

THE LEGAL PROTECTION OF PERSONAL DATA IN ISLAMIC PERSPECTIVE

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Abstract

The protection of personal data is a public right that must be protected, even in Islam through the words of the Prophet Muhammad SAW, advocating peace by promoting attitudes of mutual respect, respect and love for fellow human beings. This attitude must be practiced among other religious communities, not only among Muslims. The research purposes to discuss specifically the regulation of personal data protection in Indonesia and personal data protection from an Islamic perspective. The type of research used in this research is normative juridical or library legal research or doctrinal legal research, namely legal research by examining library materials and secondary materials. In the view of the Islamic perspective regarding the protection of personal data is monitored as an endeavor to maintain the benefit of individuals and society in the use of information technology and can be considered as an implementation of the principle of benefit in Islam.

Keywords: Data; Islam; Personal; Protection.

A. INTRODUCTION

Every citizen has constitutional rights, which are rights guaranteed by the law.¹ With these constitutional rights, the state has a constitutional obligation, namely to protect all citizens. This constitutional obligation of the state has been stated in the Preamble of the 4th paragraph of the 1945 Constitution of the Republic of Indonesia, which states that the state is obliged to protect all Indonesians in improving the general welfare, educating the nation's life, and implementing world order based on independence, world peace and social justice. Protecting the right to privacy means protecting the right to freedom of speech. This means that the right to privacy guarantees protection from the threat of fear of doing or not doing something that is a human right.²

Discussions on personal data protection continue to increase, both at the international, regional and national levels. International and regional organizations publish recommendations that can be used as guidelines for member countries. These recommendations also influence the formation of personal data protection regulations in each country. Among them is The

1 Herdi Munte, Christo Sumurung Tua Sagala, Protection Of Constitutional Rights In Indonesia, *Jurnal Ilmiah Penegakan Hukum*, Vol. 8, No. 2, December 2021, page.183-193

2 Cynthia, Registrasi Data Pribadi Melalui Kartu Prabayar Dalam Perspektif Hak Asasi Manusia, *Jurnal HAM*, Vol. 9, No. 2, 2018, page. 191-204

OECD Privacy Framework published by the Organization for Economic Co-operation and Development (OECD) in 1980 as revised in 2013. At the regional level in ASEAN, the Framework on Personal Data Protection was issued, which was agreed upon at the ASEAN Telecommunications and Information Technology Ministers Meeting (Telmin).³

In Indonesia, violations of the use of personal data often occur. In banking practice, the exchange of personal data is carried out through a sharing system, namely exchanging information about customer personal data among fellow card centers, disclosing information including transactions related to credit card holders to third parties or trading among banks themselves or through third parties, namely both individuals and data collection companies and trading customer personal data.⁴ In the health sector, patient data is traded or disclosed for insurance purposes, employment opportunities, obtaining government assistance programs without the patient's knowledge.⁵ On ride-hailing platforms, consumers' phone data is used not for the purpose for which it was originally collected, and is even used to threaten them for bad ratings⁶ or disturb the comfort of consumers in the form of sending personal messages that have nothing to do with the use of online transportation. In shopping transactions through online marketplaces, the use of cookie technology has the potential to utilize personal data including tracking online transactions where there are shopping preferences, shopping locations, communication data, and the address of a consumer.⁷

Protection of personal data is a public right that must be protected, even in Islam through the words of the Prophet Muhammad SAW, advocating peace by promoting attitudes of mutual respect, respect and love for fellow human beings. This attitude must be practiced among other religious communities, not only among Muslims. As in the Hadith of Sahih Bukhari that Rasulullah SAW, said:

كُوِ اَطْلَع فِي بَيْتِكَ أَحَدًا وَ لَمْ تَأْذَنْ لَهُ خَافْتَهُ بِحِصَّةٍ فَفَقَاتْ عَيْنَهُ مَا كَانَ عَلَيْكَ مِنْ جُنَاحٍ

3 Siti Yuniarti, Perlindungan Hukum Data Pribadi Di Indonesia, *JURNAL BECOSS (Business Economic, Communication, and Social Sciences)*, Vol. 1, No. 1 September 2019, page. 147-154

4 Rosadi, Prinsip-Prinsip Perlindungan Data Pribadi Nasabah Kartu Kredit Menurut Ketentuan Nasional dan Implementasinya, *Sosiohumaniora*, Vol. 19, No. 3, 2017, page. 206–212.

5 Rosadi, Implikasi Penerapan Program E-Health Dihubungkan Dengan Perlindungan Data Pribadi, *Arena Hukum*, Vol. 9, No. 3, 2017, page. 403–420.

6 Geistiar Yoga Pratama, Perlindungan Hukum Terhadap Data Pribadi Pengguna Jasa Transportasi Online Dari Tindakan Penyalahgunaan Pihak Penyedia Jasa Berdasarkan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen, *Diponegoro Law Review*, Vol. 5, No. 3, 2016, page. 1–19

7 Mas Rara Tri Retno Herryani, Harsono Njoto, Perlindungan Hukum Terhadap Kebocoran Data Pribadi Konsumen Online Marketace, *Jurnal Transparansi Hukum*, Vol. 5, No. 1, January 2022, page.110-136

*allow him, then you throw a stone at him so that he is blinded, you will not be sinned against.*⁸

Explanation The Prophet (may Allah's peace and blessings be upon him) says that if someone looks at another from behind a door, from above a wall or something, without his permission, and then one gouges out his eye with a pebble, this physical damage will not incur a sin or retribution on its doer. This is because the peeper is the aggressor and guilty for violating the other person's privacy.

The Hadith explains that one way to respect and honor other people is by maintaining their privacy and not abusing or disturbing them.

Research conducted by Parida Angriani with the title Legal Protection of Personal Data in E-Commerce Transactions: Perspective of Islamic Law and Positive Law that a person's personal data must be protected because privacy is related to access to personal identity, contact list, location, photos, files and things related to one's privacy. Islam views privacy as something that must be respected because it relates to a person's confidentiality. Islamic Law and Positive Law both regulate the issue of legal protection of personal data to be able to create justice, balance, security and safety and ensure legal certainty in electronic transactions. Islamic law does not explain in detail as described in positive law.⁹

Research conducted by Agam Anantama with the title Personal Data Threats in the Digital Age in an Islamic Perspective threats to personal data on social media can be grouped into three things, namely threats to multimedia content, threats to society and threats to psychology. that in addition to utilizing the privacy features provided by social media sites, as early as possible users must also be literate to be able to distinguish which ones are confidential and which ones are information, everyone must have the awareness to be able to select the content that is disseminated on social media and especially in Islam which strictly prohibits theft.¹⁰

Islam has clearly and clearly regulated the protection of personal data. Personal data must be protected because if leaked or misused it can damage a person's dignity. In concept, protecting personal information is a primary need because it is classified as *Maqashid Shari'ah*, namely the protection of personal honor. The research aims to discuss specifically the regulation of personal data protection in Indonesia and personal data protection from an Islamic perspective.

B. RESEARCH METHODS

The type of research used in this research is normative juridical or library legal research or doctrinal legal research, namely legal research by

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- 8 Al-Albani M. Nashirudin, *Ringkasan Shahih Bukhari (7th ed.)*, Yogyakarta, Gema Insani, 2003, page. 138.
 - 9 Parida Angriani, Perspective of Islamic Law and Positive Law that a person's personal data must be protected because privacy is related to access to personal identity, contact list, location, photos, files and things related to one's privacy, *DIKTUM: Jurnal Syariah dan Hukum*, Vol. 19, No. 2, Desember 2021, page. 149-165
 - 10 Agam Anantama, Ancaman Data Pribadi di Era Digital Dalam Perspektif Islam, *Ath-Thariq : Jurnal Dakwah dan Komunikasi*, Vol. 06, No. 02, Juli-Desember 2022, page. 220-236

examining library materials and secondary materials.¹¹ According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues at hand.¹² The research specification used is descriptive analysis research, because it only describes the object of the problem which then analyzes and finally draws conclusions from the research results. It is said to be descriptive because this research is expected to obtain a clear, detailed, and systematic picture, while it is said to be analytical because the material obtained from library research will be analyzed to solve problems in accordance with applicable legal provisions.

C. RESULTS AND DISCUSSION

1. The Personal Data Protection Regulation in Indonesia

Personal data, when referring to Black's Law Dictionary, is included in classified information. The definition of data protection is any method of securing information, esp. information stored on a computer from being either physically lost or seen by an unauthorized person. So what is meant by personal data in detail is a single information or a collection of information, whether confidential or not, provided by the owner of personal data / consumer and collected into an electronic system that is processed by the organizer of the electronic system to be used in accordance with its purpose and use and if it is misused, the owner / consumer can resolve it through the media of state administrative law or civil law media or criminal law media.¹³

Prior to the enactment of Law No. 27 of 2022, regulations related to personal data protection were still partial and not comprehensive.

Referring to the Academic Paper of the Personal Data Protection Law No. 27 of 2022, the philosophical rationale for the protection of personal data as contained in the Law is that: privacy of personal data is the recognition and protection of basic human rights that have been protected under International, Regional and National Law; protection of privacy of personal data is a human right mandated directly by the constitution of the Republic of Indonesia; privacy of personal data is a need to protect individual rights in society in connection with the collection, processing, organization, and dissemination of personal data.

Privacy is a fundamental thing that must be upheld because it is part of human rights, especially since the data has economic value because it can be utilized by collectors and third parties.¹⁴ Meanwhile, personal data can be said to be something or information that can show a person's identity including physical, psychological conditions, ancestry, ethnic origin, religion, and economic class.

11 Soerjono Soekanto & Sri Mamudji., *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, Jakarta, Raja Grafindo Persada, 2003, page. 13.

12 Peter Mahmud Marzuki., *Penelitian Hukum*, Jakarta, Kencana Prenada, 2010, page. 35.

13 Rizky, Karo-Karo and Teguh Prasetyo, *Pengaturan Perlindungan Data Pribadi Di Indonesia Perspektif Teori Keadilan Bermartabat*, Bandung, Penerbit Nusa Media, 2020, page. 8-12.

14 Mohammad Farid Fad., *Perlindungan Data Pribadi Dalam Perspektif Sadd Dzari'ah*, *MUAMALATUNA*, Vol. 13, No. 1, 2021, page. 41

Personal data protection is intended to protect an individual's human rights, namely a sense of security in doing activities on social media.¹⁵ This is an obligation that must be carried out by policy makers in providing a safe place for internet users through legal certainty. This raises the consequence and urgency of the existence of personal data protection arrangements. Regulations related to this matter can at least provide benefits including: Legal certainty, which provides a clear guarantee or legal standing regarding law enforcement related to violations of personal data protection. Provide strict supervision of various activities carried out by various parties, both private and government agencies. Having a comprehensive regulation that can be used as the main reference in personal data protection.

The protection of personal data is included as a human right, this is in the 1945 Constitution explicitly mandates the protection of human rights, considering that the State of Indonesia is a state of law. Based on Article 28D paragraph (1) that everyone is entitled to recognition, guarantees, protection and certainty of a fair law and equal treatment before the law. And continued in Article 28 G paragraph (1) of the 1945 Constitution that everyone has the right to protection of self, family, honor, dignity, and property under their control, and is entitled to a sense of security and protection from threats of fear to do or not do something that is a human right.

Many challenges will be faced in the implementation of this Personal Data Protection Law.¹⁶ Minimizing risks is a shared responsibility, but the burden on the government is much heavier. Much of the personal data of the population is managed by the government for the needs of public services.

Some are due to coercion, where people submit identities such as population identification numbers and family card numbers. Some are voluntary, for example to apply for the state civil service. Against this, there are two important things that must be underlined: how to maintain its security and how to use it. Do not let the information become an economic commodity.

The second challenge is institutional. In this Law, it is stated that the implementation of personal data protection is carried out by an institution established by and responsible to the president. There is no regulation on the position and structure of the institution and the authority granted to this institution.¹⁷

The next challenge that we will face is the 2024 General Election. Many politicians are already getting ready to fight for seats, whether as

15 Dewa Gede Sudika Mangku, Ni Putu Rai Yuliantini, I. Nengah Suastika, I. Gusti Made Arya Suta Wirawan, The Personal Data Protection of Internet Users in Indonesia, *Journal of Southwest Jiaotong University*, Vol. 56, No. 1, 2021, page. 202-210

16 Li *et al.*, A Survey on Federated Learning Systems: Vision, Hype and Reality for Data Privacy and Protection, *IEEE Transactions on Knowledge and Data Engineering*, Vol. 35, No. 4, 1 April 2023, page. 3347-3366

17 Julian Davis Mortenson and Nicholas Bagley, Delegation At The Founding, *Columbia Law Review* Vol. 121, No. 2, March 2021, page. 277-368

president, regional head, or council member. In order not to be like buying a cat in a sack, various efforts are made, including seeking information on the candidates' backgrounds.

2. The Personal Data Protection from an Islamic Perspective

In Islam there are laws that are used as guidelines and sources of law, namely: The Quran and the *Sunnah* of the Prophet Muhammad. Both sources are used as references in regulating the lives of Muslims. Even in surah *An-Nisa'* verse 59 very firmly states that Muslims in solving affairs must be guided by the Qur'an and *Sunnah*.

فِي تَنَازَعْتُمْ فَإِنْ مِنْكُمْ أَمْرٌ وَأُولَى الرَّسُولِ وَأَطِيعُوا اللَّهَ أَطِيعُوا اللَّهَ أَمِنُوا الَّذِينَ يَأْتِيهَا
خَيْرٌ ذَلِكَ الْآخِرُ وَالْيَوْمِ بِاللَّهِ تُوْمِنُونَ كُنْتُمْ إِنْ وَالرَّسُولِ اللَّهُ إِلَى قَرْدُوهُ عَشِي
ء تَأْوِيلًا وَأَحْسَنُ

Translation: "O you who believe, obey Allah and obey the Messenger (Muhammad), and the Ulil Amri (those in authority) among you. Then, if you differ in opinion about anything, then refer it back to Allah (the Qur'an) and the Messenger (his *Sunnah*), if you believe in Allah and the Last Day. That is better for you and better for the result. (Qs. *An-Nisa'* ayat 59).¹⁸

After Allah commanded the leaders and those in authority to be fair to their people,¹⁹ then Allah commanded the people to obey their leaders; He said: obey Allah in the way of His laws, and obey the Messenger of Allah in all his commands, and obey everyone who manages the affairs of the Muslims. if you disagree with the leader of the work in a religious matter, then return to the Qur'an and the *Sunnah*, because this is the basis of faith and contains a better outcome for you in this world and in the hereafter.

Islam views privacy as something that must be respected because it is related to a person's confidentiality. A person's personal data must be protected because privacy is related to personal profiles, contact history, location, images, documents and things related to a person's privacy. Even in the Qur'an it is emphasized about the virtue of privacy as Allah SWT says in QS. *An-Nuur* 27:

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى
تَسْتَأْذِنُوا وَتَسَلِّمُوا عَلَىٰ أَهْلِهَا ذَٰلِكُمْ خَيْرٌ لَّكُمْ لَعَلَّكُمْ
تَذَكَّرُونَ ﴿٢٧﴾

"O you who believe, do not enter a house that is not your own until you have asked permission and greeted the occupants. That is better for you, so that you may remember."²⁰

18 Departemen Agama RI, Al-Quran Terjemahan, Jakarta, CV Darus Sunnah, 2005, page. 128.

19 Abu Issa Gazi, Islamic Perspective of Leadership in Management; Foundation, Traits and Principles, *International Journal of Management and Accounting*, Vol. 2, Issue. 1, 2022, page. 1-9

20 *Ibid*, page. 547

The verse is the ethics of sharia taught by Allah to His believing servants. Allah SWT has explained the proper rules in associating to maintain good relations between mankind by not entering other people's homes without the permission of the homeowner.²¹ This is intended so that believers can be more careful, not to look at other people's disgrace or events that are not worth seeing. Based on the explanation of Surah *An-Nuur* Verse 27 that it is very important to keep someone's secret, although the Koran does not explain in detail how to provide protection for personal data, but with the words of Allah SWT in Surah *An-Nuur* Verse 27 there is a relevance that instructs believers before entering someone's house to say greetings and ask permission first, meaning that Allah through his words in Surah *An-Nuur* has provided protection or limits for believers in socializing. This is the same as regulations related to the protection of a person's personal data which can only be accessed if they get permission from the party concerned. This is in line with the words of the Prophet Muhammad. In one of the traditions quoted from the hadith of Sahih Bukhari that if someone peeps into your house when you don't allow it,²² then you throw a stone so that it blinds his eyes, you don't get a sin for it.

In the view of the Islamic perspective regarding the protection of personal data in Law No. 27 of 2022 concerning Personal Data Protection, it is monitored as an effort to maintain the welfare of individuals and society in the use of information technology and can be considered as an implementation of the principle of benefit in Islam in an effort to protect individual rights and the welfare of society in today's advanced times.

Article 65 paragraph (2) in Law No. 27 of 2022 concerning Personal Data Protection can be linked to the principles of security of honor (*hifdz al-Ird*) and security of the soul (*hifdz al-Nafs*). The principles in Islam underline the importance of maintaining the honor of individuals and society. Article 65 paragraph (2) regulates the prohibition for every individual to oppose the regulation of disclosing or informing someone's personal data that is not appropriate for certain interests. This aims to protect the interests and privacy of individuals in the processing of their personal data.

The purpose of making rules regarding Personal Data Protection is of course to remind awareness of the importance of personal data protection and to protect citizens' rights to personal data. To prevent individuals from misusing data, it is important to ensure that the data they have collected can only be used for its intended purpose.²³

21 Muhammad Iqbal, Heri Sunandar, Analysis of Tafsir verse verse Consumption of the Qur'an on Sharia Economic Development, *Enrichment Journal of Multidisciplinary Research and Development*, Vol. 1, No. 2, 2023, page. 44-50

22 Ahmad Nabil Amir, Review Of Muhammad Asad's Works, Sahih Al-Bukhari The Early Years Of Islam, *Ihyaussuna*, Vol. 2, No. 2, 2021, page. 78-82

23 K. Michael, S. Kobran, R. Abbas and S. Hamdoun, Privacy, Data Rights and Cybersecurity: Technology for Good in the Achievement of Sustainable Development Goals, *2019 IEEE*

The need for personal data protection is especially important in the digital age where personal information can be easily collected, stored, and transferred by organizations, companies, or third parties. The need for personal data protection is also increasing as more and more cases of data security breaches are being reported, such as data leaks, identity theft, and online fraud. Personal information or data has become a major source in various fields including economic, social, and many others. In fact, personal data has become one of the main components or keys for a person who enjoys technological development.

D. CONCLUSION

Personal data protection is intended to protect an individual's human rights, namely a sense of security in doing activities on social media. This is an obligation that must be carried out by policy makers in providing a safe place for internet users through legal certainty. Islam views privacy as something that must be respected because it is related to one's confidentiality. A person's personal data must be protected because privacy is related to personal profiles, contact history, location, images, documents and things related to a person's privacy. In the view of the Islamic perspective regarding the protection of personal data in Law No. 27 of 2022 concerning Personal Data Protection, it is monitored as an effort to maintain the welfare of individuals and society in the use of information technology and can be considered as an implementation of the principle of benefit in Islam in an effort to protect individual rights and the welfare of society in today's advanced times.

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