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# Personal Data Protection Law in Indonesia: Institutional Challenges

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## ABSTRACT

*More than six months after the country passed the Personal Data Protection Law, the architecture of the institution that handles personal data protection in Indonesia is still a big question. This Law not only regulates the rights and obligations of interested parties, but also puts pressure on the President to form a special institution that takes care of the implementation of personal data protection. At the same time, leakage of personal data continues to occur, both in government agencies and in business entities. In fact, personal data is information that is excluded from disclosure. This paper maps out the institutional challenges faced by Indonesia as one of the largest internet user countries in the world. This paper focuses on (i) a general overview of government institution in Indonesia; (ii) personal data protection organization; and (iii) challenges faced by personal data protection institutions in Indonesia. The research was conducted with qualitative methods through data collection of literature studies and electronic data tracking. The data collected from official websites of the Indonesian Government, mass media, social media, and any documents. To analyze field findings, this study uses the process of tracing method. The findings in this study indicate that there are six challenges found: aspects of the institution's standing, institutional form and structure, implementation of authority, preparation of infrastructure and institutional support facilities, accountability and supervision, and human resource recruitment and systems.*

**Keywords:** *Institutional challenges, Personal data protection; Personal Data Protection Law; Privacy.*

## I. INTRODUCTION

The enactment of the Personal Data Protection Law (PDP Law) on 17 October 2022 was enthusiastically welcomed by many parties who have been advocating for it for years. At the same time, the Personal Data Protection Act still gives homework to the government to form an institution tasked with protecting personal data. Until this article was written, more than six months after the PDP Law was promulgated, the form, structure, authority, and appearance of

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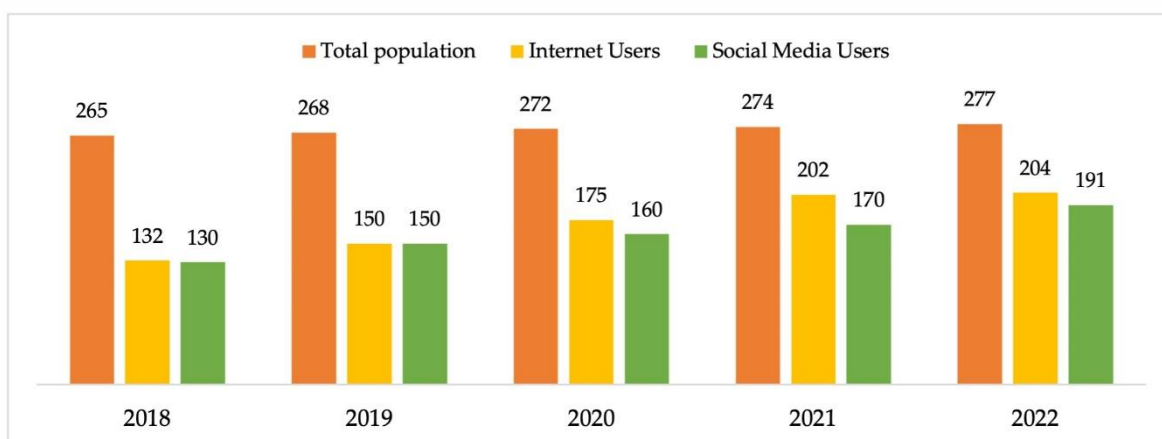
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this institution were still a mystery. It is possible for the government to form a new institution, or attach that authority to an existing one, but the challenges are certainly not simple.

On the one hand, the government wants to simplify the number of state auxiliary institutions, but on the other hand, legislators introduce new institutions that are in line with the needs and demands of the welfare state. The development of new needs after the Industrial Revolution 4.0, followed by 5.0, had a major impact on society, including risks to privacy, and the impact on governance is also unavoidable.

Digitalization is an unavoidable governance requirement currently. Tapsell argues that digitization enables widespread use of participatory media platforms, enabling citizens to formulate and distribute all kinds of messages individually and collectively. These messages sometimes confront or challenge elite forces. The case of Indonesia is very appropriate to examine how digital media has an impact on power relations. (Tapsell, 2017) The impact is not only on power relations, but also on citizens' privacy when the data is managed by the government and collected by business entities.

The emergence of the digital economy, big data, internet of things, robotics, cloud systems, all of which are technology-based activities are considered to make it easier for humans. Society 5.0 has goals and targets to create a balance between the roles of society in the proper use of technology. Through the role of humans and society as the main components, this concept will create technological developments that can alleviate the gap between humans and technology. One of the most visible emerge is the development of the use of the internet and mass media in Indonesia. To date, Hootsuite (We are Social) 2022 data shows that 204.7 million Indonesians use the internet and 93.5 percent of them are active as social media users. Whereas in early 2016 (beginning of the industry 4.0 era), there were only 88.1 million internet users. This figure is an increase of about 15 percent compared to 2015. Of this figure 79 million active users on social media.



Source: reprocessed from Hootsuite (We are Social) 2022

### Graph 1 - Comparison of Population, Number of Internet Users, and Number of Indonesian Social Media Users 2018-2022

This situation has had a positive impact, including growth in economic transactions. The Ministry of Communication and Informatics said the positive trend of digital economic development is also in line with investment developments. The results of a study by Google, Temasek, Bain & Company (2021) show that the investment value of Indonesia's digital economy during Q1-2021 was 4.7 billion USD and has exceeded the highest value for the last four years. This achievement makes Indonesia the most popular investment destination in Southeast Asia, surpassing Singapore. Capitalism, as Zuboff (2019) refers to, is unavoidable. This capitalism arises because of digital technology. Digital technologies can take many forms and have many effects, depending on the social and economic logics that bring them to life. The economic orientation is the puppet master; technology is the puppet. Zuboff mentioned that in 2009 the public first became aware that Google maintains search histories indefinitely. Behavioral data that was once discarded will never be lost because the digital track record remains. This can then lead to the exploitation of detailed consumer profiles of complete or partial personal information as the main element of many political-economic activities. In the end it can create personal data leaks and even then, be used for malicious deeds in cyberspace. (Zuboff, 2019)

On the other hand, this situation also gave rise to personal data leaks, some of which came from government agencies. In May 2020, 2.3 million population data of Indonesian citizens in the Final Voter List for the 2014 Election were shared on the hacker community forum. Then, in early July 2021, as many as 279 million Indonesian population data were sold in the online forum "Raid Forums", which came from 1.3 million e-HAC (electronic Health Alert) users. Furthermore, in January 2022 there was a computer leak in 200 Bank Indonesia computers in 20 cities. A total of more than 52 thousand documents were hacked. The last case in 2022, 1.3 million personal data hacked by Bjorka. This data comes from SIM card registration carried out by the Ministry of Communication and Informatics, in fact 2 million of them were sampled as evidence that the data had indeed been obtained by Bjorka and threatened to be sold on the Breached Forum website. Data leaks also occurred at state officials, including the President. The state electricity company, several hospitals in Indonesia, and private companies such as BRI Life, IndiHome and Tokopedia also have similar experience.

Cybercrime is also increasing in number. According to data from the Badan Siber dan Sandi Negara (BSSN) or Cyber State Agency, a total of 714,170,967 traffic anomalies or cyberattacks occurred throughout 2022, with the highest number of attacks occurring in January with 272,962,734 attacks. More than 30% of total attacks during the first half of 2022. The most common types of cyber-attacks are ransomware attacks or malware attacks aimed at demanding ransom from data owners.

The conditions above then prompted the creation of the PDP Law. The Law has been approved by parliament to be promulgated on September 20, 2022. This law serves to guarantee the right of citizens to personal protection and raise public awareness as well as guaranteed recognition and respect for the importance of protecting personal data. It is expected to become a strong legal basis for the management and protection of personal data of citizens and government administrators. The emergence of the PDP Law complements and clarifies the provisions for the protection of regulated privacy information in Freedom of Information Act.

Personal data protection (PDP) cannot be separated from citizens' rights to public information. There is a global development in recognition of access to information as an effort to encourage good governance (Acharya, 2022), but there is a need to protect personal data from the possibility of illegal disclosure or unauthorized disclosure, for example, related to the protection of people living with HIV/AIDS (Ranjan, 2022) and the challenge of disclosing personal data by the mass media. (Yadav, 2022).

Related to the PDP, in Indonesia, there are several studies that have been conducted on it. Mangku et al mention that the concept of personal data protection implies that individuals have the right to determine whether one will join an online community, share, or exchange personal data with another, and the conditions that must be met to do so. The study found that the threat of personal data leakage is increasingly prevalent because of the development of the e-commerce sector in Indonesia. (Mangku et al., 2021) In economics, Nugroho, et. al found the case from the theft of personal data, damage to the system that may allow the occurrence of data breaches, misuse of personal data that has been the business ruled itself, or other parties who may access personal consumer data (such as government). The need to set this up is important because private data is a person's privacy right. Still, it can fundamentally be economically valuable for a third party who is about to take advantage of it. (Nugroho et al., 2020)

In comparative study, Rosadi (2018) conducted a study in the legal aspect and stated that although there are existing laws in the privacy on personal data, however, those legal framework still developed in very sectoral nature. It is submitted that the most suitable regulatory concept

for Indonesia is a combination regulatory concept, or hybrid concept, which protect Indonesian's and foreigner parties' interest privacy on personal data. Rosadi also did comparison between Indonesia and the practice of other ASEAN states is also conducted to determine the most suitable approaches in addressing the protection of personal data. (Rosadi, 2018) Another study conducted by Setiawati, Hakim, dan Yoga (2019) explained that China, South Korea, and Singapore provide good lesson for Indonesia to learn in developing personal data protection regulation. (Setiawati et al., 2019) However, all these studies are mostly on the juridical aspect and were carried out before the ratification of the PDP Law.

Jannah states that there are several challenges that arise in the implementation of the PDP Law, that are how to minimize risks including data storage, sanctions for law violators, institutions, and maximizing collaboration with other parties. (Jannah, 2022) ELSAM also noted several problems that arise in the implementation of the PDP Law, including law enforcement procedures, institutions, inequality in the formulation of sanctions for violators, the risk of over-criminalization, preparation, and formation of various implementing regulations (Wahyudi, 2022)

In substance, the agreed PDP Law has followed the general standards and principles of personal data protection that apply internationally. So, what about the impact of the PDP Law, especially from an institutional perspective. The institutional aspect becomes important because at the same time there is a strong desire from the government to simplify state institutions. This paper focuses on (i) an overview of institutions in Indonesia; (ii) personal data protection organizations; and (iii) challenges faced by personal data protection agencies in Indonesia.

### **(A) Methods**

Qualitative approaches to mixed methods are used in this study. (Creswell, 2014) The type are literature review and electronic data tracking. The data collected from official websites of the Indonesian Government, e.g., [www.kominfo.go.id](http://www.kominfo.go.id), [www.bps.go.id](http://www.bps.go.id), and from mass media, social media, and any documents. To analyze field findings, this study uses the process of tracing method, "a research method for tracing causal mechanisms using detailed, within- case empirical analysis of how a causal process plays out in an actual case. Process tracing can be used both for case studies that aim to gain a greater understanding of the causal dynamics that produced the outcome of a particular historical case and to shed light on generalizable causal mechanisms linking causes and outcomes within a population of causally similar cases. Process tracing can be used both for case studies that aim to gain a greater understanding of the causal dynamics that produced the outcome of a particular historical case and to shed light on

generalizable causal mechanisms linking causes and outcomes within a population of causally similar cases. (Beach, 2017)

## II. RESULT AND DISCUSSION

Before explaining the three focuses of this study are (i) a general overview of institutional in Indonesia; (ii) personal data protection organization; and (iii) the challenges faced by PDP institutions in Indonesia, this article will begin with the concept of PDP.

### (A) Concept of Personal Data Protection

Personal data protection (PDP) is a universal concept and is a human right that is part of the right to privacy. Warren and Brandeis (1964) define the right to privacy as the right to be let alone. This definition is based on two views: personal honor; and values such as individual dignity, autonomy, and personal independence. (Bloustein, 1964). Referring to the European Union, personal data can be defined as *any information that relates to an **identified or identifiable living individual or natural person**. An identifiable person is one who can be identified, directly or indirectly, by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural, or social identity. Different pieces of information, which collected can lead to the identification of a particular person, also constitute personal data.* (What Is Personal Data?, n.d.)

In contrast to Warren and Brandeis, Gavison (1980) sees privacy as a complex concept, in which it consists of three independent and reduced elements, namely: confidentiality, anonymity, and solitude. (Gavison, 1980) The views of European countries differ from the views of the United States in defining PDP. The European group emphasizes the aspect of personal data as part of the protection of personal life, while the United States group emphasizes on personal information and communication to explain the term and scope of privacy. (Djafar, 2019)

In many countries, PDP is regulated in writing in the form of laws or other forms of legal products. Since May 2018, 28 member countries of the European Union (EU) have implemented the General Data Protection Regulation. This number continues to grow in line with the need to protect the data of its citizens. The importance of protecting personal data has also been regulated in the OECD Guideline 1980 on the Protection of Privacy and Transborder Flow of Personal Data, and the APEC Privacy Framework 2004. Countries that have laws on the protection of personal data also notice to institutional aspects. The United States has an enforcement oversight body called the Data Integrity Board; in Australia it is known as the Office of Privacy Commission; in India known Data Protection Authority; and in the Philippines known as the National Privacy Commission.

In Indonesia, the PDP Law function to guarantee the right of citizens to personal protection and raise public awareness as well as guaranteed recognition and respect for the importance of protecting personal data. This law is expected to be a strong legal umbrella for the management and protection of personal data of citizens and government officials. Before this Law was ratified, personal data protection arrangements were spread across several laws and regulations, including Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions, Law Number 39 of 1999 concerning Human Rights, Law Number 14 of 2016 2008 concerning Public Information Disclosure, and Law Number 23 of 2006 in conjunction with Law Number 24 of 2013.

### **(B) Government Institutions in Indonesia**

Binswanger dan Ruttan (1978) states institution usually defined as the set of behavioral rules that govern a particular pattern of section and relationship. An organization is generally seen as a decision-making unit – a family, a firm, a bureau – that exercise control of resources... the concept of institution will include that of organization. (Rajawali Foundation, 2010) Meanwhile, Hodgson states that institutions are the rules of the game, which are referred to as the kinds of structures that matter most in the social realm: they make up the stuff of social life. (Hodgson, 2006)

Regarding institutions in America, Milakovich and Gordon divide commissions or institutions in one country into two groups are dependent regulatory agencies and independent regulatory boards and commissions. The first group is institutions that are part of certain departments in government. This kind of institution is an extension of the state organ. The second group has a collegial leadership pattern, and the members of this institution do not serve what the president wants. (Milakovich & Gordon, 2010)

In the development of state history, theories, and thoughts on the organization of power, state organizations, and government organizations continue to develop. Conventionally, the organization of state power boils down to classical thinking: executive, legislative, and judicial. Executive power is also still relegated to ministerial institutions under the president or prime minister. Indonesia has experienced similar developments since independence until now. In its development for decades, there are institutions that are abolished and there are new institutions that are established. Until the end of the New Order, there were at least 21 non-departmental government institutions and 31 extra-structural institutions that were responsible to the president or related ministers.



After era of Reformasi (1998-now), the number of state institutions or government organizations continued to increase. This development follows the necessity of state and society (Asshiddiqie, 2006) and the complexity of the problems (Mochtar, 2016) faced by the state so that it has implications for variations in the branches of the structure of state institutions. The most common characteristic is the emergence of independent regulatory agencies.

After the amendment to the Indonesian constitution, several institutions have been established such as the Constitutional Court and the Judicial Commission. The law produced after the amendment also encouraged the creation of many new institutions to meet needs in various fields, for example the Information Commission, an institution established to resolve information disputes, including disputes regarding information privacy.

The nomenclature of these bodies varies: some use commissions, committees, bodies, agencies, and councils. The functions of each institution also vary, and sometimes even overlap. This independent institution is not only present at the center but must also be formed in the regions. As a result, the organs of the state or the organs of government administrators become very fat. Asshiddiqie classifies them into (i) equal and independent high state institutions; (ii) state institutions and state commissions that are independent based on the constitution or have constitutional interests; (iii) other independent institutions established by law; (iv) special institutions and commissions within other executive circles that are specific in nature; (v) other executive agencies and committees; (vi) state-owned enterprises, corporations, and legal entities or legal entities established for the benefit of the state or the public interest.

According to Asshiddiqie, the development of independent institutions reflects the necessity to concentrate power from the hands of the bureaucracy or conventional government organs. (Asshiddiqie, 2006) As a result of increasingly complex and complicated development demands, the bureaucratic, centralized, and concentrated power organization can no longer be relied on to achieve the welfare state. In the administration of government emerged policies of deregulation, debureaucratization, privatization, decentralization, and deconcentration. Consequently, the functions of power that are usually attached to the executive, legislative and judicial branches are transferred to a new, independent organ. Sometimes the new institution performs several functions at once. For example, the Corruption Eradication Commission has the authority to investigate and prosecute; or the Business Competition Supervisory Commission which has the functions of investigation, investigation, prosecution, and adjudication functions at the same time.

As a driving force for the running of government, this institution is a determining factor in the success of implementing government programs and policies. Currently, there are 160 non-ministerial institutions, both non-ministerial government institutions (LPNK) and non-structural institutions (LNS). These government institutions consist of ministries, agencies, institutions, commissions, committees, teams, or other names, which are formed with legal instruments, laws, government regulations, presidential regulations/decrees, and ministerial regulations. Until now there is no uniform standard of reference in forming LPNK and LNS.

Referring to Elizabeth, the characteristics of LPNK are 4 nomenclature, namely Coordinating Board/Board, Council/Assembly, Commission/Committee, and Coordination Team/Task Force. Characteristics of LPNK (Elizabeth, 2021). The nature and duties of the ministry vary, namely it is an executive branch that can provide sharpening of the functions of the ministry (Coordination Agency/Board); is an executive branch that provides input/advice to the president (Council/Assembly); is a quasi-executive, legislative, and judicial which has a distinctive and unique function, is technical in nature or born due to global and independent demands (Commission/Committee); or part of the executive duties and functions of the technical executorial and temporary in nature for the acceleration of activities or cross-sectoral (Coordination Team/Task Force). Meanwhile, the classification of LNS can be done with a more flexible approach. This is considering that LNS is independent, oriented to the interests of the community directly, and is outside government institutions. Ideally, for consistency, the naming of the LNS nomenclature should not be the same as the naming of the LPNK. This distinction is important to distinguish which institutions are classified as LPNK, and which institutions are classified as LNS. Given its more flexible and independent nature, it is difficult to determine the name of any institution that can be categorized as LNS.

The large number of state agencies or state institutions in practice often creates efficiency problems because they consume large resources and at the same time have the potential for overlapping main tasks and functions. Not surprisingly, in 2008, for example, the National Institute of Public Administration (LAN) proposed an evaluation and arrangement of state institutions. LAN highlighted, among other things, the relationship between the institutions that were formed, the implications of the formation of new institutions on resource requirements, and the nomenclature of the institutions that were formed.

Referring to the LAN study and other studies, Mochtar (2019) proposes four institutional structuring policies that need to be carried out. *First*, a temporary moratorium on formation, which means that the government should stop the formation of new institutions first while conducting a thorough institutional evaluation. *Second*, the preparation of an institutional

blueprint, so that Indonesia has a strategy and a strategic direction for the future. The institutional blueprint is mainly related to the harmonization of the formation with the goals of the state; agency naming; improvement of recruitment system and mechanism; structuring the types of rules issued to support the institution; system arrangement and employment status; relationship pattern with other institutions; arrangement of representative systems in the regions; the nature of collegiality and collectivity; and monitoring mechanisms. *Third*, strengthening the legal basis for institutional arrangement. *Fourth*, the choice of time for institutional arrangement. (Mochtar, 2016)

President Joko Widodo is undertaking to realize institutional evaluation and arrangement. During the two terms of his regime, no less than 53 institutions were dissolved. The liquidation has been carried out in stages since 2014 with the hope of increasing the effectiveness and efficiency of the implementation of government affairs and to achieve the national development strategic plan. (See Presidential Decree No. 176 of 2014; Presidential Decree No. 16 of 2015; Presidential Regulation No. 116 of 2016; Presidential Decree No. 124 of 2016; Presidential Decree No. 21 of 2017; Presidential Decree No. 82 of 2020; and Presidential Decree No. 112 Year 2020)

The liquidation of state institutions shows the political will of a government. One interesting example highlighted is the ministry. Ministries and ministerial-level officials are very dependent on the President as the holder of government power, so that in practice the number of ministers can swell and may shrink. President Abdurrahman Wahid once liquidated the Ministry of Social Affairs, then revived it during the next presidential term. The Ministry of Trade and the Ministry of Industry were once separated, then merged, but then separated again. The dynamics of the Ministry's regulation have invited a legislative response, so that the Law on State Ministries was born. The formation of the ministry has standard legal instruments and is referred to in the preparation of the cabinet. The current number of ministries is 34, plus several ministerial-level institutions led by ministerial-level officials, including the Attorney General, Cabinet Secretary, Presidential Chief of Staff, and Head of the Research and Innovation Agency. Referring to its function, there are government institutions that are primary or primary, and there are those that are secondary or supporting (state auxiliary organs).

Common symptoms that are often faced by countries that form additional institutions are the issue of accountability mechanisms, their position in the constitutional structure, and the pattern of their working relationships with executive, legislative, and judicial powers. Executive political power must be shared with legislative power which ultimately results in competition. The negative impact is in the form of unclear responsibilities and work patterns of these extra

institutions because their formation is often not based on rational needs and sufficient juridical basis. (Thohari, 2006) This lack of clarity about accountability mechanisms, as Alder argued, is because the provisions governing these institutions create separate mechanisms that are different from one another without logical constitutional instruments. (Alder, 1989)

### **(C) Personal Data Protection Institution in Indonesia**

Article 58 of the Indonesia PDP Law states that the implementation of personal data protection is carried out by an institution, without mentioning the form, structure, and appearance of the institution in question and this institution was formed by and is responsible to the president. Although the president is decisive in designing personal data protection institutions, the tasks of these institutions are not as simple as imagined. Referring to Article 59 of the PDP Law, there are four functions carried out by the personal data protection organization. First, the regulatory function. The institution formulates and establishes policies and strategies for protecting personal data that serve as guidelines for Personal Data Subjects, Personal Data Controllers, and Personal Data Processors. Second, the supervisory function. The institution carries out supervision over the implementation of personal data protection. Third, the function of law enforcement. The institution carries out administrative law enforcement in the event of a violation of the PDP Law. It is important to note that the law enforcement function is only limited to administrative violations. Fourth, facilitating out of court settlement. By reading the duties and authorities of such a large institution, the portrait of this institution in the future is worth waiting for.

From the institutional aspect, it is important to see how expectations have developed and how agreements have been made. Initially, there was great expectation that the PDP Law would immediately confirm the establishment of a personal data protection organization so that its position would be stronger. The discourse in the public sphere then deepens into an institutional form. During the discussion on the formulation of the PDP Law in the public sphere, several forms of institutions were proposed. *First*, the organization is under the ministry, but a special supervisory board is formed. *Second*, an independent institution such as the Corruption Eradication Commission or the Financial Service Authority is established with its own law. *Third*, an independent institution whose form and operations are given to the president. *Fourth*, it is incorporated into the existing state institutions and their relevant functions, such as the Information Commission or the National Human Rights Commission.

Each alternative has its own considerations. If the personal data protection agency is under the ministry in the form of a special supervisory board, it can be referred to as an LPNK which is

equivalent to an institution under other executives. This proposal can create problems because one of the main mandates of the protection policy is to ensure the compliance of other ministries/agencies with the implementation of the PDP Law, as well as to impose sanctions if government institutions commit violations. If it is formed through a separate law and is independent, then this institution has a stronger position, and the scope of its authority is greater. Consequently, the organization will also be large so that it requires large resources as well. Another alternative is to give the President the freedom to form an institution that takes care of the protection of personal data. Different from the second proposal, the establishment of an institution by the president indicates that the institution is under the executive branch. Finally, there is an idea that this institution should be inserted into an existing institution with relevant functions such as the Information Commission. The function of the Information Commission is related to, among other things, the resolution of information disputes regarding personal information. (Rianarizkiwati, 2020)

In fact, the government and parliament agreed to hand over the establishment of the Personal Data Protection Agency to the President. In addition to submitting its formation to the President, the institution must also be established by Presidential Decree. It means that the legislators give great authority to the president regarding the name, form, structure, and working mechanism of the Personal Data Protection Organizing institution. In addition, the PDP Law regulates the functions and authorities of the institution to be formed.

There are several authorities of the Personal Data Protection Organizing Agency: formulating and establishing policies in the PDP sector; supervising the compliance of the Personal Data Controller; imposing administrative sanctions for violations of PDP committed by the Personal Data Controller and/or Personal Data Processor; assisting law enforcement officers in handling suspected criminal acts of personal data; and publishing the results of PDP supervision in accordance with the applicable laws and regulations.

In addition, with regard to cross-border data, the PDP Institution is authorized to cooperate with similar institutions in other countries in the context of resolving allegations of cross-border PDP violations; conduct an assessment of the fulfillment of the requirements for the transfer of personal data outside the jurisdiction of Indonesia; and give orders in order to follow up the results of supervision to the Personal Data Controller and/or Personal Data Processor.

In relation to the potential for personal data breaches, the institution is authorized to receive complaints and/or reports regarding alleged PDP violations; conduct inspections and searches on complaints, reports, or results of supervision; summon and present parties related to the

violation; requesting information, data, information and documents from each summoned party; listen to the required expert testimony; conduct inspections and searches on electronic systems, facilities, spaces, and/or places used by the Personal Data Controller and/or Personal Data Processor; and request legal assistance from the prosecutor's office in the event of a dispute over the PDP. Although there are fifteen powers given to the Institution, the procedure for the implementation of that authority still depends on Government Regulations.

In the formulation of the PDP Law, the institution for the protection of personal data is an institution under executive power. The positive side of this kind of institutional model is the open potential for adjustment to future government needs. However, the strength of the implementation of data protection as mandated by the PDP Law is also very dependent on the political will of the president.

#### **(D) The challenges**

The formulation of the Indonesian PDP Law has not fully regulated the organs of the Personal Data Protection Agency, so its implementation still has the potential to face several challenges. *First*, the strength of the institution's position. Institutions established by law are much stronger in position than state institutions established through legislation under laws such as Presidential Regulations. The appointment by the president makes it easier for the president to reorganize and to adjust the institution. If the President think that the Institution is no longer useful, the president can liquidate it at any time. In fact, the protection of personal data is related to human rights which should be given a stronger foundation.

The *second* challenge is the institutional form and structure. How the form and structure of this Institution still depends on the President, and there is no explicit timeframe that requires (when) the Institute is formed. The period of two years referred to in the provisions of Article 74 of the PDP Law is a period of adjustment for Personal Data Controllers, Personal Data Processors, and other parties related to personal data processing. They are required to conform to the PDP Law no later than two years, starting from the date of the promulgation of this Law. How big the organizational structure of this institution is depending on the President and will affect the budget and human resources.

The *third* challenge relates to the implementation of the authority given to the institution. For example, the authority to impose administrative sanctions on government agencies that are the controllers of personal data. Is it possible for an institution under the executive (President) to impose sanctions on another institution, say, which is structurally higher in position? How strong the agency's authority is will determine the exercise of its authority in practice. This is

also related to the possibility of a division of authority with other institutions, including how coordination and collaboration should be managed.

Recall the data leak case by Bjorka. The Ministry of Communications and Informatics has shifted responsibilities with BSSN. So, it is very important to clarify the position in the state structure and the relationship between the Institute and other agencies, especially in the government. It is important to note that the authority of this Institution is not only for government agencies, but also for the private sector. Personal Data Controller is any person, public body, and international organization that acts individually or jointly in determining the objectives and exercising control over the processing of personal data. Personal Data Processor is any person, public body, and international organization acting individually or jointly in processing personal data on behalf of the Personal Data Controller.

The *fourth* challenge relates to the preparation of supporting infrastructure and facilities, especially technical regulations. The implementation of the Institution's authority, for example, still depends on how quickly a Government Regulation is issued. The PDP Law mentions one Presidential Regulation and ten Government Regulations. Not to mention the technical guidelines that must be prepared by the Personal Data Protection Agency. Similar challenges can also arise in dispute resolution outside the Institution. Remember, according to its function, this institution only facilitates the settlement of disputes out of court.

Accountability and supervision are *the fifth* challenge. The PDP Law states that the Personal Data Protection Agency is responsible to the President. However, there are other authorities related to the publication of the results of supervision and orders to follow up on the results of supervision. How is the order given to the Personal Data Controller or Processor? What if the Personal Data Controller or Processor does not execute the order? This is a future challenge that must be resolved.

Finally, it relates to the system and recruitment of human resources. Personal data protection requires resources who not only understand information technology and legal aspects, but also require independent and professional people in carrying out their duties. Professional people who are also able to capture issues that develop in the future. The need for human resources is correlated with the institutional structure, the authority possessed, and the goals to be achieved.

If refer to Article 52 of the European Union General Data Protection Regulation (EU GDPR), the above explanation will relate to a keyword “independence”. There are five kinds of independence, namely institutional independence, commissioner independence, organizational independence, human resource independence, and financial independence. (Doly, 2021)

Institutional independence is related to the actions of the supervisory authority in carrying out its duties and its powers are independent in accordance with the law. The independence of the commissioner relates to the statement that members of the supervisory authority are free from external influences, whether direct or indirect, and will not carry out instructions from anyone, must refrain from actions that are inconsistent with their duties and do not engage in work that is not in accordance with their authority. In the independence of the organization, the state must ensure that each supervisory authority is equipped with the necessary facilities and infrastructure for the effective implementation of its duties and authorities, including those to be carried out in the context of mutual assistance, international cooperation, and others. The independence of human resources is related to the freedom of the supervisory authority to choose their own staff subject to the law. The last independence that related to financial control, it should not affect independence, so the state must ensure that the annual budget is separate but can be part of the overall state budget.

### **III. CONCLUSION**

The protection of personal data is important in Indonesia because the constitution mandates to protect one's personal rights and property. The urgency of establishing a personal data protection institution is not only related to the mandate of the PDP Law. But also, how to make these institutions efficient and effective in guarding the PDP. The challenge is not only when this institution has been formed, but how the institution can continue to be a strong guardian of the implementation of the PDP Law. It is necessary to conduct an in-depth study by conducting comparative studies, learning from existing state institutions, both their advantages and disadvantages, and taking examples from other countries that have succeeded in overseeing the PDP. In essence, the real challenge for this institution is not only a solid institutional framework, but how the institution carries out its duties and authorities seriously. Malfunctioning data protection cannot be tolerated any longer.

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