

Conference Paper

The Legal Framework for Personal Data Protection in the Digital Era as Fulfillment of Privacy Rights in Indonesia

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Abstract.

In this digital era, several aspects of our lives are made easier because of the presence and development of technology. One of the examples of it is the creation of various kinds of electronic systems, whether in the form of applications, websites, or portals. In using the systems, the personal data of users is usually required for each of these electronic systems. Personal data is usually used as an identity which is needed to identify a person in the process of the electronic system. Moreover, personal data is considered a sensitive matter since it concludes the information related to a person's identity, while this information is part of the right to privacy. It is undeniable that a person's data can be used by irresponsible parties who can harm the owner's data, especially regarding their privacy rights. Therefore, legal protection is needed for this data, especially in the digital era in which personal data is widely used for various purposes such as electronic systems need or purposes. This study aims to find out and analyze the ideal protection and regulation of legal concepts related to personal data as the fulfillment of privacy rights in the digital era in Indonesia.

Keywords: legal framework, personal data, privacy rights

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1. INTRODUCTION

Technological developments in the digital era are felt in various fields or aspects of human life, where changes to these technological developments cannot be avoided. Of course, technology develops along with innovations that continue to develop and also because there are more and more human needs. Technology was created with one of its goals, namely to facilitate human life in various aspects of life, for example, technology in the field of transportation with the creation of cars, then someone who travels will save more time and energy compared to walking, then it is also the same with other fields or other aspects of human life. Technological developments are also

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inherent in human life, one of which is the development of technology in the aspect of information.[1]

Indonesian development in Information Technology has significantly impacted people's lives through advancements in data processing. This technology is crucial for personal & government purposes, providing accurate and timely information for individuals and groups. Advancements in Information Technology have influenced people's perspectives and actions in addressing existing problems, leading to the emergence of innovations and new paradigms in their lives. This development has a significant impact on the lives of Indonesian people and the overall growth of their knowledge in the field of Information Technology.

Electronic Systems, which are the applications of technology based on telecommunication networks and electronic media, and Information Technology are closely connected fields of study. With the aid of these technologies, electronic information is created, handled, analyzed, displayed, and sent. So it can be concluded that the Electronic System is a form or form of Information Technology. Examples of electronic systems are social media, online news, websites, and other forms which are certainly related to computerization and the internet. Electronic Systems can be classified into three forms, namely portals, sites, and applications when viewed from "Government Regulation Number 71 of 2019 concerning the implementation of Electronic Systems and Transactions (hereinafter referred to as PP PSTE)". So it can be concluded that Electronic Systems as a container for Information Technology that can be tangible, be it portals, applications, or sites to process Electronic Information (A Collection of Electronic Data) by the procedures for managing and the purpose of using electronic data for each electronic system.[2]

Electronic Systems in any form, be it portals, sites, or applications, must have their purposes or uses which are complemented by the features offered by the Electronic Systems to their users. In the operation of an Electronic System, person's data is usually required from the user of the Electronic System, which is used for each of the Electronic Systems. According to the PDP (Personal Data Protection) Law, Information about people that is obtained directly or indirectly, via electronic or non-electronic methods, is referred to as personal data. It can be broken down into particular and broad categories, with specialized data negatively affecting the owner (for example, biometric data, genetic data, and kid data). These kinds of Personal Data may have a big effect on people's security and privacy.

Personal data that is general have as much impact as in specific type, such as full name, religion, nationality, and others. Then processing on an Electronic System usually

uses it as previously explained for the benefit of the Electronic System. Technological developments in the digital era have many impacts on human life, both positive and negative impacts. The positive impact of technological developments is efficiency and convenience in various areas of human life. Besides the many benefits of technological developments, there are also negative impacts due to the misuse of these technologies. Then along with the development of technology, especially in the field of Electronic Systems, it is possible that there will be new problems that are certainly detrimental to other parties. As an example, that does not rule out the possibility that the Personal Data of Electronic System users stored on the Electronic Systems discussed earlier will be leaked. While the Leakage in an Electronic System is usually caused by several things, either due to hacking, lack of protection, due to the quality of human resources in the Electronic System, or the technology used not optimal. So that the it must be protected.

Personal data in general is not detailed or does not have as much impact as specific type, such as full name, religion, nationality, and others. Then processing on an Electronic System usually uses it as previously explained for the benefit of the Electronic System. Technological developments in the digital era have many impacts on human life, both positive and negative impacts. The positive impact of technological developments is efficiency and convenience in various areas of human life. Besides the many benefits of technological developments, there are also negative impacts due to the misuse of these technologies. Then along with the development of technology, especially in the field of Electronic Systems, it is possible that there will be new problems that are certainly detrimental to other parties. As an example, that does not rule out the possibility that the Personal Data of Electronic System users stored on the Electronic Systems discussed earlier will be leaked. Leakage of this in an Electronic System is usually caused by several things, either due to hacking, data protection governance that is not optimal, due to the quality of human resources in the Electronic System, or the technology used not optimal. So that it must be protected.[3]

Thus indirectly the right to privacy is regulated and recognized in the 1945 Constitution and is a constitutional right owned by Indonesian citizens. Therefore the author wants to discuss this issue with the title Personal Data Protection as Fulfillment of Privacy Rights in the Digital Age.

2. METHODOLOGY/ MATERIALS

This normative legal study focuses on using science to solve issues based on relevant legal standards. Utilizing books, literature, and pertinent rules and regulations, material

is gathered and examined utilizing the library research method. The purpose of creating this journal is to discover solutions to the problem. This study uses a statute method, using statutory rules as a foundation for evaluating facts and issues when creating this journal.

Sources of data or materials in this study come from the internet, scientific journals, articles, or other research to add references to the discussion of this journal. In the process of making this journal, the author uses qualitative data analysis techniques. Then the presentation and discussion on this data use descriptive analysis because the data used will be analyzed by describing the problems associated in writing this journal, both primary, secondary, or tertiary legal materials.

3. RESULTS AND DISCUSSIONS

Personal data is crucial because it involves or contains the identity of an individual. A person can be identified through the identification of data they have, both from the family aspect, religious aspect, citizenship aspect, and other aspects. It owned by a person can be misused by other parties or people who are not responsible for personal gain from that party or person, which then harms the owner concerned or who is referred to as a Personal Data Subject. Several actions can cause harm to the Subject as the owner of the data, such as illegal access, sale by and to unauthorized parties, leaking of a data to the public (both done in mass media or directly), and other actions that are also regulated in laws and regulations. Therefore, legal protection is needed for privacy rights which are manifested in the form of Data Protection.[4]

Laws and regulations must be formed following the development of the times that occur in people's lives so that these regulations are relevant to addressing the problems caused by these developments, and also so that these laws and regulations can protect society as a whole because they have characteristics that are relevant to the changing times. The law that has been promulgated must have gone through stages until finally it was passed into public property which is open and of course binding for the public. As an example, with the establishment of "Law Number 27 of 2022 concerning the Protection of Personal Data which was just ratified and promulgated on October 17, 2022 (hereinafter referred to as PDP Law)", where the formation of the PDP Law is a form of the government's role in protecting its people from the effects of changing times, where all Indonesian residents residing in the Republic of Indonesia are subject to PDP Law. The formation of this PDP Law keeping in mind that the development of the digital era has a great impact on people's lives, so there

is a need for a Law that specifically regulates Personal Data that is processed by an Electronic System, so that there is protection and legal certainty when someone commits the act of including personal data, both one's own and other people's data. In PDP Law, it is explained that "Personal Data Subjects are individuals who attach Personal Data to themselves". Personal Data is a form or embodiment of a person's privacy.

Privacy is a level of interaction or openness that is desired and limited by someone in certain circumstances to other people. There are several types of privacy, such as privacy over the body which means that the body is part of the privacy that is owned by a person. Identity privacy is the freedom of a person to carry out his daily activities or life without knowing his own identity. Then privacy over data which is privacy over data in other words which is Personal Data attached to itself, and also other types of privacy. That way, this attached to someone is part of that person's privacy. Everyone has the right to defend it or the right to keep the privacy that person has. The discussion in this journal aims to discuss a person's privacy in the form of Personal Data, which is a form of fulfilling privacy rights in the digital era so that relevant regulations are formed to protect the data owned by the people of Indonesia.[5]

In the digital era, many aspects of human life require Personal Data as a complementary identity that is used to find out information about a person that is intended to meet the requirements for a certain thing when someone wants to use an Electronic System, which of course is by filling in or attaching it electronically or by using the internet. into the Electronic System. Of course, the development of Information Technology in the digital era has many benefits, one of which is the creation of an Electronic System where many things can be done online through the Electronic System so that a lot of efficiencies are obtained without any space and time limitations. Even so, there must still be laws and regulations that regulate Electronic Systems, Personal Data, Electronic Transactions, and others so that with technological advances in this digital era there is still protection and legal certainty in the event of violations committed by other parties, which of course harms people. other activities that are carried out online or by using electronic systems, and are also aimed at protecting the rights and obligations of interrelated parties. Thus the creation of "Information and electronic transactions, the security of person's data, and the installation of electronic systems are governed by laws 11 of 2008, 27 of 2022, and 71 of 2019, each with a specific goal and advantages.".[6]

3.1. Privacy Rights in Law Number 11 of 2008 concerning Electronic Information and Transactions

The need for protection of one's data in the digital era considering that many things require Personal Data as a type of data that must be filled in or attached in the use of an Electronic System, and also the protection as one of fulfilling one's privacy rights which of course must be protected by the state through its regulations. Protection of this is indirectly regulated in Article 26 paragraph (1) of the ITE Law by providing certainty regarding the privacy rights owned by the Indonesian people, that it is stated that "the use of any information through media or electronic systems that in the information of a person's Personal Data, there must be approval for the person who has the personal data".[7]

So in that Article, it is regulated that the need for permission or approval from the data owner when an Electronic System wants to use the data for their respective purposes. Permission is needed from the person concerned or from the person who has the this because, as previously explained, Personal Data is private and a person has the right to open it with their respective limitations to other parties. The right to lead a private life, communicate unimpeded, and keep track of access information is recognized in Article 26 Paragraph 1 of the ITE Law. Due to the legal protection of personal data, this acknowledgment of privacy enables people to exercise their right to privacy.[8]

3.2. Privacy Rights in Law Number 27 of 2022 Concerning Personal Data Protection

The protection is explicitly regulated in PDP Law. Whereas in the Law the types of Personal Data are classified based on their nature, namely Personal Data which is specific, and Personal Data which is general. Specific Personal Data has a major impact or a great risk to the owner, such as an example of action, namely discrimination or other major losses that can be experienced by the Personal Data Subject. Personal data is general in general data that can identify a person such as full name, religion, nationality, and others.

PDP Law is a derivative of Article 28 paragraph (1) of the 1945 Constitution that people are allowed to protect themselves., which means is the existence of protection for physical and non-physical things that are attached to himself, including Personal Data that is in that person. As stated in Article 1 Point 2 of the PDP Law, protecting it entails making efforts throughout the processing sequence to uphold the constitutional rights

of data subjects. The processing of Personal Data is carried out by the Controller. It can be any person, public agency, or international organization that exercises control over the processing of Personal Data. Article 36 of the PDP Law explains that in processing this, the controller is obliged to maintain the confidentiality. Then the purpose of secrecy in that article is contained in the principle used in this PDP Law which is the principle of secrecy.[9]

The principle of confidentiality in its explanation of the PDP Law means that it must be protected from unauthorized parties and/or from illegitimate processing activities. Bearing in mind that it is a crucial matter as well as the privacy of person. Article 36 of the PDP Law explains that a Data Controller who is also an Electronic System must maintain the confidentiality of its users. Article 38 states that the controller is obligated to protect data from unauthorized processing. This is a form of accountability from an electronic system as a party that processes data of someone, which is intended so that the data will be processed to keep confidential and there is no access from outside parties, especially from parties who do not have authority regarding these matters.[10]

Protection of data involves ensuring constitutional rights of data subjects, as described in Article 1 Point 2 of the PDP Law, through efforts in processing series. The elucidation of these two Articles concludes that each Personal Data Subject as the Owner can exercise his privacy rights, where the data belonging to that person which has been submitted to the controller can be terminated, deleted, or withdrawn according to the wish or approval of the subject of the data. The privacy rights of the subject are realized through full control over their own data, where it can be terminated, deleted, withdrawn, updated, corrected, and others based on the will of the said Personal Data Subject. Article 11 of the PDP Law provides that "Personal Data Subjects have the right to postpone or limit the processing of Personal Data proportionally according to the purpose of processing Personal Data". In this Article 11 it is explained indirectly that Personal Data Subjects as Owners have the right to limit the processing process of the data they possess.[11]

Article 47 of the PDP Law states that the "Personal Data Controller which can be in the form of an Electronic System is obliged to be responsible for the processes carried out on data and is also obliged to carry out accountability in fulfilling the obligations in the principles of this PDP Law. So through Article 47 of the PDP Law", there is an accountability that must be carried out by the controller in every Processing process on the Electronic, so that the rights owned by Electronic System users as well as Subjects can defend and fight for their rights in using the System. The electronics. According to Article 46 paragraph (1) of the PDP Law states that "in the event of a failure in efforts

to protect, the controller is obligated, to give written notice. no later than 3i x 24 hours (three times twenty-four hours) to subjects and institutions”.[12]

A controller fails to secure the data in terms of confidentiality, integrity, or availability, which can lead to security issues, data loss, unauthorized access, or other problems. Data leaking from electronic systems affects the security offered for managing stored data and is a breach of data protection. Whereas Article 46 paragraph (1) of the PDP Law discusses Part of the responsibility of the controller when these violations occur which can harm the Data Subject. Personal in terms of protecting his data. The Data Protection Act regulates the rights of a person as a Subject, and also clearly regulates the obligations and responsibilities of the controller.

Of course, this PDP Law can be used to accommodate all needs in terms of fulfilling the rights and obligations of subjects and the data controllers in the digital era, where a lot of digitization has been implanted in aspects of Indonesian people’s lives which of course require a person’s data. in processing from its Electronic System. So that protection is needed, especially for someone’s Personal Data as the owner because there is privacy that must be maintained in Personal Data.[13]

4. CONCLUSION AND RECOMMENDATION

Based on the results and discussion that the author has discussed in the previous section, the following conclusions are obtained. That the right to privacy as a constitutional right of Indonesian citizens is recognized and regulated in laws and regulations, both in the 1945 Constitution; Law Number 11 of 2008, and Law Number 27 of 2022. Through these laws and regulations, legal protection and certainty are provided to the Indonesian people as subjects who have privacy rights over their Data.

Then it was concluded that data protection is a form of fulfilling one’s privacy rights because there is protection guaranteed by law for data which then indirectly creates legal certainty regarding privacy rights in the form or form of personal data owned by someone, especially in Indonesian society. Then it can also be concluded that many forms of fulfilling privacy rights in this digital era are contained in the protection that is regulated in the PDP Law, where the rights of Owners are explicitly regulated, as are the obligations of Data Controllers. as the party processing the other person’s data.

References

- [1] Asmawi S, Yamin M. Pendidikan Berbasis Teknologi Informasi Dan Komunikasi. Pros. Semin. Nas. Pendidik. Progr. Pascasarj; 2019.
- [2] Aswandi RPRN, Muchsin, Sultan M. “Perlindungan Data Dan Informasi Pribadi Melalui Indonesian Data Protection System (IDPS),” *Lemb. Penal. Dan Penulisan Karya Ilm.* 2020;3:168.
- [3] Fadli M. Pembentukan Undang-Undang Yang Mengikuti Perkembangan Masyarakat. *J. Legis. Indones.* 2018;15:50.
- [4] Kusnadi A. Sekaring Ayumeida Wijaya Usmina, “Perlindungan Hukum Data Pribadi Sebagai Hak Privasi”. *Al Wasath J Ilmu Huk.* 2021;2:1.
- [5] Nyst C. “The right to privacy in the digital age.” *J Hum Rights Pract.* 2017;9. <https://doi.org/10.1093/jhuman/huw026>.
- [6] Rosadi SD, Pratama GG. “PERLINDUNGAN PRIVASI DAN DATA PRIBADI DALAM ERA EKONOMI DIGITAL DI INDONESIA,” *VeJ*, vol. 4, 2018.
- [7] Chotimah HC. “Tata Kelola Keamanan Siber Dan Diplomasi Siber Di Indonesia Dibawah Kelembagaan Badan Siber Dan Sandi Negara.” *J Polit.* 2019;10.
- [8] Rosadi SD, Pratama GG. Urgensi Pelindungan Data Privasi Dalam Era Ekonomi Digital Di Indonesia. *Verit. Justitia.* 2018;4:105.
- [9] Zammi JR. “The court of justice invalidates decision 2016/1250 on the adequacy of the protection provided by the EU-US Data Protection Shield,” Luxembourg, 2020.
- [10] Yuniarti S. “PERLINDUNGAN HUKUM DATA PRIBADI DI INDONESIA.” *J BECOSS.* 2019;1. <https://doi.org/10.21512/becossjournal.v1i1.6030>.
- [11] Pound R. An introduction to the philisophy of law. USA: Yale University Press; 1930.
- [12] Dewi S. “Konsep Perlindungan Hukum Atas Privasi Dan Data Pribadi Dikaitkan Dengan Penggunaan Cloud Computing Di Indonesia,” *DEMO 2 J.*, vol. 22–23, p. 23, 2016. <https://doi.org/10.20961/yustisia.v5i1.8712>.
- [13] Tejomurti RK, Hadi H, Imanullah MN, Indriyani R. “Legal protection for urban online-transportation-user’s personal data disclosure in the age of digital technology.” 2018, 485–505, 487–488.