



The Right to Privacy Based on the Law of the Republic of Indonesia Number 27 of 2022

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Abstract

The impact of technological advances and digital activities in society today affects a person's right to privacy. Potential threats and violations of a person's privacy rights containing important personal information are increasingly prevalent. Almost unrestricted digital access activities pose a threat of violating one's right to privacy. Personal data containing important information may be accessed by the Data Controller and potentially disseminated freely and irresponsibly. The right to privacy is part of the human right to obtain protection for oneself based on Article 28 Letter G section (1) of The 1945 Constitution of The Republic of Indonesia. The purpose of this study is to analyze the protection of the right to privacy of personal data. This research uses normative juridical research methods by exploring legal sources. With the passing of Law Number 27 of 2022, it is hoped that it will increase understanding of the right to privacy of personal data of every citizen to be able to maintain and be responsible for the right to privacy of personal data and become a legal umbrella for the Indonesian nation in upholding justice and providing legal protection in accordance with applicable regulations.

Keywords: *Personal Data, Protection of Personal Data, Right to Privacy*

INTRODUCTION

Information technology has changed people's lifestyles and caused significant changes in socio-cultural, economic, and legal frameworks. This ultimately also resulted in the creation of a new market that has encouraged the development of the community's economic system, from a traditional economy based on the manufacturing industry to a digital economy. The digital economy was born and developed along with the use of information and communication technology which is also increasingly globalized in the world.¹ The

¹ Ananthia Ayu D., Titis Anindyajati dan Abdul Ghoffar, 'Perlindungan Hak Privasi Atas Data Diri Di Era Ekonomi Digital', *Pusat Penelitian Dan Pengkajian Perkara, Dan Pengelolaan Perpustakaan Kepaniteraan Dan Sekretariat Jenderal Mahkamah Konstitusi Jakarta*, (2019).

development of information technology and the considerable potential of the digital economy are also accompanied by several negative impacts, including threats to the right to privacy and personal data of citizens. The right to privacy or privacy right is one of the rights in the fundamental right.² The right to privacy although not an absolute human right, but the legal protection of the right to privacy remains very crucial in this digital economy era.

The widespread use of internet technology in the world is a substantial factor contributing to the increasing processing of data. There is no doubt that the internet makes the exchange of information between individuals easier and more massive. The continuous circulation of individual information through unauthorized internet facilities therefore has a reason that focuses on unfair data processing activities between consumers of internet users and companies that carry out data processing³

The right to privacy according to the Big Indonesian Dictionary (KBBI) is defined as "personal freedom and freedom". It is therefore concluded that the right to privacy is the right of a person to have personal freedom or flexibility. The right to privacy is closely related to personal data. The relationship between the right to privacy and personal data can be found through Article 28 Letter G section (1) of the 1945 Constitution of the Republic of Indonesia which states that: "Everyone has the right to the protection of personal self, family, honor, dignity, and property under his control, as well as the right to a sense of security and protection from the threat of fear to do or not do something that is a human right."

Observing the article above, at that time, the security of people within the meaning of Article 28 letter G section 1 of the The 1945 Constitution of the Republic of Indonesia Constitution was expressly identified with the guarantee of individual freedom. Throughout its entire development, protection has become a common idea known in various countries, both as a law and as a moral guideline. These freedoms are identified with the deep needs of an individual, in particular the need to pay attention to his feelings, contemplations and privileges to take part in his life, which is surely known as the choice to be left alone.⁴

Basic rights such as the right to privacy, freedom of expression, and the right to information, including the right to personal data, are becoming increasingly complex to protect today. Technological progress has not neglected these rights, making it increasingly difficult to maintain optimal protection. This is because communication technology is certainly related to the use of tools that make it easier so that data transfer can be done faster.⁵ It is critical that the security of an individual's information is not just limited to whether or not an information has a personality, but the law addresses ensuring the protection of information that can

² Piagam Hak Fundamental Uni Eropa (Charter of Fundamental Rights of The Eropean Union) (2012/C 326/02) Pasal 8

³ Jacqueline Klosek, *Data Privacy in the Information Age*, Greenwood Publishing Amerika Serikat 2000, hal. 1 dan Ulrich Sieber, *The Emergence of Information Law: Object and Characteristics of a New Legal Area*, Law, Information and Information Technology, (Ed. Eli Ledermen/Ron Shapira), Kluwer Law International, Den Haag 2001, hal. 8.

⁴ Wahyudi Djafar, 'Perlindungan Data Pribadi Di Indonesia: Lanskap, Urgensi, Dan Kebutuhan Pembaruan', *Jurnal Becoss*, 1.1 (2019), 147–54.

⁵ Alga Soraja, 'perlindungan hukum atas hak privasi dan data pribadi dalam prespektif HAM', <https://conference.untag-sby.ac.id/index.php/semnas/issue/view/6>, vol. 1 (2021).

recognize its owner. The idea of protection is widespread and managed in some countries, both as legal and unwritten guidelines, in particular the principles that exist in the eyes of the public (moral aspects).⁶

Based on Article 1 section 1 of Law Number 27 of 2022 concerning the Protection of Personal Data, it is stated that Personal Data is data about an individual who is identified or can be identified separately or combined with other information either directly or indirectly through electronic or non-electronic systems. Article 1 section 3 states that Information is information, statements, ideas, and signs that contain values, meanings, and messages, both data, facts, and explanations that can be seen, heard, and read which are presented in various packaging and formats in accordance with the development of information and communication technology electronically or non-electronically. The article explains that personal data contains information on personal matters concerning a person both in electronic and non-electronic forms.

The right to protection of personal data develops from the right to respect private life or called the right to private life. The concept of personal life relates to man as a living being. Thus the natural person is the main owner of the right to the protection of personal data.⁷ There are three important principles for privacy. The first principle is the "right to be alone" as a basic principle of privacy.⁸ The second principle is the personal data of one person, written by another person. Such information may be misused by any individual who collects or rotates information as a violation of the owner's own freedom. The third principle is the confidentiality of private internet-based interchanges. Under certain conditions, attempts to block an individual's electronic correspondence by another person may be delegated as a violation of individual freedom.⁹

Personal information as a citizen's right to privacy needs to be protected among states, governments, and societies to enhance human values and relationships. To improve genes between individuals and their communities, and to increase independence or autonomy to exercise control and obtain benefits.¹⁰ The state's participation in the protection of privacy as a right of all citizens is very clear. This is stated in Law Number 39 of 1999 concerning Human Rights which states in Article 2 of the Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights that are naturally inherent in and inseparable from human beings, which must be protected, respected, and enforced for the sake of increasing the dignity of humanity, welfare, happiness, and intelligence and justice. The right to privacy is the responsibility of the government because the government is responsible to its citizens in providing protection and ensuring security

⁶ Alga Soraja, 'perlindungan hukum atas hak privasi dan data pribadi dalam prespektif HAM', <https://conference.untag-sby.ac.id/index.php/semnas/issue/view/6>, vol. 1 (2021).

⁷ European Union Agency for Fundamental Rights and Council of Europe, Supra no 5, hlm. 37.

⁸ Ni Putu, Suci Meinarni, and Emmy Febriani Thalib, "Privacy Related to Cyber Space Activities," in *Proceedings of the International Conference on Innovation in Research (ICIIR 2018) – Section: Economics and Management Science*, vol. 88 (Atlantis Press, 2019), 176–79, <https://doi.org/https://doi.org/10.2991/iciir-18.2019.32>.

⁹ Upik Mutiara and Romi Maulana, 'Perlindungan Data Pribadi Sebagai Bagian Dari Hak Asasi Manusia Atas Perlindungan Diri Pribadi', *Indonesian Journal of Law and Policy Studies*, 1.1 (2020), 42.

¹⁰ Eka Martiana Wulansari, 'Konsep 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*, 7.2 (2020), 265–89.

for the privacy of citizens. Therefore, the state as the organizer of government is responsible for the citizens under its control and is fully responsible for protecting the human rights of citizens.

Method

This research was conducted using normative juridical methods using qualitative data. Researchers will present some primary and secondary legal materials related to the regulation of privacy rights and personal data in Indonesia and conduct a study and investigation of applicable laws. The normative juridical approach method is an approach that refers to applicable laws and regulations.¹¹ In this study, the author used the legal sources of Law Number 27 of 2022 concerning Personal Data Protection which regulates the right to privacy of personal data of Indonesian citizens.

Findings

According to the General Assembly United Nation in The Right of Privacy in the Digital Age recognizes that the development of communication technology allows people to connect to the whole world, but on the other hand these developments also increase the ability of governments, companies and individuals to carry out surveillance, wiretapping and data collection that has the potential to threaten human rights. Therefore, privacy protection is needed both online and offline activities.¹²

The United States as a major country is experiencing problems with violating the right to privacy and personal data. The data leak case was first revealed by The Guardian, a well-known media in the UK on March 26, 2018. In the media, Cambridge Analytica, a data analytics company, has used personal information taken from Facebook without permission to build a system that can target United States voters with personalized political ads based on their psychological profiles. This was revealed when Christopher Wylie, a former Cambridge Analytica contractor, outlined how the data was built algorithms. Examples of cases of violation of the right to privacy and personal data in the United States can set a bad precedent on the other side of the development of information technology.¹³

The right to privacy that contains personal data consisting of names, residential addresses, e-mail addresses, mobile phone numbers is a very valuable asset today because there is economic value in such data. The use of data through personal data transmitted/disseminated to other parties is currently an important issue. Many violations of privacy rights occur due to poor implementation or the absence of security controls between the owner of personal data and the data controller. Many countries are trying to improve security requirements and implement them in their laws. However, most security frameworks are reactive and do not address relevant threats.¹⁴

¹¹ Sunggono, B. (2003). *Metodologi Penelitian Hukum*. Jakarta: PT Raja.

¹² UN. (2016). The right to privacy in the digital age. United Nations. <https://doi.org/10.1017/S0020818300024796>

¹³ Handrini Ardiyanti, Big Data Di Media Sosial, Alogaritma dan Pemilu., Kajian Singkat Terhadap Isu Aktual dan Strategis, Pusat Penelitian Badan Keahlian DPR RI, Bidang Pemerintahan Dalam Negeri, Vol. X, No. 09/I/Puslit/Mei/2018

¹⁴ Sungmi Park, dkk, (2018). *A comparative study on data protection legislations and government standards to implement Digital Forensic Readiness as mandatory requirement*. DFRWS 2018 Europe-Proceedings of the Fifth

Currently, personal data is an important element that contains information related to personal information from a person which is widely disseminated or sent to other parties on digital media in order to obtain certain digital services. For example, personal data is provided for the process of filling out digital forms to obtain digital services and without realizing it, the data controller or digital service provider cannot guarantee the security or confidentiality of the personal data transmitted to it. Cases of misuse and violation of privacy rights that are rampant in the current era of digital technology make people think of the importance of maintaining the security and confidentiality of personal information from various potential breaches and misuse of data as a right to privacy.

In Indonesia, currently there is a regulation that regulates the protection of personal data of every Indonesian citizen, namely Law Number 27 of 2022 concerning the Protection of Personal Data. This regulation is a long wait for the Indonesian people to support the privacy rights of their citizens to personal data. With the enactment of the Law on the Protection of Personal Data, all personal data processing activities are regulated and supervised. The following are the settings regarding personal data containing the privacy of citizens as stated in Law Number 27 of 2022.

In Article 1 Section (2): Protection of Personal Data is the entire effort to protect personal data in a series of processing of Personal Data in order to guarantee the constitutional rights of the Personal Data subject. This article explains that this rule provides a guarantee of privacy protection of personal data which is the basic right of the personal data subject and through this Law also explains that the state guarantees legal protection for its citizens.

Article 3 states that the Personal Data Protection Law is based on:

- 1) Protection;
- 2) Legal certainty;
- 3) Public interest;
- 4) Expediency;
- 5) Prudence;
- 6) Balance;
- 7) Liability;
- 8) Confidentiality.

Article 3 explains the right to privacy of personal data guarantees protection for the personal data of its citizens, the element of legal certainty is stated that this regulation applies to be obeyed by all parties involved in the processing of personal data by taking into account the element of confidentiality of the information in it whose purpose is to benefit all personal data subjects.

Article 4 explains the types of personal data, namely: section (1) Personal Data consists of: a. Personal Data of a specific nature; and b. Personal Data of a general nature. Section (2) Personal Data of a specific nature as referred to in section (1) point a includes: a. health data and information; b. biometric data; c. genetic data; d. a record of crimes; e. children's data; f. personal financial data; and/or g. other data in accordance with the

provisions of laws and regulations. Section (3) Personal Data of a general nature as referred to in section (1) point b includes: a. full name; b. gender; c. statehood d. religion; e. marital status; and/or; f. Personal Data combined identifies an individual. Article 4 describes the privacy rights of everyone who contains important information concerning himself.

In Article 5: The Personal Data Subject has the right to obtain information about the clarity of identity, the basis of legal interest, the purpose of requesting and using the Personal Data, and the accountability of the party requesting the Personal Data. Under this Article, it is explained that there is a right for personal data subjects to be clear about the use of information regarding their personal data.

In Article 7: The Personal Data Subject has the right to gain access to and obtain a copy of the Personal Data about himself in accordance with the provisions of the laws and regulations. In Article 8: The Personal Data Subject has the right to end the processing, erasure, and/or destroy Personal Data about himself in accordance with the provisions of the laws and regulations. Articles 7 and 8 of this Act state that every owner of personal data has the right to have his personal information accessible, the right to obtain a copy or even to delete his personal data as he sees fit.

In Article 9: The Personal Data Subject has the right to withdraw consent to the processing of Personal Data about himself that has been given to the Personal Data Controller. This article explains that personal data that has been provided to the data service provider in this case called the personal data controller can be withdrawn by the owner of the personal data not to be processed.

In Article 13 section (1): The Personal Data Subject has the right to obtain and/or use Personal Data about himself from the Personal Data Controller in a form that is in accordance with the structure and/or format commonly used or readable by electronic systems. In Article 13 section (2): The Personal Data Subject has the right to use and transmit Personal Data about himself to other Personal Data Controllers, as long as the systems used can communicate with each other securely in accordance with the principles of Personal Data Protection under this Law. Article 13 provides the right of freedom for the owner of personal data to obtain his personal information in electronic format from the personal data controller and freedom if he wants to send his personal data to another data controller for his benefit by taking into account the principle of personal data protection.

Article 18 paragraph (1) The processing of Personal Data may be carried out by 2 (two) or more Personal Data Controllers. In section (2) In the event that the Processing of Personal Data is carried out by 2 (two) or more Personal Data Controllers must meet the minimum requirements:

- 1) There is an agreement between the Personal Data Controllers containing the roles, responsibilities and relationships between the Personal Data Controllers;
- 2) There are interrelated purposes and ways of processing Personal Data that are determined jointly; and
- 3) There are contact persons appointed jointly.

Article 18 explains that there are restrictions in the processing of personal data that regulate the personal data controller has the responsibility to carry out the processing of personal data not deviating from the purposes.

Article 21 section (1) In the case of processing Personal Data based on the consent of the Personal Data Controller, it is mandatory to submit Information regarding:

- 1) The legality of the processing of Personal Data;

- 2) The purposes for which the Personal Data is processed; \
- 3) The type and relevance of the Personal Data to be processed;
- 4) The period of retention of documents containing Personal Data;
- 5) Details regarding the Information collected;
- 6) The period of processing of Personal Data; and
- 7) Rights of Personal Data Subjects.

This article and section emphasize the obligations of the personal data controller including that the processing of personal data must have legal legality including the purpose, type and relevance, period and information of the personal data subject.

In Article 27 the Personal Data Controller is obliged to carry out limited and specific, legally valid, and transparent processing of Personal Data. This article affirms the right to privacy of citizens by limiting the processing of personal data by the data controller and has validity and legality.

The state's step in providing legal certainty is to establish and guarantee this right in the constitution, then through these instruments, the character of a country will be able to be seen about what things are put forward, what legal system is used and how the government is regulated.¹⁵

CONCLUSION

The existence of protection of personal data is a basic principle of the right to privacy. Therefore, the protection of personal data is a constitutional right of all citizens. Indonesian citizens can currently carry out data processing activities with guaranteed protection of the privacy rights of their personal data. With the existence of Law Number 27 of 2022 concerning the Protection of Personal Data, there is an element of legal certainty, it is stated that this regulation applies to be obeyed by all parties involved in the processing of personal data by taking into account the element of confidentiality of the information in it. The Personal Data Protection Law also affirms the right for personal data subjects to clarity in the use of information regarding their personal data and the obligations for personal data controllers who carry out personal data processing activities must have legal legality. With the enactment of the Data Protection Law, it is hoped that it can have a comprehensive positive impact on all Indonesian people, including increasing economic value in the digital economy sector, increasing the order of use and processing of personal data as well as understanding for all levels of society of the right to privacy of personal data. Referring to many countries that have previously owned and implemented laws regarding the protection of personal data, Law Number 27 of 2022 is expected to be able to become a legal umbrella in accommodating personal data use activities, preventing violations of personal data processing and applying law enforcement principles in ensuring protection of the privacy rights of Indonesian citizens.

¹⁵ Natamiharja, R., & Mindoria, S. (2019). Perlindungan Data Privasi dalam Konstitusi Negara Anggota ASEAN. <http://repository.lppm.unila.ac.id/10613/>

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