



RECONSTRUCTION OF PERSONAL DATA PROTECTION LAW AGAINST DATA LEAKAGE IN THE DIGITALIZATION ERA AFTER THE COVID-19 PANDEMIC

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Abstract

Post-pandemic has negative and positive impacts, one of the positive impacts is accelerating digital transformation to all aspects in Indonesia. Rapid digital transformation has not been matched by good cybersecurity, making it very vulnerable to misuse or violation of personal data such as cases of data leakage in various private and government agencies. This study aims to determine and analyze the misuse or violation of personal data and to determine and analyze the implementation of personal data protection provisions. This research is a normative legal research with descriptive-qualitative analysis. The results obtained are the issuance of Act of the Republic of Indonesia Number 27 of 2022 concerning Personal Data Protection as a general standard of personal data protection has not been able to prevent, protect and overcome personal data leaks, disharmonisation between the provisions of personal data protection, and the absence of an independent, efficient and effective personal data supervisory institution. Therefore, reconstruction in the law needs to be done to guarantee citizens' rights to personal protection, foster public awareness, ensure recognition and respect for the importance of personal data protection for the realisation of the fulfillment of human rights.

Keywords:

Reconstruction, Post-Pandemic, Personal Data.

INTRODUCTION

In this rapidly growing age, technological advancements have changed drastically. All the activities that we used to do in a conventional way have turned digital. Starting from small things like watching entertainment, reading news, to ordering food or buying goods using online applications. With the development of the times to the digitalisation era, all aspects of our lives have become easier. We can do all the work faster.

The Covid-19 pandemic became a time when people changed all their activities to be all online. People are not allowed to leave the house to reduce cases of virus transmission. The impact is that people open websites and other online things more often. The traffic of each website went up because during the pandemic it became difficult for people to go out. With the increase in traffic, every existing website must have high security to keep data safe from all crimes in cyberspace.¹

The Covid-19 pandemic has both negative and positive impacts, one of the positive impacts is accelerating digital transformation to all aspects in Indonesia. Rapid digital transformation has not been matched by good cybersecurity, making it very vulnerable to misuse or violation of personal data such as cases of data leaks in various private and government agencies.

Privacy is the right of everyone to be free in carrying out their personal lives, one of the concrete forms of privacy is personal data. Personal data is all information related to a person's personality. Over time, the form of personal data has also developed keep up with the rapid pace of technological development. This causes the potential for the emergence of violations of personal data to become even greater. Therefore, it is necessary to protect personal data considering that personal data is a sensitive matter that can be misused if it is disseminated by irresponsible parties so that it has the potential to cause financial losses to threaten the safety of the owner.²

Nowadays, we cannot deny that with the rapid development of digitalisation, personal data leakage is very common. The forms are increasingly diverse, ranging from short messages via mobile phone numbers and personal emails such as insurance offers or loans with unclear legality to fraud under various guises.³

This article will discuss the reconstruction of the Law on personal data protection against data leakage in the digitalisation era after the covid-19 pandemic. Has the Law on personal data protection been able to overcome the existing data leakage problems or are there still many shortcomings in this Law that must be evaluated.

¹ Gregorius Hendita Artha Kusuma, "Perancangan Skema Sistem Keamanan Jaringan Web Server menggunakan Web Application Firewall dan Fortigate untuk Mencegah Kebocoran Data di Masa Pandemi Covid-19", Journal of Informatics and Advanced Computing, Vol. 2, No.2, 2021:hlm 1

² Aditya Halimawan et al, "Finding Solutions to Problems with Data Protection Legal Instruments in Indonesia" Justisia Student Council, 2020: Page 30

³ ibid

RESEARCH METHODS

This research is a normative legal research, namely research that focuses on exploring library materials from various types of literature related to the legal issues studied using descriptive-qualitative analysis.

RESULTS AND DISCUSSION

Data is true and real information that can be used as a basis for study. Meanwhile, personal is data relating to a person's characteristics, such as name, age, gender, education, occupation, address, and position in the family. In addition, according to the Data Protection Act 1998 UK, personal data is data relating to a living individual who can be identified from data or from data or information that is owned or will be owned from the data controller. In addition, personal data can also be associated with the characteristics of respondents, for example gender, age, name and others.

Then, in the Regulation of the Minister of Communication and Information Technology (Permen Kominfo) Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems Article 1 point 1 of the general provisions states that personal data is certain individual data that is stored, maintained, and maintained, the truth and protected confidentiality. Whereas in Article 1 point 1 of the General Provisions of Law Number 27 Year 2022 on the Protection of Personal Data states that personal data is data about an individual who is identified individually or in combination with other information either directly or indirectly through electronic or non-electronic systems.⁴

The protection of personal data is an obligation that must be implemented by a state because the protection of personal data is part of human rights, namely the right to privacy as contained in the Universal Declaration of Human Rights (UDHR). Article 12 states that "No one shall be disturbed in his private affairs, family, home, or lawfully interfered with in his private affairs, family, home or correspondence or unlawfully attacked in his honor and good name. Everyone shall be entitled to the protection of the law against such interference or violation."⁵

The International Convention on Civil and Political Rights (ICCPR) also regulates the right to privacy as stated in article 17, namely "No one shall be arbitrarily or unlawfully interfered with in his private affairs, family, home, or correspondence or unlawfully attacked in his honor and good name."⁶ The Covenant has also been ratified by Indonesia into Law Number 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights (ICCPR).

In the perspective of Talcott Parson's social system theory, law is a variable that depends on other non-law variables. Its dependent nature means that if other variables change, the law will automatically change because the law is only the smallest part of a social system that exists in society in addition to the social subsystem, political subsystem, and

⁴ Act of the Republic of Indonesia Number 27 of 2022 concerning Personal Data Protection

⁵ Universal Declaration of Human Rights

⁶ International Covenant on Civil and Political Rights

economic subsystem⁷. The covid-19 pandemic is a variable that shakes human life to this day. As a result, all sectors of human life ranging from business economy, health, including law have been affected by this pandemic.

Especially in the field of law, this is a very big challenge because law is an instrument of state policy in tackling the problems that occur to restore the situation that occurred after the Covid 19 pandemic.

The Personal Data Protection Law was officially promulgated on Monday, October 17, 2022 by Joko Widodo as President of the Republic of Indonesia. This law is promulgated under the name of Law Number 27 of 2022 concerning Personal Data Protection. The purpose of the presence of this Law is expected to protect the personal data of the community managed by electronic system operators (PSE) and prevent data misuse from irresponsible individuals.

The enactment of the Personal Data Protection Law is to harmonize personal data regulations in one legal framework. Compared to sectoral provisions on personal data, the PDP Law has more specific provisions relating to personal data. In some previous regulations, the protection of personal data is only regulated in general, while the PDP Law regulates specific personal data consisting of health data and information, biometric data, genetic data, child data, personal financial data, and other data in accordance with laws and regulations as stipulated in Article 4 paragraph (2) of the PDP Law.⁸

Another advantage of the PDP Law is that it has regulated new matters that are in line with the rules on personal data protection that have been implemented in the European Union, namely The General Data Protection Regulation (GDPR). Matters regulated in the GDPR and also regulated in the PDP Law include data controllers, data processors, and personal data subjects (data subject rights). In addition to a more specific regulation on personal data, the PDP Law does not only protect the personal data of Indonesian citizens (WNI) residing in the jurisdiction of Indonesia but also foreigners residing outside the jurisdiction of Indonesia as stipulated in Article 2 paragraph (1) of the PDP Law.

From some of the advantages that have been described above, it turns out that from the results of the analysis found there are several weaknesses in Law Number 27 of 2022. Such as the issue of legal jurisdiction regulated in the PDP Law, it is clear that the jurisdiction is transnational and the object of regulation is certainly transnational, both civil (disputes), administrative and criminal; three types of jurisdiction in one PDP Law. The intersection between the three jurisdictions is not impossible. In Indonesian legal practice, there are often legal errors in the application of administrative sanctions, civil sanctions, and criminal sanctions. Criminal sanctions often come first and administrative sanctions and criminal

⁷ Indra Rahmatullah, "The Importance of Personal Data Protection During the Covid-19 Pandemic in Indonesia", *Bulletin of Law and Justice*, , Vol. 5, No. 1 (2021): Page 15

⁸ Click legal.com "Officially Enacted, Here Are the Advantages and Challenges of the PDP Law Source: Officially Enacted, Here Are the Advantages and Challenges of the PDP Law", <https://kliklegal.com/resmi-diundangkan-ini-kelebihan-dan-tantangan-uu-pdp/> (accessed February 5, 2023)

sanctions follow later. The adage, *ultimum remedium*, is no longer strictly applied on the grounds that in certain cases.

Another weakness in the implementation of the PDP Law is the guarantee of legal protection for domestic personal data owners facing dispute settlement with personal data controllers in other countries, namely that the guarantee of personal data protection by personal data protection institutions in other countries can be trusted and does not abuse the management of personal data belonging to Indonesian citizens by personal data controllers in other countries. In Chapter VII Article 56 paragraph (1) which states that, "Personal Data Controller may transfer Personal Data to Personal Data Controller and/or Personal Data Processor outside the jurisdiction of the Republic of Indonesia in accordance with the provisions stipulated in this Law." The weakness of this provision results in the absolute rights of personal data owners being ignored, which is contrary to the main purpose of the establishment of the PDP Law; in this case, the provisions of Article 56 have no added value for the protection of personal data, both domestically and in other countries.⁹

In addition, based on the findings of LBH Pers Jakarta, Article 4 paragraph (2) of the PDP Law determines that criminal records and financial records are included in "personal data" that must be protected. The problem is that this arrangement is not exempted for officials or public figures. So it is very risky for officials to hide their criminal history or interests. For example, this rule could be used by ex-convicted legislative candidates to not disclose their criminal history. Article 20 of the Election Law requires candidates who have been sentenced to 5 years or more in prison to disclose to the public that they are former convicts. In addition, this rule is also very risky for candidates to criminalize individuals who disclose it. Article 65 paragraph (2) prohibits any person from unlawfully disclosing personal data that does not belong to him. The sanction is imprisonment for a maximum of 4 years and/or a fine.

As a result, many people will vote for these candidates out of ignorance. Furthermore, the arbitrariness of officials committing crimes will be more difficult to eradicate. The regulation also risks violating the right to public information. The public has the right to know data on crimes and financial records of officials because the expansion of access to government records information occurs almost all over the world, such information is also an effort to control government policies, the government is also increasingly responsible for fulfilling it, along with increasingly sophisticated technology, and disclosure of such data is an important indicator of public information disclosure.

The protection of data on criminal records and financial records should be excluded for public figures/officials, so that the public's right to public information is still fulfilled. We can follow the example of the *Costeja* decision, CJEU (Court Of Justice Of the European Union) which in its consideration stated: when personal data is related to a public figure, the public has the right to have access to that information.

⁹ Romli Atma Sasmita "Some Weaknesses of Law No. 27/2022 on Personal Data Protection", <https://nasional.sindonews.com/read/923975/18/beberapa-kelemahan-uu-nomor-272022-tentang-perlindungan-data-pribadi-1666815001> (accessed on February 5, 2023).

In addition, Assistant Public Lawyer of LBH Pers, Mustafa Layong assessed that Article 15 paragraph (1) of the PDP Law does not provide exceptions to the use of personal data for the public interest, especially the fulfillment of the right to expression and to obtain data / information for the public interest. However, the exception to Article 15 paragraph (1) of the PDP Law is only for 5 things. First, the interests of national defense and security. Second, the interests of the law enforcement process. Third, the public interest in the context of state administration. Fourth, the interests of supervision of the financial services sector, monetary, payment systems, and financial system stability carried out in the context of state administration. Fifth, the interests of statistics and scientific research. According to him, this provision has the potential to hinder the work of activists and journalists who have often uncovered cases or related to crimes.

CONCLUSION

Personal data protection is an obligation of the state in protecting one of the fundamental rights of its citizens protected by the constitution. Personal data is all privacy information relating to a person. The issuance of Law No. 27 of 2022 on Personal Data Protection is the latest legal instrument in Indonesia which generally regulates the protection of personal data, personal data has not been able to prevent, protect and overcome personal data leakage, disharmonization between the provisions of personal data protection, in this legal instrument the Ministry of Communication and Information Technology has the authority to protect personal data (data protection authority) as a judge of personal data protection in the event of a violation and guardian of personal data protection so that personal data managers can be held accountable, but the personal data protection law itself has not regulated a strong personal data supervisory institution, independent, efficient and effective, does not provide a clear description of the duties and responsibilities of the Ministry of Communication and Information Technology in its role as an authorized institution, has not been able to complement as a legal umbrella instrument for 30 (thirty) laws governing personal data protection.

Finally, reconstruction in the law needs to be done to guarantee the rights of citizens and meet the greatest needs of the community for personal protection, foster public awareness, ensure recognition and respect for the importance of personal data protection for the realization of the fulfillment of human rights.

REFERENCES

Laws and Regulations

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights

Act of the Republic of Indonesia Number 27 of 2022 concerning Personal Data Protection

The Regulation of the Minister for Communication and Information of the Republic of Indonesia Number 20 of 2016 regarding Personal Data Protection

Journal Article

Gregorius Hendita Artha Kusuma, "Designing a Web Server Network Security System Scheme using Web Application Firewall and Fortigate to Prevent Data Leakage during the Covid-19 Pandemic", *Journal of Informatic and Advanced Computing*, No.2., 2021.

Aditya Halimawan, "Finding Solutions to Problems with Legal Instruments for Data Protection in Indonesia", *Dewan Mahasiswa Justisia*, 2020.

Magazine

Indah Rahmatullah, "The Importance of Personal Data Protection During the Covid-19 Pandemic in Indonesia", *Buletin Hukum dan Keadilan*, 2021, Vol. 5, No.1.

Internet

CNN Indonesia "10 Data Leak Cases 2022: Bjorka Dominant, Many Deny", <https://www.cnnindonesia.com/teknologi/20221230125430-192-894094/10-kasus-kebocoran-data-2022-bjorka-dominan-ramai-ramai->

CNN Indonesia "10 Data Leak Cases 2022: Bjorka Dominant, Many Deny", <https://www.cnnindonesia.com/teknologi/20221230125430-192-894094/10-kasus-kebocoran-data-2022-bjorka-dominan-ramai-ramai-bantah>.

KBBI. "Definition of data and personal", <https://kbbi.web.id/data>.

Klik legal.com "Officially Enacted, Here Are the Advantages and Challenges of the PDP Law Source: Officially Enacted, Here Are the Advantages and Challenges of the PDP Law", <https://kliklegal.com/resmi-diundangkan-ini-kelebihan-dan-tantangan-uu-pdp/>.

LBH Pers. "PDP Law Prone to Snare Activists and Journalists", <https://www.hukumonline.com/berita/a/lbh-pers--uu-pdp-rawan-jerat-aktivis-dan-jurnalis-lt632c32d3c8242>.

Romli Atma Sasmita "Some Weaknesses of Law No. 27/2022 on Personal Data Protection", <https://nasional.sindonews.com/read/923975/18/beberapa-kelemahan-uu-nomor-272022-tentang-perlindungan-data-pribadi-1666815001>".