International Journal of Social Science And Human Research

ISSN(print): 2644-0679, ISSN(online): 2644-0695

Volume 06 Issue 01 January 2023

DOI: 10.47191/ijsshr/v6-i1-09, Impact factor- 5.871

Page No: 58-62

Analyzing Human Right to Personal Data Protection in Indonesia Amidst its High Global Impact

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ABSTRACT: Human right to personal data protection in this era of globalism and globalization is a sine qua non of legitimate progress in effectiveness of national legal systems and advanced development of security of persons. This research seeks to make an analysis of the right to personal data protection in Indonesia cognizant of recent advancement in technology and innovation. Indonesia's enactment of the new Law No. 27 of 2022 has now set the country above the parapet in terms of its protective mechanism of human rights to personal protection and privacy where the world is globalized and gobbled at once. Considering the values of personal data provided in this new law, there is a need and urgency for the state to make a paradigm shift from only recognizing this new law as a good instrument of governance to recognizing it as a tool for protection, promotion and fulfilment of human right to privacy. In my determination to make a comprehensive analysis of this subject, a qualitative research method is used through the use of secondary data like articles, books and other materials that are germane to this work. Acutely au fait with the role of the court in interpreting laws and setting the jurisprudence thereafter, this paper concludes that this law ought to be interpreted in tandem with the guidelines of Mischief Principle of statutory interpretation in order not to dilute the purpose for which it is enacted.

KEYWORDS : Globalism; Human Rights; Indonesia; Legal Interpretation; Personal Data Protection; Progressive Law.

1. INTRODUCTION

The large industrial change has created various innovations via the use of technologies like the internet. The utilization of the internet supported by electronic gadgets greatly helps human activity. There is an influence of this innovation and technology on the finance sector in Indonesia. The millennial generation is dominated by technology and creativity, which leads to the creation of several websites that are located online. There is also great public trust in financial technology. On the basis of this, the population of users of internet in Indonesia is increasing (Shalihah, 2022). The promulgation of Law No. 27 of 2022 in Indonesia concerning the protection of personal data in Indonesia comes at this time of globalism when personal data is globally one of the most valued treasures in human development. This research seeks to assess and analyze the human right to personal data protection in Indonesia. The promulgation of this new law in Indonesia is not new in the international scene because this has started in several European countries from the early 2000s (Muhammad Usman Noor, 2020). No one shall be subjected to arbitrary interference with their private, and everyone has the right to legal protection from such interference, according to Article 12 of Universal Declaration of Human Rights. So, it is quite correct to say that this new law (Law No. 27 of 2022 in Indonesia) is a complement of the effort of the international community to strengthen the laws that concern individual right to protection of personal data.

Indonesia occupies its position in the world to make sure that there is protection of personal data through a legislative process in this age of globalization that is animated by digitization, in which the world is now a global village where individuals across the world are connected through proxies. According to research, 87.13 percent of Indonesians use the internet for social media (Muhammad Usman Noor, 2020). Sharing information, including personal information, has become simpler thanks to social media. Individual or partially personal personal information may be sensitive to some people or data. Personal information is also known as personal data. Therefore, since personal data protection has become a law in Indonesia it is equally a human right of the people of Indonesia for their rights to be protected. So this new law gives birth to this right that is being analyzed here.

2. RESEARCH PROBLEM

A promulgation of a new law is a credit to the legal system of any country but the effectiveness of state institutions in enforcing the law and the awareness of the citizens of the value of the law in promoting personal and collective security, soocial cohesion, integration, harmony, peace and justice are much more important in any jurisdiction. In this research, the problem of the unawareness of citizens of their right to personal data protection will be addressed. The research seeks to take a normative approach to point out

the need and urgency for the state to engage in strengthening this law through the principle of fundamental human rights to protection, promotion and respect. It is therefore within the purview of this research to ensure that citizens also participate in safeguarding the nation of Indonesia where globalization continues to be a threat to personal data protection.

3. DISCUSSION AND ANALYSIS

As of 2022, Indonesia's economy was rated 16th in the world and first in Southeast Asia (Caleb Silver, 2022). Everyone has the right and obligation to defend the state, and the situations for the defense are ruled by law, according to Article 30 paragraphs 1 and 2 of the Constitution of Indonesia 1945. Indonesia also has a civil law system joint with Customary law and Islamic law and therefore, the laws are interwoven to certain extent. The main principles of a society that are highly regarded by its citizens are reflected in its laws. Laws also reflect the aspiration of the community where they are enforced. In the context of Indonesia, the need and urgency for the people to be aware of protecting the state is quite important in the public system of the Indonesian country in managing and settling different problems and challenges that affect the people either individually or collectively (Riyanti, 2022). In order to achieve the public goals expressed in the preamble to the 1945 Constitution, to clearly protect the whole nation of Indonesia, and to advance and participate in national support and national life, every effort should be made to meet the demands of the world.

According the Indonesia's new law (Law No. 27 of 2022 in Indonesia), it is based on protection, legal ceertainty, public interest, benefit, prudence, balance, accountability and confidentiality. This chapter also provides for two types of data, namely: Personal Data of a Specific nature and General Personal Data. Personal data of a specific nature include health data and information, biometric data, genetic data, crime records, child data, personal financial data and other data that are in accordance with the provisions of the legislation. On the other hand, general data refer to full name, gender, citizenship, religion, marital status and, or personal data that identifies a person. One may argue that personal data protection is related to good governaance but it is also true to point out that personal daata protection is connected to the right to privacy as a human right. Considering the values of personal data provided in Law No. 27 of 2022 in Indonesia, there is a need and urgency for the state to make a paradigm shift from only recognizing this new law as a good instrument for governance to recognizing it as an instrument for protection, promotion and fulfilment of human right to priavcy. Will Indonesia make such a pardigm shift by emulating Europe Union (EU Regulation 2016/679) in accepting that a fundamental right is the protection of natural persons with regard to the processing of their personal data? Everyone has the right to the protection of their own personal data, according to Article 8 (1) of the European Union's Charter of Fundamental Rights and Article 16 (1) of the Treaty on the Functioning of the European Union (TFEU).

In order to meet the needs of Indonesians on the issue of personal data protection, this law still needs a paradigmn shift from the law as it now (das sein) to the law that should be (das sollen). Theory of *das sein* and *das sollen* is a revelation of the lacuna between reality and expectation. *Das sein* is a reality that has happened while *das sollen* is what ought to be done.

3.1. Examining the Progressive Nature of this Law

The ultimate purpose of law is to safeguard society and deliver justice, legal certainty and legal order. For this to be done, law must not be held bound by the ideology of the analytical jurisprudence of "the law as it is". Law should not only be textually evaluated in terms of what is written in books but it should be contextually evaluated in terms of what people need from it. It ought to be law in action. Progressive law has a basic premise on the nexus between people and the law as a remedy for analytical jurisprudence's shortcomings. The ideology that people are inherently decent and have traits like compassion and concern for others was left by progressivism. The fundamental tenet of progressive law is that "law is for humanity" by its very essence. The law does not exist for itself as propounded by positive jurisprudence, it does not also exist for its own sake but for human and for the attainment of their dignity and happiness. Such a position emphasizes that the law always has the status of the law as it should be (Rodiyah, 2017). The use of analytical jurisprudence in Indonesia is not sufficient. The ideology of progressive law arises in Indonesia because of concerns about the quality of law enforcement in Indonesia about two decades ago.

Connected to Legal Realism, progressive law examines the law not as it is but in terms of the achievement of social goals and the problems that arise from the social goal. Legal existence is thus related to social goals and progressive law is also close to Roscoe Pound's sociological jurisprudence who declined to study and examine law as as a study of legal rules. Progressive law is also related, to some extent, to the theory of natural law which Hans Kelsen calls attention to the metaphysical. Progressive law thus priotizes the greater human interest over interpreting law in terms of logic and rules. According to Satjipto Rahardjo, law enforcement is a set of processes describing values, ideas, and abstract ambitions to become a concrete target. The goals of law include moral values such as justice and truth. These values can appear in real life through the ideology of progressive law (Joni Efraim Liunima, 2016).

Therefore, for Law No. 27 of 2022 in Indonesia to be effective, efficient and deliver justice and truth, its enforcement ought to be contextualized in its progressive nature. What this law is as of now is not a concern to this research. Instead, what it can deliver to the people of Indonesia, and whether that delivery will satisfy the needs of the society is what concerns this research. There needs to be an urgency in the 'right-centric' approach in the enforcement of legal rights. Indonesia's legal system is built on the core values of Pancasila with civil law system joint with customary law and Islamic law. There exists an ecumenicism to the differences

that exist among the people of different religions but the gaurantee and protection of human right is an ideal value that everyone ought to be interested in, irrespective of their religions, tribes and other differences. In upholding the value of human right in Indonesia, the Law provides that, "the protection of personal data is one of the human rights that is part of personal self-protection, it is necessary to provide a legal basis to provide security for personal data, based on the 1945 Constitution of the Republic of Indonesia; that the protection of personal data is aimed at guaranteeing citizens' right to personal self-protection and fostering public awareness and ensuring recognition and respect for the importance of personal data protection" (Law No. 27 about Personal data Protection).

3.1.1. The Philosophical Underpinning of Progressive Law

The ideology of progressive law is the principles, practice and beliefs in moderate political change mainly in social improvement by the action of government (Erlyn Indarti, 2018). What is the philosophical underpinning or basis of progressive law? In the context of Indonesia, until now, not many people are keen in interrogating the philosophical underpinning of progressive law undertaken by Satjipto Rahardjo. Some people even see the idea of progressive law as nothing more than a way of finding law. Regarding the composition of the school of jurisprudence, Satjipto Rahardjo is not really clear enough to position his thoughts (Hyronimus Rhiti, 2016). According to Sajipto Raharjo, in line with the philosophy of the Indonesian nation, i.e. Pancasila, progressive law enforcement means enforcing the law not only black and white from the rules (by letters, but also by spirit and meaning, very meaningful of laws or decrees under Pancasila) so that law enforcement is done with a conscious approach, not just an intellectual one. In other words, law enforcement is carried out with determination, empathy, dedication, devotion to the suffering of a nation, and the courage to find a path out of the ordinary orientation to enable humanitarian law enforcement (Lisma, 2019). This is so because the ultimate aim of law enforcement is to serve justice with fairness.

In examining and assessing the urgency for the need for a law to be progressive and give good impact to society, Jeremy Bentham in his theory of utilitarianism argues that if an action satisfies the principle of utility, we can always say that it should be done, or at leaast it should not be done if it is wrong. This causes him to say that "this is how it should be done" (Ian Mcleod, 2012). According to Bentham, the principle of utility means that actions and conducts are right in as much as they promote happiness and pleasure, and they are wrong if they tend to produce unhappiness and pain. Therefore, utility is a principle of teleology. The greatest happiness for the greatest number of people, not the greatest happiness of the doer, is the standard of right and wrong according to the altruistic theory of classical utilitarianism. The "Good" therefore increases the number of people who experience happiness among members of a particular group. "Bad" increases the number of persons with pain. So how justifiable is utilitarianism? What about governments that make laws to suit the happiness of the ruling class to the detriment of the rest of the citizens? What is Indonesian government's view on Law No. 27 of 2022 as regards its enforcement? Does it adhere to utilitarianism's altruistic philosophy, the natural law school of philosophy that emphasizes the idea that law is a logical extension of humanity's innate morals, the realistic theory of understanding law based on what it actually does to society rather than what is written in books, or the analytical school of jurisprudence that focuses on law as it currently exists in the form it seeks to analyze?

By examining and analyzing the multi-dimensional configuration of the Indonesian society and relating it to the above questions, it is important to admit that Indonesia comprises different regions with people whose cultures and other social backgrounds differ to certain extent. The foundation of Indonesia's legal system is composed of the guiding principles of Pancasila and complemented by civil law as influenced by Dutch colonialism, and customary law which governs people's behavior as long as it does not conflict with the Constitution and the values of Pancasila, and respect for and recognition of Islamic law. Still attempting to answer the above questions, the next question that arises is: What legal theory must be used in ensuring that Law No. 27 of Indonesia 2022 delivers maximally to the society in strengthening their human right to privacy and personal protection? In my analysis, no single legal theory on its own can form a legislation that effectively governs the affairs of the people without being influenced by other legal ideas. In essence, law in its making process, up to the level of its enforcement has some elements of patiality even though in a liberal legal way with a belief in objectivity, predictability and neutrality (Muhammad Harun, 2019). So enforcing a law on the ideology of only one legal theory will produce nothing but travesty of justice because people are seen as one social group in society but they are equally recognized as having different needs and different problems that require different ways of providing those needs and solving those problems.

3.2.1. Social Justice and Legal Lertainty of Law No. 27 of Indonesia 2022

The Indonesian people have made Pancasila the base of their nation and built a live view on the lives of their people and nation and therefore, is right that its law enforcement model is humanistic. Humanistic law enforcement can be achieved by enacting laws that reflect the religious, humanitarian and social values of Pancasila, as well as the values of justice, expediency and legal certainty. Therefore, officers must provide maximum law enforcement efficiency in handling each case. The supremacy of law is translated as the supremacy of justice (Maroni et al., 2019). Social justice forms the fifth pillar of Pancasila as the basic philosophy of Indonesia. Justice offers many meanings, dimensions and approaches not only in one country but also globally because views differ concerning the development of the law as informed by the country's societal, cultural ideals and values that inform, to certain extent, the way of life of the people. It is argued that the philosophical underpinning of justice is anchored on two grounds. That is, everyone is entitled to the necessary means to lead an independent life, which is essentially what it means to be a person. However,

only a few of the necessities for people to be able to live independently, such as the rule of law, food security, education, and basic healthcare, can be provided by the state using its coercive power. The American Declaration of Independence 1776 propounded this ideology that defies both geography and time that: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness – that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government". This emphasizes that a government's primary duty is to protect its citizens' rights, in this case in accordance with the law. Since justice is a universal aspiration and the act of injustice elicits strong human emotions in all civilized people, it is especially intense when an individual's own interests are at stake (Suri Ratnapala, 2009).

In Indonesia, the phrase "rule of law" is frequently referred to as "rechtsaats". The concept of *rechtsaats*, defined in the 1945 Constitution as "rule of law", is basically based on the legal system of Continental Europe. In the 1945 Constitution the rule of law is defined as rechstaats but from a normative point of view it is necessary to distinguish from the ideals of the rule of law in the Continental European legal system or the notion of the Anglo-Saxon legal system. Certainty of law or legal system requires that the law must be clear, precise and unambiguous, and its legal implications foreseeable. The law must be written in a way that it is clearly understandable by those who are subject to it. Legal certainty has several functions. It helps maintain peace and order in society and contributes to legal efficiency by enabling individuals to have sufficient knowledge of the law so that they can comply with it. It also provides individuals with means by which they can measure whether there has been arbitrariness in the exercise of state power. This, therefore, helps individuals to organize their lives by enabling them to make long-term plans and formulate reasonable expectations. In its report on the rule of law, the Venice Commission argued that the principle of legal certainty plays an essential role in maintaining trust in the judicial system and the rule of law, and that it is a business arrangement and emphasized its importance for economic development (Venice Commission Report, 2011). Without this trust, citizens (and foreign investors) would not be able to enter into contractual relationships with local partners, in return forsaking economic activity that is vital to the country's economic development. increase. Therefore, the existence or lack thereof of legal certainty has significant economic implications. This should be encouraged by all three branches of government. It calls on legislators to ensure the quality of the laws and other legal instruments they enact. Legal certainty requires that executives respect these legal instruments when implementing them and when making decisions on general or specific issues. The judiciary must adhere to this principle when applying legal means to a particular case and when interpreting this law.

Among international legal bodies, the European Court of Human Rights repeatedly deals with the analysis of the principle of legal certainty. The European Court of Human Rights has stated that this principle is "one of the fundamental aspects of the rule of law" (European Court of Human Rights, 2006) and that its requirement is that "all laws shall be sufficiently specific". I have confirmed that there is a need to the extent reasonable in the circumstances, the consequences that a particular action may entail. When the court has decided finally on a matter, its decision shall not be questioned. The case shall be settled within a reasonable time and may continue to challenge previous decisions. Courts must not deviate from the precedent set by previous precedents without good cause.

4. CONCLUSION

In conclusion, it suffices to end this reseach by submitting that the recent decision of the state of Indonesia for coming up with Law No. 27 in Indonesia 2022 and the wisdom of the House of Representatives in validating the draft which finally resulted in the establishment of said law is quite timely. This is timely because personal data is very important both nationally and internationally. Therefore, this law having recognized this issue of protection of personal data as a human right grants Indonesians a sense of entitlement, ownership and control of their data. Therefore, "Analyzing the Human Right to Personal Data Protection in Indonesia Amidst its High Global Impact" takes a holistic approach by examining some theories of law with a view to informing the subject of personal data protection in Indonesia.

This research presents that one theory of law is not sufficient to form the basis upon which a law operates. Instead, it takes the view that law enforcement should be on the basis of multi-dimensional approach from different theories of law in order to meet the needs and solve the problems of people of Indonesia. This is the reason this research points out the various theories of law such as natural law theory, realistic theory, utilitarianism and analytical jurisprudence. This multi-dimensional approach is considered important because Indonesia is heterogenous with people from different cultures, traditions and religions. Therefore, for a law to be inclusive, it must have the elements of being meant for the people and not the people meant for the law.

Law No. 27 of 2022 in Indonesia is a good and responsive law which recognizes the needs of the Indonesian people. My point is motivated by the belief that laws should be progressive, thus they should be available to administer justice with profound legal certainty. In this regard, the "Mischief rule of interpretation" should be embraced because there was a problem in Indonesia that led to the establishment of this new law. The problem is that of insecured personal data of the people. According to Heydon's case in interpreting statutes, three factors are to be considered when interpreting a statute: (1) what the law was before the statute was enacted; (2) what problem (mischief) the statute was trying to addressed; (3) what remedy the parliament was trying to provide.

I conclude that this law should be interpreted with informed awareness that it is enacted to solve the problem of violation of human right to privacy in the form of personal data protection.

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