

CHAPTER I

INTRODUCTION

A. Background

The development of information technology can be carried out optimally if a country's national development can adapt to the social dynamics that occur in society. One of the dynamics in Indonesia is the growth of globalization, which is gaining strength and reaching the center of society. Due to globalization, the information technology industry is one of the most rapidly developing industries. Because of these transformations, people's lifestyles have evolved. People have experienced both the positive and negative effects of technological and informational advancements. This is because people of all ages and social strata have simple access to information media and technology.¹

The presence of telecommunications, computers for entertainment can be accessed easily because of their integration in the power of the internet and technology. The existence of revolution 4.0 is also an important factor in the development and stability of the world economy. The development of information that participates in the development of technology to grow business activities with e-commerce platforms is an increase in the growth and development of digital-based businesses and

¹Erga Yuhandra, "Penyuluhan Hukum tentang Dampak Positif dan Negatif Penggunaan Gadget dan Media Sosial", *Jurnal Pengabdian Masyarakat*, Vol 1 No 4 (2021) p. 78-84.

businesses. The presence of e-commerce has a very strong influence on economic development in the world, especially in Indonesia.²

The transformation of the economic and business world in general is better known as the digital economy. The presence of the digital economy gives rise to various conveniences. Such conveniences as the rapid circulation of information, economic transactions that are not limited by time and space. The development of the digital economy and business has made economic and business activities develop in the domestic and even international realms. So that economic and business transaction activities are very broad in their realm.³

The value of Indonesia's digital economy is the biggest in the Southeast Asia region, but data breach is still a big challenge to face. The Indonesian Consumers Foundation (Yayasan Lembaga Consumer Indonesia) recorded 54 cases of a data breach in e-commerce, 27 cases in peer-to-peer lending and 5 cases in electronic money. Indonesia is a favourable location for the digital economy market. This is evident from Indonesia's 265.4 million overall population, of which 132.7 million, or 50%, are already internet users. There were 177.9 million users of mobile devices out of this total, and there were 120 million active users of mobile social media. According to a study conducted in 2018 by Google and

²Anita Asnawi, "Kesiapan Indonesia Membangun Ekonomi Digital di Era Revolusi 4.0", *Syntax Literate: Jurnal Ilmiah Indonesia*, Vol 7 No 1 (2022).

³Otto Abri Pardomuan and Suparna Wijaya, "Pemblokiran Pengusahaan Ekonomi Digital atas Cross-Border Transaction Sebagai Upaya Perubahan Skema PPN", *Jurnal Penelitian Teori & Terapan Akuntansi (PETA)*, Vol 1 No 7 (2022), p. 92-112.

Temasek, Indonesia's digital economy would have a market value of \$100 billion by 2025.⁴ The presence of digital technology brings significant changes in many aspects of human life.⁵ The Indonesian Internet Service Providers Association (APJII) released the survey that from 2019 to the second quarter of 2020, the number of internet users in Indonesia was 196.7 million users, which is equivalent to 73.7% of the population in Indonesia.⁶

Personal data is real information attached to a person, so that they can identify that person. Personal data protection is crucial in order to ensure that the personal information obtained is used solely for the intended purpose and to prevent data misuse.⁷ Threats to citizens rights to privacy and personal data are just one of the negative effects of information technology growth and the vast potential of the digital economy. One of the essential rights is the right to privacy. Although the right to privacy is not a fundamental human right, it is still very important in the age of the digital economy. The right to personal data protection has been recognized as a type of human right in both the ASEAN Human Rights Declaration 2012 and the European Charter of Human Rights. Since the Universal Declaration of Human Rights recognized human rights, the convergence between the

⁴Ananthia Ayu, Titis Anindyajati and Abdul Goffar, 2019, *Perlindungan Hak Privasi atas Data Diri di Era Ekonomi Digital*, Jakarta: Pusat Penelitian dan Pengkajian Perkara dan Pengelolaan Perpustakaan Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, p. 2-101.

⁵Nurhasanah and Indra Rahmatullah, "Financial Technology and the Legal Protection of Personal Data: The Case of Malaysia and Indonesia", *Al-Risalah: Forum for Legal and Social Studies*, Vol 2 No 20 (2020), p. 97-214.

⁶Vina Himmatu Sholikhah, Noering Ratu Fatheha Fauziah Sejati and Diyanah Shabitah, "Personal Data Protection Authority: Comparative Study between Indonesia, United Kingdom and Malaysia", *Teoksessa Indonesian Scholars Scientific Summit Taiwan Proceeding*, Vol 3 (2021), p. 54-63.

⁷Ayu, Anindyajati and Ghoffar, op. cit.

right to information and the right to privacy has undergone a long evolution, giving rise to the right to protect personal data.⁸

One of the root causes of this is because there is no comprehensive law protecting personal data in Indonesia. Indonesia has actually had some personal data regulation in various sectors found in scattered laws. The laws are not only sectoral in nature, but they often overlap or contradict each other.⁹ This circumstance may indicate a breach of personal data. Because personal data is now routinely collected in many more situations and by many more organizations, and risks are heightened in certain contexts, the revised principles are also more context sensitive. Encouraging the weighing of harms, benefits, and measures to mitigate harm means that unique circumstances should be given consideration. In addition, the principles address data collection by government entities separately and require “clear and understandable notice” when personal data “affecting the employment, health care, financial products or services, or legally protected rights of an individual” is involved.¹⁰

Personal data violations also occurred in many sectors, such as the case of telco user data being exposed to the national neurology registry website in October 2019. Malaysia and Indonesia faced cases of personal data violations. However, the situation in Malaysia is better and more controlled as Malaysia already has a comprehensive legal instrument that

⁸Ayu, Anindyajati and Ghoffar, *Ibid.*

⁹Nurhasanah and Rahmatullah, *op. cit.*

¹⁰Fred H Cate, Peter Cullen and Viktor Mayer-Schonberger, 2013, *Data Protection Principles for the 21st Century*, Bloomington: Maurer Faculty, p. 12-13.

regulates the protection of personal data in the Personal Data Protection Act 2010. The Personal Data Protection Act 2010 is a legal basis for the regulation and law enforcement of personal data violations in Malaysia.¹¹

In Asia already has laws protecting the right to privacy, with the exception of Malaysia, Hong Kong and Singapore. The Personal Data Privacy Ordinance (PDPO), passed in 1995 in Hong Kong, was the first national law to thoroughly address privacy and data privacy issues. The Personal Data Protection Act No. 26 of 2012 Singapore protects personal data and privacy at a sectoral level.¹² The Singaporean model would be a good solution in order to minimize ambiguities and inconsistencies in the present model. The Ministry of Communications and Information of Singapore has developed the Personal Data Protection (Statutory Bodies) Notification 2013, which had entered into force on 20 March 2013. It listed 67 public agencies which are exempted from the application of the Singapore Personal Data Protection Act 2012.¹³

Nowadays, Indonesia has issued the Personal Data Protection Law in Law Number 27 Year 2022. Hopefully, this new act could be as a specific Act that comprehensively regulates personal data protection. Soon, followed establish the personal data protection commission. The Criminal sanctions and civil claims related to data breaches have been regulated in this Act. Hopefully the Indonesian Personal Data Protection Act 2022 will

¹¹Nurhasanah and Rahmatullah, *Op. Cit.*

¹²Ayu, Anindyajati and Ghoffar, *Op. Cit.*

¹³ Ali Alibeigi and Abu Bakar Munir, "Malaysian Personal Data Protection Act, A Mysterious Application", *University of Bologna Law Review*, Vol 2 No 5 (2020), p. 362-374.

become the legal basis for the regulation and law enforcement of personal data in Indonesia.

This research intends to conduct a study on the implementation of legal instruments to ensure the protection of personal data. Protection of personal data is the overall effort to protect personal data in the personal data processing series in order to guarantee the constitutional rights of the personal data subject. In other words, this research will examine the effectiveness of Indonesia's Personal Data Protection Law 2022. A comparative study was conducted with Malaysia, which has determined that the Personal Data Protection Act Malaysia 2010 was enforced in Malaysia since 2010. The aims of Personal Data Protection Act Malaysia 2010 are to regulate the process of personal data in commercial transactions, which mandates 11 industry sectors including Communications, Banking and Financial Institutions, Insurance, Health, Tourism and Hospitalities, Transportation, Education, Direct Selling, Services, Real Estate and Utilities to be registered under the Act. The comparative study that will be used in this research aims to learn how Malaysia protects personal data and law enforcement of personal data violations.

B. Problem Formulation

Based on this background, the formulation of the problem in this undergraduate thesis are:

1. What are the forms of Personal Data Protection in Indonesia and Malaysia?

2. What are the strategies for implementing Personal Data Protection in Indonesia and Malaysia?
3. What are the similarities and differences of Personal Data Protection in Indonesia and Malaysia?

C. Objectives of Research

The objectives of the research are:

1. To know of legal protection for personal data in Indonesia and Malaysia
2. To understand the legal protection for personal data in Indonesia and Malaysia
3. To analyze legal protection for personal data in Indonesia and Malaysia
4. To evaluate the legal protection for personal data in Indonesia and Malaysia

D. Research Benefits

1. Theoretical Benefits

The results of this research are expected to provide additional knowledge and insight to students. In addition, the results of this research can also be used as a reference source and reading source regarding comparative studies related to legal guarantees against personal data protection in Indonesia and Malaysia.

2. Practical Benefits

a. For the Government

This research is expected to be able to assist the government in comparing the implementation of personal data protection in Indonesia and Malaysia.

b. For the Community

This research is expected to provide knowledge and information to the public related to comparative studies related to legal guarantees for personal data protection in Indonesia and Malaysia.