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Navigating the Draft Implementing Regulation of the Indonesian PDP Law: Key Insights and Considerations

Introduction

As we have reached the first anniversary of the Indonesian Personal Data Protection Law (the “**PDP Law**”), it is crucial to keep a close eye on its progress and latest developments. On August 31, 2023, for public consultation purposes, the Indonesian Government released the draft of the Government Regulation on the Implementation of the PDP Law (“**Draft Regulation**”). According to the official timeline shared by the Government, the Draft Regulation is expected to be formally issued in the last quarter of 2024.

The Draft Regulation is extensive, spanning over 10 chapters and comprising 245 articles. It addresses a wide range of aspects mandated by the PDP Law, such as the Data Protection Authority, rules related to data processing, Data Protection Officers (DPOs), Data Protection Impact Assessments (DPIAs), cross-border data transfers, sanctions, and more.

While the Draft Regulation is still in its draft form and subject to potential changes, this legal update aims to provide an initial overview and highlight certain key points of interest.

1. The Role of the Indonesian Data Protection Authority

One of the pivotal aspects of the PDP regulatory framework is the role of the Indonesian Data Protection Authority (DPA). The Draft Regulation further elaborates the Indonesian DPA's authority, which includes:

- a. Formulating and determining policies relating to personal data protection, covering matters such as system standards for Controllers and Processors, implementation of personal data protection rules, establishment of the DPO ecosystem, and providing input to other government institutions in formulating sector-specific regulations/rules.
- b. Supervision towards Controllers and Processors in carrying out personal data processing activities. The Indonesian DPA will be allowed to conduct supervision, examination, and give certain orders to the Controllers/Processors.

- c. Imposing administrative sanctions against Controllers and Processors.
- d. Filing lawsuits on behalf of the public interest to seek compensation for violations of laws and regulations.

2. Extensive Elaboration of Personal Data Protection Principles, Rules, Rights, and Obligations

The Draft Regulation aspires to leave no stone unturned when it comes to personal data protection principles, rules, rights, and obligations. It provides comprehensive guidance on what organizations (Controllers/Processors) need to do to comply with the PDP regulatory framework. For example:

- Specific conditions for the use of each lawful ground. For instance, a contract may only be used as a lawful ground for a Controller to process personal data if it fulfills certain conditions, such as: (i) there are rights and/or obligations between the Controller and the Data Subjects that must be regulated under a contract; (ii) the contract is valid in accordance with the laws and regulations; and (iii) the processing of personal data is necessary for the performance of such contract.
- Requirements for organizational documents, including privacy notices/policies, data handling policies, retention policies, and records of processing activities.
- Necessary actions for organizations (Controllers/Processors) in order to comply with the principle of "security", such as: (i) determining the appropriate security mechanism to ensure data can only be accessed by authorized parties; (ii) conducting risk analysis towards the processing activities; (iii) implementing a security policy; (iv) conduct a regular check of the policy as well as its implementation; (v) implementing encryption and/or pseudonymization mechanism.
- Rules relating to cross-border data transfer. Under the Draft Regulation, in addition to explaining each legal basis to conduct cross-border data transfer (i.e., white-list, binding instrument, or consent), Controllers/Processors are also required to conduct certain actions, such as recordation, identification of the legal basis for the data transfer, ensuring adherence to the data minimization principle, and conducting risk-assessment of the cross-border data transfer.

3. Formulation of Technical Regulations

The Draft Regulation also indicates that certain aspects will be further regulated by technical regulations issued by the Indonesian DPA. These areas include, among others:

- a. Personal data processing activities based on automated individual decision-making.
- b. Implementation of operational technical measures and the determination of security levels.
- c. The appointment of Data Protection Officers (DPOs) and the establishment of their professional competency requirements.
- d. Further details on lawful grounds for cross-border data transfer, including white-list countries, appropriate binding safeguards (binding corporate rules, standard contractual clauses, etc.), and consent.

- e. Calculations for the variables of violations to determine the amount of administrative fines.

Key Takeaways

The comprehensive nature of the Draft Regulation may be evidence of the Indonesian Government's commitment to personal data protection.

As we approach the midpoint of the PDP Law's transitional period (October 2024), we have seen many organizations starting to commence compliance preparation. For organizations (both in the private and public sector) that have not yet initiated such preparation, it is advisable to consider taking the following steps:

- Review and map the existing data practices and data flows.
- Conduct a gap assessment to identify any possible incompliance in the organization's existing data practice and data flows.
- Prepare and formulate the necessary technical (e.g., system security) and organizational (e.g., policies) measures.
- Undertake any necessary corrective actions to ensure full compliance with the PDP regulatory framework.

Stay tuned for our upcoming articles in this series, where we will provide more in-depth insights into these rules and requirements.

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