

CHAPTER I

INTRODUCTION

1.1 Background

The world is currently in the fourth industrial revolution, which is marked by the digital revolution.¹ During the digital course, technology has been developing and progressing at a rapid and innovative pace, which has a massive influence on society's behavior. This can be proven by the many innovations of this era, both revolutionary yet straightforward to the world. The development of technology has evolved drastically and continues to develop until now, which has increasingly sophisticated and global use in various fields of human life. The rapid growth of information and communication technology, where economic and business activities are based, manages large-scale data storage and distribution or processing.² One of the main usages of technology is to keep company secrets as well as customer personal data. However, the ease of storing or transferring large-scale information in this networked society creates a fundamental problem that cannot be avoided, namely the easy theft or misuse of personal data of internet users.³

¹ Venti Eka Satya, "Strategi Indonesia Menghadapu Industri 4.0", Pusat Penelitian Badan Keahlian DPR RI, Vol X, Number 09/I/Puslit/Mei/2018. Pg. 1

² Hanifan Niffari, "Perlindungan Data Pribadi Sebagai Bagian Dari Hak Asasi Manusia Atas Perlindungan Data Diri Pribadi", Fakultas Hukum Universitas Indonesia, Vol 6, Number 1, Juni 2020.

³*Ibid.*

According to the Government Regulation Number 82 Year 2012 concerning the Implementation of Electronic Systems and Transactions Art. 1(27), Personal Data is specific personal data stored, maintained, and protected by the truth, and confidentiality is shielded. As stated in Article 1(4), Electronic System Administrator (*Penyelenggara Sistem Elektronik / PSE*), such as start-up companies, website owners, etc, is a state operator which provides, manages and operates the Electronic System individually or jointly⁴, must maintain confidentiality, integrity, and availability of Personal Data, guarantee that acquisition, use, and the application of Personal Data based on the agreement of the owner of the Personal Data unless otherwise stipulated by legislation and also guarantee the use or disclosure of data is done based on the consent of the owner of the Personal Data and following the objectives submitted to the owner of the Personal Data at the time of data acquisition.⁵ Personal data protection is a part of fundamental rights that are universally mandated by the ICCPR, that let individuals able to enjoy a free and private life from all kinds of unwanted interference from unknown users, the right to be able to communicate with others without being spied on, and lastly the right to monitor access to information about

⁴ Article 1 Number 4 of Government Regulation Number 82 Year 2012 regarding the Implementation of Electronic Systems and Transactions

⁵ Article 15 of Government Regulation Number 82 Year 2012 regarding the Implementation of Electronic Systems and Transactions

one's personal life and data.⁶ In Indonesia, Personal Data Protection is an integral part of Law No. 36 of 1999 regarding Telecommunication.

Historically, the first Country that passed the Data Protection Act is Germany in 1970, followed by Britain in the same year and then followed by several other European countries.⁷ In 1973, Sweden made the first data protection law, Sweden's Data Act, which made it hard for anyone to use the information without a license.⁸ Followed by France, in the year 1978, the enactment of Law 78-17 on Information Technologies, Data Files and Civil Liberties was made.⁹ Switzerland followed up with the Federal Data Protection Act (DPA) of 19 June 1992, also with its Ordinance (DPO) of 14 June 1993, which governs the Personal Data by private parties.¹⁰ Austria also developed its path by being one of the first European states with data protection authority created with the first Data Protection Act, BGBl. No. 565/1978. Which then further completes data protection in the European countries. Austria specifically implemented the Data Protection Act 2000, BGBl. I. No. 165/1999.¹¹

⁶ Article 26 Number 1 of Law No. 19 Year 2016 of UU ITE

⁷ R53, "UU PDP, Johnny Hambat Start-up", <<https://www.pinterpolitik.com/uu-pdp-johnny-hambat-start-up/>>, sited on 22 February 2020.

⁸ *Ibid.*

⁹ Library of Congress Law, "Online Privacy Law: France", <<https://www.loc.gov/law/help/online-privacy-law/2012/france.php>>, sited on 30 September 2020.

¹⁰ Lexology, "Law and The Regulatory Authority". <<https://www.lexology.com/library/detail.aspx?g=292c3925-8663-4fdb-8f1c-2eaf4b262634>>. Sited on 30 September 2020.

¹¹ European Law Institute, "Datenschutz behörde", <<https://www.europeanlawinstitute.eu/membership/institutional-members/austrian-data-protection-authority/>>, sited on 30 September 2020.

By the year 1970, similar developments have emerged in the United States (US), with the Fair Credit, which also contained data protection elements.¹² Started in January 2018, at least more than 100 countries have data protection laws. On May 25, 2018, the European Union had enacted the unification of data protection law through the European Union's General Data Protection Regulation (EU GDPR), which was comprehensive because it covered almost all personal data processing.¹³ The General Data Protection Regulation (GDPR) is the world's toughest rule on privacy and safety. Even though it has been drafted and approved by the European Union (EU), it imposes obligations on organisations wherever they are, as long as they target or collect data relating to individuals in the EU. The European Union General Data Protection Regulation (EU GDPR) is the world's toughest law regarding privacy and safety. Even though it was been drafted and approved by the European Union (EU), it still acts as an obligation on organisations wherever they are, as long as they target or collect data relating to individuals in the EU.¹⁴

Since the day internet was invented, the EU realized a need to have current protections such as Personal Data Protection. In the year 1995, they decided

¹² R53, "UU PDP, Johnny Hambat Start-up", <<https://www.pinterpolitik.com/uu-pdp-johnny-hambat-start-up/>>, sited on 22 February 2020.

¹³ *Ibid.*

¹⁴ GDPR, "What is GDPR, the EU's new data protection law", <<https://gdpr.eu/what-is-gdpr/>>, sited on 24 September 2020.

to establish minimum data privacy and security standards based on its implementation of the law. Until the year 2000, most financial institutions offered online banking uses, which since that moment, Europe's data protection authority decided to declare that the EU needs a comprehensive approach to personal data protection.¹⁵

Nowadays, the management of data and Personal Data Protection has been a crucial aspect of business activity. The technology programmed for businesses is usually related to computing, including hardware, software, telecommunications, and anything related to information or systems that facilitate communication. Either way, technology can be used for data management, whether in the form of text, images, audio, video, and also things that are related to the internet that have become an essential part of daily activities. In the present day, society is familiar with start-up ideas, especially an application. For users to register for an application, the user must input their data, such as emails, credit card numbers, and more private data. Unfortunately, inputting data online is not recommended even if it is for registration through an application since there is no guarantee of protecting data privacy on the internet.

¹⁵ *Ibid.*

The purpose of Personal Data Protection regulations is to prevent fraud and protect personal data from being misused, both by internal and external parties. There is some background to this Personal Data Protection Act because personal data are a part of human rights.¹⁶ Data is an asset of high value; it can even be traded irresponsibly. Most of the time, there have been nationwide cases of personal data violations. Therefore, regulations are needed on the importance of personal data and cross-country exchanges.

The internet has limited privacy protection due to its broad platform. As a result of the advanced technology, individuals who can hack important or classified could quickly obtain personal data that wasn't meant for public use. The current issue that has been happening in Indonesia regarding the misuse of personal data trading is usually done amongst credit card marketers who can acquire private information for a low price. The data sold contains information on names, telephone numbers, addresses, to the name of the owner's family. Besides, some are equipped with information about the financial capabilities of their owners as well. Personal data without financial capacity is usually sold at IDR 300, - per data. Meanwhile, the information on the owner's financial capability is priced at Rp. 20.000,-

¹⁶ K, Rizky P. "Perlindungan Hukum atas Privasi dan Data Pribadi Masyarakat". <<https://www.hukumonline.com/klinik/detail/ulasan/lt5d588c1cc649e/perlindungan-hukum-atas-privasi-dan-data-pribadi-masyarakat/>>. Sited on 14 April 2020.

to Rp. 50.000,- per data.¹⁷ This case can be considered a misuse of personal data, which a law related to personal data protection has been vital to protect customers' personal data or consumers from misuse.

The current issue that highlights Personal Data Protection is essential and needed to be finally legalized in the case of Tokopedia. In early May 2020, Tokopedia has a leakage of 91 million of Tokopedia users' data has now shifted to the domain of law. This causes Tokopedia and the Minister for Communication and Informatics to get sued by the Indonesian Consumer Community (KKI) for Rp. 100 billion for this incident.¹⁸ Another case of the leakage of personal data can also be found in banks. In early January 2020, there was a case about a breach of bank accounts that belongs to a senior journalist that caused the breacher to get the victim's phone number. After the breacher receives the victim's phone number, he will impose as Ilham, which leads the accused to break into the victim's bank account and access the victim's email account which results in the accounts that were burglarized; the breacher managed to steal Rp. 300 million for shopping at online stores and cash withdrawals.¹⁹

¹⁷ S. Yoga, "Data Pribadi Dijual Bebas, dari Gaji hingga Info Kemampuan Finansial", <<https://money.kompas.com/read/2019/05/13/081753626/data-pribadi-dijual-bebas-dari-gaji-hingga-info-kemampuan-finansial?page=all>>, sited on 19 February 2020.

¹⁸ Franedy, R. "91 Juta Data Pengguna Bocor, Tokopedia Digugat Rp 100 M", <<https://www.cnbcindonesia.com/tech/20200507083340-37-156876/91-juta-data-pengguna-bocor-tokopedia-digugat-rp-100-m>>, sited on 24 September 2020.

¹⁹ Bisnis.com, "Menyisir Bocornya Data Nasabah Perbankan", <<https://finansial.bisnis.com/read/20200221/90/1204419/menyisir-bocornya-data-nasabah-perbankan>>, sited on 24 September 2020.

Hitherto, the Personal Data Protection is regulated partially and sporadically, such as in the Government Regulation and The Ministerial Regulation of Communication and Information. However, no regulation comprehensively stipulated Personal Data Protection in Indonesia. As regards, the Government Regulations No.82 of 2012 concerning Implementation of Electronic Systems and Transactions (PSTE) is legislation whose mainly explain administrative sanctions are more administrative and highly dependent on the derivatives of Ministerial Regulation, as well as Ministerial Regulation No. 20 of 2016 concerning Personal Data Protection where the majority of sanctions are administrative and still has an unclear meaning, purpose, and method of protecting personal data.²⁰ Hierarchically, the one who has more binding power is the Law itself that is a legal product that has been drawn up democratically through a representative body (DPR). Even though it is regulated within Ministerial level regulation, there are no laws currently in place. Laws made explicitly for Personal Data Protection has not been completed yet. Still, other laws regulate Personal Data Protection such as Law No. 19 of 2016 concerning Information and Electronic Transactions, Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Transactions Systems, and Ministry of Information and Communication, Minister's Regulation No. 20 of 2016 concerning Personal Data. Personal

²⁰ Komite, “Perlunya Sosialisasi Permen Kominfo No.20/2016 Tentang Perlindungan Data Pribadi”, <<https://www.komite.id/2016/12/14/perlunya-sosialisai-permen-kominfo-no-202016-perlindungan-data-pribadi/>>, sited on 19 February 2020.

Data Protection Act is necessary since there are still no clear regulations and clear sanctions for criminal offenses.

On the one hand, one hundred twenty-six countries out of approximately 180 countries worldwide have primary legislation on Personal Data Protection Act, including ASEAN countries.²¹ Since 2012, the Personal Data Protection Act was demanded to protect private data on the Internet to prevent personal data misuse.²² However, on the other hand, Indonesia is still trying to cope with the uncertain finishing of RUU Personal Data Protection for seven years; therefore, this causes a legal vacuum.

However, the need for legal products to protect personal data may and may not be beneficial simultaneously. The Personal Data Protection Act may be beneficial since it's an effort to protect the release of personal data misuse. On the other hand, the Personal Data Protection Act can hinder or shut down various digital businesses since these digital businesses, especially start-ups, rely on business activities and the need to determine consumer preferences so that they can provide the right marketing strategy, that will undoubtedly be not easy to decide on business boundaries.²³ The problem

²¹ *Ibid.*

²² Indonesia.go.id, "Menunggu UU Perlindungan Data Pribadi", <<https://indonesia.go.id/narasi/indonesia-dalam-angka/sosial/menunggu-uu-perlindungan-data-pribadi>>, sited on 20 February 2020.

²³ R53, "UU PDP, Johnny Hambat Start-up", <<https://www.pinterpolitik.com/uu-pdp-johnny-hambat-start-up/>>, sited on 22 February 2020.

is that the data on consumer preferences is obtained through the activities of internet users. In other words, there has been a massive, systematic, and structured use of internet user data. Personal Data Protection Act can inhibit a digital-based economy since the Personal Data Protection Act will prevent digital business operators from using internet user data as freely as before. This impact would be felt by new start-ups who still need data support to formulate marketing strategies. This Law could push off Jokowi's vision to boost the growth development of the digital economy.

To eliminate existing legal uncertainties future loopholes in the Indonesian legal system regarding Personal Data Protection, this word argues that the legal comparison of the Personal Data Protection Act with Singapore as best practices is crucial and necessary. In this matter, Singapore's Personal Data Protection Act 2012 is considered the best in Asia since Singapore's Personal Data Protection Act shares similar principles with the EU GDPR.²⁴ As aforementioned, EU GDPR is deemed to be comprehensive because it covered almost all personal data processing.²⁵ Due to the problem, the Author will focus on comparing Indonesia's Personal Data Protection Laws to Singapore's Personal Data Protection Law as a guideline, which the

²⁴ Asia Law Portal. "ASEAN Insiders Series 2019 – Personal Data Protection". <<https://asialawportal.com/2019/07/19/asean-insiders-series-2019-personal-data-protection/>>, sited on 14 April 2020.

The link between the EU GDPR and the Singapore PDPA is that they all need user approval for all data gathering , data transmission or data disclosure communications.

²⁵ R53, "UU PDP, Johnny Hambat Start-up", <<https://www.pinterpolitik.com/uu-pdp-johnny-hambat-start-up/>>, sited on 22 February 2020.

Author will be focusing more on the collection, usage, and disclosure of data protection that is written in Part IV of Singapore's Personal Data Protection Act. Comparing Singapore's laws could suggest what improvements are needed to add to the law so that there would not be any legal problems in the future. Lastly, the Author would like to keep Jokowi's vision on developing Indonesia's Start-up company's growth by suggesting the solution as the middle ground. There would not be any Start-up companies that might shut down due to the Personal Data Protection Act's establishment.

1.2 Formulation of Issues

Corresponding to the topic of this thesis, this research analyses the following formulation of issues:

1. To what extent the Indonesia law regulates the Personal Data Protection in comparison with the Singapore's Personal Data Protection Act 2012.
2. How and to what extent the aspect of Singapore's data protection law that Indonesia currently do not have could generate beneficial impacts?

1.3 Research Purpose

The Author's purpose of writing this thesis is to answer the formulation of issues stipulated above, particularly:

1. To know how far Indonesia's law regulates the Personal Data Protection in comparison with the Singapore's Personal Data Protection Act 2012.

2. To know how far the personal data protection law generate beneficial impacts to the Indonesian start-up companies compared to Singapore practice.

1.4 Research Benefits

1.4.1 Theoretical Benefits

Theoretically, the Author hopes that this research will give vision regarding the discrepancies on Indonesia's Personal Data Protection Regulations and Singapore's Personal Data Protection. From the gaps, the Author hopes that this legal research can point out the deficiencies of the Personal Data Protection. The Author also wishes that the middle ground regarding the Personal Data Protection Law can be a solution to carry out still Jokowi's vision to develop the growth of Start-up companies in Indonesia. Altogether, the Author hopes that this research could give an in-depth knowledge regarding the latest law that will be legalized soon.

1.4.2 Practical Benefits

Practically, the Author hopes that this research can provide suggestions that could be included in the new Personal Data Protection Law and cover all the legal loopholes that could act as a prevention to further practical problems. The Author wishes that this

thesis would be helpful and useful for future UPH Law students and legal authorities.

1.5 Framework of Writing

This thesis is arranged into five main chapters that will ease the readers to understand the discussion of this thesis

CHAPTER I: INTRODUCTION

This chapter consists of the introduction, which is further divided into five parts, which are background, formulation of issues, research purpose, research benefits, and the framework of writing.

CHAPTER II: LITERATURE REVIEW

The literature review chapter will be divided into five sub-chapters. First, the Author will determine the law and regulations of Personal Data Protection in Indonesia and Singapore. Second, the Author will elaborate the Operation of Electronic System and Transaction. Third, the concept of Start-up Companies. Lastly, the author will elaborate the definition of Start-up company and its law.

CHAPTER III: RESEARCH METHODS

This third chapter will discuss the type of research in general, the type of data, data analysis technique and the type of research approach that will be used by the Author to discuss the issues of this thesis.

CHAPTER IV: DISCUSSION AND ANALYSIS

In the fourth chapter, the Author will be discussing the research problems along with the solutions. This chapter will be divided into two sub-chapters, which will answer the research questions, respectively. The first sub-chapter will consist of the law comparison between the Indonesian laws regarding Personal Data Protection to Singapore's Personal Data Protection Act 2012. The second sub-chapter will be analyzing the beneficial impacts on the Indonesian Personal Data Protection regulations.

CHAPTER V: CONCLUSION & RECOMMENDATION

In this last chapter, the Author will be explaining the conclusion to answer the issues that have been analysed in chapter four. Other than giving the conclusion, the

Author will also offer suggestions and recommendations regarding this issue.

