

CHAPTER I

INTRODUCTION

1.1 Background

Over the years, technology has revolutionized our world and daily lives. Technology has created useful tools and resources and thus letting us utilize those to provide and gather information with just a simple click of a button¹. There are many things that technology has contributed to in opening a pathway for innovations such as smartphones.² Smartphones can be considered to be a multi-functional device that allows its operator to utilize the functions in an all in one object. The era we are currently living in is at its peak of innovation through technology and will keep developing in the far future. With technology being improved and developed every year, it does demand a great quality of people to strike ideas into the minds of all others, especially the new generations, because of how the newer generations are the ones who will continue the work of their predecessor. None of these would be possible without the invention of the Internet.

The internet was not originally known as “Internet” but as ARPANET³, it was further developed by a student programmer at UCLA into the Internet we

¹ Technology In Our Life Today and How It Has Changed. Accessed on September 15, 2020. <https://www.aginginplace.org/technology-in-our-life-today-and-how-it-has-changed/>

² Smartphones are mobile devices that have more functions than regular mobile phones. They work as a computer but are mobile devices and are small enough to fit into its user’s hand

³ Advanced Research Projects Agency Network (ARPANET) was the first data networks built at the juncture of telecommunications and computing.

know today⁴. Internet is a global wide area network that connects computer systems across the world and it includes several high-bandwidth data lines that comprise the internet's "backbone" and these lines are connected to major internet hubs that distribute data to other locations, such as web servers and ISPs⁵. The Internet has been used throughout the earth by everyone since the late 1900s to gather information through the use of *Search Engines*. A search engine such as Google, Yahoo, and Bing are platforms that utilize a search engine algorithm to provide and direct its users to the information that they are searching for in an instant by providing narrowed-down options to the searcher.

Nowadays, since everything is computerized, data such as KTP can be recorded into the database of a server and keep it stored and sorted for plans and identification purposes. Even businesses have already started to utilize the use of technology and online platform in their activity from using them as the base of their product promotion up to using those online platforms as a means of transactions. Those transactions that are done through online apps are usually required by the buyer and seller to send the information of their KTP through the app when making the account as one of its requirements. In the past, such an act would not have been thought of as something dire or important, but nowadays since the data in the online world, or as we call it the cyberspace, can be acquired legally or illegally, it has put the protection of those personal data up the list.

⁴ A History Of The Internet And Its Invention. Accessed September 15, 2020. <https://allthatsinteresting.com/internet-history>

⁵ Internet. Accessed September 15, 2020. <https://techterms.com/definition/internet>

Technology and the internet indeed ease and simplify most activities and it is a great discovery even to this day, however as technology and the internet open up a path towards innovations and ideas, it also opens up the potential crime methods and strategy.⁶ Technology and the internet can be deemed as a double-edged sword because it can be used in two different ways depending on the purpose of the user, the good way, and the bad way. This is the problem we are facing today regarding the use of personal private data of each individual associated with the use of technology.

Personal data as the name suggest are private information that should not be shared with other irrelevant individuals without the approval or consent of the rightful owner.⁷ Data is a very sensitive and delicate piece of information that should not be misused in any circumstances regardless of the situation. Although the delicacy of data is known, the possibilities of data itself to be abuse are not uncommon because of the lack of knowledge in regards to how important data is in terms of usability, accessibility, and vulnerability.⁸ In the aspect of a crime, data can be used to assist in their activities and provides essential information for the crime to be conducted. A crime that requires data

⁶ The Impact of the Internet on Society: A Global Perspective. accessed October 23, 2020. <https://www.bbvaopenmind.com/en/articles/the-impact-of-the-internet-on-society-a-global-perspective/>.

⁷ Bernadette Kamleitner and Vince Mitchell, Your Data Is My Data: A Framework for Addressing Interdependent Privacy Infringements. Accessed on October 23, 2020. <https://journals.sagepub.com/doi/pdf/10.1177/0743915619858924>.

⁸ *Ibid.*

gathered through the use of the internet or is conducted on the internet or cyberspace is called *cybercrime*.⁹

Cybercrime is a criminal act that is committed through the medium of technology and the use of cyberspace. It utilizes and abuses the accessibility and the convenience of cyberspace to pinpoint their target and extract that information required to set their plan in motion whether it be in the real world or cyberspace. Different types of criminal offense related to personal data such as phishing and identity theft. The existence of cybercrime is why the *Undang-Undang* Informasi dan Transaksi Elektronik (UU ITE) was created. Even so, it does not specifically regulate personal data protection. (Footnote +2)

Of course, cybercrime had been around since the late 1900s when mobile phones started to be invented. In those times, the only potential threat was not as much as it is today. Hacking and identity theft were more common than others. But as the technology grows and develops at a fast pace, there began new types of crimes committed that can be considered a cybercrime. Of course, the strategy and methods also develop alongside technology. The first law to have been made to reduce these kinds of acts is the *Federal Computer Fraud and Abuse Act* in 1986¹⁰.

Indonesia is a nation based on law, and the Indonesian 1945 Constitution is the base of all laws that are created in Indonesia. Thus, laws that are created

⁹ Adam M. Bossler, Introduction: new directions in cybercrime research. <https://www.tandfonline.com/doi/full/10.1080/0735648X.2019.1692426>. Accessed October 23, 2020.

¹⁰ A Brief History of Cybercrime. Accessed October 23, 2020. <https://www.floridatechonline.com/blog/information-technology/a-brief-history-of-cyber-crime>.

in Indonesia must refer to the Indonesian 1945 Constitution and must not go against it at any cost. Personal data can be considered as a right. The right to have each individual's personal information to be kept for themselves and not to be shared by anyone without the permission or consent of the owner. The Indonesian 1945 Constitution of Indonesia under article 28A to 28J regulates about Human Rights.¹¹ Indonesian citizens, under the Indonesian 1945 Constitution, have the right to live, grow, develop, protection against violence, and so on. specifically under article 28H (4), it said that "*Setiap orang berhak mempunyai hak milik pribadi dan hak milik tersebut tidak boleh diambil alih secara sewenang-wenang oleh siapapun.*".¹² The term *hak milik pribadi* can also be suggested as personal data in which *hak milik pribadi* has a broad meaning to it and since it has broad meaning then personal data regarding oneself can also be included. Currently, there is no an integrated and comprehensive law regarding personal data protection in Indonesia like in the EU (European Union). The EU has implemented the GDPR (General Data Protection Regulation) since 25th May 2018. The aim of GDPR is stipulated under article 1 of the GDPR¹³ which are:

1. This Regulation lays down rules relating to the protection of natural persons concerning the processing of personal data and rules relating to the free movement of personal data.

¹¹ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

¹² Ibid.

¹³ General Data Protection Regulation (GDPR), <https://gdpr-info.eu/art-1-gdpr/>

2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.
3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons concerning the processing of personal data.

Personal data is a very delicate piece of data and yet it is not as well guarded by the state due to the absence of its specific law which is the personal data protection regulation and very poor implementation. In the perspective of law, according to Indonesian 1945 Constitution, all human rights should be protected and respected by everyone to anyone (Das Sollen), but the fact still tells us that most of these human rights stipulated in the Indonesian 1945 Constitution are still being neglected or unprotected whether it be through the act of criminal offense by breaching others rights or in the absence or lack of law (Das Sein). Such a case is the personal data protection in which it is still missing in our law even though personal data protection has been drafted since early 2000 although not prioritize until recent years. Personal data issue has to be taken seriously and Indonesia is still lacking that aspect in this regard.¹⁴ With the evolution of technology, along with its power to open up possibilities for new strategies and innovation in most industries and department, Indonesia has to step up in confronting topics and issue that concerns individual's data. Not

¹⁴ Rosadi, Sinta Dewi. "Protecting Privacy on Personal Data In Digital Economic Era: Legal Framework In Indonesia". Accessed on October 2, 2020. https://www.researchgate.net/publication/324655891_Protecting_Privacy_On_Personal_Data_In_Digital_Economic_Era_Legal_Framework_In_Indonesia

only does this concern the Indonesian 1945 Constitution, but it is also the basis of human rights for everyone in the world to gain access to their protection of rights from the moment someone is born until their time ended on earth.¹⁵ There is a saying nowadays that says "data is the new oil". It means that data's value or the price can be considered as broad an oil can be described as, expensive and valuable. Personal data relates to the rights to privacy.

In international laws or treaties such as the UDHR (*Universal Declaration of Human Rights*) and ICCPR (*International Covenant on Civil and Political Rights*), rights to privacy are regulated and both international treaties are the basis for nations in regards to human rights.

A case example is Gerindra DKI subpoena KPU DKI on NIK (Nomor Induk Kependudukan) data and NKK (Nomor Kartu Keluarga) data pemilu 2019. In this case, the content of subpoena that Gerindra submit to KPU is to open the star mark (tanda bintang) in the NIK and NKK in the voter list of pemilu 2019. Gerindra won the dispute at *komisi informasi* DKI Jakarta regarding the uncensoring of the star mark in the NIK and NKK. The head of the regional representative Gerindra, M Taufik, claimed that he wanted the data of the voters to cross-check for whatever reason he had. The decision of the information commissioner number 0018/VIII/KIP-DKI-PS/2018 said that the

¹⁵ Copelon, Rhonda. Zampras, Christina. Brusie, Elizabeth. DeVore, Jacqueline. "Human Rights Begin at Birth: International Law and the Claim of Fetal Rights", Page 121. Accessed October 2, 2020.

unveiling of the star mark in NIK and NKK is a part of information disclosure that is very strict and limited.¹⁶

Another case example is a case regarding a *Direktorat Jenderal Kependudukan dan Pencatatan Sipil (Dukcapil)* that gives authorization to the private sector to gain access to the population's data. The Dukcapil gives the private sector access to the NIK and e-KTP that was working together with the Dukcapil and according to the report, the data and information were used for the benefit of supporting the company's services. There were many critics done through the use of *Twitter*¹⁷ against the act of the Dukcapil on granting the private sectors delicate and private information on each of the individuals of the population¹⁸.

The recent cases above mentioned mandate that Indonesia requires immediately an integrated and comprehensive regulation regarding personal data protection to enhance the security to protect human rights, and the need to educate the public on the fundamentals of personal data itself as well as spreading awareness that personal data should be heavily guarded under the law to prevent leakage of unwanted information to the society or the misuse of personal data to start a crime. This challenge presented by the public itself is a challenge for the authority as well as law enforcers to act on how to prevent

¹⁶ Gerindra DKI Somasi KPU DKI terkait data NIK dan NKK Pemilu 2019. Accessed October 2, 2020. <https://nasional.kompas.com/read/2018/11/30/17092891/gerindra-dki-somasi-kpu-dki-terkait-data-nik-dan-nkk-pemilu-2019>

¹⁷ Twitter is a social media platform similar to Facebook in which an account can post comments, pictures, etc.

¹⁸ Kasus data Dukcapil: Pelajaran terkait privasi dan data pribadi di Indonesia. Accessed October 2, 2020. <https://theconversation.com/kasus-data-dukcapil-pelajaran-terkait-privasi-dan-data-pribadi-di-indonesia-121264>

criminal offense that would harm the citizen of Indonesia. With the 1945 Constitution of Indonesia as our base guidelines to enact a new law, law enforcers must take into account the possibility of future crimes that would involve the use of other people's personal data and start coming up with ideas on how to counteract those actions.

It is mentioned previously that the only nations to have a well-regulated privacy law in the European Union with their *General Data Protection Regulation* (GDPR). GDPR is deemed as the best practices for personal data protection regulation for other jurisdiction¹⁹. Most country has also begun to develop their personal data protection bill with GDPR being their base or reference and this includes Indonesia. Indonesia has been developing the RUU PDP (*Rancangan Undang undang Personal Data Protection*) with the basis of GDPR in 2018. The RUU PDP has not been completed yet until the year 2020 and will still be under adjustment until further notice. In order to exercise everyone's right to privacy, a well thought out regulations need to be implemented.

Even though the RUU PDP has not been officially enacted yet, it has already been published in websites for the public to look at the content. Currently, it has 80 articles, all of it regarding personal data protection by parties involved and management by the third parties as well.

¹⁹**THE STATE OF DATA PROTECTION RULES AROUND THE WORLD A BRIEFING FOR CONSUMER ORGANISATION, CONSUMER INTERNATIONAL COMING TOGETHER FOR CHANGE**, what is happening across the world, pg. 3.

In the digital era, the chances of cybercrime on personal data are very high especially ones that will violate the rights to privacy of individuals. This is due to the lack of strict regulation to punish the wrongdoers and the minimal amount of knowledge on this particular subject. Personal data is a part of human rights, specifically rights to privacy, that most of us neglect in this era and due to that, the consequences are grave. This is the fact that law enforcer has to be able to adapt to our situation in the digital era to tighten our defense against the violation of each individual's personal data and their rights to privacy.

1.2 Formulation of Issue

Embarking from the descriptions above, this work will analyze the significance of rights to privacy and the impact of the absence of Personal Data Protection Law in Indonesia with the formulation of issue as follows:

1. To what extent the lack of a comprehensive data protection law in Indonesia constitute a statutory breach against the international law?
2. To what extent and how Indonesia can benefit from and incorporate the international treaties regarding personal data protection to optimally protect data privacy in Indonesia?

1.3 Research Purpose

The purpose of the research that is being conducted are:

- a. To explain the significant issues and the importance of personal data in Indonesia in accordance with the Indonesian 1945 Constitution.
- b. To figure out if Indonesia can use the GDPR as their base and fundamentals of the new upcoming law on Personal Data protection.

1.4 Research Benefit

- a. The theoretical benefit of this research is hope to give knowledge and something to think about regarding the current issue we have in Indonesia from the perspective of the writer to the reader, more specifically regarding the topic of personal data that is currently one of the most valuable assets and information around the world along with the law that circulates around it.
- b. The practical benefit of this research are:
 1. For students, it is hoped to give students who are interested in the issue of personal data protection an overview and understanding of how the absence of the law impact the nation
 2. For experts, it is hoped that this research will give them suitable reference specifically on this topic for the interest of particular discussions.

3. For government institutions, it is hoped that this research will assist them as a reference in the making of the RUU PDP law to further enhance the effectiveness and productivity of the law.

1.5 Structure of Writing

The structure of writing in this thesis with the title of “**The Impact Of The Absence Of Privacy Law In Indonesia In The Technological Era**” will be structured and compiled into 5 different chapters that are organized chapters after chapters as follows:

Chapter I. Foreword

This chapter will consist of a description regarding the background of the issue, formulation of the issue, the purpose of the research, and the benefit of this research along with the structure or writing. This chapter will consist of a general description of this thesis to make it easier for readers to study and understand the content of this thesis.

Chapter II. Literature Review

This chapter consists of the foundation of theory and data that relates to the thesis, where the basic understanding of personal data will be discussed under the scope of Law Number 19 of 2016 on Information and Electronic Transaction, Indonesian 1945 Constitution and also the *General Data Protection Regulation*.

Chapter III. Research Methodology

Explain the methodology used in this thesis, that consists of the type of research, issue approach, data, and source of data, the procedure of data gathering, data processing procedure and analysis of data. This chapter also contains an overview of how the thesis is executed as well as supported by the methodology research.

Chapter IV. Research result and data analysis

This chapter will consist of the research result and analysis from the discussion that will be divided into two subchapters, first is the implementation and regulation of personal data protection nationally and the second one is the implementation and regulation of personal data internationally.

Chapter V. Closing

This chapter will consist of a conclusion and recommendation. The conclusion will be based on what has been analyzed in chapter IV. And recommendation will be based on the conclusion and what has been researched in this thesis.