

Personal Data Protection Policy in Law Number 27 of 2022 in Facing the Digital Era in Indonesia

Sopiya Salwa Salsabila

Ilmu Hukum, Sekolah Tinggi Ilmu Hukum Adhyaksa, East Jakarta, Indonesia

*Corresponding Author:

sopiyasalsabila1622@gmail.com

Abstract

The objective of this research is to further map out the policies on personal data protection in the face of the digital era in Indonesia. This research employs a quantitative method sourced from legal documents such as laws, journals, and articles. The use of information technology across various sectors in Indonesia necessitates comprehensive legal protection policies to ensure the safeguarding of personal data. In this effort, regulations on personal data protection are governed by Law Number 27 of 2022 concerning Personal Data Protection, which addresses various aspects of personal data protection endeavored by the Government. However, in practice, this law still has several weaknesses that may lead to less than optimal personal data protection for the public. Problematic issues include discussions on personal data processing, which can currently be conducted by various stakeholders without legal permission. Additionally, there are weaknesses in the rights of data subjects and their implementation. Therefore, these aspects require government attention.

Keywords: Policy, Personal Data Protection, Digital Era

1. INTRODUCTION

In the rapidly developing digital era, it is essential to be aware of and understand the Constitution. Communication technology in the current digital era has become part of everyday life. Convenience is obtained by utilizing technology through various sectors such as the economic sector, health sector, education, communication, and other sectors. The use of technology in the economic sector can be seen by utilizing online shopping platforms or e-commerce; in the health sector such as the use of e-health; the education sector by utilizing online learning media or e-learning; and in the communication sector such as social media such as Facebook, Instagram, Twitter, etc. Conveniences can be felt compared to before the use of this technology in the form of

efficiency of time, energy, and costs in accessing various services that were initially only accessible face-to-face and can now be accessed remotely through the media. This condition makes personal data an important point in the use of information technology. Personal Data is data about an individual who is identified or can be identified separately or combined with other information directly or indirectly through electronic or non-electronic systems.

According to the 1945 Constitution of the Republic of Indonesia, the protection of personal data is one of the human rights that is part of personal self-protection. This is contained in Article 28 G paragraph (1) of the 1945 Constitution which regulates the right to protect personal, family, honor, dignity, and property under a person's control. The 1945 Constitution of the Republic of Indonesia protects personal data which is one of the human rights by providing security for the personal data of every citizen. (Soraja, 2021)

The security of personal data in Indonesian society is at risk. From 2019 to 2024, the Ministry of Communication and Information Technology handled 111 cases of personal data breaches that occurred in Indonesia (Mediana, 2024). Some of these cases include a personal data breach involving the Ministry of Home Affairs' Dukcapil with approximately 337 million records, a breach affecting around 20 million participants of the Social Health Insurance Agency (BPJS), a leak of 91 million Tokopedia user records, and 1.1 million Lazada user records, a breach of 1.3 million users of the electronic Health Alert Card (eHAC), and various other incidents that significantly threaten personal data security. (BBC News Indonesia, 2023).

These figures are certainly not insignificant. There are at least two types of personal data that need protection: specific personal data and general personal data. Specific personal data includes information such as health data, biometric data, genetic data, criminal records, and other data as stipulated by regulations. General personal data includes full name, gender, religion, marital status, and other data that combine personal details. Such information can be exploited by hackers through various websites, whether government-owned, such as Dukcapil and Kominfo, or private, such as online shopping platforms, social media, and others.

Data breaches must be addressed seriously and continuously. The consequences of personal data breaches are severe, potentially leading to misuse of personal data for identity theft, financial fraud, and financial losses affecting credit cards, bank accounts, and other financial services. Identity theft can also be used for criminal activities, and victims may suffer from emotional distress and discomfort. It is the government's responsibility to prevent the misuse of personal data. The Indonesian government is working to protect citizens' data through Law No. 27 of 2022 on Personal Data Protection.

This regulation adequately covers various important aspects of personal data protection but still has shortcomings. Problematic areas include the processing of personal data, which can currently be done by interested parties without legal authorization. Additionally, there are weaknesses regarding the rights of data subjects, particularly concerning the processing of children's data. Therefore, these aspects require further government attention.

2. RESEARCH METHOD

The research method used in this study is a normative legal research method, with a focus on qualitative analysis to link existing problems with the types of analysis that are currently relevant. This research approach involves in-depth identification and analysis of questions that arise about the legal issues that are the focus of attention. The data sources used in this study include laws and regulations, while policies related to the legal issues being discussed. In addition, the literature used as references also includes books, journals, articles, and papers related to personal data policies in the digital era.

3. RESULTS AND DISCUSSION

Personal Data Protection According to Law No. 27 of 2022

According to the Big Indonesian Dictionary, personal data is data relating to a person's characteristics, namely name, age, gender, education, occupation, address, and position in the family (Lesmana et al., 2022). The definition of personal data is also outlined in Article 1, Paragraph (1) of the Minister of Communication and Information

Technology Regulation No. 20 of 2016 on Personal Data Protection in Electronic Systems, which states that "Personal Data is specific individual data that is stored, maintained, and safeguarded for its accuracy and confidentiality." Additionally, Article 2 specifies that the protection of personal data involves various stages including acquisition, collection, processing, analysis, storage, display, announcement, transmission, dissemination, and destruction of personal data, as a form of respect for personal privacy.

According to Law No. 27 of 2022 on Personal Data Protection, personal data is defined as information about an individual that is identifiable or can be identified either directly or indirectly, whether through electronic or non-electronic systems (UU No. 27, 2022). Personal data refers to any individual's privacy-related information that is identifiable and/or can be identified either on its own or in combination with other information, whether directly or indirectly, through electronic systems. Personal data and confidentiality are inseparable because personal data is inherently linked to privacy. When discussing a person's personal data, we are indirectly also addressing their privacy, which must be protected and respected (Tacino, 2020). Based on Article 6 of the Personal Data Protection Act, personal data consists of:

a. General personal data

General personal data is data relating to the data subject so that others can find out a person's identity by using one or a combination of:

- 1) Name
- 2) Place and date of birth
- 3) Identity card number, driving license, or other identification number
- 4) Biometric data such as fingerprints, digital photos, or retina scans
- 5) Other data related to the organization of personal data.

b. Sensitive personal data

Sensitive personal data is a type of personal data that receives greater legal protection and must be treated with extra security. Sensitive personal data consists of:

- 1) Religion/Belief

- 2) Health
- 3) Physical condition and mental condition
- 4) Biometrics
- 5) Personal habits
- 6) Sexual life
- 7) Political views
- 8) Criminal records
- 9) Children's data
- 10) Personal financial data

Furthermore, one form of protected data is electronic information, which consists of a collection of electronic data, including but not limited to text, audio, images, maps, designs, photos, emails, letters, symbols, numbers, access codes, and similar items. This electronic information may be stored in electronic systems or exist as electronic documents. Law No. 27 of 2022 on Personal Data Protection in Indonesia primarily aims to protect individuals' personal data and regulate the collection, use, storage, security, and deletion of personal data by entities that manage it. The implementation of this law in cases of personal data breaches involves several key aspects:

a. Obligations of Data Controllers

The law establishes obligations for data controllers, such as companies or organizations that collect and manage personal data. They must maintain the confidentiality and security of the personal data they hold. Implementation of the law may require data controllers to adopt appropriate technical and organizational measures to protect personal data from unauthorized access or use.

b. Notification Obligation

In the event of a data breach, the law may require data controllers to notify affected individuals if there is a security breach that could cause harm or risk to them. This notification must be made promptly after the breach is detected, allowing individuals to take necessary actions to protect

themselves, such as changing passwords or monitoring their financial activity.

c. Regulation of Data Transfers

The law may regulate the transfer of personal data to other countries. It may require data controllers to ensure that the destination country has adequate data protection levels before transferring personal data there. The law might set specific requirements, such as obtaining written consent from individuals or using protective mechanisms, to ensure that personal data remains secure during transfer.

d. Sanctions and Liability

The law will establish sanctions and liabilities for violations of personal data protection. Sanctions may include substantial fines or legal action against data controllers who breach data protection provisions. The law may also provide for compensation for individuals who suffer losses due to personal data breaches, including financial restitution or reputational recovery.

The implementation of Law No. 27 of 2022 aims to enhance awareness and compliance with personal data protection in Indonesia. This law is expected to improve the protection of individual's personal data and reduce incidents of data breaches that negatively impact the public. Every citizen has the right to personal data protection as a fundamental human right, part of personal protection aimed at guaranteeing citizens' rights to personal security and fostering public awareness, as stated in Article 28G, Paragraph (1) of the 1945 Constitution of Indonesia. (Situmeang, 2021).

Personal Data Protection is the overall effort to protect Personal Data in the Personal Data processing series to guarantee the constitutional rights of Personal Data subjects. The current regulation of personal data is contained in several laws and regulations so to increase the effectiveness of implementing personal data protection, the government has created regulations in the form of laws, namely Law Number 27 of 2022 concerning Personal Data Protection.

Weaknesses of Law No. 27 of 2022 Concerning Personal Data Protection

The policy related to personal data protection is contained in Law Number 27 of 2022 concerning personal data protection. Overall, this regulation is sufficient to regulate various important aspects in efforts to protect personal data including General Provisions; Principles; Types of Personal Data; Rights of Personal Data Subjects; Processing of Personal Data; Obligations for Controlling Personal Data, and Personal Data Processors in Processing Personal Data. Transfer of Personal Data; Administrative Sanctions; Institutions; International Cooperation; Community Participation; Dispute Resolution and Procedural Law; Prohibitions on the Use of Personal Data; to Criminal Provisions.(UU No. 27, 2022) However, this regulation is still considered insufficient in protecting the personal data of Indonesian citizens due to several problematic areas. One significant issue is related to the processing of personal data, which can still be carried out by interested parties without legal authorization. Additionally, there are weaknesses concerning the rights of data subjects, particularly regarding the processing of children's data. These aspects require further government attention.

The requirements for collecting personal data are outlined in Articles 20 and 21 of the Personal Data Protection Law (UU PDP). Article 20, Paragraph (1) states that personal data controllers must have a legal basis for processing personal data. This means that personal data can only be processed if there is a valid legal basis according to UU PDP. Further details are provided in Article 20, Paragraph (2), which enumerates several alternative legal bases for processing personal data, listed in items a to f, either alternative or cumulative. However, in practice, many parties process personal data without meeting the requirements stipulated in the regulation. The government needs to enforce stricter legal measures to ensure the protection of Indonesian citizens' data. This is a major weakness of UU PDP—its implementation and enforcement. Many countries or jurisdictions lack adequate infrastructure or resources to oversee and enforce UU PDP effectively. As a result, compliance with this law is often inconsistent, and data privacy breaches can occur without adequate sanctions.

Regarding the rights of data subjects, they are regulated in Articles 8, 9, 10, Paragraph (1), 11, and 13, Paragraphs (1) and (2) of UU PDP. However, these rights are

exempted for national defense and security interests, law enforcement processes, general public interests related to state administration, financial sector supervision, monetary systems, payment systems, financial stability related to state administration, and statistical and scientific research interests. This means that personal data is not fully protected, as it can be accessed anytime by authorized parties without needing the data owner's consent. Another weakness is that UU PDP provides for three types of jurisdiction: civil (disputes), administrative, and criminal. (Atmasasmita, 2022). However, the intersection of these three jurisdictions can be complex, leading to confusion in their application and enforcement.

Another weakness in the implementation of the Personal Data Protection Law is the legal protection provided to domestic data owners when resolving disputes with data controllers in other countries. Specifically, there is a concern about whether foreign data protection institutions can be trusted to properly manage and safeguard the personal data of Indonesian citizens without misuse.

Chapter VII, Article 56, Paragraph (1) states that "Personal Data Controllers may transfer personal data to Personal Data Controllers and/or Data Processors outside the legal jurisdiction of the Republic of Indonesia by the provisions outlined in this Law." However, this paragraph does not explicitly include the phrase "with the consent of the data owner" after "personal data controllers... to personal data controllers... outside the legal jurisdiction of Indonesia."

The absence of this phrase undermines the absolute rights of data owners and contradicts the primary goal of the Personal Data Protection Law. Consequently, Article 56 does not add significant value to personal data protection, both domestically and internationally. For the Personal Data Protection Law to be effective, it must establish a high level of trust among stakeholders, including data controllers and data owners, in international agreements, whether bilateral or multilateral. The success of personal data protection depends on reciprocal trust between data controllers across countries and the level of compliance among data owners with varying legal systems.

Additionally, the law suffers from the lack of detailed regulations, such as government regulations related to personal data protection in Indonesia. These

secondary regulations are crucial given the increasing cases of hacking and data breaches in the digital world. The widespread use of digital technology heightens the risk of such incidents if not swiftly addressed through legal frameworks like secondary regulations for data protection. This should prompt law enforcement to address existing data breach cases and encourage data controllers to enhance data protection measures in Indonesia.

The government needs to address these weaknesses, especially as the digital world continues to evolve and Indonesia faces significant challenges in the global digital era. With a large portion of Indonesian society now adept at utilizing information technology for communication, commerce, and other purposes, there is a pressing need to review and update the PDP Law to ensure its relevance and effectiveness in Indonesia.

4. CONCLUSION

In the context of personal data protection, the Personal Data Protection Law is a progress that can be seen with the creation and implementation of this law to protect the Indonesian people in the digital era like today. Although the PDP Law is a positive step in protecting personal data privacy, the existing weaknesses need to be addressed so that this law can provide more effective and relevant protection in the ever-changing digital era. Given that the Indonesian people have made the use of digital technology an inseparable part of everyday life. The use of technology is increasing in society, both in the economic sector, which can be seen from the use of online shopping platforms or e-commerce; the health sector, such as the use of e-health; the education sector, the use of online learning media or e-learning; and the communication sector, such as social media. Therefore, personal data protection is very important to ensure the security of people's data using their data. In addition, the government needs to listen to suggestions from various groups regarding the implementation of this PDP Law.

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