

INDONESIA PERSONAL DATA PROTECTION LAW - A MOVE TOWARDS INTERNATIONAL BEST PRACTICES

The long-awaited Personal Data Protection Law (“PDP Law”) was enacted on 17 October 2022. Considered as an “umbrella law,” the PDP Law applies to all sectors – a milestone in the progress of personal data protection in Indonesia. While not as comprehensive as the General Data Protection Regulation (the “GDPR”), the principles of this law are intended to be consistent with international practices.¹

Scope of the PDP Law

The PDP Law applies to individuals, corporations, public agencies, and international organizations that conduct activities in Indonesia or outside Indonesia, in ways that have impacts within Indonesia, or upon personal data subjects of Indonesian citizens outside Indonesia, and carry out data processing not for personal or household purposes.² The PDP Law applies if the entity is classified as either a Controller or a Processor or both.³ An entity is a Controller if it has control over the processing data.⁴ An entity is a Processor if it processes any data for a Controller.⁵ The persons whose personal data is processed is classified as a Subject.⁶

¹ Page 130 of the travaux preparatoires of PDP Law.

² PDP Law, Art. 2(1) and Art. 2(2).

³ *Ibid.*, Art. 1.4, Art 1.5, and Art. 74.

⁴ *Ibid.*, Art. 1.4.

⁵ *Ibid.*, Art. 1.5.

⁶ *Ibid.*, Art. 1.6.

Key Issues:

- PDP Law was enacted on 17 October 2022.

Applicability:

- While this law applies in Indonesia, also note that this law is also applicable to foreign companies if they carry legal activities with impact within Indonesia or upon Indonesian citizen living in foreign countries.

Data Protection Officers:

- Appointing Data Protection Officers is mandatory in certain cases.

Personal Data Protection Commission:

- The Government will

Key provisions

Standard Operating Procedure

Entities classified as a Controller must protect and ensure the security of the processed personal data.⁷ In doing so, the entity must:

1. Prepare and implement operational technical measures to protect Personal Data from disruption that contradicts the laws;⁸
2. Determine the security level of personal data by considering the nature and risks of personal data that must be protected in the course of personal data processing.⁹

Entities Performing Merger, Spin-off, Acquisition, Consolidation, and Dissolution

A Controller who performs merger, spin-off, acquisition, consolidation, or dissolution must notify the Subjects of personal data transfer before and after the merger, spin-off, acquisition, consolidation, or dissolution.¹⁰

When a Controller in the form of a legal entity dissolves or is dissolved, the storage, transfer, deletion, or destruction of Personal Data must be carried out in accordance with the laws, and must be notified to the Subject.¹¹ Further provisions on the notification procedures will be regulated in an implementing regulation.¹²

⁷ *Ibid.*, Art. 35.

⁸ *Ibid.*, Art. 35a.

⁹ *Ibid.*, Art. 35b.

¹⁰ *Ibid.*, Art. 48(1) and Art. 48(2).

¹¹ *Ibid.*, Art. 48(3) and Art. 48(4).

¹² *Ibid.*, Art. 48(5).

establish a Personal Data Protection Commission to implement PDP Law.

Liability:

- Corporate criminal liability is introduced in this law.

Implementing Regulations:

- Several provisions are pending guidance by implementing regulations.

Transition Period:

- Controller and Processor will be granted a period of two years from the enactment of this Law to fully comply with the provisions relating to the processing of personal data.
- Provisions on criminal liability come into force with immediate effect (i.e., no transition period).
- Any other applicable laws on personal data protection including those enacted before this Law still apply.

Appointment of a Data Protection Officer

Entities classified as a Controller or a Processor must appoint a data protection officer if:

1. It processes personal data to benefit public services;¹³
2. The core activities of the Controller have the nature, scope, and purposes that require regular and systematic monitoring of Personal Data on a large scale;¹⁴
3. The core activities of the Controller consist of Personal Data processing on a large scale for specific Personal Data and Personal Data related to crimes.¹⁵

Personal Data Protection Commission

The Government will establish an institution aimed to implement Personal Data Protection in accordance with the provisions of this law.¹⁶ This addition is inspired by existing personal data protection Commissions in foreign countries, for example, Hongkong, Singapore, Malaysia, and South Korea.¹⁷ The institution will have various powers, including coordinating with law enforcement agencies in handling allegations of Personal Data crime, and imposing administrative sanctions on violations conducted by Controller and Processor.¹⁸ Further provisions on this institution are subject to an implementing regulation.¹⁹

¹³ *Ibid.*, Art. 53(1)a.

¹⁴ *Ibid.*, Art. 53(1)b.

¹⁵ *Ibid.*, Art. 53(1)c.

¹⁶ *Ibid.*, Art. 58(1), Art. 58(2), and Art. 58(3).

¹⁷ Pages 68-73 of the travaux préparatoires of PDP Law.

¹⁸ PDP Law, Art. 60.

¹⁹ *Ibid.*, Art. 58(5).

Criminal Provision

Five actions may result in criminal liability if all elements within the corresponding criminal provisions are met: 1. Unlawful acquisition of personal data;²⁰ 2. Unlawful disclosure of personal data;²¹ 3. Unlawful use of personal data;²² 4. Creation of false personal data; and 5. Falsification of personal data.²³

Corporate Criminal Liability

The sentence on crimes conducted by corporations can be imposed on the management, controller, commanding officer, beneficial owner, and the corporation itself.²⁴ A corporation can be sentenced to fines with the maximum value of 10 times the maximum sentence imposed for individual (for a maximum fine of IDR 6 billion, the sentenced fine would be 10 times of this amount – IDR 60 billion or approx. USD 3.9 million).²⁵ Besides the fines, a corporation may be imposed additional sentences in various forms, e.g., seizure of profit or assets obtained from criminal activities, freezing of assets, payment of compensation, revocation of license, and dissolution.²⁶

²⁰ *Ibid.*, Art. 67(1) in relation to Art. 65(1).

²¹ *Ibid.*, Art. 67(2) in relation to Art. 65(2).

²² *Ibid.*, Art. 67(3) in relation to Art. 65(3).

²³ *Ibid.*, Art. 68 in relation to Art. 66.

²⁴ *Ibid.*, Art. 70(1).

²⁵ *Ibid.*, Art. 70(2) dan Art. 70(3).

²⁶ *Ibid.*, Art. 70(4).

Transfer of Personal Data Out from Indonesia

In cases when the data is transferred to a location within the jurisdiction of Indonesia, the PDP Law requires the Controller and Receiver to carry out personal data protection as referred to in the Law,²⁷ including Controller's obligations in personal data processing under Chapter VI of the Law.²⁸ On the other hand, if the receiver is located outside the jurisdiction, the Controller must ensure that the laws of the receivers' country domicile are equal to or higher than those that are regulated under the PDP Law.²⁹ Under Regulation of the Minister of Communications and Informatics No. 20 of 2016, an Electronic System Provider must coordinate with the Ministry of Communications and Informatics before sending personal data outside Indonesia.³⁰ Best practice stipulates coordinating with the Ministry before transferring personal data outside Indonesia. Further implementation on this transfer of data outside Indonesia is pending and will be instrumental given that the implementing institution will possess the authority to assess if the necessary conditions for transfer of personal data outside of Indonesia have been fulfilled.³¹

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²⁷ *Ibid.*, Art. 55(2).

²⁸ *Ibid.*, Ch. VI.

²⁹ *Ibid.*, Art. 56(1) and Art. 56(2).

³⁰ See [Regulation of the Minister of Communications and Informatics No. 20 of 2016](#), Art. 22(1).

³¹ PDP Law, Art. 60(f).

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