. In Europe, for example, Personal Data Protection has been regulated by the GDPR since 2016. Even though the UK

has left the European Union, it has its own Personal Data Protection regulation through the Data Protection Act 1998. By comparing laws that have been enforced and those still in draft form, it is necessary to address cases or issues that have already occurred in Indonesia (Makarim2004).

Given the numerous cases and issues in Indonesia concerning personal rights, particularly personal data, ranging from data misuse, account breaches, to data leaks within a staff context, a specific law addressing Personal Data Protection comprehensively and legalized is needed. As in criminal law, which has the principle of legality regulated in Article 1 Paragraph (1) of the Criminal Code, stating that an act cannot be punished except by a pre-existing criminal law, this principle also applies in Law Number 27 of 2022 concerning Personal Data Protection.

Effective legal resolution is required as a solution to issues. For instance, cases of breaches, theft, or misuse of personal data, which are increasingly prevalent in the current digital era. The rapid advancement of technology goes hand in hand with the rising occurrences of cybercrime and hacking. Many data breaches lead to criminal acts such as pornography or fraud. This underscores the importance of establishing strong legal regulations to protect personal data.

RESEARCH METHOD

The type of research conducted in this study is normative juridical, which focuses on the examination of positive legal norms (Matheus & Gunadi, 2024). Normative law is the process of seeking and discovering legal principles, legal rules, and legal doctrines to resolve the legal issues under review, as explained by Peter Mahmud Marzuki (Marzuki, 2019). This research is descriptive-analytical in nature, aiming to describe and provide an overview of the existing legal facts, and then analyze the applicable legislation in conjunction with legal theories.

The approach used in this research is the statutory approach, which involves collecting and examining legislation relevant to this study. The data utilized consists of secondary data obtained through literature study. This data is sourced from applicable legislation, legal research findings, legal textbooks, legal journals, legal dictionaries, the Indonesian Great Dictionary, and law dictionaries. All materials for writing this research are gathered through literature study, hence the author uses secondary data encompassing primary, secondary, and tertiary legal materials (Fajar & Achmad, 2010).

RESULTS AND DISCUSSION

Protection of Personal Data in Indonesian Legislation

1. Law Number 27 of 2022 concerning Personal Data Protection

Individuals, organizations, institutions, and the central government as described in Article 1 (6-11) are considered data subjects. This law comprehensively reviews all aspects related to personal data, from its definition to its protection system. The aim is to address issues that frequently arise in the current era, such as personal data breaches. The law also regulates procedures for handling data breach cases, including determining who is responsible for such breaches.

Law Number 27 of 2022 concerning Personal Data Protection meticulously outlines the definition of personal data in its initial Articles and establishes sanctions in Article 57. Criminal provisions related to personal data protection, starting from Article 67, have been comprehensively regulated. This law encompasses efforts to protect personal data for every citizen, reflecting extensive attention to the legal aspects that protect personal data.

Currently, the increasing incidents related to Personal Data Protection occur not only in daily life directly but also online or digitally, whether in the context of transactions or social media account administration, often accompanied by misuse. Law Number 27 of 2022 concerning Personal Data Protection aims to address the growing challenges of Personal Data Protection. Although the previous law, Law Number 11 of 2008 concerning Information and Electronic Transactions, already regulated this matter, it lacked comprehensiveness and specificity regarding Personal Data Protection, thus necessitating reinforcement through Law Number 27 of 2022 concerning Personal Data Protection.

2. Law Number 11 of 2008 concerning Information and Electronic Transactions

The law regulates Personal Data Protection in electronic systems. This is due to the vulnerabilities that have recently arisen in electronic systems, particularly concerning personal data breaches. These breaches often begin during the account creation process, where individuals must provide personal data as account identifiers, and continue during the processing or analysis of valid personal data to access an account. With the advancement of the digital era, criminal activities have increased. Examples of the impacts of these vulnerabilities include account breaches, personal data leaks from websites, and other criminal activities such as extortion.

An individual's personal data possesses privacy rights that need to be protected both individually and collectively. Individual protection aims to ensure that personal information is not easily disclosed or misused by others. Collective protection, on the other hand, aims to prevent the leakage and use of personal data by institutions or certain parties publicly, both in electronic contexts and daily life. This protection can be achieved through various means, including agreements or legal actions to prevent fraud and other harmful activities.

Regarding Personal Data Protection, Indonesia has comprehensive and official legislation to safeguard personal privacy, in accordance with Article 28G paragraph (1) of the Constitution, which affirms the right to personal protection for every individual. Law Number 27 of 2022 concerning Personal Data Protection is the legal instrument governing this matter.

In the context of the current technological era, the importance of considering security factors in the processing of personal data using various technologies has become increasingly urgent. Although electronic systems offer data security, it cannot be denied that there remains a risk of data theft by irresponsible parties. Therefore, regulations or laws are needed to provide protection for personal data. Previously, Law Number 11 of 2008 concerning Electronic Information and Transactions, which was amended in 2016 and 2024, was further regulated in Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Protection of Personal Data on Electronic Systems.

3. Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Protection of Personal Data on Electronic Systems

Protection of personal data in electronic systems refers to efforts to maintain the confidentiality of personal information of individuals using electronic systems, often referred to as electronic operators. According to the definition in Article 4 of the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Protection of Personal Data on Electronic Systems, an electronic system refers to a set of electronic devices and procedures that assist in disseminating, transmitting, publishing, displaying, processing, analyzing, storing, preparing, and/or collecting electronic information. Electronic System Users refer to individuals, communities, entities that operate, manage, and/or use the Electronic System for personal interests or for the interests of others, while users of the Electronic System refer to individuals, entities, state operators, and the public who utilize the services, equipment, goods, or information provided by the Electronic System Operators.

In the operation of electronic systems, their use is not limited to individuals alone, but also involves various other parties. Therefore, the protection of data from electronic users becomes very important, considering that everything can be conducted through electronic systems. According to Article 2 of the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Protection of Personal Data on Electronic Systems, protection efforts include aspects of dissemination, announcement, acquisition, transmission, collection, and destruction of personal data. The process of destroying personal data is carried out for users who are no longer active or have stopped using the services of the electronic system operator.

The Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Protection of Personal Data on Electronic Systems is designed to safeguard the personal data security of individuals used in electronic systems. This regulation supports the currently applicable law, namely Law Number 11 of 2008 concerning Electronic Information and Transactions. Through this law, Personal Data Protection in electronic systems can be evaluated over time, considering the progress of the era. However, the existing regulations currently remain focused on protection within the context of electronic systems.

Obstacles in Personal Data Protection Law in Indonesia

Simply put, crime can be identified as wrongful acts committed by a legal entity. Legal subjects are divided into two categories: human or individual subjects and legal entities. However, not all humans are subject to the law; only those with legal capacity are considered legal subjects, as are legal entities that have obtained operational or institutional legality. In this regard, not everything is subject to the law, but by fulfilling the requirements, an entity becomes a legal entity with legal rights and can be punished if it violates the law.

In general, regarding crimes related to personal data, such crimes are regulated in Article 28G of the Constitution of the Republic of Indonesia. When the Constitution establishes the rights of Personal Data Protection, the right to privacy is considered a human right protected by law. Concerning the protection and ownership of personal data, it is also regulated by other laws and specific regulations.

Under Indonesian law, the issue of criminality extends not only to the theft of personal data but also to the context of personal data that must maintain privacy.

Regarding privacy, it is nothing more than Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights. This convention also emphasizes the Indonesian government's obligation to protect the privacy and data privacy of its citizens. Current issues with Personal Data Protection, particularly concerning roaming, which is not comprehensive, hinder protection efforts. Other laws for personal data processing are still slow and hindered, but for the protection and resolution of Personal Data Protection.

In the context of Personal Data Protection, it is crucial to maintain individual privacy rights in various forms of information such as ID numbers, Family Card numbers, full names, birthplaces, genders, religions, blood types, highest education level, family relationship status, marital status, physical or mental disabilities, occupations, fingerprints, signatures, iris scans, mothers' names and IDs, fathers' names and IDs, current addresses, previous addresses, birth certificate/identity card numbers, ownership of birth certificates/identity cards, marriage certificate/nuptial book numbers, marriage dates, ownership of marriage certificates/nuptial books, ownership of divorce certificates, divorce certificate/decrees numbers, divorce dates, and other data elements considered individual privacy at present. Based on these, there are 29 (twenty-nine) personal data that must be protected and not consumed publicly, as regulated in Law Number 24 of 2014 concerning Amendments to Law Number 23 of 2006 concerning Population Administration.

The current challenges in personal data protection are largely due to the lack of comprehensive regulations. This insufficiency hinders the effective protection of personal data, as existing laws addressing data processing are inadequate and slow in ensuring data security. Personal data, such as identification numbers, family card numbers, and full names, require robust privacy protection. Formal barriers, caused by the absence of specific legal regulations, have been a significant issue. However, with the enactment of Law No. 7 of 2022 on Personal Data Protection, these formal obstacles can now be addressed. This development is crucial in the context of Indonesian criminal law, which relies on the principle of legality. Although this principle has been seen as rigid, the new Criminal Code (KUHP) expands its interpretation from a strictly formal legality to a more substantial one, as outlined in Articles 1(3) and 1(4) of the KUHP. Thus, having formal laws is essential for handling cases related to personal data, making it possible to prosecute data protection violations effectively.

The principle of legality is often discussed because it is considered strict, but the principle of legality, which was originally formal, has evolved in the new Criminal Code and has led to the expansion of the principle of legality itself, which is now essential (Widayati, 2011). This expansion of the principle of legality is regulated in Article 1 paragraph 3, and Article 1 paragraph 4 of the Criminal Code. Looking at its principle of legality, formal laws to handle cases of personal existence are essential. Because many cases involve it, from that explanation, the advantage in criminal cases in Personal Data Protection can be prosecuted if there is a formal law. From the crimes that occur in this personal data, it can be categorized as a crime if there is a formal law. However, it is better in the context of Personal Data Protection that in a specific law to regulate the protection of personal data, it is still in search of other laws that can be made into law, and making it a hindrance in the Law Number 27 of 2022 concerning Personal Data Protection in Indonesia. Where regulations or laws that are old still apply, as in Article 75 of Law Number 27 of 2022 concerning Personal Data Protection (Widayati, 2011).

The very importance of the law is to protect every legal subject. Especially when a form of privacy right is maintained, and there are separate rules for personal data and its protection. If there is a case that occurs, the law can be facilitated in its resolution. The reason it is called a hindering factor in resolving Personal Data Protection cases is that criminal factors in Indonesia still use the formal legal principle.

Overlapping Between New Regulations and Old Regulations Regarding Personal Data Protection

Personal Data Protection regulations in Indonesia actually exist in the Law Number 11 of 2008 concerning Electronic Information and Transactions, but they have not been comprehensively discussed there yet. In this Law Number 27 of 2022 concerning Personal Data Protection, a new law has also been enacted that comprehensively discusses it, which is Law Number 27 of 2022 concerning Personal Data Protection. In this new law, Personal Data Protection is discussed comprehensively, and in its implementation, there are obstacles in applying the old law with the new one overlapping regulations for Personal Data Protection.

The overlapping of old regulations with new ones occurs because the old rules still apply, and the new regulations have been enacted, causing obstacles in applying the law to the community for

Personal Data Protection itself. The public will also be confused about which law to adhere to, and it hinders the law enforcement process from the same different regulations in Articles and Laws.

CONCLUSION

The current era, particularly in the realm of electronic systems, presents opportunities for cybercrime. One increasingly common phenomenon is the misuse and hacking of personal data, which directly infringes on an individual's right to privacy. Such actions, known as cybercrime, not only harm individuals but can also impact national security, threatening a nation's defense systems if the personal data of its citizens can be infiltrated and exploited by irresponsible parties. Consequently, every country must prioritize the security against such crimes to protect citizens' personal data and safeguard public security. This has led to the establishment of regulations or laws governing Personal Data Protection, particularly in Indonesia. An individual's personal data carries privacy rights that require protection both individually and collectively. Individual protection aims to ensure that personal information is not easily disclosed or misused by others. Collective protection seeks to prevent the leakage and public misuse of an individual's data by institutions or specific entities, whether in electronic contexts or everyday life. This protection can be achieved through various means, including agreements or legal actions, to prevent fraud and other harmful activities.

The Law Number 27 of 2022 concerning Personal Data Protection governs the protection of all personal data of individuals, organizations, institutions, and the central government as detailed in Article 1 as data subjects. The Law Number 27 of 2022 concerning Personal Data Protection elaborates on the definition of personal data in its first article and sets forth sanctions in Article 57. Currently, the increase in incidents related to Personal Data Protection occurs not only directly in everyday life but also online or digitally, both in transactions and in managing social media accounts, often through misuse. This is regulated under Law Number 11 of 2008 concerning Information and Electronic Transactions, but it lacks inclusivity and specificity regarding Personal Data Protection, thus necessitating reinforcement by Law Number 27 of 2022 concerning Personal Data Protection.

This necessity arises from the vulnerabilities in electronic systems recently, particularly regarding personal data breaches. Data breaches often begin with the administrative process of account creation, in processing or analyzing valid personal data to access such accounts, where individuals are required to fill out personal data as account identity. Personal protection aims to ensure that personal information is not easily disclosed or misused by others. Collective protection, on the other hand, aims to prevent data breaches and misuse by institutions or certain parties, both in electronic contexts and in everyday life.

To date, Indonesia has implemented specific laws to protect personal data. These include the Electronic Information and Transactions Law, Regulation of the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Protection of Personal Data on Electronic Systems, and the latest law, Law Number 27 of 2022 concerning Personal Data Protection. While these laws comprehensively address Personal Data Protection, their implementation still faces several challenges.

The challenges in implementing Personal Data Protection regulations are often due to the overlap of various regulations, where new regulations have been enacted while the old ones remain in effect. This situation can impede law enforcement officers in applying the applicable laws. In practice, law enforcement may refer to the new law, but sometimes still reference the old law. If there is dissatisfaction with the application, the aggrieved party may file a lawsuit with the Constitutional Court.

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