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Cross-Border Personal Data Transfers after the Indonesia-United States Agreement on Reciprocal Trade (ART)

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Abstract

The commitment of the Agreement on Reciprocal Trade (ART) between Indonesia and the United States is a big step forward in how cross-border personal data transfers are handled. In this context, Indonesia has affirmed its dedication to ensuring legal certainty for the transfer of personal data to the United States. This agreement positions Indonesia as unequal, where data under its control can be transferred to the United States without any barriers. This article analyzes the legal ramifications of such commitment through the lens of international treaty law, specifically regarding the necessity of parliamentary approval. Article 10 of Law No. 7 of 2014 on Trade regulated that international trade agreements that have an enormous impact on society, cost the state budget, or require changes to current laws must be approved by law. Because cross-border transfers of personal data could violate basic privacy rights and conflict with Indonesia's data protection laws, the question is whether ART needs the House of Representatives' approval. The Constitutional Court Decision No. 137/PUU-XXIII/2025, on the other hand, offers a different interpretation. It mentions that international agreements about cross-border personal data transfers do not always need to be approved by law. This article critically examines the conflict between statutory mandates and constitutional interpretation, evaluating its consequences for democratic accountability and the safeguarding of individual rights. Furthermore, Indonesian trade law requires legislative approval for any ratification of a trade agreement that has consequences to the domestic economy. The study also contends that transparency in treaty-making processes is crucial for maintaining legal certainty, adherence to constitutional mandates, and the robust safeguarding of personal data in international trade relations

Keywords: *Cross-border Data Transfer; Treaty Ratification; Personal Data Protection*

INTRODUCTION

Based on the Constitutional Court of the Republic of Indonesia (Mahkamah Konstitusi) Decision Number 137/PUU-XXIII/2025 on January 19, 2026, an issue related the flow of data from Indonesia to other country has raised a concern particularly related to the sovereignty of Indonesia. Rega Felix, an Indonesian lawyer and lecturer, submitted the claim before the Constitutional Court in relation to the movement of data from Indonesia to other countries. The petition was founded on a wider constitutional worry: in the age of AI and data-driven enterprises, the flow of personal data is connected to questions of state sovereignty, economic dependency, and the protection of basic rights. The petitioner thinks that data is the "new oil" of the digital economy, a resource that helps countries compete and gain power in the world. (1) In this context, the legality of transmitting Indonesian residents' personal data internationally, especially to a significant economic partner like the United States, was depicted as a constitutional issue of the petition that was not incidental. It coincided with the public announcement of the conclusion of the rather than a simply administrative regulation. (2)

The Agreement on Reciprocal Trade (ART) between Indonesia and the United States was signed with a debatable concern from many legal scholars. (3) As part of this agreement, Indonesia promised to make sure that cross-border transfers of personal data to the United States are legal. The petitioner saw this consensus causing Indonesia to be in an unequal position and potentially, the data transferred to America would have no legal protection. This position makes Indonesia unbalanced and could lead to data misuse abroad without adequate protection. It is also possible that the data will be economically exploited by giant digital companies in America.

Rega Felix and the petitioners team made two primary constitutional grounds. First, they said that Article 56 of the Personal Data Protection Law goes against Article 11 of the 1945 Constitution, (4) which says that agreements between countries that have an enormous effect on the economy of the country must be approved by the House of Representatives. Based on this legal logic, any deal between Indonesia and another country, even those that might be part of international trade accords, should not be recognized right away. Instead, the House of Representatives should first look at it and provide their permission. Second, the petitioners emphasized that the personal data of every Indonesian citizen constitutes a constitutional right that must receive the highest level of protection.(5) If the implementation of Article 56 of the Personal Data Protection Law is weakened by allowing cross-border data transfers through state to state agreement without adequate oversight or control from the legislative side, it would dilute the constitutional protections guaranteed to Indonesian citizens.

Article 56 of the PDP Law sets up a system with multiple levels for moving money across borders. Personal data may be transferred internationally if the destination jurisdiction ensures a comparable or superior standard of data protection, if sufficient and enforceable protections are in place, or if the data subject grants explicit consent. The petitioner believed that this structure was not good enough. It didn't require DPR approval for international agreements that made these transfers possible, and it mostly left the decision about whether they were good enough up to data controllers. (6) The petitioner believes that letting private companies decide if foreign legal safeguards are good enough will impair constitutional protections and the state's control over important digital assets.

Unfortunately, the Constitutional Court rejected the petitioners' application in its entirety, and this is deeply regrettable because, in practical terms, it may create greater opportunities for the personal data of Indonesian citizens to be neglected and misused. The Court's interpretation suggests that cross-border data transfer arrangements, even when framed as part of inter-state cooperation, do not automatically fall within the category of agreements requiring legislative approval under Article 11 of the 1945 Constitution. However, in recent developments, trade cooperation has increasingly begun to include requirements for cross-border data transfers.

This essay examines what occurs if, during its forthcoming treaty practice, Indonesia engages in an Agreement on Reciprocal Trade that within the provisions also regulates the cross-border transfer of personal data? Therefore, under Indonesian domestic mechanisms, especially those trade agreements, could be seen as international agreements that require legislative approval. (7) Hence, the previous Constitutional Court decision must be reviewed in order to make sure that their analogical perspective also could be applied for the Agreement on Reciprocal Trade between Indonesia and the United States.

RESULTS AND DISCUSSION

1. Ratification Mechanism: Statutory Approval or Presidential Regulation?

The constitutional discourse regarding cross-humanize personal data transfers under the Indonesia United States Agreement on Reciprocal Trade (ART) is inextricably linked to the overarching framework of Indonesia's treaty-making process. The main question at the heart of the issue is whether the House of Representatives (DPR) should approve a statute (undang-undang) that makes cross-border personal data transfers legally binding, or if a presidential regulation (peraturan presiden) is enough.

This question becomes especially important when looked at in light of Article 10 of Law No. 7 of 2014 on Trade. (8) The provision says that international trade agreements must be approved by law if they (i) have a big and important effect on people's lives, (ii) involve state financial burdens, or (iii) need new laws to be made or changed. The normative logic of Article 10 embodies the principle that trade agreements extend beyond mere tariff reduction, increasingly influencing domestic regulatory frameworks and impacting constitutional rights. In the digital age, rules about how data flows are one of the most important parts of modern trade agreements.

From the perspective of the law of treaties, the Vienna Convention on the Law of Treaties (VCLT) defines a treaty as an international agreement concluded between states in written form and governed by international law. (9) State consent is what makes these kinds of agreements binding. But constitutional systems in each country decide how to express that consent, such as whether or not parliamentary approval is needed. In Indonesia, the dualist approach to treaty implementation has historically mandated ratification by statute for agreements impacting sovereignty, human rights, or national legislation. (10)

Indonesia has promised to make sure that personal data can be sent across borders to the United States safely under ART. In real life, this kind of certainty could make it easier for Indonesian citizens' personal data to move to global digital platforms based in the US, such as Google, WhatsApp, Instagram, Facebook (Meta), and other tech companies. (11) These platforms use data-driven business models, where personal data is a key economic asset. So, any legally binding promise to protect the free flow of personal data affects not only business interests but also privacy, consumer protection, cybersecurity, and even national digital sovereignty.

In digital trade talks, the United States has always pushed for the idea of "free flow of data with trust." This principle stresses the need to limit rules that limit cross-border data flows as much as possible. Instead, it relies on corporate compliance mechanisms and sectoral safeguards to build trust. The US has fought against data localization requirements in trade deals like the USMCA and digital trade chapters in other agreements. It has also pushed for rules that stop unfair limits on cross-border data transfers. The main idea behind this is to put innovation, efficiency, and the global integration of digital services first.

Indonesia, on the other hand, has a different set of rules. Indonesia is a developing digital economy with a relatively new comprehensive data protection regime under the PDP Law. It must balance economic openness with the constitutional protection of personal data as part of the right to privacy under Article 28G (1) of the 1945 Constitution. Personal data protection in Indonesia is not just a matter of following the rules; it is also protected by the Constitution. So, commitments made under ART that affect the rules for cross-border data flows could conflict with constitutional rights and the power of the legislature.

From the standpoint of Article 10 of the Trade Law, cross-border data transfer commitments seemingly fulfill the requirements necessitating statutory ratification. First, they have a big and important effect on people's lives. Personal data includes things like name, health, money, communications, and online behavior. The transfer of such data abroad impacts millions of Indonesian citizens and directly infringes upon their constitutional right to privacy. Second, these kinds of promises could cost the state money in an indirect way, especially if there are disagreements or if the state needs to change its rules to meet international obligations. Third, they might require changes to current laws, such as the PDP Law and rules for telecommunications, financial services, and electronic systems.

If ART's rules about data flows are only put into effect by a presidential regulation, a number of institutional problems arise. First, not getting DPR approval makes democracy less accountable. Parliamentary ratification is not only a formal requirement; it is also a way for people to talk about, look at, and represent a wide range of interests in society. Because personal data governance is so big and important, leaving out the DPR could give too much power to the executive branch without enough checks and balances. (12)

Second, making commitments through a presidential regulation could make the law less clear. A law passed by the DPR has more power in Indonesia's legal system than a presidential regulation. If there are conflicts between ART commitments and domestic laws, the lack of statutory ratification could lead to confusion about what the law means. Also, statutory ratification strengthens Indonesia's position in international negotiations by showing that it is a long-term commitment that has been supported by the people.

Third, not ratifying through law could make the Constitution less coherent. According to Article 11 of the Constitution, the DPR must approve international agreements that have far-reaching and fundamental effects. The Constitutional Court, in Decision No. 137/PUU-XXIII/2025, indicated that cross-border data transfer mechanisms pursuant to Article 56 of the PDP Law do not inherently necessitate legislative ratification, (13) This interpretation does not inherently apply to comprehensive trade agreements that incorporate enforceable digital trade obligations. The Court's reasoning was about whether a domestic law was constitutional, not about how a specific trade treaty with systemic effects was ratified

At the same time, too much data localization or strict rules about transferring data may make it harder for people to take part in global digital trade. The OECD has said that data flows across borders are an important part of global value chains and the trade in digital services. (14) So, policymakers have a tough job: they have to make sure that the economy is connected while also protecting constitutional rights and national sovereignty. The Court's decision shows one side of this balance by saying that the PDP Law's layered protections are constitutional. But it doesn't answer the bigger treaty-law question that comes up because of the commitments in the ART.

Fourth, relying on executive instruments could make the human rights aspect of data governance less important. Transferring personal data isn't just an economic transaction; it also involves exercising individual freedom and the right to control one's own information. Legislative deliberation guarantees the evaluation of economic interests in relation to rights-based factors. (15) If DPR isn't involved, the balancing process may unfairly favor trade liberalization goals that fit with the "free flow of data with trust" model.

Indonesia's important role in digital trade talks makes it even more important that the law is passed. Indonesia has a lot of power because its digital market is growing so quickly. Without strong agreement at home, committing to liberal data flow regimes may make it harder for regulators to change their minds in the future. This could include the ability to impose localization measures or stricter adequacy standards if they are needed for national security or the public good. Ratification through law makes sure that these kinds of promises are carefully planned and supported by the government.

In conclusion, even though presidential rules may make things go more smoothly, the constitutional, economic, and human rights aspects of cross-border personal data transfers under ART strongly support ratification through statute with DPR approval. This kind of system makes democracy more legitimate, makes the law more certain, and makes trade policy more in line with constitutional protections.

2. Comparative Practice: Bilateral Treaties and Domestic Adoption with Parliamentary Approval

Comparative state practice demonstrates that international commitments governing cross-border data transfers are frequently embedded in bilateral or multilateral treaties and subsequently incorporated into domestic law through legislative approval. This practice reflects recognition of the strategic and rights-sensitive character of data governance.

In the United States, digital trade obligations are typically incorporated within comprehensive trade agreements concluded by the executive branch but subject to congressional approval under Trade Promotion Authority procedures. Agreements such as the United States–Mexico–Canada Agreement (USMCA) include binding provisions prohibiting restrictions on cross-border data flows and limiting data localization requirements. (16) Although the U.S. constitutional system differs from Indonesia's, congressional approval ensures that digital trade commitments receive democratic endorsement and are implemented through domestic legislation.

Similarly, the European Union regulates cross-border personal data transfers through a combination of international arrangements and domestic legal instruments grounded in the General Data Protection Regulation (GDPR). (17) Adequacy decisions recognizing third countries' data protection regimes are adopted through institutional procedures subject to scrutiny by the European Parliament and Member States. Moreover, international frameworks such as the EU–U.S. Data Privacy Framework emerged after judicial review by the Court of Justice of the European Union invalidated previous arrangements (Safe Harbor and Privacy Shield) for insufficient protection of fundamental rights. This illustrates the centrality of legislative and judicial oversight in legitimizing cross-border data regimes.

Other jurisdictions in the Asia-Pacific region have similarly embedded digital trade commitments within treaties ratified by legislative bodies. For instance, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) contains provisions on cross-border data flows and electronic commerce. (18) Member states, including Japan and Australia, ratified the agreement through parliamentary processes and aligned their domestic laws accordingly. The Regional Comprehensive Economic Partnership (RCEP), to which Indonesia is a party, also includes e-commerce provisions addressing data flows. Ratification occurred through domestic legislative mechanisms, reinforcing the binding character of the commitments.

These comparative examples highlight two key patterns. First, digital trade provisions are rarely treated as purely technical administrative matters; they are recognized as integral components of international treaties with wide-ranging domestic implications. Second, democratic oversight—whether through parliamentary ratification, legislative implementation, or judicial review—plays a central role in legitimizing such commitments. (19)

Adopting ART commitments through a bilateral treaty ratified by DPR would therefore align Indonesia with prevailing international practice. It would signal that cross-border data transfer obligations are subject to constitutional scrutiny and democratic deliberation. Moreover, legislative ratification facilitates coherent domestic implementation. Parliament can introduce clarifications, safeguards, or interpretative declarations to ensure compatibility with the PDP Law and constitutional rights.

Comparative experience also demonstrates the risks of insufficient legislative involvement. The invalidation of the EU–U.S. Privacy Shield by the Court of Justice of the European Union in Schrems II illustrates how inadequate rights protections in cross-border arrangements can lead to legal instability. Robust parliamentary processes reduce the likelihood of subsequent constitutional challenges and enhance the durability of international commitments.

For Indonesia, lessons learned include the importance of embedding clear human rights safeguards within trade agreements, ensuring independent oversight mechanisms, and maintaining regulatory flexibility. Parliamentary ratification enables open debate on these issues and fosters public trust. It also mitigates perceptions that digital trade commitments disproportionately benefit foreign technology corporations at the expense of domestic interests.

Ultimately, cross-border personal data transfers occupy a hybrid space between trade liberalization and fundamental rights protection. Comparative practice suggests that states treat such commitments as matters warranting formal treaty status and legislative approval. By following this approach, Indonesia can strengthen constitutional compliance, preserve democratic accountability, and ensure that participation in global digital trade does not compromise the protection of its citizens' personal data.

CLOSING

The debate over cross-border personal data transfers under the Indonesia–United States Agreement on Reciprocal Trade (ART) reflects a broader constitutional and geopolitical transformation in the governance of the digital economy. Personal data is no longer a purely technical regulatory matter; it has evolved into a strategic economic resource and a core element of individual constitutional rights. In this context, Indonesia's commitment to provide legal certainty for the transfer of personal data to the United States must be assessed not only from the standpoint of trade facilitation, but also from the perspective of constitutional law, democratic accountability, and sovereignty.

The Constitutional Court's Decision No. 137/PUU-XXIII/2025 clarified that Article 56 of the Personal Data Protection Law remains constitutionally valid and that cross-border transfers, when subject to layered safeguards such as adequacy assessments, binding protections, and data subject consent, do not inherently violate constitutional guarantees. However, the Court's reasoning does not eliminate the need to carefully examine the treaty-making dimension of international commitments embedded within ART. While the Court addressed the domestic statutory framework, the question of ratification for binding international trade commitments, particularly those affecting millions of Indonesian citizens' personal data, remains a matter of constitutional design and legislative prudence.

Article 10 of Law No. 7 of 2014 on Trade provides a compelling normative basis for requiring ratification by statute when international trade agreements generate broad societal consequences or necessitate legal adjustments. Commitments facilitating the large-scale transfer of personal data to global digital corporations headquartered in the United States undeniably meet this threshold. Such commitments affect fundamental rights under Article 28G(1) of the 1945 Constitution, influence Indonesia's regulatory autonomy in the digital sector, and potentially reshape domestic legal frameworks. Ratification through a statute with DPR approval would therefore enhance democratic legitimacy, strengthen legal certainty, and ensure that trade liberalization aligns with constitutional protections.

Comparative state practice reinforces this conclusion. In jurisdictions such as the United States, European Union Member States, and CPTPP participants, digital trade obligations are embedded in formal treaties and incorporated into domestic law through legislative approval. Parliamentary scrutiny not only legitimizes international commitments but also allows for the integration of human rights safeguards and oversight mechanisms. Indonesia can draw lessons from these experiences to avoid regulatory instability and to preserve public trust in digital governance.

Ultimately, the governance of cross-border personal data transfers must reflect a balanced constitutional approach. Economic openness and participation in global digital trade are legitimate national objectives. (20) Yet they must be pursued within a framework that respects constitutional procedures, protects fundamental rights, and maintains sovereign regulatory space. By opting for ratification through statute rather than solely through executive instruments, Indonesia would affirm that digital trade commitments are matters of national constitutional significance. Such an approach ensures that the promise of "free flow of data with trust" does not erode democratic accountability, but instead operates within a transparent and rights-based legal order.

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