



RESEARCH ARTICLE

Unfolding Data Protection Officer Regulation in Personal Data Protection: Evidence Malaysia

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ABSTRACT

The presence regulations related to personal data protection in Indonesia, provide a new task for the Indonesian government. Power in terms of personal data protection Still not yet given space maximum movement related to handling model processing of personal data, including the institution given authority. This research targets existence ecosystem model formulation protection of personal data by institutions processing of personal data. The model was obtained by conducting a comparison law between Indonesia and Malaysia. This is due to Because The Personal Data Protection Law in Malaysia has enacted since 2010. Another thing worth noting apply in the Indonesian PDP Law, namely regarding articles that regulate the duties and functions of the Data Protection Officer (DPO) in terms of his obligation protect personal data in a company. In addition, adjustments and arrangements overlap the overlap understanding from the concept of personal data must aligned. Because this concept is the key decomposer overlap the overlap rule Because the ambiguity of the concept of personal data protection in each regulation legislation. Previous research only conducted research to the extent of personal data protection, not yet leading to the DPO. There is room open to conduct further research related to the role of the DPO. This research uses socio- legal research methods, by linking various discipline science to answer his research. Related to DPO regulations in the ecosystem this personal data protection , Indonesia can be called late realize the rules are different from Malaysia which has own a system personal data protection and plans to improve to keep up with developments This personal data protection system. Malaysia's protection system is in accordance with OECD regulations so that the system formed has apply well.

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INTRODUCTION

Revolution Industry 4.0 has provided various convenience for the world community. Presence Technology in this era has provided convenience and speed in finding information, connectivity to the data processing process, all of which are carried out digitally. The revolution Industry 4.0 is also known as cyber physical system where this revolution emphasizes automation and collaboration with technology cyber. Challenges the biggest in facing revolution industry especially in the revolution industry 4.0 is about aspect privacy. Behind The convenience provided by this era provides new opportunities for action crime. In Indonesia itself there are many found case personal data leaks such as personal data leaks BPJS Health users, BRI Life customer data, customer data leaks from a number of application e-commerce such as Lazada and Tokopedia. Even the latest is the leak of user data electronic Health Alert Card (e-HAC). The personal data was hacked and in some cases the case of personal data being sold on a platform at a price certain. In practice in various countries, DPOs have important role. The existence and model of DPO in European Union (EU) practice is explained by the EU Data Protection Supervisor as any data classified as personal data if related

directly with individual, so that it can provide recognition data owner. (Studi and others 2023) Personal data leaks are a serious problem that can lead to loss financial, identity fake, and even further misuse of data. (Lodewyk and Siahaan 2011; Anggen Suari and Sarjana 2023a) Aspect An important law in the protection of personal data is regarding rights privacy someone. (Kusnadi 2021; Kartika Sari [n.d.]). Existence digitalization related to personal data this is an important point to be protected by DPO. The increase internet usage has cause new vulnerability to intervention privacy. On the contrary, the increase use internet technology has open Lots opportunities and chances development, including ease of exchange information. Personal data somebody the more easy exposed or transferred in any way anything without the data owner 's permission because circulation of data in digital format that no longer recognizes spatial and geographical boundaries . Circulation of personal data cause the occurrence violation privacy as well as data leaks that give rise to unrest in society.

Increasing utilization internet technology gives birth new challenges in protection on privacy and personal data, especially with the increasing increasing practice collection, use and dissemination of personal data a person. (Dewi 2016) Personal Data is individual data certain things that are stored, cared for and guarded truth as well as protected confidentiality. Protection of personal data is one of right basic human being who is part from protection self-personal. Personal data protection intended to ensure right top citizen protection self-personal and grow awareness public as well as ensure recognition and respect on importance personal data protection.

Data is unorganized facts that can be processed into something. Meaningful information. Data can be in the form of text, numbers , symbols , images , or in other possible forms . Personal data is any data about a person's life. a person who is identified and/or can be identified individually or in combination with other information either directly or indirectly through system electronic and/or non- electronic . Examples of personal data including name, address, place and date of birth , and so on . In addition to general personal data, we have personal data that is sensitive. Personal data This sensitive personal data requires protection special consisting of from data relating to religion/ belief , health , conditions physical and mental condition , life sexual , financial data personal , and other personal data that may be dangerous and detrimental privacy data subjects . In terms of privacy, personal data is not only recorded digitally by the government but also companies private sector that records data on each of its employees through system digitalization. Therefore, the system data protection is also mandatory also carried out by the parties private.

Regulations related to Personal Data Protection Agency develop very good rapidly in European countries through the *Data Protection Officer (DPO)* Institution. Reflecting on the long-standing practice in European Union (EU) countries , the mechanism implemented by most countries there to guarantee implementation rule personal data protection is by presenting function of the 'data protection officer' (DPO). Based on the General Data Protection Regulation (GDPR), the rules about personal data protection in the EU, parties processing personal data certain mandatory to have and appoint a DPO (Obligation) Appointment of DPO). (Sirie 2018a; Faiqy and others 2022) This is because obligation The appointment of DPO is considered an effective mechanism, this article discusses and ends with a suggestion that the UUPDP adopt the mechanism into the UUPDP so that the purpose of the law can be achieved. Government agencies and companies that monitor regular and large- scale data processing is mandatory pointing the official or officers who carry it out function personal data protection (DPO). The presence of DPO is a profession that was born Law Number 27 of 2022 concerning Personal Data Protection (hereinafter referred to as the PDP Law). It is mandatory for companies to monitor regular and large- scale data processing to appoint a DPO. Although the DPO is appointed by the company, the PDP Law regulates the position of the DPO as independent. For example, the company cannot intervene with suggestions, input and opinions to method The company processes personal data. So, structurally , DPO has a very important role in the development of the digital world of personal data . Several countries have apply formation institution a type of DPO, Malaysia is one of the countries that has apply data protection through supervision from DPO.

Personal data protection settings through the PDP Law, justifying the importance of protection against personal data . Among a number of obligations regulated by the Personal Data Protection Act , one of a fairly important obligation is the obligation to appoint a Data Protection Officer or in the

Personal Data Protection Act referred to as the Official or Implementing Officer Function Protection of Personal Data (for the purposes of this research, this will be abbreviated as DPO). The appointment of DPO is an implementation of principle accountability companies in protecting personal data as regulated in the Personal Data Protection Act . Obligations The appointment of DPO also adopts obligation similar to that which applies in several other countries such as in European Union countries and several countries in Asia including Malaysia which already have legislation in the field of personal data protection . Previous studies have been more describe description related to personal data protection by DPO from aspect authority and duties only. (Yuniarti 2022a; Sirie 2018b; Faiqy and others 2022)The research that is developing related to DPO is more about comparing Indonesia with Singapore or the European Union . The (Ramadhani 2022; Yuniarti 2022a)empty space for research lies in the absence of conducting research related to institutions processing of personal data and how much importance the role of DPO in prevention the hack .

METHOD

This research uses legal research methods (*Socio-Legal Research*). The type of legal research used in compiling this research is the type of legal research in reality. social . This research was conducted by conducting a search for legal materials supported by facts . empirical . Legal material search carried out by collecting , analyzing , evaluating and synthesizing legal materials related to investment, both in the form of principle law , concepts , principles law , content rules law , systematics law , facts law and synchronization Regulation existing laws with regulations higher legislation as well as compare Legal Regulations in Application regulation (DPO) regarding the Personal Data Protection Ecosystem by Personal Data Processing in Comparison with Malaysia.

RESULTS AND DISCUSSION

Personal data processing

Personal data is any data of an individual that can be identified or identified separately or combined with other information through system electronic and/or non-electronic . Data (Rifan Aditya 2021; Wahyuni Sahara 2021)are unorganized facts that can be processed into a meaningful information . Data can be in the form of text , numbers , symbols , images , or in other possible forms . Personal data is very important to protect . Because without existence protection of personal data , harassment sexual , online bullying , to Online Gender Based Violence (OGBV) can easily occurs in the current era of disruption . In addition, personal data protection also needs to be carried out to prevent irresponsible individuals or parties and avoid potential pollution good name .

Personal data is one of something that is very important and needs to be maintained well. Especially in the current era of disruption, it has Lots case about theft of personal data for profit irresponsible party answer. Therefore, we as data owners must Can protect personal data we should avoid from theft of the data. Personal data consists of of 2 types namely: firstly personal data which is of a nature general, and secondly personal data which is of a special .(Rifan Aditya 2021; Wahyuni Sahara 2021; Kanwil Hukum dan HAM Sumatera Utara 2023) Personal data nature general covering full name, type gender, nationality, religion, and/or personal data combined to identify a person . Personal Data that is general is a type of personal data that can generally be identified by many people. While personal data that is specific includes, data and information health, biometric data , genetic data , life / orientation sexual . Personal Data of a sexual nature specific is the type of personal data that, if processed , may result in greater impact on the individuals associated with the data.(Annisa 2023; Kanwil Hukum dan HAM Sumatera Utara 2023; Wahyuni Sahara 2021; Rifan Aditya 2021)

Personal Data Protection (PDP) is often cause basic questions law processing of personal data . This question becomes essential considering that before the PDP Law came into effect , the processing of personal data has ongoing and carried out various entities such as public bodies , institutions , and corporation . Obligations existence The (legal) basis for personal data controllers in processing personal data is contained in Article 20 in conjunction with 21 of the PDP Law. Article 20 paragraph (1) states that personal data controllers must own base processing of personal data . This provision means that only with the existence of a legal basis according to the PDP Law, the personal data controller can process personal data . More detailed provisions contained in Article 20 paragraph (2) which regulates the basis law processing of personal data . Article 20 paragraph (2) states a number

of alternative base law processing of personal data in letters a to f which is of a nature alternative and/or cumulative . Thus , scientifically law , the fulfillment of one norm as a basis is sufficient to be the basis for rights processing of personal data by personal data controllers . The PDP Act wisely provides several alternative base law processing of personal data . Thus , contextually , this law does not impose a burden excessive to controller at a time the subject of the personal data itself.(Prof. Dr. Ahmad M Ramli 2023) Although the PDP Law does not regulate personal data contained in the provisions transition , it doesn't mean there is norm vacuum (rechtsvacuum) related to personal data . Many public bodies such as the executive , legislative , judiciary , institutions , and corporations has processing personal data previously .(Ahmad M. Ramli 2023)

Protection of personal data in ensuring personal data security as fulfillment right on privacy Indonesian society today has not running optimally, this is indicated by the fact that it is still the amount violation to misuse of personal data consequence from the more development use of digital platforms that are not accompanied by protection adequate law , because protection law to personal data security is obligation the state constitution which has been regulated in the Basic Law of the Republic of Indonesia and the birth of the Personal Data Protection Law is embodiment state protection of fulfillment right privacy inhabitant his country .(Lesmana and others [n.d.]

Data protection officer in personal data protection

Regulation personal data protection has adopted by 137 countries by early 2022. In addition to giving rise to institution personal data protection agency, regulation personal data protection also raises a new professionalism namely official / officer personal data protection officer (data protection officer). The main role of the data protection officer is to ensure compliance to regulation personal data protection so that put the function of a data protection officer as an important actor in the ecosystem personal data protection . (Yuniarti 2022b)Companies need to understand regulations , principles , and practice personal data protection . So that data and information a person is not abused by parties irresponsible answer . Not yet A regulation about personal data protection so that cause the amount crime abuse system information and personal data , therefore it is needed A capable system overcome that matter . (Aswandi and others [n.d.])Daria Bulgakova and Valentyna Bulgakova revealed that The European Union has established a digital strategy to create a trusted and secure digital identity, setting a global standard for technological development in identification. In line with the General Data Protection Regulation Article 9(1), member countries must justify any exceptions to the rule provided. (Bulgakova and Bulgakova 2023)European Union has establish a digital strategy to create reliable and secure digital identity as well as set global development standards technology in an effort identification . The Universal Declaration of Human Rights (UDHR) also states that the protection of personal data is a human right. basic humans internationally .(Vania and others 2023) According to Article 12 of the Universal Declaration of Human Rights (UDHR), "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to protection of the law against such interviews or attacks." (Vania and others 2023)Indonesia via arrangement Personal Data Protection Act own various capacity related issues Government in terms of enforcement these rules . Ratnajanta , et al, revealed that there are difficulties with the PDP Law introduction. One significant issue is the way the government uses citizens' personal information for public goals. Unfortunately, government and public organizations show little understanding of the subtleties of protecting personal data.(Januarita and others 2024)

After the PDP Law was enacted , there was change significant in the way management of personal data in digital format. Among other things, this law regulates personal data transfer mechanism . (Kominfo 2022)The existence of the PDP Authority is responsible responsible for ensuring that the management of personal data by the organizer system electronics , both government and also private , fulfill requirements set by the PDP Law. Assessment and compliance to regime Data protection with respect to personal data is important. First of all, every individual possesses personal information about them. Second, personal data about individuals is gathered and processed by all entities and organizations. (Paul Lambert 2016)On a small scale, this does happen occasionally. It happens on a large scale occasionally. All businesses, big or small, commercial companies, official government agencies, and even non-profit organizations are subject to data privacy compliance requirements. In

addition, outsourced organizations like agents, consultants, processors, and so forth are subject to obligations, as is the main organization engaged (the "controller" organization). (Paul Lambert 2016)

The development of the digital world cause distribution and distribution personal data information can be done freely without limits. The tendency violation privacy and personal data hacking can happen very easily. Various companies and agencies public and also government bear and accept so lots of data from employees, society and other personal data. Privacy rights against personal data covers everyone's right to know what happens to their personal data, who can access it, for what purposes it is used, and how it is processed and stored. (Anggen Suari and Sarjana 2023b) Moreover, this principle also involves the right of every person to give permission or approval for the use of personal data, as well as right to request deletion (right to be forgotten) or correction if the data does not match. (Anggen Suari and Sarjana 2023b)

In today's digital era, data leaks are a big threat. From banking until service health, as well as business private sector, Indonesia faces a number of incident data leak. Indonesian people's SIM card data sold in 2022 is considered to be the work of hacker Bjorka. In fact, it was reported There are 1.3 billion SIM card registration data. The leaked data includes NIK, provider phone number, and registration date, which reaches 87 GB, and is sold worth Rp743.5 million. Data totaling 347 GB from 21,000 companies in Indonesia was published online in August 2022. This data consists of from important data such as Population Identity Card (KTP), Taxpayer Identification Number (NPWP) of directors and commissioners, company NPWP, KK of shareholders shares, and the company's NPWP. PT Pertamina Training & Consulting was also involved in the incident. data leak in January 2022. All information personal applicant work, including full name, address, place of birth, date of birth, religion, and title, collected in a 60 GB file larger than 160,000. (Lintasarta Cloudeka 2023) Not an easy thing with the existence of circulation circulation of personal data online to obtain protection from effort hacking and also distribution. Government through its policy must provide protection for this personal data because personal data is right privacy of all citizens country. This personal data processing institution must given not quite enough responsible for protecting all data that is within its authority. The presence of regulations related to DPO as a party that plays a role in supervising the behavior and performance of the personal data processing institution.

It's just that Indonesia hasn't placing DPO as an important organ in traffic cross circulation of personal data. It is believed that governance effective protection of personal data can improve trust public towards the country responsible responsible for protecting its citizens. (Sulistianingsih and others 2023) This protection is achieved through implementation umbrella strong laws for the protection of personal data and systems laws that support the implementation of personal data protection. (Sulistianingsih and others 2023) The role of DPO in governance personal data protection very important, concern public as a result of the transfer of personal data they should have carried out get room clear and safe protection. Readiness government in running function protection through arrangement the law Still not yet systemically ready, this can be seen from the fact that the new PDP regulations were only ratified in 2022.

Comparison DPO regulation in supervision of personal data processing institutions between Indonesia and Malaysia

Indonesia has witness improvement data breaches over the past ten years, which have resulted in questions about how to best to protect data. Healthcare, energy, utilities, e-commerce, and financial sectors are some examples of major breaches. Given these uncertain conditions, the government to validate Law Number 27 of 2022 concerning Personal Data Protection (PDP Law) in 2022, which emphasizes people's rights to data and encourage accountability data (Januarita and others 2024) controller. People, including those who conduct business or E-Commerce at home, can be considered as controllers of personal data. according to Law Number 27 of 2022 concerning Personal Data Protection (PDP Law). As a result, they are responsible legally responsible on processing of personal data that they carry out and must comply provisions stipulated in the PDP Law. (Sri Pujianti 2023)

Indonesia can probably be said left behind in terms of issuance of the PDP Law in the Asia and ASEAN regions because other countries such as Singapore, Malaysia, Thailand, the Philippines, Japan, Korea, China, Hong Kong and Taiwan have do it previously. Even, if Compared to the number of countries

that have PDP laws throughout the world, Indonesia is further behind from Europe. There are 148 countries worldwide that have PDP laws. (Mochamad Januar Rizki 2022) Regarding the institution that protects data in the UUPDP, there is none. The rules in Law Number 27 of 2022 concerning Personal Data Protection which require institution supervisor independent to supervise data protection. (Guswan Hakim and dkk 2023)

As it should be, every organizer system electronic must own internal rules on the protection of personal data to prevent abuse information personal during the operation, because not quite enough their responsibility to collect personal data users online and offline are closely related to personal data protection. (Muhammad Fikri and Shelvi Rusdiana 2023) However, in reality, a lot of user digital data is sold. Without permission or misused for any purpose that violates legislation (beyond providing completeness administration), so that party third steal it. (Muhammad Fikri and Shelvi Rusdiana 2023) Misuse of personal data shows that awareness law society, lack of regulation effective, lack of supervision strict, and practice enforcement ineffective law is a weakness system. As a result, the people involved experience loss. One of the The weakness in the implementation of the PDP Law is that the owners of personal data in the country will protected by law when they handle disputes with personal data authorities in other countries. This means that the institution personal data protection in other countries is reliable and will not abuse management of personal data of Indonesian citizens. Function data center, also known as data authority, is to collect and secure all data and information private data sent by data officials. As a result, official data placed throughout companies and institutions government that handles data and information personal, making it easier to collaborate on data and information. Personal. (Muh Rifqy Hidayatullah Arham and M. Chaerul Risal 2023) This illustrates that the system data control in Indonesia regarding personal data protection inhabitant his country -not yet capable systemically protected.

Historically, the German state of Hesse enacted Constitution data protection first in 1970. Other countries that enacted it were Sweden in 1973, the United States in 1974, and the United Kingdom in 1984. Malaysia is also a country that is moving fast in regulating personal data protection. Malaysia has The Personal Data Protection Act No. 709 of 2010 (PDPA Malaysia). (Tsamara 2021) There are seven principle The Personal Data Protection Act No. 709 of 2010 (PDPA Malaysia) was adopted from the EU Directive on Data Protection from the OECD Guidelines or the APEC Framework. (Tsamara 2021)

The purpose of this PDPA is to safeguard interest data subject by setting processing of personal data carried out by data users in transactions commercially by ensuring that the data subject gives consent before data processing, and that the data subject has the right to access, correct, and control processing of personal data. (Sautunnida 2018) According to the PDPA, the Commissioner for Personal Data Protection (Commissioner) has appointed to implement PDPA provisions. Commissioner will recommended by the Committee The Personal Data Protection Advisor will appointed by the Minister, and will consists of from a President, three members of the sector public, and at least seven, but no more than eleven other members. Appointment Committee The Personal Data Protection Advisor will not beyond term of office three years; however, members may be appointed for two terms. consecutively. (DLA Piper 2024) Currently, Malaysian law does not require data users to designate officer data protection. (DLA Piper 2024)

However, according to PC01/2020, Commissioner currently considering introducing obligations in the PDPA for data users to designate officer data protection and introduce guidelines about the appointment. The PDP Department has shows that these requirements have been met highlighted as one of the of the five amendments main proposed to the PDPA being considered (from the 22 issues stipulated in P01/2020). (DLA Piper 2024)

Malaysia has Department of Personal Data Protection (DPDP). The Department of Personal Data Protection (PDPD) is an agency under the Ministry of Communications and Multimedia Commission (MCMC) which was established on 16 May 2011 after Parliament agree laws relating to the Act personal data protection act 2010, Law 709. Responsibility answer main This department is to supervise processing of personal data individuals involved in the transaction commercial by User Data that is not misused and applied by the relevant party. Users need to be protected to prevent any form of abuse to storage or processing of personal data from individual, sector public and private

in Malaysia for transactions commercial as set out below PDPA. In enforcing PDPA, JPDP has given the mandate to all Groups Personal Data Users consisting of from individual or party private except The government officially register for the purpose of protecting rights consumers and the public . (MyGovernment Malaysia 2024)

Development Malaysia's personal data protection experiences significant changes, when in 2024 this has been set up new regulations regarding personal data protection. As stated by Segaranlaw.com that: Malaysian enterprises will be required to designate a Data Protection Officer (DPO) as a result of the Personal Data Protection Act (PDPA) Amendment Act 2024. As Malaysia follows in the footsteps of countries like the European Union (EU), Singapore, and China, this new mandate is a major step in bringing the country into line with international best practices in data protection. While the detailed regulations for this need are still being developed, we can turn to these jurisdictions to get a sense of what to anticipate. (Chambers, 2024)

Although Constitution Amendment to the Malaysian PDPA 2024 not yet set qualifications for a DPO, it is expected that they will need to demonstrate Strong understanding of PDPA and practices best in data protection. Referring to jurisdiction other, qualifications a DPO typically includes: (1) Expert Knowledge of Data Protection Laws: This is a requirement under the GDPR in the EU, and it is likely that a DPO in Malaysia will need to be familiar with the local PDPA. (2) Knowledge Data Security and IT Systems: A DPO must understand steps techniques that can be applied to protect personal data, especially in organizations where the use of technology is very important. (3) Management Experience Risk: Conducting an assessment impact data protection and management data breach possible will be an important skill for DPOs in Malaysia. (4) Certification International: Many organizations looking for DPO with certification such as the Certified Information Privacy Manager (CIPM) from the International Association of Privacy Professionals. (IAPP). This certification demonstrates that a DPO is equipped with the knowledge and skills necessary to navigate environment complex data protection.

CONCLUSION

Several countries have put personal data protection as an important part of protection in the digital era. Indonesia is a country that is very late regulates the protection of personal data. Malaysia as a country that has regulating the PDP since 2010 in fact will improve by making amendments to strengthen function personal data protection. Malaysia feels that the Data Protection Officer is an important profession so that this DPO is a controlling and supervisory position. Indonesia through the UUPDP has regulates the DPO, but the system Not yet well formed. Substance the settings not enough to manage the function of the DPO, its structure is also not yet determined. Systematically , DPO must formed in a systematic way that is related to one another so that with the substance and structure that has been perfect in relation channel technical implementation of personal data protection public cause the emergence culture law in society to always be based on the security of personal data . Ecosystem model protection of personal data in the processing of personal data public started from ecosystem arrangement organic from the UUPDP by clearly regulating the procedures and mechanisms personal data protection. It all started must from obligation from society also to protect their personal data , then protection of all personal data received by the institution processing of personal data , where the institution is obliged protect circulation of personal data below his authority . The last thing the circulation of personal data is monitored and protected by the DPO.

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