
RESEARCH ARTICLE

Protection of Personal Data of BPJS Health Users against Data Leakage

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ABSTRACT

The development of information and communication technology (from now on referred to as ICT) represents changes in human society from time to time. Data leakage is one of the challenges in this development. As a pioneer in implementing public service institutions, the government is challenged to tackle data leakage cases. This study aims to determine the legal relationship between BPJS health and users related to data leakage and mechanisms and to compare various personal data protections in countries with Common Law and Civil Law systems. This study uses qualitative data with a normative juridical method or approach. This study concludes that the public can sue BPJS with administrative efforts to the State Administrative Court, the Prosecutor acts on Personal Data Protection, and the results of the comparison of Personal Data Protection in 2 central legal systems.

KEYWORDS

Personal Data Protection, BPJS, Data Leakage.

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1. Introduction

In 2011, the government launched the Open Indonesia Government (OGI). OGI is a movement that aims to create an open, participatory and innovative government. The government invites the public to pay attention and play an active role in formulating public policies. ¹ "That building public trust in public services carried out by public service providers is an activity that must be carried out in line with the expectations and demands of all citizens and residents regarding improving public services." ²

The term Good Governance is widely discussed when discussing the system of government. Henk Addink argues that Good Governance is a concept used by lawyers, politicians, and society. ³ Good governance is required in a democratic political arena. Good, it has the meaning of values that protect the will of the people, independence, functional aspects, and effective and efficient government. As well as governance (governance) refers to all the mechanisms, processes, and institutions where citizens and community groups express their interests, use legal rights, fulfill obligations and bridge the gaps between them. ⁴ Good governance can be interpreted as harmony between government and society to produce good governance.

The development of information and communication technology (from now on referred to as ICT) represents changes in human society from time to time. In Germany, there is a discussion of "Industry 4.0," a term coined at the 2011 Hannover Fair to describe

¹Johan Kurniawan, "Transformation of Public Participation in Policy Formulation in the Reform Era", <https://setkab.go.id/transformation-participation-public-dalam-perumusan-kebijakan-di-era-reformasi/>, [accessed 06/10 /2022]

²Consideration of Republic of Indonesia Law No. 25 of 2009 concerning Public Service

³Henk Addink, *GOOD GOVERNANCE CONCEPT AND CONTEXT*, (USA: Oxford University Press, 2019), p. 3.

⁴ Cahya Dicky Pratama, "Good Governance: Definition and Principles", <https://www.kompas.com/skola/read/2020/12/18/174244269/good-governance-definition-and-principles>, [accessed on 27/ 9/21]

how this will revolutionize global value chain organizations. By enabling "smart factories," the fourth industrial revolution creates a world where global virtual and physical manufacturing systems cooperate flexibly. This allows absolute customization of products and the creation of new operating models.⁵ This revolution is marked by technological advances in various fields, including artificial intelligence, robotics, blockchain, nanotechnology, quantum computing, biotechnology, the Internet of Things, 3D printing, and unscrewed vehicles.⁶ This has entered into various aspects of life, one of which is in government by combining the development of information and communication technology with government policies. Information and communication technology developed by the government or known as e-government makes it easier for citizens to access government policies so that events planned by the government can run smoothly.⁷ Governments will recognize the opportunities and capabilities that come with ICT capabilities. Information and communication technology development certainly affects many aspects of life, including the health sector. The digitization process in the health sector positively impacts the systematic, organized, simple, and efficient storage of health databases.

The issue of personal data protection is one of the essential issues that has received attention recently. The widespread use of digital platforms is one of the reasons why privacy is so important. In recent years, the whole world, including Indonesia, has been hit by the Covid-19 pandemic caused by the SARS-CoV-2 virus, or Coronavirus. Also, a group of viruses infects the respiratory system.⁸ During the Covid-19 pandemic, changes in the lifestyle of Indonesian people who want to go online are more of a threat to cyberattack efforts.

In a report by the Indonesia Cyber Security Independent Resilience Team (CISRT), the material loss from the leak of 279 million data on members of the Health Social Security Administration Agency (BPJS) reached IDR 600 trillion.⁹ Information and technology experts assess that this is due to the exploited population data resulting from the negligence of the person in charge who issued the loss. Kotz allegedly leaked the data leak on the Raid Forums hacker forum.¹⁰ The data leaked in the hacker forum included, among other things: National Identity Number, National Identity Card (KTP), Telephone Number, email, name, address, and salary.¹¹ Such information falls under cybercrime, which is not a criminal offense. Therefore, an integrated and sustainable policy is needed to manage it.

The right to privacy must be protected to build relationships with others, and a person does not have to tell everything about himself. Certain things are private that only one can know. Privacy is a right that stands alone and does not depend on other rights, but this right will be lost if the person discloses personal matters to the public. Another reason privacy deserves legal protection is that the harm suffered is difficult to assess. The losses incurred are far greater than the physical losses because they have disrupted their personal lives, so the victim must receive compensation if there is a loss suffered. Privacy rights are more sensitive, which can represent these personal rights. Personal rights are sensitive matters relating to personal data or identity. Protecting the right to privacy means protecting the right to freedom of speech. That is, the right to privacy guarantees protection from the threat of fear of doing or not doing something that is a human right.

In the Indonesian state constitution, the 1945 Constitution of the Republic of Indonesia (1945 Constitution), Article 28G states that:

*"Everyone has the right to protection for himself/herself, family, honor, dignity, and property under his control, and has the right to feel safe and protected from threats of fear to do or not do something which is a human right."*¹²

⁵ Klaus Schwab, *The Fourth Industrial Revolution*, (New York: Crown Business, 2017), p. 16.

⁶ Nurdianita Fonna, *Development of the Industrial Revolution 4.0 in Various Fields*, (Bogor: Guepedia, 2019), p. 11.

⁷ Institute for Research and Community Service, University of Medan Area, "INFORMATION TECHNOLOGY IN THE FIELD OF GOVERNMENT, HOW IMPORTANT?" <https://lp2m.uma.ac.id/2021/11/08/TECHNOLOGY-INFORMATION-DIP-GOVERNMENT-SEBERAPA-PENTINGNYA/>, [accessed 06/10/2022]

⁸ World Health Organisation, "Naming the coronavirus disease (COVID-19) and the virus that causes it" [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) [accessed 09/30/2022]

⁹ CNN Indonesia, "Expert Calls Loss of Population Data Leakage-BPJS IDR 600 T", <https://www.cnnindonesia.com/technology/20210623115637-199-658214/ahli-sebut-kerugian-kebocoran-data-penduduk-bpjs-rp600-t>, [accessed 09/30/2022]

¹⁰ Farid Assifa, "7 Leaking Data Revealed by Raid Forums before being Blocked by Kominfo" "7 Leaked Data Revealed by Raid Forums before being Blocked by Kominfo", <https://www.kompas.com/tren/read/2021/05/22/205006565/7-data-leaked-revealed-raid-forums-before-blocked-kominfo?page=all>, [accessed 06/10/2022]

¹¹ Roy, "Excited! KTP Data Up To HP Numbers Of 279 Million Indonesian Citizens Leaked?", <https://www.cnbcindonesia.com/tech/20210520160626-37-247096/heboh-data-ktp-untung-nomor-hp-279-juta-warga-ri-bocor>, [accessed 06/10/2022]

¹²The 1945 Constitution of the Republic of Indonesia Article 28G.

This article is a mandate that is part of Human Rights (HAM) which is the basis of every Indonesian society that everyone has the right to the protection of their data. The 1945 Constitution of the Republic of Indonesia Article 28G becomes the umbrella for the related regulations.

Data protection is also a fundamental human right. Many countries recognize that data protection is a constitutional right or in the form of "data habeas," namely the right of individuals to protect their data and prove it if the data is found to be inaccurate.¹³ Albania, Armenia, the Philippines, Timor Leste, Colombia, and Argentina are countries with historical and cultural differences that recognize the role of data protection to facilitate democratic processes and ensure constitutional protection.¹⁴

The Personal Data Protection Bill (PDP) has been discussed since 2012 and was drafted in 2016. After being pushed to 2019, the Personal Data Protection Bill (UU PDP) was finally approved for release on January 20, 2022. This Law has an inventory of 371 issues and consists of 16 chapters and 76 chapters. The number of articles in the Personal Data Protection Law has increased by 4 from the government's first proposal at the end of 2019, namely 72 articles.¹⁵ The ratification of this draft law coincides with an increase in the disclosure of citizens' data, which has been troubling recently. This Law guarantees citizens' rights to personal security and encourages public awareness and recognition of the importance of protecting and respecting personal data.

Previously, the protection of personal data in Indonesia was implicitly regulated in several Laws Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). Article 26, paragraph 1 of the ITE Law reads,

"Unless otherwise stipulated by Laws and Regulations, the use of any information via electronic media concerning a person's data must be carried out with the consent of the person concerned."¹⁶

Subject to the above, anyone who believes that a third party violates their right to privacy can file a claim. These rules were later revealed in the Government Regulation concerning the Implementation of Electronic Systems and Transactions Number 82 of 2012 and Government Regulations concerning the Implementation of Electronic Systems and Transactions Number 71 of 2019.

Based on the explanation of the background above, the authors are interested in writing about the Protection of the Personal Data of BPJS Health Users against Data Leaks.

2. Method

Research activities for writing scientific papers. The scientific method describes obtaining information and information used in writing this scientific paper. A scientific writing method is needed for a mature and structured system.

The approach used in this paper is Normative Juridical. Peter Mahmud Marzuki defines Normative Juridicalism as discovering law, legal principles, and legal theories to answer legal questions. [1]The writing of this scientific work uses the library research method using several primary legal study materials: the Data Protection Act and Law Number 11 of 2008 concerning Information and Electronic Transactions and secondary materials in the form of articles, literature, journals, theses, dissertations, and others.

3. Results and Discussion

3.1 Personal Data and Its Protection

Data is personal information if it relates to an individual so that it can be used to identify that individual, namely the data owner. [1]In Indonesia, the concept of personal data is explicitly explained in Chapter I, General Provisions Article 1 Paragraph 1 of the Law on Personal Data Protection, which reads,

"Personal Data is any data about a person, whether identified and/or identifiable separately or combined with other information, either directly or indirectly through electronic and/or non-electronic systems." [2] information is referred to as personal information when it refers to an individual's personal information or can be used to identify an individual. For example, an account number written on paper is data. However, if the account number is included with the owner's name, this will be categorized as personal data.

13Hanifan Niffari, "PROTECTION OF PERSONAL DATA AS PART OF THE HUMAN RIGHT TO PROTECTION OF PERSONAL PERSON (A COMPARATIVE REVIEW WITH LEGISLATION REGULATIONS IN OTHER COUNTRIES)", *Yuridis* Vol. 7 Number 1, June 2020, p 107.

14Graham Greenleaf, 76 Global Data Protection Laws, Privacy Laws & Business Special Report, September 2011.

15Widhia Arum Wibawana, "Contents of the Personal Data Protection Law: Prohibitions, Sanctions and Types of Data", <https://news.detik.com/berita/d-6302589/isi-uu-perlindungan-data-privadi-larangan-sanksi-dan-data-type->, [accessed 23/9/21]

16Law Number 11 of 2008 concerning Information and Electronic Transactions Article 26 Paragraph 1

The Law on Protection of Personal Data Article 3, which regulates the types of personal data, includes:^[3]

"(1) Personal Data consists of:

1. General Personal Data; and Personal Data of a specific nature.
- (2) General Personal Data, as referred to in paragraph (1) letter a, includes:
 1. full name;
 2. gender;
 3. citizenship;
 4. religion; and/or
 5. Personal Data combined to identify an individual.
- (3) Specific Personal Data as referred to in paragraph (1) letter b includes:
 1. health data and information;
 2. biometric data;
 3. genetic data;
 4. life/sexual orientation;
 5. political views;
 6. crime record;
 7. child data;
 8. personal financial data, and/or
 9. other data following the provisions of the legislation."

It is a mandate from the 1945 Constitution concerning Human Rights, which later became the basis of the right to protect the personal data of every citizen. The right to protect personal information develops from the right to respect personal life or privacy. The concept of individual life includes humans as living beings. Thus, the individual is the ultimate owner of the right to the protection of personal data.^[1]

The mandate of these rights is then stated in Chapter IV of the Law on Personal Data Protection as follows: the right to request information regarding clarity of identity, the basis for legal interests, the purpose of requesting and using Personal Data, and the accountability of parties requesting Personal Data to the right to obtain and/or use their Personal Data from the Personal Data Controller.

3.2 BPJS Responsibility For User Data Leaking

The purpose of the state, as stated in the preamble to the 1945 Constitution of the Republic of Indonesia, is to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life and participate in maintaining world order and social justice. The Preamble to the 1945 Constitution of the Republic of Indonesia states that the state aims to promote the general welfare. Following this goal, everything that exists in Indonesia, including humans, Indonesia's natural wealth, culture, and the values of the Indonesian state, must be protected. The Fourth Amendment to the 1945 Constitution of the Republic of Indonesia strengthens this right by building a stable society for the benefit of all citizens.

10. Indonesia is a country that adheres to the concept of a welfare state, meaning that the state is responsible for improving the quality of good public services by developing state policies in various welfare sectors and providing various facilities needed by the community. The concept of social security, in a broad sense, includes all efforts in the field of social welfare to improve the standard of human life in overcoming backwardness, dependence, neglect, and poverty.^[2]
11. In the country's Constitution, the 1945 Constitution of the Republic of Indonesia Article 28H paragraph (3) reads:
12. "Everyone has the right to social security that allows his full development as a dignified human being" ^[3].
13. Furthermore, Henry Campbell Black in Black's Law Dictionary states that
14. "Privilege is an advantage or advantage that a person, company or class has over the common interests of other citizens. Force or extraordinary or extraordinary exceptions. A special right, privilege, exception, power, franchise, or immunity possessed by a person or class not normally possessed by others."¹⁷

The quote explains that social security is a public interest that is the right of citizens and is not a privilege. Social security is a focus for every country as a form of social protection rather than the implementation of the country's goals in promoting the general welfare. Its purpose is to ensure everyone can fulfill their basic needs for a good life. In Indonesia, it is promulgated in the Law of the Republic of Indonesia Number 24 of 2011 concerning the Social Security Administering Body Article 1 Paragraph 1, which reads:

¹⁷ Henry Campbell Black, *Black's Law Dictionary* 6th printing . (Minnesota: West Publishing Co., 1990) , p . 1197 .

"Social Security Administering Body, hereinafter abbreviated as BPJS, is a legal entity established to administer the social security program."^[1]

In administering Social Security, the existing BPJS in Indonesia is divided into two: Health BPJS and Employment BPJS. Both of these programs have different program implementations. Of course, it is adjusted to the common goals of the two providers of the social security program. As the name implies, BPJS Health is a social security program that operates in the health sector to ensure fair and equitable access to health service facilities for the community. Meanwhile, BPJS Employment is a social security program that guarantees the welfare of workers and their families in Indonesia.

In carrying out the intended social security, several things must be considered by the organizers, including:

3.3 Public Servant

Etymologically quoted from the Big Indonesian Dictionary is "a matter or way of serving and facilities provided in connection with the sale and purchase of goods or services."^[2]

In writing (Mazlan, 2019), Syafilie et al. in Pasalong (2013: 6) say that the public is several people who have thoughts, feelings, hopes, attitudes, and actions that are right and good according to this standard.

From the definition above, it can be concluded that public service is the provision of services to the broader community, either provided free of charge or by collecting fees carried out by the government or private parties. In Article 1 point 1 of Law Number 25 of 2009 concerning Public Service, it is explained that public service is as follows: "Public service is an activity or series of activities in the context of fulfilling service needs under statutory regulations for every citizen and resident of goods services, and/or administrative services provided by public service providers"^[3]

Then there are also principles in organizing public services as follows:^[4]

1. Empathy with customers ;
2. Procedural restrictions;
3. Clarity of service procedures
4. Minimizing service requirements,
5. clarity of authority,
6. cost transparency,
7. Certainty of the schedule and duration of service,
8. form minimization,
9. Maximize the validity period of the permit,
10. Clarity of rights and obligations of providers and customers, and
11. Effectiveness of complaint handling.

3.4 Good Governance

Good governance is a concept that includes the steps to reach decisions and how they can be considered together. Governments, citizens, and the private sector agree to govern a country. In Indonesia itself, Good Governance began at the beginning of the reform era, when the government system was reformed at that time, which required a transparent democratic process, so Good Governance became one of the absolute contributions of the New Government reform.^[5]

Sedarmayanti, in his book, suggests that the characteristics or principles developed in good governance are as follows:^[6]

1. Participation Every citizen has the right and obligation to participate in state, government, and community processes, either directly or through legal institutions, to represent their interests. This participation is not only in the implementation phase but during the policy formulation, implementation, evaluation, and use of the results.
2. The rule of law is applied in democracy, national life, and government. One of the conditions for democratic life is the existence of fair and impartial law enforcement. Therefore, the first step in building good governance is to create a solid legal system, be it software, hardware, or human resources that run the system (human hardware).
3. Transparency Openness is one of the characteristics of Good Governance, especially the spirit of the open era and the results of the information revolution. Transparency covers all areas of activity that affect all the needs of society.
4. Responsiveness As a logical consequence of transparency, each group involved in the good governance process must respond to the needs and concerns of each stakeholder.
5. (Consensus Orientation), mediating between different interests to make the best choice for the greater interest regarding policies and procedures.
6. Equity, all citizens have the same rights.

7. Effectiveness and Efficiency, Processes and institutions are designed to meet the most appropriate resource requirements.

Accountability, Decision makers in government, the private sector, and civil society must be accountable to government agencies and stakeholders. This responsibility depends on the organization for matters inside or outside the organization.

In the principle of public service, there is a principle of clarity on the rights and obligations of providers and customers. This principle states that the rights and obligations of all providers and customers must be clearly defined and included in fines and compensation provisions. The rights referred to in public services, as quoted from the Ombudsman page, are: "In public services, the most basic thing is that the community has the right to get quality services under the principles and objectives of the service, to know the truth of the contents of service standards, to supervise the implementation of service standards, to receive responses to complaints submitted, receive advocacy, protection, and/or fulfillment of services." [1] The community, in receiving advocacy and protection, is supported by the principle of the rule of Law in good governance, namely that the legal framework must be fair and impartial, especially human rights law.

It is contained in Article 1 Paragraph 3 of the Personal Data Protection Act, which reads, "The Personal Data Controller is the party that determines the purpose and exercises control over the processing of Personal Data." This article defines BPJS as the controller of Personal Data.

The responsibility of BPJS as controller of personal data is regulated in Article 41 of the Law on Personal Data Protection which reads, "Controllers of Personal Data must be responsible for processing Personal Data and demonstrate their responsibility in fulfilling obligations to implement the principles of protecting Personal Data." [2] This article makes responsibility for Personal Data an obligation of BPJS in its implementation as controller of Personal Data

In the case of BPJS data leakage, written in the Law on Personal Data Protection Article 27 reads, "Personal Data Controllers are required to protect and ensure the security of the Personal Data they process by performing:

"Preparation and implementation of operational and technical steps to protect Personal Data from interference with the processing of Personal Data that is contrary to the provisions of laws and regulations; and determining the level of security of Personal Data by taking into account the nature and risks of Personal Data that must be protected in the processing of Personal Data." [3]

From this article, it can be determined that BPJS Health organizers must protect and ensure the security of Personal Data from BPJS users with the rules set by the legislation.

This is related to the Law on Protection of Personal Data Article 13 confirms that "The owner of the Personal Data has the right to demand and receive compensation for violations of his Personal Data under the provisions of the laws and regulations." [4] This means the public whose Personal Data was leaked (Residential Identification Number, National Identity Card (KTP), Telephone Number, email, name, address, salary) have the right to demand and receive compensation for violations of their Personal Data.

To claim rights in cases of leakage of Personal Data in the BPJS case, the Lawmakers in formulating the Draft Law on Personal Data Protection have formulated related dispute resolutions. Article 56 of the Law on Personal Data Protection states

"(1) The settlement of disputes over the protection of Personal Data is carried out through arbitration, courts, or other alternative dispute resolution institutions under the provisions of the laws and regulations.

(2) The applicable procedural law in dispute resolution and/or court proceedings for the protection of Personal Data, as referred to in paragraph (1), is carried out based on the applicable procedural Law under statutory provisions.

(3) The legal evidence in this Law is:

a. evidence as referred to in the procedural Law; and

b. other evidence is in the form of electronic information and/or documents under laws and regulations.

(4) If it is necessary to protect Personal Data, the trial process is carried out in private." [5]

BPJS is an instrument of public service and is a government program designed to ensure security and social welfare for all. It is contained in Law Number 25 of 2009 concerning Public Services Article 51, which states, "The public can sue the organizers or implementers through state administrative courts if the services provided cause losses in the field of state administration." [6] This article requires that the service provided, if it causes a loss, the community, namely either a person or a legal entity, can take administrative measures. [7]

Considering the 1945 Constitution of the Republic of Indonesia Article 28 G, which states self-protection as a human right (HAM), the Law on Protection of Personal Data Article 56, and Law Number 25 of 2009 concerning Public Services, it can be concluded that the relationship laws that both parties can implement are: The government as the Social Security Administering Body (BPJS) for its negligence in causing losses, can be sued (became the defendant) by the public as the plaintiff who feels aggrieved over the leakage of his Personal Data as a result of arbitration, courts or alternative dispute resolution institutions namely the state administrative court.

3.5 Legal Remedies That Victims Can Take Against Personal Data Leaks

If a data leak occurs in a company's electronic system, the Electronic System Operator (PSE) must acknowledge and notify its users explicitly and personally. This is contained in Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PSTE).

Cases of data leakage often occur in Indonesia. If a data leak occurs, what needs to be questioned first is the credibility of the organization's security system and whether to implement security governance properly or not. In this case, the relevant organization is the main party responsible for the cyber security incident that occurred.

According to the Law on Protection of Personal Data, "the protection of personal data is one of the human rights which is part of personal self-protection, it is necessary to provide a strong legal basis to provide security for personal data, based on the 1945 Constitution of the Republic of Indonesia".

3.6 Legal Protection of Personal Data as Privacy Rights

The right to privacy must be protected because to build a relationship with other people; one does not have to tell everything about himself; certain things are personal that only one's self should know. Someone in his life also needs time to be alone where privacy is needed by someone. Privacy is a right that stands alone and does not depend on other rights, but this right will be lost if the person discloses personal things to the public. Privacy also includes a person's right to have domestic relations, including how someone builds a marriage and fosters his family; other people may not know about this personal relationship, so Warren calls it the right against the word. There is another reason why privacy deserves legal protection, namely because the harm suffered is difficult to assess. The loss is much greater than the physical loss because it has interfered with his personal life, so if there is a loss, the victim must receive compensation.

Privacy, according to Alan Westin, is as follows: "Privacy is the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others"¹⁸ (organizations to decide when, how, and what information about themselves is shared with others).

The constitutional rights regulated in the 1945 Constitution of the Republic of Indonesia include 40 rights of citizens. One of them is the right to personal protection. This right is regulated in Article 28 G Paragraph (1) with the outline that citizens have the right to personal protection, family, honor, dignity, and property under their control. This article assumes that personal rights are property rights. However, with the development of information and communication technology, personal rights should not only be interpreted as property rights. Personal rights should also be privacy rights. Privacy rights are more sensitive, which can represent these personal rights. Personal rights are sensitive matters relating to personal data or a person's identity. The identity starts with an Identity Card (KTP), Driver's License (SIM), Passport, Family Card (KK), Taxpayer Identification Number (NPWP), Account Number, Fingerprint, Characteristics of a person, and so on. Protecting the right to privacy means protecting the right to freedom of speech. That is the right to privacy guarantees protection from the threat of fear of doing or not doing something, which is a human right.¹⁹

3.7 Legal Liability for Data Leak

Civil liability is regulated in Article 26 of the ITE Law, which stipulates that anyone can apply to the court to access personal data without consent. At a minimum, violations regarding Personal Data Protection (KUHP 1365), as well as errors based on the provisions on illegality or negligence (KUHP 1366), can be considered illegal acts submit the responsibility for the electronic system to each electronic system operator (PSE) and must be accountable.²⁰

¹⁸ Siti Yuniarti, 2019, "Legal Protection of Personal Data in Indonesia", *Becoss Journal*, Vol. 1 No.1, Pg. 147-154

¹⁹ Sekaring Ayumeida Kusnadi, Andy Usmina Wijaya, 2021, "Legal Protection of Personal Data as a Privacy Right", *Al Wasath Journal of Law Studies* Volume 2 No. April 1: 9 - 16

²⁰ Public Relations of FHUI, "Legal Responsibility for Leakage of Personal Data By: Edmon Makarim*", <https://law.ui.ac.id/peruntungan-Hukum-terhadap-kebocoran-data-pribadi-oleh-edmon-makarim/>, [accessed 30/09/2022]

If asked who will be responsible for data leakage, then the answer is found in Article 15 of the ITE Law, which reads, "Electronic System Operators must operate Electronic Systems reliably and safely and are responsible for the proper operation of electronic systems".²¹ Government Regulation No.71 of 2019 Article 24 Paragraph (3) states that "In the event of a system failure or disruption that has a serious impact as a result of the actions of other parties on the Electronic System, the Electronic System Operator (PSE) is required to secure Electronic Information and/or Documents Electronically and immediately report at the first opportunity to law enforcement officials and related Ministries or Institutions."²²

However, now in Indonesia, there is a special law that regulates the Protection of Personal Data which was recently approved by the DPR and the President because there is an increasing number of data leaks occurring in today's modern digital era. Article 58 Paragraph (1) of the Law on Personal Data Protection states that "The government has a role in realizing the implementation of Personal Data Protection under the provisions of this Law".²³ As well as Article 59 Paragraph (1) states that "In the interest of the public and/or national interest, the prosecutor's office as a state attorney has the authority to act for and on behalf of the state or government for violations of Personal Data Protection both committed domestically and abroad".²⁴

3.8 Comparison Of Policies Regarding The Protection Of Personal Data Between Indonesia And Other Countries

With the advancement of information and technology in this era, it is used for people who can collect personal information. Public awareness of the protection of personal information, such as privacy, is the duty of the government to provide equal and uniform advice or education to every community. Because if privacy is not maintained, it can endanger life and the ecosystem. Of course, as a legal order, Indonesia must not only provide education but also provide legal protection to its citizens based on Pancasila.

Personal data itself is something that is inherent in everyone and is something private in nature. Personal data is something that must be protected because it is everyone's right to privacy. Data is included as personal data if the data relates to a person so that it can be used to identify that person, namely the owner of the data.²⁵ Entities protected in the personal data protection mechanism are natural persons, not legal persons.²⁶

Even though the Regulation on Protection of Personal Data in the Electronic System of the Ministry of Communication and Informatics of the Republic of Indonesia Number 2016, in this case, the exercise of the right to privacy is not privacy only adequately protected by ministerial regulations, because ministerial regulations cannot legally regulate data collection activities.

3.8.1 Personal Data Protection Policy In Anglo-Saxon Countries (Common Law Systems)

The Common Law legal system was introduced and developed in England in the 16th century, supported by geography and ongoing political and social developments. This legal system spread rapidly outside Britain, including in Canada, the United States, and other former British colonies. (Britain).²⁷ The highest source of law in the Common Law system is the experience of people formed in court/transformed into court decisions. This source of customary law makes this legal system a common law or unwritten legal system.

In the UK itself, in terms of protection of personal data, the UK will not disclose or provide data in their possession to other countries for any purpose, even in a lawful manner before the law, if the country does not have laws that specifically regulate the protection of personal data. In the UK, the rules regarding the protection of personal data are contained in the data protection law 1998 (The Data Protection Act 1998). In the law, it is explained that there is an implementing agency, namely The Data Protection Commissioner, which is authorized to supervise all data users who control personal data. Meanwhile, in Indonesia, the commissioner body authorized to monitor personal data is not regulated by any law.

²¹ ITE Law Article 15

²² Government Regulation no. 71 of 2019 Article 24 Paragraph (3)

²³ Draft Law on Personal Data Protection Article 58

²⁴ Draft Law on Personal Data Protection Article 59

²⁵ *European Union Agency for Fundamental Rights and Council of Europe, Handbook on European Data Protection Law, (Belgium, 2014)* , p. 36 .

²⁶ Regarding the term "legal entity", Article 1653 of the Indonesian Civil Code states: "Apart from true civil companies, associations of persons as legal entities are also recognized by law, whether the legal entity was established by public authority or recognized as such, whether in addition, the legal entity is accepted as permissible or has been established for a specific purpose which is not contrary to law or decency .

²⁷ *Peter de Cruz, Comparative Law in a Changing World, Cavendish Publishing Limited, London-Sydney, 1999*, p . 37 .

In addition, the protection of individual privacy rights is also described in the provisions of the Data Protection Act 1998, which allows data subjects to obtain information about the processing of their data and to prevent certain types of data processing from taking place if it is deemed to be harmful to their interests.²⁸

Protection of personal data in the UK is very strong and strict; this law even prohibits personal data from being transferred to countries outside Europe unless the country concerned can guarantee the same data protection. Meanwhile, the Indonesian government has so far not made a point of transferring data to other countries one of the important things to discuss, even though this is very important in responding to challenges and opportunities in the current digital era, which is even broad in scope at the international transaction level.

Apart from the United Kingdom, Indonesia's neighboring country, namely Malaysia, also adheres to the common law system. Malaysia has, earlier than Indonesia, regulated the protection of personal data in the form of a separate law.²⁹ This is regulated by Malaysia in the Personal Data Protection Act (PDPA) 2010, which was passed in May 2010 by the Malaysian Parliament. This regulation aims to regulate the processing of personal data by data users in the context of commercial transactions, to safeguard the interests of the data subject concerned it _ This can be realized by ensuring that the consent of the data subject is obtained before processing personal data, as well as granting the right to access data and also control the processing of their data.

PDPA 2010 is structured as a law that can protect personal data by complying with several personal data protection principles that are modified and changed to suit the needs and circumstances that exist in Malaysia.³⁰ PDPA also stipulates that no transfer of personal data outside Malaysia can be carried out except in a place approved by the Minister of Information, Culture, and Communication. Then the destination country for the transfer of personal data must have an adequate level of protection, at least equivalent to the level of protection provided by PDPA Malaysia.³¹

3.8.2 Personal Data Protection Policy In Continental European Countries (Civil Law Systems)

Roman law was the forerunner of the legal system of continental Europe, and although Roman law was the soul of the legal system of continental Europe, the influence of Roman law was also strongly felt in the development of the Anglo-Saxon legal system. The legal system of Continental Europe uses the law as the main source of law.³² Although based on written laws passed by the legislature, in some countries that follow this legal system, they are complementary to existing decisions but are sometimes used as a reference source of law.

The concept of German personal data regulations starts first with the protection of personal data in the European Union because Germany is a member of the European Union and is therefore obliged to follow its regulations. The German Constitutional Court in 1983 established the right of citizens to use personal data freely and defined personal data privacy as a citizen's right. Article 2 (a) in the Data Protection Directive states, "any information relating to an identified or identifiable natural person ('data subject'); an identifiable person can be identified, directly or indirectly, in particular by reference to an identification number or one or more specific factors to his physical, physiological, mental, economic, cultural or social identity". (any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is a person who can be identified, directly or indirectly, in particular by reference to an identification number or one or more specific factors to physical, physiological, mental, economic, cultural or social identity).³³ The data is divided into sensitive and non-sensitive data. Sensitive data is defined as data that is entitled to the strongest possible legal protection, and such policies must be provided in writing.³⁴

In implementing and supervising the protection of personal data, Germany has several parties assigned to the safety and comfort of its people regulated in the GDPR. GDPR is a regulation regarding data protection where users' data may not be used in any form without their permission. The GDPR itself is mandatory for all people around the world who process, store, or otherwise process the personal data of residents of all European Union (EU) countries.³⁵ Personal Data Protection Officers designated under

²⁸Edmon Makarim, *Introduction to Telematics Law (A Compilation of Studies)*, in Radian Adi Nugraha, *Juridical Analysis of Personal Data Protection in Cloud Computing Systems Judging from the Electronic Information and Transaction Law*, University of Indonesia, 2012, p. 50.

²⁹Zuryati Mohamed Yusoff, *The Malaysian Personal Data Protection Act 2010: A Legislation Note*, *New Zealand Journal of Public and International Law*, Vol. 9, No. 1, 2011, p. 6.

³⁰*Ibid*, p. 6.

³¹*Ibid*, p. 6.

³²Munir Fuady, *Comparative Legal Studies*, (PT. Refika Aditama : Bandung , 2007) , p . 32 .

³³ *European Union Agency for Fundamental Rights and Council of Europe* , Article 2

³⁴ Namrysilia Buti Anjawai, F. Yudhi Priyo Amboro, Rufinus Hotmaulana Hutauruk , "Comparison of Legal Protection Related to Personal Data in Indonesia and Germany", *Al-Manhaj: Journal of Islamic Law and Social Institutions*, Vol. 4, 2, December, 2022, p. 213.

³⁵Mirza M. Haikal, " What is the General Data Protection Regulation (GDPR)? Should You Worry?", [What is GDPR? Should You Worry?](https://niagahoster.co.id), niagahoster.co.id, [accessed on 30/09/2022]

GDPR rules as controllers for data processing activities with the following qualifications; (a) Public authorities; (b) core activities such as processing operations tailored to their nature and purposes requiring subject monitoring and (c) oversight of processing of sensitive data. Of course, in the selection of duties, the requirements must be strict and determined by official bodies. Therefore, anyone who works as a Personal Data Protection Officer cannot be dismissed or punished for fulfilling their duties (Europe, 2016).

In Indonesia, there is no national data protection authority for private data. For example, the Indonesian Financial Services Authority has the authority to be a data privacy regulator in the capital market sector and is always related to issues of personal data of bank customers. However, Government Regulation No. 82 of 2012 article 65 states that business actors who carry out electronic transactions can be certified by a Reliability Certification Agency from within the national and international levels. However, the institution in question does not yet exist in Indonesia.

5. Conclusion

Based on the results and discussion as described above, several conclusions can be drawn. The existence of this principle states that the rights and obligations of all providers and customers are related to the principles of the rule of law in the principles of Good Governance. The government, as the Social Security Administration Agency, hereinafter defined as the Personal Data Controller, holds full responsibility for the data that is managed and processed. People who have the right to protect their data have the right to sue BPJS at the State Administrative Court. Prosecutors acting on violations of Personal Data Protection and policies in Common Law countries, in this case, England, do not have laws that specifically regulate personal data protection but have an implementing body to protect privacy rights and countries that adhere to Civil Law in this case Germany has rules regarding the privacy of personal data and these data are protected strictly and in writing.

5.1 Suggestion

The government, as a provider of public services, especially BPJS Kesehatan, must be more careful in responding to information technology developments and social developments in formulating and implementing laws and regulations in Indonesia. What is important, technology and data protection are efficient, timely, and right on target. Most Indonesian citizens should know how to protect themselves against their data. Educate those around them about the careful use of social media and the internet without disclosing personal information/data.

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