

Privacy in Indonesia: overview

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LEGISLATION

1. What national laws (if any) regulate the right to respect for private and family life and freedom of expression?

General laws

Article 28(G) of the 1945 Constitution provides that every person has the right to:

- Protection of their personal selves, families, respect, dignity and possessions under their control.
- Security and protection from threat of fear for doing, or not doing, something which constitutes a human right.

Article 28(G) is considered the basis for more specific data privacy legislation.

Provisions on the protection of personal data can be found in Law No 11 of 2008 regarding Electronic Information and Transactions, as amended by Law No 19 of 2016 (Electronic Information Law). The procedural guidelines for the Electronic Information Law are contained in Government Regulation No 82 of 2012 regarding the Implementation of Electronic Systems and Transactions (Government Regulation 82). However, none of these regulations provide a comprehensive set of provisions for the protection of personal data, but rather simply provide the general idea of personal data protection without specific guidelines. On 1 December 2016, the Minister of Communication and Informatics (MOCI) issued a regulation specifically for the protection of personal data that is contained in an electronic system, namely MOCI Regulation No 20 of 2016 regarding Personal Data Protection in Electronic Systems (MOCI Regulation 20). MOCI Regulation 20 is an implementing regulation for the Electronic Information Law and Government Regulation 82.

The House of Representatives is now in the process of discussing a draft law on Personal Data Protection (PDP Draft Law), which is rumoured to be on track for issuance in 2017. The enactment of the PDP Draft Law would give rise to the first comprehensive law in Indonesia that specifically deals with the protection of personal data.

The Electronic Information Law, Government Regulation 82 and MOCI Regulation 20 are jointly referred to here as the PDP Regulations.

Sectoral laws

There are several laws in a number of specific areas that indirectly deal with data privacy. These include:

- **Employment.** There is no specific stipulation in Indonesian employment laws on the protection of personal data of employees. It would normally be considered sufficient for employers in Indonesia to regulate the protection of the personal data of their employees by way of unilateral employee consents, employment agreements, company regulations or collective labour agreements. The basis to make these agreements and/or consents depends on the freedom of

contract principle under Article 1338 of the Indonesian Civil Code. These agreements and/or consents authorise the collection, retention, disclosure and use of employees' personal data or other confidential information.

- **Health sector.** Article 57 of Law No 36 of 2009 regarding health stipulates in principle that every person is entitled to the confidentiality of their personal health information that has been provided to, or collected by, health care providers.
- **Financial sector.** Financial service providers are prohibited by Article 31 of Financial Services Authority (*Otoritas Jasa Keuangan (OJK)*) Regulation No 1/POJK.07/2013 regarding Financial Consumer Protection from disclosing customer data and/or information to third parties, unless they receive written consent from the customer or are required to by lawful authority. If a financial service provider obtains personal data and/or information of a person and/or a group of persons from a third party it is required to have written confirmation from the third party that the person or group has agreed to the disclosure.
- Additionally, the protection of consumers' personal data and/or information in relation to the payment transaction process conducted by payment system service providers is provided under Article 25 of Indonesian Central Bank (Bank Indonesia) Regulation No 18/40/PBI/2016 regarding the Provision of Payment Transaction Processing.
- **Telecommunications sector.** Article 40 of Law No 36 of 1999 regarding Telecommunications (Telecommunications Law) prohibits the "tapping" of information transmitted through telecommunications networks. Telecommunications services operators must keep any information transmitted, and/or received, by a telecommunications service subscriber, through a telecommunications network and/or telecommunications services provided by the relevant operator, confidential (*Article 42, Telecommunications Law*).

2. Who can commence proceedings to protect privacy?

The Minister of Communication and Informatics (MOCI) supervises the implementation of MOCI Regulation 20. The relevant official at the ministry is authorised to request data and information from an electronic system provider (ESP) to check on their data protection compliance. This may be done periodically or at any time considered necessary.

Every data subject and electronic system provider (ESP) can file a complaint to the MOCI. This is intended as an effort to resolve a dispute by deliberation or through other alternative resolution efforts.

The complaint intended above can be filed based on the following reasons:

- Written notification was not given of the failure by an ESP to protect the confidentiality of personal data to the data subject or other ESPs related to such personal data. This does not

necessarily have to have had a detriment effect on the data subject.

- A loss has occurred to the data subject or other ESPs related to the failure to protect the confidentiality of the personal data where the deadline to provide written notification has passed.

In the event of a dispute, MOCI delegates its authority to settle the dispute to the Director General of Informatics Application (Director General). In this case, the Director General will form a data privacy dispute settlement panel.

3. What privacy rights are granted and imposed?

Data subjects are entitled to:

- The confidentiality of their personal data.
- File complaints with the Minister of Communication and Informatics in relation to disputes over the failure of the relevant electronic system provider (ESP) to protect the confidentiality of their personal data.
- Obtain access or the opportunity to change or update their personal data without interfering with the personal data management system, unless otherwise provided by applicable laws and regulations.
- Obtain access or the opportunity to receive the history of their personal data that has been given to the ESP insofar as it is still in accordance with the applicable laws and regulations.
- Request the destruction of their personal data in an electronic system managed by the ESP, unless otherwise determined by applicable laws and regulations.

4. What is the jurisdictional scope of the privacy law rules?

The Electronic Information Law clearly states that it has extraterritorial coverage. In addition to covering actions conducted within the territory of Indonesia and/or by an Indonesian citizen, the Electronic Information Law is also applicable to any legal actions conducted outside the Indonesian jurisdiction that have legal implications in or are detrimental to Indonesia, either by:

- An Indonesian citizen.
- A foreign citizen.
- An Indonesian legal entity.
- A foreign legal entity.

Under the Electronic Information Law, the phrase "detrimental to Indonesia" includes, but is not limited to, losses in connection with the national economy, strategic data protection and the dignity, protection, defence and sovereignty of the nation, citizens and legal entities.

As an implementing regulation of the Electronic Information Law, the scope of MOCI Regulation 20 should also be considered extraterritorial.

5. What remedies are available to redress the infringement of those privacy rights?

The data privacy dispute settlement panel formed by the Director General of Informatics Application may provide a recommendation to the Minister of Communication and Informatics to impose administrative sanctions on the relevant electronic system provider. However, the dispute can also be settled amicably or by any other alternative dispute resolution process.

6. Are there any other ways in which privacy rights can be enforced?

MOCI Regulation 20 provides that personal data must be protected during the following processes:

- Acquisition and collection.
- Processing and analysing.
- Storage.
- Appearance, publication, transmission, dissemination and/or access opening.
- Destruction.

Practical Law Contributor profile



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Non-professional qualifications. Bachelor of Laws in Private Law, University of Indonesia; LLM in International Economic and Business Law, University of Groningen, The Netherlands

Recent transactions

- Advising a world-leading supplier company of protective coatings to the decorative, protective, marine, container and yacht markets in connection with a compliance review, including data protection matters.
- Acting for one of the world's largest telecommunication companies in the acquisition of an Indonesian data centre service provider company.
- Advising an Indonesian ICT services and solutions provider company, a subsidiary of one of the biggest global IP network companies, in the expansion of its line of business.
- Acting for a subsidiary of one of the largest ICT companies in the world to establish its presence in Indonesia.
- Advising an Indonesian data centre service provider company on data protection and data centre service matters.

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Recent transactions

- Advising real estate companies on the impact of Indonesian personal data protection regulations on their businesses.
- Advising a multinational insurance company on the application of Indonesian personal data protection regulations.
- Assisting a Japanese telecommunications company with the acquisition of a company engaged in data storage hosting services.

Languages. English, Indonesian

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