# Client Alert August 2025

## Indonesia's constitutional court clarifies the obligation of data protection officers' appointment

### Overview

On 30 July 2025, the Constitutional Court of Indonesia issued Verdict Number 151/PUU-XXII/2024. This verdict provides the long-awaited clarity on the obligation of data controllers and data processors to appoint a data protection officer (*Pejabat Pelindungan Data Pribadi* (DPO)) under Article 53 paragraph (1) of Law Number 27 of 2022 on Personal Data Protection (PDP Law).

Previously, the obligation of data controllers and data processors to appoint a DPO can be interpreted as arising only when all three criteria mentioned in Article 53 paragraph (1) (a), (b), and (c) of the PDP Law are met cumulatively. This interpretation was based on Indonesian standard legislative drafting principles, where the use of conjunction "and" indicates that all listed conditions have to be satisfied collectively.

This formulation led to varied implementation across business sectors and raised concern that certain organizations who only fulfills one or two of the three criteria laid out under Article 53 paragraph (1) of the PDP Law are not obligated to appoint a DPO, potentially undermines the protection of personal rights guaranteed under Article 28G of the Constitution of Indonesia.

## Key ruling

Under this verdict, Article 53 paragraph (1) of the PDP Law must now be read as an alternative instead of cumulative requirement; otherwise, it would be considered to have no legal force. As a result, the correct reading of Article 53 paragraph (1) of the PDP Law shall be as follows:

"*(1) A Personal Data Controller and a Personal Data Processor shall appoint an officer or personnel to carry out the function of Personal Data Protection [DPO] in the following circumstances:*

*(a) the processing of Personal Data is for the purpose of public services;*

*(b) the core activities of the Personal Data Controller have characteristics, scope, and/or purposes that require regular and systematic monitoring of Personal Data on a large scale;* ***~~and~~ and/or***

*(c) the core activities of the Personal Data Controller consist of large-scale processing of specific types of Personal Data and/or Personal Data related to criminal offenses*."

Therefore, it is affirmed that the obligation to appoint a DPO under Article 53 paragraph (1) of the PDP Law arises when any one (or more) of the listed criteria is met.

## Implications of the previous wording

Before this verdict, the formulation of Article 53 paragraph (1) of the PDP Law could lead to a differing interpretation in determining whether the obligation to appoint a DPO arose when any of the listed criteria was met or only when all three are fulfilled cumulatively.

From a strict textual interpretation, Article 53 paragraph (1) of the PDP Law appeared to mandate a cumulative interpretation, given the use of the conjunction "and" between points (a), (b), and (c). However, this created considerable uncertainty in the market due to the following reasons:

1. The cumulative requirement seemed to differ from the main objective of the PDP Law. In practice, many organizations would only meet one of the criteria under Article 53 paragraph (1) of the PDP Law and engage in high-risk personal data processing activities. To be consistent with the spirit of the PDP Law, these organizations should also be required to appoint a DPO to ensure data protection obligations.
2. The PDP Law is largely modeled after the EU General Data Protection Regulation (GDPR), including the provision regarding the appointment of a DPO. However, a key distinction lays in the choice of the conjunction used. The GDPR uses conjunction "or", clearly indicating that meeting any one of the conditions is sufficient to trigger the DPO requirement; whereas the PDP Law uses conjunction "and" that led to differing interpretations. In practice, many Indonesian organizations have used the GDPR as a benchmark when interpreting and implementing the PDP Law.
3. In the Constitutional Court's judicial review process, both the Indonesian House of Representatives (DPR) and the President of the Republic of Indonesia — as parties invited by the Court to provide official statements expressly affirmed that the original legislative intent behind Article 53 paragraph (1) of the PDP Law was to establish an alternative set of requirements, not a cumulative requirement.

Our practical experience shows that some private sector organizations were hesitant to appoint a DPO due to this specific language of Article 53 paragraph (1) in particular letter (a) that referenced data processing as "for the purpose of public services". This phrase is often interpreted narrowly as applying only to government-provided services. Consequently, private entities frequently concluded that they were not subject to the DPO requirement.

This reluctance may have been further influenced by the commercial implications associated with appointing a DPO. Establishing a DPO function requires organizational planning and investment, including financial resources and dedicated personnel. In the absence of legal certainty, many companies appear to delay the appointment of a DPO.

## What this means for businesses

With the issuance of the Court's verdict, businesses can now shift their focus inward and consider the following key actions in assessing their compliance obligation:

- **Reassess the applicability**: Companies should evaluate whether their operations fall under any one of the three criteria under Article 53 paragraph (1) of the PDP Law. This includes determining whether: they process personal data for public service functions; their core activities require regular and systematic monitoring of personal data on a large scale; and/or they process a large scale of specific data (e.g., biometric, health, or financial data) or data related to criminal offenses.
- **Determine the appropriate DPO model**: If the company is required to appoint a DPO, they should assess the best model for DPO implementation. Some common approaches include appointing an internal DPO within the organization, or setting up a group-level DPO covering several affiliate entities, or engaging an external provider who offer DPO-as-a-Service (DPOaaS). Each model carries its own advantages and limitations, therefore the selection should be tailored to the company's capabilities.

## Key takeaways

- The Constitutional Court has confirmed that for Article 53 paragraph (1) of the PDP Law should be interpreted as setting out alternative—not cumulative—criteria for appointing a DPO. Therefore, meeting any one or more of the listed criteria is sufficient to trigger the DPO obligation.
- With the clarification in place, companies should reassess their eligibility under Article 53 paragraph (1) of the PDP Law and consider the suitable DPO implementation model.

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