

The Role of Law in Indonesia's Economic Development in the Digital Era

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Abstract

The current digital economy raises demands from business people to carry out activities online. Law No. 5 of 1999 about the Prohibition of Monopolistic Practices and Unfair Business Competition, is still unable to accommodate the impact of the digital economy that will emerge in the future. The development of the digital economy will lead to an increase in the ability of digital platforms to collect more data, increase the competitiveness of online store owners and with the emergence of several applications, so that the dominant position of digital platforms can be misused which can result in competitors being uncompetitive at the market level. Related to this, it is necessary to have regulations that regulate in a more detailed scope related to the existence of juridical protection of personal data of people which in the future will be required in data collection on the ongoing practice of changing digital economy.

Keywords: digital economy, laws and regulations related to personal data protection, laws and regulations in the digital economy era

INTRODUCTION

Every Indonesian citizen must be able to interpret the meaning and the role of the 1945 Constitution of Republic of Indonesia (UUD 1945) as the highest origin of law in Indonesia, which contains the rights and interests of every layer of society. Article 28-point C of the 1945 Constitution became a philosophy in Indonesia regarding digital development through technology. The concept of the digital economy was first introduced by Don Tapscott as a socio-political and economic system that has the characteristics of an intelligence space, including information, various access instruments, capacities, and information processing. The components of the digital economy were identified for the first time, namely the technology, information and communication industries, e-commerce activities, and the digital distribution of goods and services.¹² Based on this definition, the digital economy is an economy based on electronic goods and services produced by electronic businesses and traded through electronic commerce, which means, businesses with electronic production and management processes and which interact with partners and customers and conduct transactions via the internet and the web. technology. The Indonesian government is currently planning for Indonesia to have

¹ Tapscott Don (1995) The Digital Economy: Promise and Peril in the Age of Networked Intelligence. New York: McGraw-Hill page 2.

² Atkinson, R.D. and McKay, A.S (2007), Digital Prosperity: understanding the economic benefits of the information technology revolution, Information Technology and Innovation Foundation, Washington, DC, page 7.

the largest digital economic power in Southeast Asia starting from 2020. The government targets e-commerce transactions to create 1,000 technopreneurs with a business value of US\$ 10 billion by 2020.³ In the context of the digital economy, businessmen which use such as trade mechanisms with e-commerce and transactions using e-banking which store consumer personal data such as names, home or office addresses, email addresses and even data on consumer bank account numbers. The definition of personal data is a true and real information attached to a person, thereby identifying that person. The importance of personal data protection is to ensure that someone's personal data that is collected is used in accordance with the purpose of collection, so that data misuse does not occur. Personal Data is a concept that describes a process or effort to combine regulations regarding privacy and personal data that are scattered in various legal instruments into one separate legal instrument. Thus, the protection of privacy and personal data has a *sui generis* place.

The right to protection of personal data develops from the right to respect private life. Individuals related to this matter have the position as the main owner of personal data protection rights.⁴ Regarding the matter of privacy, it is not explicitly stated in the 1945 Constitution, but implicitly the right to privacy is contained in Article 28G paragraph (1) of the 1945 Constitution. Regarding the guarantee of the right to privacy itself is contained in Law No. 39 of 1999 about Human Rights Article 29 paragraph (1) and Article 30.

In Indonesia, the process of discussing privacy and personal data protection is still going through because Indonesia already has a Personal Data Protection Bill. The bill aims to incorporate privacy arrangements for distributed personal data into a separate law. The drafting of the academic text on the Data Protection Bill is the initial stage of the convergence process which was completed in October 2015. The existence of a form of juridical regulation is the best way to protect a legal subject from the arbitrariness that is applied.

According to Westin there are 5 conceptions of privacy as follows:

Personal Autonomy

Personal autonomy is a fundamental concept, and has a rationale for individualism. To protect personal autonomy and individuality, one must have a personal space free from outside influences. The privacy policy is useful for protecting the borderline regarding individual data from the prying eyes of others. The concept of privacy places limits on what countries and other parties can get or know and what they can't know from individuals by creating a "private area."

Emotional Release

The conditional perception of privacy lies in the existence of personal freedom that makes it possible to experience emotional release.

Limited and Protected Communications

Rosen defines privacy as a claim to social boundaries that protect a person from simplification, objectification, and judgments taken out of context. Personal information that crosses social boundaries from the private domain to the public domain without the knowledge of the person

³ <https://balitbangsdm.kominfo.go.id/?mod=published> on 15th Desember 2022, at 18:10 Western Indonesian Time.

⁴ *Supra*, European Union Agency for Fundamental Rights and Council of Europe, no 5, page 37.

concerned, can easily be moved out of context leading to an inaccurate assessment of his or her character.

Privacy Rights

The right to privacy offers the individual seclusion necessary for self-evaluation and self-introspection. The right to privacy is the time it takes to form, compile and evaluate opinions.

Minimizing Loads and Burdens

The final conception of the right to privacy is this right as a means of minimizing burdens. The right to privacy gives a person a way to protect themselves from these unwanted and aggravating intrusions. When legitimate disturbances do occur, the burden they place on individuals must be kept to a minimum.⁵

RESULTS AND DISCUSSION

The business competition authority is regulated by the Business Competition Supervisory Commission (KPPU) to carry out regulatory analysis based on the principles of fair business competition as stipulated in Law No. 5 of 1999 about the Prohibition of Monopolistic Practices and Unfair Business Competition.

Policies related to the digital economy sector in Indonesia include:

- 1. Law No. 8 of 1999 about Consumer Protection:** Regarding digital economic transactions, these laws and regulations protect in terms of legal aspects related to consumer protection including actions that are prohibited for business actors and the responsibilities of business actors. Aspects of prohibited actions are contained in Articles 8 to 18. Meanwhile, aspects of responsibility are regulated in Articles 19 to 28. In Article 18, businessmen are prohibited from making or including standard clauses in every document and/or agreement, one of the two is when it states the transfer of responsibilities of business actors and states that consumers are subject to regulations in the form of new rules. In practice, standard clauses contained in platforms/sites related to documents or agreements can be declared null and void under the Consumer Protection Act.
- 2. Law No. 36 of 1999 about Telecommunications:** In the regulation, there are several clauses that support fair business competition in the telecommunications sector, among others, Article 10, explaining that, in the operation of telecommunications it is prohibited to carry out activities that could lead to monopolistic practices and unfair business competition among telecommunications operators. Article 25 explains that every telecommunications network operator is required to provide interconnection if requested by other telecommunications network operators. The implementation of the rights and obligations listed in paragraphs (1) and (2) is carried out based on the principles of efficient use of resources, harmony of telecommunication systems and equipment, improvement of service quality, and the existence of fair competition that is not detrimental to each other. In Law No. 36 of 1999 it is explained that there is a prohibition for telecommunications operators to carry out activities that will later result

⁵ Bart Willem Schermer (2007) *Software Agents, Surveillance, And The Right To Privacy: A Legislative Framework For Agentenabled Surveillance*, (Leiden: Leiden University Press), page 73.

- in unfair business competition in accordance with the provisions of Law No.5 of 1999 about Prohibition of Monopolistic Practices and Unfair Business Competition.
3. **Law No. 39 of 1999 about Human Rights:** Article 29 paragraph (1) regulates personal, family, honor, dignity and property rights protection, Article 30 regulates protection against threats of fear to do or not do something, Article 31 regulates that no one's residence may be disturbed, stepping on or entering a yard place of residence or entering a house contrary to the will of the person who lives there, is only permitted in cases that have been stipulated by law.
 4. Law No. 11 of 2008 about Information and Electronic Transactions (ITE) and Law No. 19 of 2016 about Amendments to Law No.11 of 2008 concerning Information and Electronic Transactions Law No. 11 of 2008 concerning Information and Electronic Transactions regulate matters related with information, documents and electronic signatures, administering electronic certificates and electronic systems, electronic transactions and domain names, intellectual property rights, and personal data protection.
 5. **Law No. 14 of 2008 about Public Information Disclosure:** It is contained in Article 6 paragraph (1) and Article 6 paragraph (2). Article 17 prohibits the disclosure of personal information about people, especially regarding family history, medical and psychological history, financial information and evaluation records regarding a person's abilities, recommendations, intellectual, formal, or informal educational records.
 6. **Law No. 7 of 2014 about Trade:** Article 57 explains that business actors are prohibited from trading goods domestically that do not meet the Indonesia's National Standard (SNI) because standards related to SNI have been enforced compulsorily.
 7. **Presidential Regulation No. 44 of 2016 about List of Closed Business Fields and Open Business Fields with Requirements in the Investment Sector:** The regulation stipulates that organizer of trade transactions through electronic systems (platform-based marketplaces, daily deals, price grabbers, online classified ads) will apply a maximum foreign capital ownership requirement of 49%. The business can be 100% open to foreigners with a minimum investment of IDR 100 billion.
 8. **Regulation of the Financial Services Authority (POJK) No. 77/POJK.01/2016 about Information Technology-Based Money Lending Services:** The regulation only regulates the scope of information technology-based lending and borrowing services (peer to peer lending) which is one of the objects of supervision of the Financial Services Authority (OJK). Peer to peer lending services is the provision of financial services to bring together lenders and loan recipients through an electronic system using the internet network. Financial service providers are required to apply for registration and licensing to the OJK.
 9. **Bank Indonesia Regulation No. 19/12/PBI/2017 about Implementation of Financial Technology:** Article 6 explains that financial technology providers must be in the form of business entities and financial technology providers other than banks must be Indonesian legal entities. This provision limits the number of business actors and violates the principle of fair business competition when Bank Indonesia stipulates requirements for obtaining permits related to maintaining national financial stability.
 10. **Regulation of the Minister of Finance No. 210/PMK.010/2018 about Tax Treatment of Trade Transactions Through Electronic Systems (e-commerce):** The regulation only regulates the imposition of taxes on businessmen in the e-commerce sector. Traders or service providers who deliver goods and/or services electronically

(e-commerce) through marketplace platform providers carry out the obligation to collect, deposit, and report, value added tax payable of 10% of the transaction value of BKP and/or JKP submission.

- 11. Bank Indonesia Regulation No. 18/40/PBI/2016 about Implementation of Payment Gateway Payment Transaction Processing:** This regulation has the aim of protecting electronic services that allow merchants to process payment transactions using payment instruments using cards, electronic money, and/or Proprietary Channels.

The Government of Indonesia through Government Regulation No. 80 of 2019, concerning Trading Through Electronic Systems, protects parties who have an impact on national security vulnerabilities with security clearance from the competent authority. Regarding aspects of business competition, it is stated in Article 26 letter b which explains that business actors are required to comply with the provisions of laws and regulations in the field of business competition. Thus, the implementation of trading activities through the electronic system of business actors must comply with Law No. 5 of 1999 which regulates aspects related to business competition.

Regarding electronic agreements, KPPU recommends that every electronic agreement made by business behavior (site/platform) be reviewed by the Ministry so that there are no standard clauses that are detrimental to consumers and create disproportionate conditions between sites/platforms and their users. Until now there is no policy related to personal data protection. Access to user personal data can determine the company's position and result in anti-competitive behavior in the relevant market.

Indonesia has rules regarding the protection of personal data in the digital era and set forth in the form of Ministerial Regulation No. 20 of 2016 about Personal Data Protection (PDP) stipulated on November 7 2016, promulgated and effective December 1 2016. Bill on Personal Data Protection if passed will be the first comprehensive law in Indonesia that specifically deals with data privacy issues.

The definition of personal data based on Article 1 No. 27 of the ITE Law Regulation of the Minister of Communication and Informatics No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems is certain individual data that is stored, cared for, and safeguarded and protected by confidentiality.

If the owner of the personal data is included in the category of children, the parent or guardian of the child concerned will give consent. Those who violate the rules are only subject to administrative sanctions in the form of verbal warnings, written warnings, temporary suspension of activities and / or announcements on websites in the network, the procedure for which will be regulated by a Ministerial Regulation.

Regarding the scope of personal rights in Indonesia, it includes, among other things, something that concerns a person's personal self, family, personal property and reputation, doing and not doing something, private residence, and personal communication.

Specifically, in the provisions of Article 26 of the Electronic Information and Transaction Law, it is explained that a person's personal data may not be transferred arbitrarily without the

consent of the data owner. In Indonesia, there are 32 laws whose material has content related to the regulation of citizens' personal data.

Personal rights based on Article 25 of the ITE Law are personal rights which are the right to enjoy private life and be free from all kinds of disturbances, personal rights are the right to be able to communicate with (other people without spying), and personal rights are the right to monitor access to information about a person's personal life and data.

Telecommunications sector, Article 19 Regulation of the Minister of Communication and Informatics No. 26 / PER / Minister of Communication and Informatics / 05/2007 concerning Security and Utilization of Internet Protocol-Based Telecommunications Networks (amended) clarifies that telecommunications service providers are responsible for storing data due to their obligation to record log files for at least three months.

Article 25 paragraph 2 Kemenkoinfo Regulation No. Regulation 4/2016 stipulates that written notification to the owner of personal data is required if there is a failure in protecting the confidentiality of personal data in electronic systems. In Indonesia, sanctions for data privacy breaches are found under the relevant laws and are basically fines. Imprisonment can be imposed in egregious cases, such as in the case of willful offences. Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions regulates violations of privacy in Article 30 paragraphs (1), (2) and (3). 112 Criminal sanctions for violations in Article 30 paragraph (1), (2), (3) are found in article 46 paragraph (1), (2), and (3). The ITE Law and Amendments to the ITE Law provide for criminal penalties ranging from: a fine of IDR 600 million to IDR 800 million and a prison sentence of six to eight years for unauthorized access, a fine of IDR 800 million and a prison sentence of 10 years for interception or wiretapping of transmissions. Meanwhile, a fine of IDR 2 billion to IDR 5 billion and up to 8 years. 10 years in prison for changing, adding, subtracting, transmitting, interfering, deleting, moving or hiding electronic information or failure of electronic archives, one side is subject to administrative sanctions (which do not eliminate civil and criminal responsibility). This administrative sanction is in the form of a written warning, administrative fine, temporary expulsion from the registration list (as required in the regulations). Failure to comply with Kemenkoinfo Regulation No. 4/2016 are subject to administrative sanctions in the form of verbal warnings written warnings of temporary suspension of announcement activities on online banking law websites according to Article 47 of the Banking Law, commissioners, directors or employees of banks or their affiliates who deliberately provide information that must be kept confidential can be sentenced to imprisonment not less than 2 years but not more than 4 years, and fined at least IDR 4 billion but not more than IDR 8 billion.

Legal arrangements in Indonesia regarding cookies and location data, until now there are no laws and regulations that regulate them. However, if the data collected by cookies or location data is obtained by illegal access to electronic information, the other party is subject to a prison sentence of six to eight years and/or a fine of IDR 600 million to IDR 800 million.

The existence of hoaxes in Indonesia is legally regulated in Article 45 A (1) and Article 45 A (2) of Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, which explains that everyone is prohibited from spreading

information that contains false and misleading news content that can create feelings of hatred or hostility towards certain individuals and/or groups of people based on ethnicity.⁶

In POJK No. 13/POJK.02/2018 concerning Digital Financial Innovation in the financial services sector, there is a problem related to the lack of effectiveness of the regulatory sandbox which is a supervisory and monitoring mechanism.⁷

The Concept of The Omnibuslaw Within the Framework of Information Communication Technology for The Future *Ius Constituendum*

According to Prof. Mahfud MD, technically juridical with regard to the implementation of the Omnibus Law there are no problems, it will later produce new laws and regulations that revise several laws and regulations at once.⁸ From a civil perspective, the existence of the Omnibus Law is not yet a solution for the existence of start-up companies, because from a business capital perspective it comes from foreign investors who have the opportunity to harm business actors and the relationship between technology and communication information is related to personal data protection. the reason for start-up companies is that they still rely heavily on managing user data.⁹

Consumers and businessmen in buying and selling transactions have problems, so they can use the Consumer Protection Act as a guideline for consumers, especially to fight for their rights to protect their interests.

National Data Protection Authority

In Indonesia there is no specific national data protection authority for data privacy. For example, the Indonesian Financial Services Authority (OJK) has the authority to act as a data privacy regulator in the capital market sector (since December 31, 2012) and relating to bank customer data privacy issues (since December 31, 2013). Article 65 of Government Regulation No. 82 of 2012 states that business people who operate electronic transactions can be certified by internal Indonesian reliability certification bodies or foreign competency certification bodies. Until now, this institution does not yet exist.

Article 3 (1) and (2) Kemenkoinfo Regulation No. 36 of 2014 concerning Procedures for Registration of Electronic System Operations distinguishes the operation of electronic systems into two types, namely electronic system operators for public services and electronic system operators for non-public services. Providers of electronic systems for public services must register, while providers of electronic systems for non-public services may perform registration, which indicates that registration is not mandatory for providers of electronic systems for non-public services, giving rise to consequences for all providers of electronic systems, whether for public services or non-public services, must register.

⁶ Husnul Hotimah, (2018), *Hoaks Dalam Perspektif UU Nomor 19 Tahun 2016 Tentang Informasi dan Transaksi Elektronik dan Hukum Islam*, Thesis, Jakarta: UIN Syarif Hidayatullah Tangerang, page 3.

⁷ <https://finansial.bisnis.com/read/20180902/ojk-terbitkan-aturan-fintech-ini-point-pointnya> accessed: 14th December 2022, at 22:28 Western Indonesian Time.

⁸ <https://nasional.kompas.com/read/2020/01/31/11511821/begini-mekanisme-omnibus-law-gantikan-undang-undang-lama?page=all> accessed: 14th December 2022, at 22:35 Western Indonesian Time.

⁹ Judit Nagy, et al (2018), *"The Role and impact Industry 4.0 and The Internet of things of the Business Strategy of The Value Chain the Case of Hungary"*, *Jurnal Sustainability*, Vol. 10 No. 10.

Article 4 of the Regulation of the Minister of Communication and Informatics No. 4 of 2016 concerning Information Security Management Systems stipulates that there are three categories of electronic systems, namely strategic electronic systems which are electronic systems that have a serious impact on public interests, public services, smooth running of the state, or state defense and security. High electronic systems are electronic systems that have a limited impact on the interests of certain sectors and/or regions. Low electronic systems are other electronic systems that are not included in strategic electronic systems and high electronic systems.

Kemenkoinfo Regulation No. 4 of 2016 Article 10 paragraph (1) explains that strategic electronic system operators and high-level electronic system operators are required to have an information security management system certificate. Article 10 paragraph (1) Kemenkoinfo Regulation No. 4 of 2016 explains that, low-level electronic system operators can have an information security management system certificate in providing services to citizens.

Article 15 (2) Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions states that electronic system providers must provide written notification to owners of personal data after their failure to protect personal data. Article 20 (3) Government Regulation No. 82 of 2012 concerning Implementation of Electronic Systems and Transactions Article 25 paragraph 2 of the Coordinating Ministry for Communication and Information Technology No. 2016 Regulation stipulates that, written notification to the owner of personal data is required if there is a failure to protect the confidentiality of personal data in an electronic system. the provisions of the notification of infringement must provide reasons or causes for the failure to protect the confidentiality of personal data. This can be provided electronically, if the owner of the personal data has given consent at the time of obtaining and collecting their personal data.

CONCLUSIONS AND SUGGESTION

In Indonesia, sanctions for data privacy breaches are found under the relevant laws and are basically fines. Imprisonment can be imposed in egregious cases, such as in the case of willful offences. Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions regulates privacy violations in Article 30 paragraphs (1), (2) and (3). 112 Meanwhile, criminal sanctions for violations in Article 30 paragraph (1), (2), (3) are found in article 46 paragraph (1), (2), and (3).

Until now there are no laws and regulations regarding cookies and location data. However, if the data collected by cookies or location data is obtained by illegal access to electronic information, the other party may be subject to a prison sentence of six to eight years and/or a fine of IDR 600 million to IDR 800 million.

If Indonesia has passed the Data Protection Bill, then data protection will emerge in a comprehensive nature, which means that the law should contain regulations related to sensitive and non-sensitive data, and the existence of a national data protection authority that oversees and takes action against data protection violations.

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