

## Philosophy of Personal Data Protection in Electronic Wallets

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**ABSTRACT:** Electronic wallet comes with a system device that is connected to the internet, making it very easy for consumers to operate it. Electronic wallets have the same function as physical wallets in general, namely as a place to store a number of information such as digit numbers, e-money cards, personal identity, contact records, delivery history or billing information, customer sites and other things used when checking out on e-sites. commerce. This condition needs to be responded to by protecting personal data. This research aims to analyze personal data protection in electronic wallets in the context of legal objectives and personal data protection for electronic wallet users as a human right. Protection of personal data in electronic wallets in the context of legal objectives aims to provide justice, benefit and legal certainty for electronic wallet users. Protection of personal data for electronic wallet users is a right to privacy that is recognized as a human right. This right to personal protection is also a constitutional protection.

**Keywords:** *Electronic wallet, personal data protection, philosophy*

### I. INTRODUCTION

Electronic wallets are a non-cash payment method. This payment method is increasingly popular in the Covid-19 pandemic era because it does not require direct interaction between sellers and buyers in payment transactions. Electronic wallet services are included in server-based electronic money. Services of this type include GoPay, OVO, LinkAja, Doku, and DANA. Since the non-cash movement was first intensified by Bank Indonesia in 2014 to realize a cashless society and encourage economic transactions, digital finance has continued to grow rapidly. This is in line with the increasingly widespread use of e-commerce platforms and digital instruments during the pandemic, as well as the strong public preference and acceptance of digital transactions [1]. Using an electronic wallet requires users to enter personal data to activate the electronic wallet application.

Law of the Republic of Indonesia Number 27 of 2022 concerning Protection of Personal Data is the first provision in Indonesia that regulates personal data. This provision began to be promulgated on 17 October 2022. Article 1 number 1 of Law of the Republic of Indonesia Number 27 of 2022 concerning Protection of Personal Data states "Personal Data is data about natural persons who are identified or can be identified individually or in combination with other information either directly or indirectly through electronic or non-electronic systems." Overall, personal data on electronic wallets has not been clearly constructed. Protection of personal data is protection for consumers. Consumer Protection is the legal protection of consumer rights. Protection of consumer rights is actually an effort made to provide access to justice for consumers who tend to be in an inferior position.

Protection of personal data is a concept of human rights. Concepts are formulated based on the ontological, axiological and epistemological characteristics of an object of thought [2]. Ontologically, seen from history and philosophy, privacy is a fundamental human right because the right to privacy is attached to other rights and freedoms, including freedom of expression, association/gathering and beliefs which must be protected and have been recognized in written law or in the form of general principles [3]. As a very fundamental right, the right to privacy should be optimally protected.

In 2021, cyber police recorded 182 cases of data theft reported by the public. This figure increased by 27.3% compared to the previous year which was 143 reports. Over the last five years, the increase in reports of data theft has increased by 810% from 20 reports in 2016 [4]. This misuse of personal data creates potential losses for consumers, namely being vulnerable to becoming victims of financial crimes such as illegal money transfers, tax fraud, extortion, and loan applications. In addition, by possessing other people's personal data, violators can claim to be other people in order to participate in various social assistance programs, health

services, employment programs and so on. Consumers will also be bothered by spam advertisements and telemarketing offers. This of course interferes with someone's right to privacy.

Axiologically, personal data protection is respect for the values of justice, humanity and the protection of one's economic rights. Gustav Radbruch places the value of justice as a philosophical study. Next, Radbruch starts with the view that society and order have a very close relationship, they are even said to be two sides of a coin, this shows that every community (society) in it needs order [5]. The obligation to follow the requirements put forward by electronic wallet application providers violates the value of justice where consumers have no choice. Even. the potential for personal data breaches to cause disorder in society in the form of violations of consumer rights. Personal data protection provides benefits for consumers in the form of protection from the threat of loss due to misuse of personal data.

Epistemologically, this protection is regulated in Article 12 of the Universal Declaration of Human Rights which stipulates "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."

Constitutionally, personal data as a human right can be linked to the provisions in Article 28G paragraph (1) of the 1945 Law of the Republic of Indonesia which states "Everyone has the right to protection of their person, family, honor, dignity and property in their possession." under his authority, and has the right to a feeling of security and protection from the threat of fear of doing or not doing something which is a human right." Personal data protection provides legal certainty for personal data owners so that the personal data they hold is only used by the data controller in accordance with the intended interests.

As a human right and constitutional right, the state has a legal obligation to provide protection for personal data in electronic wallets. Hendy Mustiko Aji, Izra Berakon and Maizaitulaidawati Md Husin stated "In the context of e-wallets, government support can be translated into the network infrastructure, policy packages, speed of access, and security guarantees in digital transactions" [6]. The absence of an obligation to consent from personal data subjects in the transfer of personal data across national borders constitutes a violation of the right to privacy, thus having implications for injustice, not achieving benefits and not providing legal certainty for personal data subjects.

## II. DISCUSSION

### 1. Protection of Personal Data in Electronic Wallets in the Context of Legal Objectives

Philosophical considerations for protecting personal data in electronic wallets are related to legal objectives where the aim of protecting personal data in electronic wallets is to realize justice (*rechtsgerechtigheid*), expediency (*rechtsutiliteit*) and legal certainty (*rechtszekerheid*). Gustav Radbruch is of the view that society needs justice and requires order in using technology as a payment instrument through protecting personal data.

The development of non-cash payment methods began to experience a significant increase from 2007 to 2011. This development continues to increase until now, even in the last 5 years there has been a lot of research discussing this matter. The reason for the rapid increase in the number of users using electronic wallets is due to technological advances that are becoming more sophisticated from year to year. Technology facilitates human desires that want things to be fast and easy. Electronic wallets are a technology that is starting to be used by the general public from various generations. Based on several related studies, it is stated that the whole world is competing with each other to increase the efficiency of human work with the help of technology and the internet, this is one of the triggering factors for consumers' shift from traditional to digitalization. Apart from speeding up the transaction process, electronic wallets as an innovative server-based technology also help users to store their transaction data without the need to manually record their daily expenses [7].

Technology is a very important instrument in human life. In the current era of globalization of information, the existence of information has a very important meaning and role in all aspects of life, and is one of the necessities of life for everyone, both individually, groups of individuals, as well as society and business actors. Regarding this, Syailendra, Moody R., et al stated the following:

The era of globalization has placed technology and information in a strategic position where it also affects people's daily lives. The development itself describes human life in this era of globalization. Naturally, humans tend to desire to have a good and decent life, so the idea arises that humans must make changes to get a decent life. Human life currently is in the era of the use of very sophisticated technology. If humans only thought about how to survive in ancient times, now with changing times and technological developments, these thoughts have developed, and there is a desire to plan for life in the future [8].

The globalization of information was born from a technology that is very useful for human life today, namely the internet. The advantage of using the Internet in various fields is that it becomes easier, but on the other hand it certainly creates new situations that must be taken into account as a regulation to better ensure that

users' use of the Internet is protected by the protection of their personal data (the protection of privacy rights) and avoids misuse which can have an impact. loss to social society. The importance of protecting access to users' personal data from cybercrime is a serious consideration given the increasing number of cell phone and internet users recently and there is no definite guarantee for personal data [9].

With the development of technology and its use, a person's personal data can be easily accessed, stored, transferred, disseminated and used to and by other parties quickly and without the permission or knowledge of the owner of the information. In the development of the modern economy, personal data information is a very valuable asset that has high economic value so that it is widely used by various groups, both for business purposes. In connection with this phenomenon, protecting personal data, especially in electronic wallets, is certainly homework for the government.

Protection of personal data in electronic wallets is very important considering that electronic wallets are a worldwide payment system. Malik, Ritika, Aarushi Kataria, and Naveen Nandal in their research stated the following:

In today's world these digital wallets are very popular and tomorrow there will be a direct payment system which will be done through different intermediates like mobile wallets and different companies which are dealing in plastic money in other words transactions which are cashless and which can be replaced with a hard cash note [10].

Article 8 of the GDPR states that Processing in the context of employment is related to human dignity. In detail in point 1 it is stated as follows:

Those rules shall include suitable and specific measures to safeguard the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity and monitoring systems at the work place.

In connection with Article 88 point 2 GDPR, Luciano Floridi in his research stated the following:

The text just quoted contains two assumptions: that the data subject must be a human person, whose dignity is safeguarded (a legal person could not enjoy human dignity); and that human dignity is different from "legitimate interests and fundamental rights". Both are correct, and the second assumption is indicative. Despite its almost invisible presence in the GDPR, human dignity is the fundamental concept that provides the framework within which one needs to interpret what the GDPR—and more generally European culture and jurisdiction—understand by informational privacy (henceforth only privacy). This is coherent with the role played by the concept both in the 1948 Universal Declaration of Human Rights (Preamble and Article 1) and in the EU Charter of Fundamental Rights [11].

The protection provided by the state regarding personal data in electronic wallets is carried out by structuring and drafting regulations. This state duty cannot be separated from the essence of the Pancasila Law State. The Pancasila Legal State according to Padmo Wahyono is a group life of the Indonesian nation, thanks to the grace of Allah the Almighty and driven by the noble desire to live a free national life in the sense of independence, sovereignty, unity, justice and prosperity, which is based on law, whether written or unwritten as a vehicle for order and prosperity with a protective function in the sense of upholding democracy, humanity and social justice [12].

The Indonesian Rule of Law which is based on Pancasila is a concept that has a special character so that it differentiates it from the original concept, namely *Rechtsstaat* and Rule of Law which developed in western countries. These special characters include; the principle of kinship which prioritizes the public interest above individual interests, law which is based on certainty and justice, based on religion but not theocracy and secular, law as a reflection of society's culture and law which is neutral and universal. Thus, Pancasila is not only the spirit of the state but also the source of all sources of law in Indonesia [13].

Philipus M. Hadjon stated that from the history of its formulation and placement of its precepts in the preamble to the 1945 Constitution, Pancasila is the basis of the state in terms of the ideology and philosophy of life of the Indonesian nation. As an ideology or as a philosophy of life, Pancasila itself is a guide to life behavior [14]. According to Muhammad Yamin, in Sanskrit "Pancasila" has two kinds of meanings, namely:

- a. *Panca* means five and *syila* (short vowel i) means joint stone, principle or basis, so if put together it becomes a basis that has five elements.
- b. *Panca* means five and *syiila* (long i vowel) means rules of behavior, important or obscene, so if you put them together there are five important rules of behavior [15].

The philosophical basis for personal data protection is Pancasila, namely *rechtsidee* (legal ideals) which is a thought construction (idea) that directs the law towards what is aspired to. Rudolf Stamler, said that *rechtsidee* functions as a *leitsern* (guiding star) for the realization of the ideals of a society. It is from this

*rechtsidee* that legal concepts and politics are developed in a country. This legal ideal is normative and also constitutive. Normative means that it functions as a transcendental prerequisite that underlies every dignified positive law, and is the moral foundation of law and at the same time the benchmark for the positive legal system. A constitutive legal ideal means that *rechtsidee* functions to direct the law towards the goals to be achieved. Gustaf Radbruch stated that "*rechtsidee*" functions as a constitutive basis for positive law, giving meaning to the law. *Rechtsidee* is a regulatory benchmark, namely testing whether positive law is fair or not. Legal ideals will influence and function as general principles that provide guidance (guiding principles), norms of criticism (evaluation rules), and motivating factors in the administration of law (formation, discovery, application of law and legal behavior) [16].

Pancasila as a way of life for the Indonesian nation and state contains the values: 1) Divine values, human values, unity values, people's values and justice values, 2) Ideal values, material values, spiritual values, pragmatic values and positive values, 3) Ethical values, aesthetic values, logical values, social values and religious values. In fact, the values contained can be generally applied (universal), and will be special in the life and life of society, nation and state for the Indonesian people [17]. Thus, the protection of personal data in electronic wallets is guided by the values of Pancasila.

The five principles of Pancasila are combined into one unified philosophical system of the Indonesian nation. The first principle, Belief in the Almighty God, contains the philosophy that the Indonesian people believe in the existence of the Almighty God and are aware of the limitations of God's creatures. The second principle, just and civilized humanity, has the philosophy that the Indonesian state seeks to realize the benefit of humanity. The third principle, Indonesian unity, has the philosophy that with unity, the Indonesian nation will be strong and work together to realize the goals of the state. The fourth principle, democracy led by wisdom in deliberation/representation, contains the philosophy that the Republic of Indonesia is a democracy in every area of state life. The fifth principle, social justice for all Indonesian people, has the philosophy that the Indonesian people desire to provide formal and substantial justice and prosperity to the Indonesian people [18].

Protection of personal data in electronic wallets cannot be separated from the second principle of Pancasila. The second principle of Pancasila is, "The essence of Pancasila is to refer to religious human values (humanism-religious), not secular humanity, therefore the measure of truth that is used as a basis for policy is not merely rational but also religiosity [19]. Just and civilized humanity" is the philosophical basis for personal data protection, bearing in mind that the protection in question will create justice and form a human civilization that respects personal data [20].

Just and civilized humanity is the value of Pancasila which humanizes humans in a just and civilized manner, however, the portion of this justice differs according to individual abilities because justice cannot be generalized. A just and civilized humanity respects and upholds human rights in obtaining justice, not providing equal status in earning a living income, but upholding human rights that are inherent in a person from the womb. In principle II which states "Just and civilized humanity" contains human values, including the recognition of human dignity [21].

Humanity and justice are the common threads for the Indonesian people in national and state life which are consistently found in every stage of state formation, namely in the background stage, in the goal setting stage, and in the stage of determining basic choices in the nation and state [22]. Justice is an effort or action to direct positive law towards legal ideals [23]. Justice is an effort or action to direct positive law as an effort with coercive sanctions towards something that is just (*ZwangversuchzumRichtigen*). Social justice for all Indonesian people as the fifth principle of Pancasila, is the goal of the other four principles. It contains other precepts [24].

The Indonesian state is philosophically based on the values contained in the principles of Pancasila, so that the relationship between the government and its citizens should prioritize the principles of mutual cooperation and the values of deliberation in making decisions. The Pancasila legal state is based on the values contained in the Pancasila principles and should animate state life in Indonesia. Therefore, the preparation and implementation of the legal system in Indonesia since the enactment of the 1945 Constitution of the Republic of Indonesia has been based on and inspired by Pancasila [25].

As a consequence of the position of Pancasila contained in the Preamble to the 1945 Constitution of the Republic of Indonesia as a fundamental norm, juridically, the values of Pancasila must be derived into the 1945 Constitution of the Republic of Indonesia and subsequently in all Legislation. another invitation. In this framework, the Indonesian legal state can also be called the Pancasila legal state [26].

Pancasila is contained in the Preamble to the 1945 Constitution of the Republic of Indonesia as the constitution of the Indonesian state. The 1945 Constitution of the Republic of Indonesia, which is the basic law for the formation of positive law, contains four main ideas, which experts agree are the ideals of Indonesian law, namely: first, the ideal of protection contained in the phrase "The state protects the entire Indonesian nation, and all of Indonesia's blood is based on unity"; second, the ideal of social justice, contained in the phrase "The state has the right to realize social justice for all Indonesian people"; third, the ideal of usefulness contained in the phrase "A state with people's sovereignty, based on the people and representative deliberation"; and fourth, the

ideal of general justice, which is contained in the phrase "The state is based on the belief in One Almighty God". The ideal of protection contains the meaning of a legal ideal that guarantees the protection of the entire Indonesian nation [27].

Pancasila is a guideline in making regulations regarding the protection of personal data in electronic wallets. Article 2 of Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislative Regulations states "Pancasila is the source of all sources of state law." In the Elucidation to Article 2 it is further stated as follows:

The placement of Pancasila as the source of all sources of state law is in accordance with the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely Belief in One Almighty God, Just and Civilized Humanity, Indonesian Unity, Democracy which is led by wisdom in Deliberation/Representation, and social justice for all Indonesian people.

Exploring philosophical values in protecting personal data can be seen from the principles contained in Law of the Republic of Indonesia Number 27 of 2022 concerning Protection of Personal Data. Article 3 and the Explanation of this Law are based on:

- a. Protection; What is meant by "principle of protection" is that any processing of Personal Data is carried out by providing protection to Personal Data Subjects over their Personal Data and that Personal Data from being misused.
- b. Legal certainty; What is meant by "principle of legal certainty" is that every processing of Personal Data is carried out based on a legal basis to realize the Protection of Personal Data and everything that supports its implementation so that it obtains legal recognition inside and outside the court.
- c. Public interest; What is meant by "principle of public interest" is that in enforcing the protection of personal data we must take into account the public interest or society at large. These public interests include the interests of state administration and national defense and security.
- d. Expediency; What is meant by the "principle of benefit" is that the regulation of Personal Data Protection must be beneficial for the national interest, especially in realizing the ideals of general welfare.
- e. Caution; What is meant by "precautionary principle" is that parties involved in the processing and monitoring of Personal Data must pay attention to all aspects that have the potential to cause harm.
- f. Balance; What is meant by "principle of balance" is an effort to protect Personal Data to balance the rights to Personal Data on the one hand with the legitimate rights of the state based on the public interest.
- g. Accountability; What is meant by "principle of responsibility" is that all parties involved in the processing and monitoring of Personal Data act responsibly so as to guarantee a balance of rights and obligations of the parties involved, including the Personal Data Subject. And
- h. Confidentiality. What is meant by "principle of confidentiality" is that Personal Data is protected from unauthorized parties and/or from unauthorized Personal Data processing activities.

The philosophy of personal data protection in the Pancasila legal state cannot be separated from the recognition, protection and fulfillment of human rights. This setting provides benefits for individuals to reduce their privacy. Personal data protection is a protection of the human right to privacy as well as a limitation of the human right to seek sources of information. The characteristics of good information will be determined by criteria including the following:

- a. Pertinence, namely that the information must be relevant and can provide added value;
- b. Timeliness, namely that the information must be available when it is needed;
- c. Accuracy, namely that the information must be accurate according to the context and intensity of its intended use;
- d. Reduced uncertainty, namely the information must approach absolute certainty;
- e. Element of surprise, namely the information must be something actual [28].

## 2. Protection of Personal Data for Electronic Wallet Users as a Human Right

This concept of personal data protection emphasizes that everyone has the right to decide when someone will share data with others or to share data with other people and determine the conditions that must be met during the process of sharing data within a community [29]. Regarding personal data protection, Oleksandr Bukhanevych, et al. stated as follows:

The protection of personal data is a fundamental element of human rights in the information society. As a basic human right, its violation endangers the security, honor, dignity of the person, and so on. This right is also derived from the constitutional right not to interfere with privacy and the right to prohibit the collection, storage, use, and dissemination of confidential personal information [30].



Personal data protection is the protection of human rights. General Explanation of Law of the Republic of Indonesia Number 27 of 2022 concerning Protection of Personal Data states as follows:

Protection of Personal Data is included in the protection of human rights. Thus, regulations regarding Personal Data are a manifestation of recognition and protection of basic human rights. The existence of a Law on Personal Data Protection is a necessity that cannot be postponed any longer because it is very urgent for various national interests. Indonesia's international community also demands protection of personal data. This protection can facilitate transnational trade, industry and investment.

Personal data is a component of privacy data, where privacy is a person's right to close or keep private matters (in this case personal information) confidential. In the digital era, the right to privacy refers to the protection of an individual's personal data and sensitive information from misuse, theft, or surveillance by unauthorized third parties. The right to privacy is increasingly important in an era where the internet and various social media platforms have become very accessible. People want to use internet services, express their opinions, and interact with the digital world without fear of having their personal data misused. However, there are difficulties when trying to align the protection of privacy rights with laws such as the Law on Information and Electronic Transactions. There is a natural tension between efforts to maintain internet security and order and the need to protect people's rights to privacy and freedom of expression [31].

Edmon Makarim summarizes three aspects of privacy, namely privacy of a persona, privacy of data about a person and privacy of a person's communications. The three aspects of privacy can be detailed as follows:

1. Privacy of a persona

This right to privacy is based on the general principle that everyone has the right to be let alone. In general, there are four types of violations of personal privacy, namely:

- Publications that put someone in the wrong place. For example, by using a photo of a woman as an illustration for an article about a mother who abandoned her child.
- Inappropriate use of someone's name or preferences for commercial purposes.
- Disclosure of embarrassing personal facts to the public.
- Disturbing someone's silence or solitude.

2. Privacy of data about a person

Privacy rights may also apply to information about an individual that is collected and used by others. This includes, for example, information about a person's habits, medical records, religion and membership in political parties, tax records, employee data, insurance records, criminal records and so on. Misuse of information collected on members of an organization/institution or on customers of a company constitutes a violation of a person's right to privacy.

3. Privacy of person's communications

In certain situations, the right to privacy may also extend to online communications. In certain cases, monitoring and disclosing the contents of electronic communications by someone other than the sender or person to whom it is sent may constitute a violation of a person's privacy [32].

In connection with the concept of personal data above, it can be seen that an identifiable person is someone who can be recognized/identified directly or indirectly based on an identification number or based on one or more specific factors of physical, psychological, mental, cultural or social identification. The entity protected in the personal data protection mechanism is a "natural person" not a "legal person" [33]. In practice, the data collection process is designed in such a way that the data giver provides the data to a party. However, a side effect of collecting this data is that the personal data collected is sometimes traded to other parties to market certain products. Data buying and selling transaction activities without the permission of the person whose data is taken is a violation of personal data.

### III. CONCLUSION

The essence of personal data protection in electronic wallets is philosophically in accordance with the Pancasila legal state where the protection of personal data is the protection of privacy and the protection of economic rights which are human rights. Protection of personal data is a human right as part of the right to privacy which is guaranteed legal certainty in the protection of both international legal instruments and the country's constitution. The legal objective of guaranteeing legal certainty is realized by stipulating that any processing of Personal Data is carried out based on a legal basis to realize Personal Data Protection. Legal certainty also provides guarantees regarding the implementation of legal protection that has legal recognition inside and outside the court.

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