Comparison of The Right to Be Forgotten Regulations in Indonesia and European Union Countries

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Abstract

The development of digital technology has raised crucial issues related to personal data protection, one of which is related to the right to be forgotten. The European Union has strictly regulated this right through the General Data Protection Regulation (GDPR) since 2018, replacing the previous provisions in Directive 95/46/EC. The GDPR itself regulates the "Right to be Erased" or "Right to be Forgotten," which includes how to Request Erasure, Conditions for Erasure, Obligations of Data Controllers, and Exceptions regarding what matters do not apply to the Right to Erasure. In contrast, Indonesia has only just begun to accommodate this principle through changes to the Electronic Information and Transactions Law (UU ITE) of 2016 and the Personal Data Protection Law (UU PDP) of 2022, although it still faces various implementation challenges. This study aims to compare the legal regulations related to the right to be forgotten between Indonesia and the European Union in order to assess the effectiveness of the available legal protection, as well as encourage the preparation of more adaptive regulations in Indonesia. This study uses a normative legal approach, with a statute approach method that focuses on the study of laws and regulations. The results of the study show that the European Union has a more comprehensive and structured protection system through the GDPR, while Indonesia is still in the early stages of development with limitations in institutional and technical aspects, so it is necessary to strengthen the implementation and consider the application of a similar approach as in the European Union to guarantee the right to personal data effectively.

Keywords: ***Indonesia; GDPR; Right to be Forgotten; European Union.***

Introduction

The development of information and communication technology not only facilitates human activities in various aspects of life but also expands the reach of information distribution quickly and massively. Through the internet, a person's personal data can easily be spread to various digital platforms, either through social media, search engines, or other online databases. In this situation, individual control over their personal information becomes increasingly difficult, especially if the data has already been published and widely distributed. This condition raises the need for adequate legal protection, one of which is through recognition of the right to be forgotten.

The right to be forgotten emerged as a response to situations where individuals do not have an effective mechanism to delete or withdraw their personal data from the digital space. For example, someone who was involved in a case was later found not guilty, but their digital footprint continues to appear in internet search results. This kind of information can harm the individual's reputation, career, and social life, even though legally they are no longer associated with the case. In this context, the right to be forgotten becomes important to restore personal rights and provide an opportunity for individuals to continue their lives without being overshadowed by their digital past.[1]

In various countries, the right to be forgotten has been legally recognized, such as in the European Court of Justice ruling in the case of Google Spain vs. AEPD and Mario Costeja González in 2014. This ruling stipulates that individuals have the right to request the removal of links to their personal information from search engines if the information is no longer relevant or violates privacy However, the application of this right is not absolute, because it must consider the balance between the individual's interest in protecting their privacy and the public interest in obtaining information.

In Indonesia itself, the discourse on the right to be forgotten has begun to receive serious attention, especially after the enactment of the Personal Data Protection Law (UU PDP). This law provides a legal basis for individuals to submit a request for deletion of personal data to the data controller. However, major challenges still exist in terms of implementation, including the readiness of digital infrastructure, public awareness, and coordination between authorized institutions. Therefore, personal data protection in the digital era is not only a matter of regulation but also requires commitment from all elements of society and government to create a safe and fair digital space.

The European Union has asserted its position as a region that is serious about protecting the privacy rights of its citizens through the implementation of the General Data Protection Regulation (GDPR). This regulation not only regulates the collection and processing of personal data but also emphasizes the importance of the individual's right to full control over their personal information in the digital world. One of the central points of the GDPR is the article on the right to erasure, better known as the right to be forgotten. This provision allows individuals to request the deletion of their personal data when the data is no longer relevant, is used without a valid legal basis, or is processed unlawfully.

[1] Bachtiar. Legal Research Methods. Banten: Unpam Press, 2019.

The 2014 case of Google Spain v AEPD was a milestone in strengthening the right to be forgotten in European law. In this case, the Court of Justice of the European Union ruled that search engine operators such as Google can be required to remove links to an individual's personal information if the information is no longer relevant or is considered to be disproportionately detrimental to the individual's right to privacy. The ruling confirmed that even if the information is lawfully published in its original source, an individual's right to privacy and data protection may override the public interest in access to certain information, depending on the context.[2]

Before GDPR was enacted, the European Union had Directive 95/46/EC or The Data Protection Directive which became the forerunner of the data protection framework in the region. However, along with technological advances and the complexity of data processing in the digital era, the directive was deemed no longer adequate to meet the challenges of the times. GDPR replaced it with a broader scope, stricter sanctions, and more detailed protection mechanisms, including cross-border arrangements for global companies processing EU citizens' data.

With the implementation of GDPR, not only institutions and companies in the European Union are affected, but also entities from outside the region that offer services or monitor the behaviour of individuals in the European Union. This signifies the global approach that the European Union is starting to take to ensure that high privacy standards can be applied consistently, even beyond its territorial borders. Therefore, GDPR is not only an internal legal instrument but has also become an international reference for other countries in designing personal data protection regulations, including Indonesia which is starting to move towards strengthening data protection through the PDP Law.

On the other hand, Indonesia is still in the development stage of regulating comprehensive personal data protection. Law Number 27 of 2022 concerning Personal Data Protection (UU PDP) has begun to accommodate privacy principles, including the right to delete data. However, before the PDP Law was introduced, the provision regarding the right to be forgotten was first introduced through Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). In this context, the

[2] Beynon-Davies, P. Information Systems: An Introduction to Informatics in Organizations. Basingstoke: Palgrave Macmillan, 2002.

regulation still raises a number of debates, both in terms of legal substance and its implementation in the field.

The purpose of this study is to compare the legal provisions on the right to be forgotten in Indonesia, which are regulated in Law No. 19 of 2016 as an amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE) with the European Union, which is regulated through Directive 95/46/EC The Data Protection Directive and General Data Protection Regulation (GDPR). This comparative study is important because each jurisdiction has a different approach, principles, and mechanisms in regulating the right to be forgotten, so this comparison can provide a deeper understanding of the effectiveness of legal protection of individual rights to personal data in the digital era. Through this comparative analysis, the study aims to identify the advantages and disadvantages of each legal system, as well as provide recommendations for the development of legal policies in Indonesia to be more responsive and adaptive to global challenges in personal data protection.[3]

Research Method

In this study, the approach used by the researcher is normative legal research. Peter Mahmud Marzuki stated that normative legal research is a process that aims to explore and identify relevant legal rules, principles, and doctrines. This process is not just about finding answers, but also trying to provide comprehensive solutions to the legal issues faced so that it can create a deeper and more applicable understanding in a dynamic legal context. This type of research focuses on the study of laws and regulations as the basis for analysis, which in this case is included in the statute approach. According to Bachtiar, the essence of legal research is actually a scientific activity that is systematically designed to study and reveal legal truth through organized, logical, and structured methods Therefore, each method used must be explained sequentially and become part of a unified research system. Methodological consistency is crucial, in the sense that there should be no principal conflict between elements in the research framework. Thus, the focus of legal research is how to find appropriate and relevant legal sources to provide an explanation of a particular legal phenomenon or problem.

This study uses a normative-comparative method, which is an approach that examines the laws and legal documents that apply in both the European Union and Indonesia regarding the

[3] Danimunthe, Fadli Zalini and Heru Susetyo. The Right to Be Forgotten. Jakarta: Faculty of Law, University of Indonesia, 2019.

right to be forgotten. The data sources used are secondary data, such as laws and regulations (GDPR, ITE Law, and PDP Law), legal literature, scientific journals, and related court decisions. The data analysis technique is carried out qualitatively with an emphasis on comparing legal structures, basic principles, and implementation mechanisms of the right to be forgotten in the two jurisdictions. The results of this analysis are then used as a basis for discussion to assess the suitability, advantages, and disadvantages of each legal system in protecting citizens' personal data.[4]

This normative legal research is often referred to as doctrinal legal research, literature study, or document study. The term "doctrinal" is used because the focus of the study lies in written legal materials, such as laws and regulations, legal literature, and opinions of legal experts. It is also called a literature study or documentation because most of the data sources studied are secondary and obtained from libraries or official documents issued by state institutions. In other words, this research does not rely on field data but rather comes from an analysis of existing legal norms.

Results and Discussion

The Right to Be Forgotten Regulation in Indonesia

In Indonesia, the regulation regarding the right to be forgotten has not been regulated comprehensively as in the European Union. The term right to be forgotten began to appear explicitly in the revision of Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), which was amended through Law Number 19 of 2016. Article 26 paragraph (3) of the ITE Law states that electronic system organizers are required to delete irrelevant electronic information and/or electronic documents, at the request of the person concerned, based on a court ruling.

More technical regulations are outlined in the Regulation of the Minister of Communication and Information Technology Number 20 of 2016 concerning Protection of Personal Data in Electronic Systems. In it, although it does not explicitly mention the term right to be forgotten, there are provisions that regulate that users have the right to update, correct, and even delete their personal data from electronic systems. However, this mechanism still depends on the court or intervention from the Ministry of Communication and Information.

[4] Marzuki, Peter Mahmud. Legal Research. Kencana Prenada. Media Group. Jakarta, 2011.

Along with the enactment of Law Number 27 of 2022 concerning Personal Data Protection (PDP Law), the regulation of this right has progressed. Article 15 paragraph (1) letter g of the PDP Law emphasizes that personal data subjects have the right to delete and/or destroy their personal data, especially if the data is irrelevant, has expired, or is processed without consent. However, the implementation of the PDP Law still requires the establishment of an independent supervisory authority so that this right can be accessed effectively.[5]

The right to be forgotten becomes increasingly important in the digital age where personal information is easily spread widely and is difficult to control. Once information is published on the internet, it is very likely to remain permanently available, even if it is no longer relevant, misleading, or personally detrimental. This situation can damage a person's reputation, hinder job opportunities, and even cause long-term psychological.

However, the impact of the right-to-be-forgotten regulation in Indonesia is still limited because it does not yet have a legal instrument equivalent to the General Data Protection Regulation (GDPR) in the European Union. The provisions in the ITE Law and Permenkominfo No. 20 of 2016 do not provide clear, fast, and easily accessible procedures for individuals who wish to delete their personal data. Reliance on court decisions also slows down the process and is not friendly to people who do not have adequate legal capacity. This causes the implementation of the right to be forgotten in Indonesia to still be normative and has not fully provided real protection for an individual's reputation in the digital space. As a result, individuals who experience losses due to the dissemination of irrelevant or personally detrimental information still face difficulties in restoring their good name.[6]

Another concrete example besides the Costeja González case is the case of an individual who was once a defendant but was later found not guilty by the court. However, old news related to the case can still be easily found on search engines and causes social stigma. In this context, the right to be forgotten becomes a tool to restore the dignity of the individual and provide an opportunity for someone to improve their life.[7]

Some of the main benefits of implementing the right to be forgotten include:

a) Protection of personal reputation, Providing individuals with the opportunity to protect their good name by deleting information that is no longer relevant.

[5] Hadikusuma, Hilman. Indonesian Legal Language. Bandung: Alumni, 2010.
[6] Rahardjo, Satjipto. Legal Science. Bandung: Citra Aditya Bakti, 2014.
[7] Samuel D. Warren and Louis D. Brandeis. “The Right to Privacy.” Law and Development 4, 2018.

b) Increased control over personal data, Allowing individuals to have full control over how their data is used and disseminated.
c) Data misuse prevention, Personal information that is no longer accurate or valid can become a source of fraud or blackmail if not promptly deleted.
d) Social justice restoration, A person who has experienced a legal or social problem that has been resolved can erase negative digital footprints that could hinder reintegration into society.

Encouraging ethical data processing practices, With this right, electronic system organizers will be more careful and transparent in managing user data.

The Right to Be Forgotten Regulation in The European Union

The European Union is the most advanced legal region in recognizing and regulating the right to be forgotten, which is explicitly regulated in the General Data Protection Regulation (GDPR), specifically Article 17. This regulation has been directly applicable in all EU member states since May 2018 and is an important milestone in personal data protection.

In the European Union, regulations issued by EU institutions, such as regulations and directives, have their own implementation mechanisms in member countries. Regulations, such as the General Data Protection Regulation (GDPR), apply directly and uniformly throughout member countries without the need for national ratification or enactment, unlike Indonesia which must ratify international regulations such as those from the UN through laws first. Meanwhile, directives only set goals to be achieved, and each member country is required to adapt them to their national laws within a certain period of time. Therefore, the European Union legal system allows for more integrated and direct implementation of laws throughout the region without the need for a ratification process like in Indonesia.[8]

a) Concept and Philosophical Basis

The right to be forgotten in the European Union is based on the principle of personal freedom and the right to privacy, guaranteed in the Charter of Fundamental Rights of the European Union, in particular Article 7 (respect for private and family life) and Article 8 (protection of personal data). Its philosophical goal is to give citizens full control over their personal data as part of their fundamental rights and to prevent misuse by unauthorized parties.

[8] Case C-131/12, Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (AEPD), Mario Costeja. González (May 13, 2014), Paragraph 14

b) Implementation of the Right to Be Forgotten

The European Union implements this right not by removing content from the internet altogether, but by restricting access to personal data through search engines. This mechanism was strengthened by the landmark ruling of the European Court of Justice (ECJ) in the case of Google Spain SL v. AEPD and Mario Costeja González, in which the Court ruled that individuals can request that links to outdated information be removed from search results, even if the information is still available on the original site.

c) Consent to Use of Personal Information

The GDPR requires explicit and informed consent from the data subject before their personal data can be processed. This is stated in Articles 6 and 7 of the GDPR, which require that consent must be freely given, specific and revocable at any time by the data owner.

d) Deletion of Used Data

The GDPR gives individuals the right to request the deletion of personal data if the data is no longer needed, is being processed unlawfully, or if the subject withdraws consent. If the controller does not comply with the request, the data subject has the right to file a claim for damages, as set out in Article 82 of the GDPR.

e) Deletion of Information from the Organizer

Data controllers in the European Union are required not only to delete data, but also to notify third parties involved in processing the data (e.g. third-party websites) that the data subject has requested deletion, as per Article 19 of the GDPR. However, the primary responsibility remains with the first party (the data controller).

f) Deletion Mechanism

The GDPR requires system operators to provide easy and fast mechanisms for individuals who wish to exercise the right to be forgotten. This includes online forms, email submissions, and even judicial mechanisms if necessary. This process must be followed up without unreasonable delay.

g) Government Intervention

The EU emphasizes the importance of the role of independent data protection authorities in each member state, such as the Commission Nationale de l'Informatique et des Libertés (CNIL) in France or the Information Commissioner's Office (ICO) in the UK. These bodies are tasked with ensuring that the right to be forgotten and other privacy rights are upheld without political interference, but within the framework of protecting the public interest, for example when the information has journalistic or historical value.

h) Regulation of Distribution of Information and Personal Data

The GDPR prohibits the sharing of sensitive personal data without a valid legal basis. Article 9 explicitly prohibits processing data relating to race, ethnicity, political opinions, religious beliefs, trade union membership, genetic data, biometric data and medical history, except in certain circumstances and with strict safeguards.

i) Deletion Exceptions

The right to be forgotten is not an absolute right. The GDPR provides exceptions, for example when data is necessary for freedom of expression and information, the public interest, archiving for historical or scientific purposes, and other legitimate interests (Article 17 paragraph 3 GDPR). This shows that data deletion must be balanced with other rights.

j) Execution Authority

The European Union empowers data administrators or controllers (e.g. Google, Facebook and other technology companies) to implement erasure requests. However, this implementation is monitored and evaluated by the competent data protection authority. If the controller refuses the erasure request, the data subject can lodge a complaint with the authority or with a court.

The European Union has a significant advantage over Indonesia in regulating the right to be forgotten because of its more systematic, comprehensive, and operational approach through the General Data Protection Regulation (GDPR), which not only explicitly regulates the right to be forgotten in Article 17, but also provides a clear implementation mechanism, independent supervisory authority, and guarantees of strong legal protection for individuals. Unlike Indonesia, which still relies on partial regulations through amendments to the ITE Law and the 2022 PDP Law, the European Union has succeeded in integrating the principle of personal data protection as part of human rights, providing direct access for individuals to request data deletion without having to go through a complicated judicial process, and ensuring strict supervision of its implementation by data protection authorities in each member country. This advantage shows that the European Union is more prepared regulatory and institutionally in guaranteeing individuals' right to privacy in the digital era.[9]

The European Union has recognized and regulated the right to be forgotten more systematically through the General Data Protection Regulation (GDPR) which came into effect in 2018. GDPR replaces Directive 95/46/EC and is the mainstay of personal data protection

[9] Anggraeni, Fitri Setyawati. "Polemic of Personal Data Ownership Regulation, Urgency for Harmonization and Legal Reform in Indonesia", Journal of Law & Development. 48. 4(2018): 814-825, 2018.

across all EU member states. The right to be forgotten is explicitly regulated in Article 17 of the GDPR which states that data subjects have the right to request the deletion of their personal data to the data controller under certain conditions, such as the irrelevance of the data, withdrawal of consent, or unlawful processing of the data.

The existence of this right gained strong legal legitimacy after the European Court of Justice ruling in the case of Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costeja González (2014). In the case, Mario Costeja González sued Google because search results regarding the auction of his house still appeared even though the event had long passed and was no longer relevant. The Court ruled that individuals have the right to request that old, detrimental and irrelevant information be removed from search engines, thus confirming that the right to privacy can override the right to public information in certain situations.

The GDPR also provides an administrative mechanism that allows individuals to make requests directly to data controllers (including technology companies) without having to go through the courts. Data protection authorities in each member state also have the power to receive complaints, conduct investigations, and impose administrative sanctions.

Thus, both Indonesia and the European Union are aware of the importance of protecting personal data, including in the form of the right to be forgotten. However, Europe has been more advanced in formulating and implementing this principle systematically and operationally. Indonesia still needs to strengthen regulations, technical mechanisms, and public awareness so that this right can be accessed effectively and fairly.[10]

Conclusion

A comparison of the right-to-be-forgotten regulations between Indonesia and the European Union reveals significant gaps that reflect the level of regulatory maturity and readiness for implementation in both. The European Union, through the GDPR, strengthens the rights of data subjects with clear provisions on consent, data accuracy, and structured deletion mechanisms. This regulation not only guarantees individual rights proactively, but also effectively controls the interaction between data controllers and third parties who process data. On the other hand, Indonesia still operates a looser and more reactive legal framework,

[10] Mantelero, Alessandro. “The EU Proposal for a General Data Protection Regulation and the Roots of the 'Right to be Forgotten'.” Computer Law & Security Review 29, no. 3 (2013): 229–235.

where the protection of personal data relies more on lawsuits after a violation, and deletion procedures are often delayed due to reliance on court orders. This condition raises doubts about the effectiveness of protection and the speed of individual access to their rights in the fast-paced and dynamic digital era.

Indonesia has a great opportunity to strengthen its legal framework for personal data protection by adopting clear exception provisions and protecting sensitive data, as the European Union has done. The absence of similar regulations in Indonesia has the potential to open up loopholes for data misuse. In addition, the revision of the ITE Law, which does not explicitly regulate data deletion mechanisms, shows the urgent need for adaptive and proactive legal reforms.

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