

PERSONAL DATA PROTECTION POLICY IN LAW NUMBER 27 OF 2022 IN THE PERSPECTIVE OF POSITIVE LAW AND ISLAMIC LAW

Eryna Syahadatina A.B¹, Ahmad Fauzi², Ahya Jazuli³

¹²Pascasarjana UIN Sunan Kalijaga Yogyakarta, ³University of Zitouna Tunisia
erynabadar23@gmail.com, ahmad.fauzi@uin-suka.ac.id, jazuli.ahya4@gmail.com

▪ Received: 16-12-2022

▪ Revised: 24-06-2023

▪ Accepted: 30-06-2023

Abstract

*The rise of various data leakage problems that occurred, made the Indonesian government officially stipulate the existence of a Personal Data Protection Law contained in Law No. 27 of 2022. As a Muslim-majority country, of course, we need to look at views and legal concepts from an Islamic perspective. Thus, this research aims to determine the application of the Personal Data Protection Act in the perspective of positive law and Islamic law. The use of qualitative methods with a normative juridical approach is the research method used. The main focus is on library research in the form of data on applicable laws in Indonesia, articles, books, the Koran, hadith, books and other literary documents that are in line with research. The results of the study show that the Personal Data Protection Act implies the concept of *sadd al-dzari'ah* in Islamic law as a form of prevention and the government's responsibility, to seek legal guarantees and cover the increasing threat of personal data leakage. This study also found that the PDP Law that was just passed in its implementation still needs to be reviewed in the articles related to the institution that will later supervise and ensure the control and processing of personal data.*

Keywords: *Personal Data Protection, Positive Law, Islamic Law*

Abstrak

Maraknya berbagai permasalahan kebocoran data yang terjadi, membuat pemerintahan Indonesia secara resmi menetapkan adanya Undang-Undang Pelindungan Data Pribadi yang dimuat pada UU No.27 Tahun 2022. Sebagai negara mayoritas muslim tentunya perlu melihat pandangan serta konsep hukum dari kacamata islam. Dengan demikian adanya penelitian ini bertujuan untuk mengetahui penerapan Undang-Undang Pelindungan Data Pribadi dalam perspektif hukum positif serta hukum islam. Penggunaan metode kualitatif dengan pendekatan yuridis normatif menjadi metode penelitian yang digunakan. Fokus utamanya pada studi kepustakaan berupa data perundang-undangan yang berlaku di Indonesia, artikel, buku, al-qur'an, hadis, kitab-kitab serta dokumen literatur lainnya yang selaras dengan penelitian. Hasil penelitian menunjukkan bahwa Undang-Undang Pelindungan data pribadi mengimplikasikan konsep *sadd al-dzari'ah* dalam hukum islam sebagai bentuk preventif dan tanggung jawab pemerintah, untuk mengupayakan jaminan hukum dan menutup ancaman kebocoran data pribadi yang semakin meningkat. Studi ini juga menemukan bahwa Undang-Undang PDP yang baru disahkan dalam penerapannya masih perlu dilakukan pengkajian ulang pada pasal terkait lembaga yang nantinya akan mengawasi serta memastikan pengendalian dan pemrosesan data pribadi.

Kata kunci: Pelindungan Data Pribadi, Hukum Positif, Hukum Islam

INTRODUCTION

The emergence and rapid development of information and communication technology has brought opportunities and challenges. Information that has materialized into the new oil era is so massively used. Not only is it intended for mutual interaction among social media

users but there is also active interaction between individuals and digital-based information service providers. Various industrial sectors have mostly used information systems, such as trade and business (e-commerce), government (e-government), finance (e-payment), health (e-health), social media (social network) and other mobile internet.

The challenge faced when the number of users increases is the emergence of cases related to the leakage of one's personal data, leading to fraud, cyber bullying, doxing, and pornography crimes becoming a new threat. This case is a form of violation of privacy policy related to the misuse of personal data by those who use it. This becomes very dangerous and important regarding the legal umbrella in protecting the personal data of internet users in Indonesia. Given that previously regulations related to personal data protection were spread across various sectors partially. Another opportunity when there is a concrete legal umbrella is not only beneficial for personal interests, but will further encourage communities and investors to come to Indonesia. Therefore, Indonesia carried out a complete legal reform to overcome various problems related to personal data. The Personal Data Protection Law (UU PDP) number 27 of 2022 was officially passed. The existence of the PDP Law is expected to be able to provide optimal and effective protection of personal data as part of privacy as well as a form of protection of human rights.¹

As a Muslim-majority country, Islamic law is one of the forms of national law and is a solution to all problems of life.² So many writings are published both in scientific works and in the news to urge the existence of personal data protection legislation. Besides being seen from the perspective of positive law, there are also those who compare to find similarities from Islamic law. Such as research conducted by Parida Anggraeni,³ states that between positive law and Islamic law both create justice, balance and security for personal data owners. The focus of his research on e-commerce application users. The same statement was expressed by Soediro,⁴ proving that Islam is not only a religion of the past but also present in the contemporary era. The basis of his research uses the ITE Law. From the previous research, the researcher will fill the void that exists when previously the legal basis of research on

¹ Muhammad Saiful Rizal, "Perbandingan Perlindungan Data Pribadi Indonesia Dan Malaysia," *Jurnal Cakrawala Hukum* 10, no. 2 (2019): 218–27, <https://doi.org/10.26905/idjch.v10i2.3349>.

² Maswir Maswir, "Implementasi Hukum Islam Di Indonesia Dalam Perspektif Siyasah Syar'iyah," *Hukum Islam* 19, no. 1 (2019): 81, <https://doi.org/10.24014/hi.v19i1.7249>.

³ Parida Angriani, "Perlindungan Hukum Terhadap Data Pribadi Dalam Transaksi E-Commerce: Perspektif Hukum Islam Dan Hukum Positif," *DIKTUM: Jurnal Syariah Dan Hukum* 19, no. 2 (2021): 149–65.

⁴ Soediro, "Prinsip Keamanan, Privasi, Dan Etika Dalam Undang-Undang Informasi Dan Transaksi Elektronik Dalam Perspektif Hukum Islam," *Kosmik Hukum* 18, no. 2 (2018): 95–112.

sectoral regulations, in this study will look at specific legislation regarding the protection of personal data using the perspective of positive law and Islamic law.

Therefore, researchers are interested in knowing how Islamic law views the existence of the latest Law number 27 of 2022 related to personal data protection. as well as to examine how to apply the Law on personal data protection. so that the main focus is only to examine Law number 27 of 2022 concerning personal data protection. This research is important to see a new perspective in terms of Islamic law and positive law that applies to personal data protection legislation and becomes the direction of further government policies.

RESEARCH METHODS

The use of qualitative research methods with a normative juridical approach is used in this research, which focuses mainly on library research. In the form of data collection related to the object of research derived from primary and secondary law. Data is obtained from laws and regulations as well as Indonesian government policies, articles, books, the Qur'an, hadith, books and other literature documents relevant to the research.⁵ Furthermore, after conducting the data collection process, the data is then analyzed. Starting with a statute approach, namely an approach through legislation, conceptual approach, namely a conceptual approach and through a comparative approach, namely a different legal comparison approach.

In this research, there are two research objects in the form of material objects as research targets and formal objects used as a method for understanding material objects. Law No.27 of 2022 concerning Personal Data Protection as a material object and Islamic law perspective as a formal object.

LITERATURE REVIEW

A. Definition of Personal Data

Personal data or privacy data is a manifestation of each individual's basic human rights that should be protected in accordance with Pancasila. Alan Wetis simply defines the area of privacy as the ownership of individuals, groups, or institutions to determine the information owned to be regulated when, how, and to what extent it can be shared with others.⁶ Another explanation is found in the juridical basis of the 1945 Constitution, which states that everyone has the right to protection of personal data, both those relating to

⁵ Peter Mahmud Marzuki, *Penelitian Hukum : Edisi Revisi* (Kencana Prenada Media Grup, 2017).

⁶ Siti Yuniarti, "Perlindungan Hukum Data Pribadi Di Indonesia," *Business Economic, Communication, and Social Sciences (BECOSS) Journal* 1, no. 1 (2019): 147–54, <https://doi.org/10.21512/becossjournal.v1i1.6030>.

family, honor, dignity and property. As well as the right to get a sense of security from any party, who wants to take arbitrary action against data owned by others.⁷

In Islam the definition of personal data is written in surah Annur verse 27

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا
ذَلِكَ خَيْرٌ لَّكُمْ لَعَلَّكُمْ تَذَكَّرُونَ

Meaning: “O ye who believe! Enter not houses other than your own without first announcing your presence and invoking peace upon the folk thereof. That is better for you, that ye may be heedful”.

In surah An-Nur verse 27 there is a history of Asbabun Nuzul that at that time there was a woman from the Ansar complained to the apostle of Allah SAW "O Messenger of Allah, I am in my house in a state that I myself do not want to be seen by others. But there are always men from my family entering my house. Then what should I do?". So that the surah of the Qur'an has an implied meaning to maintain one's privacy. This is the sensitivity of Islamic teachings regarding the protection of one's private sphere.

B. Principles of Personal Data Protection

The basic principles as a reference for making decisions in data protection are explained in eight principles. The first principle of protection is interpreted as protection carried out to protect personal data from being misused by other parties; the principle of legal certainty is interpreted that every management, processing of personal data requires an independent legal basis; the principle of legal interests is interpreted that the legal basis is made to protect the security, defense and security of the state as well; the principle of expediency which must be in accordance with national interests; the principle of prudence is carried out with all parties involved must be protected from various related parties; the principle of balance by always considering human rights and state rights must be equally fulfilled; the principle of responsibility between rights and obligations can be maintained in balance and finally the principle of confidentiality ensures that personal data is protected from third parties and unauthorized processing.⁸

C. Legal Reference for the Establishment of Personal Data Protection Regulation

The policy formulation of the Personal Data Protection Law is predicted to have international standards, in other words, at the same level as other developed countries that

⁷ Republik Indonesia, “Undang-Undang Dasar 1945 Pasal 28 G,” n.d.

⁸ Erlina Maria Christin Sinaga, “Formulasi Legislasi Perlindungan Data Pribadi,” *Jurnal RechtVinding* 9, no. 2 (2020): 237–56.

both have sovereign data protection policies. However, long before the inauguration of the Personal Data Protection Act in Indonesia, there have been approximately 132 countries in the world that have special policies regarding the regulation of personal data protection. As in ASEAN, in 2010 there was Malaysia by formulating the Personal Data Protection Act (PDPA) policy,⁹ in 2012 Singapore and the Philippines and 2019 Thailand both passed personal data protection regulations. Other countries such as the Netherlands are known as *Wet Basberming Persoongegevens*, in Belgium in 2018 it was called *The Belgian Law of July 2018* to replace the previous personal data protection regulation in 1992. Then in 1998 in America it was called the *Digital Millennium Copyright Law* policy. Furthermore, it is called the *Act on the Protection of Personal Information (APPI)* since 2017 a policy issued by the Japanese government. In South Korea the regulation is called the *Personal Information Protection Act (PIPA)*, a regulation that was amended in 2016.¹⁰ In addition, since 2018, more precisely on May 25, 2018, the European Union has implemented an international policy for companies and corporations whose target markets are residents of the European Continent, to comply with the *General Data Protection Regulation (GDPR)* policy. Of course, the regulations between countries have differences, but basically all personal data protection policies contain issues such as principles, protection procedures, rights, and subjects, as well as fines for companies / corporations / individuals who misuse other people's personal data.

RESULTS AND DISCUSSION

A. Implementation of Law Number 27 Year 2022 on Personal Data Protection

The definition of personal data is data related to each individual that is recorded independently, either combined or separately, directly or indirectly electronically or nonelectronically. Meanwhile, the so-called personal data protection defined according to Article 1 (1) of the PDP Law is an effort to protect the processing of personal data to obtain legal rights as the subject and owner of personal data.¹¹

Since 2016 the PDP Law has been discussed, and officially on October 30, 2022 the PDP Law was passed or inaugurated as the guardian and protector of personal data of the people in Indonesia. The final manuscript contains 371 lists of problem inventory

⁹ Rizal, "Perbandingan Perlindungan Data Pribadi Indonesia Dan Malaysia."

¹⁰ Tiara Almira Raila Jeremias Palito, Safira Aninditya Soenarto, "Urgensi Pembentukan Pengaturan Pelindungan Data Pribadi Di Indonesia Seta Komparasi Pengaturan Di Jepang Dan Korea Selatan," *Supremasi Hukum* 17 (2021): 18–22.

¹¹ Republik Indonesia, "Undang-Undang Tentang Pelindungan Data Pribadi (UU Nomor 27 Tahun 2022)," 2022.

(DIM) and presents 76 articles and 16 chapters. The PDP Law discusses the protection of personal data, including the definition of personal data, control, processing, and subject of personal data, personal data of children and persons with disabilities, prevention of leakage of personal data, deletion of personal data, unsuccessful protection of personal data, and penalties for misuse of personal data, as well as sanctions against misuse of personal data. The legal basis for personal data protection is based on existing regulations and policies such as Law 39 of 1999 on Human Rights, Law 19 of 2016 on ITE, Regulation of the Minister of Communication and Information 20 of 2016, Law 14 of 2008 on Public Information Disclosure, Law 8 of 1999 on Consumers, Law 24 of 2013 on Population Administration and other related laws. Other legal basis for personal data protection policy is based on the International Covenant on Civil and Political Rights, to regional conventions in the realm of the European Union and ASEAN, policies on the National Strategy for Trusted Identities in Cyberspace and other international policies.¹²

The uniqueness of Law 27/2022 PDP is that it has a *lex specialis* nature, which is a very beneficial thing, because this nature makes the PDP Law unhindered by certain sectors or other legal regimes. This is in accordance with the principle, "special laws override general laws".¹³ In addition, in its application, the PDP Law uses the principle of extraterritorial jurisdiction, which gives the right that all forms of legal actions carried out outside the territory of the Unitary State of the Republic of Indonesia but have an impact within the territory of the country or within the country, the law will be implemented by the authority even though it is outside its territory.

The PDP Law contains types of personal data including general and specific personal data. General personal data includes full name, gender, marital status, cellular number, e-mail address, and so on. Meanwhile, special types of personal data include health information, criminal records, child data, and personal financial data. Meanwhile, a person or individual connected to a person's personal self is called a personal data subject. The personal data subject has rights such as the right to obtain data and accountability from the party requesting personal data; the right to update personal data; the right to withdraw consent to processing of personal data in order to end processing, delete or destroy personal data; and the right to object to actions based on automated processing,

¹² Zaim Yunus, "Panduan Singkat Memahami UU 27/2022 Tentang Pelindungan Data Pribadi," LegalUs, 2022, <https://legal2us.com/panduan-singkat-memahami-uu-27-2022-tentang-pelindungan-data-pribadi/>.

¹³ Ahmad M Ramli, "Tafsir UU Perlindungan Data Pribadi Yang Perlu Diketahui," Kompas.com, 2022, <https://nasional.kompas.com/read/2022/09/25/13335721/tafsir-uu-perlindungan-data-pribadi-yang-perlu-diketahui>.

including profiling in the form of electronic identification activities, related to employment history, economic situation, health, personal preferences, attentiveness, reliability, behavior and so on that may have legal consequences and have a significant impact on the personal data subject.

Wisely, the PDP Law also regulates the prohibition of the use of personal data contained in articles 65 and 66, which are prohibited when receiving and also accommodating, expressing, using, to the prohibition related to creating or entering personal data owned by others which can harm the subject of personal data as the legal owner of his personal data ownership. It is hoped that the latest law on personal data protection can be used as a legal umbrella and be able to provide protection to trade practitioners and the public in the digital era.

There are sanctions given when there is a leak of personal data. Sanctions include written warnings, temporary suspension of activities, and fines. It is also stated in article 57 paragraph 3 that the fine from administrative sanctions reaches 2% of the annual profit of the violated element. The heaviest sanction is the criminal threat with a maximum period of six years and a fine of up to six billion, if there is hacking, leaking the use and falsification of personal data. Therefore, the Law on Personal Data Protection cannot be taken lightly. In addition to the settlement in the court to resolve disputes, the Personal Data Protection Law also explains the settlement using non-litigation channels in the form of dispute resolution outside of court methods. Article 64 paragraph (1) of the PDP Law reads: "Dispute settlement for personal data protection is carried out through arbitration, court, or other alternative dispute resolution institutions in accordance with the provisions of laws and regulations".¹⁴ The article states that dispute resolution can be through a non-litigation process in the form of arbitration or using other legal resolution institutions.

The explanation of arbitration itself is in Article 1 (1) of Law number 30 of 1999 concerning arbitration and alternative dispute resolution, which explains how civil disputes can be resolved outside the public courts based on an agreement made in writing by all parties to the dispute. The arbitration process begins with an agreement to resolve the dispute contained in a document containing the signatures of the parties to the dispute. This is followed by selecting an executor as the decision-maker of the dispute, which can be one or more persons chosen by the disputing parties or directly chosen by the district

¹⁴ Republik Indonesia, "Undang-Undang Tentang Pelindungan Data Pribadi (UU Nomor 27 Tahun 2022)."

court to give a decision on a *causu*. This appointed person (arbitrator) is tasked with giving a decision on the case of the dispute of the parties involved. Settlement through this arbitration route is a win-lose judgment, that is, even though it is not a court route, the legal force remains strong and binding for the parties involved.

In general, the essence contained in the explanation of each chapter and article of the PDP Law that has been passed is in accordance with the global principles of personal data protection that apply internationally. It clearly formulates the definition of personal data, adopts the process, limitations, and obligations of data processing, as well as the protection of the rights of personal data subjects. So that the interpretation of this legislation must be able to provide protection and certainty in the state constitution. The key to effective implementation of PDP Laws from several countries lies in the authority of the data protection agency as a supervisory body. Tasked with ensuring compliance with data control and processing carried out by corporations, governments or other private parties. Therefore, Indonesia, which has just implemented a personal data protection policy, must have an independent authority in carrying out various supervisions. This will ensure justice and firmness in law enforcement of the PDP Law.

Article 58 to Article 60 discusses special institutions that will be mandated to play a role in realizing the implementation of personal data protection. "The government plays a role in realizing the implementation of Personal Data Protection in accordance with the provisions of the PDP Law, which is determined and responsible to the president as the institution is regulated by presidential regulation".¹⁵ From article 58, there is an institution that is given a mandate that is determined and responsible to the president. However, the PDP law does not explain in detail how the institution will be established. In addition, it does not detail the position and structure of the PDP authority. Whether the institution will be newly established or just an institution that is converted from the previous existing institution. As a result, the personal data protection institution will not be much different from other executive government institutions. Whereas one of its main mandates is to ensure the implementation of personal data protection against administrative law. As well as providing sanctions if the institution commits a violation in the form of facilitating out-of-court dispute resolution. This applies to both government and private institutions that use a person's personal data in carrying out their duties and functions. Therefore, the personal data protection institution needs to be ensured that it will not take sides or be

¹⁵ Republik Indonesia.

biased when supervising ministries or other government institutions. This is because the existing institutions and authorities are both in the executive branch. Thus, the only thing that can be expected is the policy and attention to detail from a president to formulate the institution later, in the form of the power that the authority of the personal data protection institution will have.

The PDP Law does not regulate investigators other than the police, meaning that there are no certain officials who can become investigators except from the police. Whereas in the ITE Law there is an article about investigators outside the police, namely in article 43 of the ITE Law, "that in addition to investigating officials of the police of the Republic of Indonesia, it also cooperates with civil servant officials".¹⁶ Therefore, it means that the same enforcement actors, similar criminal laws, should not let the performance produced after the PDP Law have an insignificant performance when before the PDP Law.

Meanwhile, the personal role of each individual as the owner of the data should also not be careless about the personal data owned, for the owner can take early prevention by increasing digital security literacy, such as not using the same password on each account, being wise in sharing ownership of personal data such as population identification numbers, e-mail, telephone numbers, and other personal data. And always be careful in visiting sites or in downloading applications that contain fraud.

B. Implementation of Law Number 27 Year 2022 on Personal Data Protection Islamic Law Review

The source of law in Islam is guided by the Qur'an and Hadith or Sunnah of the Prophet Muhammad SAW. Both are a source of reference for Muslims in organizing and carrying out their lives. With the wider power of Islam so that it has more and more people who are in any part of the earth. Making the problems of social life of Muslim communities more complex and diverse. No exception in the era of industrial globalization and the digital era, where there are individual personal rights in which there is privacy and confidentiality such as biodata, photos, videos, likes, and other important data.

In Islamic law, personal data is classified as data that has the glory, honor and dignity of a person who must not be disturbed. So that when there is misuse of data, it causes harm (*mudharat*) in the form of damage to one's dignity. Whereas in Islamic law as

¹⁶ Republik Indonesia, "Undang-Undang Tentang Informasi Dan Transaksi Elektronik (UU Nomor 19 Tahun 2016)," 2016.

much as possible to realize the benefit of the people. This is in line with the explanation of personal data protection in the perspective of *saad dzari'ah*, which is a method of istinbath Islamic law oriented towards the maintenance of the public good.¹⁷ The existence of personal data protection regulations in the form of legislation becomes absolutely necessary as a preventive measure to close the space for public mischief that could arise. As the hadith narrated by Bukhari and Muslim,

إِذَا اسْتَأْذَنَ أَحَدُكُمْ ثَلَاثًا فَلَمْ يُؤْذَنَ لَهُ فَلْيَنْصَرِفْ

Meaning: "If one of you asks for permission three times, but is not granted, then go back" (HR Al-Bukhari and Muslim).

Asking permission first when entering someone else's house, forbidding Muslims to enter the house before getting permission from the owner of the house, saying salam first when entering someone else's house so as not to witness things that are usually hidden and guarded not to be seen by others.¹⁸ Therefore, the meaning of the house is not only as a place to shelter from the heat, rain, or not just to warm up from the cold weather but more to the realm of the most personal privacy. In addition to the evidence from the Quran, there are many narrations of the Prophet's hadith that show the protection of personal data is very important. Other people's privacy should not let other parties know. One of them is the hadith narrated by Anas which clearly describes it:

عَنْ أَنَسٍ قَالَ أَتَى عَلِيَّ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا أَلْعَبُ مَعَ الْعُلَمَانَ قَالَ فَسَلَّمَ عَلَيْنَا فَبَعَثَنِي إِلَى حَاجَةٍ فَأَبْطَأْتُ عَلَى أُمِّي فَلَمَّا جِئْتُ قَالَتْ مَا حَبَسَكَ قُلْتُ بَعَثَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِحَاجَةٍ قَالَتْ مَا حَاجَتُهُ قُلْتُ إِنَّهَا سِرٌّ قَالَتْ لَا تُحَدِّثَنَّ بِسِرِّ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَحَدًا قَالَ أَنَسُ وَاللَّهِ لَوْ حَدَّثْتُ بِهِ أَحَدًا لَحَدَّثْتُكَ يَا ثَابِتُ

Meaning: "Anas reported that he said, "I was once visited by the Messenger of Allah (SAW) while I was playing with other friends. Then he greeted us and sent me on an errand until I was late returning home. Arriving home, my mother asked me, 'Why were you late coming home? So I answered, 'I was told by the Messenger of Allah for a need.' My mother continued to ask, 'What need?' I replied, 'It's a secret.' My mother said, 'Well, you should not tell the secret of the Messenger of Allah to anyone.'" Anas said, "By Allah, if I could tell that secret to someone, I would tell it to you, Tsabit!" (HR Muslim no 4533).

¹⁷ Mohammad Farid Fad, "Perlindungan Data Pribadi Dalam Perspektif Sadd Dzari'ah," *Muamalatuna* 13, no. 1 (2021): 33, <https://doi.org/10.37035/mua.v13i1.4674>.

¹⁸ S Sudariyah, "Konstruksi Tafsir Al-QurânTManul Majid An-Nur Karya M Hasbi Ash-Shiddieqy," *SHAHIH: Journal of Islamicate Multidisciplinary* 3, no. 1 (2018): 93–106, <https://doi.org/10.22515/shahih.v3i1.1282>.

From the verses of the Qur'an and the Prophet's Hadith, it can be seen that there is a sensitivity of Islamic teachings regarding the preservation and protection of one's personal privacy, which may be something that a person does not want to show in public, which is his honor. It is also clear that in the *maqasidus syariah* there is *hifdzul al-Dīn*, which is a guarantee for the benefit of the people in maintaining their religious beliefs. *hifdzul al-aql* (protecting the mind) in the form of rights that guarantee human freedom of thought and expression *hifdzun nafsi* (protecting the body and soul) in the form of personal protection, and *hifdzul mali* (protecting property) and *hifdzul nas* (protecting human rights),¹⁹ so that the PDP Law is part of the objectives of Islamic law (*maqasidus syariah*). The principle of *hifdzul al-nasl* means that Islam preserves and protects the privacy of others.

The ethics of asking permission first to something that is not its right, has even been recommended from an early age, found in Surah An-Nur verse 58

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لِيَسْتَأْذِنَكُمْ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا الْحُلُمَ مِنْكُمْ ثَلَاثَ مَرَّاتٍ مِّن قَبْلِ صَلَاةِ الْفَجْرِ وَحِينَ تَضَعُونَ ثِيَابَكُمْ مِّنَ الظَّهْرِ وَمِن بَعْدِ صَلَاةِ الْعِشَاءِ ثَلَاثُ عَوْرَاتٍ لَّكُمْ ءَلَيْسَ عَلَيْكُمْ وَلَا عَلَيْهِمْ جُنَاحٌ بَعْدَهُنَّ طَوْفُونَ عَلَيْكُمْ بَعْضُكُمْ عَلَى بَعْضٍ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ ءَايَاتِهِ ۗ وَاللَّهُ عَلِيمٌ حَكِيمٌ

Meaning: "O ye who believe! Let your slaves, and those of you who have not come to puberty, ask leave of you at three times (before they come into your presence): Before the prayer of dawn, and when ye lay aside your raiment for the heat of noon, and after the prayer of night. Three times of privacy for you. It is no sin for them or for you at other times, when some of you go round attendant upon others (if they come into your presence without leave). Thus Allah maketh clear the revelations for you. Allah is Knower, Wise".

The verse that teaches Muslims to be ethical from a young age is a way for Muslims to know the boundaries between personal privacy and the privacy of others.²⁰ This is in line with the regulation of personal data protection, that users' personal data can only be accessed if they get permission from the party who owns the data. Hadith narrated by Abu Hurairah, the Messenger of Allah (peace and blessings be upon him) also said,

لَوْ أَنَّ امْرَأً اِطَّلَعَ عَلَيْكَ بِغَيْرِ إِذْنٍ فَحَدَفْتَهُ بِحُصَاةٍ فَفَقَأَتْ عَيْنَهُ مَا كَانَ عَلَيْكَ مِنْ جُنَاحٍ

Meaning: "If someone looks into your house without your permission, and you throw a pebble at him so that he picks out his eye, there is no sin on you". (HR. Al-Bukhari and Muslim)

¹⁹ Musolli Musolli, "Maqasid Syariah: Kajian Teoritis Dan Aplikatif Pada Isu-Isu Kontemporer," *AT-TURAS: Jurnal Studi Keislaman* 5, no. 1 (2018): 60–81, <https://doi.org/10.33650/at-turas.v5i1.324>.

²⁰ Ash-Shiddieqy, *Tafsir Al-Qur'an Majid An-Nur* (Pustaka Rizki Putra, 2016).

The previous surahs and verses of the Qur'an explain the importance of maintaining the privacy of fellow believers. It is forbidden by religion to see something that is not rightfully theirs, let alone when the information obtained is used for improper purposes, including for crime or personal gain. It is also clear from the Hadith of Al-Bukhari and Muslim that in Islam, every contradictory action will have consequences. In fact, the Hadith implies that if privacy is misused by others, their actions are punishable. Ensuring this explains that Islam provides basic ethical values to be applied in the lives of people. Another explanation of the obligation of a Muslim to other Muslims to both maintain honor and maintain their respective privacy is contained in the hadith:

كُلُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ حَرَامٌ دَمُهُ وَمَالُهُ وَعِزُّهُ

The meaning of the hadith is, "Every Muslim against another Muslim is forbidden, namely his blood, honor and property" (HR. Bukhari).

From the hadiths and Qur'anic verses that have been discussed, it is found that the personal data owned by people is an important part of Islam and sanctions are also regulated for each individual's actions when violating other people's losses both in the realm of personal data owned by individuals. Although the explanation is only explicitly stated in the Qur'an and hadith.

Islamic law recognizes *saad dzari'ah* as an *istinbat* method oriented towards the maintenance of benefit. By calculating the impact and consequences of an action, when the action leads to a *mafsadah* and harms the people, it is prohibited because rejecting harm is more important. Analyzing the PDP law regarding its application is permissible. Because a person performs an activity/behavior related to the collection of his/her personal data, which was originally allowed because it contains benefits, but in the goals that will be achieved, it has the potential to end in harm and misfortune if there is no protection from the Government. Therefore, the existence of a law on personal data protection is a preventive measure to prevent misuse (*sadd dzari'ah*), the occurrence of misuse in the management of personal data which results in the potential spread of a person's personal data.

CONCLUSION

The substance of Islamic law that the Personal Data Protection Law is an implementation of *saad al-dzari'ah*, there is harmony in the form of concrete steps to seek legal guarantees with the aim of social humanitarian interests by prioritizing community

protection over government obligations (*hablu minannas*). This is also an effort to realize the benefit of the people and reject the misfortune that leads to loss and damage. Related to the implementation of personal data legislation policy is not the end of the struggle for the process of protecting people's personal data. But it is the beginning of a bright spot to finish the data leaks that often occur. The implementation is still very early, especially in terms of the structural and character of the personal data protection authority or institution established by the president later is still unclear. Although the standards and general principles of personal data protection have followed international standards. So that between the government, private sector and corporations, and individuals as owners of privacy data, need to work together so that the personal data protection policy can be realized in accordance with expectations and synchronization with various other laws and regulations.

REFERENCES

- Angriani, Parida. "Perlindungan Hukum Terhadap Data Pribadi Dalam Transaksi E-Ash-Shiddieqy. Tafsir Al-Qur'an Majid An-Nur. Pustaka Rizki Putra, 2016.
- Commerce: Perspektif Hukum Islam Dan Hukum Positif." *DIKTUM: Jurnal Syariah Dan Hukum* 19, no. 2 (2021): 149–65.
- Communication, and Social Sciences (BECOSS) Journal* 1, no. 1 (2019): 147–54. <https://doi.org/10.21512/becossjournal.v1i1.6030>.
- Fad, Mohammad Farid. "Perlindungan Data Pribadi Dalam Perspektif Sadd Dzari'ah." *Muamalatuna* 13, no. 1 (2021): 33. <https://doi.org/10.37035/mua.v13i1.4674>.
- Jeremias Palito, Safira Aninditya Soenarto, Tiara Almira Raila. "Urgensi Pembentukan Pengaturan Pelindungan Data Pribadi Di Indonesia Seta Komparasi Pengaturan Di Jepang Dan Korea Selatan." *Supremasi Hukum* 17 (2021): 18–22.
- Linn, Emily. "A Look Into the Data Privacy Crystal Ball: A Survey of Possible Outcomes for the EU-U.S Privacy." *Vanderbilt Journal of Transnational Law* 50 (2017): 1358.
- Marzuki, Peter Mahmud. *Penelitian Hukum: Edisi Revisi*. Kencana Prenada Media Grup, 2017.
- Maswir Maswir, "Implementasi Hukum Islam Di Indonesia Dalam Perspektif Siyasa Syar'iyah," *Hukum Islam* 19, no. 1 (2019): 81, <https://doi.org/10.24014/hi.v19i1.7249>.
- Musolli, Musolli. "Maqasid Syariah: Kajian Teoritis Dan Aplikatif Pada Isu-Isu Kontemporer." *AT-TURAS: Jurnal Studi Keislaman* 5, no. 1 (2018): 60–81. <https://doi.org/10.33650/at-turas.v5i1.324>.
- Ramli, Ahmad M. "Tafsir UU Perlindungan Data Pribadi Yang Perlu Diketahui." *Kompas.com*, 2022. <https://nasional.kompas.com/read/2022/09/25/13335721/tafsir-uu-perlindungan-data-pribadi-yang-perlu-diketahui>.
- Rizal, Muhammad Saiful. "Perbandingan Perlindungan Data Pribadi Indonesia Dan

Malaysia.” *Jurnal Cakrawala Hukum* 10, no. 2 (2019): 218–27. <https://doi.org/10.26905/idjch.v10i2.3349>.

Safutra, Ilham. “UU Perlindungan Data Pribadi Disahkan, Segera Bentuk Komisi PDP.” *JawaPost.com*, 2022. <https://www.jawapos.com/nasional/politik/21/09/2022/uu-perlindungan-data-pribadi-disahkan-segera-bentuk-komisi-pdp/>.

Sinaga, Erlina Maria Christin. “Formulasi Legislasi Perlindungan Data Pribadi.” *Jurnal RechtVinding* 9, no. 2 (2020): 237–56.

Soediro. “Prinsip Keamanan, Privasi, Dan Etika Dalam Undang-Undang Informasi Dan Transaksi Elektronik Dalam Perspektif Hukum Islam.” *Kosmik Hukum* 18, no. 2 (2018): 95–112.

Sudariyah, S. “Konstruksi Tafsir Al-Qur’ânul Majid An-Nur Karya M Hasbi Ash-Shiddieqy.” *SHAHIH: Journal of Islamicate Multidisciplinary* 3, no. 1 (2018): 93–106. <https://doi.org/10.22515/shahih.v3i1.1282>.

Sulistiyawan, Luqman. “Kilas Balik, Lima Kasus Kebocoran Data Pribadi Di Indonesia.” *Kompas.com*, 2021. <https://www.kompas.com/cekfakta/read/2022/09/06/171100182/kilas-balik-lima-kasus-kebocoran-data-pribadi-di-indonesia-?page=all>.

Undang-Undang Dasar 1945 Negara Republik Indonesia

Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik

Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi

Yuniarti, Siti. “Perlindungan Hukum Data Pribadi Di Indonesia.” *Business Economic*,

Yunus, Zaim. “Panduan Singkat Memahami UU 27/2022 Tentang Pelindungan Data Pribadi.” *LegalUs*, 2022. <https://legal2us.com/panduan-singkat-memahami-uu-27-2022-tentang-pelindungan-data-pribadi/>.