

Basis of Data Protection Officer Appointment: Comparative Study of Indonesia and European Union Regulation

Tegar Islami Putra ^{1*}, Nurul Fibrianti ², Mohammad Raziq Fakhruallah³

^{1,2} Faculty of Law, Universitas Negeri Semarang, Semarang, Indonesia.

³ Faculty of Civil Engineering, Universiti Teknologi Malaysia, Kuala Lumpur, Malaysia

 : tegarislami44@students.unnes.ac.id

Corresponding Author*



Abstract

Introduction: The utilization of information technology makes it very easy for a person's Personal Data to be collected and transferred from one party to another without the knowledge of the Personal Data Subject. Personal data controller As a form and effort of protection, it is mandatory to appoint a Data Protection Officer and carry out functions and duties in accordance with the law. To be able to fulfill these functions and duties, it is important to determine the Basis of Data Protection Officer Appointment.

Purposes of the Research: The research aims to explain and analyze the comparison of Basis of Data Protection Officer Appointment between Indonesia and Europe Union.

Methods of the Research: The research method used in this study is the normative juridical research method with qualitative approach that identifying issues through in-depth analysis of relevant legal regulations concerning the concept of Data Protection Officer Appointment and also employs a comparative study.

Results Main Findings of the Research: This study found that the Basis of Data Protection Officer Appointment in Indonesia and the European Union have similar and different aspects of professionalism and ability to fulfill duties. Meanwhile, there are differences in terms of personal data protection practices, where the Indonesian regulation separates knowledge of the law, the practice of Personal Data Protection as the basis for the appointment of data protection officers. Whereas the rules in the European Union combine them so that they have a basis for expert knowledge of data protection law.

Keywords: Basis; Data Protection; Officer Appointment.

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INTRODUCTION

By the late 1970s, the idea of an internet was in the air.¹ The presence of the internet as an infrastructure and network has supported the effectiveness and efficiency of a company's operations.² The Internet began with the idea of a scientist who wanted to build a vast network that could connect people around the world. Nikola Tesla called it a "word wireless system" in the early 1900s. But the first practical scheme for the internet only came in the 1930s, when J.C.R. Licklider popularized the idea of the 'Intergalactic Network' Computer.³ The first workable prototype of the internet was found in the late 1960s from the creation of

¹ Martin Campbell-Kelly and Daniel D. Garcia-Swartz, "The History of the Internet: The Missing Narratives," *Journal of Information Technology* 28, no. 1 (2013): 18–33, <https://doi.org/10.1057/jit.2013.4>.

² Alcianno Ghobadi Gani, "Sejarah Dan Perkembangan Internet Di Indonesia Alcianno Ghobadi Gani, ST.," *Jurnal Mitra Manajemen* 5, no. 2 (2020): 69.

³ S Rappaport, P Podsiadlowski, and I Horev, "The Past and Future History of Regulus," *The Astrophysical Journal* 698, no. 1 (2009): 667.

the Advanced Research Projects Agency Network (ARPANET). ARPANET used packet switching to allow many computers to communicate on a single network. The project was originally funded by the United States Department of Defense.⁴ In the 1980s, first-generation (1G) communication systems were introduced.⁵ This generation of communication systems continues to evolve until today, up to the fifth generation (5G). South Korea was the first country to inaugurate 5G network services commercially on April 3, 2019 in Seoul.⁶ The internet as a concrete form of technological development provides tremendous benefits. The benefits of technology in information systems are undoubted because it has a role in helping organizations operate efficiently, effectively, and competitively.⁷

In today's era, information can include assets or personal data that is private to an individual.⁸ The protection of personal or private rights will increase human values, improve the relationship between individuals and their communities, increase independence or autonomy to exercise control and obtain decency, and increase tolerance and keep away from discrimination and limit government power.⁹ Data protection can basically be related specifically to privacy as stated by Allan Westin who first defined privacy as the right of individuals, groups or institutions to determine whether or not information about them will be communicated to other parties so that the definition put forward by Westin is called information privacy because it involves personal information.¹⁰ The data is called a digital dossier which is a collection of personal data information owned by most or even almost all people by utilizing internet technology developed by private parties which is very risky for violating the privacy rights of a person's personal data.¹¹

The Yahoo data breach is one of the worst and most notorious cases of known cyberattacks and currently holds the record for the case with the highest number of victims. The first attack occurred in 2013, and many more would continue over the next three years. In this case, more than 3 billion user accounts were exposed. A team of Russian hackers targeted Yahoo's database using backdoors, stolen backups, and access cookies to steal records from all user accounts, which included personally identifiable information (PII) like: Names, Email addresses, Phone numbers, Birth dates, Passwords, Calendars, and Security questions.¹² Another well-known case is Amazon, which was fined 746 million euros because it was proven to have used users' personal data without going through a consent process in accordance with the tracking user data law.¹³

In the Indonesian legal space, personal data is a constitutional right that must be protected by Indonesian law, so that every community feels safe regarding their privacy

⁴ Raphael Cohen-Almagor, "Internet History," *International Journal of Technoethics* 2, no. 2 (2011): 47, <https://doi.org/10.4018/jte.2011040104>.

⁵ Ahmad Saroji, Triana Harmini, and Muhammad Taqiyuddin, "Internet Evolution: A Historical View (Sejarah Evolusi Generasi Internet)," *Jurnal Lani: Kajian Ilmu Sejarah & Budaya* 2, no. 2 (2022): 66, <https://doi.org/10.30598/Lanivol2iss2page65-75>.

⁶ Maria Massaro and Seongcheol Kim, "Why Is South Korea at the Forefront of 5G? Insights from Technology Systems Theory," *Telecommunications Policy* 46, no. 5 (2022): 102290, <https://doi.org/https://doi.org/10.1016/j.telpol.2021.102290>.

⁷ Danial Rahman, "Pemanfaatan Internet Sebagai Sumber Belajar Dan Informasi," *Jurnal Perpustakaan Dan Informasi* 1, no. 1 (2021): 10.

⁸ Imam Teguh Islamy et al., "Pentingnya Memahami Penerapan Privasi Di Era Teknologi Informasi," *Jurnal Teknologi Informasi Dan Ilmu Komputer* 5, no. 3 (2018): 22.

⁹ Danrivanto Budhijanto, *Hukum Telekomunikasi, Penyiaran & Teknologi Informasi: Regulasi & Konvergensi* (Bandung: PT. Refika Aditama, 2010): 4.

¹⁰ Hanifan Niffari, "Perlindungan Data Pribadi Sebagai Bagian Dari Hak Asasi Manusia Atas Perlindungan Diri Pribadi (Suatu Tinjauan Komparatif Dengan Peraturan Perundang-Undangan Di Negara Lain)," *Jurnal Yuridis* 7, no. 1 (2020): 107, <https://doi.org/10.35814/selisik.v6i1.1699>.

¹¹ Fanny Priscyllia, "Perlindungan Privasi Data Pribadi Perspektif Perbandingan Hukum," *Jatiswara* 34, no. 3 (2019): 243.

¹² Kyle Chin, "Biggest Data Breaches in US History (Updated 2024)," *Upguard.com*, 2024, <https://www.upguard.com/blog/biggest-data-breaches-us>.

¹³ Sinta Dewi Rosadi, *Pembahasan UUU Pelindungan Data Pribadi (UU RI No. 27 Tahun 2022)* (Jakarta Timur: Sinar Grafika, 2022).p.37.

rights. The state's promise of this is contained in Article 28G paragraph (1) of the 1945 Constitution, which basically explains that everyone has the right to personal protection and the right to a sense of security.¹⁴ The Elucidation of Law Number 27 Year 2022 states that this regulation is a representation to reduce overlapping provisions on Personal Data Protection, so basically the provisions in this Law are standards for Personal Data Protection in general, whether processed partially or wholly by electronic and non-electronic means, where each sector can apply Personal Data Protection according to the characteristics of the sector concerned. The regulation of Personal Data aims to, among others, protect and guarantee the basic rights of citizens related to personal protection, guarantee the public to get services from Corporations, Public Bodies, International Organizations, and the Government, encourage the growth of the digital economy and the information and communication technology industry, and support the improvement of the competitiveness of the domestic industry.¹⁵

As of January 2024, We Are Social's latest report shows that the number of individual global internet users has reached 5.35 billion people. This amounts to 66.2% of the global population, which totals 8.08 billion people.¹⁶ Therefore, it is important to provide a mechanism for Personal Data Protection. The importance of Personal Data Protection in a more practical and implementative sense as stated by the Director General of Informatics Application of the Ministry of Communication and Information of the Republic of Indonesia, Samuel Abrijani Pangarepan, among others 1) A means to provide protection to the basic rights of society; 2) A comprehensive legal umbrella to encourage reform of personal data processing practices; 3) Responding to the needs and legal demands of society, especially consumers; 4) Promoting responsible innovation and respect for human rights in the perspective of personal data protection; 5) Developing ecosystems and new talents in personal data protection and strengthening Indonesia's leadership in governance and global relations; and 6) Fostering habits and public awareness in personal data protection.¹⁷

The Indonesia general regulation of personal data protection is found in Law No. 8/1997 on Company Documents, Law No. 36/1999 on Telecommunications, Law No. 24/2013 on Population Administration, Law No. 19/2016 on Electronic Information and Transactions, Law No. 36/2009 on Health, and Law No. 43/2009 on Archives. However, the study in this paper is limited to the protection of personal data that is directly related to electronic data.¹⁸ For the latest regulation related to personal data, the government issued Law Number 27 Year 2022 on Personal Data Protection.¹⁹ In its drafting, Law Number 27 Year 2022 on Personal Data Protection makes the General Data Protection Regulation (GDPR) of the European Union as one of the sources and references in its formulation.

¹⁴ Marcella Suwignjo, "Urgensi Perlindungan Hukum Data Pribadi User E- Commerce Indonesia," *Jurnal Education and Development Institut Pendidikan Tapanuli Selatan* 12, no. 1 (2024): 85–89.

¹⁵ Krista Yitawati et al., "Implikasi Dan Sosialisasi Undang-Undang Tentang Perlindungan Data Pribadi Dalam Menjaga Kerahasiaan Data Pribadi Seseorang," *Jurnal Daya-Mas* 7, no. 2 (2022): 91, <https://doi.org/10.33319/dymas.v7i2.92>.

¹⁶ Cindy Mutia Annur, "Individu Pengguna Internet Global Tembus 5,35 Miliar Pada Januari 2024," *Katadata.co.id*, 2024, <https://databoks.katadata.co.id/datapublish/2024/02/08/individu-pengguna-internet-global-tembus-535-miliar-pada-januari-2024>.

¹⁷ M.J Rizki, "Kominfo Paparkan Beragam Manfaat Penting Kehadiran UU PDP," *Hukumonline.com*, 2022, <https://www.hukumonline.com/berita/a/kominfo-paparkan%02beragam-manfaat-penting-kehadiran-uu-pdp-lt6360ac5d1fe3>.

¹⁸ H. S. Disemadi, "Urgensi Regulasi Khusus Dan Pemanfaatan Artificial Intelligence Dalam Mewujudkan Perlindungan Data Pribadi Di Indonesia," *Jurnal Wawasan Yuridika* 5, no. 2 (2021): 178.

¹⁹ Tegar Islami Putra, "Data Protection Impact Assessment Indicators In Protecting Consumer E-Commerce Platforms," *The Indonesian Journal of International Clinical Legal Education* 6, no. 1 (2022): 15.

In the implementation of Personal Data Protection, there will be many parties involved, one of which is the Data Protection Officer (DPO). Companies/parties that manage personal data, appoint a Data Protection Officer or in Law Number 27 Year 2022 is referred to as an official or officer who carries out the function of Personal Data Protection.²⁰ It is mandatory for companies that monitor data processing regularly and on a large scale to appoint a DPO.²¹ The general provisions of Law Number 27 Year 2022 explain that the use of information technology makes it very easy for a person's Personal Data to be collected and transferred from one party to another without the knowledge of the Personal Data Subject, thus threatening the constitutional rights of the Personal Data Subject.

Although the DPO is appointed by the company, Law Number 27 Year 2022 regulates the DPO's position as an independent instrument.²² For example, the company cannot intervene with advice, input, and opinions on how the company conducts personal data processing. Given the importance of the DPO as a party that must exist in an institution that manages personal data, it is important to examine it further. Including the DPO appointment, it is certainly important to have a basis and selection standard for the implementation of good Personal Data Protection in an institution. One of the references for drafting personal data protection laws in various countries today is the General Data Protection Regulation (GDPR). The regulation package passed by the European Union in 2016 has influenced a number of personal data protection policies from various countries around the world. As a regulation affecting a number of personal data protection policies around the world, the author feels it is important to conduct a comparison of the Basis of Data Protection Officer Appointment for the implementation of good Personal Data Protection in Indonesia.

Several studies related to DPO have been conducted, including the research by Simbolon. In 2012, yang mana menjelaskan mengenai perbedaan antara Law Number 27 Year 2022 dan GDPR. This research explains that some of the differences are the exclusion of the rights of personal data subjects, the legal basis for processing personal data, the obligations of controlling personal data, and the imposition of sanctions. This research also explains that the principles of data processing, the process of imposing sanctions, and the authority of the personal data protection agency in the GDPR are explained in more detail compared to the Law Number 27 Year 2022.²³ This research also explains that the challenges of implementing the Law Number 27 Year 2022 in Indonesia can be overcome by conducting rapid, targeted, and effective dissemination so that business actors and public institutions understand the regulation. However, this study does not discuss the Basis of Data Protection Officer Appointment and the regulation comparison in Indonesia and the European Union because it only explains the comparison of these regulations in general, the basis of data protection officer appointment.

Another study conducted by Hakim in 2023 showed that there is a need for a person to be appointed as a member of the data protection supervision and the form of qualification. The rules relating to the protection of personal data in Indonesia are still weak and general in nature because the regulations are contained in several separate laws and regulations and

²⁰ Ady Thea DA, "Mengenal Profesi Data Protection Officer Dalam UU PDP," Hukumonline.com, 2022, <https://www.hukumonline.com/berita/a/mengenal-profesi-data-protection-officer-dalam-uu-pdp-lt6345254931470/>.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

only describe the concept of personal data protection in general. The comparison of personal data protection between Indonesia and the European Union in conducting online transactions can be seen with the existence of online loans through peer-to-peer lending, which is very vulnerable to misuse of data by unscrupulous lenders. The regulation has not been clearly regulated in Indonesia. In the European Union, there is a prohibition on disclosing any information that reveals the racial identity, ethnicity, religion, beliefs, biometric data, health data, and sexual life of users, as described in Article 9 of the GDPR. In addition, Law No. 27 of 2022 on Personal Data Protection does not contain rules regarding the existence of an independent supervisory institution to supervise data protection. Meanwhile, in the European Union, as mentioned in Article 53 of the GDPR, a person who is appointed as a member of a data protection supervisor must have appropriate qualifications, experience, and abilities in the field of data protection, so it is not permissible to simply give the position to a person who does not have an understanding of data protection.²⁴

Although those studies are broadly related to legal issues, none have specifically examined the Basis for Appointing a Data Protection Officer comparatively between Indonesia and the European Union. Therefore, the research proposal submitted here has a high level of novelty and can have a direct impact on the academic community in Indonesia. Based on the background that has been presented above, the researcher is interested in researching and analyzing "Basis for Appointment of Data Protection Officer (Comparative Study of Indonesian and European Union Regulations)". This research raises two research questions: 1) What are the duties of the Data Protection Officer according to Indonesian and EU regulations? 2) What is the basis for the appointment of a Data Protection Officer according to Indonesian & EU Regulations?.

METHODS OF THE RESEARCH

The approach used in this research is a qualitative approach.²⁵ This approach involves identifying issues through in-depth analysis of relevant legal regulations concerning the concept of Data Protection Officer Appointment. This research also employs a comparative study, primarily in analyzing selected legal materials through content analysis, involving grammatical, systematic, and theological interpretations of the law. The emphasis of this research is to provide an overview and description of the concept of corporate criminal liability through an inventory and in-depth analysis of the comparative legal regulations in place in Indonesia and Europe Union. The research method used in this study is the normative juridical research method. It is a qualitative research type that employs a statute approach and a comparative approach.²⁶ Normative juridical research gathers primary data through the analysis of relevant legal regulations, ranging from legislation to ministerial regulations, and also includes the use of supporting scholarly journals. In addition, secondary data is collected through interviews with relevant parties.²⁷ The legal basis used

²⁴ Guswan Hakim, Oheo Kaimuddin Haris, and Muthaharry Mohammad, "Analisis Perbandingan Hukum Mengenai Regulasi Perlindungan Data Pribadi Antara Uni Eropa Dan Indonesia Comparative Analysis of Laws Concerning Personal Data Protection Regulations Between the European Union and Indonesia," *Halu Oleo Legal Research* | 5, no. 2 (2023): 443, <https://ojs.uajy.ac.id/index.php/jik/article/view/682>.

²⁵ Ahmad Rijali, "Analisis Data Kualitatif," *Alhadharah: Jurnal Ilmu Dakwah* 17, no. 33 (2019): 143, <https://doi.org/10.18592/alhadharah.v17i33.2374>.

²⁶ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 132, <https://doi.org/10.14710/gk.2020.7504>.

²⁷ Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020): 49.

in this study is Euro Union General Data Protection Regulation dan Law of the Republic of Indonesia Number 27 of 2022 concerning Protection of Personal Data.

RESULTS AND DISCUSSION

A. Tasks of DPO According to Indonesia & European Union Regulation

1. Tasks of Data Protection Officer According to Law Number 27 Year 2022

The threats to personal data and informational protection (and privacy) have increased as the case with which personal data can be collected and transferred electronically increases. This has increased further with digital technology, computer processing power, Web 2.0 (i.e. the second generation of internet), new signal, and social media.²⁸ In the digital era, all data exchanges and data flows become more efficient and time-saving with the support of adequate digital infrastructure. As the development of the digital era becomes faster and more efficient, personal data must be considered.²⁹ In the midst of the rapid digital era, individuals' personal data is increasingly vulnerable to potential abuse and privacy violations.³⁰ Violations can also occur in connection with irresponsible processing of personal data. It is as if people's personal data is traded without a clear basis. In connection with this, Law Number 27 of 2022 on Personal Data Protection was drafted, which is based on 8 main principles. The implementation of Law No. 27 of 2022 is based on the principles of protection, legal certainty, public interest, expediency, prudence, balance, responsibility, and confidentiality as explained in Article 3. The application of these principles is certainly something that needs to be considered in the implementation of personal data protection by the Data Protection Officer.

A Data Protection Officer is an official who must be appointed by a personal data controller or personal data processor. According to Article 53 paragraph (1) of Law Number 27 Year 2022, a Data Protection Officer is an official who carries out the function of personal data protection in the case of: a) Processing of Personal Data for the benefit of public services; b) The core activities of the Personal Data Controller have a nature, scope, and/or purpose that requires regular and systematic monitoring of Personal Data on a large scale; and; c) The core activities of the Personal Data Controller consist of large-scale processing of Personal Data for specific Personal Data and/or Personal Data relating to criminal offenses.

The obligation for personal data managers to appoint a Data Protection Officer is to carry out the function of personal data protection. Personal data is all individual data through electronic and/or non-electronic systems, whether identified and/or independently identifiable, combined with other information.³¹ In carrying out their functions, Data Protection Officers pay attention to risks related to personal data processing by considering the nature, scope, context, and purpose of processing as mandated by Article 54 paragraph (2) of Law No. 27 of 2022. The minimum tasks for the Data Protection Officer are juridically explained through Article 54 paragraph (1), namely: Inform and provide to the personal

²⁸ P Lambert, *The Data Protection Officer: Profession, Rules, and Role* (Florida: CRC Press, 2016): 137.

²⁹ Diah Puspitasari et al., "Urgensi Undang-Undang Perlindungan Data Pribadi Dalam Mengatasi Masalah Keamanan Data Penduduk," *Journal of Administrative and Social Science* 4, no. 2 (2023): 197, <https://doi.org/10.55606/jass.v4i2.403>.

³⁰ Kadek Rima Anggen Suari and I Made Sarjana, "Menjaga Privasi Di Era Digital: Perlindungan Data Pribadi Di Indonesia," *Jurnal Analisis Hukum* 6, no. 1 (2023): 133, <https://doi.org/10.38043/jah.v6i1.4484>.

³¹ Tegar Islami Putra, Akbar Jihadul Islam, and Abdullah Mufti Abdul Rahman, "Integrating Islamic Laws into Indonesian Data Protection Laws: An Analysis of Regulatory Landscape and Ethical Considerations," *Contemporary Issues on Interfaith Law & Society* 4, no. 1 (2024): 99, <https://doi.org/doi.org/10.15294/ciils.v3i1.78690>.

data controller or personal data processor to comply with the provisions of this law: a) Monitor and ensure compliance with this law and the policies of the personal data controller or personal data processor; b) Provide advice on personal data protection impact assessments and monitor the performance of personal data controllers and personal data processors; and c) Coordinate and act as a contact person for issues related to personal data processing.

The duties of the Data Protection Officer are carried out on all types of personal data as mandated by Article 4 paragraph (1) of Law No. 27 of 2022 which generally divides two types of personal data, namely specific personal data and general personal data.³² Specific personal data encompasses sensitive information such as health records, biometric and generic data, criminal histories, data concerning children, personal financial information, and any other data stipulated by prevailing laws and regulations. Conversely, general personal data, as defined in Law Number. 27 of 2022, includes more commonplace identifiers such as names, genders, nationalities, religions, marital statuses, and any combination of data used for individual identification purposes.³³ In accordance with its definition, the Data Protection Officer will carry out its responsibility to make efforts to protect personal data. Personal Data Processor is any person, public body, and international organization acting individually or collectively in the processing of Personal Data on behalf of the Personal Data Controller.

2. Tasks of Data Protection Officer According to General Data Protection Regulation

The primary role of a data protection officer is to ensure that their organization processes the personal data of their staff, customers, providers or other individuals (also referred to as data subjects) in accordance with applicable data protection rules. In practice, a Data Protection Officer's involvement can take several forms. A Data Protection Officer can assist companies in designing and implementing a good personal data protection system within the company. A Data Protection Officer can work with the company's management or Data Protection Officer-related divisions within the company to ensure the processing is in accordance with the applicable rules.³⁴

In the implementation of personal data protection, data protection officers in performing their duties must pay attention to the risks associated with processing operations, taking into account the nature, scope, context, and purpose of the processing as mandated by Article 39 Paragraph (2) of the General Data Protection Regulation. In addition, the General Data Protection Regulation also describes the minimum duties of a Data Protection Officer in Article 39 Paragraph (1), which are: a) To inform and advise controllers or processors and employees performing processing of their obligations pursuant to this Regulation and other Union or Member State data protection provisions; b) To monitor compliance with this Regulation, with other Union or Member State data protection provisions and with the controller's or processor's policies with respect to the protection of personal data, including the assignment of responsibilities, awareness raising and training of staff involved in

³² Tegar Islami Putra and Nurul Fibrianti, "Data Protection Impact Assessment Indicators in Protecting Consumer Personal Data on E-Commerce Platforms," *Legal Challenges in Overcoming the Digital Divide (Article in Press)* 6, no. 1 (2024): 121, <https://doi.org/doi.org/10.15294/ijicle.v5i3.72001>.

³³ Tegar Islami Putra, Akbar Jihadul Islam, and Abdullah Mufti Abdul Rahman, "Integrating Islamic Laws into Indonesian Data Protection Laws: An Analysis of Regulatory Landscape and Ethical Considerations," *Contemporary Issues on Interfaith Law & Society* 4, no. 1 (2024): 85.

³⁴ Danny Kobrata, "Pentingnya Peran Data Protection Officer Dalam Suatu Perusahaan," APPDI.or.id, 2024, <https://appdi.or.id/pentingnya-peran-data-protection-officer-dalam-suatu-perusahaan/>.

processing operations, and related audits; c) Provide advice where requested on data protection impact assessments and monitor their performance in accordance with Article 35; d) Cooperate with supervisory authorities; e) Acting as a point of contact for supervisory authorities on issues relating to processing, including prior consultation as referred to in Article 36, and to consult, if necessary, in relation to other issues.

In carrying out the task of protecting personal data, a Data Protection must also pay attention to the Principles relating to processing of personal data as stipulated in Article 5 Paragraph (1) of the General Data Protection Regulation, which are: a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency'); b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation'); c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation'); d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy'); e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation'); f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate Technical or organisational measures ('integrity and confidentiality').

In carrying out the duties of a data protection officer, it must be able to consider many points of view, one of which is the Water Information Practice Principles (FIPPs). The FIPPs are not part of any official or legal requirements. However, they have been the basis for several different privacy guidelines. They also reflect many widely accepted privacy principles appearing in other official privacy frameworks.³⁵ In his protection efforts, the Data Protection Officer will carry out efforts to protect personal data as his responsibility for the Controller of personal data. In this case, 'Personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier.

A. Basis of Data Protection Officer Appointment in Indonesia & European Union Regulation.

1. Basis of Data Protection Officer Appointment in Indonesia

³⁵ Publication Team, "What Are the Fair Information Practices? ," Cloudflare.com, 2024, <https://www.cloudflare.com/learning/privacy/what-are-fair-information-practices-fipps/>.

Ministry of Communications and Informatics as Indonesian government was drafted the Personal Data Protection Law in 2006.³⁶ However, the drafting process was put on hold.³⁷ It was as early as 2012 that Ministry of Communications and Informatics resumed its work on draft. Data Protection Officer will be in charge of many different legal, technical, and organizational problems-linked to processing personal data.³⁸

In terms of the appointment of the Data Protection Officer itself, regulatively Indonesia has provided a basis for appointment as stated in Article 53 paragraph (2) of Law Number 27 Year 2022 which reads: “Officials or officers who carry out the function of Personal Data Protection as referred to in paragraph (1) shall be appointed based on professionalism, knowledge of the law, Personal Data Protection practices, and ability to fulfill their duties”.

On an international scale, the International Association of Privacy Professionals (IAPP) has drafted a competency standard of Data Protection Officer through the substance outlined in the Certified Information Privacy Manager (CIPM).³⁹ IAPP is a professional organization that focuses on risk management and data protection. The IAPP is one of the reference bases in bringing together global information management people, tools and practices to thrive in today's rapidly growing digital economy.

The draft DPO competency standards in CIPM include:⁴⁰ a) Personal Data Protection Analysis: The DPO has the ability to observe and apply the implementation of personal data protection in an organization; b) Accountability: The DPO is able to map the personal data management obligations of an organization to clarify its accountability; c) Risk Management: The DPO assists organizations in identifying risks that may occur and then assessing, handling and monitoring the risks; d) Audit: The DPO is able to systematically process in obtaining and objectively evaluating evidence on the implementation of personal data protection; e) Operational Personal Data Protection : The DPO is able to execute personal data protection as an integrated process in the business processes of an organization.

In addition to the above, Minister of Manpower Decree No. 103 of 2023 has also been issued on the Determination of Indonesian National Competency Standards in the Information and Communication Category for Programming Activities, Computer Consultation and Related Activities in the Field of Expertise of Personal Data Protection. The principles and Units of Competency related to expertise in Personal Data Protection are explained. The principles of Personal Data protection in this decision explain that they are limited and specific, legally valid, transparent; carried out in accordance with its objectives; guarantee the rights of the owner of Personal Data, carried out accurately, completely, not misleadingly, up to date, and can be accounted for; protect the security of Personal Data from unauthorized access, unauthorized disclosure, unauthorized modification, misuse, destruction and/or deletion of Personal Data; carried out by notifying the purpose and processing activities, as well as the failure of the PDP; destroyed and/or deleted after the retention period ends or at the request of the Personal Data Subject; carried out responsibly and can be clearly proven. Meanwhile, the Competency Units related to expertise in

³⁶ Muhammad Iqsan Sirie, “The Mandatory Designation of a Data Protection Officer in Indonesia ’ s Upcoming Personal Data Protection Law,” *Padjadjaran Jurnal Ilmu Hukum* 5, no. 1 (2018): 25.

³⁷ *Ibid.*

³⁸ Sirie, *Op.Cit.* p.41.

³⁹ *Ibid.*

⁴⁰ Publication Team, “Kenali Kompetensi Data Protection Officer Sebagai Role Baru Di Dunia Data Privasi,” *Heylaw.id2*, 2019, <https://heylaw.id/blog/kenali-kompetensi-data-protection-officer-sebagai-role-baru-di-dunia-data-privasi>.

Personal Data Protection are listed in Table 1. The appointment of a Data Protection Officer is important to minimize crimes in personal data protection. The forms of crime regulated in Law Number 27 of 2022 are include manipulating population data, accessing population data, disseminating population data, changing, adding, reducing, transmitting, damaging, removing, moving, hiding electronic information, moving or transferring electronic information and/or electronic documents to the electronic system of other unauthorized persons, disclosing information in the form of personal data other than those required to be opened access by public agencies, obtaining or collecting personal data unlawfully, disclosing personal data unlawfully, and using personal data unlawfully.⁴¹

Table 1. List of Competency Units Category Information and Communication Main Group Programming Activities, Computer Consulting and Related Activities Field of Expertise Protecting Personal Data

NO	UNIT CODE	COMPETENCY UNIT TITLE
1.	J.62PDP00.001.1	Determining the Foundations of the Personal Data Protection Work Program
2.	J.62PDP00.002.1	Determining the Need for Personal Data Protection Team Structure
3.	J.62PDP00.003.1	Determine the Personal Data Protection Framework
4.	J.62PDP00.004.1	Identifying laws and regulations related to personal data protection
5.	J.62PDP00.005.1	Determining Personal Data Protection Strategy
6.	J.62PDP00.006.1	Developing Risk Matrix Criteria for Personal Data Protection
7.	J.62PDP00.007.1	Carrying out an Impact Assessment on Personal Data Protection
8.	J.62PDP00.008.1	Testing the Effectiveness of the Personal Data Protection Work Program
9.	J.62PDP00.009.1	Developing Personal Data Protection Governance
10.	J.62PDP00.010.1	Developing Personal Data Protection Management in the Domain
11.	J.62PDP00.011.1	Implementing the Personal Data Protection Work Program
12.	J.62PDP00.012.1	Monitoring the Personal Data Protection Work Program in Accordance with Regulations
13.	J.62PDP00.013.1	Formulate Suggestions to Related Management
14.	J.62PDP00.014.1	Managing Audits Related to the Personal Data Protection Work Program

⁴¹ Tegar Islami Putra et al., "Critically Reveal The Dimensions of Damage From Unauthorized Use of Personal Data," *The Digest: Journal of Jurisprudence and Legisprudence* 5, no. 2 (2025): 231-262: 54, <https://doi.org/doi.org/10.15294/digest.v5i2.19941>.

15.	J.62PDP00.015.1	Ensure follow-up to the results of personal data protection audits carried out by the relevant units
16.	J.62PDP00.016.1	Formulate the Process of Obtaining Consent to Processing Personal Data
17.	J.62PDP00.017.1	Responding to requests for personal data information according to the provisions
18.	J.62PDP00.018.1	Ensure Personal Data Protection is Integrated in Incident Response Management
19.	J.62PDP00.019.1	Ensuring the implementation of incident response management related to failure to protect personal data

Source: Research Results from Author, 2024

2. Basis of Data Protection Officer Appointment in European Union

Similarly, the General Data Protection Regulation recognizes that data subjects can be adults or children, which also implies different levels of constraint. General Data Protection Regulation also specifies the roles and capabilities of senders and recipients of personal data, which could be data subjects (e.g. app users), data controllers (e.g. app providers), data processors (e.g. cloud storage providers), or third parties (e.g. ads providers).⁴²

All organizations, regardless of the type or size, that handle EU residents' personal information should have someone in the organization who is tasked with monitoring GDPR compliance (part of the "organizational measures" referred to in Article 25). That said, hiring an actual Data Protection Officer is only required by the GDPR if you meet one of three criteria: a) Public authority, the processing of personal data is done by a public body or public authorities, with exemptions granted to courts and other independent judicial authorities; b) Large scale, regular monitoring, the processing of personal data is the core activity of an organization who regularly and systematically observes its "data subjects" (which, under the GDPR, means citizens or residents of the EU) on a large scale; c) Large-scale special data categories, the processing of specific "special" data categories (as defined by the GDPR) is part of an organization's core activity and is done on a large scale.

The importance and breadth of the Data Protection Officer duties make finding a qualified candidate an essential step in GDPR compliance.⁴³ While the GDPR does not list specific qualifications, it does stipulate that the level of knowledge and experience required of an organization's Data Protection Officer must be determined according the complexity of the data processing operations being carried out. When evaluating a candidate or creating a job listing for the position, these are some of the most important qualifications to keep in mind:⁴⁴ a) Significant (over 5 years) experience working with EU and global privacy laws, including drafting of privacy policies, technology provisions, and working on compliance; b) Significant experience working with IT programming or infrastructure, including certification in information security standards; c) Significant experience in performing

⁴² Danny S.\ Guamán et al., "Automated GDPR Compliance Assessment for Cross-Border Personal Data Transfers in Android Applications," *Computers and Security* 130, no. C (2023): 3, <https://doi.org/10.1016/j.cose.2023.103262>.

⁴³ Publication Team, "Everything You Need to Know about the GPDR Data Protection Officer (DPO)," GDPR.eu, 2018, <https://gdpr.eu/data-protection-officer/>.

⁴⁴ *Ibid.*

audits of information systems, attestation audits and risk assessments; d) Demonstrated leadership skills achieving stated objectives coordinating with a diverse set of stakeholders and managing multiple projects at once; e) Demonstrated ability to continuously coordinate with multiple parties and supervisors while maintaining independence; f) Demonstrated communication skills to address different audiences, from the board of directors to data subjects, from managers to IT staff and lawyers; g) Demonstrated self-starter with ability to gain required knowledge in dynamic environments and remain up-to-date on cutting-edge developments; h) Demonstrated record of engaging with emerging laws and technologies; i) Experience in legal and technical training and in awareness raising; and j) Experience in dealing successfully with different business cultures and industries.

Apart from the above, GDPR has basically provided the basis for the appointment of a Data Protection Officer. This is explained in Article 37 Paragraph (5) General Data Protection Regulation, which reads: *"The data protection officer shall be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in Article 39."*

Based on this, it is mandatory for a Data Protection Officer to first know and understand the Tasks of Data Protection Officer According to the basis of Data Protection Officer appointment. This is also the basis of Data Protection Officer Appointment in the European Union, which is different from the regulations in Indonesia which separate knowledge of law and Personal Data Protection practices. Meanwhile, regulations in the European Union combine them so that they have basis an "expert knowledge of data protection law". Basis of Data Protection Impact Assesment also important to minimize the threats of personal data protection. For example for IP Address that can be used to track geographic location, unauthorized use & opening of personal data, and Distributed Denial of Service Attacks.⁴⁵

CONCLUSION

The basis of Data Protection Officer Appointment for Indonesia and the European Union is similar and different in certain aspects. Similarly, the General Data Protection Regulation & Law Number 27 of 2022 concerning Personal Data Protection recognizes that data subjects can be adults or children, which also implies different levels of constraint. The General Data Protection Regulation also specifies the roles and capabilities of senders and recipients of personal data, which could be data subjects, data controllers, data processors, or third parties. Apart from that, there is also a similar definition of personal data which provides the definition that 'Personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier. This then becomes the duty of a Data Protection Officer in these two countries to protect personal data. In terms of the Basis of Data Protection Officer Appointment, Indonesian regulations explain that selection is based on professionalism, knowledge of the law, Personal Data Protection practices, and ability to fulfill their duties. Meanwhile, regulations in the European Union have a basis for selection, namely professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfill the tasks.

⁴⁵ Tegar Islami Putra and Nurul Fibrianti, "Threats and Legal Protection of Personal Data Combined in E-Commerce Transactions Based on Personal Data Protection Law in Indonesia," *Lambung Mangkurat Law Journal* 9, no. 1 (2024): 64-74, <https://doi.org/10.32801/lamlaj.v9i1.438>.

Where in this case it is directly specialized to have expertise in data protection law. Regulations in Indonesia separate knowledge of law and Personal Data Protection practices.

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