

# **Ensuring the Safeguarding of Individuals Affected by Unauthorized Use of Personal Information: A Comparative Analysis of General Criminal Law and Islamic Legal Frameworks**

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## **Abstract:**

The rapid advancement of technology has led to the massive collection and storage of personal data. This data can be misused for various purposes, causing significant harm to individuals. Therefore, protecting personal data is crucial. This study aims to examine the protection of victims of personal data misuse from the perspectives of Indonesian Criminal Law and Islam. The study begins by exploring the significance of personal data protection. Personal data is essential for individuals' identity, privacy, and financial security. Its misuse can lead to identity theft, financial fraud, and reputational damage. Next, the study delves into the formulation of personal data protection under Indonesian Criminal Law. The Indonesian Criminal Code does not explicitly address personal data protection. However, several provisions can be interpreted to protect personal data, such as the prohibition against unauthorized data collection and dissemination. The study further examines personal data protection in Islam. Islamic law emphasizes the protection of individuals' rights and privacy. Several Islamic principles, such as the right to privacy (haqq al-khususiyah) and the prohibition against harming others (la tadharrur), support the protection of personal data. The study concludes by highlighting the importance of a comprehensive legal framework for personal data protection in Indonesia. This framework should encompass both civil and criminal law provisions, drawing upon both Indonesian Criminal Law and Islamic principles. By strengthening legal protections, individuals can be better safeguarded from the misuse of their personal data.

**Keywords:** personal data protection; criminal law; victims' rights

## **Introduction**

The rapid and substantial evolution of information technology has profoundly altered global behaviour and lifestyles. In a borderless world, societies are deeply influenced by social, cultural, economic, and legal ramifications stemming from

technological innovations. Throughout history, each successive wave of technological advancement has necessitated the establishment of a suitable legal framework. Yet, it must be acknowledged that while information technology serves as the foundation for human advancement and prosperity, it also harbours the potential to be exploited for illicit purposes. In the realm of safeguarding personal data, there exists a range of pertinent human rights, among which is the right to privacy, enabling individuals to uphold confidentiality and exercise control over the utilization of their personal information. It is within every person's entitlement to dictate the circumstances, manner, and recipients of the disclosure of their data. The primary objective of personal data protection lies in thwarting unauthorized or unwarranted access, utilization, and dissemination of individual personal information.<sup>1</sup>

The notion of privacy is notably intricate, initially articulated as the "Right to Privacy" by Samuel Warren and Louis Brandeis, delineating it as a fundamental entitlement encompassing the ability to relish life and dwell in tranquility. Its legal progression is inexorable, underscored by the imperative for acknowledgment and safeguarding. The imperative for legislative frameworks safeguarding privacy is imperative, with legal safeguards constituting the underlying equilibrium. The interconnectedness of the right to privacy and the safeguarding of personal data underscores the imperative of shielding personal data as an integral component of universally recognized human rights, as enshrined in international and regional legal frameworks such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Law Commission Convention.<sup>2</sup>

In the contemporary digital landscape, the advancement of information and communication technology has ushered in profound changes in human existence. Consequently, the significance and sensitivity surrounding personal data have escalated, given the proliferation of online activities. Personal data encompasses particulars such as one's name, address, identification numbers, financial records, medical histories, and other intimate information pertaining to an individual. Amidst the rapid march of technological progress, the threat of personal data misuse and privacy breaches looms large. Thus, safeguarding personal data emerges as an imperative human right that warrants preservation and enforcement. Indonesia, as a developing nation embracing technological innovation at pace, bears a duty to safeguard personal data as an integral facet of the right to privacy. Within this framework, the preservation of privacy rights assumes paramount importance and demands urgent attention. The right to privacy epitomizes the entitlement of every individual to uphold the confidentiality and security of their personal data. Given the escalating occurrences of privacy infringements and misuse of personal data, it becomes imperative for each nation to institute robust laws and regulations to shield the privacy rights of its populace.

In recent years, Indonesia has witnessed a succession of data security breach

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<sup>1</sup> Andy Usmina Wijaya Sekaring Ayumeida Kusnadi, 'Perlindungan Hukum Data Pribadi Sebagai Hak Privasi', *JA: Jurnal Al-Wasath* 2 (2021): 19–32.

<sup>2</sup> R. Haganta, 'Legal Protection of Personal Data as Privacy Rights of E-Commerce Consumers Amid the Covid-19 Pandemic', *Lex Scientia Law Review*, 4 (2020): 77–90, <https://doi.org/10.15294/lesrev.v4i2.40904>.

incidents. Notably, on April 17, 2020, there occurred a personal data leak encompassing 12,115,583 Tokopedia user accounts.<sup>3</sup> Following the incident, it was disclosed that the e-commerce entity Bhineka.com experienced a data breach, wherein a group of hackers identifying as Shining Hunters asserted possession of 1.2 million user records. The compromised data purportedly fetched a sum of USD 12,000, equivalent to Rp. 17,800,000, upon sale.<sup>4</sup> The recent incident involving the leakage of 380,000 Biznet user data underscores the vulnerability of Indonesians' right to privacy to potentially harmful exploitation. It's essential to recognize that personal data breaches stem not only from leaks but also from irresponsible management of personal information, such as indiscriminate data sharing without proper justification. In light of the growing reliance on digital platforms, safeguarding personal data is of paramount importance to uphold the security of individuals' information.

The study of personal data protection has become the subject of study by academics, including : Erna Priliyasi's research posits that Ministerial Regulation Number 20 of 2016 regarding Personal Data Protection falls short in adequately safeguarding consumers. Consequently, she contends that it is imperative for the government to promptly enact measures to ensure the protection of personal data from misuse.<sup>5</sup> Research Nela Mardiana show that the current implementation of personal data protection in Indonesia fails to adequately safeguard individuals' privacy rights. This inadequacy is evidenced by numerous instances of data misuse due to the proliferation of digital devices and platforms lacking sufficient legal protections.<sup>6</sup> Kadek Rima Anggen Suari and I Made Bachelor say that the Personal Data Protection (PDP) Law exhibits deficiencies, particularly in its treatment of the privacy of children and individuals with disabilities. They highlight a concerning trend of potential misuse of all information pertaining to these groups, despite the PDP Law's stipulation of a 'special' process. However, this specialized process lacks precise regulation within the law, and notably, there is an absence of an age threshold for the classification of children, among other identified shortcomings.<sup>7</sup>

Research Ni Putu Noni Suharyani and Ni Komang Sutrisnishow that the effectiveness of personal data protection in safeguarding individuals' privacy rights remains suboptimal due to the proliferation of online platforms without commensurate preventative legal safeguards, resulting in numerous instances of

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<sup>3</sup> 'Marak Data Bocor, Butuh Taji UU Data Pribadi', CNN Indonesia, 2020, <https://www.cnnindonesia.com/teknologi/20200707230022-185-522059/marak-data-bocor-butuh-taji-uu-data-pribadi>.

<sup>4</sup> Susetyo Dwi Prihadi, 'Peretas Jual 1,2 Juta Data Pengguna Bhinneka.Com Di Dark Web', CNN Indonesia, 2020, <https://www.cnnindonesia.com/teknologi/20200511000424-185-501867/peretas-jual-12-juta-data-pengguna-bhinnekacom-di-dark-web>.

<sup>5</sup> Erna Priliyasi, 'Pentingnya Perlindungan Data Pribadi Dalam Transaksi Pinjaman Online', *Majalah Hukum Nasional* 49, no. 2 (28 November 2019): 1–27, <https://doi.org/10.33331/mhn.v49i2.44>.

<sup>6</sup> Nela Mardiana Parihin, 'Urgensi Perlindungan Data Pribadi Dalam Prespektif Hak Asasi Manusia', *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 5, no. 1 (13 May 2023): 16–23, <https://doi.org/10.52005/rechten.v5i1.108>.

<sup>7</sup> Kadek Rima Anggen Suari and I. Made Sarjana, 'Menjaga Privasi Di Era Digital: Perlindungan Data Pribadi Di Indonesia', *Jurnal Analisis Hukum* 6, no. 1 (25 April 2023): 132–42, <https://doi.org/10.38043/jah.v6i1.4484>.

personal data breaches.<sup>8</sup> The research conducted by Hari Sutra Disemadi say that personal data protection regulations in Indonesia remain fragmented across various laws and regulations. This fragmentation indicates a lack of serious commitment by the government towards ensuring robust personal data protection. Consequently, the absence of comprehensive regulations governing personal data protection has led to several issues, including inadequate protection afforded to the public due to the weakness of existing legal frameworks.<sup>9</sup>

Erlina Maria Christin Sinaga and Mery Christian Putri contended that prevailing data protection regulations lack efficacy due to their dispersion across multiple sectoral regulations, thereby failing to furnish optimal protection.<sup>10</sup> Sangojoyo et al contend that Indonesia's personal data protection measures significantly lag behind those established in several ASEAN nations such as Malaysia and Singapore. Notably, Malaysia and Singapore have enacted specialized and comprehensive regulations, namely the Malaysian and Singaporean Personal Data Protection (PDP) Laws, which align with the EU's General Data Protection Regulation (GDPR). These laws aim to bolster the security of data managed by private entities and impose stringent penalties for unauthorized or unlawful access, collection, and transfer of data.<sup>11</sup>

Handryas Prasetyo Utomo et al contend that stringent and comprehensive regulations are imperative to ensure the security of information technology users and enhance technology-based health services. They advocate for the establishment of an independent regulatory body or a personal data protection commission tasked with regulating, supervising, and controlling these endeavors. Although governmental entities are responsible for oversight within their respective sectors, coordination with the Minister of Communication and Information is essential.<sup>12</sup> Winnie Stevanil and Lu Sudirman examined the Imperative of Safeguarding Financial Technology User Data against Online Crimes in Indonesia, positing that a robust legal framework achieves efficacy through five key elements: the existence of the law, law enforcement personnel, sufficient resources and infrastructure, societal engagement, and cultural alignment. They aspire that incorporating indicators concerning legal effectiveness will ensure justice and safeguard personal data for all individuals inadvertently implicated in online criminal activities.<sup>13</sup> Muhammad Firman Al Ghani's research

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<sup>8</sup> Ni Putu Noni Suharyanti and Ni Komang Sutrisni, 'Urgensi Perlindungan Data Pribadi Dalam Menjamin Hak Privasi Masyarakat', *Prosiding Seminar Nasional Fakultas Hukum Universitas Mahasarakwati Denpasar 2020* 1, no. 1 (2021): 119–34.

<sup>9</sup> Hari Sutra Disemadi, 'Urgensi Regulasi Khusus dan Pemanfaatan Artificial Intelligence dalam Mewujudkan Perlindungan Data Pribadi di Indonesia', *Jurnal Wawasan Yuridika* 5, no. 2 (28 September 2021): 177–99, <https://doi.org/10.25072/jwy.v5i2.460>.

<sup>10</sup> Erlina Maria Christin Sinaga and Mery Christian Putri, 'Formulasi Legislasi Perlindungan Data Pribadi Dalam Revolusi Industri 4.0', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (27 August 2020): 237, <https://doi.org/10.33331/rechtsvinding.v9i2.428>.

<sup>11</sup> Bram Freedrik Sangojoyo, Aurelius Kevin, and David Brilian Sunlaydi, 'Urgensi Pembaharuan Hukum Mengenai Perlindungan Data Pribadi E-Commerce Di Indonesia', *Kosmik Hukum* 22, no. 1 (10 February 2022): 27, <https://doi.org/10.30595/kosmikhukum.v22i1.12154>.

<sup>12</sup> Handryas Prasetyo Utomo, Elisatris Gultom, and Anita Afriana, 'Urgensi Perlindungan Hukum Data Pribadi Pasien Dalam Pelayanan Kesehatan Berbasis Teknologi Di Indonesia', *Jurnal Ilmiah Galuh Justisi* 8, no. 2 (13 September 2020): 168–85, <https://doi.org/10.25157/justisi.v8i2.3479>.

<sup>13</sup> Winnie Stevani and Lu Sudirman, 'Urgensi Perlindungan Data Pengguna Financial Technology



emphasizes the critical necessity for governmental involvement and collaboration with diverse agencies to ensure the safeguarding of personal data in the execution of online loan services. It underscores the imperative for decisive measures against unregistered and unauthorized online loan providers. Based on the above issues, this article aims to discibe the importance of personal data protection. This article also discibe to develop protocols for the protection of personal data in accordance with both general criminal law and Islamic principles

## Method

This study employs a normative juridical research methodology, focusing on the analysis of legal norms governing behavior and the examination of existing laws. It adopts a statutory approach, scrutinizing regulations pertaining to the legal protection of personal data. Additionally, a comparative method is utilized to contrast legal provisions concerning personal data protection within both general criminal law and Islamic law frameworks. Normative juridical research involves the examination of secondary data, such as library materials, and is often referred to as theoretical or dogmatic legal research. In this study, secondary data primarily consists of prior research discussing the significance of personal data protection and the formulation of relevant legal principles according to both general and Islamic criminal law.

## Result and Discussion

### The fundamental tenets governing the protection of personal data privacy

Personal data pertains to information concerning an individual that enables their identification, directly or indirectly, whether through electronic or non-electronic means. This includes data that can be linked to an individual through identifiers such as identification numbers or specific factors related to their physical, physiological, mental, economic, cultural, or social identity. In essence, data qualifies as personal if it is associated with an identifiable person, namely the data subject.<sup>14</sup>

The principle of the right to privacy concerning personal data stands as a critical facet amidst the swift evolution of the contemporary digital landscape. In our daily interactions, we find ourselves engaging with diverse technologies necessitating the provision of personal information online. Personal data encompasses any details capable of directly or indirectly discerning an individual, encompassing elements such as name, address, telephone number, email address, date of birth, identification number, financial particulars, and medical records.<sup>15</sup> The concept of data protection is often regarded as an essential component of initiatives aimed at safeguarding privacy. Essentially, data protection is closely intertwined with privacy, as elucidated

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Terhadap Aksi Kejahatan Online Di Indonesia', *Journal of Judicial Review* 23, no. 2 (23 December 2021): 197–216, <https://doi.org/10.37253/jjr.v23i2.5028>.

<sup>14</sup> *European Union Agency for Fundamental Rights and Council of Europe Handbook on European Data Protection Law*, (Belgium, 2014).

<sup>15</sup> Emilda Y Lisa NA Mahira, DF, 'Consumer Protection System (CPS): Siste, Perlindungan Data Pribadi Konsumen Melalui Collaboration Concept', *Legislatif* 3 (n.d.): 287–302.

by Allan Westin, who defines privacy as the entitlement of individuals, groups, or institutions to exercise control over the information they disclose, regardless of whether such information will be shared with other parties. Termed as information privacy, Westin's definition pertains to the management of personal data. Additionally, data protection is upheld as a fundamental human right; in numerous nations, it is enshrined either as a constitutional provision or in the form of "data habeas," which entails an individual's entitlement to seek protection for their information and rights in cases of mishandling of data. The collection and dissemination of personal data are viewed as infringements upon an individual's privacy rights, as the right to privacy encompasses the freedom to decide whether to furnish personal data or not. Furthermore, personal data is perceived as a valuable asset or economic commodity of considerable worth.

The principle of the right to privacy concerning personal data encompasses various fundamental rights. These include an individual's entitlement to be informed about any occurrences involving their personal data, disclosure of the parties accessing it, clarification of the purposes for which the data is utilized, and details regarding its processing and storage methods. Additionally, this principle underscores the right to provide consent for the use of personal data, alongside the prerogative to request the deletion or rectification of inaccurate data (commonly known as the right to be forgotten). Primarily, the objective of this principle is to safeguard human rights and uphold individual dignity, while also ensuring the ethical and transparent handling of personal data. These principles extend not only to corporations engaged in data collection but also encompass governmental bodies and other entities involved in the collection, processing, and utilization of personal data.<sup>16</sup> Warren and Brandeis posit that alongside the swift progression of technology, there is a growing consciousness among the public, acknowledging the inherent entitlement of every individual to derive satisfaction from their own life. They contend that privacy constitutes an essential entitlement for individuals to lead their lives privately, and this evolution within the realm of law becomes an imperative inevitability necessitating suitable legal acknowledgment. Consequently, every person holds the prerogative to safeguard their privacy, demanding commensurate protection.<sup>17</sup>

Maintaining relationships with others often necessitates individuals concealing certain aspects of their personal lives to preserve their standing within a given social sphere. Privacy is considered an inherent entitlement, distinct from other rights, yet its preservation can be compromised when individuals disclose private matters to the public. In the course of existence, every individual requires moments of solitude, thereby rendering privacy a fundamental necessity. The right to privacy encompasses

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<sup>16</sup> RE Latumahina, 'Aspek Hukum Perlindungan Data Pribadi Di Dunia Maya', *GEMA AKTUALITA* 3 (2014): 14–25.

<sup>17</sup> SD Rosadi, *Cyber Law Aspek Data Privasi Menurut Hukum Internasional, Regional Dan Nasional* (Jakarta: Refika Aditama, 2015).

one's capacity to nurture intimate connections within familial settings, thereby upholding the institution of marriage and fostering familial care. Warren refers to this as the right to be free from interference. Furthermore, the challenge of quantifying harm underscores the significance of affording legal protection to privacy. Intrusions into an individual's private sphere can yield consequences far exceeding tangible damages, warranting compensation for victims of privacy breaches.<sup>18</sup>

Each person is entitled, according to the provisions outlined in the 1945 Constitution of the Republic of Indonesia, to safeguard oneself, one's family members, one's integrity, dignity, and property within one's jurisdiction. Furthermore, every individual has the entitlement to experience a sense of safety and security free from all forms of peril and apprehension. Article 28, Letter G, Paragraph (1) of the 1945 Constitution of the Republic of Indonesia expressly affirms the right of every individual to protection for oneself, one's family, integrity, dignity, and property within one's jurisdiction, as well as the entitlement to feel secure and shielded from the threat of crime or human rights violations.<sup>19</sup> The principle of data protection is designed to uphold individuals' autonomy in deciding whether they want to reveal or share their personal information. Furthermore, individuals possess the prerogative to specify the conditions under which their personal data is transferred. As privacy rights evolve, there is a growing emphasis on endeavors to safeguard personal data.

Individuals in Indonesia are entitled to the freedom to decide whether to maintain the confidentiality of their personal data or disclose it, a right safeguarded by relevant legal provisions.<sup>20</sup> According to existing legal provisions, Indonesian citizens possess a constitutional entitlement to safeguard their privacy, encompassing the protection of personal information. It is incumbent upon the state, pursuant to these constitutional rights, to furnish legal safeguards for various facets of Indonesian citizens' lives. The legal aims pertaining to constitutional rights ought to encompass benefits, equity, and lucidity.

### **The Significance of Safeguarding Personal Data**

The term "urgency," stemming from the Latin "urgere," denotes a pressing need for prompt resolution. In English, it signifies the immediate necessity for action. Similarly, in Indonesian, "urgency" carries the same weight, indicating a crucial requirement or significant matter. This term underscores the imperative for swift and efficient addressing of a problem or critical circumstance.<sup>21</sup> Personal data pertains to details concerning an individual's identity, encompassing aspects such as name, age,

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<sup>18</sup> S Dewi, 'Prinsip – Prinsip Perlindungan Data Pribadi Nasabah Kartu Kredit Menurut Ketentuan Nasional Dan Implementasinya', *Sosiohumaniora* 19 (2017): 206–12.

<sup>19</sup> SF Anggraeni, 'Polemik Pengaturan Kepemilikan Data Pribadi: Urgensi Untuk Harmonisasi Dan Reformasi Hukum Di Indonesia', *Jurnal Hukum & Pembangunan* 48 (2018): 814–25.

<sup>20</sup> P Erna, "'Pentingnya Perlindungan Data Pribadi Dalam Transaksi Pinjaman Online (The Urgency of Personal Protection in Peer to Peer Lending)'", *Majalah Hukum Nasional*, 2019.

<sup>21</sup> 'Kamus Besar Bahasa Indonesia (KBBI)', accessed 21 March 2024, <https://kbbi.web.id/urgensi>.

gender, education, occupation, address, and familial role. Such data is capable of pinpointing a specific person, hence it is denoted as the owner's data. The delineation of personal data is further outlined in Article 1 Number 29 of the Government Regulation of the Republic of Indonesia Number 71 of 2019 pertaining to the Implementation of Electronic Transaction Systems, wherein personal data is defined as "any information regarding an individual, whether explicitly identified and/or identifiable either singularly or in conjunction with other data, whether directly or indirectly, through electronic and/or non-electronic systems."<sup>22</sup>

The initial provision of Section 1 in Minister of Communication and Information Technology Regulation Number 20 of 2016, about the safeguarding of Personal Data in Electronic Systems, stipulates that "Personal Data refers to specific individual information that is preserved, upheld, and safeguarded as accurate and confidential." Additionally, Article 2 elucidates that safeguarding activities concerning the acquisition, compilation, processing, analysis, storage, presentation, disclosure, transmission, dissemination, and elimination of personal data within electronic systems are deemed as measures for ensuring privacy protection.

The escalation of personal data breaches in Indonesia highlights a growing awareness regarding the significance of safeguarding personal information in tandem with the proliferation of internet usage and technology-driven applications. While the Constitution of 1945 delineates the right to self-defence under Article 28G Paragraph (1), stipulating the entitlement of every citizen to the protection of their person, family, honour, dignity, and property, it is imperative to acknowledge that in the realm of evolving information and communication technology, the notion of personal rights extends beyond mere ownership rights as articulated in the aforementioned article. Specifically, the right to privacy ought to be recognized as a fundamental entitlement. Given its direct correlation to an individual's personal information and identity, the right to privacy assumes heightened significance and is rightfully construed as a personal entitlement. Nonetheless, recent instances of personal data breaches underscore a pressing and concerning issue.

Leakage of personal information poses a grave threat, potentially resulting in financial repercussions, identity theft, and further exploitation of data. Thus, governments, corporations, and individuals must heighten awareness of data security and undertake appropriate preventive measures to safeguard such sensitive information. In the contemporary digital landscape, where virtually all devices are interconnected and equipped with internet accessibility, allowing for remote management, the reliance on digital technology for enhancing work efficiency, expanding social and economic networks, and facilitating various activities has become ubiquitous. Consequently, the associated risks have grown increasingly

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<sup>22</sup> Ni Putu Noni. Ni Komang Sutrisni Suharyanti, 'Urgensi Perlindungan Data Pribadi Dalam Menjamin Hak Privasi Masyarakat' 1 (2021): 120–34.



pronounced. Therefore, it is essential to remain abreast of the latest developments concerning data security, both within Indonesia and across the globe.<sup>23</sup> The advancement of computer technology in the realm of information and communication has undergone substantial progress within society, thereby making a significant contribution to fulfilling the needs of the community.<sup>24</sup>

The entitlement to privacy stands as a cornerstone in safeguarding human dignity and serves as the bedrock of human rights. This entitlement finds recognition in Article 12 of the Universal Declaration of Human Rights (UDHR), which stipulates that 'No individual shall suffer arbitrary interference with their privacy, family, home, or correspondence, nor shall such privacy be subject to unlawful attacks upon their honour or reputation.' Additionally, the right to privacy encompasses an individual's authority to dictate the entities granted access to their personal information and how said information is utilized. Core to data protection principles is the assertion that every person possesses the prerogative to determine whether to disclose or exchange their data. In essence, safeguarding personal data entails two fundamental aspects: protecting both the visible and invisible physical data. Furthermore, data protection encompasses regulating against unauthorized usage, misuse of data for specific purposes, and ensuring proper data deletion.

The rise in incidents involving the unauthorized disclosure of individuals' data, coupled with the absence of effective resolution mechanisms for violations, underscores the suboptimal state of legal protection for personal data. Addressing this issue has become an urgent imperative following the enactment of the Personal Data Protection Bill. In addition, our constitution unequivocally affirms in Article 28G that safeguarding personal data is a fundamental entitlement for all Indonesian citizens. The imperative of legal safeguards to uphold the privacy of individuals' personal information within Indonesia is undeniable. Consequently, the matter of privacy and personal data has assumed paramount significance in the contemporary age. The proliferation of information technology and the surge in internet usage, particularly within Indonesia, underscores the necessity for tailored measures to ensure the protection of privacy and personal data<sup>25</sup>

The protection of personal data is of paramount importance due to the potential violation of an individual's rights to privacy if mishandled by data providers or third parties. Regrettably, despite the pressing need for robust regulations safeguarding personal data, public consciousness regarding its protection remains inadequate. Generally, society has yet to fully grasp the significance of safeguarding

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<sup>23</sup> Cynthia H, 'Registrasi Data Pribadi Melalui Kartu Prabayar Dalam Perspektif Hak Asasi Manusia', *Jurnal HAM* 9 (2018): 191–204.

<sup>24</sup> Syaifudin A, 'Perlindungan Hukum Terhadap Para Pihak Di Dalam Layanan Financial Technology Berbasis Peer to Peer (P2P) Lending (Studi Kasus Di PT. Pasar Dana Pinjaman Jakarta)', *Dinamika*, 26 (2020): 408–21.

<sup>25</sup> Meilan Arsanti Nela Mardiana, 'Urgensi Perlindungan Data Pribadi Dalam Prespektif Hak Asasi Manusia', *JURNAL RECHTEN: RISET HUKUM DAN HAK ASASI MANUSIA* 5 (2023).

personal data as an inherent component of property rights deserving protection. This lack of awareness is evidenced by the widespread dissemination of posts containing personal information across various social media platforms and networks. Furthermore, users often exhibit a lack of comprehension regarding the privacy policies and terms and conditions of electronic platforms such as e-commerce, online transportation, fintech, and others, particularly those about the utilization of personal data.

The e-commerce sector's expansion in Indonesia has brought about an increasing risk of personal data breaches. Safeguarding society against such threats is a fundamental duty of the state, as articulated in our constitution, particularly in Article 28 G paragraph (1) and Article 28 H paragraph (4). In pursuit of fulfilling this constitutional obligation, the government, through the Ministry of Communication and Information (Kemenkominfo), has taken steps to address this issue. This includes the enactment of Regulation of the Minister of Communication and Information Number 20 of 2016 on the Protection of Personal Data in Electronic Systems, which was officially established on November 7, 2016, and became effective on December 1, 2016. The regulatory scope outlined in Article 2 paragraph (1) encompasses safeguarding personal data throughout its lifecycle, including acquisition, collection, processing, analysis, storage, display, announcement, transmission, dissemination, and destruction.

The issuance of the Ministerial Regulation on Personal Data Protection is grounded in the principle of respecting personal data as a facet of individual privacy. This notion of privacy encompasses the right of individuals to dictate whether their data is permissible for access and disclosure by relevant parties, within the bounds set forth by statutory regulations. The overarching objective is to furnish comfort and instill trust in personal data owners in the event of data breaches. However, the author observes that the current regulation leaves several aspects of personal data protection unaddressed, particularly concerning types of personal data not explicitly mentioned. Consequently, there is apprehension that the efficacy of implementing this regulation may be compromised due to the presence of numerous unregulated issues.

Amidst the escalating risks of cybercrime, information breaches, and the misuse of personal data, safeguarding individual data in Indonesia has emerged as a pressing necessity. This imperative extends beyond the realm of individual privacy rights; it represents a critical element in fostering public confidence within the digital landscape. A robust level of trust in the protection of personal data is poised to foster the acceptance of technology, fortify business security, and underpin the sustainable growth of the digital economy.<sup>26</sup> It is imperative to acknowledge that safeguarding personal data goes beyond mere legal compliance; it encompasses ethical

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<sup>26</sup> Shaquila Dania, Muhammad Irfan, Mairisa Elvia, 'Ancaman Cybercrime Dan Peran Cybersecurity Pada E-Commerce: Systematic Literature Review.', *JURSIMA* 11 (2023).

considerations, principles of justice, and social responsibility. The active participation of all stakeholders, including governmental bodies, private enterprises, and civil society, is indispensable in fostering awareness regarding the significance of preserving personal data privacy. Moreover, effective enforcement of laws against breaches of data privacy, coupled with educational initiatives, will serve as catalysts for the adoption of improved data protection measures across all sectors. Hence, enhancing awareness about the criticality of personal data protection in Indonesia necessitates a comprehensive approach, encompassing robust legal frameworks, educational endeavours, awareness campaigns, and collaborative efforts among diverse stakeholders. These measures will lay the foundation for a secure, trustworthy, and ethically sound digital environment conducive to future technological advancements and economic prosperity.<sup>27</sup>

### **Development of Regulations for the Protection of Personal Data in Accordance with Islamic Legal Principles**

Islamic teachings establish fundamental principles governing human conduct, encompassing the safeguarding of individual privacy, reverence for property rights, and the promotion of honesty and integrity. Islamic jurisprudence, known as fiqh, offers specific directives on legal and ethical matters, yet the direct adaptation of these principles to the digital sphere remains an evolving area. Scholars have commenced inquiries into the integration of basic Islamic ethics within contexts such as data privacy and cybersecurity. For instance, recent research has proposed guiding principles of Islamic work and business ethics for multinational corporations operating in Muslim-majority nations. This endeavour aims to ensure that business practices align with Islamic tenets, including the rights and duties of employees in Islam, prevention of worker discrimination, treatment of labour associations, prohibition of child and forced labour, as well as equitable distribution of income and wages.<sup>28</sup>

Additional research delves into the growing issue of consumer data theft and evaluates the importance of consumer data privacy within the framework of digital ethics informed by Islamic principles. The findings indicate that employing robust cybersecurity measures and ethical conduct rooted in Islamic values can mitigate the risk of criminal activities and data breaches targeting consumers.<sup>29</sup> Islamic principles can be utilized within the realm of cyber security to safeguard personal information and reputation. The Islamic concept of "aura," which underscores the importance of personal space and privacy, can be effectively adapted to the digital age. Moreover, Islamic finance principles, such as the prohibition against "gharar" (excessive

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<sup>27</sup> Nasri LinraAtan Darham Daeng, Yusuf, 'Perlindungan Data Pribadi Dalam Era Digital: Tinjauan Terhadap Kerangka Hukum Perlindungan Privasi', *INNOVATIVE: Journal Of Social Science Research*, 2023.

<sup>28</sup> Mushaddad Hasbullah Mohamad Zaharuddin Zakaria, Nisar Mohammad Ahmad, Ahmad Zaki Salleh, 'Guiding Principles for Islamic Labor Code and Business Ethics', *International Journal of Academic Research in Business and Social Sciences* 7 (2017): 336–45.

<sup>29</sup> Diana Ambarwati Afriyan Arya Saputra, Muhammad Iqbal Fasa, 'Islamic-Based Digital Ethics: The Phenomenon Of Online Consumer Data Security', *Jurnal Ekonomi Dan Keuangan Islam* 11 (2021).

uncertainty) and "riba" (usury), offer valuable frameworks for assessing risks associated with digital transactions and data management. Additionally, the application of Islamic legal methodologies like "maslahah mursalah" (public interest) and "sadd al-dhara'i" (blocking the means to harm) is considered pertinent in endeavours aimed at protecting personal data.<sup>30</sup> The significance of meticulously assessing the legal framework within Islamic nations and its alignment with international cybersecurity norms and standards cannot be overstated.<sup>31</sup>

Research has advocated for the advancement of Islamic financial structures, particularly in Saudi Arabia, promoting the integration of pluralistic legal frameworks and the harmonization of diverse legal traditions, encompassing both Western and non-Western perspectives.<sup>32</sup> The engagement of governmental authorities and relevant stakeholders holds paramount importance in formulating regulations that definitively establish the imposition of criminal or civil penalties and guarantee the unequivocal enforcement of the law.<sup>33</sup> The principles of Islamic law can be applied to address crimes occurring in cyberspace, including ensuring the security of digital platforms, through the identification of various forms of cybercrime and the establishment of suitable punishments for transgressions.<sup>34</sup>

In Islam, there exist legal principles which function as guiding frameworks and primary sources of regulations, namely the Quran and the Sunnah of the Prophet Muhammad. These two sources serve as fundamental references for governing the lives of Muslims.<sup>35</sup> In the Islamic perspective, upholding privacy is deemed obligatory as it pertains to individual confidentiality. Personal information should be safeguarded due to its connection to identity, interactions, whereabouts, images, documents, and other personal aspects. Even in the Qur'an, the significance of privacy is underscored as part of Allah's commands, as stated in Surah An-Nur, verse 27, It menas:

*"Believers, refrain from entering a household that does not belong to you without prior permission and extending greetings to its inhabitants. This conduct is more appropriate for you, fostering mindfulness."*

<sup>30</sup> Arif Gozali Warso Saputro Dimas Kuku Nur Rachim, Ahmad Firdaus, 'Analysis of the Impact of Population Growth in DKI Jakarta Using Logistic Model', *Jurnal Pendidikan Matematika Kudus* 5 (2022).

<sup>31</sup> Mohamed Gamal Abdelmonem Azhar Althahab, Sabah Mushatat, 'Between Tradition and Modernity: Determining Spatial Systems of Privacy in the Domestic Architecture of Contemporary Iraq', *International Journal of Architectural Research Archnet-IJAR* 8 (2014), <https://doi.org/10.26687/archnet-ijar.v8i3.396>.

<sup>32</sup> Roger Strange Bruce Allen Hearn, Jenifer Piesse, 'Overcoming Financing Constraints to Corporate Expansion: Evidence from a Company in an Emerging Islamic Market', *Transnatl Corp* 18 (2009), <https://doi.org/10.18356/729df526-en>.

<sup>33</sup> Zongyu Song FangBing Zhu, 'Systematic Regulation of Personal Information Rights in the Era of Big Data', *SAGE Open* 12 (2022), <https://doi.org/10.1177/21582440211067529>.

<sup>34</sup> Muhammad Asyraf Ahmad Termimi Khairul Azhar Meerangani, Ahmad Faqih Ibrahim, Muhammad Yasin Omar Mukhtar, Muhammad Hilmi Mat Johar, Adam Badhrulhisham, 'Cybercrime and Its Violation of Digital Platform Security: An Islamic Law Perspective', *International Journal of Academic Research in Progressive Education and Development* 11, no. 3 (2022): 503–15, <https://doi.org/10.6007/IJARPED/v11-i3/14564>.

<sup>35</sup> Abdul Wahhab Khalaf, *Ilmu Ushul Fikih, Terjmh. Halimuddin*, 2012.



Ibn Asyur, a prominent commentator hailing from Tunisia, offered an interpretation of this verse which outlines guidelines pertaining to seeking permission to enter a dwelling. He elucidated that a home transcends being merely a shelter or sanctuary from the elements; it is also a sanctuary of privacy. According to his analysis, this verse underscores the importance of Islamic teachings in advocating for the respect and preservation of individual privacy. The home is regarded as a highly personal space wherein individuals may possess items or engage in activities they prefer to keep private, out of concern for their dignity.

Ibn Asyur also observed that during the pre-Islamic era known as Jahiliyah, there was a laxity in regulating entry into homes, particularly for those in positions of authority. Consequently, the verse underscores the importance of respecting others' privacy irrespective of social standing. Interestingly, in contemporary times, parallels can be drawn to the notion of a firewall, which serves to safeguard against unauthorized access to private networks. This draws a parallel to the narrative of Dzulqarnain in Surah al-Kahf, verse 96, wherein he was tasked with erecting a barrier of iron, enveloped in fire and copper, to shield the community from assaults by Gog and Magog.

The significance of safeguarding personal information is underscored not only in the Quran but also in numerous hadiths of the Prophet. An example of this can be found in the narration by Anas, which exemplifies the crucial nature of maintaining the confidentiality of others and highlights the importance of honouring individual privacy.

عَنْ أَنَسٍ قَالَ أَتَى عَلِيَّ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا أَلْعَبُ مَعَ الْعُلَمَاءِ قَالَ فَسَلَّمَ عَلَيْنَا فَبَعَثَنِي إِلَى حَاجَةٍ فَأَبْطَأْتُ عَلَى أُمِّي فَلَمَّا جِئْتُ قَالَتْ مَا حَبَسَكَ قُلْتُ بَعَثَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِحَاجَةٍ قَالَتْ مَا حَاجَتُهُ قُلْتُ إِنَّهَا سِرٌّ قَالَتْ لَا تُحَدِّثَنَّ بِسِرِّ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَحَدًا قَالَ أَنَسٌ وَاللَّهِ لَوْ حَدَّثْتُ بِهِ أَحَدًا لَحَدَّثْتُكَ يَا نَابِثٌ

Anas recounted, "On one occasion, the Prophet Muhammad (peace be upon him) came to visit while I was engaged in play with my peers. He greeted us and assigned me a task, which caused me to return home later than usual."

Examining the context of these verses and hadiths, it is evident that they can be closely associated with safeguarding personal data in the contemporary digital age. The preservation of personal data stands as a significant facet of the objectives of Islamic law, integral to the protection of an individual's dignity, life, and possessions. The Indonesian Ulema Council, in its role as the custodian of the Ummah's interests, has diligently advocated for the enactment of the Personal Data Protection Law (UU PDP) as an essential component of Islamic jurisprudence. Following a protracted endeavour since its inception in 2016, the PDP Law was ultimately ratified on Wednesday, September 20, 2022.<sup>36</sup>

Allah (SWT) has meticulously outlined guidelines for positive social

<sup>36</sup> Muamalah, 'Pentingnya Perlindungan Pribadi Menurut Perspektif Islam', 2022, <https://mirror.mui.or.id/tanya-jawab-keislaman/muamalah/42340/pentingnya-perlindungan-pribadi-menurut-perspektif-islam/>.

interactions to uphold harmonious relationships among individuals, one of which includes the prohibition of entering another person's residence without their explicit consent. This prohibition aims to encourage believers to exercise caution, refraining from behaviours that entail making judgments about others or participating in inappropriate gatherings. The explanation found in Surah An-Nuur verse 27 underscores the significance of respecting individual privacy, albeit not explicitly addressing the safeguarding of personal data. Nevertheless, the divine injunction in this verse underscores the importance of seeking permission before entering someone's home, thereby establishing clear boundaries in social interactions

This aligns with the principles of personal data protection regulations, which underscore that access to personal information should only be granted with consent from the data owner. This principle mirrors the teachings of the Prophet Muhammad, peace be upon him, as recorded in the Sahih Bukhari hadith, wherein it is stated that if someone looks into a house without permission and is met with a response that blinds their eyes, they bear no guilt for their action. This underscores the significance of respecting individual privacy and adhering to the boundaries established in social interactions, reflecting Islamic teachings that prioritize peace and justice.

### **Development of Personal Data Protection by Criminal Law Principles**

In addressing the issue of crime or criminality, it is imperative to consider several key aspects as outlined by Professor Sudarto. Firstly, the utilization of criminal law should align with the national development direction, aimed at fostering a just and equitable society in both material and spiritual aspects, grounded in the principles of Pancasila. Thus, the application of criminal law should focus on diminishing crime rates and enhancing crime prevention strategies to ensure the safety and well-being of the entire community. Secondly, efforts to tackle or prevent criminal activities through legal processes must target "unintentional actions" that pose potential harm, both materially and spiritually, to society members. Thirdly, the application of criminal law should factor in the principle of "costs and benefits" to ensure an efficient allocation of resources. Lastly, considerations regarding the use of criminal law should take into account the capabilities and operational capacities of law enforcement agencies to prevent excessive workload accumulation and avoid overburdening.<sup>37</sup>

According to Prof. Dr. Wirjono Prodjodikoro, SH, the fundamental purpose of criminal law is to uphold justice. He also emphasized that within legal discourse, the primary objective of criminal law is articulated as the prevention of criminal behaviour. This can be achieved through various means, such as instilling widespread fear in society (general prevention) or instilling fear in individuals who have committed crimes previously (specific prevention). It is advisable to refrain from violating the law or to educate and rehabilitate individuals demonstrating tendencies towards criminal behaviour. The goal is to steer them towards positive and constructive actions, enabling them to contribute positively to society.

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<sup>37</sup> Abd. Rahman Saleh, 'Perlindungan Data Pribadi Dalam Perspektif Kebijakan Hukum Pidana', *HUKMY: Jurnal Hukum* 1, no. 1 (2021): 91–108, <https://doi.org/10.35316/hukmy.2021.v1i1.91-108>.

This viewpoint may be acknowledged as a secondary or ancillary objective; however, this objective, albeit supplementary, can wield significant influence in redressing societal conditions, which are still deemed the primary objective of the penal system, akin to administrative and civil punitive frameworks. Barda Nawawi Arief posits that the term "Criminal Law Policy" originates from the English "policy" and the Dutch "politiek", thus it can also be denoted as "Criminal Law Politics" or more commonly referred to as "penal policy", "criminal law policy", or "strafrechtspolitik".

Concrete and efficacious legal safeguards for personal data are imperative to guarantee the complete protection of individual privacy. The significance of safeguarding personal data is undeniable, given its inherent value in protecting one's interests. Vigorous efforts to offer robust protection for personal data are highly significant in thwarting any potential misuse and exploitation by unauthorized entities. The existence of robust legal protections provided by the state is an absolute necessity for ensuring the security and integrity of personal data.

Currently, we are facing an urgent situation regarding the protection of personal data. The existing legal safeguards are notably inadequate. Merely regulating personal data protection through governmental measures falls short; it necessitates legislative backing to ensure comprehensive legal protection that comforts both society and the state. The state's criminal law policy must be robust to safeguard the rights of individuals regarding their data. Clear and decisive punishment for perpetrators who compromise personal data integrity is imperative. Ambiguity in legal sanctions and a lax approach toward personal data breaches will inevitably be exploited by hackers. Without firm legal repercussions, the state fails to shield its citizens' data adequately, resulting in substantial losses. The rise of cross-border digital crimes underscores the urgency for stringent legal frameworks to counteract the increasingly complex landscape of data theft and global economic crime.

The legal system must assume a commanding role in addressing the menace of data breaches and hacking incidents, ensuring that perpetrators of such crimes are apprehended and brought to justice. In cases where the law is inadequate in addressing crimes with global reach, particularly those within the multifaceted economic domain, society and the nation stand to suffer significant losses. Vulnerabilities in legal frameworks concerning hacking activities pose a threat to national stability and integrity, thereby undermining the very fabric of civilization. One viable approach involves intensifying law enforcement efforts to thwart illicit data transactions and the harmful trade of personal information.

## **Conclusions**

Based on the research findings, it has been determined that safeguarding personal data is crucial for upholding individual rights and freedoms, as well as preventing potential misuse of data that could lead to harm. Both General Criminal Law and Islamic law contain regulations aimed at preserving the privacy of personal data, albeit with differing approaches and emphases. Therefore, there is a need for a comprehensive and cohesive framework for personal data protection that integrates

elements from both general and Islamic criminal law. Furthermore, it is recommended that empirical studies be conducted to examine the practical implementation of personal data protection rules and provisions. Comparative analysis of personal data protection regulations across different countries is also necessary. Additionally, research should delve into the ethical and philosophical considerations surrounding personal data protection.

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