
THE ROLE OF THE STATE IN PROTECTING PERSONAL DATA UNDER LAW NUMBER 27 OF 2022

Cornelia Ayu Hafsari¹, Labib Muttaqin²¹ Muhammadiyah University of Surakarta (corneliaayuu@gmail.com)² Muhammadiyah University of Surakarta (lm812@ums.ac.id)

ABSTRACT

The purpose of this research is to find out the role of the state and to find out the juridical review of legal protection in guaranteeing the security of personal data in terms of Law Number 27 of 2022 concerning Protection of Personal Data which in its analysis uses a conceptual approach and a legal approach. invitation (law approach). The results of this study are that the PDP Law provides protection for a person's personal data and provides strict sanctions for perpetrators of cybercrime, including phishing perpetrators. The government has an important role in implementing the PDP Law, among others by imposing sanctions on cybercrime perpetrators, strengthening cooperation between government agencies in the field of cybersecurity, and providing a sense of security and comfort for the public in conducting online transactions and maintaining personal security. data. The Personal Data Protection Authority was established by the government to formulate policies and oversee personal data protection as well as provide administrative sanctions and assist law enforcement in dealing with personal data crimes. The PDP Law and related government actions are expected to minimize phishing practices and protect Indonesian people's personal data

Keywords: Personal Data, Role of the State, Protection

INTRODUCTION

Indonesia has many regulations regarding personal data protection which are contained in several laws. The President of the Republic of Indonesia has passed Law Number 27 of 2022 concerning Personal Data Protection which aims to regulate the legal protection of personal data which is a solution to various types of cases related to misuse of personal data. (Anggraeni and Setyawati Fitri, 2018)

The urgency regarding privacy protection in Indonesia at this time is not linear with public awareness of the importance of protecting privacy. The state is required to be open to its people, including regarding data held by the government. However, not much of the data held by the government can be made public. In this case, it can occur because of the private nature of the data and also because the data is vulnerable.

Various incidents regarding reports of leaking and misuse of data held by government agencies can actually show how important this security aspect is in efforts to safeguard the public's personal data. This also proves that the state has an important character in ensuring the fulfillment of personal and state interests in the use of personal data, as well as ensuring the security of personal data held by state institutions. (Pratama, B, 2017)

In Article 1 Paragraph 1 of Law Number 27 of 2022 concerning Personal Data Protection, it is stated that personal data is "data about natural persons who are identified or can be identified individually or in combination with other information either directly or indirectly through electronic or non-electronic systems. ." Continuing in Article 1 Paragraph 2 of Law Number 27 of 2022 concerning Personal Data Protection, it is stated that personal data protection is "the entire effort to protect Personal Data in the process of processing Personal Data in order to guarantee the constitutional rights of Personal Data subjects." (Hisbullah, 2021)

In general, these laws also take into account whether data moves across borders, which often raises

jurisdictional issues, including possible conflicts with applicable national laws. (Priscyllia, 2019) Therefore, laws must put people at the center, which means ensuring that personal data is protected, regardless of whether their data is processed inside or outside the territory where the community is located (extra-territorial sphere).

In this scope, the transfer of this data to entities abroad can only be carried out if the data recipient has a level of data protection that is at least equal to the provisions in the sender's national law.

The concept of the welfare state is the basis for the position and role of government in modern countries. The welfare state is a modern legal area and is the opposite of the concept of a formal (classical) legal state, which is based on the idea of strict control over the implementation of state power (especially the executive) at a time when absolute monarchies have a lot to prove for abuse of power. (PSIK, 2008)

One of the characteristics of a welfare state is the government's duty to seek general welfare. Tied to the welfare state Asa Briggs argues, if the welfare state is a state with organized power (through politics and government) modifying market efficiency in three directions: first, the lowest guaranteed income for individuals and families regardless of the market value of their work and possessions; second, reduce and eliminate social risks associated with social contingencies, for example illness, old age and unemployment; third, delivering social assistance in the main way to all communities without looking at differences in degrees and layers. (Asep Mulyana, 2015)

Every country has certain goals, one of which is how the country is structured and how people's lives are regulated. On the other hand, the function of government emphasizes a dynamic perspective on the state with all activities and positions used to achieve the state's goals. The goal of a country is actually the country's aspiration to realize the country through systematic procedures or instruments that apply to that country. According to Roger Soltau, the goal of the state is to enable its people to develop and regulate their creativity as freely as possible.

It is explained about public information in article 1 number (2) of Law Number 14 of 2008 concerning Openness of Public Information, that "public information is information that is produced, stored, managed, sent, and/or received by a public body related to the organizer and state administration and/or administration and administration of other public bodies in accordance with this law as well as other information relating to the public interest." Public information is "information" that has been processed or collected by public bodies related to the administration and interests of society. Article 6 paragraph (3) states that, "public information that cannot be provided by Public Bodies is as intended in paragraph (1):

- a. Information that could harm the country;
- b. Information relating to business protection interests from unfair business competition;
- c. Information relating to personal rights;
- d. Information relating to position secrets; and/or
- e. The requested public information has not been mastered or documented."

The right to protect personal data is increasing in the authority to view privacy or what is called the right to private life. In other words, individuals are the main owners of personal data protection rights. This personal data has a vulnerable nature which makes it something interesting, because a person's activities and needs in their daily life are closely related to personal data. Personal data is also an asset or commodity with high economic value. (N, 2020)

In Indonesian literature, the term legal state is a direct translation of *rechtstaat*. The characteristics of *rechtstaat* include: (Huda, 2005)

1. The existence of a Basic Law or constitution which contains written provisions regarding the relationship between the authorities and the people;
2. There is a division of state power;
3. Recognizing and protecting people's freedom rights.

The most obvious form of legal protection is the existence of law enforcement institutions such as courts, prosecutors, police and non-litigation dispute resolution institutions. This is in line with the concept of law according to Soedjono Dirdjosisworo who stated that law is important and diverse in

society, one of which can be seen from the meaning of law in the existence of law enforcement institutions.

A person as a legal subject is a follower or bearer of rights from the time he is born alive until he dies. In this case there is an exception, namely that babies still in their mother's womb are considered legal subjects as long as their interests are supported. The next legal subject is a legal entity, which is a collection of people or can also be a collection of legal entities. According to Satjipto Rahardjo, the law protects a person's interests in a certain way giving him the power to act in a sequence of measurable interests. Interests are subject to rights because rights include elements of protection and recognition.

Therefore, legal protection is one of the media that must be maintained by other justice. Legal protection is an activity to maintain or support society to achieve society's interests towards justice. Then legal protection is constructed as a form of service and the subject being protected. (Salim HS and Erlies Septiana Nurbaini, 2013). The purpose of protecting personal data in the view of Islamic law is for the purposes stipulated by maqashid al-syari'ah law, namely to create *maslahah* (goodness) for humanity.

Protection of personal data is a right that belongs to society and this right must be protected, even in Islam through the words of the Prophet Muhammad SAW, advocating peace by prioritizing behavior that respects, respects and loves fellow human beings. This behavior must be practiced between people of one religion and another, not only among fellow Muslims. From Abu Hurairah Rodhiyallahu 'anhu said, that he heard the Messenger of Allah sallallaahu 'alaihi wa sallam say: (Al-Albani M. Nashirudin, 2003)

لَوْ اطَّلَعَ فِي بَيْتِكَ أَحَدٌ، وَلَمْ تَأْذُنْ لَهُ، حَدَفْتُ هُ بِخِصَابَةٍ، فَفَقَأَتْ عَيْنَهُ مَا كَانَ عَلَيْكَ مِنْ جُنَاحٍ

It means:

"If someone peeks into your house, and he does not ask your permission, then you throw pebbles at him so that his eyes gouge out, then there is no sin on you." (HR. Bukhari no. 6888).

The hadith explains that the way to respect and respect other people is to protect their privacy and not abuse it.

RESEARCH METHODS

There are many methods used in legal trials. The author focuses research on a conceptual approach because it is considered to adhere to established laws. This was done due to the unavailability of laws that deal with the problems being faced.

A statutory approach is also used in this paper. Peter Mahmud Marzuki defines a legislative approach as an approach that utilizes legislation and regulations. This approximation is carried out using a review of all regulatory laws relevant to the conflict in question. (Mukti Fajar and Yulianto Achmad, 2010). Law no. 27 of 2022 concerning the security of Personal Data is one of the rules applied by the author in this experiment. They also use other rules that are relevant to this experiment.

RESULTS AND DISCUSSION

A. The State's Role in Protecting Personal Data in View of Law Number 27 of 2022 concerning Personal Data Protection

On October 17 2022, the President of the Republic of Indonesia Joko Widodo signed Law no. 27 of 2022 concerning the security of Personal Data. While advances in technology and the internet continue to develop and criminal activity continues to increase, the problem of data theft is a major concern and definite and safe solutions are immediately provided. Cybercrime inevitably impacts individuals, groups and countries. In addition, these losses include losses in the economic, banking, political, or even national security fields.

It is hoped that the PDP Law will be a bright spot for personal data leaks that often occur in Indonesia. The concept of the right to privacy is protected in the PDP Law. According to the Academic Paper on the Personal Data Security Law, "the right to confidentiality through the security of personal

data is an important element for individual privacy and dignity". Therefore, the aim of establishing individual information security regulations is aimed at protecting clients' needs from misuse of their personal information by other parties.

By citing Article 5 of Law Number 12 of 2001 concerning the Creation of Regulations, the Personal Data Protection Law requires the principles of establishing good legal regulations. To ensure that the PDP Law is acceptable to the public, this analysis produces the following conclusions:

1. Clarity of purpose: every law passed has a specific goal to achieve prosperity, such as protecting people's personal data and their right to privacy.
2. At the DPR RI Plenary Session, First Session of the 2022-2023 Session, the Personal Information Security Bill was officially declared law.
3. "Every law that is made must consider how the regulation impacts society from a philosophical, sociological and juridical perspective."
4. Every legal regulation is made because it is really needed and useful for regulating the life of the community, nation and state. One of the legal laws that is really needed by society is the personal data protection law. Nowadays, people are worried about their privacy because many cases of data leakage are suspected to have occurred. This is mainly due to the development of the internet and increasingly advanced technology. With the ratification of the PDP Law, the Indonesian people received good results.

So from the analysis above, the passing of the PDP Law can be said to be a solution to current personal data leaks. Apart from that, the Indonesian people will have clear legal protection.

B. Juridical Review of Legal Protection in Ensuring the Security of Personal Data in View of Law Number 27 of 2022 concerning Personal Data Protection

The purpose of Law no. 27 of 2022 concerning Personal Data Protection is to increase the efficiency of implementing personal data security, fortify and guarantee the basic rights of citizens regarding personal protection, maintain access to services from companies, public bodies, international organizations and governments, and advance the digital economy and information and communications technology industry.

According to Article 28 G paragraph (1) of the Republic of Indonesia Law of 1945, "Every person has the authority to safeguard their body, family, glory, prestige and wealth under their authority, and has the right to a sense of security and peace." Being safe and protected from pressure to do or not do something is a human right. There are concerns that individuals and legal entities may commit Personal Data breaches, leading to Personal Data security issues.

Data owners must receive registered requests, both electronic and non-electronic, to exercise the rights of personal data subjects as mentioned in Article 14. Except for statistical purposes as well as scientific research, the interests of law enforcement processes, public purposes, state management is interested in monitoring the financial services sector, monetary and transaction systems, and the constancy of the financial system implemented by the government, and the interests of national defense and security. Personal data controllers must process personal data in a limited and specific manner, lawfully, honestly and in accordance with its intended purpose.

The initiative to respect the security of personal data in Indonesia is driven by regulations on human rights according to the 1945 Constitution. After that, the security of personal information is referred to in several laws, namely:

1. Article 40 Paragraph (1) Law no. 10 of 1998 concerning Banking regulates obligations for banks to keep their customer data and information confidential;
2. Article 42 Paragraph (1) of Law Number 36 of 1999 concerning Telecommunications which requires service providers to ensure the security of all information sent or received via telecommunications services or networks;
3. According to Article 2 of Law Number 8 of 1999 concerning consumer security, consumer protection must be based on benefits, justice, balance, security and legal certainty;

4. Every person's right to personal integrity is protected by Article 21 of Law Number 39 of 1999 concerning Human Rights. Therefore, it is impossible for someone to become a research subject without their permission;
5. Article 6 Paragraph (3) of Law Number 14 of 2008 concerning transparency of Public Information which states that several information cannot be conveyed to public bodies, one of which is information about personal rights;
6. Article 57 Paragraph (1) of Law Number 36 of 2009 concerning Health which guarantees the security of each patient's personal data;
7. Article 84 Paragraphs (1) and (2) Law no. 24 of 2013 regarding the transformation of Law no. 23 of 2006 concerning Population Management protects citizens' personal information such as fingerprints, irises, signatures, information indicating physical or mental disabilities;
8. Article 26 Paragraph (1) Law No. 19 of 2016 concerning the transformation of Law no. 11 of 2008 concerning Digital News and Payments (UU ITE) stipulates that the person concerned must provide written consent before using digital information that is connected to individual information;
9. Minister of Communication and Information Technology Decree No. 20 of 2016 concerning the security of Personal Information in Digital Concepts, numbers 1 and 2, describe individual information, namely a person's identity that is clear and easy to understand, which means that personal evidence is maintained, guarded and stored in a secure safe;
10. Due to Government regulation Number 71 of 2019 concerning the implementation of electronic systems and payments, personal data must be stored, stored properly and kept confidential, as outlined in Article 1 Number 27.

In terms of personal data protection, legal regulations in Indonesia are almost the same as in Australia, namely they are sectoral or spread across various regulations. In Australia, regulations are spread across commonwealth, state and territory levels. Meanwhile, legal protection in Malaysia and Singapore tends to be better than Indonesia. This is because personal data protection laws in both countries have been regulated in one comprehensive law, namely the Personal Data Protection Act 2010 in Malaysia and the Personal Data Protection Act 2012 in Singapore. Meanwhile, Article 26 Paragraph (1) of the ITE Law is similar to the contents of the 2010 Data Protection Law in Malaysia. Both regulations seek to ensure that before personal data is collected and processed, prior consent must be obtained from the subject. Indonesia has actually prepared a draft law that specifically regulates personal data protection (RUU PDP). On January 24 2020, President Joko Widodo signed the bill and it has been included in the 2021 Prolegnas Priority. Through the PDP Bill, Indonesia will incorporate all regulations regarding privacy or personal data into law.

CONCLUSION

Based on the article above, it can be concluded that developments in technology and information have made it easier for irresponsible people to access a person's personal information. Even though Indonesia had several regulations regarding personal data defense before the emergence of Law Number 27 of 2022 regarding Personal Data Protection, these regulations were not specific enough. The PDP Law provides protection for a person's personal data and provides strict sanctions for cybercriminals, including phishing perpetrators. The government has an important role in implementing the PDP Law, including providing sanctions for cybercriminals, and providing a sense of security and comfort for the public to make online payments and safeguard their personal data. The Personal Data Protection Authority was established by the government to formulate policies and supervise personal data protection as well as provide administrative sanctions and assist law enforcement in dealing with personal data crimes. The PDP Law and related government actions are expected to minimize phishing practices and protect the personal data of the Indonesian people.

REFERENCES

1. Al-Albani M. Nashirudin. (2003). Ringkasan shahih Bukhari. *Gema Insani*, 138.
2. Anggraeni; Setyawati Fitri. (2018). Polemik Pengaturan Kepemilikan Data Pribadi Urgensi untuk Harmonisasi dan Reformasi Hukum Indonesia. *Jurnal Hukum & Pembangunan*, 814-825.
3. Ardi S. G., S. Lasmadi, dan K. Nabawi. Cyber Crime dalam Bentuk Phising Berdasarkan Undang-Undang Informasi dan Transaksi Elektronik. *PAMPAS: Journal Of Criminal*. (1) 2.
4. Dalam, Asep Mulyana. (2015). Studi tentang Negara Kesejahteraan. *Artikel*.
5. Dian Ekawati. (2018). Perlindungan hukum terhadap nasabah bank yang dirugikan akibat kejahatan skimming ditinjau dari perspektif teknologi informasi dan perbankan. *UNES Law Review*. (1) 2.
6. Djafar dan Wahyudi. (2019). Hukum perlindungan data pribadi di indonesia: lanskap, urgensi dan kebutuhan pembaruan. *Seminar Hukum dalam Era Analisis Big Data, Program Pasca Sarjana Fakultas Hukum UGM*.
7. Hisbulloh, M. H. (2021). Urgensi Rancangan Undang-Undang (RUU) Perlindungan Data Pribadi. *Jurnal Hukum*, 119.
8. Huda, N. (2005). Hukum Tata Negara Indonesia. *PT Raja Grafindo Persada*, 74.
9. Librayanto, r., & Jurdi, f. (2008). Trias Politica dalam Struktur Ketatanegaraan Indonesia: Kekuasaan Presiden antara Tak Terbatas dengan Tidak Tak Terbatas. *PuKAP*.
10. Mukti Fajar dan Yulianto Achmad . (2010). Dualisme Penelitian Hukum Normatif dan Empiris. *Pustaka Pelajar*, 157.
11. Muhammad Saiful Rizal. (2019). Perbandingan Perlindungan Data Pribadi Indonesia dan Malaysia. *Jurnal Cakrawala Hukum*. (10) 2.
12. Margareta R. A dan B. Santoso. (2018). Urgensi Rekonstruksi Hukum E-commerce di Indonesia. *Jurnal Law Reform*. (14)1.
13. N, H. (2020). Perlindungan Data Pribadi sebagai Bagian Hak Asasi Manusia atas Perlindungan Diri Pribadi suatu Tinjauan Kompratif dengan Peraturan Perundang-undangan di Negara Lain . *Selisik*, 2685-6816.
14. Pratama, B. (2017). Beberapa Catatan Tentang Ruu Data Pribadi. *Binus University*.
15. Priscyllia, F. (2019). Perlindungan Privasi Data Pribadi Perspektif Perbandingan Hukum . *Jatiswara*.
16. PSIK, T. R. (2008). *Negara Kesejahteraan & Globalisasi*.
17. Rhesita Yustitiana (2021). Pelaksanaan Pengaturan Hukum Tindak Kejahatan Fraud Phishing Transaksi Elektronik Sebagai Bagian Dari Upaya Penegakan Hukum Di Indonesia Dikaitkan Dengan Teori Efektivitas Hukum. *Jurnal Hukum Visio Justisia* (1) 1.
18. Salim HS & Erlies Septiana Nurbaini. (2013). Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi. *PT. Rajagrafindo Persada*, 261.
19. Yuniarti, S. (2019). Perlindungan Hukum Data Pribadi di Indonesia. *Jurnal Becoss*, 1.