

LEGAL PROTECTION OF PERSONAL DATA BASED ON REGULATION IN INDONESIA**Jumriani Nawawi**

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ABSTRACT

This research focused on how positive law provides legal protection against the use of personal data in Indonesia. This research aims to find out the various problems related to legal protection of the use of personal data based on human rights principles by providing benefits and guarantees of legal certainty for the public against the protection of personal data both electronically and non-electronically. This type of research is normative juridical research. Research is carried out qualitatively by relying on library research studies. The results showed that forms of abuse such as theft and the sale of personal data violate the law in information technology and can also be categorized as a violation of human rights because personal data is part of human rights that must be protected. Legal protection of personal data in Indonesia from a positive legal perspective has been realized by several regulations that regulate. Still, no one has comprehensively regulated the protection of personal data.

Keywords : Law; Personal Data; Legal Protection

INTRODUCTION

The Republic of Indonesia includes human rights regulations in its Constitution (UUD). The preamble to the 1945 Constitution does not specifically mention human rights in the words: "that independence is the right of all nations...". So the elaboration of the concept of legal protection of human rights is regulated in the body of the 1945 Constitution (after the amendments), namely in Article 28A-J, Article 29, Article 30, Article 31 and Article 34. Human rights are rights that are



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recognized as rights. rights inherent in humans because of their nature and nature. One of the most basic rights is the right to freedom. Without the right to freedom, it is impossible for humans to develop their potential naturally as human beings in their full quality.¹

With the development of information and communication technology, personal rights should not only be interpreted as property rights. Personal rights should also be interpreted as privacy rights. Privacy rights are more sensitive which can represent these personal rights. Personal rights are sensitive matters relating to personal data or a person's identity. The identity starts from Identity Card (KTP), Driver's License (SIM), Passport, Family Card (KK), Taxpayer Identification Number (NPWP), Account Number, Fingerprint, Characteristics of a person and so on.

The constitutional rights regulated in the 1945 Constitution of the Republic of Indonesia include the rights of citizens. One of them is the right to personal self-protection, as regulated in Article 28F of the 1945 Constitution which contains the provisions "Everyone has the right to communicate and obtain information for personal and social development, and has the right to seek, obtain, possess, store, process and convey information. by using all available channels" and Article 28G paragraph (1) which contains provisions that every person has the right to personal protection, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear of to do or not to do something that is a human right.

Along with technological advances, especially the use of the internet in the current digital era, it is very closely related in everyday life. The majority of people use the internet as a medium of assistance in carrying out various activities, with the hope that they can carry out all these activities effectively, accurately and efficiently. The development of technology, information and communication allows the distribution of information and data quickly. The internet, which was originally only for publishing information (one way) later turned into a more interactive pattern and later became a means for

¹ Akub, M. S., & Ilyas, A. (2013). *Wawasan Due Process Of Law Dalam Sistem Peradilan Pidana*, Rangkang Education, p. 79.



transacting. The development of internet-based community activities cannot be separated from the fact that the user's personal data is used which is the privacy of the user. According to Amos Rapoport, privacy is the ability to control interactions, the ability to obtain choices and the ability to achieve the desired interactions.²

The regulation of legal protection for the misuse of personal data as a perfect form of crime in an effort to provide legal certainty to the community.³ The misuse of personal data without realizing it can occur because it is the negligence of the potential victim (the community) itself in carrying out their daily activities. For example, without us knowing it when buying a starter pack and then asking the counter clerk to register it, when downloading the application, attaching personal data in the platform or form and so on which the counter officer can unknowingly misuse and potentially cause harm. for data owners. In addition, as a result of the rapid development of science and technology nowadays, what is popularly used is related to big data. Big data is considered a promising solution in processing data because it is able to process large and varied data and can make accurate attachments, thus making big data not only used by the government but also by the private sector.

METHOD

This type of research is normative juridical research. Research is carried out qualitatively by relying on library research studies. In this study, researchers used qualitative descriptive analysis with content analysis methods, namely analyzing data obtained from literature studies related to problems regarding the legal protection of the use of personal data.

RESULT AND DISCUSSION

² Edmon Makarim, "Kerangka Kebijakan Dan Reformasi Hukum Untuk Kelancaran Perdagangan Secara Elektronik (E-commerce) Di Indonesia", *Jurnal Hukum & Pembangunan*, <https://doi.org/10.21143/jhp.vol44.No.3.25>

³ <https://fhukum.unpatti.ac.id/jurnal/sasi/article/view/394/285>, Penyalahgunaan Data Pribadi Sebagai Bentuk Kejahatan Sempurna Dalam Perspektif Hukum Siber, accessed on March 15, 2022.



Misappropriation of Personal Data in Indonesia

In recent times, the rapid development of technology is marked by the increasing urgency of information and data management in various aspects of each individual's life. With the increasing availability of many forms of media technology, now every individual has many choices for any information they want to obtain. More and more public and private institutions can use new information technology to simplify human life, efficiency, and productivity.

Globalization is seen and understood as a standard process that cannot be avoided from the progress of human civilization in the field of science and technology (Science and Technology), especially in communication and information technology; with technological advances so rapidly, the use of electronic media and information technology has a significant role and has penetrated various sectors of human life.⁴ The position of electronic media and information technology has also changed the level of people's daily lives in terms of economics, law, politics and culture. So that technology can no longer be underestimated in its use.

In today's era, we cannot escape from advances in information and communication technology. Recent developments, especially when the world is facing the COVID-19 pandemic, from the world of education having e-learning, the business world being busy with e-commerce, to the government starting its e-government. That's how vibrant it is; now, everything is e-mailed, such as e-banking, e-tax, e-registration, e-campus, e-books, etc.

Utilization of technology and data information is beneficial both in the fields of education and the economy and others; matters relating to the development of science, science and so on are easily accessible so that billions and even trillions of information can be received quickly. . In the field of work, the management of large amounts of data can be appropriately managed, quickly, effectively and efficiently and minimize errors.

⁴ Abdul Wahid dan Mohammad Labib, *Kejahatan Mayantara (Cybercrime)*, Cetakan kedua (Bandung: Refika Aditama, 2010), p 6.



In the economic field, promotions and potentials in improving the community's welfare are carried out quickly without limitation of place or region and reach all levels of society, both nationally and internationally. However, the development of technology and information provides benefits and causes problems that can harm the community, such as data misuse, theft of personal data, sales of personal data, fraud, and others.

Concerns about the misuse of personal data are also seen that a percentage of 59% of internet users feel anxious if their data is misused by companies or certain parties with the motive of mere profit, which harms the data owner. The increase in internet users is inseparable from public awareness of technology that demands convenience in the era of globalization as a supporting factor for other activities, including the emergence of new forms of crime.

Personal data in this 21st-century era has become a "sexy item" because the shift in the real world, which is increasingly shifting to new things in the form of visuals, is becoming easier for all activities to do. The adage "crime is a product of society itself" applies to the rapid development of information technology that creates new things in the legal world. The crime of using technology as an internet-based media appears and is growing in society, becoming a common thing.⁵

Business actors or electronic system operators can collect personal data from customers or prospective customers offline or online, where digital data can be traded without the knowledge and permission of the data owner or misused such as for purposes other than giving, submission of digital personal data, personal data can also occur. Connected is hijacked and stolen (hacked) by third parties. With the misuse of personal data, it can be seen that there are system weaknesses and a lack of supervision, so personal data can be misused and result in losses for the owner of the data.

Large companies use it to study consumer behavior, such as loyalty, visit patterns, purchase history, and others, to effectively market their products or services. But on the other hand, the abuse of

⁵ Afitrahim, *Yurisdiksi Dan Transfer of Proceeding Dalam Kasus Cybercrime*, Tesis, Universitas Indonesia, 2012, p 2.



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big data can not be denied and threaten a person's privacy. For example, the turmoil that arises when you have to register personal data such as identity cards (KTP) and family cards (KK); another example is the history of online motorcycle taxi applications, where there is an opportunity for data misuse that causes losses. In addition, currently, there is a dark website that is suspected of being able to retrieve data from users of the Zoom application. In this regard, there are several examples of cases of misuse of personal data, including:⁶

1. Copying data and information on the customer's ATM card (skimming) where the skimming actor withdraws funds elsewhere.
2. Online loans, where the transaction mechanism fills data online, but in the case of late payments, it is not uncommon to use collectors to intimidate customers, customers' families, leaders where customers work and can even access data from customers cellphones.
3. Online transportation, where consumers experience sexual harassment via WhatsApp numbers.

In banking practice, personal data exchange is carried out through a sharing system, exchanging information about customers' data between card centers, disclosing information, including transactions related to credit cardholders to third parties or being traded between banks themselves or through third parties namely both individuals and groups. Companies that collect data and trade people's data.

Legal Protection of Personal Data based on Regulation in Indonesia

In the current era of globalization, where all transactions are based online, it is very unfortunate that Indonesia has not yet had special rules regarding the protection of personal data at the legal level. Regulations regarding the protection of personal data in Indonesia already have several regulations that regulate personal data protection;

⁶ <https://fhukum.unpatti.ac.id/jurnal/sasi/article/view/394/285>, Penyalahgunaan Data Pribadi Sebagai Bentuk Kejahatan Sempurna Dalam Perspektif Hukum Siber, accessed on January 15, 2022.



at least some statutory provisions generally regulate the obligation to provide personal data protection in Indonesia. One of them is also regulated in Law no. 39 of 1999 concerning Human Rights, which in several articles guarantees the protection of citizens' privacy rights. Provisions regarding personal data information in Indonesia are still partially regulated and have been mentioned in several sectoral laws governing the confidentiality of personal information/data. There are at least 32 laws whose material is related to the regulation of personal data, ranging from the financial sector, taxation, security, population, archives, telecommunications law enforcement, and banking to the health sector.⁷

According to Satjipto Raharjo, legal protection protects human rights (HAM) that are harmed by others. That protection is given to the community to enjoy all the rights granted by law. Law can be functioned to realize adaptive, flexible, predictive, and anticipatory protection. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.⁸

According to Fitzgerald explains, Salmond's theory of legal protection is that the law aims to integrate and coordinate various interests in society because, in a cross-interest, protection of particular interests can only be done by limiting various interests on the other hand. The interest of the law is to take care of human rights and interests so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages; namely, legal protection is born from a legal provision and all legal regulations provided by the community, which are an agreement by the community to regulate behavioral relations between community members and between individuals and the

⁷ ELSAM, "UU Perlindungan Data Pribadi Penting Segera Diwujudkan", <https://elsam.or.id/uu-perlindungan-data-pribadi-pentinga-segera-diwujudkan/>, accessed on January 15, 2022

⁸ Satjipto Rahardjo, Ilmu Hukum, PT. Citra Aditya Bakti, Bandung, 2000, p 53.



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government, which are considered to represent the interests of the community.⁹

There are several regulations related to the protection of personal data which, apart from being regulated in:

1. The 1945 Constitution of the Republic of Indonesia and
2. Law Number 39 of 1999 concerning Human Rights is also regulated in
3. Law Number 36 of 1999 concerning Telecommunications,
4. Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration,
5. Law Number 14 of 2008 concerning Openness of Public Information,
6. Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

In addition, the urgency of personal data protection can be seen with the protection of personal data as part of human rights regulated in Article 12 of the Universal Declaration of Human Rights (UDHR), which provides a legal basis for member countries in terms of the state's obligation to protect and respect human rights. on the individual citizens of their respective countries. In addition, in the International Covenant on Civil and Political Rights (ICCPR). This Convention was born on December 16, 1966, through Resolution 2200 A and has been in force since March 23, 1976. This international legal instrument provides more explicit protection of the human person's rights. Article 17, paragraph (1) of the ICCPR states that no one will experience arbitrary or unlawful interference with his privacy, family, home or correspondence or any unlawful attack on his honor and reputation; everyone has the right to protect the law against such interference or

⁹ Phillipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*. PT. Bina Ilmu, Surabaya, 1987, p 20.



attack. This Convention emphasizes that no one can be treated arbitrarily or unlawfully, interfering with his personal, family, home or correspondence matters. This Convention further gives authority to each country to make legal instruments to protect its citizens so that it is the obligation of countries that have ratified the Convention to implement it.

However, it turns out that, even though many regulations regulate the protection of personal data, until now, there is still no one comprehensive legal umbrella discussing the protection of personal data. This causes these regulations to be sectoral and have different understandings or definitions regarding personal data. In addition, there are no strict rules, especially regarding criminal sanctions, that can be a legal umbrella to provide legal certainty in the protection of personal data, thus providing a deterrent effect for perpetrators. It is deemed necessary to have a definite and clear legal umbrella so that law enforcement officers can act against the leakage of personal data that deviates from their obligations, especially in terms of protecting personal data. With the rules that regulate specifically and ultimately, law enforcement will be more specific in taking action against all things that are detrimental to the community regarding personal data, which is often a problem in every case, one of which is in terms of online loans which are now more widely used by people to meet their needs.

The insistence on the need for comprehensive personal data protection regulations and the unavailability of strategic guidelines in the governance of personal data protection in Indonesia indicates that it is necessary to map out a strategy for implementing personal data protection regulations when these regulations are passed. This strategy can be seen from the aspect of the readiness of personal data managers in carrying out their duties and the public opinion that is currently developing regarding the protection of personal data. However, until now, in preparing and discussing the Draft Law (RUU) for Personal Data Protection, there has been no reference or strategic guideline regarding the governance of personal data protection itself.



CONCLUSION

1. The problem of misuse of personal data is a form of crime. Some cases of misuse of personal data show that there is still less than optimal and less effective protection of personal user data.
2. Several regulations governing the legal protection of personal data are still cross-sectoral. There is no comprehensive legal umbrella in dealing with the misuse of personal data. Positive law in Indonesia in protecting the use of personal data is still in the form of a Draft Personal Data Protection Law.

REFERENCES

Akub, M. S., & Ilyas, A. 2013. Wawasan Due Process Of Law Dalam Sistem Peradilan Pidana, Rangkang Education.

Abdul Wahid dan Mohammad Labib, Kejahatan Mayantara (Cybercrime), Cetakan kedua Bandung: Refika Aditama, 2010.

Phillipus M. Hadjon, Perlindungan Hukum Bagi Rakyat Indonesia. PT. Bina Ilmu, Surabaya, 1987.

Satjipto Rahardjo, Ilmu Hukum, PT. Citra Aditya Bakti, Bandung, 2000.

Edmon Makarim, "Kerangka Kebijakan Dan Reformasi Hukum Untuk Kelancaran Perdagangan Secara Elektronik (E-commerce) Di Indonesia", Jurnal Hukum & Pembangunan, <https://doi.org/10.21143/jhp.vol44.No.3.25>

Afitrahim, Yurisdiksi Dan Transfer of Proceeding Dalam Kasus Cybercrime, Tesis, Universitas Indonesia, 2012.

ELSAM, "UU Perlindungan Data Pribadi Penting Segera Diwujudkan", <https://elsam.or.id/uu-perlindungan-data-pribadi-pentinga-segera-diwujudkan/>, diakses pada tanggal 15 Januari 2022.

<https://fhukum.unpatti.ac.id/jurnal/sasi/article/view/394/285>, Penyalahgunaan Data Pribadi Sebagai Bentuk Kejahatan Sempurna Dalam Perspektif Hukum Siber, diakses tanggal 15 Maret 2022.

<https://fhukum.unpatti.ac.id/jurnal/sasi/article/view/394/285>, Penyalahgunaan Data Pribadi Sebagai Bentuk Kejahatan Sempurna Dalam Perspektif Hukum Siber, diakses pada tanggal 15 Januari 2022.

