



# Legal Construction of the Protection and Processing of Children's Personal Data in Indonesia

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**Abstract.** Children fall into the vulnerable category in terms of fulfilling human rights in a country. The Republic of Indonesia guarantees the welfare of children's rights, including the privacy rights of the children. In the digital era, personal data often experiences misuse of its processing. Specifically for children's personal data, more specific protection is needed compared to adult personal data. Unfortunately, in Indonesia, there are no regulations regarding the protection of children's personal data. Children's personal data contains a variety of important information and is more prone to be misused by some parties. Therefore, it is necessary to have special protection relating to the protection and processing of children's personal data. Based on these conditions, to fulfill the legal certainty principle and solve the legal vacuum, this research aims to provide a legal construction for the protection and processing of personal data in Indonesia. This research is doctrinal research with a statutory approach and a comparative approach which will provide a comparison of regulations in countries that have provided legal protection for children's personal data. The research findings show that in terms of a legal void related to children's personal data, it is necessary to provide arrangements specifically related to the consent of the children and the holder of parental responsibility considering the juridical, philosophical, and sociological aspects of urgency. The Children's Online Privacy Protection Rule regulates the conditions applicable to a child's consent in relation to information society services and special protection of children's personal data, which can then be adopted into laws and regulations, specifically in the Personal Data Protection Law Number 27/2002, as a solution to the problem of children's personal data in Indonesia.

**Keywords:** Legal Construction, Protection and Processing Data, Children's Personal Data

# 1 Introduction

## 1.1 Research Background

Technology-based activities allow for rapid data exchange [1]. Internet users in Indonesia vary from children and adults. According to the data from the Indonesian Internet Service Providers Association (“APJII”) noted that internet penetration in Indonesia has reached 78.19 percent in 2023 or penetrated 215,626,156 people from a total population of 275,773,901 people, which in 2023 has increased by 1.17% compared to last year. When viewed on data from the Central Bureau of Statistics, the percentage of the population aged five years and over who have accessed the internet by age group can be seen in the following table:

**Table 1.** Percentage of Population 5 Years and Over Who Have Accessed the Internet in the Last 3 Months by Age Group 2019-2021 (BPS, The National Socio-Economic Survey, 2021)[2]

Age Group – Communication	Percentage of Population 5 Years and Over Who Have Accessed the Internet in the Last 3 Months by Age Group (in percent)		
	2019	2020	2021
5-12	7.93	9.55	13.32
13-15	7.86	7.42	7.23
16-18	9.66	8.83	8.12
19-24	18.72	17.13	15.26
25+	55.84	57.07	56.08

When viewed from this data, internet users in Indonesia at the age of 5-12 years have always increased, on the other hand in the age range 13-15 and 16-18 have decreased in percentage. However, when viewed in the table, children as internet users in Indonesia in 2019 - 2021 always increased in numbers [3].

Thus, based on these data, internet users who are included in the category of children basically have implications for how children behave on the internet, especially on the ability and understanding of privacy and personal data from children.

According to the study conducted by Livingstone, Sonia, *et. al.*, it is stated that 5- to 7-year-old children – they found that there is limited evidence on their understanding of privacy, but the existing studies suggest that children of this age are already starting to use services that collect and share data. At this young age, children have little clear understanding of how to engage in online privacy protection and rely on adults to advise them and create rules [3]. Children’s sharing of personal data at this stage (children aged 8-11) is guided by parental advice, and those whose parents are actively mediating their internet use are sharing less personal information online [3]. Children of this age also see monitoring more positively than adults (e.g., that it might be for the benefit of their own safety), but they also start to develop a desire for independence and might come up with strategies to bypass parental monitoring, supervision, or surveillance when it is undesirable [4]. Also this study stated that for the oldest group of children – children between 12 and 17 years of age – they found that they are by now aware of

privacy risks: they engage in careful consideration of information disclosure and balance their desire to protect themselves with the need to participate and socialize [4].

According to the data from the Ministry of Women Empowerment and Child Protection (“KemenPPPA”)[5] in the year 2022, the data shows that boys spent more time accessing the internet for entertainment such as playing games or watching videos at 73.54 percent compared to girls at 67.91 percent. However, the data shows that girls access the internet more to get information/news, obtain information related to learning, and spend time playing social media compared to boys. Meanwhile, internet access used to search for information and conduct online buying and selling transactions for both boys at 7.26 percent and girls at 11.77 percent can be stated as equally low.

Based on this data, children have started to use the internet at a relatively young age, where access to the internet is used either for gaming, video streaming, or social media. The use of the internet by children is relatively much related to their daily lives.

Personal data protection is one of the human rights which is part of personal protection, therefore it is necessary to provide a legal basis to provide security over personal data, based on the 1945 Constitution of the Republic of Indonesia. The protection of personal data is aimed at ensuring the rights of citizens to personal protection fostering public awareness and ensuring recognition and respect for the importance of personal data protection.

Therefore, the rise of children as internet users certainly implies that there is a need for privacy protection for children, especially regarding the protection and processing of children's personal data. The establishment of a comprehensive regulation regarding children's privacy is needed to ensure the certainty of children's privacy rights in the era of digitalization.

## **1.2 Legal Materials and Method**

This study adopts a descriptive-analytical approach using normative doctrinal methods. This study aims to analyze and evaluate the urgency to merit specific protection of children's personal data. This study employs statute and comparative approaches to address the issue regarding personal data protection for children.

Legal materials in this study are categorized into primary and secondary legal material, whereas the primary legal material consists of the statutes and regulation both in Indonesia and America in terms of children's personal data and the secondary materials are books, literature, journals, and any internet articles which is related to the protection and processing of children's personal data. Legal materials from this study are accumulated by using both the internet and literature review.

## 2 Result and Discussion

### 2.1 Legal Construction of The Data Protection and Processing of Children's Personal Data in Indonesia

The legal protection and processing of children's personal data in Indonesia has not been comprehensively regulated. In 2022, Indonesia passed a legal instrument of Personal Data Protection Law Number 27/2022 ("PDP Law"). PDP Law is mandated by Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that, "Every person shall have the right to the protection of his/her person, family, honor, dignity, and property under his/her control, and shall have the right to security and protection from threats of fear to do or not to do something which is a fundamental right". The issue of personal data protection arises due to concerns over Personal Data that can be experienced by persons and/or legal entities. Such violations may cause material and non-material losses. Legal protection of privacy means preventing losses that are difficult to assess [6].

In PDP Law, personal data is categorized into two categories, specific personal data, and general personal data. Children's data is included in specific personal data. The protection and processing of children's personal data is regulated in Article 25 which states that:

#### Article 25

- (1) Processing of children's Personal Data is organized in a specialized manner.
- (2) The processing of children's Personal Data as referred to in paragraph (1) must obtain the consent of the child's parents and/or guardians in accordance with the provisions of laws and regulations.

The above provision notes several important points related to the processing of children's personal data, namely special organization of processing children's personal data and parental/guardian consent is required in terms of processing children's personal data. In this regard, PDP Law is the only domestic legislation providing the protection and processing of children's personal data. It is argued that the PDP Law has been enacted based on the following laws:

- 1) 1945 Constitution of the Republic of Indonesia
- 2) Presidential Decree Number 36/1990 Concerning Ratification of the Convention on the Rights of the Child

Under the 1945 Constitution of the Republic of Indonesia, the right to privacy is considered a constitutional right. This means the legal protection of privacy is being covered by the Constitution itself.

On the other hand, Presidential Decree Number 36/1990 is the ratification of the Convention on the Rights of the Child held in New York, USA on January 26, 1990. The Government of the Republic of Indonesia then ratified the convention and fulfilled its obligation of the convention in the form of a Presidential Decree. Specifically, Article 3 Paragraph 1 of the Convention on the Rights of the Child contains an important principle namely "the best interest of the children". It is therefore argued that the protection and processing of children's personal data fall within this principle, it is only natural that the PDP Law should accommodate this principle in one of its articles.

If elaborated further, the best interest of the children principle, basically has different categories, namely individual and collective best interest. Gerison Lansdown, in an article, explains further regarding the differences:[7]

“Well, traditionally, most legal systems have a concept of the best interests of an individual child. This supersedes what would be fair to the parent, for example in a custody case. Also, redress and remedy work most effectively at the individual level. However, the Committee interprets best interests as also applying to children as a constituency or group. In the context of a child rights impact assessment, you are largely thinking about children as a constituency rather than children as individuals, because you’re looking at broad policy matters that impact children’s daily lives. Crucially, if you ignore the collective, then you completely ignore children in policy making – their experience, views, preferences, and the impact the policy is having on them. But you need a more qualified approach to take account of other needs within the community. Also, it would be very difficult to seek specific redress in relation to best interests determined collectively, although it is not impossible. For instance, say a school decided to exclude a child which took no account of their best interests, then the child could seek redress against the decision. But the fact is that the school must consider the best interests of the individual child and of the children within the school.”

Therefore, based on the approach to the *best interest* of the child, it is appropriate for the PDP Law to provide an additional principle in its regulation. In the establishment of legislation, Indonesia refers to the Indonesia Establishment of Legislations Law Number 12/2011. In this law, it is stated that certain laws and regulations may contain other principles in accordance with the legal field of the relevant laws and regulations. This therefore suggests that in the case of children, the principle of *the best interest of the child* can be written explicitly in the PDP Law.

## **2.2 Legal Comparison of PDP Law Indonesia and Children’s Online Privacy Protection Act of 1998 (United States of America)**

As mentioned in the previous section, in Indonesia the protection and processing of the child's personal data is accommodated sporadically in several regulations. The latest regulation regarding privacy is accommodated in the PDP Law. The formulation of rules on personal data protection is due to the need to protect individual rights in society in connection with the processing of personal data both electronically and non-electronically using data processing devices. Adequate protection of personal data will give the public confidence to provide personal data for various greater public interests without being misused or violating their personal rights. Thus, this regulation will create a balance between the rights of individuals and communities whose interests are represented by the state. This regulation on personal data protection will contribute greatly to the creation of order and progress in the information society. However, the PDP Law, in its current form, has not been successful in protecting and processing children's personal data.

A comparative analysis is made of the United States Children's Online Privacy Protection Act ("COPPA") of 1998. COPPA is a federal law applicable to the online collection of personal information by persons or entities under United States jurisdiction about children under 13 years of age. Under COPPA it is stated that the term "child" means an individual under the age of 13, while in Indonesia the term "child" refers to an individual under the age of 18 [8].

The following three points in COPPA are worth explored and considered to be accommodated in the Indonesian law:[9]

- 1) The COPPA imposes certain requirements on operators of Websites or online services directed to children under 13 years of age, and on operators of other Websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age (collectively, "operators"). Among other things, the law requires that operators provide notice to parents and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age.
- 2) The law also requires operators to keep secure the information they collect from children and prohibits them from conditioning children's participation in activities on the collection of more personal information than is reasonably necessary to participate in such activities.
- 3) The law contains a "safe harbor" provision enabling industry groups or others to submit to the Federal Trade Commission for approval self-regulatory guidelines that would implement the protections under the law.

Based on the above points, COPPA provides further arrangements, especially about the responsibility of service providers for children's personal data. This is a crucial matter because in the case of a violation of children's personal data, it can be caused by the child himself, or caused by other parties.

Then it is necessary to understand some explanations of the phrases contained in COPPA, which include operators, disclosure, internet, and parents. The term "operator" according to COPPA:

(A) means any person who operates a website located on the Internet or online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce-

- (i) among the several States or with 1 or more foreign nations;
- (ii) in any territory of the United States or in the District of Columbia, or between any such territory and-
  - (I) another such territory; or
  - (II) any State or foreign nation; or
- (iii) between the District of Columbia and any State, territory, or foreign nation; but

(B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 45 of this title.

The term disclosure refers to with respect to personal information- (A) the release of personal information collected from a child in identifiable form by an operator for any purpose, except where such information is provided to a person other than the operator who provides support for the internal operations of the website and does not disclose or use that information for any other purpose; and (B) making personal information collected from a child by a website or online service directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through-

- (i) a home page of a website;
- (ii) a pen pal service;
- (iii) an electronic mail service;
- (iv) a message board; or
- (v) a chat room.

The term "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio. Lastly, the term a parent includes a legal guardian.

According to the COPPA, the regulation itself focuses on the responsibility of the operators to provide notice to parents and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age and to keep secure the information they collect from children and prohibits them from conditioning children's participation in activities on the collection of more personal information than is reasonably necessary to participate in such activities.

The similarities between COPPA and PDP Law lie in parental consent. It is also accommodated in the PDP Law that parental consent is mandatory for the processing of children's personal data. However, the definition of parental consent itself is not provided in the PDP Law, while the COPPA explains further regarding verifiable parental consent, which means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child. Thus, it is necessary to give a clear definition in PDP Law regarding parental consent by adopting the definition from the COPPA to ensure the legal certainty of the processing of children's personal data.

Aside from the obligations of the operators and parental consent, there are other crucial matters that are required in relation to what is included in a child's personal data. In the PDP Law, there is no specific provision regarding the definition of children's personal data, only that it states children's data is categorized as specific personal data [10].

The COPPA explained further what is considered personal information which means individually identifiable information about an individual collected online, including-

- a) a first and last name;

- b) a home or other physical address including street name and name of a city or town;
- c) an e-mail address;
- d) a telephone number;
- e) a Social Security number;
- f) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or
- g) information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.

The above definitions regarding personal data can be adopted in Indonesia PDP Law in order to ensure certainty regarding what is considered as the children's personal data to give the legal protection and processing of their personal data.

### 3 Conclusion

The protection and processing of children's personal data in Indonesia are regulated in the PDP Law, however, the law itself still needs improvement regarding the imposing of the requirements to the operators in the processing of children's personal data, the definition of the parental consent, and further explanation regarding the personal information to ensure the legal certainty of the protection and processing children's personal data. The Children's Online Privacy Protection Act of 1998 (United States) (COPPA) regulates the conditions applicable to a child's consent in relation to information society services and special protection of children's personal data, which Indonesia can learn from and where suitable may consider adopting relevant provisions of COPPA into the Personal Data Protection Law Number 27/2002, to improve the legal protection and suitable processing of children's personal data in Indonesia.

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