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RESEARCH ARTICLE

CHILDREN'S PRIVACY RIGHTS BASED ON THE THEORY OF DIGNIFIED JUSTICE IN INDONESIA

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Abstract

Child data protection is a mandate of the constitution of the Republic of Indonesia. The purpose of this study is first, to find out the provisions of children's personal data protection in Indonesia, Second, critical notes on the regulation towards protection of children's personal data. Third, the perspective of the theory of dignified justice related to the protection of children's personal data. The research method used is normative legal research. The results of the study are first, the protection of children's personal data in Indonesia has been regulated in the constitution, namely Law Number 27 of 2022 concerning the Protection of Personal Data (UU PDP), which is the embodiment of Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Second, the PDP Law regarding the protection of children's personal data still seems simple as assessed from the legal substance of the parental consent mechanism, verification, audit monitoring and the lack of a risk-based approach. Third, dignified justice aims to humanize humans as creatures of God Almighty, by placing children in their true position in technology and personal data. Dignified justice is carried out through a multi-stakeholder cooperation through the synergy of parents, companies, government, educational institutions, and the press. In the end, the goal is the creation of sustainable protection for children's privacy data because children are the future assets of a nation.

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Introduction:-

Based on the APJII internet profile survey, the highest internet penetration is in the age group of 13-18 years at 99.16% (ninety-nine point sixteen percent). Children in the age range of 5-12 years are 62.43% (sixty-two point forty-three percent) users.¹ Cyberattacks on Indonesia are increasing from year to year. The increase in attacks not only affects parents but also children. Protection of children's personal data is necessary because the threat can occur anywhere and anytime. Threats can occur in a non-physical way, such as violence in virtual spaces, exploitation of children's personal data, discrimination of children in virtual spaces, falsification of children's

¹ The Indonesia Internet Network Operators Association, *Indonesia 2022 Internet Profile Survey*, <https://apjii.or.id/survei>, accessed on July 4, 2022.

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personal data and the use of children's data for illegal activities. Threats that use children's data can also spread physically or in non-virtual spaces.

Child data protection is needed as an effort to protect children from harmful interactions in order to create the welfare of a child's life. The² protection of children's personal data in Indonesia has been regulated in the constitution, namely Law Number 27 of 2022 concerning Personal Data Protection (PDP Law) in Article 4,³ Article 25 paragraph (1)⁴ and paragraph (2).⁵ The rules of the PDP Law are a form of state intervention that shows that Indonesia is a welfare state.⁶ The PDP Law is the embodiment of Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia.⁷ The presence of the PDP Law is a good first step,⁸ and deserves appreciation.

In the PDP Law, a separate portion is given, namely children's personal data is included in specific data categories.⁹ Specific data means that the data has a higher level of danger if accessed by irresponsible parties. The more specific a data is, the stricter its protection must be, both at the time when the information is collected, the information is distributed, the type and format of the information and its storage.¹⁰ However, in substance, there are several notes by the author related to the regulation of the PDP Law on the protection of children's personal data and this will be a study of discussion in this paper and what is the view of the theory of dignified justice on the records in the PDP Law?

Methodology:-

This study uses normative juridical research.¹¹ The data collection method was collected through literature studies.¹² The library materials used are secondary data¹³ supported by primary, secondary and tertiary legal

² According to Esping Andersen, there are 5 (five) basic welfare states², namely 1). Full democracy; 2). Social citizenship; 3). Modern industrial relations system; 4). The right to education and the expansion of modern mass education; 5). The production and provision of citizens' welfare cannot be completely handed over to the market.

³ Article 4 which divides the types of data into two, namely specific and general.

⁴ Article 25 paragraph (1) states that the processing of children's personal data is carried out specifically.

⁵ Article 25 paragraph (2) the processing of children's personal data must obtain the consent of parents and/or guardians.

⁶ There are 3 (three) main keys in understanding the welfare state: first, intervention carried out by the state (in this case the government) to ensure the welfare of its citizens; 2). Welfare must be developed based on the basic needs of the community; 3). Welfare is the right of every citizen. The goal of the welfare state, one of which is to provide social protection for every citizen.

⁷ Article 28 G paragraph (1) reads "Everyone has the right to personal self-protection, family, honor, dignity, and property under their control, as well as the right to a sense of security and protection from the threat of fear to do or not to do something that is a human right." (Shinta Dewi Rosadi, 2009, *Cyberlaw on the Protection of Privacy of Personal Information in E-Commerce according to International Law*, Widya Padjadjaran, Bandung, pp. 10-12).

⁸ Prior to the PDP Law, personal data protection was regulated in the Ministry of Communication and Informatics Regulation No. 20 of 2016. In Article 2 paragraph (2) of Permenkominfo No. 20 of 2016 concerning the Protection of Personal Data in Electronic Systems, which states that: "In implementing the provisions as referred to in paragraph (1) must be based on the principle of good Personal Data protection, which includes: (a) respect for Personal Data as privacy; (b) Personal data is confidential in accordance with the Consent and/or based on the provisions of laws and regulations; (c) based on Consent; (d) relevance to the purposes of acquisition, collection, processing, analysis, storage, appearance, announcement, delivery and dissemination; (e) the feasibility of the Electronic System used; (f) good faith to immediately notify the Personal Data Owner in writing of any failure to protect Personal Data; (g) availability of internal rules for the management of Personal Data protection; (h) responsibility for Personal Data in the User's control; (i) ease of access and correction of Personal Data by the Personal Data Owner; and (j) the integrity, accuracy, and validity and up-to-date of Personal Data"

⁹ Law Number 27 of 2022 concerning the Protection of Personal Data in Article 4 Paragraph (1) and paragraph (2) regarding specific personal data.

¹⁰ EC Data Protection Working Party, *Opinion 13/2011 on Geolocation Services on Smart Mobile Devices*, Europa EU, http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2011/wp185_en.pdf, diakses pada tanggal 14 Oktober 2021.

¹¹ Soekanto, Soerjono and Sri Mamudji, 1994, *Normative Legal Research, A Brief Review*, Jakarta, Raja Grafindo Persada, p. 13.

materials. Primary legal materials consist of basic norms or rules, basic provisions or regulations, and laws and regulations. Secondary legal materials are books, research journal articles, previous research reports, mass media related to personal data protection; as well as tertiary legal materials such as the Black Law Dictionary, the Great Dictionary of Indonesian Language, and so on.

Result and Discussions:-

Rules that specifically protect children's personal data are currently contained in Law Number 27 of 2022 concerning Personal Data Protection. According to UNICEF, there are several reasons why a child needs special protection, including his or her personal data, namely first, the child is in a period of growth and development so that the child's preferences can change according to the experience they are facing.¹⁴ Second, children's abilities are limited, depending on their age development. Third, the imbalance of power relations so that often children do not have choices regarding the processing of their data. Fourth, clear governance is needed so that children do not suffer losses from data processing.¹⁵

The Dignified Justice Theory is justice that humanizes human beings as creatures created by God Almighty. Dignified justice contains legal objectives, namely, legal certainty, and utility.¹⁶ In relation to the protection of children's data, dignified justice wants to put children in the real position, which is as fair as possible by protecting the dignity and dignity of children in technology, and personal data,¹⁷ because upholding human dignity is a very essential right.¹⁸ According to the author, the following are some notes related to child data protection in the PDP Law, along with views from the theory of dignified justice, namely:

First, the PDP Law still requires the only protection of children's data through a parental consent mechanism . Second, the scope of parental or guardian consent is not optimal. Third, the PDP Law does not include a risk-based mechanism. Fourth, it does not include detailed procedures for verifying the child's age. Fifth, the PDP Law does not include a child-friendly complaint mechanism. Sixth, the PDP Law has not included education to improve children's digital literacy. Seventh, the PDP Law has not included periodic evaluation and monitoring for children's personal data. Eighth, the PDP Law does not specify procedures for increasing international cooperation and effective law enforcement related to the protection of children's personal data.

a. The PDP Law still requires the only way to protect children's data through the parental consent mechanism (Article 25 paragraph (2) of the PDP Law)

The PDP Law only uses the centrality of parental consent / age-appropriate indicator However, these indicators, first, are considered insufficient to provide protection for children's data. Second, there are not enough options for children with a lot of information and approval presented. Third, it may imply a reduction in responsibility by the data controller. Fourth, the complexity of processing makes parents feel overwhelmed so that when it is charged to parents, the protection is not optimal. Fifth, most parents do not understand the privacy policy (PP). It could be because parents are lazy to read the "terms and conditions," the habit of checking, complicated language, too many points, small fonts, PP in United Kingdom.¹⁹ Therefore, this can not only be imposed on parents but according to the perspective of dignified justice in order to provide more comprehensive protection, data controllers are also obliged to be responsible for ensuring a safe virtual space for children.

¹² Nazir, M, 2005, *Research Methods*. Jakarta, Ghalia Indonesia.

¹³ Hadikusuma, H, 1995, *Method of Making Working Papers or Thesis in Law*, Bandung, Mandar Maju.

¹⁴ Childhood is a golden time and must be kept away from adversity (Jasmontaite, Children Online Privacy, p.19).

¹⁵ UNICEF, 2021, *The Case for Better Governance of Children's Data: a manifesto*, UNICEF, New York, hlm. 11.

¹⁶ Teguh Prasetyo, *Legal Research as a Perspective on the Theory of Dignity Justice* (Bandung: Nusa Media, 2019), p.10.

¹⁷ Honorary Council for Election Administration, "Prof. Teguh Determination to Campaign for the Concept of Globally Dignified Justice," <https://dkHA.go.id/tekad-prof-teguh-kampanyekan-konsepkeadilan-bermartabat-mendunia/>, accessed July 25, 2020, at 16.35 WIB.

¹⁸ Honorary Council for Election Administration, *Ibid*.

¹⁹ Child data protection is not only the responsibility of parents, but also companies, families, communities, governments and the state continuously to protect children's rights. Extra supervision of children, both personally and as part of society, needs to be carried out to prevent the entry of negative external influences that can interfere with children's growth and development. (Hardjon, 2007, *Legal Protection for Children*, Eresco, Jakarta, p. 5).

b. The scope of parental or guardian consent is not optimal

The PDP Law requires parent/guardian consent, but the mechanism for obtaining approval and the conditions for obtaining approval have not been regulated in detail in the PDP Law. This can cause difficulties in practice. Therefore, the author's input, based on the perspective of dignified justice, in the implementation regulations of the PDP Law, a more adaptive parent/guardian consent mechanism can be developed that follows the development of technology and the age of the child. For example, a tiered consent approach can be applied that is tailored to the age and level of data processing risk. More specifically, for younger children, parent/guardian consent will be required for all types of data processing, while for older children, consent is only required for high-risk data processing or only for parental notice.

According to the perspective of dignified justice, this approach with a gradation system also recognizes the development of children's capacities as they age. In addition, it provides flexibility in protecting children's data while still respecting the right to autonomy of children during the period of growth and development because a child is entitled to four things based on the Convention on the Rights of the Child, namely the right to survival; protection rights; the right to growth and development; and the right to participate.²⁰ Furthermore, in the Draft Government Regulation of the Republic of Indonesia concerning the Governance of Child Protection in the Implementation of Electronic Systems, which is being discussed as a derivative regulation of the PDP Law, at least regulates:

1). The need to include complete and clear information

a) Purpose of data collection

Specific explanations of why child data is needed, for example for educational purposes (such as academic assessment, tracking of learning progress), health (such as medical records, immunization history), or participation in online activities (discussion forums, social media).

b) Parties accessing data

Clearly mention the parties who will have access to the child's data, including the name of the company or organization, the role in providing the service, and the purpose of the data access. For example, teachers for educational purposes, doctors or hospitals for health purposes, or social media platforms for online interaction purposes.

c) Potential risks

A detailed explanation of the potential risks of data misuse, such as identity theft, illegal transactions, cyberbullying (harassment or insults), or the use of data for unintended purposes (such as age-inappropriate marketing or profiling).

d) Benefits for children

Concrete explanations of the procedures for using data that provide benefits for children, such as improving the quality of educational services to provide a more personalized online experience, or personal data that improves health services for children.

e) Easy-to-understand language

The use of language that is simple, clear, and easy to understand by parents/guardians from various educational and cultural backgrounds. Avoid complicated technical terms and use analogies or examples that are relevant to everyday life.

f) Appropriate format

Providing information in a variety of easily accessible formats, such as written text with easy-to-read font sizes, animated videos with clear narratives, or visually appealing infographics. In addition, consider providing information in multiple languages that reach non-Indonesian-speaking parents/guardians.

2. Consent is made voluntarily

a) Without coercion

²⁰ United Nations Convention on the Rights of the Child, as translated by UNICEF Indonesia. The child's right to privacy is regulated in Article 16 CRC, which states that every child has the right to privacy and therefore needs to be protected from privacy violations concerning family, home, communication, and the child's reputation (United Nations Convention on the Rights of the Child, translated by UNICEF Indonesia, hereinafter referred to as UN-CRC, Article 16). Article 16 CRC asserts that the child's right to privacy includes information privacy, personal and spatial privacy, and the right to solitude. It also emphasizes the right to protection from arbitrary interference or illegal intrusion into the child's family, residence, or correspondence, as well as the right to protect their honor and reputation.. (Christian Whalen, 2022, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes*, Springer, Swiss, hlm. 94).

Make sure the parent/guardian doesn't feel compelled or pressured to give consent. Explain that parents have the right to refuse consent without negative consequences for the child.

b) Sufficient time

Parents/guardians are given sufficient time to read and understand the information before giving consent. Don't force parents/guardians to make hasty decisions.

c) The right of parents/guardians to ask questions

Provide easily accessible communication channels, such as email, phone, or online chat for parents/guardians to ask questions or clarify the information provided.

3). Right to withdraw consent

a) Parents/guardians have the right to withdraw their consent at any time without being subject to penalty or negative consequences.

b) Simple and easy-to-understand consent withdrawal mechanism procedures for parents/guardians, such as online forms or customer service.

c) Provide an explanation to the parent/guardian of what will happen after the consent is withdrawn, for example whether the data will be permanently deleted, anonymized, or stored for a certain period of time.

c. The PDP Law does not include a risk-based approach mechanism

A risk-based approach to the processing of children's personal data means that the level of protection provided must be commensurate with the level of risk of data processing. For example, more sensitive children's personal data such as children's health data or children's genetic data must be given stricter protection with more complicated verification mechanisms compared to other children's personal data such as the child's name, place of birth or children's address. From the perspective of dignity justice, this risk-based approach is needed to ensure that data protection resources are allocated efficiently in the context of appropriate decision-making for the management of children's data and in order to balance the needs of protection with the benefits of data use.

d. The PDP Law has not included education to improve children's digital literacy

Improving digital literacy education from an early age so that children understand their rights and how to protect themselves in virtual spaces. Education is the key to child empowerment. According to the perspective of dignity justice, by understanding the rights and risks, children can make more informed decisions about their personal data and become more responsible internet users. This can be done through school curricula, public awareness campaigns, and special training programs. Therefore, in the new Draft Government Regulation, children need to be educated to increase their awareness of their rights related to personal data, as follows:

1. Right to Know

a) The information provided to the child must be adjusted to the child's age and maturity level with simple language, interesting illustrations, and examples that are relevant to the child's daily life.

b) Use various ways to convey information to children, such as animated videos with characters that children like, interactive games that teach about privacy, or illustrated stories.

2. Right to Access and Correct

a) Provision of accessible and child-friendly mechanisms for requesting access to and correction of personal data, such as simple online forms or "privacy settings" features within the app or website.

b) Involve parents/guardians in the process of accessing and correcting children's data, especially younger children or who do not have the ability to fully understand the implications of accessing and correcting personal data.

3. Right to Erase Data

a) Explain to the child how the child can request the deletion of his or her personal data if he feels uncomfortable or no longer needs it. Provide an accessible and child-friendly mechanism for filing takedown requests.

b) Evaluate each deletion request carefully, taking into account the best interests of the child.

e. The PDP Law does not include a Child-Friendly complaint mechanism

In order to create a comfortable environment virtually, from the perspective of dignity justice, it is very important to be able to accommodate cases that develop in the virtual space by developing child-friendly complaint mechanisms, such as providing special complaint channels for children, using language that is easy for children to understand, and involving children in the complaint process. Children must be ensured to feel safe and comfortable to report personal data violations to empower children in order to participate in the protection of children's personal data because they will also be human beings who must be humanized (ngewongke wong).

f. The PDP Law does not specifically state procedures for increasing international cooperation and effective law enforcement related to the protection of children's personal data.

In the perspective of dignified justice, governments can increase international cooperation on the protection of children's personal data, such as participating in international forums, sharing best practices, and adopting international standards. This collaboration is needed to expand knowledge and resources in order to protect children's data. It also helps in the harmonization of children's data protection standards around the world, as well as facilitates the secure flow of data across borders.

Furthermore, the importance of effective law enforcement by providing heavier sanctions to ensure that violators are held accountable. Strong law enforcement provides a deterrent effect for violators. In addition, it shows the government's commitment to protecting children's data, providing justice for victims and building public trust in the children's data protection system in Indonesia.

h. The PDP Law does not include periodic evaluation and monitoring for Children's Personal Data

From the perspective of dignity justice, it is very important to conduct periodic evaluation and monitoring of the implementation of children's personal data protection regulations. This monitoring and evaluation is used to identify areas that need improvement and ensure that regulations remain relevant to technological developments and children's needs. Periodic evaluations ensure regulations remain effective and responsive to changes in the digital environment. It also allows for the identification of problems and the development of appropriate solutions to protect children's data continuously and continuously.

i. The PDP Law does not include detailed procedures for verifying the age of children

Child age verification is an increasingly important issue along with the increasing use of the internet by children. In the PDP Law, there is no detailed mechanism related to the verification of children's age which is carried out through parental consent. Even though the wrong age verification procedure can cause the verification results to be invalid and easy to manipulate. For example, children can make themselves older than their actual age (manipulating age). The verification method through parental consent contained in the PDP Law is the most common and easy-to-implement method, but there are weaknesses that must be anticipated, such as children can easily forge parental consent, or some parents do not have access to the internet so they cannot understand the risks of sharing children's personal data in virtual spaces.

According to the perspective of dignity justice, parental consent requires affirmative action from the parent/guardian, such as checking a box or providing a written statement to show that the parent understands and consents to the collection and use of the child's sensitive data. However, age verification technology today continues to develop, even though there is no single perfect method. Here are other age verification methods that can be used, along with their weaknesses that must be anticipated:

1. Age Verification System through a Third Party

This system can provide a higher level of trust than just parental consent. Some third-party systems have used advanced technology in performing age verification such as facial recognition or voice analysis. However, this system can be expensive and difficult to implement. In addition, there are concerns about the privacy and security of data used by third-party age verification service providers.

2) Security questions and facial recognition

Security questions and facial recognition are relatively inexpensive and easy-to-apply methods. But unfortunately, security questions can be easily guessed, and facial recognition technology to date is still not entirely accurate.

3) Multi-layered age verification method

A layered approach to child age verification can be used, which includes a combination of parental consent, a third-party age verification system, and a safety question method with transparency in mind. There is no easy verification method, but using a layered approach can help protect children from online dangers while still respecting children's privacy.

4) The use of digital wallets or verified digital identities.

Conclusion:-

From the perspective of the theory of dignified justice, the pressure point for personal data protection is contained in the 2nd and 5th precepts of Pancasila. In the 2nd precept, Fair and civilized humanity means that in every law formation there must be a guarantee and respect for human rights, namely children's rights.²¹ The description of the second precept, Fair and Civilized Humanity, is very relevant to the protection of children's personal data which provides protection for a person's dignity,²² namely recognizing and treating children according to their dignity and dignity as beings of God Almighty. This is in line with the view of dignified justice, namely justice that humanizes people, or justice that makes people happy. Meanwhile, in the fifth precept, social justice for all Indonesia people means that in the formation of national laws must aim to provide justice and welfare for all Indonesia children.²³ Providing recognition to every child through equality of degrees, equal rights and basic obligations of every human being, without discriminating between ethnicity, descent, religion, belief, gender, social status, skin color and so on.²⁴

Therefore, in accommodating the record of the PDP Law as mentioned above, the Theory of Dignity Justice has a philosophical approach that works with a systematic and holistic approach to legal rules and principles to achieve goals.²⁵ The step that must be taken from the perspective of dignified justice is through a holistic approach, namely multi-stakeholder cooperation, both between the government (government regulation), parents/guardians (age-appropriate indicators), schools, civil society organizations and companies (company approach on child data protection).²⁶ A holistic approach is needed because, according to dignified justice, good and dignified justice is justice that is able to balance rights and interests in an ecosystem influenced by power and information asymmetry. The move is also in line with the recommendations of the UN children's rights committee which calls for multi-stakeholder cooperation in protecting children from personal data misuse and exploitation in the virtual world.

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²¹ Based on the Convention on the Rights of the Child, in general, children's rights are divided into four categories, namely the Right to Survival; Protection Rights; the right to growth and development; and the Right to Participate (*United Nation Convention on the Rights of the Child*, translated by Unicef Indonesia).

²² As can be seen in the formulation of the points of practice of Pancasila 2nd precept, as follows: a. Recognizing the equality of degrees, equal rights and basic obligations of every human being, without discriminating between ethnicity, descent, religion, belief, gender, social status, skin color and so on; b. Developing an attitude of mutual love for fellow humans; c. Developing mutual tolerance and tepo sliro; d. Developing an unkind attitude towards others; e. Upholding human values; f. Likes to do humanitarian activities; g. Dare to defend truth and justice; h. The Indonesian nation feels itself as part of all mankind; i. Developing an attitude of respect, respect and cooperation with other nations.

²³ As can be seen in the formulation of the points of the practice of the 5th precept of Pancasila, as follows: a. Developing mutual tolerance and tepo sliro; b. Developing an impartial attitude towards others; c. Upholding human values; d. Fond of carrying out humanitarian activities; e. Dare to defend truth and justice; f. The Indonesian nation feels itself as part of all mankind; g. Develop an attitude of respect, respect and cooperation with other nations.

²⁴ Teguh Prasetyo & Abdul Halim Barkatullah, 2012, *Filsafat Teori & Ilmu Hukum*, Raja Grafindo Persada, Jakarta, p. 367

²⁵ Prasetyo, Teguh, Keadilan Bermartabat: Perspektif Teori Hukum. *Op.cit.* Hal.2

²⁶ Pasal 3.1. Committee on the Rights of the Child explains: "All the decisions made by the States or also by private actor, such as business enterprises in the digital environment, should always consider their best interests and the promotion and protection on all their rights."

4. EC Data Protection Working Party, Opinion 13/2011 on Geolocation Services on Smart Mobile Devices, Europa EU, http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2011/wp185_en.pdf, diakses pada tanggal 14 Oktober 2021.
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