



THE LEGAL CERTAINTY ON CHILDREN'S PERSONAL DATA: REALIZING LEGAL PROTECTION ON SOCIAL MEDIA

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Abstract

This research focuses on legal certainty regarding the formulation of children's personal data in the PDP Law and legal protection efforts for children's personal data on social media. This research is a normative legal research with a concept and statutory approach. The results of the study show that the formulation of children's personal data in positive law actually creates legal uncertainty so that it has an impact on the implementation of legal protection related to children's personal data requiring further regulations and guidelines. Legal protection efforts for children's personal data on social media can be carried out preventively and repressively. Preventively, legal protection for children's personal data on social media is carried out by involving the role of parents, society, and the state through the establishment of special institutions that provide an understanding of the importance for children to protect and understand the benefits of personal data. Repressively, legal protection for children's personal data on social media is carried out by prioritizing the aspect of compensation if the child's personal data is misused which harms the child's personality and is oriented towards criminal sanctions as determined in laws and regulations.

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I. INTRODUCTION

Protection of personal data is one form of rights that must be guaranteed by the state to the public, especially after the development of information and communication technology. (Aliza et al., 2022) The increasingly massive development of information and communication technology requires efforts from the state to guarantee and provide schemes related to efforts to provide personal data protection for the public. (Firmansyah, 2022) One of the efforts of the state to provide personal data protection is the formulation of Law No. 27 of 2022 concerning Personal Data Protection (PDP Law) which was passed in 2022. The passing of the PDP Law is a form of state effort to guarantee, protect, and offer formulations in order to protect the personal data of the Indonesian people. One of the parties who must get personal data protection is a child. Protection of personal data for children is important to maintain that various aspects related to children's personal data can be protected from various attempts to breach or steal children's personal data. (Ghani, 2022) Personal data protection for children is also important to be provided by the state because children do not have the awareness to

report as well as have the intensity to be active in protecting their personal data. Therefore, the role of the state is important to provide personal data protection for children.(Sahetapy, 2021)

One of the most important personal data protection for children is in children's activities on social media. Children in Indonesia as millennials are certainly familiar with social media.(Tiwari et al., 2023) One of the activities of children on social media is to enter various identities and personal data. The lack of legal awareness regarding personal data on each child and weak parental supervision of children who use social media can cause the potential for hacking or theft of personal data for children in their activities on social media. The potential for hacking or theft of personal data for children in their activities on social media is further weakened by the provisions for personal data protection for children still strictly regulated in the PDP Law.(Firdaus, 2022) Article 4 paragraph (1) juncto paragraph (2) of the PDP Law specifically includes children's personal data as specific personal data that must receive special treatment in its implementation. Various provisions in the PDP Law specifically explain that there is a need for arrangements "in" Government Regulations (PP) to follow up on various provisions in the PDP Law. However, until mid-2023, the PP as the implementer of the PDP Law has not yet been formulated, causing a legal vacuum related to efforts to fulfill personal data protection for children in their activities on social media.

Therefore, this study aims to answer two legal issues, namely legal certainty related to the formulation of children's personal data in the PDP Law and legal protection efforts for children's personal data on social media. Research on the protection of children's personal data has actually been carried out by three previous researchers, namely: first, research conducted by Besar et al. (2020) which discusses efforts to ensure the guarantee of children's rights through the protection of children's online personal data.(Sofian . A, Pratama . B, 2020) The advantage of this study is the discussion that when this research was published, there was no PDP Law so it required a legal product that was able to guarantee personal data, especially children's personal data. The shortcomings of this study have not explained the legal consequences obtained if there is no protection of children's personal data. Second, research conducted by Anggoro et al. (2021) with a focus on legal protection related to misuse of children's personal data.(Ayumeida Kusnadi et al., 2021) The advantage of this study is that it comprehensively outlines the right to protection of children's personal data as part of the constitutional rights that must be fulfilled by the state. The weakness of this study is that there has been no comprehensive review of international legal institutions that discuss the protection of children's personal data.

Third, research conducted by Suryaningsi and Widyaningsih (2022) which discusses the existence of children's privacy rights by providing legal protection of personal data for children.(Tika Widyaningsih, 2022) The advantage of this study is a comprehensive analysis of legislation, namely the ITE Law and the Child Protection Law which need to include the protection of children's

personal data in its formulation. The flaw in this study is that it has not addressed current cases related to violations of children's personal rights. Of the three studies above, this study which focuses on legal certainty related to the formulation of children's personal data in the PDP Law and legal protection efforts for children's personal data on social media is an original research and even research related to children's personal data with reference to the PDP Law was first conducted in this study.

II. METHODS

Metode This research with a focus on legal certainty related to the formulation of children's personal data in the PDP Law and legal protection efforts for children's personal data on social media is a normative legal research. A special characteristic of normative legal research is the identification on statutory legal materials, which in this case is the PDP Law.(Marzuki, 2017) The primary legal materials in this study are: the 1945 NRI Constitution, Law No. 23 of 2002 concerning Child Protection (Child Protection Law), Law No. 39 of 1999 concerning Human Rights (Human Rights Law), and the PDP Law. Secondary legal materials include: journal articles, books, and research results that discuss children's rights and personal data protection. Non-legal material is a dictionary of languages. The approach used is a concept and legislation approach.

III. ANALYSIS AND DISCUSSION

3.1. The Legal Certainty Related to the Formulation of Children's Personal Data in the PDP Law

The importance of personal data protection made the Indonesian government and the House of Representatives finally pass the PDP Law in 2022. One of the urgency of the passage of the PDP Law is to overcome the existence of cyber crimes whose orientation is on efforts to attack and threaten each other's personal data.(Yuniarti, 2022) Personal data is one of the important components that must be protected because the substance of personal data concerns identity and several aspects related to a person's personality.(Johan, 2022) This is what makes personal data must be protected even if it can only be disclosed if approved by the person concerned. In general, the PDP Law regulates personal data in general, namely personal data that is also qualified in various laws and regulations.(Lestari & Mujib, 2022) Article 4 of the PDP Law actually provides a classification of personal data in twoFurther explanation of child data is not explained in detail in the PDP Law. The explanation of Article 4 of the PDP Law only explains that the urgency of regulating specific personal data is to anticipate potential discrimination and losses that will be experienced by the subject of personal data holders, namely general personal data and specific personal data. General

personal data is personal data related to general personal identity, such as religion, gender, marital status, and other personal data intended to identify an individual.

Personal data is specifically affirmed in Article 4 paragraph (2) which includes: health information, crime records, personal finances, to children's data. Provisions that include child data as part of specific personal data actually require in-depth explanation. In this context, what kind of child data is part of specific personal data. Further explanation of child data is not explained in detail in the PDP Law. The explanation of Article 4 of the PDP Law only explains that the urgency of regulating specific personal data is to anticipate potential discrimination and losses that will be experienced by the subject of personal data holders.(Setiawan & Najicha, 2022) Based on the explanation of Article 4 of the PDP Law, it can be understood that the child data referred to in Article 4 of the PDP Law is child data which, if opened, has the potential to cause discrimination and harm to be experienced by children.(Evelyn Angelita Pinondang Manurung, 2022) Even so, it has not been clearly affirmed about the definition of children's personal data as what is categorized as specific personal data has the potential to make legal certainty and legal protection for children unguaranteed.

Protection related to children's personal data is one of the important things that must be realized and is one of the spirits of the formulation of the PDP Law.(Safira Widya Attidhira & Yana Sukma Permana, 2022) This can be seen from the provisions of Article 4 of the PDP Law which has categorized children's data as specific personal data so that one of the PDP Law's commitments is to protect children's personal data. In general, there are three urgencies why children's personal data needs to be protected, namely: First, children's personal data as formulated in the explanation to Article 4 of the PDP Law qualifies as specific personal data because it can cause potential discrimination or harm that can be regarding the legal subject of personal data.(Firdaus, 2022) In this context, children can be harmed by the dissemination of their personal data so that formulating children's personal data as specific personal data in the PDP Law is the right formulation.(Gellert, 2022) Even so, children as formulated in Article 1 point 1 of the Child Protection Law, which is the age range of 0-17 years, are young and certainly do not have an understanding of the importance of maintaining personal data.(Kementerian PPPA, 2019) Therefore, the protection of children's personal data needs to be emphasized considering that children often ignore the importance of personal data protection for themselves.

Second, Article 2 juncto Article 4 of the Child Protection Law actually mandates the need for guaranteed certainty and legal protection for children to be able to carry out their activities. Children under the age of 18 do not actually have attention to their personal data. In fact, there is the potential for children's personal data to be used by certain parties because of a lack of understanding about the importance of understanding personal data. Therefore, the formulation of the PDP Law can be understood by categorizing children's personal data as specific personal data with the aim of the

need for protection and law enforcement efforts specifically regarding children's personal data.(Fajar et al., 2021) Third, factually the importance of ensuring certainty and legal protection related to children's personal data because in the era of information technology development, children's activities have also penetrated the digital world, one of which is social media.(Lancieri, 2022) This is confirmed by We Are Social data that in January 2023 of the 167 million social media users in Indonesia, 33.4% are aged 8-16 years.(Arifin, 2023) This means, there are approximately 55 million children in Indonesia who use social media. The use of social media on the child in some processes also uses the child's personal data.(Stucke, 2022) Therefore, in the use of personal data as a prerequisite in social media, children need to understand or at least get supervision and guidance from parents regarding the importance of children's personal data.

From the three urgencies of personal data protection for children above, it can be concluded that the importance of efforts to guarantee and provide legal protection related to children's personal data needs to be done because children's activities on social media also require the use of personal data and to maintain the substance of children's personal data which by the PDP Law is qualified as specific personal data. Although practically necessary efforts to guarantee and protect personal data for children, there are three legal problems in the PDP Law that make efforts to guarantee and protect personal data for children in social media still encounter obstacles, namely: first, children's personal data in the PDP Law is not explained in detail about children's personal data in any case. Even the explanation of Article 4 of the PDP Law has not provided an explanation regarding children's personal data in any case. Unclear provisions on children's personal rights have the potential to cause legal uncertainty and in practice complicate efforts to protect and enforce laws related to children's personal data.

Second, the PDP Law in its various formulations explains that a separate PP will be formulated to follow up the PDP Law. Until mid-2023, the implementing PP of the PDP Law has not yet been formulated. In fact, with the formulation of the implementing PP of the PDP Law, it is hoped that the term children's personal data can be clarified and formulated in detail, including how to guide the protection and enforcement of laws related to children's personal data. The non-formulation of the implementing PP of the PDP Law actually makes the implementation of the PDP Law still "half-hearted" because several aspects are needed to be emphasized and clarified in the implementing PP of the PDP Law, one of which is related to children's personal data and efforts to protect and enforce it. Third, the transitional provisions in the PDP Law also do not provide a time limit for the formation of the implementing PP of the PDP Law. In fact, in general in a statutory regulation, the formation of further regulations is generally given a grace period such as, ".. no later than 2 years after this law is promulgated...." or other similar provisions. (Khalid, 2014)

The absence of time limits for the formation of the implementing PP of the PDP Law further emphasizes the legal uncertainty. This is because the implementing PP of the PDP Law is an

important instrument in implementing the provisions of the PDP Law. The absence of PP implementing the PDP Law also has the potential to make the implementation of the PDP Law not optimal, especially related to efforts to protect children's personal rights. Of the three obstacles to the implementation of the PDP Law in guaranteeing certainty and legal protection related to children's personal rights, it can be seen that the non-formulation of the implementing PP of the PDP Law is an obstacle to implementing legal protection related to children's personal rights. This is because, the PDP Law is still flimsy in explaining children's personal rights, so it requires further regulation in the PP.

However, the non-ratification of the implementing PP of the PDP Law creates legal uncertainty related to the implementation of the PDP Law in an effort to provide legal certainty and protection related to children's personal rights, especially when doing activities on social media. Moreover, in the PDP Law there is also no limitation on the time for the formation of the implementing PP of the PDP Law, which has the potential to cause legal uncertainty in the application of the substance of the PDP Law. From the results of the analysis above, it can be concluded that the formulation of children's personal data in the PDP Law actually creates legal uncertainty, because: first, the provisions of children's personal data are not emphasized in the PDP Law covering what kind of children's personal data. Second, the implementation of legal protection related to children's personal data requires further regulation and guidance through the implementing PP of the PDP Law while the PP has not yet been formed. Third, the absence of time limits for the formation of the implementing PP of the PDP Law further creates legal uncertainty related to the substance of the protection of children's personal data in its use on social media because the PP has not been established as the implementer of the PDP Law.

3.2. Realizing Legal Protection for Children's Personal Data on Social Media

The use of children's personal data as one of the prerequisites in creating and doing activities on social media actually causes problems related to the implementation of legal protection efforts for children's personal data on social media. This is based on the construction of Article 4 of the PDP Law which confirms that children's personal data is personal data of a specific nature. The nature of this specific personal data makes the child's personal data exclusive and requires special arrangements.(Yang, 2021) Special arrangements related to children's personal data are needed to clarify and reinforce the formulation and appropriate legal protection efforts in protecting children's personal data.(Hari Sutra Disemadi, 2022) Protection related to children's personal data is actually part of children's rights. This is as formulated in Article 60 paragraph (2) of the Human Rights Law which affirms that children have the right to obtain and utilize information from various available information channels.(Gellert, 2022)

The consequences of the right to information also make the state obliged to maintain and guarantee various substantive aspects related to children's rights, one of which is the child's right to obtain protection related to personal data.(Yitawati et al., 2022) Therefore, the right of children to obtain protection related to personal data is part of human rights so that states are obliged to protect children's personal data. Regarding efforts to protect children's personal data, it actually encounters problems when the PDP Law does not provide specific explanations and regulations regarding the provisions of children's personal data. The unclear regulation of the PDP Law related to children's personal data actually has implications for three aspects, namely: first, legal uncertainty in the regulation of the PDP Law related to children's personal data has the potential to hinder the implementation and implementation of the PDP Law. This is because one of the main substances of the PDP Law is the need for further regulation in the PP. However, with the implementation of the PDP Law PP not yet formulated, several aspects of the PDP Law, especially the substance regarding legal protection related to children's personal data, have not been implemented optimally.(Setiawan & Najicha, 2022)

Second, legal uncertainty in the regulation of the PDP Law also has implications for what children's rights are specifically guaranteed in the PDP Law. This is because if there is a problem related to children's personal data, then with the absence of PP implementing the PDP Law, it can create confusion for law enforcement officials. This is because there are no guidelines and guidelines regarding the implementation of the PDP Law which should be formulated through the PP. Third, the vagueness of the regulation of the PDP Law makes "temporarily" some provisions in the PDP Law, especially those related to the protection of children's personal data in activities on social media hampered and cannot be applied optimally.(Soemitra & Adlina, 2022) Of the three implications related to the unclear regulation of the PDP Law related to legal certainty regarding children's personal data and the formulation of PP as the implementer of the PDP Law, legal protection efforts are needed to be able to protect children's personal rights in their activities on social media. Legal protection efforts are actually a basic conception in legal science.(Rahardjo, 2014)

One of the orientations of law is the effort to provide legal protection for society. The orientation of legal protection is carried out to strengthen the potential for rights that can be violated.(Dewi et al., 2022) In relation to children's personal data, with reference to the Child Protection Law and Human Rights Law, the guarantee of children's personal rights is part of human rights which is the obligation of the state to protect and establish policies to realize the implementation of personal data protection for children.(Rico & Janot, 2021) Legal protection efforts related to the protection of children's personal data are actually based on the conception of preventive and repressive legal protection as stated by Philipus M. Hadjon.(Philipus M. Hadjon, 2007) The use of preventive and repressive legal protection theory as proposed by Philipus M. Hadjon was chosen because this theory emphasizes the role of the state to provide legal protection. In the context of

protecting children's personal data, the state has a crucial position and role to be able to realize the implementation of child personal data protection. Therefore, the state is obliged to establish various relevant policies and legal products to realize the realization of children's personal data protection.

Preventive legal protection is legal protection that aims to prevent misuse of children's personal data in their activities on social media. (Safitri & Sa'adah, 2021) In general, there are three legal protection orientations that aim to prevent the misuse of children's personal data in their activities on social media, namely those carried out by parents, the role of society, and the role of the state in preventing misuse of children's personal data. The role of parents emphasizes that children who engage in social media activities that require personal data should be based on parental supervision. Parental supervision is needed so that children's personal data can be safer and avoid various attempts that have the potential to hack or break into children's personal data for certain purposes. One of the preventive roles of parents can be seen in the provisions of Article 25 of the PDP Law where in the processing of children's personal data which is carried out specifically, the role of parents is important, especially in relation to certain consent efforts that represent the interests of children.

The role of the community to participate in efforts to provide preventive legal protection related to children's personal data in their activities on social media can be carried out as stipulated in Article 63 of the PDP Law. Where the community can play a role by conducting training, education, socialization, advocacy, and supervision related to children's activities on social media that require personal data. The role of the state in efforts to protect children's personal data in their activities on social media is as stipulated in Article 58 of the PDP Law which confirms the establishment of institutions that will succeed in the implementation of personal data protection. The establishment of the institution which will be carried out through the Presidential Regulation is also expected to provide a special approach and formulation related to the protection of children's personal data. This is so that the protection of children's personal data can be optimally carried out.

Repressive legal protection is carried out with the aim of restoring the rights of parties who have been violated by activities that can hack personal data. (Nurhidayati et al., 2021) In relation to children's personal data in their activities on social media, repressive legal protection can be carried out regarding the provision of compensation as affirmed in Article 12 of the PDP Law. In addition, regarding efforts to provide criminal sanctions against parties who violate, steal, and hack children's personal data in their activities on social media, the provisions of Article 67 to Article 73 of the PDP Law apply. In addition to criminal sanctions, repressive legal protection can be carried out civilly through compensation suffered by children for misuse of their personal data. Pasal 12 ayat (1) UU PDP sejatinya memberikan penegasan mengenai diperkenankannya subjek hukum data pribadi untuk meminta ganti rugi terkait penyalahgunaan data pribadi yang berakibat pada kerugian yang dialami subjek hukum data pribadi. Karena subjek hukum data pribadinya adalah anak yang data pribadinya

disalahgunakan, maka upaya untuk melakukan gugatan ganti kerugian dilakukan oleh orang tua/wali dari anak tersebut.

Based on the results of the analysis above, legal protection efforts for children's personal data on social media can be carried out preventively and repressively. Preventively, legal protection for children's personal data on social media is carried out by involving the roles of parents, society, and the state through the establishment of special institutions that provide an understanding of the importance for children to maintain and understand the benefits of personal data. Repressively, legal protection for children's personal data on social media is carried out by prioritizing aspects of compensation if the misused child's personal data harms the child's personal and is oriented towards a criminal sanction approach and can also be done by requesting a claim for compensation that can be initiated by parents or children as legal subjects of personal data.

IV. CONCLUSION

The formulation of children's personal data in the PDP Law actually creates legal uncertainty, because: first, the provisions of children's personal data are not emphasized in the PDP Law covering what kind of children's personal data. Second, the implementation of legal protection related to children's personal data requires further regulation and guidance through the implementing PP of the PDP Law while the PP has not yet been formed. Third, the absence of time limits for the formation of the implementing PP of the PDP Law further creates legal uncertainty related to the substance of the protection of children's personal data in its use on social media because the PP has not been established as the implementer of the PDP Law. Legal protection efforts for children's personal data on social media can be carried out preventively and repressively. Preventively, legal protection for children's personal data on social media is carried out by involving the roles of parents, society, and the state through the establishment of special institutions that provide an understanding of the importance for children to maintain and understand the benefits of personal data. Repressively, legal protection for children's personal data on social media is carried out by prioritizing aspects of compensation if the misused child's personal data harms the child's personal and is oriented towards a criminal sanction approach and can also be done by requesting a claim for compensation that can be initiated by parents or children as legal subjects of personal data.

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