



Personal Data Protection in the Scope of Indonesian Law: Implications for the Act of Accessing Someone Else's Mobile Phone

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Abstract

Personal data protection in Indonesia has become an increasingly relevant topic along with the rapid development of information and communication technology. In this digital era, personal data has become a very valuable asset, but it is also vulnerable to protection. This study specifically discusses the regulations governing personal data protection in Indonesia, especially Law Number 27 of 2022 concerning Personal Data Protection (UU PDP), and applies it to the police's authority to access individual mobile phones. Using a literature study approach, this study examines several challenges that arise in the implementation of the PDP Law. One of the main challenges is the principle of data protection which is still not clearly defined, which is often confusing in practice. In addition, the responsibility of information and communication technology service providers is still a concern, especially in terms of managing and storing user data. This study also highlights that although the police have the authority to access personal data in the context of law enforcement, proper procedures must be followed to maintain individual privacy rights. In this case, a balance is needed between law enforcement and privacy protection, as well as transparency in the implementation of these procedures. The results of the study show that although the PDP Law is a significant step forward, implementation challenges and the lack of public understanding of privacy rights are still obstacles. Therefore, further efforts are needed to strengthen regulations and increase public awareness regarding the importance of personal data protection, to ensure that privacy rights are maintained amidst technological developments.

Keywords: Personal Data Protection, Privacy, Mobile Access, Individual Rights Law, Data Security.

1. Introduction

The rapid development of digital technology has brought significant changes in various aspects of life, including in terms of personal data protection. Personal data refers to information that can be used to identify a person. This can be a name, address, telephone number, email address, card number, credit, or other information related to a person's identity (Blankley, 2004). Personal data can be collected in various ways, such as account registration, online transactions, or use of other online applications and services, this is very dangerous if it falls into the wrong hands, this personal data can be exploited by criminals for purposes that are financially detrimental, damaging reputation, and threatening online privacy. Thus, the importance of protecting personal data to avoid the threat of cyber crime.

In this digital era, devices such as mobile phones or handphones (HP) have become very personal and multifunctional tools, storing various important information such as contacts, messages, notes, and financial data. With this important role, protection of personal data stored on HP is a crucial issue, especially in the context of Indonesian law. Personal data protection is an internationally recognized human right (Suwondo, 2021), which guarantees individual privacy over data concerning their identity and personal activities. In Indonesia, the urgency to protect personal data is increasingly recognized along with the increasing cases of data misuse and privacy violations, including the act of opening someone else's cellphone without permission.

This unauthorized access can cause various losses, ranging from the dissemination of personal information to theft of identity and sensitive data. Article 1 of the Criminal Procedure Code states that Investigators are Police Officers of the Republic of Indonesia or certain Civil Servants who are given special authority by law to carry out investigations. Meanwhile, Article 7 of the Criminal Procedure Code explains that the duties and authorities of investigators are to obtain reports or complaints, arrest, detain, search, confiscate, investigate and take other actions based on law. Furthermore, the definition of investigation is contained in Article 1 Paragraph (2) of the Criminal Procedure Code (Behrens, 1998).

The importance of protecting personal data has been accommodated in various regulations in Indonesia, including Law No. 27 of 2022 concerning Personal Data Protection (PDP Law). This law stipulates that individuals, including those who carry out business or e-commerce activities at home, can be categorized as personal data controllers so that they are legally responsible for the processing of personal data that they organize and comply with the provisions contained in the PDP Law (Hafsari & Muttaqin, 2023). This law aims to provide legal certainty for data owners in protecting their personal information from detrimental actions. In this context, the act of opening someone else's cellphone without permission can be considered a serious violation of the right to privacy, with legal implications that can accompany such actions.

The development of information technology has made it easier to access personal data, but on the other hand, it has also increased the risk of privacy violations. In everyday life, the act of opening someone else's cellphone is often considered trivial, but the implications for privacy are very large. Personal data on a cellphone can include highly sensitive information, such as private messages, photos, videos, and financial information that is vulnerable to misuse.

The legal implications of opening someone else's cellphone can vary, depending on the severity of the violation and the impact it causes. The PDP Law regulates administrative and criminal sanctions for perpetrators of data privacy violations, including fines and the threat of imprisonment. This shows that the act of opening someone else's cellphone without permission is not an act that can be taken lightly, but can have serious legal consequences (Simbolon & Juwono, 2022; Arafat & Oktaviani, 2022).

In a social context, the act of opening someone else's cellphone also reflects a violation of ethics and norms of decency. Although there are certain reasons that may be used, such as curiosity or certain interests, such actions are still unjustifiable from a legal and moral perspective. This action not only violates individual privacy but can also damage interpersonal relationships that are based on trust.

The implementation of laws related to personal data protection in Indonesia still faces various challenges, ranging from a lack of public awareness to limited law enforcement. Although regulations are in place, effective enforcement still requires further efforts, including public education on the importance of respecting the privacy of others. This is important to build a culture of respecting privacy rights and reducing violations that often occur in everyday life.

2. Literature Review

Muda et al. (2024) stated in their research that checking cellphones by police officers during patrols must be carried out with the correct procedures in accordance with applicable regulations. The act of opening or checking someone's cellphone without clear authority, as carried out by the Raimas Backbone Team, violates the rules in the Criminal Procedure Code, especially regarding the authority of investigators in conducting searches. This shows that the act of opening someone else's cellphone without proper procedures can violate the law and the individual's right to privacy, in line with the protection of personal data regulated in regulations in Indonesia.

Clancy (2004) stated that the discretionary authority of the Police in carrying out searches in emergency situations can be justified normatively based on the provisions of Article 16 paragraph 1 letter (1), Article 18 of Law Number 2 of 2002 concerning the Police, and Article 5 paragraph (1) letter a in Law Number 8 of 1981 concerning the Criminal Procedure Code. In the legal theory approach, searches carried out in urgent situations must be considered as a necessity and balance, on the condition that the investigator's actions do not conflict with the rule of law, are in line with legal obligations that require such actions, are carried out properly and reasonably, and are truly necessary (Noodzakelijk). Searches in emergency conditions are discretionary powers that do not violate the right to privacy, because privacy can be limited as long as police actions are based on considerations of prevention and law enforcement to realize safety. The principle of balance between firmness and persuasive actions is key in implementing this discretion.

In the Republic of Indonesia Law Number 19 of 2016, Article 30 paragraph (1) states that "Any person who intentionally and without rights or unlawfully accesses another person's electronic system in any way." This provision shows the importance of protecting electronic systems from illegal access (Republic of Indonesia Law Number 19 of 2016). The use of any information relating to a person's personal data must be carried out with the consent of the person concerned, unless otherwise determined by statutory regulations. Any person who feels that his/her rights have been violated in relation to the use of personal data as referred to in paragraph (1) may file a lawsuit for the losses incurred.

Jeffries & Apeh (2020) stated in his research that police officers can only search cellphones with clear provisions as per the SOP. Officers may search cellphones if they comply with the SOP. The police must not be careless in conducting searches that fall into the category of someone's privacy. Police officers must still be able to distinguish between things that fall into the realm of privacy and those that do not. The police as investigators in carrying out forced search efforts must be based on the Letter of the Head of the District Court. However, in very necessary and urgent circumstances, the search action can be carried out by the police without bringing a permit from the Head of the District Court. A search action without permission can be carried out if it is feared that the perpetrator will immediately flee or repeat the crime or the object that can be confiscated is feared to be immediately destroyed or moved.

In addition, it is also strengthened by research by Lestari & Rasji (2024) Personal Data Protection has been regulated in Law Number 27 of 2022 concerning Personal Data Protection, Law Number 11 of 2008 concerning Electronic

Information and Transactions, and Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 20 of 2016 concerning Personal Data Protection in Electronic Systems. Personal data protection is an effort to protect individual privacy rights, which includes the need to protect a person's privacy and protect their personal data.

In another study, Putra & Fibrianti (2024) explained that the responsibility for designing a personal data protection strategy lies with the government or state authorities, considering that consumers are the more vulnerable party in e-commerce transactions. These researchers also highlighted the importance of Law No. 27 of 2022 concerning Personal Data Protection which was passed on October 17, 2022, with the main objective of protecting people's personal data managed by Electronic System Organizers (PSE) and preventing crimes committed by irresponsible parties. Furthermore, they discussed the concept of Data Protection Impact Assessment (DPIA) which is implicitly explained in Article 34 paragraph (1) of the PDP Law, although the relevant Government Regulation has not been approved. Putra & Fibrianti also emphasized the importance of paying attention to the rights of personal data subjects as mandated in Articles 6 to 13 of Law No. 27 of 2022, especially in the context of protecting consumer personal data on e-commerce platforms.

Johan (2022) explains that the issue of privacy and personal data protection has often been in the spotlight in recent years, especially related to social networks, consumer profiles by online advertising companies, and cloud computing. This researcher emphasizes that the ITE Law and the Regulation of the Minister of Communication and Information 20 have not been able to comprehensively address the challenges of personal data protection in Indonesia, in contrast to countries such as Singapore and Malaysia which have regulated it with the help of a specially formed Authority. Butarbutar identifies several challenges to data protection, including the unclear principles of data protection in Indonesia, the terminology of personal data, sensitive personal data, and the responsibilities of service providers and data users. To address this, Butarbutar suggests that Indonesia have a personal data protection law that regulates the principles and terminology related to data protection, cross-border personal data flows, crimes against personal data, big data, cloud computing, and data related to artificial intelligence.

Badar et al. (2023) explained that Law No. 27 of 2022 concerning Personal Data Protection was created with consideration of individual protection and the need for a legal basis for personal data security based on the 1945 Constitution of the Republic of Indonesia. These researchers emphasized that the purpose of personal data protection is not only to ensure awareness and concern for the importance of personal data protection, but also to guarantee citizens' rights to individual self-protection. Furthermore, they explained that Law No. 27 of 2022 aims to increase public awareness and has the main objective of protecting individual personal data and regulating various aspects of personal data management, including the collection, use, storage, security, and deletion of personal data by the entities that manage it.

Eddyono (2016) stated based on Article 28G Paragraph 1 of the 1945 Constitution, it is stated that everyone has the right to protection, family, honor, position, and wealth of individuals under his/her authority, as well as peace of mind and fear. the right to protection from intimidation. The 1945 Constitution has regulated the power of privacy which cannot be taken arbitrarily, as stated in Article 28H (4) which states: Everyone has the right to have private property and no one may arbitrarily have this property. From the text of the article, it is stated that human rights are basic rights and rights that must be agreed to by every citizen. All citizens have the right to obtain their basic rights from birth and cannot be taken or handed over to anyone.

3. Methods

This study uses secondary data obtained through literature study. Literature study is an approach that involves collecting and analyzing data that is already available from various sources, such as books, journal articles, laws, research reports, and other official documents. This method was chosen because it allows researchers to understand the concepts, theories, and regulations that are relevant to the topic of personal data protection within the scope of Indonesian law, as well as the implications of the act of opening someone else's cellphone without permission. Through literature study, this study will examine the legal regulations governing personal data protection in Indonesia, including Law No. 27 of 2022 concerning Personal Data Protection (UU PDP) and Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHP). In addition, this study will also analyze various legal cases and previous studies related to privacy violations, especially those involving the act of opening someone else's cellphone without consent.

4. Results and Discussion

Personal data protection in Indonesia has become a major concern in recent years, especially with the enactment of Law Number 27 of 2022 concerning Personal Data Protection (UU PDP). Research by Putra & Fibrianti (2024) shows that the responsibility for designing a personal data protection strategy lies with the government, considering that consumers are the more vulnerable party in e-commerce transactions. The PDP Law aims to protect personal data managed by Electronic System Organizers (PSE) and prevent crimes committed by irresponsible parties. However,

although this regulation provides a clearer legal framework, challenges in its implementation still exist. Noted that existing regulations have not been fully able to address the challenges of personal data protection in Indonesia, especially compared to countries such as Singapore and Malaysia which have special authority to regulate data protection.

In the context of police action, research by Muda et al. (2024) emphasized that cell phone inspections by police officers must be carried out in accordance with the correct procedures. The act of opening someone else's cellphone without clear authority violates the provisions of the Criminal Procedure Code (KUHAP). This shows that although the police have the authority to conduct searches, they must still comply with established procedures to protect the individual's right to privacy. Jeffries & Apeh (2020) added that the police can only conduct cellphone searches if they meet clear provisions, and arbitrary actions can potentially violate the law and the individual's right to privacy.

In emergency situations, the police have the flexibility to conduct searches without permission from the court, as long as the action is based on urgent considerations. Clancy (2004) explain that searches in emergency situations must consider the balance between law enforcement and privacy protection. Although there is a normative justification for such actions, it is important for the police not to abuse their authority. This study shows that actions that are not in accordance with procedures can potentially violate the individual's right to privacy and have legal consequences for the officers concerned.

Furthermore, identified several challenges in personal data protection, including the unclear principles of data protection and the responsibilities of service providers. This study emphasizes the need for Indonesia to have a more comprehensive personal data protection law, which regulates the principles and terminology related to data protection, cross-border personal data flows, and crimes against personal data. The PDP Law not only aims to raise public awareness of the importance of personal data protection, but also to guarantee citizens' rights to protect their personal data.

Overall, although there has been progress in personal data protection regulations in Indonesia, challenges in implementation and public understanding still need to be overcome. This study shows that personal data protection and individual privacy rights must be a priority in law enforcement, especially in the context of police action. By strengthening regulations and raising public awareness, it is hoped that personal data protection in Indonesia can be more effective and in accordance with international standards.

5. Conclusion

From the results of this study, it can be concluded that personal data protection in Indonesia has progressed with the PDP Law, but there are still significant challenges in its implementation. Police actions in accessing individual mobile phones must be carried out in accordance with clear procedures to avoid violating privacy rights. Although there is leniency in emergency situations, it is important for law enforcement officers to act proportionally and in accordance with applicable legal provisions. Therefore, further efforts are needed to increase public awareness of their rights related to personal data protection, as well as strengthen existing regulations to be in line with technological developments and community needs.

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