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Comparison of Personal Data Protection in Indonesia and Thailand: Case Studies and Comparisons

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Abstract: One of the objectives of the creation of Law Number 27 of 2022 concerning Personal Data Protection is for the public to understand Information about the clarity of identity, the basis of legal interests, the purpose of requests and use of Personal Data, and the accountability of parties requesting Personal Data. On the one hand, the presence of Law Number 27 of 2022 concerning Personal Data Protection in Indonesia is considered quite late with the quite rampant cases of misuse of personal data and personal data leaks. Cases of misuse of personal data and personal data leaks are quite rampant in Indonesia, for example the problem of personal data leaks in the JKN application where as many as 279 million personal data of residents in BPJS Kesehatan were leaked due to failures in managing personal data security. In addition, there was the theft of consumer data of Tokopedia application users as much as $\pm$ 91 million user data, due to Tokopedia being hacked by hackers. From the description, it is known that the purpose of this study is to determine the legal protection model for personal data for JKN Mobile Application users from the perspective of Law No. 27 of 2022 concerning Personal Data Protection, and to encourage the immediate establishment of a Personal Data Protection Agency or Commission to address all issues of leaks and Illegal Access of Personal Data in Indonesia. The research method in this study is a normative juridical method using secondary data and descriptive analysis. The results show that both Indonesia and Thailand have demonstrated a commitment to protecting personal data by adopting a modern legal framework. Thailand's PDPA has advantages in terms of earlier implementation time and a more mature supervisory agency. Meanwhile, Indonesia's PDP Law is still in the early stages of implementation, with technical regulations being prepared, including the establishment of a special supervisory agency.

Keyword: Legal Protection, Personal Data, Data Privacy

INTRODUCTION

As a state based on law, Indonesia must pay attention to the principles or principles of the state based on law that must be implemented in order to achieve general welfare. One of the principles in a state based on law is the public interest. Several legal principles that can be derived from the basic principles of the public interest are (1) The principle of general welfare, (2) The principle of social responsibility of the state and government that are active in the administration of the state, (3) The principle of legality, and (4) The principle of discretion and other legal principles (Sibuea and Dwi Seno Wijanarko, 2020: 314).

Based on the basic principles of a state based on the rule of law above, the rights and obligations of citizens are regulated through laws and regulations to protect citizens' rights in order to achieve public welfare. One of the characteristics of a state based on the rule of law is the principle of legality. The principle of legality implies that the implementation of government administration prioritizes the legal basis for decisions and/or actions made by Government Agencies and/or Officials . Consequently, decisions or actions by government agencies or officials cannot be carried out arbitrarily. In the context of Indonesia as a state based on the rule of law, the authority to carry out an administrative action carried out by government organs or state officials in the administration of government must be based on a source of authority clearly granted by laws and regulations. The clarity of the source of authority will provide legality for government administrative actions and prevent the abuse of authority (Sinaga, 2019: 5).

The rapid development of technology and information today has had significant implications for people's lifestyles. Currently, people's activities have converted from manual systems to digital systems supported by the internet. This has forced society to adapt to these circumstances. The positive implications of this era are enormous when digital-based technology is used by people in their daily lives, for example, to increase work productivity, build socio-economic relationships, and help facilitate various aspects of life, such as education, transportation, tourism, trade, the financial industry, and government. Sustainably improving the quality of Indonesian society by utilizing information technology and science is one of the goals of national development and is also a global challenge (Santoso, 2014: 40).

One of the government agencies or organizations in Indonesia that develops technology is BPJS Kesehatan, which is a government-owned organization mandated to provide health services in the form of health insurance to all Indonesian people based on the principles of mutual cooperation and justice. The Social Security Administering Body (BPJS) was established by the government with the aim of providing social protection and welfare for all people. This is one of the mandates of Law Number 40 of 2004 concerning the National Social Security System (SJSN) (Sudaryanti, *et al*, 201). This regulation was then strengthened by Law Number 24 of 2011 concerning the Social Security Administering Body, resulting in the birth of BPJS Kesehatan which manages the JKN-KIS Program. The JKN program is based on Presidential Decree Number 12 of 2013, Article 6, paragraph (1) concerning National Health Insurance (JKN), which states that Health Insurance participation is mandatory and covers all Indonesian residents and the target of Universal Health Coverage (UHC) in 2019 is that all Indonesian people have registered as BPJS Kesehatan members. Since January 1, 2014, the Indonesian government has started implementing the National Health Insurance Program - Healthy Indonesia Card (JKN -KIS).

The issue of the leak of personal data of 279 million residents in BPJS Kesehatan surfaced on Friday, May 21, 2021. BPJS Kesehatan data was allegedly leaked and traded through the *raidsforum.com* site and included population identification numbers (NIK), identity cards (KTP), telephone numbers, emails, names, addresses, and salaries. The data allegedly related to BPJS Kesehatan was sold by a forum user with the ID ' *Kotz*' . In his

description, he said that the data also included data on deceased people, and there were one million data for free trials and 20 million of these data contained personal photos (Waranggani, 2021). The file was shared since May 12, 2021. In fact, for weeks the issue has been widely public attention. The account claimed to have more than 279 million other data that were sold for USD 6,000. BPJS Kesehatan stated that the data that had been collected did not reach 279 million as claimed by the data seller. As of May 2021, the number of BPJS data reached 222.4 million.

On the one hand in Thailand in comparison, it is governed by the Personal Data Protection Law (PDPA) BE 2562 (2019) which came into full force from 1 June 2022. The PDPA is Thailand's first comprehensive legal framework to regulate data protection, with many of its principles similar to the European Union's General Data Protection Regulation (GDPR). It is certainly interesting to discuss further the comparison of legal protection of personal data in Thailand and Indonesia.

METHOD

In this research, the researcher uses the Normative Juridical Legal Research method, namely legal research that emphasizes secondary data in research and examines the principles of positive law derived from library data. The research approaches used in this research include:

- a) The statute approach is an approach that is carried out by examining all laws and regulations related to the legal issue being discussed.
- b) Conceptual Approach (Conceptual Approach) is an approach in legal research that provides an analytical perspective on solving problems in legal research seen from the aspect of the legal concepts that underlie it, or can even be seen from the values contained in the norming of a regulation in relation to the concepts used.
- c) Analytical Approach is an analysis of legal materials to understand the meaning contained in the terms used in legislation conceptually, as well as to understand their application in legal practices and decisions.
- d) Case approach , where the Case Approach is an approach in normative legal research in which researchers try to build legal arguments from the perspective of concrete cases that occur in the field.

In this study, the researcher used secondary data. Secondary data is library data containing legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials. The collection of legal materials is carried out by identifying and inventorying positive legal regulations, examining library materials (books, scientific journals, research reports), and other legal sources relevant to the legal issues being studied. The collected legal materials are then classified, selected, and ensured to be non-contradictory to facilitate analysis and construction. The data analysis method used in this research is qualitative juridical, namely in the form of an in-depth interpretation of legal materials as is common in normative legal research.

RESULT AND DISCUSSION

1. Legal Protection of Personal Data in Indonesia is Based on Law Number 27 of 2022 concerning the Protection of Personal Data

From one of the elements above, it is known that there is an element of human rights protection inherent in the image of a state of law, which is then conceptualized into the principle of legal protection. In the previous explanation, it was known that according to Philipus M. Hadjon, legal protection is the protection of dignity and honor, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. According to Philipus M. Hadjon, legal protection is divided into two forms,

namely preventive and repressive, as for the explanation, Preventive legal protection, namely legal protection that aims to prevent a dispute from occurring. This type of legal protection, for example, before the government establishes a rule or decision, the people can file objections, or are asked for their opinion regarding the planned decision. Regarding the preventive legal protection referred to by Philipus M. Hadjon above, it is intended to provide prevention from the occurrence of a violation of the law, both by the perpetrator of the violation and people who may become victims of the perpetrator of the violation of the law. Repressive legal protection, namely legal protection carried out by imposing sanctions on the perpetrator in order to restore the law to its actual state. This type of protection is usually carried out in court. The repressive protection referred to by Philipus M. Hadjon above is intended to take action against an act that violates a person's rights, so that repressive legal protection is expected to provide a sense of security and legal certainty for parties who are harmed by the actions of the offender (Mahfud, 2015: 41-42).

At the technological level, the government can essentially utilize electronic facilities to effectively connect and communicate with the public for administrative purposes. As a policy for utilizing technology and communication facilities, the government has issued several policies, including Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. The Personal Data Protection Law (PDA) is a regulation created to safeguard the privacy and security of individuals' personal data. In general, the primary purpose of this law is to provide adequate protection for individuals against unauthorized use, unwanted disclosure, or misuse of their personal data. Furthermore, this law is also intended to create transparency in data use, provide individuals with the right to control their personal data, and establish responsibilities for organizations or related entities that collect, manage, and process such data. Each country or jurisdiction may have different rules and regulations regarding personal data protection.

However, personal data protection laws generally contain provisions such as data processing requirements, individual rights, notification of data breaches, permission and consent from individuals, and institutions or authorities responsible for supervising and enforcing laws regarding personal data protection. In 2022, the government issued specific regulations regarding personal data protection through Law Number 27 of 2022 concerning Personal Data Protection. In today's digital age, it's crucial to understand how to protect personal data by understanding the Personal Data Protection Law. This is because social media and various other *online platforms* also pose dangers that lurk for their users. These threats can include personal data theft, sabotage, and much more. Meanwhile, what is meant by personal data protection according to Article 1 paragraph 2 of the PDP Law is all efforts made to protect individual personal data in the series of processing or management of personal data to guarantee the constitutional rights of Personal Data Subjects.

On the one hand, as discussed in the previous discussion, the leak of personal data of 279 million residents in BPJS Kesehatan surfaced on Friday, May 21, 2021. BPJS Kesehatan data is suspected of being leaked and traded through *the raidsforum.com* site and includes population identification numbers (NIK), identity cards (KTP), telephone numbers, emails, names, addresses, and salaries. The data allegedly related to BPJS Kesehatan was sold by a forum user with the ID 'Kotz'. In his description, he said that the data also included data on deceased people, and there were one million data for free trials and 20 million of these data contained personal photos (Waranggani, 2021). The file was shared since May 12, 2021. In fact, for weeks the issue has been widely public attention. The account claimed to have more than 279 million other data that were sold for USD 6,000. BPJS Kesehatan stated that the data that had been collected did not reach 279 million as claimed by the data seller. As of May 2021, the number of BPJS data reached 222.4 million. "We are currently conducting further investigations to determine whether the data originated from BPJS Kesehatan. We

have deployed a special team to track and locate the source as soon as possible," BPJS Kesehatan quoted the agency as saying (Antara, 2021).

The problem is that the issue of law enforcement regarding personal data has not yet received special attention from either the government or law enforcement officials, where this can be seen that in law enforcement regarding the protection of personal data, it is still considered a problem that does not need to receive enough attention, so that often business actors who are negligent in managing personal data can still escape legal responsibility, this can be seen from the existence of legal facts on Decision 235/PDT.G/2020/PN.JKT.PST is a concrete example of the leaking of consumer personal data in Tokopedia *e-commerce*. There is no responsibility from the business actors as a whole. This case is known to have involved the theft of consumer data of Tokopedia application users amounting to $\pm$ 91 million user data, where Tokopedia *e-commerce was hacked by hackers* (Dja'far, 2023: 5). The stolen data includes User ID, email, full name, date of birth, gender, cellphone number and encrypted password, where the hacking occurred on March 20, 2020.

A day later, the hacker announced that he had sold 91 million data for US\$5,000 or equivalent to Rp 75 million. The hacker admitted to selling the data on Empire Market, a black market on the Dark Web. Tokopedia management itself has acknowledged the existence of attempts to steal Tokopedia user data. However, Tokopedia in Decision 235/PDT.G/2020/PN.JKT.PST, refused to take legal responsibility, because there was a standard clause where the judge who examined the Decision 235/PDT.G/2020/PN.JKT.PST case, decided in favor of Tokopedia and stated that the Defendants' exceptions were accepted and granted, and stated that the District Court was not authorized to try the *a quo* case.

This happens because the implementation of the legal regulation of personal data protection in Indonesia is still quite confusing, because both the government and law enforcement officials are still quite concerned with other problems related to electronic crimes related to information and electronic transactions such as defamation, distribution of pornography, and other problems besides personal data protection, so that legal protection for people who use the Mobile JKN application based on Law Number 27 of 2022 concerning Personal Data Protection against the spread of personal data in Indonesia is not yet optimal.

2. Comparison of Personal Data Protection in Indonesia and Thailand

The concept of data protection is often treated as part of the protection of the right to privacy. Data protection can essentially relate specifically to privacy, as proposed by Alan Westin, who first defined data privacy or "*information privacy*" as the right of individuals, groups, or institutions to determine when, how, and to what extent information about them is communicated to others.

The provisions on personal data protection are also relevant to the guarantee of the right to legal protection for the community as stipulated in Article 28D of the 1945 Constitution of the Republic of Indonesia. Legal protection is one of the important aspects that must be fulfilled by the state for its citizens. Legal protection, especially regarding personal data, is urgently needed to be emphasized because of the development of information and communication technology that makes personal data an object to be hacked and even misused. There are various facts that show that there are attempts to misuse personal data with various motives, such as: motives for seeking profit, motives for threats, to intelligence motives to obtain personal data information from a country.

In fact, personal data protection is basically a legal umbrella for Indonesian people to guarantee their personal data entrusted to the manager or person in charge of a legal entity, business entity, or government agency that controls the personal data belonging to the public, and in this paper the researcher specifically limits the protection of the personal data in

question to the protection of personal data belonging to the public entrusted to a particular application, namely in this case the KJN application.

If we investigate further the concept of personal data protection in Law Number 27 of 2022 concerning Personal Data Protection, then based on the provisions of Article 5, one of the objectives of creating this law is for the public to understand information about the clarity of identity, the basis of legal interests, the purpose of requests and use of Personal Data, and the accountability of the party requesting Personal Data.

On the one hand, the presence of Law Number 27 of 2022 concerning Personal Data Protection in Indonesia is considered quite late with the quite rampant cases of personal data misuse and personal data leaks, where previously. Handling of cases of personal data misuse and personal data leaks was carried out by referring to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, even though its implementation is still quite confusing, because both the government and law enforcement officials, only focus on criminal efforts against perpetrators who misuse personal data, or steal personal data, but do not focus on the losses experienced by the public, and ignore the accountability of managers, responsible parties, and organizers who control, store, and manage personal data belonging to the public.

Personal data protection in Thailand is regulated by the Personal Data Protection Act (PDPA) BE 2562 (2019), which came into full force on 1 June 2022. The PDPA is Thailand's first comprehensive legal framework to regulate data protection, with many of its principles similar to the European Union's General Data Protection Regulation (GDPR).

The details regarding the regulations, scope, sanctions, and their impact on society. The main regulation of the Personal Data Protection Act (PDPA) BE 2562 (2019): This law regulates the collection, use, disclosure, and other processing of personal data by private and government entities. The difference in the Legal Entity that handles Personal Data Protection (PDPC) between Indonesia and Thailand can be seen in the PDPA establishing a Personal Data Protection Committee (PDPC) as a supervisory body. The PDPC is responsible for enforcing the PDPA, providing guidelines, and handling violations in Thailand, while in Indonesia there is no legal entity that oversees personal data issues like the PDPC in Thailand. Since its enactment, the PDPC has issued a number of regulations and further guidelines to clarify the requirements of the PDPA, including data breach procedures and criteria for handling data subject requests.

The main comparison between personal data protection laws in Indonesia and Thailand, which are based on the Indonesian Personal Data Protection Act (PDP Act) of 2022 and the Thai *Personal Data Protection Act* (PDPA) of 2019. The two laws share many similarities because they both adopt principles from the European Union's *General Data Protection Regulation* (GDPR). Both the Indonesian PDP Act and the Thai PDPA provide the same rights to data owners (data subjects), including the right to access, correct, delete, or withdraw consent regarding their personal data. Both Indonesia and Thailand establish basic principles that data controllers must adhere to when processing personal data, such as the principles of legality, accountability, purpose limitation, and data integrity. The extraterritorial scope of both laws in Indonesia and Thailand applies not only to domestic companies but also to foreign entities that process the personal data of their respective citizens. Both distinguish between general personal data and sensitive personal data, providing stricter protection for sensitive data such as health, biometric, and religious information. Both also impose administrative and criminal sanctions for violations of personal data protection, including fines and imprisonment.

A clear comparison of personal data protection regulations between Indonesia and Thailand can be seen in the following table:

Table 1. Comparison of Indonesia-Thailand Personal Data Protection

No	Comparative Aspects	Indonesian PDP Law	PDPA Thailand
1	Implementation time	Enacted in October 2022, Indonesia became one of the last ASEAN countries to have a comprehensive PDP law.	It was passed in 2019, but its implementation was postponed due to the COVID-19 pandemic.
2	Supervisory body	The PDP Law regulates the establishment of a special supervisory agency, but its implementation is still in the stage of drafting derivative regulations.	PDPA has had a supervisory body with a clearer role from the start.
3	Cross-border data transfer	The provisions regulate the requirements that must be met for transferring data abroad.	Cross-border data transfer rules are more complex. The PDPA is less specific about data transfers to comply with court decisions or foreign authorities, a key difference compared to the GDPR.
4	Administrative fines	Establishes administrative and criminal fines, but the value of the administrative fines is not as detailed and as large as the fines in the GDPR, which is a reference for many countries.	The rules regarding fines are clearer and the fines imposed tend to be larger.
5	Government involvement	The Indonesian government has a role in implementing the PDP Law. However, concerns remain about the independence of the oversight body.	PDPA rules also apply to the public sector, but with several exceptions that are regulated further.
6	Impact and enforcement	Because it's only recently come into effect, enforcement still needs to be strengthened. Several data breach incidents in Indonesia demonstrate the ongoing challenges in law enforcement.	PDPA enforcement has progressed. However, challenges remain in adapting the industry to these new standards.
7	Data protection impact assessment (DPIA)	Require data controllers to conduct DPIAs, especially for high-risk data processing.	It does not explicitly require a DPIA, but requires data controllers to assess risks and review data security measures.

From this description , it can be seen that both Indonesia and Thailand have demonstrated a commitment to protecting personal data by adopting modern legal frameworks. Thailand's PDPA has the advantage of earlier implementation and a more mature oversight body. Meanwhile, Indonesia's PDP Law is still in the early stages of implementation, with technical regulations still being prepared, including the establishment of a dedicated oversight body. Nevertheless, both laws are equally important in ensuring the protection of individual rights in the digital age.

CONCLUSION

The problem of legal regulation of personal data protection in Indonesia is still quite confusing in its implementation, because both the government and law enforcement officials are still quite concerned with other problems related to electronic crimes related to information and electronic transactions such as defamation , distribution of pornography , and other problems besides personal data protection , so that legal protection for people who use the Mobile JKN application based on Law Number 27 of 2022 concerning Personal Data Protection against the distribution of personal data in Indonesia is not yet optimal .

From this description , it can be seen that both Indonesia and Thailand have demonstrated a commitment to protecting personal data by adopting modern legal frameworks. Thailand's PDPA has the advantage of earlier implementation and a more mature oversight body. Meanwhile, Indonesia's PDP Law is still in the early stages of

implementation, with technical regulations still being prepared, including the establishment of a dedicated oversight body. Nevertheless, both laws are equally important in ensuring the protection of individual rights in the digital age.

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