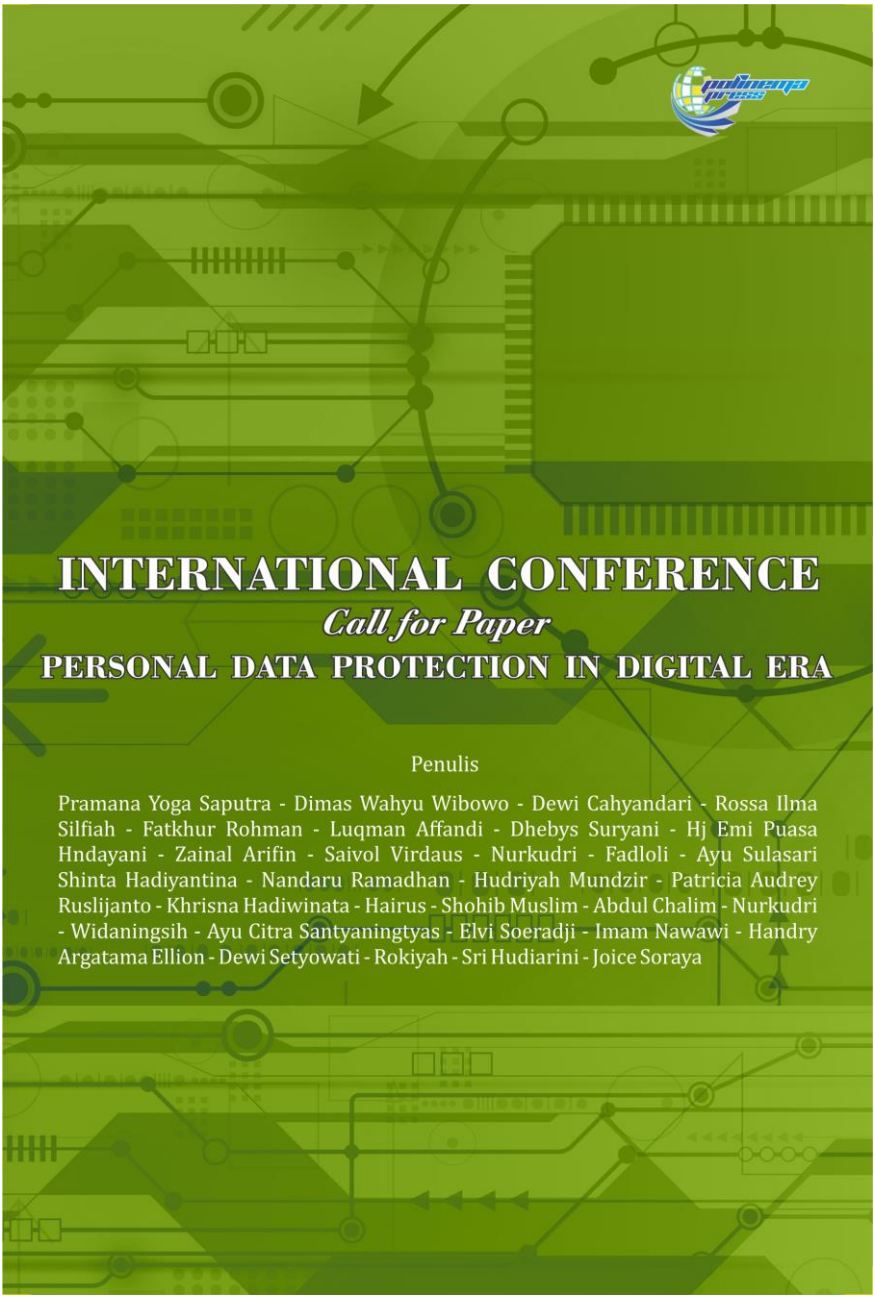
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Daftar Isi

The Indonesia Government Authority of Privileged Access the Personal Data Protection In Digital Era

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ABSTRACT

Article 28G of the Republic of Indonesia Constitution 1945, provides that every person has the right to:

(1) Protection of their personal selves, families, respect, dignity and possessions under their control.

(2) Security and protection from threat of fear for doing, or not doing, something which constitutes a human right.

This article is considered as the basis for more specific data privacy legislation. Provisions on the protection of personal data can be found in Law Number 11 in 2008 on Electronic Information and Transactions, as amended by Law Number 19 in 2016 . The procedural guidelines for the Electronic Information and Transaction Law are contained in Government Regulation Number 82 in 2012 regarding the Implementation of Electronic Systems and Transactions. However, none of these regulations provide a comprehensive set of provisions for the protection of personal data, but rather simply provide the general idea of personal data protection without specific guidelines.

The problems of this article are (1) Why the Indonesia Government has authority of privileged to access personal data in digital era? (2) How is the synchronization of personal data protection arrangements in the Law Number 11 in 2008 on Electronic Information and Transactions, as amended by Law Number 19 in 2016 and the Law Number 24 in 2013 on Population of Administrative? In accordance with

the issues raised, this research is a doctrinal research or also referred to as normative research.

Type of Paper: *Review*

Keywords*: Digital Era, Government Authority, Privilege Access, Personal Data Protection.*

1. Introduction

Personal Data is data in the form of personal identity, code, symbol, letters or numbers of personal markers of a person. Privacy issues were written for the first time in 1980 by two Americans, Waren and Brandels with the article "The right to privacy" in the Harvard Law Review, one of their descriptions of "The Right to Be alone"[60]. Each country uses a different terminology between personal information and personal data. Substantively, however, the two terms have the same notion that the two terms are often used interchangeably. The United States, Canada and Australia use the term personal information while the EU and Indonesia states themselves in Law Number 11 in 2008 on Information and Electronic Transactions using the terms of personal data.[61]

The protection of personal data is increasingly important because personal data may be misused and injure the rights of the owner of that

[60] Jan Smits, (1991), **Komputer : Suatu Tantangan Baru Di Bidang Hukum**, Surabaya : Airlangga University Press, hlm. 3

[61] Britania Hanif Putri, "**Perlindungan Data Pribadi Menurut Hukum Positif di Indonesia**", HIMSLAW ARTICLE (11 Maret 2017), diakses 3 Desember 2017, http://scdc.binus.ac.id/himslaw/2017/03/perlindungan-data-pribadi-berdasarkan-hukum-positif-indonesia/

personal data. In view of the concept of human rights, that is, the rights that human beings possess solely because they are human beings based on their human dignity.[62] Accordingly, everyone has the right not to be subjected to arbitrary or unlawful attacks on his personal life or personal property including his communication relationship by a state official conducting an investigation and / or investigation in a criminal offense is one fundamental human rights. [63]

The right is regulated in the Universal Declaration of Human Rights (hereinafter referred to as the UDHR) in article 12 which in essence everyone is entitled to the protection of his personal affairs, including his personal data. Other International instruments related to the protection of personal data are also implied in article 17 of the Covenant on Civil and Political Rights (hereinafter referred to as the Civil Rights Covenant). In article 17 it is declared about the legal protection against arbitrary and unauthorized interference with his private secrecy. The existence and basis of human rights are solely for the benefit of the human person, meaning that every individual can enjoy his human rights.[64]

In Indonesia, the protection of personal data has been guaranteed by the Constitution of the Republic of Indonesia in Article 28G Paragraph (1) which appears to implicitly state that "everyone is entitled to the protection

[62] Eko Riyadi,dkk, (2008), **Hukum Hak Asasi Manusia**, Yogyakarta:PUSHAM UII, hlm, 11

[63] PMK 5/PUU-VIII/2010

[64] Effendi Masyhur, (1994), **Dimensi/Dinamika Hak Asasi Manusia Dalam Hukum Nasional dan Internasional**, Jakarta : Ghalia Indonesia, hlm. 47

of personal self, family, honor, dignity and property under his control..." . The rights contained in this norm are not absolute, but apply restrictions under the provisions of Article 28J. The Constitutional Court of the Republic of Indonesia gives interpretation to Article 28G paragraph (1) concerning the right of privacy which can be related to the right to protection of personal data in Decision Number 20 / PUU-XIV / 2016. Although in the concept of privacy and data protection, the two rights have differences. In Decision Number 5 / PUU-VIII / 2011, the Constitutional Court also wrote that right to privacy is a part of human rights (derogable rights) and coverage of right to privacy includes information or right to information privacy, also called data privacy (data protection). A number of rules and court decisions also affirm the right of privacy. Among other things, Article 32 of Law Number 39 in 1999 on Human Rights and Law Number 12 in 2005 on Ratification of International Covenant on Civil and Political Rights 1976. The Constitutional Court has also provided legal arguments on the right to privacy in its three decisions, namely PMK No. 006 / PUU-I / 2003, PMK No. 012-016-019 / PUU-IV / 2006 and PMK No. 5 / PUU-VIII / 2010.[65]

Not only the Constitution, some other rules in Indonesia also regulate the protection of personal data in order to avoid any misuse that may infringe upon the owner of such personal data and may incur losses such as material loss or defamation and honor. The protection of personal

65 http://www.hukumonline.com/berita/baca/lt59cb4b3feba88/data-pribadi-dan-dua-dasar-legalitas-pemanfaatannya-oleh--daniar-supriyadi

data is also guaranteed by the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 in 2016 concerning Protection of Personal Data in Electronic System, Article 26 of Law Number 19 in 2016 on Amendment to Law Number 11 in 2016 on Information and Economic Transactions (Law of IET). But until now, there is no comprehensive regulation related to the protection of personal data. Issues related to the protection of personal data becomes a hot topic after the Ministry of Information and Communications requires the registration of customer numbers validated by the resident registration number through the Regulation of the Minister of Communication and Information Technology Number 12 in 2016 on Telecommunication Service Customer Registration that has been amended by Regulation of the Minister of Communication and Information Technology Number 14 in 2017 on the Amendment MoCI Regulation Number 12 in 1986 concerning Telecommunication Services Customer Registration.[66] Public concerns arise related to data protection to be provided.

Starting October 31, 2017, the Indonesian government requires new SIM cards to register card with Citizen Identity Number and Family Card Number. Old customers who already have prepaid SIM cards before 31st October 2017 are also required to re-register in the same way. This registration is given time limit until 28 February 2018, sanction given to new user hence phone number can not be activated, while old user which

[66] https://www.kominfo.go.id/content/detail/10874/siaran-pers-no-187hmkominfo102017-tentang-pemerintah-akan-berlakukan-peraturan-registrasi-kartu-prabayar-dengan-validasi-data-dukcapil/0/siaran_pers

do not register herself until deadline hence phone number will be blocked gradually. The Government has enacted this policy on the grounds in order to provide protection to consumers, related to the misuse of mobile numbers by irresponsible parties such as fraud and hoaxes. The legal basis for prepaid card registration is stipulated in Regulation of the Minister of Communication and Information Technology Number 14 in 2017 on Amendment to Regulation of the Minister of Communication and Infomation Technology Number 12 in 2016 on the Registration of Customer Service Subscribers. In the regulation of the minister of communication and informatics there are procedures, sanctions and supervisory authority on SIM card registration activities. It is also stipulated in article 17 that subsequent customer data shall be deposited by the Telecommunication Service Provider. This is contrary to what the Director General of Population and Civil Registration conveyed in his press conference.

Director General of Population and Civil Registration Zudan Arif Fakhrulloh promised that the government guarantees the security of user data registered on prepaid card numbers. The data will not be altered and abused by the operator because it is located on the of Population and Civil Registration server. The operator is also prohibited to disclose any personal data belonging to the customer. If violated, it will be given legal sanction. However, the government has yet to have comprehensive rules on the protection of personal data, although in National Legislation Programe the House of Representatives has planned and the Government has adopted an initial draft of the bill on the protection of personal data. The government also does not have a clear legal basis that shows the regulation of personal data of people who have registered SIM card. Whereas the registration

procedure for registering the SIM card requires the public to include Citizen Identity Number and Family Card Number which two items are according to the Law of Population and Civil Registration is personal data whose protection is guaranteed by the government.

From the above background, the issues discussed in this paper are:

1. Why the Indonesia Government has authority of privileged to access personal data in digital era?
2. How is the synchronization of personal data protection arrangements in the Law Number 11 in 2008 on Electronic Information and Transactions, as amended by Law Number 19 in 2016 and the Law Number 24 in 2013 on Population of Administrative?

2. Literature Review

2.1. The Theory of State Law

Indonesia is a legal state. This is based on the consideration that constitutionally, Indonesia has declared itself as a state of law, also theoretically, the objective of a state of law is to uphold the existence of a legal system that ensures legal certainty and protection of the rights of the people, as well as the exercise of common prosperity. This theory takes on the essence that the law is supreme and the obligation for the State organizers to submit to the law. There is no power above the law. The state law in principle requires all actions or deeds of the authorities have a clear

legal basis or there is legality both based on both written and unwritten law.[67]

2.2. Harm Principle (John Stuart Mill)

Harm principle, states that an individual is free to act as he wishes as long as he does not interfere with the rights of others with his actions. That is, freedom is not free without borders so that the juridical state has the legitimacy to limit the freedom of individuals in acting so as not to cause harm to the rights of others. Based on this harm principle then becomes the basis of the state has the authority to become a mediator in order to avoid clash between the implementation of individual rights to one with other individual rights. That is, that the state authorities restrict the freedom of the individual to avoid the occurrence of collisions between individual freedoms with each other.[68]

2.3. Categorical Imperative Principles (Immanuel Kant)

The categorical imperative principle bases on two norms, namely[69]:

1. Every man is enforced according to his dignity. It must be applied in all things as subjects, not objects;

[67] Shinta Hadiyantina, (2009). **Kebebasan Bertindak Kepala Daerah di Bidang Perizinan dalam Perspektif Hukum Administrasi**, Disertasi, Program Doktor Ilmu Hukum, Fakultas Hukum, Universitas Brawijaya, p. 87

[68] Marret Leiboff and Mark Thomas, (2009), **Legal Theoris: Contexts and Practice**, Sidney: Thomson Reuters, p. 230

[69] Bernard L. Tanya, et.al, (2010), **Teori Hukum; Strategi Tertib Manusia Lintas Ruang dan Generasi**, Yogyakarta: Genta Publishing, p. 66

2. One must act with the proposition that what is the basis of his actions is indeed a universal principle (respect for free and autonomous humanity).

Each individual will tend to fight for independence he has in freedom and autonomy. But the exercise of one's independence may be detrimental to the rights of others. For that reason it takes the law to avoid violations of the rights of others as a result of the implementation of one's freedom. In this case, the law means as a necessity of every free and autonomous being who must live together. It is at this point that ethnic imperatives call for ethics, living by law if they want to live together peacefully and fairly. This ethical imperative call raises an obligation to obey the law. The law itself is the number of conditions that ensure that one will be adapted to the will of another individual according to the general norm of freedom.[70]

3. Research Methodology

3.1. Types and Research Approach

This type of research is normative/doctrinal juridical research. According to Soetandyo Wignjosoebroto doctrinal law research developed because the data of law (rules and positive legal decisions) is not always fully composed to be able to answer the whole problems, then the equipment business is done by finding the general principles of data rules (through the induction process). Thus, a positive normative system that

[70] Theo Huijbers, (1990), **Filsafat Hukum dalam Lintas Sejarah**, Yogyakarta: Kanisus, p. 98

develops not only consists of positive rules but also consists of principles.[71] Soerjono Soekanto prefer to mention doctrinal legal research with normative juridical research which is given as a legal research done by examining library materials or secondary data only.[72] Thus this research, is a research of legal principles and the interpretation of positive law that governs the authority of the government against personal data protection.

3.2. Types and Resources of Legal Material

This article, there are 2 (two) types of legal materials collected, namely; First, the legal substance of the government's authority to protect personal data; Secondly, legal material on the synchronization of legal norms related to personal protection of data contained in the legislation concerning Information and Elelectronics Transaction Law and Population Administrative Law.

The first and second law materials are derived from: (1) primary legal materials consisting of: (a) the basic norms in the Republic of Indonesia Constitution; (b) Legislation related to Information and Elelectronics Transaction Law and the Population Administrative Law; (2) Secondary Legal Material, which provides explanation on primary legal materials such as: (a) Draft of Law; (b) the results of existing research; (c) scientific papers of jurists and so on; (3) Material Tertiary law or supporting legal material includes: (a) legal materials that provide guidance as well as explanations of primary and secondary materials such

[71] Soetandyo Wignjosoebroto, (2002). **Hukum : Paradigma, Metode dan Dinamika Masalahnya**, Jakarta: Elsam dan HUMA, p. 147-160.

[72] Soerjono Soekanto, (1990). **Penelitian Hukum Normatif**, Jakarta, Rajawali Pers, p. 15.

as dictionaries, encyclopedias, and others; (b) other materials necessary to supplement or supplement data such as politics, philosophy, sociology and others.

3.3. Legal Material Collection Method

The collection of legal research material is done through the document study. The collected legal material can be guaranteed objectivity, it means that the subjectivity bias of the researcher can be kept as low as possible, controlled by discussions with a number of colleagues who are perceived to understand some of the issues under investigation as well as by reviewing the results of similar studies that have been present before.

3.4. Method of Analysis and Presentation of Legal Material

In legal research normative / doctrinal, data processing is essentially an activity to hold systematization of legal materials. So in accordance with the type of legal materials that rely on library data then the next analysis in this study using the model of juridical qualitative analysis.

4. Results

4.1. *Government's Authority of Privileged to Access Personal Data in Digital Era*

Personal data protection is a form of respect for the right to privacy. Although Indonesia does not yet have lex specialis regulations governing the protection of personal data, but the guarantee of protection of the right

to privacy is contained in the Indonesian Constitution, specifically Article 28G:

> "Everyone is entitled to protection for personal protection, family, honor, dignity, and property under his control, and is entitled to a sense of security and protection from the threat of fear of doing or not doing something constituting human rights."

Under the provision, the Indonesian Constitution does not explicitly mention the privacy and protection of personal data. But as a state constitution, which is a strong recommendation in protecting human rights, it can be a reference to establishing more specific rules concerning the protection of personal data.

In addition to the obligation to protect personal data, the government also has the authority to access personal data of citizens, including:

1. Article 47 of the Criminal Procedure Code, the police have the authority to access a person's personal letter sent through the post office including information through telecommunication technology;
2. Elucidation of Article 26 of Corruption Act states that in the process of investigation, prosecution and examination of corruption cases, investigators have wiretapping authority. In addition to eavesdropping, restrictions on privacy rights are also seen in Articles 28, 29 and 30 of the Corruption Act.
3. The Population of Administrative Law regulates the activities of population administration as a series of activities of structuring and controlling in the issuance of documents and population

data,including personal data of the population, through the Information System of Population Administration.

4. In carrying out the task of state intelligence, the State Intelligence Agency is authorized to intercept, check the flow of funds and extract information, as regulated in Article 31 of the State Intelligence Law. In order to obtain information on the flow of funds and to extract information for the sake of state intelligence, State Intelligence Agency may request from law enforcers and related institutions, with orders from the Head of State Intelligence Agency.
5. Regulation of the Minister of Communication and Information Technology Number 14 in 2017 on Amendment to the Regulation of the Minister of Communication and Information Technology Number 12 in 2016 on the Registration of Subscriber Services Customers which requires registration of SIM cards using ID number and Family Card Number.

4.2. *The Synchronization of Personal Data Protection Arrangements in the Law Number 11 in 2008 on Electronic Information and Transactions, as Amended by Law Number 19 in 2016 and the Law Number 24 in 2013 on Population of Administrative*

In implicit arrangements concerning the protection of personal data are still scattered across various levels of Indonesian legislation and reflect only aspects of the protection of personal data in general. These arrangements are included in the IET Act and the Population Administrative Act:

1. Law Number 19 in 2016 on Amendment to Law Number 11

in 2008 on Information and Electronic Transactions, mentioned implicitly on the protection of the existence of a data or electronic information both general and personal. The arrangements relate to the protection of unauthorized use, protection by electronic system providers, and protection from access to illegal intervention. One of them is in Article 26 of the IET Law which requires that the use of any personal data in an electronic medium shall obtain the consent of the owner of the data concerned. Thus, a breach of such action may be made against the losses incurred.[73]

2. Law Number 23 in 2006 on Population of Administrative. In Article 85, the state has an obligation to retain and provide protection for the personal data of that resident. It is also mentioned in Article 79 which requires the state to provide protection and appoint the minister as the person responsible for the privileges of the citizen's personal data access. Similarly, the latest Population of Administrative Law in Article 1 point 22 recognizes personal data as personal data that must be kept, maintained and kept true and protected in secrecy.[74]
3. Regulation of the Minister of Communication and

[73] Wahyudi, et.al. (2016), **Perlindungan Data Pribadi; Usulan Pelembagaan Kebijakan dari Perspektif Hak Asasi** Manusia, Jakarta: Elsam, p 40-41

[74] Ibid, p 39

Information Number 20 in 2016 on Protection of Personal Data in Electronic Systems.

None of the rules discuss how the rules of this personal data will be managed and kept by the government. So the protection system also needs to be asked for certainty. Whereas UDHR also has arranged the protection of personal data to protect the dignity and good name of someone and his family in article 12. Meanwhile, the Indonesian Constitution contains norms about the protection of personal data. Article 28G Paragraph (1) contains "Everyone is entitled to personal protection, family, honor, dignity, and property under his control. The rights contained in this norm are not absolute, but apply restrictions under the provisions of Article 28J. The Constitutional Court of the Republic of Indonesia gives interpretation to Article 28G paragraph (1) concerning the right of privacy which can be related to the right to protection of personal data in Decision 20 / PUU-XIV / 2016. Although in the concept of privacy and data protection, the two rights have differences. In Decision No.5 / PUU-VIII / 2011, the Constitutional Court also wrote that right to privacy is a part of human rights (derogable rights) and coverage of right to privacy includes information or right to information privacy, also called data privacy (data protection). A number of rules and court decisions also affirm the right of privacy. Among other things, Article 32 of Law Number 39 in 1999 on Human Rights and Law Number 12 in 2005 on Ratification of International Covenant on Civil and Political Rights 1976. The Constitutional Court has also provided legal arguments on the right to privacy in its three decisions, namely PMK No. 006 / PUU-I / 2003, PMK No. 012-016-019 / PUU-IV /

2006 and PMK no. 5 / PUU-VIII / 2010.[75]

5. Discussion

5.1. *Government's Authority of Privileged to Access Personal Data in Digital Era*

The government has a theoretical basis to be able to access personal data, although it is an inherent right of citizen and should be respected and protected by the government. These basics include:

1. John Stuard Mill's Harm Principle;

2. Immanuel Kant's Categorical Imperative Principle.

If the two principles are related the personal data, it can be concluded:

1. Governments have a basis for accessing the personal data of citizens;

2. The Government shall provide the clear and valid reasons under which it may be exercised;

3. The government should protect the data so as not to be abused.

The most important point is the last point. Indonesia doesn't yet have comprehensive regulations relating to the protection of personal data. The most relevant regulation is the Regulation of the Minister of

[75] Daniar Supriadi, "**Data Pribadi dan Dua Dasar Legalitas Pemanfaatannya**" (14 Desember 2016) diakses 3 Desember 2017, http://www.hukumonline.com/berita/baca/lt59cb4b3feba88/data-pribadi-dan-dua-dasar-legalitas-pemanfaatannya-oleh--daniar-supriyadi

Communication and Information Number 20 in 2016 on Protection of Personal Data in Electronic Systems. In contrast to the UK and the United States that have set about the protection of personal data since far away days. In the UK, the regulation of personal data arrangements is guaranteed under the Data Protection Act in 1998. This regulation provides the definition of personal data to be protected, the rights of data owners and independent bodies that enforce the law. As in the United States there is no uniformity of definition of personal data. The scope of the Privacy Act 1974 in the United States which is the data protection regulation is reserved for federal agents. While for the private sector refers to guidelines issued by government agencies and industry groups that are not binding in general. Although different settings, both provide data protection mechanisms for data gatherers and managers and provide rehabilitation mechanisms in case of violations.[76]

The government actually has the right to enforce SIM card registration obligation by using ID Card and Family Card Number, especially to see the two principles described above. But by not forgetting the importance of protection of personal data owned by each individual, before the policy of the government enacted should the basic rules have been prepared in advance with the rules and comprehensive and clear. Will use for that personal data, how it will be managed and where it will be stored.

5.2. *The Synchronization of Personal Data Protection Arrangements in the Law Number 11 in 2008 on Electronic Information and*

[76] https://indonesiana.tempo.co/read/74761/2016/05/21/lintangsetianti/urgensi-regulasi-perlindungan-data-pribadi

Transactions, as Amended by Law Number 19 in 2016 and the Law Number 24 in 2013 on Population of Administrative

A variety of rules already exist, showing only pieces of protection against personal data in the absence of clear and complete settings. Especially on the sanctions imposition. There is nothing to be clear about the sanctions imposed on a telecommunication service company if it misuses the use of personal data already submitted. It is unclear where the personal data will be brought, and the obvious reason with a definite basis on how to process the data and the location of its storage.

The concept of data protection is often perceived as part of privacy protection. Data protection can basically be specifically related.[77] According to Allan Westin privacy it is the right of individuals, groups or institutions to determine whether information about them will be communicated or not to others so that the definition stated by Westin is called information privacy as it concerns personal information.[78] Personal data settings appear as an individual right to determine whether they will share or exchange their personal data or not. In addition, the individual also has the right to determine the terms of the implementation of the transfer of such personal data. One of the principles of personal data arrangement in European Countries is the regulation of personal data flows and prohibiting personal data out of European countries if the third State does not have adequate laws with European countries so it is feared that it will

[77] Sinta Dewi Rosadi,"**Implikasi Penerapan Program E-Health Dihubungkan dengan Perlindungan Data Diri**" Arena Hukum Vol 9 No. 3 (Desember 2016): 403

[78] Alan Westin, (1970), **Privacy and Freedom**, New York: Atheneum, pp. 7

hamper the trade and international business that has been globalized.[79] To avoid this, the Organization for Economic and Cooperation Development (OECD) issued a Guidelines known as the Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data.[80]

In OECD Guidelines there are 6 basic principles of data protection:

a. Collection Limitation Principle

   There should be a limit to collecting personal data and such data should be obtained in a legitimate and fair manner and where necessary with the knowledge or consent of the data subject.

b. Data Quality Principle

   Personal data shall be in accordance with its intended use and, for the purposes required, the data shall be accurate, complete, and shall be updated.

c. Purpose Specification Principle

   The purpose of collecting such personal data shall be determined no later than at the time of data collection and subsequent use is limited to the fulfillment of objectives.

d. Personal data must not be disclosed, made available, or used for purposes other than by subject matter consent and by law.

[79] Sinta Dewi, **Model Regulation For Data Privacy In The Application Of Biometric Smart Card**" *Brawijaya Law Journal Vol 4* (2017): 117

[80] Ian J. Llyodm, (2014), **Information Technology Law**, United Kingdom: Oxford University Pers, pp. 31

e. Security Safeguard Principle

Personal data must be protected with reasonable protection and security against risks such as data loss or unauthorized access, destruction, use, modification or disclosure of data.

f. Openness Principle

There should be a general policy on openness to development, practices and policies pertaining to personal data. This means that there must be an existence and the main purpose of its use, as well as identity and place of data control.

From these principles, the urgency of the law on the protection of personal data is increasingly clear. Especially in Indonesia has applied a policy that will collect personal data of the population with a very large amount. The public must know for what data has been submitted.

6. Conclusion

From the discussion, it can be concluded:

1. The protection of personal data is a fundamental right of every citizen obliged to be protected by the state, as contained in Article 28G of the Constitution of the Republic of Indonesia. However, the government has the authority to access and manage such personal data by means of legal instruments, to protect the interests of the people more broadly;
2. Indonesia doesn't yet have a comprehensive regulation related to the protection of personal data. The protection of personal data is regulated in Law Number 11 in 2008 on Information and Electronic Transactions, Law Number 23 in

2006 on Population of Administrative, Law Number 39 in 1999 on Human Rights, and Regulation of the Minister of Communication and Information Number 20 in 2016 on Protection of Personal Data In Electronic Systems. The most relevant regulation is the Regulation of the Minister of Communication and Information Number 20 in 2016 on Protection of Personal Data in Electronic Systems. Promulgation of individual laws related to the protection of personal data so that existing arrangements can be synchronized with each other.

References

A book

Alan Westin, (1970), **Privacy and Freedom**, New York: Atheneum.

Bernard L. Tanya, et.al, (2010), **Teori Hukum; Strategi Tertib Manusia Lintas Ruang dan Generasi**, Yogyakarta: Genta Publishing.

Effendi Masyhur, (1994), **Dimensi/Dinamika Hak Asasi Manusia Dalam Hukum Nasional dan Internasional**, Jakarta: Ghalia Indonesia.

Eko Riyadi,dkk, (2008), **Hukum Hak Asasi Manusia**, Yogyakarta:PUSHAM UII.

Ian J. Llyodm, (2014), **Information Technology Law**, United Kingdom: Oxford University Pers.

Jan Smits, (1991), **Komputer : Suatu Tantangan Baru Di Bidang Hukum**, Surabaya : Airlangga University Press.

Marret Leiboff and Mark Thomas, (2009), **Legal Theoris: Contexts and Practice**, Sidney: Thomson Reuters.

Soerjono Soekanto, (1990). **Penelitian Hukum Normatif**, Jakarta, Rajawali Pers.

Soetandyo Wignjosoebroto, (2002). **Hukum : Paradigma, Metode dan Dinamika Masalahnya**, Jakarta: Elsam dan HUMA.

Theo Huijbers, (1990), **Filsafat Hukum dalam Lintas Sejarah**, Yogyakarta: Kanisus.

Wahyudi, et.al. (2016), **Perlindungan Data Pribadi; Usulan Pelembagaan Kebijakan dari Perspektif Hak Asasi** Manusia, Jakarta: Elsam.

Thesis

Shinta Hadiyantina, (2009). ***Kebebasan Bertindak Kepala Daerah di Bidang Perizinan dalam Perspektif Perkembangan Hukum Administrasi*** (Doctoral's Thesis, Universitas Brawijaya, Malang,Indonesia).

Journal

Sinta Dewi Rosadi,"**Implikasi Penerapan Program E-Health Dihubungkan dengan Perlindungan Data Diri**" Arena Hukum Vol 9 No. 3 (Desember 2016)

Sinta Dewi, **Model Regulation For Data Privacy In The Application Of Biometric Smart Card**" *Brawijaya Law Journal Vol 4* (2017)

Internet

Britania Hanif Putri, "**Perlindungan Data Pribadi Menurut Hukum Positif di Indonesia**", HIMSLAW ARTICLE (11 Maret 2017), diakses 3 Desember 2017, http://scdc.binus.ac.id/himslaw/2017/03/perlindungan-data-pribadi-berdasarkan-hukum-positif-indonesia/

Daniar Supriadi, "**Data Pribadi dan Dua Dasar Legalitas Pemanfaatannya**" (14 Desember 2016) diakses 3 Desember 2017, http://www.hukumonline.com/berita/baca/lt59cb4b3feba88/data-pribadi-dan-dua-dasar-legalitas-pemanfaatannya-oleh--daniar-supriyadi

https://indonesiana.tempo.co/read/74761/2016/05/21/lintangsetianti/urgensi-regulasi-perlindungan-data-pribadi

http://www.hukumonline.com/berita/baca/lt59cb4b3feba88/data-pribadi-dan-dua-dasar-legalitas-pemanfaatannya-oleh--daniar-supriyadi

https://www.ip-rs.si/en/legislation/general-data-protection-regulation/

https://www.kominfo.go.id/content/detail/10874/siaran-pers-no-187hmkominfo102017-tentang-pemerintah-akan-berlakukan-peraturan-registrasi-kartu-prabayar-dengan-validasi-data-dukcapil/0/siaran_pers