



Digital Trust NewsFlash

PwC Digital Services / May 2020 / No. 02

Indonesia's Progress on Data Protection

On 24 January 2020, **President Joko Widodo** signed the **Personal Data Protection (PDP) Bill** which is currently being finalised by the Indonesian House of Representatives (DPR). Upon finalisation of this PDP Bill, Indonesia will become the **fifth country in ASEAN** to implement regulations regarding Personal Data Protection. For the existing Personal Data Controller, there will be a two-year period before the PDP Bill is fully effective and achieves full compliance.

The PDP Bill regulates a wide range of matters, from **types of personal data, stakeholders' rights and obligations, processing and transferring, data protection officer appointments, dispute resolutions**, and even **administrative and criminal sanctions**. It seems **safe to say** that the scope of this PDP Bill is leaning towards that of the General Data Protection Regulation 2016/679 (GDPR) issued by European Parliament and Council of the European Union.

It is important to note that the PDP Bill is **not the only personal data protection law** in existence in Indonesia. Indonesia already has a large quantity of laws regarding personal data protection, although they remain sporadic and siloed. This PDP Bill will be the **first Indonesian law** to provide a comprehensive set of provisions for the protection of personal data, not only via an electronic system but also non-electronically, acknowledging the rights and obligations of the stakeholders involved.

Personal Data Definition and Types

Personal data is defined as any data about a person, either fully identified and/or who can be identified separately, or data combined with other information directly or indirectly through an electronic and/or non-electronic system.

There are two types of personal data, as stated below:

- a. **General personal data:** data which consists of full name, gender, citizenship, religion, and/or personal data which **combines** to enable identification.

- b. **Specific personal data:** personal data that requires special protection, and consists of data relating to health data and information, biometric data, genetic data, life/sexual orientation, political orientation, criminal record, child data, personal financial data, and/or any other data in accordance with the prevailing laws and regulations.

Personal Data Owner Rights

Some of the Personal Data Owner rights stated in the PDP Bill include:

- a. The right to request access to and/or a copy of personal data correction errors and inaccuracies from the Personal Data Controller.
- b. The right to request termination of personal data processing and/or deletion and/or destruction of personal data, as well as revocation of the processing consent submitted.
- c. The right to request whether or not to process personal data through a pseudonym mechanism for certain purposes.
- d. The right to sue and receive compensation over personal data violations in accordance with the law.

Personal Data Controller and Personal Data Processor

In the normal course of business, it is common for an entity to act as both Personal Data Controller and Personal Data Processor. This PDP Bill defines both roles as follows:

A Personal Data Controller is an individual, corporation, public body, business actor, or organisation/institution that determines the purpose of and controls the processing of personal data. A Personal Data Controller is required to ensure the **accuracy, completeness, consistency, and security** of personal data collected in accordance with statutory provisions. Prior to conducting personal data processing, the Personal Data Controller must obtain **explicit consent** from the Personal Data Owner. The consent can be in written form or recorded orally. The following information should be stated in the consent:

- a. Personal data processing legality and purpose.
- b. The types of personal data that will be managed and their retention period.
- c. The rights of the Personal Data Owner (e.g. to update and/or revoke the consent given).

A Personal Data Processor is an individual, corporation, public body, business actor, or organisation/institution that processes personal data on behalf of the Personal Data Controller. The Personal Data Processor has legal responsibility for any data processing activities, as long as the appointed Personal Data Processor conducts the data processing activities in accordance with the instructions from the Personal Data Controller. Otherwise, the Personal Data Processor will bear legal responsibility.

This PDP Bill also states a **service level agreement** regarding the processing activities that the Personal Data Controller must achieve, which are as follows:

- a. Notifying the Personal Data Owner in the event of any change to the information stated in the consent (as mentioned above) no later than seven days after the change takes place.
- b. Updating and/or correcting any errors and/or inaccuracies in personal data no later than 24 hours after the request is received.
- c. Processing of personal data termination no later than 3 x 24 hours after the request is received.
- d. Providing a written notification to the Personal Data Owner and Ministry of Communication and Informatics (MOCIT) in the event of personal data protection failure, no later than 3 x 24 hours after the failure takes place.

The Personal Data Controller must **protect** and ensure the security of the personal data it processes by:

- a. Developing and implementing technical measures to protect the personal data from interruptions during processing. For example, the Personal Data Controller can implement **secure storage** for personal data storing.

- b. Defining the personal data security level during processing as per the nature of and risks involving the personal data. This can be exemplified by ensuring the **right to be forgotten** within the personal data processing activities.

Appointment of a Data Protection Officer

The Personal Data Controller and Personal Data Processor must appoint an officer to perform the function of protecting personal data in the event of the following:

- a. The processing of the personal data is for the benefit of public services.
- b. The main activities of the Personal Data Controller involve a nature, scope and/or objectives that require regular and systematic monitoring of personal data on a large scale.
- c. The main activities of the Personal Data Controller consist of processing large-scale personal data for specific personal data and/or personal data relating to criminal offences.

Personal Data Transfer

Personal data transfer from a Personal Data Controller to another Personal Data Controller within or outside Indonesia is **permitted** if consent from the Personal Data Owner has been obtained and the process is in accordance with the PDP Bill. In addition, for transferring data outside the Indonesian legal territory, there are some further requirements that need to be adhered to, such as:

- a. The receiving country of the Data Controller or international organisation must have a data privacy protection level that is equivalent to or higher than the PDP Bill.
- b. There must be an international treaty between Indonesia and the country of the receiving party.

Administrative and Criminal Sanctions

The two types of sanctions for non-compliance towards the PDP Bill are as follows:

- a. **Administrative Sanctions**, which will be imposed on business owners in the following forms: a written warning, temporary cessation of processing of personal data, deletion or destruction of personal data, compensation, and/or administrative fines, which will be imposed by the MOCI.
- b. **Criminal Sanctions**. This PDP Bill also states the criminal sanctions for misconduct in personal data privacy. Here are some of the examples:
 - Selling/buying personal data;
 - Collecting personal data for personal gain;
 - Disclosing/using personal data that does not belong to the offender;
 - Forging personal data for personal gain or harming others; and
 - Operating data visualisation tools in public for identification purposes.

Any violation of the above points may result in imprisonment for up to seven years and/or fines of up to IDR 70 Billion.

Ensuring Compliance

Organisations, especially those that process personal data, will be given a two-year period before this PDP Bill is fully effective and achieves full compliance.

There are some actions that can be taken during this transition period, such as:

- a. Review the current Personal Data Protection governance to ensure it covers the end-to-end Data Protection cycle.
- b. Review the current contract/consent with customers to include the mandatory clauses.
- c. Review the current business processes that use personal data to ensure that adequate controls have been put in place.
- d. Review the third-party governance over personal data management to ensure its compliance with the PDP Bill and main contractor Data Privacy Governance.
- e. Review the existing Personal Data Protection related technology to ensure sufficient security controls.

Your PwC Indonesia contacts:

Subianto

Digital Services Co-Leader
Risk Assurance Leader
subianto.subianto@id.pwc.com

Yuliana Sudjonno

Risk Assurance Partner
yuliana.sudjonno@id.pwc.com

Melli Darsa

Legal Services Senior Partner
melli.darsa@id.pwc.com

Indra Allen

Legal Services Partner
indra.allen@id.pwc.com

Adi Pratikto

Inward Investment and Corporate
Services Partner
adi.pratikto@id.pwc.com

Radju Munusamy

Advisory Partner
radju.munusamy@id.pwc.com

Ravi Ivaturi

Risk Assurance Technical Advisor
ravi.ivaturi@id.pwc.com

Dewi Andriati

Risk Assurance Senior Manager
dewi.andriati@id.pwc.com

Andrew Tirtadjaja

Risk Assurance Senior Manager
andrew.tirtadjaja@id.pwc.com

Yoso Nicodemus

Legal Services Senior Manager
yoso.nicodemus@id.pwc.com

Hengky Antony


Risk Assurance Manager
hengky.antony@id.pwc.com

Eric Junatra

Risk Assurance Manager
eric.junatra@id.pwc.com

www.pwc.com/id

 PwC Indonesia

 @PwC_Indonesia

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