

Research Article

Legal Protection of Citizens' Privacy Rights Based on the Principle of Justice

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ORCIDZuhdi Arman: <https://orcid.org/0009-0009-6914-2430>**Abstract.**

The development of digital technology has created serious challenges to the protection of citizens' privacy rights. The rampant leakage and misuse of personal data by the public and private sectors shows the weakness of existing legal protection. Although Law Number 27 of 2022 concerning Personal Data Protection has been enacted, the effectiveness of its implementation is still in doubt, especially in ensuring justice for victims of privacy violations. This article analyzes the legal protection of privacy rights using the principle of justice approach, namely distributive, corrective, and procedural justice. The approach used is juridical-normative, complemented by case studies of personal data violations. The results of the study show that legal protection of privacy rights is still inadequate in substance. Therefore, the principle of justice needs to be used as the main foundation in the reconstruction of the legal system in the digital era.

Keywords: data, digital era, privacy, protection

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1. Introduction

The rapid development of information and communication technologies (ICT) in the digital era has significantly transformed the way individuals interact, work, and live their daily lives. On one hand, this digital transformation has brought considerable benefits in terms of efficiency, transparency, and social connectivity. On the other hand, it has also raised serious challenges to human rights, particularly the right to privacy. In a democratic state, the right to privacy is a fundamental right that must be guaranteed and protected by the state, as it concerns individual dignity, integrity, and freedom from unlawful interference. (Rizi & Seno, 2022)

Privacy, according to many scholars, refers to the “right to be let alone” and the right to control one’s personal information. In the digital age, privacy encompasses not only physical space but also digital personal data, which are increasingly scattered across platforms such as social media, online transactions, e-government services,

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and commercial applications. The more personal data that is collected, stored, and processed by both government and private entities, the higher the potential for privacy violations if not supported by a strong legal protection framework.(Tokson, 2020)

In Indonesia, public and policy awareness of the importance of privacy and personal data protection remains relatively low. This is reflected in the previously limited and fragmented regulatory landscape governing personal data management. Although the 1945 Constitution of the Republic of Indonesia guarantees protection of the individual under Article 28G paragraph (1), the implementation of such protection has been partial and sectoral. Before the enactment of Law Number 27 of 2022 concerning Personal Data Protection (PDP Law), data protection provisions were dispersed across various laws, including the Electronic Information and Transactions Law, the Population Administration Law, and the Health Law, among others. This resulted in regulatory overlaps, legal gaps, and difficulties in law enforcement.

Meanwhile, privacy violations in Indonesia are increasing both in frequency and in the severity of their consequences. Incidents such as the 2021 data breach involving 279 million BPJS Kesehatan (Indonesia's National Health Insurance) records, leaks in e-commerce platforms, and the sale of patient data on online forums underscore the weak legal protections for personal data. In many cases, victims lack effective legal mechanisms to seek compensation or redress for the harms they suffer. Law enforcement agencies also often lack the technical capacity and legal framework to handle digital privacy violations effectively.(Solove, 2022)

The enactment of the PDP Law in 2022 marked an important initial step in building a legal framework for personal data protection in Indonesia. However, many observers argue that the law still contains fundamental weaknesses in terms of institutional arrangements, oversight, and substantive justice for victims. The supervisory authority remains under the President and lacks structural independence; there are no guarantees of direct compensation for victims; and the law predominantly relies on administrative procedures for enforcement. Some academics and practitioners even argue that the law functions more as a bureaucratic regulation than as an instrument for civil rights protection.

In this context, it is necessary to examine more deeply how justice principles can serve as a foundation for building a more responsive legal protection system for the right to privacy. Justice principles, as developed in legal theory and political philosophy, include distributive justice, corrective justice, and procedural justice. These three forms

of justice are not only relevant to the design of legal policy but also in assessing the extent to which the state equitably protects its citizens' rights.(Selznick, 2020)

By employing a justice-based approach, we can evaluate whether legal protections for privacy in Indonesia truly fulfill the fundamental principles of justice, or whether they reinforce inequality between powerful entities (data controllers) and vulnerable parties (data subjects). This approach also opens the space to propose a reconstruction of the privacy protection system that goes beyond formal regulatory compliance to emphasize substantive fulfillment of victims' rights and perpetrators' accountability.

Therefore, this paper aims to: (1) identify fundamental issues in Indonesia's legal protection system for privacy rights; (2) analyze the application of justice principles in privacy protection; and (3) offer legal policy recommendations grounded in justice principles as a foundation for legal reform in the digital era. This research is expected to make both theoretical and practical contributions toward strengthening human rights protection—particularly privacy rights—within Indonesia's national legal system.

2. Methods

This study employs a normative juridical approach, which is a legal research method based on positive legal norms, legal principles, and legal theories as the foundation for analysis. This approach is utilized because the research focuses on examining the substance of the legal framework governing the protection of privacy rights within Indonesia's legal system and its relevance to the principles of justice.

The data used in this study are secondary legal materials, including primary legal sources such as statutory regulations namely, the 1945 Constitution of the Republic of Indonesia, Law Number 27 of 2022 concerning Personal Data Protection, and other relevant legislation. In addition, secondary legal materials are also employed, including books, scholarly journals, legal articles, official institutional reports, and relevant court decisions. These data are analyzed using qualitative methods, which involve systematically interpreting the contents of legal norms and documents and thoroughly assessing their legal implications.(Hayek & Shearmur, 2022)

The analysis technique combines both deductive and inductive reasoning. The deductive approach is applied to derive conclusions from general legal principles regarding the application of privacy rights to the specific legal context of citizens, while

the inductive approach is used by examining case studies of personal data breaches to draw conclusions about the effectiveness of existing regulations.(Tomasi, 2021)

Thus, this methodology enables a comprehensive analysis both normative and evaluative of whether the current legal system for the protection of privacy rights aligns with the ideal principles of justice as envisioned in legal theory and human rights discourse.

3. Result and Discussion

3.1. Challenges to the Protection of Citizens' Privacy Rights in the Digital Age

Citizens' privacy rights face serious challenges in the digital era. The rapid development of information and communication technologies has enabled increasingly sophisticated systems of data collection, storage, processing, and distribution. However, these advancements have not been matched with adequate legal protections. In Indonesia, prior to the enactment of Law No. 27 of 2022 on Personal Data Protection (PDP Law), there was no single comprehensive regulation governing the right to personal data. Legal provisions were sectoral and scattered across various statutes, such as the Electronic Information and Transactions Law, the Population Administration Law, and numerous ministerial regulations in the fields of health, finance, and education. This regulatory fragmentation created overlapping norms, substantive legal gaps, and difficulties in implementation and law enforcement.(Savaresi & Setzer, 2022)

The absence of national standards for personal data protection before the PDP Law led to frequent violations of privacy, often by both public and private institutions. For example, many entities collected personal data without valid consent or shared it with third parties for commercial purposes. More alarmingly, massive data breaches occurred repeatedly. Notable incidents include the leak of 279 million health insurance records (BPJS Kesehatan) in 2021, which were allegedly sold on dark web forums, as well as data leaks involving major platforms such as Tokopedia, Bukalapak, and the COVID-19 vaccination tracking app PeduliLindungi.(Teremetskyi et al., 2021)

In these data breach cases, victims had virtually no effective legal remedies to seek redress. There was no clear authority responsible for data protection oversight, no victim-friendly complaint mechanisms, and law enforcement officers often lacked the technical capacity to handle cyber-related cases. Consequently, a wide gap emerged between the normative recognition of privacy rights in Article 28G (1) of the 1945

Constitution and the actual state of protection on the ground a classic manifestation of the discrepancy between *das Sollen* (what ought to be) and *das Sein* (what is). Privacy rights, which should be guaranteed as constitutional and human rights, remain in a precarious position.(Mapp, 2020)

The PDP Law represents a critical milestone in addressing these gaps. It provides rules regarding the rights of data subjects, the duties of data controllers and processors, administrative and criminal sanctions, and plans for establishing a supervisory authority. Nevertheless, the law has attracted criticism. Key concerns include the lack of independence of the supervisory body, which is placed under the executive branch (the President), the absence of direct compensation mechanisms for victims, an overly administrative rather than corrective approach to dispute resolution, and overly broad exceptions granted to state institutions in processing citizens' data. In short, while the PDP Law serves as a much-needed legal umbrella, it still suffers from structural and substantive problems that hinder the realization of equitable privacy protection.

3.2. Analysis of Privacy Protection Based on the Principle of Justice

In modern legal theory, the principle of justice serves as a fundamental foundation in designing legal systems that are not merely legalistic but also provide substantive protection for citizens. Three forms of justice can be employed to evaluate the legal system governing privacy protection: procedural justice, distributive justice, and corrective justice.

First, procedural justice demands transparent, participatory, and accountable legal processes in the collection, processing, and storage of personal data. In the Indonesian context, procedural justice has yet to be fully realized under the Personal Data Protection Law (PDP Law). For instance, data controllers are not explicitly required to proactively provide clear and understandable information to data subjects about how their data will be used. The implementation of data subjects' rights to object and to access their data remains weak, due to the absence of an independent and efficient complaint mechanism. Moreover, dispute resolution is primarily administrative in nature and conducted through an institution under the executive branch, rather than through independent judicial processes.(Anwary, 2023)

Second, distributive justice relates to how the benefits and burdens of the privacy protection system are distributed fairly among all segments of society. In practice, communities with low digital literacy—such as the elderly, rural populations, and children—are more vulnerable to data misuse. The PDP Law does not fully accommodate the special protection needs of these groups. For example, there are no affirmative provisions regarding the protection of children’s data, even though they are active internet users but lack the full capacity to understand digital risks. In contrast, powerful entities such as corporations and government agencies are afforded greater leeway in processing personal data under the guise of public service or national security.

Third, corrective justice concerns mechanisms for redress for victims of privacy violations and the imposition of sanctions on violators. While the PDP Law stipulates administrative and criminal penalties, it does not explicitly mandate compensation for victims. Civil litigation procedures remain complex, costly, and time-consuming barriers that most victims are unable to overcome. As a result, many privacy violations go unremedied, and perpetrators often escape proportionate accountability. This underscores the weakness of corrective justice within the current data protection framework.(Kharisma, 2021)

Thus, the application of the principle of justice in the protection of privacy rights in Indonesia remains suboptimal. Existing regulations have yet to establish a system that positions data subjects as the primary owners of their personal data. A state-centric and commercial approach continues to dominate, while the voices of victims and civil society lack proportional representation within the legal framework of privacy protection.

3.3. Proposal for Reconstructing the Privacy Protection System Based on the Principle of Justice

Based on the aforementioned problems and analysis, it is evident that a reconstruction of the legal system for protecting citizens’ privacy rights is urgently needed—one that is grounded in the principle of justice. This reconstruction must not only involve normative reform but also institutional restructuring, governance improvements, and a paradigm shift in viewing privacy as an integral component of human dignity.

First, a limited amendment to the 1945 Constitution is necessary to explicitly recognize the right to privacy and personal data protection as constitutional rights guaranteed by the state. This step is crucial to ensure that all derivative policies comply with the

principle of data protection and to enable constitutional review of any contradictory legislation.(Wischmeyer & Rademacher, 2020)

Second, the establishment of an independent data protection authority outside the executive branch is a strategic measure to ensure effective oversight of data collection and usage practices. Such an authority should be endowed with robust powers to monitor both public and private sectors, receive public complaints, impose sanctions, and issue binding technical guidelines.

Third, the remediation system for victims must be strengthened. A swift, affordable, and fair administrative compensation mechanism should be established to ensure victims of privacy violations can access justice without enduring protracted judicial processes. Additionally, public education programs on privacy rights and protective measures are essential to enhance public awareness and resistance against data misuse.

Fourth, the principles of transparency and accountability for data controllers must be enforced through mandatory periodic audits, disclosure of cybersecurity incidents, and open reporting on data processing activities. This should begin with state institutions and major digital corporations.(Solow-Niederman, 2022)

Fifth, the regulatory reconstruction must emphasize intergenerational justice and justice for vulnerable groups. The protection of personal data belonging to children, persons with disabilities, the elderly, and indigenous communities should be designed using a participatory approach tailored to their specific needs. The state must implement affirmative actions and establish higher protection standards for these groups.(Lageson, 2020)

Finally, partnerships with civil society, academia, and the media must be reinforced in the roles of oversight and advocacy for privacy rights. Multi-stakeholder involvement will enhance the legitimacy of the legal system and ensure that privacy protection is not merely rhetorical but becomes a tangible practice within social and institutional realities.

Through these measures, Indonesia's privacy protection system will move closer to realizing justice that centers on human dignity. The state, as the primary duty bearer, must demonstrate concrete commitment to safeguarding citizens' privacy rights amidst the growing wave of digitalization.

4. Conclusion

The protection of citizens' privacy rights in Indonesia remains a pressing issue in the digital age, particularly in light of the rapid development of information and communication technology. While digital transformation brings numerous benefits, it also poses significant risks to fundamental human rights, including the right to privacy. The enactment of Law Number 27 of 2022 on Personal Data Protection (PDP Law) marked a substantial step toward establishing a national legal framework for data protection. However, this legislation still harbors several fundamental weaknesses, especially in terms of institutional independence, access to justice for victims, and equitable protection for vulnerable populations. This study reveals that the existing legal system does not fully reflect the core principles of justice namely procedural, distributive, and corrective justice. Procedural justice remains limited due to the lack of transparent, participatory, and accountable mechanisms. Distributive justice is compromised as data protection disproportionately favors state and corporate entities, leaving marginalized groups at risk. Corrective justice is weak, as victims of data breaches lack effective legal remedies and face challenges in seeking redress or compensation. Therefore, a justice-based reconstruction of Indonesia's privacy protection system is imperative. The state must recognize privacy as a constitutional right and adopt reforms that ensure institutional independence, public education, proactive oversight, and inclusive regulatory approaches. Furthermore, special protection for vulnerable groups must be embedded into the law to fulfill the ideals of intergenerational and substantive justice. This research underscores the urgent need for a shift in both policy and legal paradigms, from a state-centric and bureaucratic model toward a rights-based framework that centers the dignity and autonomy of individuals in the digital era. Only through such a comprehensive transformation can Indonesia realize a privacy protection regime that not only complies with legal formalities but also embodies the moral imperative of justice in a democratic society.

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