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Judicial Reasoning in Personal Data Misuse Cases: The Application of the Personal Data Protection Law in Court Decisions

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Original Article

Abstract

The rapid advancement of digital technology has heightened the risk of personal data misuse, thereby necessitating effective law enforcement under Law Number 27 of 2022 on Personal Data Protection (PDP Law). This study aims to examine judges' legal reasoning in adjudicating cases of personal data misuse and to analyze the application of the PDP Law within Indonesia's criminal justice system. Specifically, it assesses the alignment between the ideal legal principles (*das sollen*) and the practical implementation (*das sein*). Employing a normative juridical approach combined with qualitative analysis, this research examines three court decisions: Decision No. 77/Pid.Sus/2024/PN Tangerang, Decision No. 78/Pid.Sus/2024/PN Tangerang, and Decision No. 5/Pid.Sus/2023/PN Karanganyar. The findings reveal that judges have begun to internalize the paradigm of personal data protection through the application of Articles 67 and 68 of the PDP Law, although variations in interpretation and implementation persist. The study concludes that Indonesia's judicial practice is undergoing a gradual transition toward a more consistent enforcement of privacy law, yet further development of jurisprudential guidelines and enhanced judicial capacity remain essential to strengthening privacy protection in the digital era.

Keywords: *Judicial Reasoning, Misuse, Personal Data, Court Decisions*

Abstrak

Perkembangan teknologi digital telah meningkatkan risiko penyalahgunaan data pribadi, sehingga menuntut penegakan hukum yang efektif melalui Undang-Undang Nomor 27 Tahun 2022 tentang Pelindungan Data Pribadi (UU PDP). Penelitian ini bertujuan untuk mengkaji pertimbangan hukum hakim dalam memutus perkara penyalahgunaan data pribadi serta menganalisis penerapan norma-norma UU PDP dalam praktik peradilan pidana, dengan menilai kesesuaian antara prinsip hukum ideal (*das sollen*) dan realitas penerapan (*das sein*). Penelitian ini menggunakan pendekatan yuridis normatif dengan analisis kualitatif terhadap tiga putusan pengadilan, yaitu Putusan Nomor 77/Pid.Sus/2024/PN Tangerang, 78/Pid.Sus/2024/PN Tangerang, dan 5/Pid.Sus/2023/PN Karanganyar. Hasil penelitian menunjukkan bahwa hakim telah mulai menginternalisasi paradigma perlindungan data pribadi melalui penerapan Pasal 67 dan 68 UU PDP, meskipun masih terdapat variasi dalam penafsiran dan penerapannya. Penelitian ini menyimpulkan bahwa praktik peradilan Indonesia sedang bertransisi menuju penerapan UU PDP yang lebih konsisten, namun masih memerlukan pedoman yurisprudensi dan peningkatan kapasitas aparat peradilan untuk memperkuat perlindungan hak privasi di era digital.

Kata kunci: *Pertimbangan Hakim, Penyalahgunaan, Data Pribadi, Putusan Pengadilan*

1. INTRODUCTION

The development of information and communication technology (ICT) has brought fundamental transformations to Indonesia's social, economic, and legal order. The rapid pace of digitalization has created a new arena for human activity centered on the management of personal data as a high-value commodity. In the digital economy, personal data functions not only as an element of individual identity but also as a strategic asset that shapes business strategies, marketing practices, and the delivery of public services. However, these advancements have also opened the door to widespread and complex forms of personal data misuse. Phenomena such as identity theft, online fraud, electronic system breaches, and the unauthorized dissemination of personal information have become pressing issues that demand serious legal scrutiny.

The misuse of personal data not only causes economic harm but also constitutes a violation of human rights—particularly the right to privacy, which is recognized as a constitutional right of citizens. Within the Indonesian legal framework, explicit recognition of the right to privacy was only formally established with the enactment of Law Number 27 of 2022 on Personal Data Protection (PDP Law). Prior to this, the regulation of personal data was fragmented across multiple sectoral laws, including Law Number 11 of 2008 on Electronic Information and Transactions (ITE Law) and its subsequent amendments, along with derivative regulations. This fragmentation weakened legal certainty and undermined the protection of personal data owners, as there was no comprehensive framework defining the rights, obligations, and responsibilities of the parties involved in personal data processing.

The enactment of the PDP Law represents a significant milestone in Indonesia's legal system, introducing for the first time a unified and comprehensive regulatory framework that governs the principles of data processing, the rights of data subjects, the obligations of data controllers, and the imposition of administrative and criminal sanctions for violations. From a *das sollen* perspective, the PDP Law was designed to strike a balance between individual privacy rights and the demands of a growing digital economy. However, from a *das sein* perspective, the implementation of the law's provisions faces numerous technical and institutional challenges. These challenges are reflected in various criminal cases adjudicated by Indonesian courts, where judges encounter new interpretive complexities in assessing the elements of personal data breach offenses.

Differences in judicial reasoning across cases—such as Decision No. 77/Pid.Sus/2024/PN Tangerang, Decision No. 78/Pid.Sus/2024/PN Tangerang, and Decision No. 5/Pid.Sus/2023/PN Karanganyar—illustrate inconsistencies in understanding and applying the PDP Law, particularly concerning the elements of unauthorized data acquisition, data use for unlawful purposes, and violations of the principle of consent. Judicial reasoning in these cases serves as a critical object of

analysis, as it reflects how newly established legal norms are interpreted and operationalized in judicial practice. As Rahardjo asserts, law should not be viewed merely as a normative text (law on the books), but as a dynamic instrument for realizing substantive justice within society (law in action).¹

Advancements in ICT have fundamentally transformed the ways in which people interact, transact, and engage in various aspects of life. While digital transformation has created opportunities for efficiency and connectivity, it has also introduced multifaceted legal challenges—particularly in the realm of personal data protection. The issue of personal data misuse has become a global concern, as it directly implicates the protection of human rights, especially the right to privacy. The enactment of Law Number 27 of 2022 on Personal Data Protection (PDP Law) therefore marks a pivotal step in Indonesia's legal reform, establishing a comprehensive legal foundation for digital privacy and reinforcing the protection of personal data in the digital era.

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¹ Satjipto Rahardjo, *Ilmu Hukum*, 8th ed. (Bandung: PT Citra Aditya Bakti, 2014).

sanctions for violations. From a *das sollen* perspective, the PDP Law was designed to strike a balance between individual privacy rights and the demands of a growing digital economy. However, from a *das sein* perspective, the implementation of the law's provisions faces numerous technical and institutional challenges. These challenges are reflected in various criminal cases adjudicated by Indonesian courts, where judges encounter new interpretive complexities in assessing the elements of personal data breach offenses.

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Several previous studies have examined legal issues related to personal data management and cybercrime, both before and after the enactment of the Personal Data Protection Law (PDP Law). Ginting analyzed the legal accountability of offenders involved in criminal acts of illegal access to another person's electronic system based on Law Number 11 of 2008 on Electronic Information and Transactions (ITE Law). Using a normative legal approach, the study underscored the importance of proving the elements of the offense in cases of unauthorized access and highlighted the judges' role in interpreting relevant provisions, such as Article 406 of the Criminal Code and Article 28(1) of the ITE Law. Ginting emphasized that judicial reasoning functions as a mechanism for ensuring substantive justice and aligning legal norms with empirical realities in digital crime cases. However, this study remained confined to the ITE Law

² Rahardjo.

and did not establish a connection between illegal access offenses and the paradigm of personal data protection as governed under the PDP Law.³

Furthermore, Syariah investigated the crime of population data manipulation and its legal application in Decision No. 283/Pid.Sus/2021/PN.Pkl. Adopting a normative juridical method with a case-based and statutory approach, the study demonstrated that electronic data manipulation constitutes a formal offense as stipulated in Article 51 in conjunction with Article 35 of the ITE Law. Syariah argued that the court's interpretation was inappropriate because it did not fully capture the essential elements of the offense. The study concluded that clarity regarding the offense's elements and the judges' interpretative accuracy is crucial in determining criminal liability. Nonetheless, this research focused on electronic data manipulation in general and did not examine the implementation of the PDP Law, which more specifically regulates the rights of data subjects and the obligations of data controllers.⁴

Puteri et al. extended the discussion on digital crime by focusing on hacking offenses under Articles 30 and 46 of the ITE Law. Their analysis of Decision No. 9/Pid.Sus/2021/PN Pli, involving the hacking of Telkomsel's DigiPos system, employed a normative juridical approach and found that the perpetrator was sentenced to three years of imprisonment and fined IDR 50 million, reflecting a deterrent effect. Nevertheless, the study highlighted the need for stricter and more adaptive law enforcement to address the evolving dynamics of cybercrime. However, similar to earlier research, it remained within the ITE Law framework and did not explore the transition or relationship between the ITE Law and the newly established PDP Law as a specialized legal instrument for data protection.⁵

Meanwhile, Silalahi et al. examined mechanisms for protecting personal data in electronic information systems from a criminal law perspective. By reviewing 20 scholarly articles, their study identified several normative weaknesses in the PDP Law, including ambiguities in the definition of offenses, disharmony among regulations, and weak enforcement mechanisms. They also noted inadequate criminal law implementation in major data breach cases, such as those involving BPJS and IndiHome. These findings highlight the need to harmonize the PDP Law with the ITE Law and the Indonesian Criminal Code (KUHP), as well as to enhance the institutional

³ Aleksander Ginting, "Analisis Yuridis Tindak Pidana Mengakses Sistem Elektronik Milik Orang Lain" (Universitas Medan Area, 2017), [https://repository.uma.ac.id/jspui/bitstream/123456789/24953/1/138400081-Aleksander Ginting - Fulltext.pdf](https://repository.uma.ac.id/jspui/bitstream/123456789/24953/1/138400081-Aleksander%20Ginting-Fulltext.pdf).

⁴ Khusnul Syariah, "Tinjauan Yuridis Terhadap Tindak Pidana Manipulasi Data Kependudukan Melalui Registrasi Kartu Prabayar: Studi Putusan Nomor: 283/Pid.Sus/2021/PN.Pkl" (Universitas Hasanuddin Makassar, 2022), https://repository.unhas.ac.id/id/eprint/17683/2/B011181468_skripsi_12-07-2022_1-2.pdf.

⁵ Camelia Billah Puteri, Joelman Subaidi, and Budi Bahreisy, "Analisis Putusan Hakim Terhadap Tindak Pidana Dalam Mengakses Sistem Elektronik Orang Lain Tanpa Hak: Studi Putusan Nomor 9/Pid.Sus/2021/PN Pli," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 8, no. 2 (2025): 1–13, <https://doi.org/10.29103/jimfh.v8i2.21177>.

capacity of law enforcement agencies. However, this research was conceptual and did not specifically analyze judges' legal reasoning in criminal adjudications.⁶

In addition, Sibarani et al. emphasized the importance of digital evidence in technology-based crime cases, asserting that such evidence must meet legal accountability standards as it constitutes a critical component of judicial proceedings. While this research contributes to the methodological discourse on digital evidence, it does not connect these insights to the concrete implementation of the PDP Law in personal data misuse cases.⁷

Finally, Putro, through his analysis of Case No. 19/Pid.Sus/2011/PN.Ska, assessed the conformity of judicial reasoning with the objectives of the ITE Law. He found that the judge considered juridical, sociological, and philosophical aspects in a balanced manner, aligning with the law's objective of providing legal protection for both users and providers of information technology. This study remains historically significant as it underscores the role of judges as interpreters of legal values in digital crime cases, yet it does not explicitly address privacy rights and personal data protection issues.⁸

Furthermore, Matheus and Gunadi examined institutional challenges in implementing the Personal Data Protection Law (PDP Law), particularly the absence of an independent supervisory authority responsible for monitoring the circulation and use of personal data. Using a normative juridical method combined with a comparative approach, their study underscored the urgency of establishing an autonomous supervisory body similar to Indonesia's Business Competition Supervisory Commission (KPPU), enabling the country to achieve international adequacy in data governance. While emphasizing the institutional dimension, their findings reinforce the argument that the successful implementation of the PDP Law depends heavily on the establishment of an effective oversight mechanism and its consistent application in legal practice.⁹

Most previous research has concentrated on the normative dimensions of the Electronic Information and Transactions Law (ITE Law) or the conceptual shortcomings of the PDP Law, without examining how judges interpret and apply the PDP Law's provisions within the context of criminal justice. To date, no study has

⁶ Johan Alfred Sarades Silalahi, Yuspika Yuliana Purba, and Muhammad Fadly Nasution, "Analisis Yuridis Terhadap Mekanisme Perlindungan Data Pribadi Dalam Sistem Informasi Elektronik Berdasarkan Perspektif Hukum Pidana Di Indonesia," *Jurnal Minfo Polgan* 14, no. 1 (2025): 604–13, <https://doi.org/10.33395/jmp.v14i1.14810>.

⁷ Mery Rohana Lisbeth Sibarani et al., "Penerapan Konsep Pembuktian Digital Dalam Kasus Kejahatan Teknologi Informasi," *Jurnal Kolaboratif Sains* 8, no. 1 (2025): 390–95, <https://doi.org/10.56338/jks.v8i1.6742>.

⁸ Ary Widhiatmo Putro, "Analisis Yuridis Putusan Hakim Mengenai Perkara Informasi Dan Transaksi Elektronik: Studi Kasus Putusan Hakim Nomor: 19 / Pid.Sus / 2011 / PN.Ska," *Jurnal Dinamika Hukum* 6, no. 2 (2015): 31–43, https://ejurnal.unisri.ac.id/index.php/Dinamika_Hukum/article/view/4210.

⁹ Juan Matheus and Ariawan Gunadi, "Pembentukan Lembaga Pengawas Perlindungan Data Pribadi Di Era Ekonomi Digital: Kajian Perbandingan Dengan KPPU," *Justisi* 10, no. 1 (2024): 20–35, <https://doi.org/10.33506/jurnaljustisi.v10i1.2757>.

systematically analyzed judicial reasoning in criminal decisions concerning personal data misuse following the enactment of the PDP Law. The distinctiveness of this study lies in its comprehensive examination of three early court decisions applying the PDP Law, exploring the relationship between the ideal norm (*das sollen*) and its practical application (*das sein*) to assess the actual effectiveness of personal data protection within Indonesia's legal framework. Based on this background, the objectives of this study are as follows:

- 1) To examine judges' legal reasoning in adjudicating personal data misuse cases, as reflected in Decision Nos. 77/Pid.Sus/2024/PN Tangerang, 78/Pid.Sus/2024/PN Tangerang, and 5/Pid.Sus/2023/PN Karanganyar. This analysis aims to evaluate how judges interpret the elements of the offense—such as unauthorized data acquisition, use, and dissemination—and the extent to which these interpretations align with the principles enshrined in the PDP Law.
- 2) To analyze the application of the PDP Law's normative provisions in criminal justice practice by assessing the conformity between ideal legal principles (*das sollen*) and their practical realization (*das sein*). This study investigates the extent to which judicial actors have internalized the paradigm of personal data protection in their legal reasoning and decision-making processes.

2. RESEARCH METHODOLOGY

This study employs a normative juridical approach, integrating both case-based and statutory approaches. This methodological framework was selected because the research focuses on analyzing the application of Law Number 27 of 2022 on Personal Data Protection (PDP Law) within judges' legal reasoning in cases of personal data misuse. The three judicial decisions examined are Decision No. 77/Pid.Sus/2024/PN Tangerang, Decision No. 78/Pid.Sus/2024/PN Tangerang, and Decision No. 5/Pid.Sus/2023/PN Karanganyar, which represent the earliest applications of the PDP Law in the criminal domain. The analysis centers on patterns of legal argumentation, interpretation of offense elements, and the normative bases used by judges in formulating their decisions.

The study relies primarily on secondary data, comprising primary legal materials (statutory provisions and court decisions), secondary legal materials (legal literature, academic articles, and previous studies), and tertiary legal materials (legal dictionaries and encyclopedias). Data were collected through library research, utilizing academic sources and official legal databases. Data analysis was conducted using qualitative descriptive-analytical techniques, encompassing processes of data reduction, classification, interpretation, and comparative analysis between *das sollen* (ideal norms)

and *das sein* (judicial practice) to identify both conformity and deviation in the implementation of the PDP Law.

The analytical framework is grounded in Satjipto Rahardjo's Progressive Legal Theory, Criminal Responsibility Theory, and Legal Protection Theory.¹⁰ Through three stages of analysis—normative, applicative, and evaluative—this research seeks to assess the extent to which judges have internalized the principles of personal data protection in their judicial reasoning and to explore the harmonization between the PDP Law, the Electronic Information and Transactions (ITE) Law, and the Indonesian Criminal Code (KUHP). By adopting this methodological design, the study aims to make a scholarly contribution to strengthening the effectiveness of personal data protection law enforcement within Indonesia's criminal justice system.

3. RESEARCH RESULT AND DISCUSSION

3.1. Judges' Legal Considerations in Adjudicating Personal Data Misuse Cases

This study examines judges' legal considerations in adjudicating cases of personal data misuse, as reflected in Decisions Number 77/Pid.Sus/2024/PN Tangerang, Number 78/Pid.Sus/2024/PN Tangerang, and Number 5/Pid.Sus/2023/PN Karanganyar. The analysis focuses on how judges interpret the elements of the offense, particularly concerning the unauthorized acquisition, use, and dissemination of personal data, and evaluates the extent to which these interpretations align with the principles established under Law Number 27 of 2022 on Personal Data Protection (PDP Law).

A review of the three decisions reveals that the judges consistently recognized the right to privacy as a constitutional right that must be safeguarded by the state. In Decision No. 77/Pid.Sus/2024/PN Tangerang, the panel of judges explicitly held that the use and dissemination of personal data without the owner's valid consent constitute a violation of the constitutional rights guaranteed under Article 28G(1) of the 1945 Constitution. Such conduct also contravenes the principles of lawfulness, fairness, and transparency set forth in Article 3(a) of the PDP Law. Similarly, Decision No. 78/Pid.Sus/2024/PN Tangerang affirmed that the unauthorized use of personal data, even in the absence of direct financial loss, satisfies the elements of a criminal offense because it infringes upon the data subject's autonomy. In this case, the judges relied on the potential for immaterial harm as sufficient grounds for establishing legal liability. Meanwhile, Decision No. 5/Pid.Sus/2023/PN Karanganyar treated the misuse of personal data for fraudulent purposes as a serious offense with dual consequences: violating privacy rights and causing both economic and social harm.

The analysis suggests that judges have begun to interpret the elements of "without rights" and "intentionally" in a more substantive manner. The term "without rights" is

¹⁰ Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta, 2010), PT. Elex Media Komputindo.

understood as any action not based on the data subject's explicit consent, while "intentionally" is defined as the perpetrator's awareness of infringing another person's privacy rights, regardless of direct economic motive. The findings indicate that judges have adopted the key principles embedded in the PDP Law—particularly those concerning consent and purpose limitation—as the normative foundation for assessing criminal liability in personal data misuse. The three cases collectively demonstrate that Indonesian courts are increasingly treating privacy protection as an integral component of substantive justice in digital criminal law.

Nevertheless, the study also identifies interpretive variations among the decisions. Decision No. 77 emphasizes the violation of privacy rights and the legitimacy of consent; Decision No. 78 underscores the recognition of immaterial harm; while Decision No. 5 integrates violations of the PDP Law and the Criminal Code cumulatively. These variations suggest that the Indonesian judiciary remains in a transitional phase toward establishing consistent legal interpretation in personal data protection cases. The findings further indicate an emerging trend of judicial activism, in which judges serve as primary interpreters in addressing normative gaps not yet explicitly regulated under the PDP Law—particularly regarding the assessment of immaterial losses and the proof of malicious intent (*mens rea*) in digital crime contexts.

When compared with previous studies, the present findings are consistent with the observation that law enforcement in Indonesia still faces challenges in interpreting the elements of the offense and establishing intent in personal data misuse cases.¹¹ However, this research reveals a notable paradigm shift—from a formalistic to a substantive and humanistic judicial approach—where privacy violations are assessed not merely in terms of economic loss but also in relation to the infringement of human dignity and identity security. These findings also corroborate the arguments of Bangun et al. and Manurung and Thalib, who emphasize that effective legal protection of personal data must be grounded in the recognition of individual autonomy over personal information.¹² Judges across the three examined cases appear to have adopted this perspective, treating consent as a central criterion for determining violations. Compared with earlier studies, which highlighted the weak criminalization of personal data breaches—previously regarded as administrative infractions—this study demonstrates

¹¹ Imam Wahyudi Makkawaru et al., "Penegakan Hukum Perlindungan Data Pribadi Melalui Sarana Hukum Perdata," *Journal of Innovation Research and Knowledge* 4, no. 9 (2025): 6473–6488, <https://doi.org/10.53625/jirk.v4i9.9663>; Kurniawan Nduru, Muhammad Yusuf Daeng, and Rudi Pardede, "Penegakan Hukum Atas Penyalahgunaan Data Pribadi Di Media Sosial," *Lancang Kuning Law Journal* 2, no. 2 (2025): 127–35, <https://doi.org/10.31849/lklw.v1i01.23281>.

¹² Budi Hermawan Bangun et al., "Sosialisasi Perlindungan Data Pribadi Sebagai Bagian Dari Hak Asasi Manusia," *Jurnal Pengabdian Kepada Masyarakat Nusantara* 4, no. 4 (2023): 3356–65, <https://ejournal.sisfokomtek.org/index.php/jpkm/article/view/1678>; Evelyn Angelita Pinondang Manurung and Emmy Febriani Thalib, "Tinjauan Yuridis Perlindungan Data Pribadi Berdasarkan UU Nomor 27 Tahun 2022," *Jurnal Hukum Saraswati* 4, no. 2 (2022): 139–148, <https://e-journal.unmas.ac.id/index.php/JHS/article/view/5941>.

significant progress. Indonesian courts now recognize personal data misuse as a serious criminal act with far-reaching implications for social stability and public trust in the national digital ecosystem.¹³

The interpretation of these findings indicates that judges have begun to regard the Personal Data Protection Law (PDP Law) as *lex specialis* within Indonesia's criminal law system. In Decision No. 5/Pid.Sus/2023/PN Karanganyar, for instance, the judge emphasized that violations of the PDP Law do not exclude the application of the Criminal Code; instead, both can apply cumulatively when the act also fulfills the elements of other crimes, such as fraud. This judicial approach aligns with the principle of *lex specialis derogat legi generali*, whereby the PDP Law functions as a specialized legal framework for ensuring justice in cases involving personal data violations, without nullifying the relevance of general criminal law provisions.

Furthermore, judges appear to be adopting a more progressive and contextual perspective that emphasizes the balance between legal substance, legal structure, legal facilities, societal needs, and legal culture.¹⁴ Within this framework, judges play an increasingly active role in fostering public legal awareness about the importance of personal data protection in the digital era. This approach positions privacy protection not merely as a procedural right but as a fundamental dimension of substantive justice. By recognizing that potential immaterial harm constitutes sufficient evidence of a violation, judges have applied the principle that justice should be measured not solely by material losses but also by the extent to which the law safeguards individual dignity and autonomy from the abuse of digital power.¹⁵ The judges' emphasis on victim protection reflects a restorative and humanistic orientation of criminal law, highlighting an effort to restore social balance and prevent similar offenses rather than focusing exclusively on retribution.¹⁶

Taken comprehensively, this study confirms that the three judicial decisions reflect a paradigm shift in Indonesia's criminal law toward a more modern and equitable framework for personal data protection. Judges no longer treat personal data breaches as mere administrative infractions or minor violations but as serious criminal acts with systemic implications for human rights and the integrity of the digital legal order. The principal findings of this study can be summarized in three key points:

- 1) First, judges consistently apply the core principles of personal data protection contained in the PDP Law—particularly the principles of lawfulness, fairness, and transparency—by using data subject consent as a benchmark for determining the legality of data acquisition and use.

¹³ Ginting, "Analisis Yuridis Tindak Pidana Mengakses Sistem Elektronik Milik Orang Lain"; Nduru, Daeng, and Pardede, "Penegakan Hukum Atas Penyalahgunaan Data Pribadi Di Media Sosial."

¹⁴ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: Rajawali Pers, 2016).

¹⁵ John Rawls, *Justice as Fairness: A Restatement*, ed. Erin I. Kelly (Cambridge: Belknap Press, 2001).

¹⁶ Muladi Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2010).

- 2) Second, judges increasingly consider immaterial losses as a legitimate basis for criminal liability, signaling broader legal recognition of the social and psychological dimensions of privacy violations.
- 3) Third, there is an emerging judicial trend toward interpreting the crime of personal data misuse cumulatively with other offenses, such as fraud, thereby reinforcing the PDP Law's position as *lex specialis* while maintaining the applicability of general criminal law.

The findings strengthen the argument that Indonesia's judicial system is evolving toward the full integration of personal data protection within the national criminal law framework. This development not only enhances the effectiveness of cyber law enforcement but also reaffirms the judiciary's role as a guardian of human rights in addressing the challenges of the digital age. Moving forward, harmonization of judicial interpretations and the formulation of technical guidelines for implementing the PDP Law are urgently required to ensure consistent enforcement and legal certainty within the digital community. Through these measures, personal data protection in Indonesia can transcend its normative foundations to become a genuine pillar of digital justice—safeguarding security, integrity, and human dignity.

3.2. Implementation of the Norms in Law Number 27 of 2022 on Personal Data Protection (PDP Law)

This study analyzes the implementation of the norms contained in Law Number 27 of 2022 on Personal Data Protection (PDP Law) within Indonesia's criminal justice system. The primary objective is to assess the alignment between the ideal legal principles (*das sollen*)—the normative values embodied in the PDP Law—and the practical reality (*das sein*) of their application in judicial practice. Specifically, the analysis examines the extent to which judicial officials, particularly judges, have internalized the new paradigm of personal data protection in their legal reasoning and decision-making processes.

This research adopts a normative juridical approach and employs case studies of three court decisions that directly apply the PDP Law: Decision No. 77/Pid.Sus/2024/PN Tangerang, Decision No. 78/Pid.Sus/2024/PN Tangerang, and Decision No. 5/Pid.Sus/2023/PN Karanganyar. These cases represent the earliest implementation of the PDP Law in Indonesian criminal proceedings and provide a crucial basis for evaluating the degree to which the paradigm of personal data protection has been institutionalized within the judiciary.

An analysis of these decisions reveals that judges have made substantive efforts to apply the PDP Law, particularly Articles 67 and 68, which prohibit the collection, disclosure, or use of personal data without authorization or for illegitimate purposes. In Decision No. 77/Pid.Sus/2024/PN Tangerang, the panel of judges concluded that the

elements of “without authority” and “without consent” were proven beyond reasonable doubt. The judges emphasized that consent is the fundamental criterion determining the legitimacy of any personal data processing. The acquisition of personal data without the data subject’s explicit consent constitutes a direct violation of the principle of lawfulness, fairness, and transparency as stipulated in Article 3(a) of the PDP Law.

In Decision No. 78/Pid.Sus/2024/PN Tangerang, the judge found that the defendant’s act of using another person’s personal data to register a new SIM card without permission violated the data subject’s rights and contravened the data controller’s duty to preserve the accuracy, integrity, and validity of personal data. The judge held that the element of “unlawfulness” was satisfied because the defendant intentionally used another person’s data for an illegitimate purpose, even though no direct financial loss occurred.

Decision No. 5/Pid.Sus/2023/PN Karanganyar illustrates the dual application of the PDP Law and the Indonesian Criminal Code (KUHP). In this case, the judge applied Article 67(2)(b) of the PDP Law cumulatively with Article 378 of the Criminal Code concerning fraud. The court concluded that the defendant’s use of another individual’s data to impersonate a police officer not only violated the victim’s right to privacy but also constituted fraud. This demonstrates the judge’s understanding of the PDP Law as *lex specialis*, applicable alongside general criminal law provisions.

From a normative standpoint, these three cases reflect an effort to uphold the right to privacy as a constitutional and legal principle. However, in practice, variations remain in the judicial interpretation of the elements of the offense and the core principles of the PDP Law. The findings indicate that while Indonesia’s judiciary has begun to internalize the personal data protection paradigm, such application is not yet fully consistent across cases. From a *das sollen* perspective, the PDP Law mandates that all personal data processing must be guided by principles of legality, consent, transparency, and accountability. In contrast, the *das sein* reality shows that judicial practice still focuses primarily on violations of the elements “without rights” and “without consent,” while principles such as accountability and data controller responsibility have yet to be comprehensively enforced.

Judges in Decisions No. 77 and No. 78 demonstrated an appreciation of data subject rights, yet their reasoning remained centered on the actions of individual offenders rather than the institutional responsibilities of data controllers. Conversely, Decision No. 5 exhibited a more holistic understanding, recognizing that personal data violations constitute not only individual offenses but also broader threats to social order. This reflects a shift from an administrative paradigm to a substantive criminal paradigm, positioning personal data violations as crimes against human rights rather than mere administrative infractions.

The findings of this study are consistent with those of Mahameru et al. (2024), who assert that the implementation of the Personal Data Protection Law in Indonesia remains in a transitional phase. Both studies highlight that law enforcement officials, including judges, require additional time and specialized training to fully comprehend the technical and multidisciplinary principles of data protection.¹⁷ However, in contrast to Hariyono and Simangunsong's conclusion that the courts have not yet effectively applied the law, the present study finds that judges have begun to integrate the Personal Data Protection Law (PDP Law) with general criminal law norms, signaling notable progress in the internalization of data protection principles within judicial reasoning.¹⁸

Furthermore, this research complements the work of Kusnadi, who underscores the importance of the principle of consent as the foundation of personal data protection.¹⁹ Decisions No. 77/Pid.Sus/2024/PN Tangerang and No. 78/Pid.Sus/2024/PN Tangerang demonstrate that judges regard data subject consent as an absolute precondition for lawful data processing. Consequently, this study reinforces the emerging trend in Indonesian criminal justice practice toward a consent-based data protection paradigm, marking a significant evolution in judicial understanding of privacy rights. The analysis further reveals that variations in judicial interpretation of the PDP Law stem from three key factors: (1) the complexity and multidimensionality of the law's normative structure; (2) the limited availability of legal precedents for reference; and (3) differing levels of conceptual understanding among judges regarding personal data protection.

The teleological approach adopted in Decision No. 77 reflects the judges' interpretation of the PDP Law through the lens of its ultimate purpose—the protection of human rights. The systematic approach in Decision No. 78 demonstrates the judiciary's awareness of the complementary relationship between the PDP Law and the Electronic Information and Transactions Law (ITE Law). Meanwhile, the formalistic approach in Decision No. 5 indicates a degree of judicial caution in applying newly established legal norms.

The application of the PDP Law across these three cases illustrates the evolutionary process of law enforcement in the digital era.²⁰ Judges not only uphold the letter of the law ("law on paper") but also strive to embody its underlying spirit ("law in action"). This development signifies the judiciary's gradual movement toward a

¹⁷ Danil Erlangga Mahameru et al., "Implementasi UU Perlindungan Data Pribadi Terhadap Keamanan Informasi Identitas Di Indonesia," *Jurnal Esensi Hukum* 5, no. 2 (2024): 115–31, <https://doi.org/10.35586/jsh.v5i2.240>.

¹⁸ Akbar Galih Hariyono and Frans Simangunsong, "Perlindungan Hukum Korban Pencurian Data Pribadi (Phishing Cybercrime) Dalam Perspektif Kriminologi," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): 1–12, <https://doi.org/10.53363/bureau.v3i1.191>.

¹⁹ Sekaring Ayumeida Kusnadi, "Perlindungan Hukum Data Pribadi Sebagai Hak Privasi," *Al-Wasath: Jurnal Ilmu Hukum* 2, no. 1 (2021): 9–16, <https://doi.org/10.47776/alwasath.v2i1.127>.

²⁰ Rahardjo, *Penegakan Hukum Progresif*.

substantive justice paradigm, wherein personal data protection is regarded as an integral component of constitutional rights and human dignity.

Nonetheless, a gap remains between *das sollen* (what ought to be) and *das sein* (what is). Ideally, the PDP Law mandates the application of the principles of accountability and responsibility for data controllers. In practice, however, judicial focus remains largely confined to individual perpetrators, without extending to corporate or institutional responsibility in data governance. This indicates that the legal structure, in Soerjono Soekanto's terms, does not yet fully support the operationalization of the PDP Law's substantive principles.²¹ The absence of technical guidelines and the limited conceptual capacity of law enforcement officials continue to hinder consistent implementation. This study confirms that the implementation of the PDP Law in Indonesian criminal justice practice has shown tangible progress, though challenges persist in achieving uniform interpretation and a comprehensive understanding of its core principles.

First, judges have affirmed that personal data violations constitute human rights violations with criminal implications—signifying a paradigm shift from administrative protection to substantive legal enforcement. Second, the variation in judicial interpretation underscores the need for jurisprudential development and technical judicial guidelines to ensure consistent application of the PDP Law across Indonesian jurisdictions. Third, the integration of the PDP Law with the ITE Law and the Criminal Code (KUHP) reflects Indonesia's broader effort to align its legal system with the realities of digital transformation and information technology. Within this framework, judges play a strategic role in maintaining a balance between legal certainty and privacy protection, both of which are essential values in a modern rule-of-law system. The future effectiveness of the PDP Law will depend largely on three interrelated factors: (1) enhancing the capacity of law enforcement officials through continuous professional training; (2) fostering a legal culture that recognizes and respects privacy as a fundamental human right; and (3) developing coherent jurisprudential guidelines to promote interpretive consistency. Through these efforts, the PDP Law can evolve beyond a mere statutory framework to become an effective legal instrument for promoting justice and safeguarding human dignity in Indonesia's digital society.

4. CONCLUSION

This study aims to conduct an in-depth analysis of judicial considerations in adjudicating cases involving the misuse of personal data, as reflected in Decisions No. 77/Pid.Sus/2024/PN Tangerang, No. 78/Pid.Sus/2024/PN Tangerang, and No. 5/Pid.Sus/2023/PN Karanganyar. It further examines the extent to which the norms

²¹ Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*.

stipulated in Law No. 27 of 2022 concerning Personal Data Protection (PDP Law) have been consistently applied within Indonesia's criminal justice system. The primary objective of this study is to evaluate the congruence between the ideal legal principles (*das sollen*) and their actual implementation (*das sein*), particularly in relation to the recognition of the right to privacy and the new paradigm of personal data protection within judicial reasoning.

The findings indicate that, in general, judges have recognized the PDP Law as a *lex specialis* governing violations of personal data rights. Across the three analyzed cases, judges explicitly interpreted key elements of the offense—such as “without authority,” “without consent,” and “use of personal data for unauthorized purposes”—in alignment with the underlying spirit of legal protection mandated by the PDP Law. Nonetheless, variations in interpretive approaches were observed. Some judges adopted teleological and systematic methods, considering broader principles of justice and human rights, while others adhered to a more formalistic approach that confined interpretation strictly to the statutory elements of the offense.

These findings confirm that the internalization of the personal data protection paradigm within the Indonesian judiciary remains in a transitional phase and has yet to achieve full uniformity. The main contribution of this study lies in its empirical insight into the dynamics of applying the PDP Law in judicial practice and in providing a foundation for the development of jurisprudential guidelines that ensure more consistent and equitable enforcement. The study's limitations include the small number of analyzed cases and the inability to capture the full range of personal data misuse incidents across Indonesia. Therefore, future research should broaden its scope by examining additional cases across different levels of the judiciary and incorporating the perspectives of law enforcement officials and data controllers. From a policy standpoint, this study underscores the necessity of enhancing judicial capacity through targeted training and the formulation of technical guidelines for the implementation of the PDP Law. Such measures are essential to ensure that the right to personal data protection is genuinely recognized, maintained, and enforced as an integral component of human rights protection in the digital era.

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