

Legal politics of personal data protection in Law Number 27 of 2022: Challenges and implementation

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Abstract

Personal data protection is a fundamental right recognized by various international legal instruments. Indonesia has enacted Law Number 27 of 2022 on Personal Data Protection (PDP Law) in response to the increasing risks of data breaches in the digital era. The legal politics underlying the formation of the PDP Law reflects the state's commitment to balancing individual interests in protecting personal data with public interests and national digital economic interests. This research uses a juridicalnormative research method with a statutory and conceptual approach. The results show that the PDP Law adopts universal data protection principles adapted to the national legal context, encompassing regulation of data subjects' rights, obligations of data controllers and processors, and oversight mechanisms through a personal data protection authority institution. Implementation challenges include limited human resources, low digital literacy among the public, and suboptimal formation of an independent supervisory authority. The policy implications of this research encourage accelerating the establishment of the Personal Data Protection Authority (PDPA) as an independent institution with full authority in enforcing personal data protection law in Indonesia.

Keywords: Personal data protection, legal politics, PDP Law, data protection authority, legal implementation

Introduction

The rapid development of digitalization has brought significant consequences for the management of citizens' personal data. Advances in information and communication technology, including the widespread use of social media, ecommerce services, and other digital platforms, have made personal data a valuable asset vulnerable to misuse. Indonesia, as one of the countries with the largest internet users in Southeast Asia, faces serious challenges in providing legal protection guarantees for its citizens' personal data. Various data breach cases affecting government agencies and the private sector in recent years have highlighted the urgency for comprehensive regulations in this field (Herlambang and Prasetyo, 2022)^[3, 8].

Law Number 27 of 2022 on Personal Data Protection (hereinafter referred to as the PDP Law) is a long-awaited legislative product, given that for more than a decade the drafting of this law had experienced complex political dynamics. The enactment of the PDP Law marks a new chapter in the legal politics of data protection in Indonesia while positioning Indonesia alongside countries that already have similar regulations. The legal politics of forming the PDP Law reflects the state's choices in balancing the protection of individual rights with the needs of the digital industry and national interests.

As stated by Moh. Mahfud MD, legal politics is the legal policy (legal policy) that will be implemented or executed nationally by a particular state government (Mahfud MD, 2022)^[6]. From a comparative law perspective, the PDP Law adopts many principles found in the European Union's General Data Protection Regulation (GDPR), but with adjustments to Indonesia's social, cultural, and legal context. This becomes important to examine further, particularly

Discussion

Legal Politics of PDP Law Formation

The PDP Law arose from the urgent need to provide legal certainty in the management of personal data in Indonesia.

Before the enactment of the PDP Law, personal data regulation was still scattered across various sectoral regulations that were partial and unintegrated, such as the Law on Electronic Information and Transactions (ITE Law), Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions, and Ministerial Regulation of the Ministry of Communication and Information Technology Number 20 of 2016 on Personal Data Protection in Electronic Systems (Ramadhan and Sari, 2022)^[9].

The legal politics underlying the formation of the PDP Law encompasses at least four main dimensions. First, the human rights dimension, where the PDP Law represents a manifestation of the constitutional mandate to protect citizens' right to privacy. Second, the legal certainty dimension, with the aim of creating an integrated and comprehensive regulatory framework. Third, the digital economy dimension, given that trust in the national digital ecosystem requires data security guarantees. Fourth, the international legal harmonization dimension, as an effort to align with global data protection standards (Hamzah and Lestari, 2023)^[2].

Substantive Provisions of the PDP Law

The PDP Law comprehensively regulates various aspects of personal data protection, from the definition of personal data, rights of data subjects, obligations of data controllers and processors, lawful data processing mechanisms, to sanctions for violations. Article 1 number 1 of the PDP Law defines personal data as data about an individual who is identified or can be identified separately or in combination regarding institutional readiness and the substance of its provisions (Safitri and Nugroho, 2023)^[12].

This research aims to analyze the legal politics underlying the formation of the PDP Law, identify implementation challenges, and formulate policy recommendations to promote the effectiveness of personal data protection in

Indonesia. A comprehensive understanding of these aspects is a prerequisite for creating an equitable digital legal ecosystem.

Literature Review

Concept of Personal Data Protection

Personal data protection is fundamentally part of the right to privacy that is universally recognized. Article 12 of the Universal Declaration of Human Rights (UDHR) affirms that no one shall be subjected to arbitrary interference with their privacy. In the context of Indonesian positive law, the right to privacy including personal data protection has a constitutional foundation in Article 28G paragraph (1) of the 1945 Constitution (Wahyudi, 2021) ^[15].

According to Rosadi and Tahir (2022) ^[10], personal data protection encompasses a series of legal and technical mechanisms designed to ensure that information relating to individuals is collected, processed, stored, and used in accordance with principles that respect the rights and dignity of the persons concerned. These principles include transparency, data minimization, accuracy, storage limitation, integrity, confidentiality, and accountability.

Legal Politics and the Formation of Legislation

Legal politics is closely related to the legislative process as a concrete manifestation of the state's will. Within the framework of a law-based state, the formation of legislation must reflect the values of justice, legal certainty, and benefit (Simatupang, 2023) ^[13]. The PDP Law as a product of national legal politics is expected to address the legal needs of Indonesian society in facing the challenges of the digital era.

Jimly Asshiddiqie states that legal politics is part of public policy formulated by authorized state institutions, where the process cannot be separated from the dynamics of power and interests existing in society (Asshiddiqie, 2021) ^[1]. In the context of the PDP Law, its formation required a long time due to the complexity of interests that needed to be accommodated, ranging from the interests of technology industries, government agencies, to civil society.

Research Method

This research uses a normative legal research method (normative legal research) that is descriptive-analytical in nature. The approaches used are the statutory approach and the conceptual approach. The statutory approach is conducted by examining all regulations related to personal data protection, including the PDP Law, its implementing regulations, and various sectoral regulations governing data processing. The conceptual approach is carried out by referring to legal concepts and doctrines developed in legal science literature.

Data in this research consists of secondary data sourced from primary legal materials in the form of legislation, secondary with other information, either directly or indirectly through electronic or non-electronic systems (Law No. 27 of 2022).

The PDP Law distinguishes between general personal data and specific personal data. Specific personal data includes health data and information, biometric data, genetic data, and data concerning political views and religious beliefs. This distinction is important because specific personal data receives stricter protection compared to general personal data (Kurniawan, 2022) ^[5].

Rights of Personal Data Subjects

One of the significant advances brought by the PDP Law is the recognition and comprehensive regulation of data subjects' rights. The PDP Law recognizes several important rights of data subjects, including: the right to obtain information about the clear identity of the data controller, the right to complete, update, and correct errors in personal data, the right to obtain access to their personal data, and the right to delete or destroy personal data (right to be forgotten).

The recognition of the right to erasure (right to erasure) is an important breakthrough in Indonesian law. This right enables data subjects to request deletion of their personal data from the data controller's system when the data is no longer needed or when there are other legal grounds. However, the implementation of this right still requires further elaboration through implementing regulations (Nurfaizi and Putri, 2023) ^[7].

Implementation Challenges of the PDP Law

Although the PDP Law has provided a relatively comprehensive legal foundation, its implementation faces several serious challenges. The first main challenge is the absence of the Personal Data Protection Authority (PDPA) as an independent supervisory institution. The PDP Law mandates the establishment of this institution, but to date it has not been optimally realized, creating a gap in personal data protection law enforcement (Prasetyo and Wahyuni, 2023) ^[8].

The second challenge is low digital literacy and legal awareness among the public. Many citizens do not yet understand their rights as data subjects, making them unable to utilize the protection mechanisms provided by the PDP Law. This is compounded by minimal socialization conducted by the government to the general public (Hidayat and Nurhayati, 2022) ^[4].

The third challenge relates to technical capacity and human resources in both government and private sectors. Many organizations do not yet have adequate infrastructure and capabilities to fulfill the obligations set out in the PDP Law, including the obligation to appoint a data protection officer and conduct data protection impact assessments (Santoso, 2023) ^[11].

Policy Recommendations

Based on the above analysis, several strategic steps are needed to optimize the implementation of the PDP Law. First, the government needs to prioritize the establishment of the PDPA as an independent, professional supervisory institution with full authority in personal data protection law legal materials in the form of scientific literature, legal journals, and textbooks, as well as tertiary legal materials in the form of legal dictionaries and encyclopedias. Data collection techniques were carried out through library research by gathering, reading, and analyzing various relevant legal sources. Data analysis was conducted qualitatively by interpreting, evaluating, and synthesizing various legal materials obtained to produce comprehensive conclusions regarding the legal politics of personal data protection in the PDP Law.

enforcement. This institution must be equipped with competent human resources and adequate budget.

Second, programs to improve digital literacy and legal education for the public need to be carried out massively

and continuously. Third, the government together with industry associations needs to develop technical guidelines that help businesses, particularly small and medium enterprises, in meeting the obligations set by the PDP Law. Fourth, harmonization between the PDP Law and existing sectoral regulations needs to be carried out to avoid overlap and

Conclusion

The legal politics underlying the formation of the PDP Law reflects the state's efforts to build a comprehensive data protection framework, in line with the development of international law, and capable of accommodating the interests of various stakeholders. The PDP Law has brought several significant advances to Indonesia's legal system, particularly through more comprehensive recognition of data subjects' rights, regulation of the obligations of data controllers and processors, and the establishment of sanctions that can provide deterrent effects.

However, the effectiveness of the PDP Law in protecting citizens' personal data is highly dependent on the speed and accuracy of establishing supervisory institutions, the quality of implementing regulations, and the commitment of all stakeholders. Existing implementation challenges must be addressed with systematic and measurable policies, so that the primary objective of the PDP Law—namely the realization of effective and equitable personal data protection—can be achieved.

This research recommends that the government immediately establish the PDPA as a top priority, accompanied by programs to strengthen institutional capacity, improve public digital literacy, and develop operational technical regulations. In this way, the PDP Law can truly become an effective legal instrument in protecting citizens' rights in the digital era.

inconsistency in law enforcement (Wibowo and Sanjaya, 2023) ^[16].

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