

Original Paper

A Brief Review: Children Online Privacy Protection in Indonesia

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Abstract

Children's Online Privacy Protection is a form of protection for all information attached to a child such as: a name, address, photo, video, and other related information pointing to the children. In Indonesia, the regulation of a child's personal data does not create adequate protection. In reality, many children's personal data are spread on social media and other various platforms that children access and as a result, the child's personal data can be accessed and used for marketing purposes and/or other exploitation. As a legal subject, a child cannot protect themselves not only from various purposes of online business models designed by online platforms, but also from other people that may have bad intentions. In a global context, standardization becomes a necessity as both a measuring instrument and guidance for other countries to follow. The problem is, some of the measurements need to be adjusted with national law to comply with the set of local standards. Some of the first countries that have already regulated children's privacy are found within the European Union (EU), UK and U.S. This research describes the scope of child protection standards and match them with Indonesian positive law. The research method of this research use doctrinal legal research to collect and to analyze legal material regarding two main concepts, namely: child protection regulation and information regulation. As a result, it is found that there is no legal mechanism that guarantees the protection of children's personal data in Indonesia. It is suggested that Indonesian parliament and the President immediately revise the Child Protection Act and /or Electronic Transaction and Information Act.

Keywords

children online privacy, children personal data, privacy protection

1. Introduction

When children's personal data is leaked or can be identified in cyber space, then there is the possibility for violations of children's rights which can cause hardship to the child. The risks for children when they use technology is wide open because the system of information and technology is fueled by user data. In general terminology, data misuse is a common concept, but the moment the legal subject is an under-aged victim then the additional concept of "children" and the added protection considerations must be applied. Based on reports from UNICEF in 2017, there were five million profiles of children's accounts in the digital world that had been stolen using internet-based theft (UNICEF, 2016). Furthermore, in 2017, Javelin Strategy & Research also found that more than one million children in the United States have been victims of identity theft which caused a loss of US \$ 2.6 billion (Javelin, Research, & Strategy, 2020). Data collection of children's information can though have some positive merit: for example, making it easy for parents to monitor children's activities, location, and also to facilitate child protection through law enforcement.

The losses due to crime of children's personal data was also experienced by European countries in 2017 which recorded 1.37 billion data that was lost or stolen (IT Governance, 2017). The high crime rate of children's personal data in the digital world turns out to have a close relationship with the age and habits of children who are now accustomed to using technological facilities such as mobile phones and tablets that are connected to the internet. Another problem related to the child's personal data protection is that the Internet can make children become overly consumptive. For example, overuse of Youtube and other social media sites has been shown to affect children and toddlers' psychological development, namely: impaired motor skills, delayed language development, attention and concentration disorder, screen addiction, and other physical-social interaction. (Sulkin, 2017) Some researchers claim that the Internet also effects to physical development because it can make children have too little time to sleep and eat. (Bila, 2018) On the economic side, children can have increased consumerism behaviour as they become attracted to products that they see online. (Nathaniel J. Evans, 2019) The effects above can be an additional manifestation from data aggregation and data analysis of an Internet user, including children, raising the issue of how broad child protection online should be.

Perhaps the area of child protection online that has gained most international attention and consensus is surrounding the issue of Online Child Sexual Exploitation (OCSE). As technology has evolved the various ways in which children can be sexually exploited has increased. Aside from the growing volume of child sexual abuse images found online, specifically in relation to children's online personal data, various risks and harms exist related to grooming (by potential child sex offenders) and 'sextortion'. Offenders can use the personal data of children they find online to lure and entice the children to create and share further personal information or even indecent photos of themselves. If child sex offenders have access to contact details of a child, they can even travel to their locations and sexually exploit them.

Personal data and children's privacy are therefore inseparable; personal data is a transformational part

of privacy, and the right to privacy is a human right that should be respected and protected (Brandeis, 1890). Warren and Brandeis consider privacy to be respected and protected because: (1) in relationships with others, one has to protect some elements of personal life so that an individual can maintain his/her position at a certain level, (2) a person in his or her life needs time to become aware of the privacy that is most needed by that individual, (3) privacy is a private right and does not depend on any other rights—but such rights will be lost if the person publishes personal matters to the public, and (4) privacy includes a person's right to have a domestic relationship including for example how one builds a marriage, or builds his or her association within the family.

Privacy exists in Indonesian regulations: the protection of personal data and citizen privacy are mandated in Article 28G of paragraph (1) of the Constitution of the Republic of Indonesia of 1945 (Undang-Undang Dasar, 1945) and also in Article 2 of 3 of the Administration of Public Administration Act No. 23/2006 (Dewi, 2009). Although the regulation does not specifically specify children's data, but as legal subjects, children are included in the legal concept.

In order to respect and protect the rights of children, the Government of Indonesia has also enacted Law Number 35 of 2014 concerning Amendment of Law Number 23 of 2002 regarding Child Protection as an effort to provide legal certainty and its commitment to safeguarding children's rights as the nation's successors. The Government of Indonesia has also ratified and enacted Law Number 19 of 2016 concerning amendment of Law Number 11 of 2008 regarding Electronic Information and Transactions as an effort to protect from all electronic crimes.

However, the protection of personal data, especially children's personal data, has not been specifically regulated in the laws mentioned above, as a result, many arbitrary practices in the use of children's personal data exist, especially the use and misuse of children's personal data online. As such, national laws also do not provide adequate guarantees of protection for the use of children's data. Therefore, protecting the personal data of children in the future bill of Personal Data Protection is very important, including criminal penalties for the use of children's personal data.

To answer the problem of protecting children's personal data in Indonesia from misuse, the data controller must undertake the principles of data protection. However, under the current lack of regulation of child data protection in Indonesia, there is less obligation for the platform in protecting Indonesian children online. Furthermore, take for example the U.S which is a country that already has child data protection, resulting in the platforms in the U.S definitely complying with U.S regulations. However, they do not have legal obligations to other countries so the platform is not responsible to protect children's data in other countries. Although, as a legal subject the host country of the platform may already have children's data protection regulations, it is not *mutatis mutandis* that the platform will secure other countries data of children.

Based on the description above we hope that this research can be used as a reference in relation to the concept of protection of children's personal data in general and more specifically in the context of Indonesia.

2. Method

2.1 *Privacy as a Concept*

In the literature there is no robust definition of privacy, but many scholars believe claims for privacy are universal and the concrete forms differ according to prevailing social, economic and cultural characteristics. American law professor Alan Westin sets three levels that influence privacy norms: political, socio-cultural, and personal levels (Lukács). Privacy is a concept that is "contemporary" (Negley, 1966) which is the idea that every individual has the right to enjoy the respect and protection of various aspects of their personal lives. Privacy as a normative concept rooted in philosophical, legal, sociological, political and economic traditions. The principle discussion of privacy can be traced to Aristotle's descriptions of the differences between public and private space in life (Swanson, 1992).

Privacy is "the right to be free from unwarranted intrusion and to keep certain things from public view" (Wood, 2018). Thus, privacy is an important element in individual autonomy. Much of what makes us human comes from our interactions with other people in the private space where we assume no one is watching (IFLA, 2018). Solove, Rotenberg, and Schwartz highlight privacy within the phenomenon of technology (Daniel, 2006). They also quoted Gross's notion on privacy in technology in relation to how a person can control one's personal affairs and ensure limitation of access from others to someone's personal space (Gavison, 1980).

With regards of technology, Waldman saw privacy as an issue of trust in relation to sharing personal information in a networked world. He quoted the opinion of the sociologist, Bates who defined the concept of privacy as a person's feeling that others should be excluded from something that concerns himself (Waldman, 2015). Yuwinanto explained that privacy is an individual right to determine whether and to what extent someone is willing to open himself to others or that privacy is the right not to be disturbed (Yuwinanto, 2011). Privacy is therefore the level of interaction or openness desired by someone in a certain condition or situation. The desired level of privacy involves openness or closure, a desire to interact with others, or instead when one wants to avoid or try to be difficult to be reached by others. Altman added the meaning of privacy as a selective process of controlling access to oneself and access to others (Altman, 1976).

There are many facets to describe 'personal' [privacy], whether as a concept, or as a permission in a legal context. In the development of information technology, another complexity has arisen in defining privacy because technology transforms privacy into a series of information and/or data. In spite of this complexity, the main concept of privacy can still be used to describe the digital privacy phenomenon, namely: privacy is a permit belonging to the person who owns the space, the level of permission is dependent on that individual giving that access, and to a certain degree, the state's authority to access as by law.

2.2 *Child Terminology under the Law*

According to R.A. Kosnan, the definition of children are of "young people at a young age in the soul" and that his or her life's journey is easily affected to the surrounding circumstances (Koesnan, 2005).

The implication here is that childhood is not necessarily time-bound but implies a varying range of years depending upon human development. Childhood is often categorised as a time of innocence, play and learning. Adolescence, the time between puberty and legal adulthood is often characterised by more agency and competency. This is perhaps why when referring to the Children's Online Privacy Act (COPPA) in force in America, the children referred to in this rule are those who are not yet 13 years old.

The 1989 Child Rights Convention defines the "child" as any human being under the age of eighteen, except under the applicable law (The Convention on The Rights of the Child, n.d.) for that child, the majority attained previously and as such, childhood ends and the individual legally becomes an adult. Whereas in most countries around the world this is now 18 years of age, this can differ in some from the range of 15-21 years. A further complication is the varying ages used to denote 'minors' in statute books when looking at things like age of consent, age of criminal responsibility, marriageable age etc.

In line with the Convention on Rights of the Child, in the Organization for Economic

Co-operation and Development (OECD) Council Recommendation on The Protection of Children Online (2012) it states that a child is any human being who has not reached the age of 18 years old. In Indonesia, the category of children is not much different from the Convention on Rights of the Child 1989, namely anyone under 18 years of age. However, under the provisions of Article 45 of the Criminal Code it defines children as anyone who is not yet 16 years old. Nevertheless, based on Article 1 of the Law Number 35/2014 concerning Child Protection, a "Child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb".

Although age limits to determine children are quite different in some countries, the basic concept of the child is similar, namely: a legal person, under-age, part of family that needs family and government protection because of their vulnerability and inability to protect themselves. According to their condition, the law creates dispensation or special treatment to children. Whilst they have similarity with an adult as a legal subject, but in some conditions, such as legal responsibility, it is different than with an adult person.

3. Protection of Child Online Privacy

In the general explanation of the Indonesian Child Protection Act, it is explained that children need to be protected spiritually, physically, and socially. Also, it recognizes that children do not yet have the ability to stand alone, and because of this, there is a burden of obligation for families, communities and the government to guarantee, preserve and secure the interests of the children. The guarantee and security should be carried out by those who care for them under state supervision and guidance, and if necessary, by the state itself. The concept of child online protection stems from integrating the concepts of child protection and personal data protection. Within the grand posture of online privacy protection, child online protection serves as a subset concept from personal information and privacy.

Woven into the concept of child protection in relation to personal data, then the content of the

information is clearly all about children's information. In terms of protecting privacy for children the duty-bearers named above need to maintain the psychological development of the child, and to guard their freedom and autonomy as part of the rule of law.

Beyond Internet freedom, according to the law, a *netizen* is not only an adult as an Internet user, but also a child. Recognising that in the era of the Internet, data is the fuel to run a business, the data analytics that have been used by a platform must still have special treatment on child data privacy. Universally, children must be treated in a special way comparing to an adult as children as users can be victims of information exposure for example in relation to violence, pornography, radicalism, and also consumerism. (Myatt, 2015)

4. Discussion

4.1 Child Data Protection in other Countries

Referring to the General Data Protection Regulation (GDPR) in Europe, article 6 regulates the processing of child data which must be based on the legitimate interest of the subject data or the owner of personal data. In article 8 of the GDPR, the definition of a child is under the age of 16 years. Comparing with the provisions in the United States through a rule called the Children's Online Privacy Protection Rule (COPPA) of 2013 (last revised at the end of 2019), some of the revised provisions include: definitions, notices and parental permission requirements, and limitations on responsibilities in the doctrine of safe harbor (with the actual knowledge owned by the operator). The revision of the COPPA was conducted by the Federal Trade Commission (FTC), which was also marked by the imposition of a fine of 170 Million USD to Google and Youtube because it was considered to violate the privacy of children. Based on COPPA, a child is defined as under the age of 13 years, the same as the protection of children's personal data within the UK.

One of the unique aspects of the personal data protection model in the United States is the relative detail (even though the U.S still doesn't have a data protection law like many countries in Europe). The scope of provision in protecting children's personal data includes: email address, first and last name, screen name, location, message details, residential address, telephone number, hobbies, photos, videos, and audio. Furthermore, according to the Information Commissioner's Office in the UK, several things that must be obeyed in protecting children's personal data include: children's interests, transparency of data usage, minimum data usage, data sharing, location, and parental control. Behavioral engineering techniques are used so that children follow safe behaviour (known as the "nudge technique"), when using tools or toys that are connected online.

4.2 Indonesian Regulation for Child Data Protection

According to current regulations, until 2020 there is still no special law that regulates data protection in Indonesia; also there is no specific regulation to regulate child data protection. Furthermore, it can be also said there is no regulation on data privacy protection, because data protection is regulated separately under many sectoral laws. (Pratama, 2019) Unfortunately, child data protection can only be addressed

through the information and electronic transaction law (ITE Law) and child protection law.

One of important reasons child data protection must be regulated at this particular time is because the government has recently started to discuss a data protection law. As explained above, in terms of the legal position, data protection is a broad concept of data privacy protection that needs to specifically include child data protection. Child data protection must be inserted and explicitly written under the data protection law because there are legal consequences for the consent of data usage. Some of requirements of child data privacy consent are: parental consent, parental notice, parental permission, and parental identity. (Kosta, 2017) The legal requirements mentioned above are needed to adequately put children as an autonomous legal subject as an Internet user and to protect them. As mentioned already, child exploitation in the internet age can be varied and have many negative impacts on both the physical and psychological wellbeing of the child. With the discussion of the Draft Law on the Protection of Personal Data by the government in Indonesia ongoing, it is both critical and timely to protect children's personal data as one of the subsets of personal data protection. Even though it is important to realize that the aspect of protecting personal data has many aspects that need to be regulated, the protection of children's personal data is an urgent imperative and needs to be considered and regulated properly.

The protection of children's personal data online is a vital and important step to protect children from various threats of violence, abuse and extortion that can occur virtually in cyberspace. In addition, the protection of children's personal data can also guarantee the child's normal growth and development because their data is not misused by various people to gain financial benefits or to frighten or threaten children. At present there is no legal rule in Indonesia that provides protection for personal data of children, both in the Child Protection Act or the Electronic Transaction Information Act. As a result, there is no legal mechanism that guarantees the protection of children's personal data. Some countries have followed the European Union and the United States by protecting child online privacy. These countries already have special laws that provide protection for children's personal data, so that when someone takes a child's personal data or stores it or distributes it, then they can be subject to punishment.

Therefore, the recommendation offered in this study is that the Indonesian parliament and the President need to immediately revise the Child Protection Act and /or Electronic Transaction and Information Act and include a special chapter on the protection of children's personal data protection which prescribes criminal sanctions, fines and compensation for the use of children's personal data without the right. For the short term, the Ministry of Information and Communication and the Ministry of Women's Empowerment and Child Protection should immediately make a Joint Ministerial Regulation to protect personal data of children online as well as legal sanctions for those who violate it. Besides that, it is also necessary to educate children and parents to protect themselves from distributing or sharing personal data that can be potentially misused.

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