



Client Alert

A new Government Regulation amending the Government Regulation No. 82 Year 2012 regarding the Electronic Systems and Transactions ("**GR 82/2012**") is currently being drafted.

The personal data protection issue has gained significant attention in the regulatory sector. On May 25, 2018, the European Union (EU) have enforced Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation - "**GDPR**"). Under GDPR, EU-based companies and any affiliates thereof are required to handle and manage the data under their possession. A failure to comply with the GDPR will result in heavy fines. Following EU's application of the regulation, the Indonesian government has also applied regulations and sanction in data protection.

Current Data Protection Regulatory Regime in Indonesia

In Indonesia, the provisions relating to general data protection are scattered in a number of laws and regulations in various regimes such as banking, financial services, population administration, and communication and informatics. One of the regulations governing private data protection is the GR 82/2012.

In general, the laws and regulations related to data protection in the GR 82/2012 is regulated in its Article 15 and in the Minister of Communication and Information Regulation No. 20 Year 2016 regarding Personal Data Protection in the Electronic System.

These existing regulations, however, are deemed to be insufficient in countering the misuse of personal data issues in Indonesia. For example, earlier this year, there was a report where a debt collector contacted a number of people whose names are stored in the debtor's phone contact list for the purpose of collecting the money which was owed by the debtor to the related peer-to-peer lending company, hence misusing the debtors' personal data.

The Draft of the Amendment on the GR 82/2012

In response to the relevant issues, particularly on the potential misuse of personal data, an amendment to the GR 82/2012 is currently being drafted in order to provide a stronger protection on personal data. On the initial examination of the draft, we note that data subjects are entitled to request for the deletion of any irrelevant electronic information and/or electronic documents that are under the control of Electronic System Operator. Electronic information and/or electronic documents that are deemed to be irrelevant consist of personal data that:

- a. are obtained and processed without the consent of the data subjects;
- b. the consent of which had been withdrawn by the data subjects;
- c. are obtained or processed in an unlawful manner;
- d. are no longer in accordance with the objective of its obtainment based on the agreement and/or laws and regulations;
- e. the usage of which has exceeded the period set forth under the agreement and/or laws and regulations; and/or
- f. are displayed by the Electronic System Operator which harm the data subjects.

The request, as mentioned above, must personally be submitted by the related data subject to the local district court. If the local district court grant the request, the local district court will then issue a determination concerning the deletion. Upon the local district court's determination, the related Electronic System Operator must delete the irrelevant electronic information and/or electronic documents.

For that purpose, the draft stipulates that Electronic System Operator must provide a mechanism for deleting irrelevant electronic information and/or electronic documents. This mechanism shall at least contain provisions regarding:

- a. the provision of communication line between the Electronic System Operator and the data subjects;
- b. data collection on the request to delete the irrelevant electronic information and/or electronic documents;
- c. technical instructions of the deletion;

- d. period in completing the deletion; and
- e. the authorized party to carry out the deletion.

Electronic System Operator must comply with the aforementioned requirements. Failure to comply with such requirements will result in the imposition of administrative sanctions, such as:

- a. written warnings;
- b. administrative fines;
- c. temporary suspension;
- d. access termination;
- e. exclusion from the list of: Electronic System Operator, Electronic Agent Operator, Electronic Certification Organizer, and Reliability Certification Agency.

Fur further inquiries, please contact:

Rahmaddiar Ibrahim

Associate

Hermawan Juniarto & Partners

Email: rahibrahim@hjplaw-deloitte.com

Michael Ray Kresnadi

Associate

Hermawan Juniarto & Partners

Email: mkresnadi@hjplaw-deloitte.com

Mikaila Jessy Azzahra

Intern

Hermawan Juniarto & Partners

Email: mazzahra@hjplaw-deloitte.com



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