

The Legal Protection of Personal Data in the Perspective of Human Rights

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Abstract. *In the history of its development, privacy is a concept that is universal and recognized in various countries both written in the form of laws and unwritten in the form of moral rules. Protection of personal rights or private rights will increase human values, improve the relationship between individuals and their communities, increase independence or autonomy to exercise control and obtain decency, and increase tolerance and keep away from discrimination and limit government power. The purpose of this research is to discuss the Construction of Personal Data Protection Arrangement in Indonesia and Personal Data Protection from Human Rights Perspective. Law No. 27 of 2022 on Personal Data Protection, it can be observed that there is some progressiveness regarding personal data in Indonesia. It can be seen in terms of legal politics, understanding, information, personal data processors, personal data controllers, and personal data subjects who are not only people but also companies / legal entities. So that the politics of law in this arrangement can be seen in the active role of the government starting from regulation, storage, processing, transfer, to countermeasures both preventively and repressively (imposition of sanctions). Novelty in this research is that regulatory efforts related to the right to privacy of personal data are a manifestation of the recognition and protection of basic human rights. Therefore, the preparation of the Law on Personal Data Protection has a strong philosophical foundation and can be accounted.*

Keywords: *Data; Human; Personal; Protection; Rights.*

1. Introducing

All Citizens have sacred privileges, special freedoms that are guaranteed by law. With these fundamental privileges, the state has a sacred commitment, a

commitment to guarantee each of its citizens.¹ The commitment of the state that has been established is contained in the initial part of the 1945 Constitution of the Republic of Indonesia, where the state secures all of Indonesia's spilled blood to work on comprehensive government assistance for schooling obliged to do so. Public life and keep everything under control based on autonomy, world harmony and civil rights.²

Article 28G Paragraph 1 of the 1945 Constitution of the Republic of Indonesia, does not allow any person to do anything that constitutes the protection, family, honor, dignity, and property of private persons under his authority, as well as human rights. Fear of threats.³ In the history of its development, privacy is a concept that is universal and recognized in various countries both written in the form of laws and unwritten in the form of moral rules.⁴

Related to personal rights as human rights, Danrivanto Budhijanto explained, that "Protection of personal rights or private rights will increase human values, improve relations between individuals and their communities, increase independence or autonomy to exercise control and obtain appropriateness, and increase tolerance and keep away from discrimination and limit government power.⁵

The state's position on the protection of privacy as the right of all and any citizens is very clear. This is stated in the Preamble of Human Rights Law Number 39 of 1999, which states in the fourth point: "As a member of the United Nations, the Indonesian people have a moral and legal responsibility, the Universal Declaration of Human Rights. Rights made by the United Nations to be obeyed and implemented, and others relating to human rights accepted by the Republic of Indonesia. Various international documents." Therefore, the state as the organizer of government is responsible for the citizens under its control, who are fully responsible for taking care of them, according to international law, responsibility for the right to a healthy environment due to climate change

¹ Nawaz, S., Shabbir, M. S., Shaheen, K, & Koser, M. The Role of Human Rights and Obligations toward Cross Gender Empowerment under the domain of Islamic Laws. *IRASD Journal of Management*, Vol 3 No. 3, 2021, Page. 208–217.

² Changsan Ma, Chapter 10 The "Fourth Generation of Human Rights" under the Background of the Smart Society and Its Protection, *Chinese Year Book of Human Rights*, Vol 5, 2023, Page 239-270

³ Hanifan Niffari, Perlindungan Data Pribadi Sebagai Bagian Dari Hak Asasi Manusia Atas Perlindungan Diri Pribadi (Suatu Tinjauan Komparatif Dengan Peraturan Perundang-Undangan Di Negara Lain), *Jurnal Yuridis*, Vol. 7 No. 1, Juni 2020, Page. 105 - 119

⁴ Banisar, *Privacy & Human Rights, An International Survey of Privacy Laws and Developments*, Electronic Privacy Information Centre, Washington. D.C, 2000, Page. 1-3.

⁵ Danrivanto Budhijanto, *Hukum Telekomunikasi, Penyiaran & Teknologi Informasi: Regulasi & Konvergensi*, PT. Refika Aditama, Bandung, 2010, Page. 4.

Conceptually, the state is the only party that should be responsible for protecting human rights.

The development of increasingly sophisticated technology raises a number of new challenges, especially in terms of the enjoyment of the right to privacy. The fulfillment of needs using data-based internet technology is increasingly mushrooming in Indonesia. Starting from banking, health, trade transactions, even online transportation or various other activities that require the collection of personal data. This phenomenon poses its own challenges, especially facing the issue of personal data protection guarantees. At the global economic level, Indonesia is considered a country with a strategic position in international trade, including electronic transactions that allow for the wider distribution of personal data.⁶

For example, leaking privacy data to third parties becomes a legal problem. This incident has been experienced by the well-known social media company Facebook.⁷ This company experienced a data leak or breach including data on Indonesian citizens. With this incident, it can be illustrated the importance of privacy data to the security of both the owner itself (individual) and the country.⁸ Facebook data leaks occur not only in Indonesia, Singapore also experienced the same thing. In 2017, three million Yahoo email users' data was stolen. This has an impact on consumer confidence in companies that often concede data or have their data stolen by third parties.

The case of personal data protection failure in Indonesia has become a public concern in recent years. The public is more familiar with the term "personal data leakage" than the standard term "personal data protection failure" contained in regulatory documents. Personal data protection failure refers to a condition of failure of the Electronic System Operator to protect personal data managed by the Electronic System Operator. The Electronic System Operator has the obligation to develop internal rules as a form of preventive effort to avoid failures in the protection of personal data managed by the Electronic System Operator.⁹

⁶ Heppy Endah Palupy, *Privacy and Data Protection: Indonesia Legal Framework*, Journal Master Law and Technology di Universiteit van Tilburg, Tilburg (2011) Page. 35.

⁷ Mario Plenkovic, Darja Kupinic Guscic dan Slobodan Hadzic, Media Study on Correlation Connection between "Like" and Visual Elements of Form in Communication Content Perception on Facebook, *Informatologia*, Vol 47, No 4, 2014, Page. 245

⁸ Rudi Natamiharja, A Case Study on Facebook Data Theft in Indonesia, *Jurnal Fiat Justisia*, Vol 12, No 3, September 2018, Page. 210.

⁹ Pasal 5 ayat (2) menyebutkan bahwa "Setiap Penyelenggara Sistem Elektronik harus menyusun aturan internal perlindungan Data Pribadi sebagai bentuk tindakan pencegahan untuk menghindari terjadinya kegagalan dalam perlindungan Data Pribadi yang dikelolanya".

Research conducted by Rosihan Luthfi with the title "Protection of Personal Data as a Manifestation of Human Rights Protection" states that protecting personal rights in Indonesia is an obligation of the state constitution as regulated in Article 28 G paragraph (1) of the 1945 Constitution which is part of protection of personal privacy. The state's constitutional obligations are regulated in Article 28 G paragraph (1) of the 1945 Constitution which is part of the protection of personal privacy. 1945 which is part of personal self-protection. Personal data protection is a strategic asset that is often misused, so further regulation is needed to avoid the bad consequences of misuse of personal data to avoid the bad consequences of misuse of personal data, namely selling for commercial purposes without the consent of the owner of the personal data and misuse of health data misuse of health data.¹⁰

Then the research conducted by Sahat Maruli Tua Situmeang with the title "Personal Data Abuse as a Form of Perfect Crime in Cyber Law Perspective" Based on the results of the research shows that in order to create legal certainty, it is necessary to establish a law that regulates specifically, clearly, structurally and comprehensively regarding the protection of personal data and harmonizes existing laws and regulations governing the protection of personal data and clear mechanisms related to coordination between law enforcement. In this regard, the researcher proposes the establishment of norms that regulate criminal sanctions in its enforcement as a deterrent effect as well as reconstruction and reformulation of norms in the current regulations on personal data protection.¹¹

This research discusses in more depth the right to personal data protection as a human right. The purpose of this research is to discuss the Construction of Personal Data Protection Arrangement in Indonesia and Personal Data Protection from Human Rights Perspective.

2. Research Methods

The type of research used in this research is normative juridical. Normative juridical research is research that uses the legis positivist conception. This concept views law as identical to written norms made and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and detached from real community life.¹² The research in this thesis is descriptive analytical. Descriptive analytical research is a

¹⁰ Rosihan Luthfi, *Perlindungan Data Pribadi Sebagai Perwujudan Perlindungan Hak Asasi Manusia, Jurnal Sosial dan Teknologi (Sostech)*, Vol. 2 No. 5, May 2022, Page 431-437

¹¹ Situmeang, *Penyalahgunaan Data Pribadi Sebagai Bentuk Kejahatan Sempurna Dalam Perspektif Hukum Siber. SASI*, Vol. 27 Vol. 1, 2021, Page. 38-52

¹² Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta: Ghalia Indonesia, 1988, Page. 13-14

study that describes, examines, explains, and analyzes legal regulations.¹³ By using this descriptive nature, the rule of law in this research can be precisely described and analyzed in accordance with the objectives of this research. The problem approach refers to the applicable laws and regulations (*statue approach*).¹⁴

3. Results and Discussion

3.1. Construction of Personal Data Protection Regulation in Indonesia

The Preamble of the 1945 Constitution of the Republic of Indonesia states that the Government of the Republic of Indonesia has a constitutional obligation to protect the entire Indonesian nation and the entire Indonesian homeland and to promote public welfare, educate the nation's life, and participate in implementing world order based on independence, lasting peace and social justice. In the context of the development of information and communication technology, the purpose of the state is realized in the form of protection of personal data of every Indonesian citizen or resident.

Philosophically, regulatory efforts regarding the right to privacy of personal data are a manifestation of recognition and protection of basic human rights. Therefore, the drafting of the Personal Data Protection Bill has a strong philosophical foundation and can be accounted for.¹⁵

The philosophical foundation of personal data protection is Pancasila, namely *rechtsidee* (legal ideals) which is a construction of thoughts (ideas) that directs the law to what is aspired to. Rudolf Stamler, said that *rechtsidee* functions as a *leitsern* (guiding star) for the realization of the ideals of a society. From *rechtsidee*, the concept and politics of law in a country are compiled. The legal ideals are normative, and also constitutive.

Sociologically, the formulation of rules on personal data protection can also be understood due to the need to protect individual rights in society in connection with the collection, processing, management, and dissemination of personal data. Adequate protection of privacy regarding data and personal data will be able to provide public confidence to provide personal data for various interests of the greater community without being abused or violating their personal rights. Thus, this regulation will create a balance between the rights of individuals and

¹³ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI- Press, 2008, Page. 10

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media, 2010, Page. 96

¹⁵ Eka Martiana Wulansari, *Kosep Perlindungan Data Pribadi Sebagai Aspek Fundamental Norm dalam Perlindungan Terhadap Hak Atas Privasi Seseorang Di Indonesia*, *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan*, Vol. 7 No 2, 2020, Page. 265-290

communities whose interests are represented by the state. The regulation on Personal Data Protection will contribute greatly to the creation of order and progress in the information society.

As a state of law, the Republic of Indonesia has an obligation to protect the rights of its citizens.¹⁶ These rights are part of the human rights guaranteed in the 1945 Constitution. In order to address the issue of security and protection of personal data, the government established Law No. 19/2016 on the Amendment to Law No. 11/2008 on Electronic Information and Transactions. However, along with the rapid development of technology, currently these provisions are deemed insufficient to resolve legal issues that occur, especially regarding the protection of personal data on social media platforms, it is hoped that in certain circumstances. If examined further, the matter of personal data, apart from being regulated in the Electronic Information and Transactions Law, is also regulated in several laws and regulations in Indonesia that do not specifically regulate personal data. This is because personal data can be provided, stored, transferred and even leaked not only through electronic systems (cyberspace) but also through non-electronic systems. This is why in the widespread context of its use, several laws and regulations that cover this matter can be used.

Until October 17, 2022, the Government officially issued Law of the Republic of Indonesia Number 27 Year 2022 on Personal Data Protection. This is a new era in the regulation of personal data in Indonesia along with the flow of technology and information in cyberspace around the world. In this research, the author would like to analyze several other elements that must be considered together as an input to support the effectiveness of the regulation itself.

In line with the regulation of the protection of personal data in a special law, namely Law No. 27 of 2022 on Personal Data Protection, it can be observed that there is some progressiveness regarding personal data in Indonesia. It can be seen in terms of legal politics, understanding, information, personal data processors, personal data controllers, and personal data subjects who are not only people but also companies / legal entities. Therefore, the politics of law in this regulation can be seen in the active role of the government, starting from regulation, storage, processing, transfer, to countermeasures both preventively and repressively (imposition of sanctions). It can also be noted that this is a regulation regarding the protection of personal data that is regulated at the level

¹⁶ Diya Ul Akmal, *Indonesian State of Law: The Essence of Human Rights Protection in the Establishment of Laws and Regulation*. *Primagraha Law Review*, Vol. 1, No. 1, 2023, Page. 1-11

of a law, so it is certainly worth pursuing its implementing regulations immediately so that the protection mechanism becomes efficient.¹⁷

3.2. Personal Data Protection from a Human Rights Perspective

The urgency of personal data protection can be seen in the existence of personal data protection as part of human rights regulated in Article 12 of the Universal Declaration of Human Rights which provides a legal basis for its member states in terms of the state's obligation to protect and respect the right to privacy of its respective citizens. 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 took effect on March 23, 1976. This international legal instrument provides more explicit protection for human personal rights. Article 17 paragraph (1) of the ICCPR states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence or to unlawful attacks on his honor and reputation, everyone being entitled to the protection of the law against such interference or attacks.

There are internationally recognized principles of privacy and personal data. These principles are the foundation for modern national data protection laws. One of the international instruments protecting privacy and personal data was issued by the Organization for Economic Co-operation and Development (OECD). In addition, the Council Of Europe (CoE) adopted the European Convention For The Protection Of Human Rights (ECHR) in 1950.¹⁸

Protection of privacy data as part of respect for the right to privacy must begin by providing legal certainty. Therefore, the guarantee of protection of privacy data must be placed in a legal instrument that has the highest power, namely the Constitution, because the Constitution is the highest legal instrument in a country. Legal certainty (principle of legality) is necessary and cannot be ruled out in the context of law enforcement by every state. The state's step in providing legal certainty is to stipulate and guarantee these rights in the constitution, so through this instrument the character of a country will be seen about what is put forward, what legal system is used and how the government is organized,¹⁹ Thus, it is time for Indonesia to have clear regulations on personal data protection.

¹⁷ Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis*, Vol. 4, No. 2, 2017, Page. 148–63

¹⁸ Rosadi, Pratama, Urgensi Perlindungan data Privasi dalam Era Ekonomi Digital Di Indonesia. *Veritas et Justitia*, Vol. 4, No. 1, 2018, Page 104.

¹⁹ Natamiharja, Mindoria, *Perlindungan Data Privasi dalam Konstitusi Negara Anggota ASEAN*, 2019, Page. 3.

In this regard, Sudikno Mertokusumo argues that law functions as a tool to provide protection of human interests. Meanwhile, Philipus M. Hadjon said that the main purpose of the rule of law is to provide legal protection for its people. Legal protection for the people against government actions is based on two principles, namely the principle of human rights and the principle of the rule of law.²⁰

Regulatory efforts related to the right to privacy of personal data are a manifestation of the recognition and protection of basic human rights.²¹ Therefore, the drafting of the Law on Personal Data Protection has a strong philosophical foundation and can be accounted for. The philosophical foundation in question is Pancasila which is the rechtsidee (legal ideals) and the idea of realizing the law to what is aspired to.

Basically, the form of personal data protection is divided into two forms, namely the form of data protection in the form of physical data security, visible data and invisible data.²² Another form of data protection is the regulation of unauthorized use of data, misuse of data for certain purposes and destruction of the data itself.

The enactment of Law Number 27 Year 2022 on the Protection of Personal Data is a hope for legal protection from the many cases of crime from the misuse of personal data in Indonesia which comes from data leaks and theft of personal data. The presence of the Personal Data Protection Law gives authority to the government in overseeing the governance of personal data carried out by electronic system providers. The Personal Data Protection Law states personal data as data about an individual who is identified or can be identified individually or in combination with other information either directly or indirectly through electronic or non-electronic systems.²³ Meanwhile, what is meant by personal data protection is the overall effort to protect personal data in the series of personal data processing in order to guarantee the constitutional rights of personal data subjects.

In order for the protection of personal data to be carried out appropriately to fulfill all the criteria in its regulation, the Personal Data Protection Law divides personal data into two types of data, namely specific personal data and general

²⁰ Setiadi, *Sistem Peradilan Pidana Terpadu dan Sistem Penegakan Hukum di Indonesia*. Jakarta: Prenada Media, 2017, Page 272.

²¹ Michele Finck, They who must not be identified distinguishing personal from non-personal data under the GDPR, *International Data Privacy Law*, Vol. 10, No. 1, 2020, Page 11-37

²² P. Yang, N. Xiong and J. Ren, "Data Security and Privacy Protection for Cloud Storage: A Survey," in *IEEE Access*, vol. 8, 2020, Page. 131723-131740,

²³ Undang-Undang Tentang Perlindungan Data Pribadi, UU Nomor 27 Tahun 2022, selanjutnya disebut UU UU PDP, Pasal 1 ayat (1)

personal data. As stated in Article 4 paragraph (2), the specific types of personal data include: health data and information; biometric data; genetic data; crime records; child data; personal financial data; other data in accordance with the provisions of laws and regulations.

In this specific data, the position of crime records is included in the specific category of personal data, according to the author's opinion, the regulation regarding crime records in the specific data criteria where a person's crime records receive different treatment compared to general data, such as in Article 34 which states that personal data controllers are obliged to conduct a data protection impact assessment in the event that the processing of personal data has a high potential risk to personal data subjects. The processing of personal data has a high potential risk as referred to, one of which is the processing of specific personal data. This is considered to make it easier for corruptors after serving their prison terms to return to become public officials and nominate in the general election process, because the public cannot find out about their criminal records.

Legal protection is absolutely necessary in the concept of a state of law. This is because the birth of the concept of the rule of law has the main objective of recognizing and protecting human rights. Thus, the concept of the rule of law will be fully and consequently implemented if followed by efforts made by the state in providing protection to its citizens. In a country there will be a reciprocal relationship between its citizens, then this relationship will give birth to a right and obligation to each other. Legal protection will be a right for citizens, while on the other hand legal protection is an obligation for the state against its citizens.

4. Conclusion

Philosophically, regulatory efforts concerning the right to privacy of personal data are a manifestation of recognition and protection of basic human rights. Therefore, the drafting of the Personal Data Protection Bill has a strong philosophical foundation and can be accounted for. Sociologically, the formulation of rules on personal data protection can also be understood due to the need to protect individual rights in society in connection with the collection, processing, management, and dissemination of personal data. Adequate protection of privacy regarding data and personal data will be able to give the public confidence to provide personal data for a variety of greater community interests without being misused or violating their personal rights. The enactment of Law No. 27 of 2022 on Personal Data Protection is a hope for legal protection from the many cases of crime from the misuse of personal data in Indonesia stemming from data leaks and theft of personal data. Legal protection is absolutely necessary in the concept of a state of law. This is because the birth of

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