

The Analysis of the Role & Obligations of Notaries in Protecting Data Security Based on the Personal Data Protection Law

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Abstract. *Notaries as public officials who are authorized to make authentic deeds carry out their duties and authorities inseparable from the processing of Personal Data, both physical and electronic. Notaries process Personal Data not only for Personal Data subjects, namely Clients, but also for workers or interns, or third parties whose information is provided by the Client. Since the enactment of the PDP Law, Notaries as officials who make authentic deeds in processing Personal Data are not only obliged to maintain the confidentiality of Personal Data, but there are also several other obligations regulated in the PDP Law as an effort to prevent and eradicate potential cybercrime. In this study, the author will dissect the role and obligations of Notaries in the security of Personal Data based on the PDP Law. The study used a normative legal method with a statutory approach and a conceptual approach. Through this study, it is concluded that a Notary as an official who makes authentic deeds has a crucial role, namely as a Personal Data Controller who can determine the purpose and method of processing personal data. Notaries have several obligations as regulated in the PDP Law, including having a basis for processing, ensuring the security of personal data, assessing the impact of Personal Data Protection, recording all personal data processing activities, appointing Personal Data Protection officials, fulfilling the rights of personal data subjects, and others. The ultimate goal of this study is expected to provide knowledge and legal certainty related to Personal Data Protection in notarial practice.*

Keywords: *Controller; Data; Notary; Obligations; Personal; Processing.*

1. Introduction

The rapid development of technology has resulted in many significant changes in almost all aspects of people's lives. Technological advances provide many conveniences for people ranging from the transfer of communication media, documentation, lifestyle, and others. However, like two sides of a coin, technological advances that provide convenience also bring negative impacts

not only on people's culture, but also the potential for crime using technology, such as phishing, insider threats, malware and ransomware, data breaches, hacking, social engineering, unauthorized use of data, and others. The use of cyberspace to carry out data collection, storage, exchange, and/or validation activities provides space for everyone to move in the shadows to steal or seize information that can be misused without the owner of the data knowing. Therefore, strict and effective legal protection is needed to prevent and eradicate cybercrime.

In October 2022, the Indonesian Government passed Law No. 27 of 2022 concerning Personal Data Protection ("**PDP Law**") to fulfill the basic human rights of the community to self-protection as stipulated in the 1945 Constitution of the Republic of Indonesia. The ratification of the PDP Law is a form of response from the Indonesian Government and the House of Representatives to the community's need for protection and legal certainty, especially with the increasing number of cases of violations involving data, especially incidents of leaks and misuse of Personal Data (Juan Matheus & Ariawan Gunadi, 2024). Through the PDP Law, many preventive and repressive efforts are regulated to ensure that Personal Data is not misused without the knowledge of the data owner which can later harm the data owner either directly or indirectly. Moreover, Personal Data as a movable and intangible object can be transferred quickly without limitations of space and time.

Personal Data is data about an individual who is identified or can be identified individually or in combination with other information either directly or indirectly through an electronic or non-electronic system. An individual who has Personal Data attached to him/herself is referred to as a Personal Data Subject. In daily activities, Personal Data is a person's identity and personal information that is often used and requested to identify a person in a legal act. The party receiving Personal Data verifies and processes Personal Data including activities of obtaining and collecting, processing and analyzing, storing, correcting and updating, displaying, announcing, transferring, disseminating, or disclosing; and/or deleting or destroying. From the explanation above, it can be seen that the regulation of Personal Data Protection results in many legal implications because the objects and legal acts regulated are related to the entire series of data processing activities inherent in an individual. Even by storing a person's Personal Data, even though the legal relationship between the parties has ended, it is included in the Personal Data processing activity. The legal implications that occur after the birth of the PDP Law (Sisca, 2024) are that all legal subjects who manage Personal Data and/or use Personal Data for certain purposes will be subject to and comply with the PDP Law without exception. This also applies to Notaries as officials who make authentic deeds.

According to Article 1 number 1 of Law No. 30 of 2004 concerning the Position of Notary ("**UUJN**"), it is defined that a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. The position of Notary is basically a public office, but has a scope of work in private legal construction (Kurniawan Tribowo & Alif Ridwan Pramana Putra, 2021). Notaries in carrying out their duties

and authorities are one of the parties that cannot be separated from the processing of Personal Data. In notarial practice, Notaries act as parties who process Personal Data, namely by collecting Personal Data from users of Notary services to make notarial deeds, analyzing Personal Data to validate the truth that will be recorded in authentic deeds, storing Personal Data in minutes of deeds or other documents, and others. Then the Notary will include the Personal Data of the Client or other parties in the notarial deed, which includes the identities of the parties who will be included in the body of the deed, the identities of witnesses at the end of the deed, and other information that is in accordance with the written evidence and statements from the Client. Data and information received by Notaries are confidential and are only used for making notarial deeds.

Technological developments have brought about significant changes in Notarial practice, with the use of digital platforms for the storage, exchange and verification of legal documents (Mislaini dan Habib Adjie, 2023). Moreover, in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary (“UUJN-P”) the concept of Cyber notary has been introduced, which is a concept that is closely related to technological advances in creating authentic deeds in cyber space and can help notaries carry out their daily activities (Wicaksono, 2023). From the introduction of this concept, it is known that lawmakers realize that with global developments in economic, social, cultural, educational and other aspects, notarial practices must adapt and be dynamic, namely leading to the use of technology. In addition, in practice, Notaries have also used technology in their daily activities such as storing data/documents in information systems, transferring data/documents with electronic communication media, and others. Therefore, awareness and data protection systems in notarial practices are crucial to be developed and implemented as mandated by the PDP Law.

Basically, the obligation related to data security carried out by Notaries is not something new. Article 16 paragraph (1) letter f of the UUJN-P has regulated that Notaries are obliged to keep confidential everything regarding the deeds they make and all information obtained in making the deed and Notaries can only disclose the contents of the deed, grosse deed, copy of the deed or extract of the deed to certain parties, namely to people who are directly interested in the deed, heirs or people who obtain rights, unless otherwise determined by statutory regulations. However, with the enactment of the PDP Law, there are additional regulations that must be adjusted in notarial practice.

Based on the background above, the author is interested in discussing more deeply the role and obligations of Notaries in Personal Data Protection after the enactment of the PDP Law. This discussion is important and interesting because with the development of the current era, notary practices are no longer limited to conventional or face-to-face data and information transfer activities, but have used electronic media. Moreover, the concept of cyber notary has now been introduced as one of the Notary's authorities in the UUJN-P. In general, this study aims to analyze the role and legal implications for Notaries in fulfilling the obligation to Protect Personal Data as observed in the PDP Law.

2. Research Methods

The method used in this study is normative juridical by analyzing based on the policy of laws and regulations on Personal Data Protection and Notary Positions applicable in Indonesia. This study uses a statute approach and a conceptual approach. The regulatory approach in this study is used by dissecting the regulations regarding Personal Data Protection which are more specific in Law No. 27 of 2022 concerning Personal Data Protection. This approach will be elaborated with a conceptual approach, namely by starting from the views or doctrines that develop in legal science, so that it can produce knowledge, concepts and legal principles that are relevant to the issues at hand (Kristiawanto, 2024).

The specifications that will be used in this study are analytical descriptive (Suryanto, 2022) by providing an overview or explanation of the subject and object of the research as the results of the research carried out as is without justifying the research results. The subject of the research will focus on the Notary as an Authentic Deed Making Officer and the object of this research will lead to the role and obligations in the Protection of Personal Data in Notary Practice. This study will use secondary data types, namely referring to laws and regulations, books, journals, papers, and other documents, and the data collection technique that will be carried out is through literature studies (Suryanto, 2022) namely the study of written information regarding the law originating from various sources and widely published and needed in normative legal research based on laws and regulations, judge's decisions, agreements or legal science books.

3. Results and Discussion

3.1. The Role and Position of Notaries in Fulfilling Personal Data Protection Provisions

In the PDP Law, there is a classification of roles or positions for parties who process personal data, namely as Personal Data Controllers ("Controller") or Personal Data Processor ("Processor"). Based on Article 1 number 4 of the PDP Law, it is defined that Controller is any person, public body, and international organization that acts individually or jointly in determining the purpose and controlling the processing of Personal Data. While Processor is defined in Article 1 number 5 of the PDP Law, namely any person, public body, and international organization that acts individually or jointly in processing Personal Data on behalf of the Controller. Interpreting these two definitions, it can be seen that the most fundamental difference between Controller and Processor is related to the authority to process Personal Data. Controller can determine the purpose and control the processing of Personal Data, while Processor can only process Personal Data on the orders and on behalf of the Controller.

Analyzing from the definition of Controller and Processor, Notary plays a role and acts as Controller. Notary plays a role and acts on his/her own behalf based on his/her authority to achieve the purpose of processing personal data, namely making authentic deeds and other authorities regulated in laws and regulations. Notary has a legal relationship and interacts with

Personal Data Subjects who provide their Personal Data or Personal Data of other people who have been given permission to use it. Notary can determine the method and purpose of processing Personal Data without intervention from any party. However, of course this will be informed to Personal Data Subjects to realize transparency in Personal Data processing.

In notarial practice, the role of the Processor in assisting the Notary as Controller is reflected in the role of Notary employees or Notary interns (Intan Permata Mipon & Mohamad Fajri Mekka Putra, 2023). In practice, the Notary is assisted by Notary workers or interns in managing Client Personal Data in the process of making authentic deeds or fulfilling other Notary obligations. In this condition, the Notary as Controller is responsible for the Personal Data processing activities carried out by the Processor. This is as regulated in Article 51 paragraph (3) of the PDP Law. However, if the Notary workers or interns use Personal Data for other purposes and beyond those ordered by the Notary, the workers or interns are personally responsible for the Personal Data processing activities.

3.2. Obligations of Notaries as Personal Data Controller According to the Personal Data Protection Law

As explained earlier, the Notary acts as a Controller in the processing of Personal Data from Notary service users. The Controller has full authority in determining the method and purpose of processing Personal Data provided with the knowledge and consent of the Personal Data Subject. To maintain the corridor of use of Personal Data, the PDP Law regulates many obligations that bind the Controller both in preventive and repressive efforts in Personal Data Protection.

Referring to the provisions of Article 16 paragraph (1) of the PDP Law, processing of Personal Data includes all activities of obtaining and collecting, processing and analyzing, storing, correcting and updating, displaying, announcing, transferring, disseminating, or disclosing and/or deleting or destroying Personal Data. From the use of the phrase "or" in this provision, it can be seen that if a party carries out one or more of the above categories, the party has processed Personal Data either as a Controller or Processor. In carrying out their duties and authorities, Notaries process Personal Data, namely by collecting Personal Data from users of Notary services to make notarial deeds, analyzing Personal Data to validate the truth that will be recorded in authentic deeds, storing Personal Data in minutes of deeds or other documents, and others.

Notaries as Controller must have a basis for processing Personal Data. Processing Personal Data can be based on (1) explicit valid consent from the Personal Data Subject, (2) fulfillment of agreement obligations in the event that the Personal Data Subject is one of the parties or to fulfill the request of the Personal Data Subject when entering into an agreement, (3) fulfillment of legal obligations of the Controller in accordance with the provisions of laws and regulations, (4) fulfillment of protection of the vital interests of the Personal Data Subject, (5)

implementation of duties in the context of public interest, public services, or implementation of the Controller's authority based on laws and regulations; and/or (6) fulfillment of other legitimate interests by considering the objectives, needs, and balance of the Controller's interests and the rights of the Personal Data Subject. The basis for processing is the legal basis and legality for the Controller to carry out processing of Personal Data lawfully and with the knowledge of the Personal Data Subject. In general, the legal relationship that binds the Notary and the Client is based on the agreement and consent of both parties. In addition, the basis for processing Personal Data carried out by Notaries is also based on legal obligations. One of them is related to the storage of Personal Data. Based on Article 16 paragraph (1) letter b of the UUJN-P, it is regulated that Notaries have an obligation to store Minutes of Deeds as part of the Notary Protocol. Notaries must archive the Notary Protocol properly until later the Notary Protocol must be submitted for certain reasons as regulated in Article 62 of the UUJN. Related to this obligation, the Author is of the opinion that in order to provide legal certainty on the basis of processing Personal Data, it would be more ideal if it was carried out with the explicit and written consent of the Client stating that all data provided is true and with the knowledge of the Personal Data Subject. This is to provide legal protection to Notaries from misuse of Personal Data provided by Clients and to be a legal umbrella for every Personal Data processing activity carried out by Notaries.

With the enactment of the PDP Law, the method and purpose of processing Personal Data must be explicitly conveyed to the Personal Data Subject to protect the Notary from alleged unauthorized use of data. The Controller is required to provide information regarding the legality, purpose, type and relevance, retention period, details regarding the information collected, the processing period of Personal Data and the rights of the Personal Data Subject. This information aims to provide transparency regarding the use of Personal Data and must be known to the Personal Data Subject before processing the Personal Data. In the event of any changes to this information, the Controller is required to notify the Personal Data Subject.

The Controller is required to process Personal Data in a limited and specific, legally valid, and transparent manner in accordance with the purpose of processing Personal Data. The Controller is required to protect and ensure the security of Personal Data and maintain the confidentiality of Personal Data. The Controller is also required to ensure the accuracy, completeness, and consistency of Personal Data in accordance with the provisions of laws and regulations, namely by verifying Personal Data. If correlated with notarial practice, this is a common and mandatory thing for Notaries to do to validate the Client's statement with supporting evidence or documents which are then attached to the Minutes of the Deed, such as Resident Identity Cards, Birth Certificates, Death Certificates, and/or other documents.

The Controller is required to record all Personal Data processing activities. Looking at the current positive law in Indonesia, there are no further regulations regarding the mechanism and procedures for recording Personal Data processing activities. However, there are many opinions that since its enactment in 2016, the General Data Protection Regulation (“**GDPR**”) has become the gold standard in PDP regulation in many countries other than EU member states, including

Indonesia (Mimi Kartika, 2024). This can be seen that many articles in the Indonesian PDP Law have a level of similarity to the GDPR, including those related to the obligation to record Personal Data processing activities which are similar to the concept in Article 30 of the GDPR concerning Record of Processing Activities (“**ROPA**”). Article 30 GDPR contains provisions regarding the substance and content of information contained in the ROPA, the Controller's monitoring of the ROPA carried out by the Processor, and others.

The Controller is required to conduct a Personal Data Protection impact assessment in cases where Personal Data processing has a high potential risk to Personal Data Subjects. The Personal Data Protection impact assessment is conducted to evaluate the potential risks arising from the processing of Personal Data and the efforts or steps that must be taken to mitigate the risks including the rights of Personal Data Subjects and comply with the PDP Law (Budhijanto, 2023). Potential high risks in processing Personal Data include:

- a. automated decision-making that has legal consequences or significant impact on the Personal Data Subject;
- b. processing of Personal Data of a specific nature;
- c. processing of Personal Data on a large scale;
- d. processing of Personal Data for systematic evaluation, scoring or monitoring activities of Personal Data Subjects;
- e. processing of Personal Data for the purpose of matching or combining groups of data;
- f. use of new technologies in the processing of Personal Data; and/or
- g. processing of Personal Data that limits the exercise of the rights of the Personal Data Subject.

If interpreted grammatically, there is a phrase and/or in the provisions above. This can be interpreted that the obligation to carry out the risk assessment must be carried out even if it only fulfills one of the high-risk Personal Data processing activities. Article 16 paragraph (1) letter c of the UUJN-P explains that one of the obligations of a Notary is to attach letters and documents as well as the fingerprints of the person appearing to the Minutes of the Deed. Fingerprints are included in the type of Personal Data that is specific, namely biometric data. Therefore, the Notary is also obliged to carry out risk management efforts with a Personal Data Protection risk assessment.

The Controller is required to supervise each party involved in the processing of Personal Data under the Controller's control. In accordance with the principle of accountability for Personal Data Protection, the Controller is the party held accountable for the processing of Personal Data under its control (Rosadi, 2023). One of the parties involved in the processing of Personal Data carried out by the Notary is the workforce or interns who help the Notary make authentic deeds. The Notary is responsible for monitoring and ensuring limited access by parties under its control to prevent misuse of Personal Data.

The Controller must appoint an official or officer who carries out the Personal Data Protection function in the case of processing Personal Data for the benefit of public services, the Controller's core activities have a nature, scope, and/or purpose that requires regular and systematic monitoring of Personal Data on a large scale; and the Controller's core activities consist of processing Personal Data on a large scale for Personal Data of a specific nature and/or Personal Data related to criminal acts. Based on the categorization in the provisions above, a Notary is one of the parties who must appoint a Personal Data Protection Officer because a Notary is one of the public officials who carries out public service activities as stated in the general explanation section of the UUJN-P.

The Personal Data Protection Officer may be appointed from within and/or outside the Controller based on professionalism, knowledge of the law, Personal Data Protection practices, and ability to fulfill his/her duties. The Personal Data Protection Officer has the duties of at least informing and providing advice, monitoring and ensuring compliance with the Personal Data Protection provisions, providing advice on the assessment of the impact of Personal Data Protection and monitoring the performance of the Controller, coordinating and acting as a contact person for issues related to the processing of Personal Data.

4. Conclusion

Based on the discussion above, it can be concluded that: a) The enactment of the PDP Law has legal implications for all legal subjects who carry out Personal Data processing activities. Notaries as officials who make authentic deeds in carrying out their duties and authorities are inseparable from Personal Data processing activities, namely for the purpose of making authentic deeds at the request of the Client. Notaries act for and on behalf of themselves as general officials who make authentic deeds and process Personal Data as Controllers. b) Before the enactment of the PDP Law, there were basically obligations related to the security of Personal Data, namely the obligation of Notaries to maintain the confidentiality of all information and/or documents obtained in the process of making authentic deeds. However, after the enactment of the PDP Law, there are more detailed regulations, both preventive and repressive, to ensure that Personal Data is processed safely, transparently, in accordance with the objectives and with the knowledge of the Personal Data Subject. These obligations include the obligation of Notaries to have a basis for processing, provide transparency in the processing of Personal Data, record all Personal Data processing activities, assess the impact of Personal Data Protection risks, appoint Personal Data Protection Officers, and others.

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