

Reconstruction of the Criminal Sanctions System Regulation for Personal Data Protection Based on Justice Values

Teguh Dwi Santosa^{1*}, Anis Mashdurohatun², Bambang Tri Bawono²

¹Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

²Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

DOI: <https://doi.org/10.36348/sijlcj.2025.v08i02.004>

| Received: 19.01.2025 | Accepted: 24.02.2025 | Published: 27.02.2025

*Corresponding author: Teguh Dwi Santosa

Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

Abstract

The purpose of this study is to analyze and find the weaknesses in regulations on the criminal sanction system for personal data protection in Indonesia and how to reconstruct regulations on the criminal sanction system for personal data protection based on the value of justice using constructivism paradigm with a socio-legal research approach method to solve research problems by examining secondary data and primary data by finding the legal reality experienced in the field and qualitative descriptive methods, where later the data will be presented descriptively. The result shows that the protection is weak, because there is incomplete law in Article 12 of the Personal Data Protection Law. This results in uncertainty in the aspect of law enforcement, especially in Article 67 and Article 68 in terms of imposing compensation when there is a failure to protect personal data, added with the inequality in the formulation of sanctions that can be applied to the public and private sectors, legal culture, namely digital literacy in society is still low, so that many individuals do not fully understand the importance of personal data protection and its implications in the digital environment. Therefore, the Legal Reconstruction proposed by the author is carried out on the addition of one paragraph to Article 67 paragraph (4) which contains the Provisions as referred to in paragraph (1), paragraph (2) and paragraph (3). the judge is obliged to determine the amount of compensation payment. Reconstruction is also carried out in Article 68 so that it becomes paragraph (2) The provisions as referred to in paragraph (1) the judge is obliged to determine the amount of compensation payments.

Keywords: Legal Reconstruction, Personal Data, Legal Protection, Justice Value.

Copyright © 2025 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution **4.0 International License (CC BY-NC 4.0)** which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

INTRODUCTION

In Article 1 number 4 of the Republic of Indonesia Law Number 27 of 2022 concerning Personal Data Protection, there are personal data controllers and personal data processors. Personal data controllers are any person, public body, and international organization that acts individually or jointly in determining the purpose and exercising control over the processing of personal data. Meanwhile, what is meant by a personal data processor is any person, public body, and international organization that acts individually or jointly in processing personal data on behalf of the personal data controller (Toebagus, 2022).

Law Number 27 of 2022 concerning Personal Data Protection also regulates sanctions or penalties for violations of Personal Data Protection. Sanctions apply to electronic system organizers (PSE), both government (public) and private (private), individuals, and corporations.

Example of personal data leak The Indonesian government once created a Health application (e-HAC) but on July 2, 2021 the application was no longer used and the government appealed to uninstall the application, but there was no follow-up in securing existing data, even though the provisions of the law should have followed up on this.

According to VPN Mentor, they revealed that the eHAC data that was leaked was 2 Gigabytes. The number of data of Indonesian citizens and foreign citizens who installed eHAC and were leaked is estimated to have reached more than 1.4 million people. Meanwhile, the eHAC data that has been exposed currently reaches 1.3 million people.

The case of the leak of 18.5 million BPJS Ketenagakerjaan user data which was sold on the dark forum for IDR 153 million. In an upload on BreachForums, cybercriminal Bjorka leaked 19.5 million data under the name 'BPJS Ketenagakerjaan

Indonesia 19 Million'. He also shared 100 thousand samples containing NIK, full name, date of birth, address, mobile number, email address, type of job and company name (UPN, 2022).

In May 2023, Bank Syariah Indonesia (BSI) data was suspected of being leaked. At that time, the Founder of Ethical Hacker Indonesia Teguh Aprianto revealed that BSI was the victim of a cyber attack in the form of extortion alias ransomware by hackers LockBit. The total data stolen reached 1.5 TB, including 15 million user data and passwords for internal access and its services, as well as customer personal data and loan information (CNN Indonesia, 2023).

Law of the Republic of Indonesia Number 27 of 2022 concerning Protection of Personal Data, there are two types of sanctions for violators of personal data. The first type, for controllers or processors of personal data if they violate the provisions of Law of the Republic of Indonesia Number 27 of 2022 concerning Protection of Personal Data. Among them, not processing personal data according to its purpose and not preventing unauthorized data access.

Imposition of compensation on Personal Data Subjects due to failure of personal data protection by Personal Data Controllers in Indonesia is still a problem because there is incomplete law in Article 12 of the Personal Data Protection Law. This results in uncertainty in the aspect of law enforcement in terms of imposing compensation when there is a failure of personal data protection. Until now, Personal Data Protection has not specifically regulated the imposition of compensation due to failure of personal data protection. That's why, The problem above are further organized into research with the following main problem:

1. What are the weaknesses of the Criminal Sanctions System Regulation For Personal Data Protection in Indonesia Currently?
2. How is the reconstruction of the Criminal Sanctions System Regulation For Personal Data Protection based on the value of justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Criminal Sanctions System Regulation for Personal Data Protection in Indonesia Currently

Currently, the debate about the ideal form of the PDP Supervisory Agency is still ongoing. On the one hand, the Government still wants the supervision of personal data protection to continue to be managed by the Ministry of Communication and Information. However, from another perspective, several legal experts have argued that if the PDP Agency is under the auspices of the ministry, there is a potential conflict of interest because Law No. 27 of 2022 categorizes the Ministry as a public entity that is one of the subjects of personal data protection. This includes executive, legislative, and judicial institutions. In other words, it is difficult to maintain the independence of the PDP Agency if this institution is bound to the Ministry of Communication and Information, because it will supervise the same entity (Widodo, 2018). This is contrary to the principle of *nemo iudex in causa sua*, which indicates that a person should not supervise himself, and can create a potential conflict of interest. The author is of the view that to avoid a conflict of interest, the PDP Supervisory Agency must operate independently. The term 'independent' listed in the Big Indonesian Dictionary has two interpretations, namely 'stand alone' and 'not tied to another party'. According to the definition in Black's Law Dictionary, the word 'independent' can be interpreted as not dependent, not bound by control, restrictions, modifications, or restrictions on resources originating

from outside (Widodo, 2019). Metia Winati Muchda (2014), are of the view that what is meant by 'independent' is a situation and condition where no person or party can bind another party and is free from the involvement of certain parties. Thus, independent can be concluded as a situation where a certain party is not affiliated and is free from all intervention and influence from any party. Law Number 27 of 2022 concerning Personal Data Protection (PDP) is a legal consequence of the Indonesian government's ratification of four international conventions, namely the Universal Declaration on Human Rights; Article 12; International Covenant on Civil and Political Rights: Article 17; Convention on the Rights of the Child: Article 16; and the International Convention on the Protection of All Migrant Workers and Members of Their Families: Article 14. The state's obligation to implement the contents of the agreement, both mandatory obligations and non-mandatory obligations with all legal consequences thereof.

One of the main obstacles in the implementation of the PDP Law is the absence of more detailed implementing regulations. Without a PP that regulates the details of its implementation, interpretation and enforcement of this Law can be difficult. A clear PP is needed to fill the gaps in the law and provide more concrete guidance in addressing emerging issues.

Then, the Applicability for parties outside Indonesia has the potential to be difficult to implement in accordance with Article 2 of Law No. 27 of 2022 concerning Personal Data Protection, because the mechanism for lawsuits by data subjects who are violated is not easy. This is because the development of information technology tends to be preceded by parties outside Indonesia and the absence of criteria for parties processing personal data that are excluded such as personal or household activities.

The personal data type section in Article 4 of Law No. 27 of 2022 concerning Personal Data Protection has the potential for the use of general personal data that has a high risk impact. For example, the use of the mother's name, date of birth to identify someone in the banking sector. The lack of definition of several types of specific data such as sexual orientation and political views in this case will potentially open up space for data misuse to discriminate against certain minority groups.

Inequality' of the formulation of sanctions that can be applied to the public sector and the private sector, when committing violations of the Personal Data Protection Law is considered unbalanced in imposing sanctions on public institutions or corporations that violate the rules for collecting, managing, and processing personal data. The PDP Law stipulates that if the violation is committed by a public institution, only administrative sanctions may be imposed (Article 57 paragraph (2)). Meanwhile, in the private sector, in

addition to being subject to administrative sanctions, they can also be threatened with administrative fines of up to 2 percent of total annual income (Article 57 paragraph (3)), and can even be subject to criminal penalties in the form of fines referring to Articles 67, 68, 69, 70. With this formulation, although it is stated that this law is binding on the public and private sectors, in the same capacity as data controllers/processors. However, in its application, it will be sharper on corporations, blunter on public bodies.

Furthermore, Article 57 paragraph (2) of the PDP Law states that administrative sanctions as referred to in paragraph (1) are in the form of: written warnings; temporary suspension of Personal Data processing activities; deletion or destruction of Personal Data; and/or administrative fines. Administrative sanctions in the form of administrative fines as referred to in paragraph (2) letter d are a maximum of 2 percent of annual income or annual receipts for violation variables, as stated in Paragraph (3) of Article 57 of the PDP Law. Paragraph (4) of Article 57 states that the imposition of administrative sanctions as referred to in paragraph (2) is given by the institution. Meanwhile, Paragraph (5) of Article 57 of the PDP Law states that further provisions regarding the procedures for imposing administrative sanctions as referred to in paragraph (3) are regulated in Government Regulations. Then in Article 72 paragraph (1) of the PDP Law it is stated that the confiscation and auction of assets or income as referred to in Article 71 paragraph (4) are carried out against convicted corporations and are not sufficient to pay off the criminal fine, the corporation is subject to a substitute penalty in the form of freezing part or all of the corporation's business activities for a maximum period of 5 (five) years. Then in Article 72 paragraph (2) it reads: The duration of the freezing of part or all of the corporation's business activities as referred to in paragraph (1) which is determined by the judge, is stated in the court decision. In addition, corporations that are proven to have violated the principle of personal data protection can also be subject to additional penalties in the form of compensation payments, in accordance with Article 73 of the PDP Law. The substance of the Republic of Indonesia Law Number 27 of 2022 concerning Personal Data Protection regarding the formulation of unequal sanctions between the public and private sectors when committing violations. He said, for the public sector that commits violations, it is only possible to be subject to administrative sanctions as stated in Article 57 paragraph (2) which reads, administrative sanctions as referred to in paragraph (1). Meanwhile, for the private sector, in addition to being subject to administrative sanctions, they can also be threatened with administrative fines of up to 2 percent of the total annual income as regulated in Article 57 paragraph 3. In fact, referring to Articles 67-70, criminal penalties can be imposed. Although it is stated that Law of the Republic of Indonesia Number 27 of 2022 concerning Personal Data Protection is binding on the public and private sectors, in the same capacity as

data controllers/processors, in its application, it will be stricter on corporations, and less on public bodies so that its enforcement becomes questionable (Widjajanti, 2024).

2. Reconstruction of the Criminal Sanctions System Regulation for Personal Data Protection Based on the Value of Justice

Protection of Personal Data is part of respect for the right to privacy (the right of privacy) must begin with providing legal certainty. Therefore, guarantees for the protection of Personal Data must be contained in a legal instrument that has the highest power, namely the constitution and the legal instrument must be firm in order to provide explicit protection to the community. Legal certainty must be maintained for the sake of the security and order of a country and ultimately positive law must always be obeyed.

Based on the description above, the values of justice in carrying out legal protection of Personal Data must be a regulation that is firm so that the community can feel their rights are protected. The absence of a clear form of legal certainty against the misuse of personal data will have an impact on the welfare of the community.

The imposition of compensation on Personal Data Subjects due to the failure of personal data protection by Personal Data Controllers in Indonesia is still a problem because there is incomplete law in Article 12 of the Personal Data Protection Law. This results in uncertainty in the aspect of law enforcement in terms of imposing compensation when there is a failure to protect personal data. Until now, Personal Data Protection has not specifically regulated the imposition of compensation due to the failure to protect personal data.

In the reconstruction basis, the author applies the progressive legal theory of Satjipto Raharjo. The idea of progressive law actually originated from Sartjipto Rahardjo's concern for the development of law in Indonesia. In D.H.M. Mauwissen's view, legal development is related to theoretical and practical aspects. Of course, legal development must be seen from these two aspects. In legal development, theoretical and practical aspects certainly cannot be separated. However, the corruption and old-fashionedness of legal development in Indonesia have actually been acute. Even though the reform movement was emphasized in the 1990s, the reform movement only "cut branches" and failed to make a "paradigmatic change" to the "roots" that were still spreading. The root of the legal corruption is the corrupt mentality and unprofessionalism of law enforcers. The law is then placed only as a "tool" that can be played by those in power. Based on the above, the reconstruction of regulations based on justice values proposed by the author is in Law Number 27 of 2022 concerning Personal Data Protection which includes protection of citizens' privacy rights, increasing legal

awareness, guaranteeing fair public services, preventing data exploitation by foreign parties, and the growth of the information technology industry. In addition, the legal norms of Articles 67 and 68 are revised with clearer criminal provisions, such as the threat of imprisonment of up to 6 years and a maximum fine of IDR 6 billion for violations such as collecting, disclosing, using, or falsifying personal data. In each case of violation, the judge is obliged to determine the amount of compensation to be paid to the victim.

CONCLUSION

1. The weaknesses of the regulation of the criminal sanctions system for personal data protection that are not yet based on the values of justice are divided into three main aspects. First, the weakness of the legal structure which includes the absence of a personal data protection institution, the weakness of the data encryption system by data controllers, and the lack of competent human resources. Second, the weakness of the legal substance such as the absence of Implementing Regulations (PP), the difficulty of implementing sanctions for violators abroad, the unclear definition of several types of specific data, and the inequality of sanctions for the public and private sectors. Third, the weakness of the legal culture, where the low digital literacy of the community causes a lack of understanding of the importance of personal data protection.
2. The reconstruction of regulations based on the values of justice in Law Number 27 of 2022 concerning Personal Data Protection includes the protection of citizens' privacy rights, increasing legal awareness, guaranteeing fair public services, preventing data exploitation by foreign parties, and the growth of the information technology industry. In addition, the legal norms of Articles 67 and 68 are revised with clearer criminal provisions, such as the threat of imprisonment of up to 6 years and a maximum fine of IDR 6 billion for violations such as the collection, disclosure, use, or falsification of personal data. In each case of violation, the judge is obliged to determine the amount of compensation that must be paid to the victim.

REFERENCES

- CNN Indonesia. (2023). *Ransomware Lockbit 3.0 klaim lumpuhkan BSI dan curi data pengguna*. taken from <https://www.cnnindonesia.com/teknologi/20230513093401-185-949046/ransomware-lockbit-30-klaim-lumpuhkan-bsi-dan-curi-data-pengguna> on 20 January 2024.
- Faisal. (2010). *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, p.56.
- Galang Windi Pratama, T., Puzikov, R., Lantsov, S., Ponkratov, V., Khomenko, E., Vatutina, L., & Pessoa, G. H. R. (2024). Developing the Preventing Model of Transnational Crimes in Russia and Indonesia in the Age of Sanctions and Global

- Economic Instability. *Qubahan Academic Journal*, 4(4), 206–224. <https://doi.org/10.48161/qaj.v4n4a1335>
- Muchda, M. W., Bachtiar, M., & Dasrol. (2014). Pengalihan tugas pengaturan dan pengawasan perbankan dari Bank Indonesia kepada Otoritas Jasa Keuangan berdasarkan Undang-Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan. *Jurnal Ekonomi*, 22(4), 75–92.
 - Pratama, T. G. W., & Galang, T. (2020). The urgency for implementing crytomnesia on Indonesian copyright law. *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514. DOI:10.36348/sjhss.2020.v05i10.001.
 - Pratama, T. G. W. (2022). Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan. *Widya Pranata Hukum*, 4(1), 65-83. DOI: <https://doi.org/10.37631/widyapranata.v4i1.583>
 - Universitas Pendidikan Nasional. (2022). *Geger serangan hacker Bjorka, ingatkan kita pentingnya menjaga keamanan data pribadi*. taken from <https://undiknas.ac.id/2022/09/geger-serangan-hacker-bjorka-ingatkan-kita-pentingnya-menjaga-keamanan-data-pribadi/> on 20 January 2024.
 - Widodo, W., Budoyo, S., & Pratama, T. G. W. (2018). The role of law politics on creating good governance and clean governance for a free-corruption Indonesia in 2030. *The Social Sciences*, 13, 1307-1311.
 - Wahyu, W., & Toebagus, G. (2019). *Poverty, Evictions and Development: Efforts To Build Social Welfare Through The Concept Of Welfare State In Indonesia*, 3rd International Conference On Globalization Of Law And Local Wisdom (Icglow 2019). Dx.Doi.Org/10.2991/Icglow-19.2019.65
 - Widjajanti, E., Hummerson, A. W., Multiwijaya, V. R., & Alfianto, D. (2024). Personal Data Protection According to the Implemented Law in Indonesia and Japan. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 23(3), 2258-2272. Doi: 10.31941/pj.v23i3.4340.