



DATA PRIVACY AND CONSTITUTIONAL RIGHTS IN INDONESIA

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Abstract

This article explores the connection between data privacy and constitutional rights in Indonesia, particularly within the framework of a democratic rule of law. The 1945 Constitution of Indonesia guarantees citizens' fundamental rights, including security and privacy. However, the rapid advancement of information technology has introduced new challenges for personal data protection. Currently, Indonesia's regulations, such as the Electronic Information and Transaction Law (ITE Law), lack comprehensive measures to safeguard data privacy rights, as they are sectoral and fragmented. This article highlights the necessity of enacting the Personal Data Protection Bill (RUU PDP) as a crucial step in strengthening the legal framework for data privacy protection in Indonesia. Additionally, it compares international regulations like the General Data Protection Regulation (GDPR) in the European Union, as well as data protection laws in neighboring countries like Singapore and Malaysia. The article underscores that prioritizing the protection of personal data privacy rights is essential for safeguarding constitutional rights and individual dignity, as well as for fostering a secure and trustworthy digital ecosystem in Indonesia.

Keywords: Data Privacy, Constitutional Rights, Personal Data Protection, International Regulation.

1. INTRODUCTION

The advancement of information and communication technology over the past few decades has significantly transformed nearly every aspect of human life, including how individuals interact, work, learn, and manage their personal data. This progress has enabled people to become more connected, efficient, and productive. However, alongside these conveniences, new challenges have emerged, particularly concerning the protection of personal data and privacy rights. Privacy rights, which are an essential part of human rights, now face increasingly complex threats. The challenges of protecting privacy rights are increasingly growing in this digital age, as advancements in information technology enable the large-scale collection and storage of personal data in both the public and private sectors. This poses serious risks to individuals, including financial losses, identity theft, and misuse of information that can damage reputations and threaten personal safety. Incidents of data breaches involving major technology companies and government institutions highlight the vulnerability of personal data in today's digital landscape (Suari & Sarjana, 2023).

Data privacy is a critical issue with substantial global implications, particularly when comparing regulations across various nations. The European Union has implemented robust laws, such as the General Data Protection Regulation (GDPR), to ensure the protection of its citizens' personal data (Albakjaji & Adams, 2020; Adams & Almahmoud, 2023). In stark contrast, the United States demonstrates a markedly different approach, lacking a federal law that explicitly safeguards privacy rights (Clayton et al., 2019; Adams & Almahmoud, 2023). This absence of comprehensive federal regulation leads to significant variations in how personal data is handled and protected online across different jurisdictions. Such disparities not only influence the level of privacy protection individuals can expect but also affect international businesses and their compliance strategies. As companies navigate the complexities of operating in diverse regulatory environments, they must adapt to varying standards and practices regarding data privacy. This difference in regulatory frameworks creates challenges for individuals seeking to understand their

rights and for organizations striving to maintain compliance while protecting consumer data effectively. The contrast between the stringent EU regulations and the more fragmented approach in the U.S. highlights the ongoing global debate over the balance between innovation, business interests, and individual privacy rights.

Indonesia, experiencing rapid internet growth, encounters significant challenges regarding personal data protection. The increasing integration of technology into daily life has raised awareness about the importance of safeguarding personal information. Constitutionally, Article 28G, Paragraph (1) of the 1945 Constitution provides a framework for privacy rights, ensuring the protection of every citizen's individual, family, honor, dignity, and property. However, with the continuous advancement of technology, it is essential to reconceptualize privacy rights beyond mere property protection. In the digital era, these rights should be recognized as fundamental, emphasizing individual control over personal information. This shift reflects the need to adapt legal frameworks to address the complexities of digital privacy, ensuring that citizens have agency over their data amidst the evolving technological landscape. Recognizing privacy as a fundamental right will not only enhance protection measures but also foster public trust in digital platforms, ultimately contributing to a safer and more secure online environment for all Indonesians.

The relationship between data privacy and constitutional rights in Indonesia is interconnected, especially in the context of rapidly advancing digital technology. The first component of concern is data privacy, which refers to an individual's right to control their personal information, including its collection, storage, and use by third parties. This is closely tied to the constitutional rights enshrined in the 1945 Constitution, which provides a foundation for human rights protection in Indonesia, including the right to privacy. Regulations and policies related to personal data protection, such as the Personal Data Protection Law (UU PDP), are crucial aspects of this research, given the new challenges that have arisen, such as privacy violations and data misuse. Furthermore, the lack of public awareness regarding their rights poses another significant issue, as it can influence how individuals safeguard their personal information. Through a comprehensive analysis of the relationship between data privacy and constitutional rights, along with the challenges faced, this study aims to offer recommendations for legal practitioners and policymakers. These recommendations are intended to enhance data privacy protection in Indonesia, ensuring that citizens' constitutional rights are effectively upheld in an ever-evolving digital landscape.

The concept of the rule of law serves as an essential foundation for understanding the relationship between data privacy and constitutional rights in Indonesia. Various scholars, including Julius Stahl and A.V. Dicey, offer differing perspectives on the characteristics and definitions of the rule of law. In Indonesia, this concept is adopted from Article 1, Paragraph (3) of the 1945 Constitution, which asserts that Indonesia is a legal state. The elements of Rechtsstaat proposed by Stahl, along with principles of the Rule of Law, such as the supremacy of law and equality before the law, create a framework that strengthens the protection of human rights and limits state power. However, the distinctive feature of the rule of law in Indonesia includes a welfare orientation outlined in the 1945 Constitution, emphasizing the state's responsibility to achieve social welfare for all citizens. This foundational understanding underscores the importance of effective data privacy regulations and policies, as outlined in previous discussions, to ensure that constitutional rights are upheld within this framework.



Human rights also play a critical role in this context. As Donnelly and Shestack argue, these rights are inherent to all individuals and must be respected by both the state and society (Kumar, 2023). The historical evolution of human rights is divided into three generations: the first focuses on civil and political rights, the second prioritizes social, economic, and cultural rights, and the third emphasizes collective rights. In Indonesia, Law No. 39/1999 on Human Rights serves as the legal foundation governing various aspects of human rights, highlighting the state's responsibility to fulfill these rights. This law encompasses the right to life, personal freedom, security, welfare, as well as specific rights for women and children. As Eleanor Roosevelt once said, "Where, after all, do universal human rights begin? In small places, close to home..." This underscores the importance of implementing laws like these at both societal and governmental levels to ensure that basic rights are safeguarded. Integrating the concepts of the rule of law and human rights, it becomes evident that both complement each other in the context of individual protection and the limitation of state power. The principles inherent in these two theories must be applied together to achieve social justice and welfare for all of Indonesia's citizens. As this research progresses, it is essential to analyze how these two theories interact within the legal and policy frameworks in Indonesia, as well as the challenges encountered during their implementation. This study will delve deeply into the relationship between data privacy, constitutional rights, and the application of these principles in light of advancements in digital technology in Indonesia.

Despite a clear understanding of the theories of Rule of Law and human rights in Indonesia, there exists a significant research gap concerning the application of these principles in the context of data privacy in the digital era. First, while Law No. 39/1999 guarantees human rights, its implementation in safeguarding individual data privacy faces new challenges arising from technological advancements (Wells, 2023). Second, the public's lack of awareness regarding their privacy rights also acts as a barrier to effective protection (Gunawan, 2024). Additionally, existing regulations, such as the Personal Data Protection Law (UU PDP), need to be evaluated for their effectiveness in addressing increasingly complex privacy violations (Azhari, 2015). Third, the interaction among various legal elements, including the protection of human rights and privacy policies, has not been extensively researched within a broader legal context (Harahap et al., 2024). Fourth, there is an urgent need to analyze how these challenges can be addressed through more comprehensive, data-driven policy recommendations (Kumar, 2023). This research aims to fill this gap and contribute to a better understanding and development of policies that protect data privacy in Indonesia.

This research investigates the development of data privacy as it relates to constitutional rights in Indonesia, focusing on how technological progress and societal needs influence this evolution. It aims to underscore the interaction between legal structures and the swift changes instigated by digital technologies. The study will address critical challenges in protecting data privacy rights, including deficiencies in current regulations, public awareness levels concerning privacy matters, and industry practices that could threaten individual privacy. By examining these elements, the research intends to identify effective measures to improve data privacy protection as a vital element of constitutional rights in Indonesia. Furthermore, it will offer policy suggestions to reinforce the legal framework governing privacy in the digital era. Through this thorough approach, the study seeks to enhance the understanding of data privacy as a crucial aspect of human rights, ensuring that individuals receive adequate protection in an increasingly interconnected environment.

2. IMPLEMENTATION METHOD

This research adopts a normative juridical approach, concentrating on data privacy issues within the framework of constitutional rights in Indonesia. The methodology involves a literature study, encompassing an analysis of legal documents, the constitution, and pertinent laws and regulations. The sources utilized include books, academic articles, and reports from watchdog organizations and non-governmental entities focused on privacy and human rights. The documentation method serves as the primary data collection technique, allowing the author to review and comprehend both current and historical challenges surrounding privacy protection in Indonesia's legal system. Data analysis is conducted inductively, identifying key themes and critical issues related to personal data misuse and the application of relevant constitutional principles. Employing content analysis, this research aims to systematically and objectively pinpoint specific characteristics of texts concerning data privacy and constitutional rights. By analyzing these components, the study seeks to illuminate the intricate relationship between data privacy and constitutional rights in Indonesia, thereby highlighting the implications of technological advancements and societal demands on privacy protection. The findings are intended to shed light on the challenges faced in safeguarding individual privacy rights, which include gaps in existing regulations, limited public awareness, and potentially harmful industry practices. Ultimately, this research aspires to provide constructive recommendations for policy enhancements, aimed at strengthening the legal framework surrounding data privacy in the digital age. By doing so, it contributes to the broader discourse on human rights and privacy, advocating for more robust protections that align with constitutional guarantees. In conclusion, this comprehensive analysis not only identifies the pressing issues at hand but also underscores the need for a more integrated approach to data privacy and constitutional rights in Indonesia's evolving legal landscape.

3. RESULTS AND DISCUSSION

In a democratic rule of law, the protection of citizens' constitutional rights and the right to data privacy are two interrelated and essential facets. The Indonesian Constitution, specifically the 1945 Constitution (UUD 1945), enshrines numerous fundamental rights for every individual, including the rights to life, family, personal development, justice, and security. The concept of the rule of law, derived from the theory of Rechtsstaat, necessitates that the government not only upholds these rights but also ensures that the legislative, executive, and judicial branches respect and do not infringe upon these constitutional rights. Within this framework, the state is not merely an instrument of power but also serves as the primary guardian of human rights and constitutionalism. This responsibility becomes increasingly significant in the context of advancing technology and the growing digital economy, which pose new challenges to individual privacy. The rise of data-driven services and social media platforms raises pressing concerns about how personal information is collected, stored, and utilized, often without adequate consent or transparency. Consequently, the state must implement effective legal frameworks and regulations that specifically address data privacy issues while ensuring that these frameworks align with the broader principles of human rights. Moreover, public awareness and education on data privacy rights are crucial in empowering citizens to understand and exercise their rights effectively. Through this approach, a more robust protection mechanism can be established, one that not only safeguards individual privacy but also fortifies the overarching framework of constitutional rights. Ultimately, this dual focus on constitutional protections and data privacy rights will contribute to a more just and



equitable society, fostering trust between citizens and the state while enhancing the overall integrity of the democratic process in Indonesia.

sectoral and lack comprehensive coverage. This lack of a specific, overarching law that fully addresses personal data protection creates a significant gap that undermines citizens' constitutional rights in terms of data privacy. In contrast, other countries have established more comprehensive frameworks for protecting personal data. For instance, the European Union's General Data Protection Regulation (GDPR) enforces strict data protection standards with global implications. Additionally, Singapore's Personal Data Protection Act (PDPA) of 2012 and Malaysia's PDPA of 2010 have implemented robust legal structures to ensure the privacy of their citizens' data. These regulations highlight the necessity of obtaining consent from data subjects prior to processing their information, while also granting individuals rights to access and amend their personal data. The effective measures taken by these nations to safeguard citizens' privacy should serve as a model for Indonesia to emulate.

The protection of constitutional rights fundamentally relies on the principles of the rule of law, with the Constitution serving as the primary reference point for all government actions and legislation. It mandates that these actions must not infringe upon the basic rights guaranteed by law. Enshrined in the 1945 Constitution, constitutional rights possess essential characteristics that must be upheld by state institutions. The Constitutional Court (Mahkamah Konstitusi), as the guardian of the Constitution, plays a pivotal role in protecting these rights. Every citizen is entitled to file a complaint should they believe their constitutional rights have been violated, and the Constitutional Court possesses the authority to adjudicate disputes concerning these violations. However, the rise of digitalization introduces new challenges, particularly regarding personal data privacy. Personal data, which encompasses any information that can identify individuals, poses a significant risk of misuse if not adequately safeguarded. Within the framework of human rights, the right to privacy is a crucial component of human dignity and must be defended against abuse by both government entities and private organizations. This right to privacy is inherently linked to constitutional rights, granting individuals the authority to understand how their personal data is utilized and to provide consent prior to any processing of their information. Consequently, the intersection of constitutional rights and digital privacy necessitates robust legal protections and an informed citizenry that can navigate the complexities of data usage in the digital age. Ensuring that these rights are respected not only reinforces the fundamental principles of democracy but also fosters trust between the state and its citizens, thus contributing to a more just and equitable society.

The introduction of a Personal Data Protection Bill (RUU PDP) is crucial for Indonesia. The proposed PDP Bill is anticipated to enhance the legal framework surrounding personal data protection and align domestic regulations with international standards. By passing the PDP Bill, Indonesia will not only reinforce individual privacy rights but also bolster its competitive position in the global digital economy. Strengthening data privacy protections is essential for fostering public trust in the utilization of digital technologies, particularly in key sectors such as e-commerce, finance, and information technology. With the rapid advancements in technology, Indonesia must implement more stringent and comprehensive regulations to safeguard citizens' constitutional rights, particularly regarding personal data privacy. The increased potential for personal data misuse, driven by technological growth and involving both governmental and private entities, necessitates a robust legal system to deter violations. The responsibility for data privacy protection extends beyond the state; it also requires active participation from society and the industrial sector to ensure ethical data management in compliance with applicable regulations.



The acknowledgment of the right to privacy is enshrined in the 1945 Constitution of Indonesia, particularly in Article 28G paragraph (1), which affirms that every individual is entitled to the protection of their self, family, honor, dignity, and property. However, the existing regulations concerning personal data protection in Indonesia remain relatively inadequate and fragmented. While laws such as the Electronic Information and Transaction Law (ITE Law) and Law No. 23/2006 on Population Administration exist, they tend to be

4. CONCLUSION

The analysis indicates that safeguarding constitutional rights, particularly the right to personal data privacy, is a fundamental element of a democratic legal state. The Indonesian Constitution, through the 1945 Constitution, guarantees essential rights for every citizen, including the right to privacy. However, the rapid advancement of information technology has introduced new challenges related to the security and confidentiality of personal data. Unfortunately, the current legal framework in Indonesia is inadequate, as existing regulations remain incomplete and disjointed. In contrast, countries such as the European Union, Singapore, and Malaysia have implemented more comprehensive legal structures to protect their citizens' privacy, providing valuable insights for Indonesia. Consequently, prioritizing the protection of personal data privacy rights is crucial for upholding individual dignity and fostering trust in digital technologies.

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