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Formulation of Specific Personal Data Protection in Relation to Court Decisions

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Abstract.
This research aims to examine and analyze the actualization of specific personal data protection in the context of court decisions. In the digital era and with the advancement of information technology, the protection of personal data has become an increasingly important and relevant issue. However, there is a need to further understand how specific personal data protection is realized and implemented in the context of court decisions. This research adopts a normative legal research method with a legislative and conceptual approach. The data used consists of primary legal materials such as legislation and court decisions related to personal data protection. Additionally, this study also refers to legal literature and expert opinions regarding personal data protection and court decisions. The results of the research indicate that the actualization of specific personal data protection in court decisions is an exception due to the principle of open court proceedings and the publication of trial outcomes. This relates to the specific personal data protection concerning criminal records. There is a need to exempt criminal records from the exceptions stated in court decisions. The importance of exempting personal data protection in the context of court decisions is also emphasized to prevent misuse in the judicial process and maintain public trust in the justice system. This research provides an important contribution to identify and analyze how specific personal data protection can be implemented in court decisions. The implications of this research are expected to provide a better understanding for relevant parties, including the judiciary, government, and the general public, regarding the importance of specific personal data protection in the context of justice.

Keywords: formulation, personal data protection, court decision

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1. Introduction

Every citizen has rights guaranteed by the law, known as constitutional rights. The state has a constitutional responsibility to protect all its citizens. This obligation is enshrined in the Fourth Clause of the Preamble of the Constitution of the Republic of Indonesia in 1945 (UUDRI 1945), which states that the state has a duty to protect the entire Indonesian nation in promoting public welfare, advancing national education, upholding world order based on independence, world peace, and social justice.

One of the 40 constitutional rights of citizens stipulated in UUDRI 1945 is the constitutional right to personal protection. This right is explained in Article 28G Paragraph (1), which generally states that every citizen has the right to protection of their personal self, family, honor, dignity, and possessions under their control. In this article, personal rights are assumed as ownership rights. However, in the era of information and communication technology advancement, the understanding of personal rights should not be limited to mere ownership rights. Personal rights should also be interpreted as the right to privacy. The right to privacy is more sensitive and encompasses the overall concept of personal rights. Personal rights involve sensitive matters, particularly related to personal data or an individual's identity.(Sakaring Ayumeida dan Andy Usmina, ' Perlindungan Hukum Data Pribadi Sebagai Hak Privasi ' , (2021), Vol 2 No 1, Journal Al-Wasath, [20].)

By definition, personal data can be defined as data about an identified or identifiable individual, whether collected separately or combined with other information, whether directly or indirectly, through electronic or non-electronic systems. Meanwhile, the protection of personal data can be described as the overall efforts to safeguard personal data in the processing of such data in order to ensure the constitutional rights of the subjects of the personal data.(Pasal 1 ayat (2) Undang-Undang Nomor 27 Tahun 2022 tentang Perlindungan Data Pribadi)

Indonesia has entered the era of the Fourth Industrial Revolution. Everything can be controlled from anywhere through internet networks and interconnected devices. The implications of this era are significant when digital-based technologies are used by society in their daily lives, such as improving work productivity, building socio-economic relationships, and facilitating various tasks.(Syaifudin.A, 'Perlindungan Hukum Terhadap Para Pihak Di Dalam Layanan Financial Technology Berbasis Peer to Peer (P2P) Lending (Studi Kasus di PT. Pasar Dana Pinjaman Jakarta)", (2020), Vol 26, Dinamika [408].) The development of computer-based information and communication technology has rapidly progressed in society. As a result, society has been facilitated by these technological advancements.(Aswandi, R, Putri R, Muhammad S, 'Perlindungan Data dan Informasi Pribadi Melalui Indonesia Data Protection System (IDPS) ' , (2020) Vol 3, Legislatif, [167].)

The rapid development of technology has extended to various dimensions of human life, including social, cultural, economic, political, and legal aspects. The use of technology has significantly transformed communication patterns, interactions, and even government services to the public.(Rachel Silcock, 'What Is e-Government. Parliamentary Government , 2001, Vol 54, Parliamentary Af-fairs, [88].) In the context of governance, the use of technology for government administration and service delivery to the public is

commonly referred to as e-Government. E-Government was first implemented in various countries since the early 2000s, both in developed and developing nations,(Svenja Falk, et al (eds), 'Digital Government: Leveraging Innovation to Improve Public Sector Performance and Outcomes for Citizens ', (Switzerland: Springer Internasional Publishing 2017), [6].) including Indonesia.

The implementation of e-Government in Indonesia began in 2001 with the issuance of Presidential Instruction Number 6 of 2001 on the Development and Utilization of Telematics in Indonesia (Telematics Presidential Instruction 2001). Subsequently, in 2003, Presidential Instruction Number 3 of 2003 was issued on the National Policy and Strategy for the Development of e-Government (e-Government Presidential Instruction), which specifically regulated the government's policy on e-Government implementation in Indonesia. In the considerations, it was explained that the issuance of the Presidential Instruction aimed to encourage the use of technology in the government processes to enhance efficiency, effectiveness, transparency, and accountability in governance.

As a further step in strengthening the foundation of e-Government implementation in Indonesia, in 2018, Presidential Regulation Number 95 of 2018 on the Electronic-Based Government System (SPBE Presidential Regulation) was issued. In principle, the SPBE Presidential Regulation refers to the concept of e-Government based on the definition stated in the regulation, which is "the implementation of governance that utilizes information and communication technology to provide services to SPBE users".(Pasal 1 angka 1 Peraturan Presiden Nomor 95 Tahun 2018 tentang Sistem Pemerintahan Berbasis Elektronik.)

By implementing the SPBE, the government aims to leverage new technologies such as big data, the Internet of Things, Artificial Intelligence, and others. The Master Plan for SPBE, which is attached to the SPBE Presidential Regulation, also accommodates the utilization of these technologies. However, the use of these technologies also poses its own challenges, particularly regarding privacy issues and the protection of personal data. Considering that through the use of these technologies, the government can collect and process massive amounts of public data, concerns arise regarding the use and protection of personal data by the government as the data holder.(Faiz Rahman, ' Kerangka Hukum Perlindungan Data Pribadi Dalam Penerapan Sistem Pemerintahan Berbasis Elektronik Di Indonesia ', 2021, Vol 18, Jurnal Legislasi Indonesia, [83].)

The relation between the protection of personal data and court decisions lies in the protection of criminal records.(Pasal 4 ayat (2) huruf d Undang-Undang Nomor 27 Tahun 2022 tentang Perlindungan Data Pribadi) Furthermore, "catatan kejahatan" refers to written records of individuals who have committed unlawful acts or violated the law

or are undergoing legal proceedings for their actions. This includes police records and the inclusion in prevention or denial lists.(Penejelasan Pasal 4 ayat (2) huruf d Undang-Undang Nomor 27 Tahun 2022 tentang Perlindungan Data Pribadi)

The explanation above can be summarized that criminal records, including those included in court decisions, are protected by Law Number 27 of 2022 concerning Personal Data Protection, hereinafter referred to as the PDPA. However, how does the principle of open and public court proceedings and the public disclosure of court decisions apply?

Based on the aforementioned exposition, this research focuses on discussing the position of court decisions within the concept of personal data protection in Indonesia and formulating an ideal concept of specific personal data protection that aligns with the principles of justice in Indonesia. Therefore, it is expected that this research can complement and provide additional perspectives in the study of personal data protection laws that already exist.

In this research, the method used is normative legal research method, which emphasizes literature research on secondary data,(Soerjono Soekanto. Pengantar Penelitian Hukum . (UI Press 2007). [9].) With a descriptive research nature,(Soerjono Soekanto dan Sri Mamudji. Penelitian Hukum Normatif: Suatu Tinjauan Singkat . (Rajawali Press 2015). [14].) There are two approaches used to address the raised issues, namely the legal approach and the conceptual approach.(Peter Mahmud Marzuki. Penelitian Hukum: Edisi Revisi. (Kencana 2005) [19].)

2. Ideal Formulation of a Specific Concept of Personal Data Protection in Harmony with the Principle of Justice in Indonesia

The rapid advancement of information and communication technology has brought about various opportunities and challenges. Information technology enables people to connect with each other without geographical boundaries, thus being a driving factor of globalization. Various sectors of life have utilized information technology systems, such as electronic commerce (e-commerce) in the trade/business sector, electronic education (e-education) in the field of education, electronic health (e-health) in the healthcare field, electronic government (e-government) in the governance sector, and information technology utilized in other fields. The utilization of information technology has made it easy to collect and transfer someone's personal data from one party to

another without the knowledge of the Personal Data Subject, thereby threatening the constitutional rights of the Personal Data Subject.

The protection of personal data falls within the realm of human rights protection. Therefore, the regulation concerning personal data is a manifestation of the recognition and protection of fundamental human rights. The existence of a Personal Data Protection Law is an urgent necessity that cannot be further delayed, as it is crucial for various national interests. Indonesia's international engagement also requires the protection of personal data. Such protection can facilitate transnational trade, industry, and investment.

The Personal Data Protection Law is mandated by Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "Every person has the right to the protection of their personal selves, families, honor, dignity, and possessions under their control, as well as the right to feel safe and protected from threats and fears of any actions that infringe upon their basic rights." The issue of personal data protection arises due to concerns about violations of personal data that individuals and/or legal entities may experience. Such violations can result in material and non-material losses.

The formulation of rules on personal data protection can be understood as a response to the need to protect individual rights within society in relation to the processing of personal data, whether electronically or non-electronically, using data processing devices. Adequate protection of personal data will instill public trust in providing their personal data for various larger societal purposes without it being misused or violating their privacy rights. Thus, this regulation will create a balance between individual rights and the interests of society represented by the state. The regulation on personal data protection will make a significant contribution to the establishment of order and progress in an information society.

According to the Personal Data Protection Law itself, the protection of personal data encompasses specific personal data and general personal data.(Pasal 4 ayat (1) Undang-Undang Nomor 27 Tahun 2022 tentang Perlindungan Data Pribadi) The Personal Data Protection Law classifies specific personal data as follows:

1. Health data and information;
2. Biometric data;
3. Genetic data;
4. Criminal records;
5. Child data;

6. Personal location data; and/or
7. Other data as stipulated by the regulations.

Meanwhile, personal data of a general nature includes:

1. Full name;
2. Gender;
3. Nationality;
4. Religion;
5. Marital status; and/or
6. Combined personal data that identifies an individual.

The correlation between the protection of personal data and court decisions relates to criminal records as stated in Article 4, paragraph (2), letter d of the Personal Data Protection Law (UU PDP), considering the principle of open court proceedings and the publication of verdicts that are publicly accessible. “Criminal records” refer to written records that contain information about an individual who has committed unlawful acts or is undergoing a judicial process due to their actions. These records include details of the criminal incidents, dates of occurrence, types of legal violations committed, and other relevant information.

In the context of criminal records, court decisions refer to official rulings issued by a court after a legal process against an individual accused of committing a legal offense. Court decisions involve determining whether someone is guilty or not guilty, as well as imposing appropriate punishment or sanctions if found guilty.

Court decisions are also part of criminal records as they reflect an individual’s legal status concerning their actions. Information about court decisions is recorded in criminal records for data storage purposes and providing information about a person’s criminal record.

Criminal records, including court decisions, play a crucial role in law enforcement and legal decision-making. The information contained in criminal records can be used by law enforcement agencies, the judiciary system, or other relevant parties to determine appropriate actions, such as imposing penalties, supervision, or rehabilitation measures.

It is important to ensure that criminal records and court decisions are created and accessed while upholding the principles of justice, privacy, and the protection of individual rights. The principle of presumption of innocence must be upheld, and only relevant and necessary information should be used in decision-making based on criminal records.

Court decisions are still closely related to the principle of open court proceedings. Simply put, open court proceedings are court sessions that are open and can be attended by the general public. The legal basis for open court proceedings states that "For the purpose of examining, the presiding judge opens the session and declares it open to the public, except in cases concerning morality or involving children as the accused".(Pasal 153 ayat (3) Kitab Undang-Undang Hukum Acara Pidana) Those provisions must be followed and implemented, and if they are not fulfilled, it will result in the nullification of the legal decision.

The open court hearing aims to ensure that all court proceedings are clear, visible, and known to the public, as court proceedings should not be perceived as obscure, closed, or whispered in a hidden manner.(M. Yahya Harahap. Pembahasan Permasalahan dan Penerapan KUHAP (Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali). (Sinar Grafika 2010). [109].) In addition to being regulated in the Indonesian Criminal Procedure Code (KUHAP), open court hearings for the public are also governed by Article 13 of Law Number 48 of 2009 concerning Judicial Authority, which states that:

1. All court examination hearings are open to the public, unless otherwise determined by law.

2. Court decisions are only valid and legally binding when pronounced in open court hearings.

3. Failure to comply with the provisions as mentioned in paragraph (1) and paragraph (2) results in the nullity of the decision in terms of the law.

The provision of open court hearings to the public is a legal principle stating that court proceedings should be accessible and witnessed by the general public, unless there are specific legal reasons to hold closed sessions. This principle aims to maintain transparency, accountability, and public trust in the judicial process.

Furthermore, court decisions are typically read openly and published to the public. This is done to provide legal clarity, deterrence against lawbreakers, and inform the public about legal rulings.

However, when referring to the Personal Data Protection Law (UU PDP), there is a conflict between the principle of open court hearings and the protection of personal data. The UU PDP regulates the privacy rights of individuals regarding the collection, processing, and dissemination of personal data. Information about criminal records is considered sensitive personal data and protected by the UU PDP.

Therefore, adjustments to the UU PDP can be a solution to balance the principle of open court hearings with the protection of personal data. In this context, criminal records originating from court decisions can be exempted from the privacy protection regulated by the UU PDP. This allows court decisions and relevant criminal records to remain public information and accessible to the public.

It is important to note that any changes to the UU PDP should be done carefully and consider the principles of personal data protection and related individual rights. Appropriate legal adjustments should strike a balance between public interests, legal transparency, and privacy protection.

The explanation regarding the provision of open court hearings to the public and the open reading and publication of court decisions to the public indicates a conflict between the principle of open court hearings and the Personal Data Protection Law (UU PDP), which regulates privacy protection related to criminal records. Therefore, adjustments to the UU PDP are needed to exclude criminal records originating from court decisions.

Court decisions are expected to be excluded from criminal records as intended by the UU PDP. This is because the phrase “criminal records,” which also includes court decisions in the concept of the UU PDP, contradicts the principle of open court hearings. Thus, court decisions should be excluded as criminal records.

Therefore, there needs to be a formulation regarding the conceptualization of the regulation of criminal records that does not include court decisions in the concept of personal data protection. This refers to the Stufenbau theory or the theory of positive law, which explains the origins of law and its emergence in positive legal regulations. The Stufenbau theory is part of legal science and not a matter of legal policy”.(FX. Adji Samekto, ‘Menelusuri Akar Pemikiran Hans Kelsen Tentang Stufenbeautheorie Dalam Pendekatan Normatiffilosofis’ , (2019), Vol 7, Jurnal Hukum Progresif„ [1].)

The Stufenbau theory views that the law must be systematic, meaning that it should be organized from general to specific, resembling an inverted pyramid. The process is referred to as “concretization.” It is depicted as an inverted pyramid.

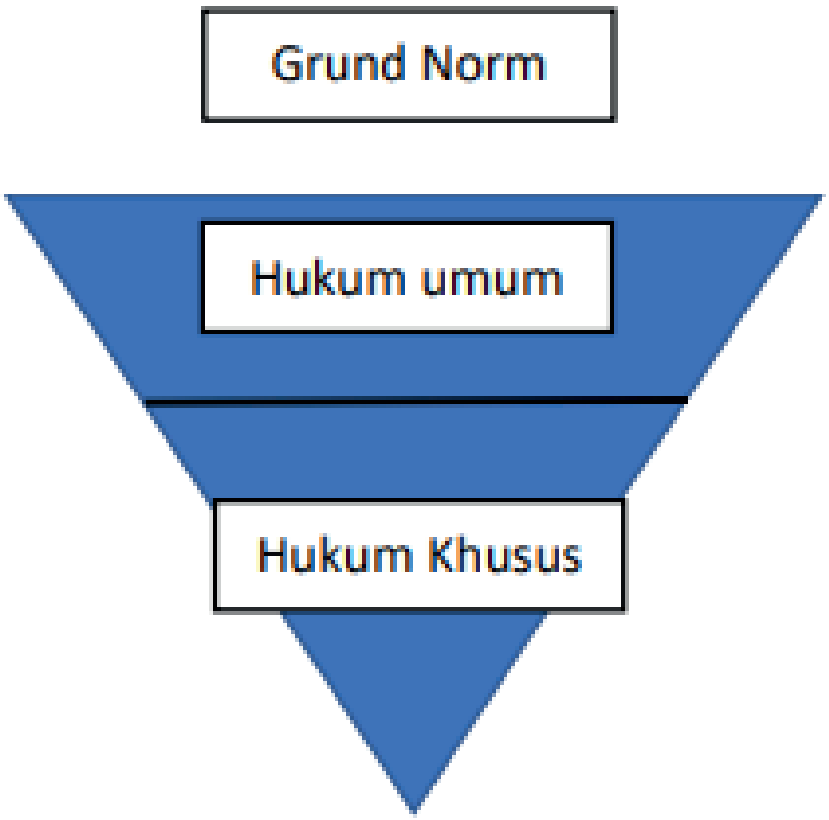

Figure 1: Stufenbau Theorie.

The Grundnorm is the source of all legal sources or legal values in Indonesia, namely Pancasila with its five principles. The position of the Grundnorm is outside the pyramid, meaning that it is not considered law according to the Stufenbau theory.

Furthermore, in the formation of regulations, it is necessary to consider values and principles as the basis for legislation, so that these principles and values are abstract references that are concretized into general laws, namely the 1945 Constitution of the Republic of Indonesia, and the regulations that are subordinate to it, down to specific and concrete regulations. Law also contains legal norms, which are guiding principles for behavior, stating what is allowed and what is not allowed. Therefore, the position of principles is prioritized, and thus, the PDP Law needs to be adjusted regarding the regulation of criminal records by excluding court decisions, based on the consideration of the fundamental position of principles over specific articles in a legislation.

Therefore, the conceptual formulation of the article in the PDP Law can be seen as follows:

Table 1: Conceptual Formulation of Criminal Record in the Personal Data Protection Law.

No	the current rules	Conceptualization of Regulation
1	**Article 4, paragraph (2) of the Personal Data Protection Law** Specific Personal Data as referred to in paragraph (1), letter a, includes: health data and information; biometric data; genetic data; criminal records; children's data; personal financial data; and/or other data as stipulated by the regulations. **Explanation of Article 4, paragraph (2), letter d of the Personal Data Protection Law** The term "criminal records" refers to written records about an individual who has engaged in unlawful acts or violations of the law or is undergoing legal proceedings for their actions. This includes police records and inclusion in prevention or denial lists.	**Article 4, paragraph (2) of the Personal Data Protection Law** Specific Personal Data as referred to in paragraph (1), letter a includes: health data and information; biometric data; genetic data; criminal records; data of children; personal financial data; other data as stipulated by laws and regulations; and/or Except for data based on court decisions. **Explanation of Article 4, paragraph (2), letter d of the Personal Data Protection Law** The term "catatan kejahatan" refers to written records about an individual who has committed or violated the law or is currently undergoing legal proceedings for their actions, including police records and inclusion in preventive or denial lists, except for data originating from court decisions.

3. Conclusion

Court decisions should be excluded from the concept of "catatan kejahatan" (criminal records) in the Personal Data Protection Law. This is due to the conflict between the provisions of Article 4 paragraph (2) letter d of the Personal Data Protection Law, which regulates the protection of personal data including criminal records, and the principle of a free and open court.

In the context of personal data protection, it is important to consider the principle of open and public court decisions. Article 4 paragraph (2) letter d of the Personal Data Protection Law may limit the accessibility of court decisions to the general public, creating a closed and secretive impression.

In this regard, it is necessary to formulate or adjust the Personal Data Protection Law to exclude court decisions from the concept of criminal records. This exception will ensure justice and legal certainty in disclosing information that should be known to the general public.

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