

## Telecommunications and Media

Versi Bahasa Indonesia

### Enforcement Date

1 December 2016

### Related ILB

- House Passes Bill on the Amendment to the ITE Law
- Draft Bill on Private-Data Protection
- Information-Security Management Systems Finally Regulated
- Regulating the Production, Distribution and Use of Pornography
- Government Regulates Domain Names

## Personal-Data Protection under the ITE Framework

The Ministry of Communication and Informatics (“**Ministry**”) recently issued Regulation [No. 20 of 2016](#) on Personal-Data Protection Within Electronic Systems (“**Regulation 20/2016**”).

Regulation 20/2016 is basically an implementation of Article 15 (3) of Government Regulation [No. 82 of 2012](#) on the Organization of Electronic Systems and Transactions (“**Government Regulation 82/2012**”), which required further guidelines to be set regarding the protection of personal data during the organization of any electronic systems.<sup>1</sup> In essence, these guidelines address the following areas:

1. Classifications of personal data;
2. Protection of personal data;
3. Rights of personal-data owners;
4. Obligations of personal-data users;
5. Obligations of electronic-system organizers;
6. Dispute settlements;
7. Role of the government and the public;
8. Supervision; and
9. Administrative sanctions.

Due to the broad scope of Regulation 20/2016, this edition of Indonesian Legal Brief (ILB) will confine its discussion to points (1), (2) and (6).

<sup>1</sup> Recital, Regulation 20/2016.

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### Classification of Personal Data

Regulation 20/2016 defines personal data as certain individual data, the veracity of which is recorded, sustained and maintained while its confidentiality is protected.<sup>2</sup> "Certain individual data" refers to any

accurate and concrete information which is directly or indirectly attached to and also identifiable by each personal-data owner, provided that the data utilization complies with the prevailing laws and regulations.<sup>3</sup>

As mentioned above, Regulation 20/2016 has been issued in order to implement one of the provisions set out under Regulation 82/2012, which is actually an implementing regulation to Law [No. 11 of 2008](#) on Electronic Systems and Transactions, which was recently amended by Law [No. 19 of 2016](#) (collectively referred to as the "ITE Law").<sup>4</sup> One of the concerns addressed by the ITE Law is the whole issue of personal data, and the ITE Law stipulates that an individual is entitled to indemnity from any party that uses his/her personal data without consent first being granted.<sup>5</sup>

Despite the importance of this provision, both Regulation 82/2012 and Regulation 20/2016 of the ITE Law set out an insufficient basis for determining the scope, classification and criteria of any such personal data, and also offered little in the way of examples.

### Protection of Personal Data

Regulation 20/2016 stipulates that any personal data may only be utilized in certified electronic systems and must be protected during the implementation of any activities which relate to personal-data management, namely: receipt, collection, processing, analysis, saving, display, announcement, transmission, dissemination, opening of access and erasure of any personal data.<sup>6</sup>

Such protection is to be implemented based on a number of principles. One of these principles requires personal data to be treated as confidential information, based on the owner's written consent and/or applicable laws and regulations.<sup>7</sup>

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<sup>2</sup> Art. 1 (1), Regulation 20/2016.

<sup>3</sup> Art. 1 (2-3), Regulation 20/2016.

<sup>4</sup> For more information on the amendment, see ILD [No. 480](#) and ILB [No. 2991](#).

<sup>5</sup> Art. 26 (1-2), ITE Law.

<sup>6</sup> Arts. 2 (1), 3 and 4 (1), Regulation 20/2016.

<sup>7</sup> Art. 2 (2b), Regulation 20/2016.

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In order to obtain such consent, an electronic-system organizer (“**Organizer**”)<sup>8</sup> must provide a consent form which has been printed in the Indonesian language, and this should be sent to the personal-data

owner, or to his/her biological parents or authorized guardians if the owner is not legally capable of providing consent. It should also be noted that any such consent can only be given after the owner has confirmed the accuracy, confidentiality and the utilization purposes of his/her personal data.<sup>9</sup>

Through the holding of such consent, an Organizer is then entitled to legally undertake the abovementioned personal-data management activities while simultaneously implementing the protection basis and/or various measures, as follows:

Management Activities	Protection Basis/Measures
Receipt and collection <sup>10</sup>	<ol style="list-style-type: none"> <li>Both of these activities may only be undertaken after the owner’s consent has been received or based on the applicable laws and/regulations, and must only cover personal data which are relevant to the data-utilization purposes.</li> <li>The organizer must respect the data owner’s privacy as regards the issue of data confidentiality or any changes/updates which are made to any such data.</li> <li>Any received and collected personal data must be verified, whether they are received and collected directly from the data owner, or indirectly from various other sources.</li> <li>The electronic systems which are used for these activities should satisfy certain interoperability and compatibility levels and should utilize legal software.</li> </ol>
Processing and analysis <sup>11</sup>	<p>Personal data can only be processed and analyzed according to the Organizer’s initial data-collection purposes, provided that:</p> <ol style="list-style-type: none"> <li>The Organizer has also obtained consent from the owner as regards the processing and analysis of the data in question, unless these data are open for public-service purposes; and</li> <li>The data have been verified.</li> </ol>

<sup>8</sup> Electronic-systems organizers are any individuals, legal entities, governmental organizers, business enterprises and members of the public who, either separately or jointly, provide, manage and/or operate electronic systems in order to meet their own interests and/or those of other parties. [Art. 1 (6), Regulation 20/2016].

<sup>9</sup> Arts. 2 (4), 6 and 37, Regulation 20/2016.

<sup>10</sup> Arts. 7 (1), 9 (1), 8 (1), 10 (1-2) and 11 Regulation 20/2016.

<sup>11</sup> Arts. 12-14, Regulation 20/2016.

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<p>Storage<sup>12</sup></p>	<ol style="list-style-type: none"> <li>1. Any personal data which are to be saved must first be verified and encrypted.</li> <li>2. Any such data should be stored for a certain period, based on the applicable laws and regulations which cover the relevant sector</li> <li>3. where the data are to be utilized, or for a period of at least five years if no relevant regulation addresses such matters.<sup>13</sup></li> <li>4. Organizers must retain data for a period of five years from the last day upon which the data owner used the data, and any such data may only be erased after this period has elapsed, unless the Organizer is still intending to use the data for their own collection purposes.<sup>14</sup></li> <li>5. Organizers are also required to open data centers and disaster recovery centers in Indonesia for the purpose of data protection.</li> </ol>
<p>Display, publishing, transmission, dissemination and/or opening of access<sup>15</sup></p>	<ol style="list-style-type: none"> <li>1. These activities may be undertaken by the Organizers and users, by Organizers only, or by users only, provided that such any such parties have already secured the consent of the data owner and that the data in question have been verified.</li> <li>2. Any transfers of personal data from a domestic Organizer to a foreign country must be coordinated via the Ministry in accordance with the prevailing laws and regulations which cover cross-border exchanges of personal data.</li> <li>3. Organizers must provide any relevant law-enforcement apparatus with the data which is contained within their systems if the data are required for the purpose of legal proceedings.</li> </ol>
<p>Erasure</p>	<ol style="list-style-type: none"> <li>1. Personal data must be erased from an electronic system if: (a) the saving period has expired; or (b) the personal-data owner requests it.<sup>16</sup></li> <li>2. Any such deletion may encompass either part or the entirety of any personal data, whether it is in electronic or non-electronic form,</li> <li>3. and such data must no longer be made available within the electronic system after any such deletion has taken place.<sup>17</sup></li> </ol>

<sup>12</sup> Arts. 15, 16, 17 and 19, Regulation 20/2016.

<sup>13</sup> The following regulations cover the area of personal data: (1) Freedom of public information; (2) Banking; (3) Residential administration; (4) Health; and (5) Taxation. For more information, see ILD [No. 480](#).

<sup>14</sup> Art. 19, Regulation 20/2016.

<sup>15</sup> Arts. 21, 22 (1) and 23 (1), Regulation 20/2016.

<sup>16</sup> Art. 25 (1), Regulation 20/2016.

<sup>17</sup> Art. 25 (2), Regulation 20/2016.

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Additionally, Organizers are also obliged to formulate internal regulations which implement personal-data protection measures as a preventive strategy, so as to avoid any failures which could arise during attempts to protect any personal data which lie under their control.<sup>18</sup>

Note that any Organizers which have undertaken any of the management measures outlined above must comply with the provisions set out under Regulation 20/2016 within a two-year period of the regulation coming into force.<sup>19</sup>

### Dispute Settlement

Regulation 20/2016 allows for any personal data owners and Organizers to file complaints with the Ministry regarding any failures to protect the confidentiality of any personal data. Such complaints are to be settled amicably or through alternative-dispute-settlement measures, and may be submitted based if the following conditions prevail:<sup>20</sup>

- a. The Organizer fails to deliver written notice regarding any such failures to the data owners or other Organizers; or
- b. The data owners or other Organizers have sustained damage or have been placed at a disadvantage as a result of any such failures.

Any such complaints should be submitted in writing within 30 of any of the abovementioned conditions occurring, along with relevant supporting evidence.<sup>21</sup> Any such complaint will then be processed in accordance with the mechanism specified under Article 31 (1) of Regulation 20/2016.<sup>22</sup>

If the complaint is not ultimately settled through an amicable procedure or other alternative dispute-resolution mechanism, then the disputing data owners or Organizers may file a civil claim at the district court.<sup>23</sup>

Regulation 20/2016 has been in force since 1 December 2016. RP

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<sup>18</sup> Art. 5 (1-2), Regulation 20/2016.

<sup>19</sup> Art. 38, Regulation 20/2016.

<sup>20</sup> Art. 29, Regulation 20/2016.

<sup>21</sup> Art. 31 (a), Regulation 20/2016.

<sup>22</sup> Art. 31 (h), Regulation 20/2016.

<sup>23</sup> Art. 32, Regulation 20/2016.

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### RECENTLY PUBLISHED ILB

- Provisions on Debtor-Information System Amended
- PBB Deduction for Geothermal Activity
- New Provisions on Regional Tax
- Service Tariffs at the Ministry of Law and Human Rights Readjusted

### • RECENT REGULATION

- Bank Indonesia (BI) Regulation [No. 18/41/PBI/2016](#) on Bilyet Giros
- Director General of Customs and Excise Regulation [No. PER-39/BC/2016](#) on Procedures for the Granting of Temporary Import Approvals for Foreign-Tour Ships, Spare Parts Which Arrive Separately from Foreign-Tour Ships and the Completion of Temporary Imports of Foreign-Tour Ships for Reexport or Non-Reexport Purposes
- Director General of Customs and Excise Regulation [No. PER-40/BC/2016](#) on Second Amendment to Director General of Customs and Excise Regulation No. PER-40/BC/2016 on Procedures for the Determination of Tobacco-Product Excise Tariffs