

Harmonizing Privacy Rights Protection in Electronic Transaction with Roscoe Pound's Legal Principle

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Abstract

The rapid development of information technology is significantly impacting the lives of humans. This technology enables transfer between regions, thereby threatening the right to privacy. However, the progress of the era related to electronic transactions will continue, necessitating the protection of privacy rights in electronic transactions, through harmonization with the legal principles of Roscoe Pound. A normative legal study was conducted with a statutory and conceptual method, then data were collected through literature studies and analyzed using descriptive-qualitative statistics. Privacy data protection has been implicitly regulated in Electronic Information and Transactions (ITE) and Personal Data Protection (PDP) Law, as well as Government Regulation concerning the Implementation of Electronic Systems and Transactions (PP PSTSE). The concept of law as social engineering positions ITE and PDP as key instruments in the formation and development of society.

Meanwhile, the balance is seen when a regulation has accommodated the interests, of both state, community, and individual, showing the legal thinking side of Roscoe Pound. Policymakers need to pay more attention to how policies are made in accordance with Roscoe Pound's legal principle to achieve the main objective.

Keywords

Information Technology and Privacy, Electronic Transactions and Legal Protection, Privacy Data Protection, Roscoe Pound's Legal Principles, Policy Harmonization

A. Introduction

Rapid globalization is requiring humans to continuously adapt to global dynamics. The most visible global dynamics are the development of future technology that changes community order, specifically those related to social and cultural issues. This is comparable to the application of technology in all fields, where the community is compelled to adapt to existing developments. A survey conducted in January 2024 confirmed that the number of internet users worldwide reached 5.35 billion.¹ The report also stated that internet users in Indonesia reached 185.3 million out of 278.7 million residents.²

The rapid development of technology has effectively erased the boundaries between individuals. This marked the entrance into the globalization era, accompanied by the Industrial Revolution 4.0 which eventually led to a more effective and efficient work process. Technology at the global level has many positive impacts on the social conditions of the community. Furthermore, with the presence of various gadgets, the development has penetrated the field of information. These gadgets are used as a medium of communication considering that globalization has demanded a life without limits. The use of

¹ We Are Social, *Digital 2024: 5 Billion Social Media Users*, <https://wearesocial.com/id/blog/2024/01/digital-2024-5-billion-social-media-users/>, (January 31, 2024).

² We Are Social, *Digital 2024: Indonesia*, <https://datareportal.com/reports/digital-2024-indonesia>, (21 February 2024).

technology cannot be separated from the internet which has become a basic need.

All human activities carried out in the internet world are included in electronic transaction activities (e-commerce). Electronic transactions are regulated in Article 1 Number 2 of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law 2008) which defines legal acts carried out using computers, computer networks, and media. Regulations related to electronic transactions included Articles 17 to 22 of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (ITE Law 2024). ITE Law provided a legal basis for electronic transactions, a framework for various digital aspects, and established legal rules relating to the use of information technology.³ There was also Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE).

Electronic transactions are regulated in the national legal system and the international law. The international regulation includes the UNCITRAL Model Law on Electronic Commerce 1996, which has been ratified by the UN General Assembly through resolution 51/162 dated December 16, 1996.⁴ The basic concept of the UNCITRAL Model Law is the regulation related to electronic transactions, specifically in the field of trade.

Technological developments have negative impacts on the implementation. The most visible negative impact is related to the protection of privacy rights and personal data in electronic transactions. International laws currently have a legal vacuum regarding the protection of privacy rights and personal data in electronic transactions. In Indonesia, the protection of privacy rights and personal data has been regulated in Article 28G

³ Martinelli, Imelda, Fricila Anggitha Sugiawan, and Renita Zulianty. "Perlindungan Hak Privasi Dalam Era Digital: Harmonisasi Undang Undang Informasi Transaksi Elektronik Dengan Prinsip-Prinsip Filosofi Hukum Roscoe Pound dalam Hukum Perikatan." *Jurnal Multidisiplin Teknologi dan Arsitektur* 1, no. 2 (2023): 412-421.

⁴ Syahrin, Muhammad Alvi. "Konsep Keabsahan Kontrak Elektronik Berdasarkan Hukum Nasional Dan Uncitral Model Law On Electronic Commerce Tahun 1996: Studi Perbandingan Hukum Dan Impilkasinya Dalam Hukum Perlindungan Konsumen." *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 9, no. 2 (2020): 105-122.

paragraph (1) of the 1945 Constitution of Indonesia (UUD NRI 1945), Law Number 27 of 2022 concerning Personal Data Protection (UU PDP), and ITE Law. There is currently a discourse between the right to privacy and the protection of personal data. However, the protection of the right to privacy and personal data is a form of respect for Human Rights.⁵ This study used the term "*privacy rights protection*," which was associated with electronic transaction activities regulated in ITE Law. Privacy rights protection has also been regulated in Article 26 paragraph (1) of the 2016 ITE Law and Article 36 of PDP Law.⁶

The regulations prove that Indonesia has taken steps to anticipate the problem of protecting privacy rights in electronic transactions. In regulating electronic transactions, ITE Law provides the main essence, specifically the regulation of privacy rights protection. However, some argue that ITE Law should be adjusted to broader legal principles, as explained in Roscoe

⁵ Wahyuni, Wilia. "Perbedaan Pelindungan Data Pribadi dan Hak Privasi", *HukumOnline*, <https://www.hukumonline.com.unslib.idm.oclc.org/berita/a/perbedaan-pelindungan-data-pribadi-dan-hak-privasi-lt634028ec159e2/?page=2>, (8 Oktober 2022).

⁶ Article 2 (2) of Law Number 27 of 2022 concerning Personal Data Protection (PDP Law), explains: this law does not apply to the processing of personal data by natural persons in personal or household activities; It is further explained: The phrase "personal activities (*kegiatan pribadi*)" or "household activities (*kegiatan rumah tangga*)" has a meaning that can be interpreted as activities in the private sphere that are personal, non-commercial, and nonprofessional. The exception is a form of protection of human rights, especially maintaining the right to privacy of everyone in line with Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia. *See also* Mahkamah Konstitusi, "Pemerintah UU Perlindungan Data Pribadi Beri Perlindungan Hukum", <https://www.mkri.id/index.php?page=web.Berita&id=18915>, (13 February 2023), accessed December 11, 2024. For further discussion and cases related to data privacy protection, *see also* Putra, Tegar Islami, et al. "Risks of Consumer Personal Data Protection at the Personal Data Processing Stage of E-Commerce Websites." *Journal of Private and Commercial Law* 8, no. 2 (2024): 110-128; Yusliwidaka, Arnanda, Muhammad Ardhi Razaq Abqa, and Khansadhia Afifah Wardana. "A Discourse of Personal Data Protection: How Indonesia Responsible under Domestic and International Law?." *Pandecta Research Law Journal* 19, no. 2 (2024): 173-202; Putra, Tegar Islami, et al. "Critically Reveal the Dimensions of Damage from Unauthorized Use of Personal Data (Study of Decision Number 78/Pid. Sus/2024/PN Tng)." *The Digest: Journal of Jurisprudence and Legisprudence* 5, no. 2 (2024): 231-262.

Pound's legal principle. In this context. Roscoe Pound showed the importance of law as a tool to achieve social justice and also the urgency to maintain a balance between individual rights and social interests. This was explained through the "Social Principle", stating that the main objective of the law is to serve the social interest and achieve social welfare.

Roscoe Pound considered the existence of a "*Principle of Freedom*," which must be limited when there is a conflict with public interest. Therefore, understanding legal limitations is considered important in the context of protecting the right to privacy and individual freedom. There was also a "*Principle of Legal Certainty*" which showed the importance of definite and consistent laws, necessary for the regulation of the right to privacy. This legal certainty enables individuals and companies to understand rights and obligations in the scope of electronic transactions that continue to grow.⁷ In general, Roscoe Pound's legal principles values are consistent with the desire to preserve privacy rights in electronic transactions.

The incorporation of Roscoe Pound's legal principle into the protection of privacy rights in electronic transactions is achieved through ITE Law. Although ITE Law has undergone several revisions, there is no clear path to achieving harmony with Roscoe Pound's legal principle.⁸ Therefore, there is a need to examine the protection of privacy rights in electronic transactions. In practice, the right to privacy should be protected by the state and guaranteed by law.⁹

B. Harmonizing Privacy Protection: Between Developments and Challenges

Personal data reflects the identity, symbols, codes, numbers, or letters that represent a person but are personal.¹⁰ The definition of personal data is generally used by several countries

⁷ Martinelli, et.al. "Perlindungan Hak Privasi dalam Era Digital: Harmonisasi Undang Undang Informasi Transaksi Elektronik dengan Prinsip-Prinsip Filosofi Hukum Roscoe Pound dalam Hukum Perikatan."

⁸ Anggita, Annisa Tri. "Implementasi Hukum Positif dalam Perlindungan Hak Sipil Digital Warga Negara di Era Kecerdasan Buatan." *Causa: Jurnal Hukum dan Kewarganegaraan* 6, no. 12 (2024): 81-90.

⁹ Wahyuni, "Perbedaan Pelindungan Data Pribadi dan Hak Privasi".

¹⁰ Latumahina, Rosalinda Elsina. "Aspek Hukum Perlindungan Data Pribadi di Dunia Maya." *Jurnal Gema Aktualita* 3, no. 2 (2014): 14-25.

in Europe and the United States which is better known as "personal information". In the contexts of transferring personal information, policy making, and citizens at the global level, the term "privacy" is more relevant. In this discussion, privacy means the rules governing the collection, use, and disclosure of information.¹¹ Entering the mid-20th century, the right to privacy began to be recognized as the most fundamental Human Right (HAM) in international, regional, and national legal instruments.¹² Basically, the concept of privacy was developed by Warren and Brandeis through the study entitled "The Right to Privacy". The study explained that the advancement and development of technology will raise public awareness of the right to enjoy life, hence, the personal life is not disturbed by other people or even the state.¹³ Therefore, the right to privacy requires protection and recognition through law.¹⁴ According to *Black's Law Dictionary* privacy is defined as follows:

*"The right to be left alone, the right of a person to be free from unwarranted publicity."*¹⁵

Several regional regulations in the world have included privacy protection in their legal systems, namely (1) *Universal Declaration of Human Rights* (UHDR) (2) *International Covenant on Civil and Political Rights* (ICCPR), (3) *European Covenant on*

¹¹ Richards, Neil M., and Woodrow Hartzog. "Taking Trust Seriously in Privacy Law." *Stanford Technology Law Review* 19, no. 3 (2016): 431-472.

¹² Enerstvedt, Olga Mironenko. *Aviation security, privacy, data protection and other human rights: Technologies and Legal Principles*. Vol. 37. (Cham: Springer, 2017). See also Haganta, Raphael. "Legal Protection of Personal Data as Privacy Rights of E-Commerce Consumers Amid the Covid-19 Pandemic." *Lex Scientia Law Review* 4, no. 2 (2020): 77-90; Putra, Tegar Islami, Nurul Fibrianti, and Mohammad Raziq Fakhrrullah. "Data protection impact assessment indicators in protecting consumer personal data on e-commerce platforms." *The Indonesian Journal of International Clinical Legal Education* 6, no. 1 (2024): 111-150.

¹³ Ferrera, Gerald R., et al. *Cyberlaw: Text and cases*. South-Western Thomson Learning, 2000.

¹⁴ Devi, Shinta. *Cyberlaw: Perlindungan Privasi atas Informasi Pribadi Dalam E-Commerce Menurut Hukum Internasional*. (Bandung: Widya Padjajaran, 2009).

¹⁵ Black, Henry Campbell, et al. *Black's law dictionary*. Vol. 196. St. Paul, MN: West Group, 1999.

*Human Rights (ECHR), (4) Council of Europe Convention for the Protection of Individuals concerning Processing of Personal Data, (5) Charter of Fundamental Rights of the European Union, (6) European Union General Data Protection (GDPR), and (7) Guidelines on the Protection of Privacy and Trans-border Flows of Personal Data (OECD).*¹⁶ At the international level, there are still no regulations that specifically explain the protection of privacy rights in electronic transactions. The presence of the UNCITRAL Model Law on Electronic Commerce 1996 only regulates the technicalities related to electronic transactions, specifically in the field of trade.

The majority of the regulations on privacy rights in electronic transactions are in European countries. This distinction arises from the fact that European countries view personal data (privacy) as a right that is inherent in every individual and is included in the realm of human rights. However, this is different from the United States which views personal data (privacy) as an object to be bought and sold.

Based on the explanation, there is a need for the implementation of privacy rights protection to be part of human rights, thereby ensuring recognition, respect, and protection of human dignity.¹⁷ Danrivanto Budhijanto explained that the protection of personal rights or privacy rights will increase human values, relationships between individuals and communities, independence or autonomy to exercise control to obtain appropriateness, as well as increase tolerance and distance from discriminatory treatment and limit government

¹⁶ Jufri, Muhammad Ariq Abir, and Akbar Kurnia Putra. "Aspek Hukum Internasional dalam Pemanfaatan Deepfake Technology Terhadap Perlindungan Data Pribadi." *Uti Possidetis: Journal of International Law* 2, no. 1 (2021): 31-57. See also Aradhana, Abdiel Abraar Arya, and Charles Sahalatua Pangaribuan. "Cyberbullying in Media Social: A Mainstreaming the Victim Protection Principles in Indonesian Criminal Justice System." *Indonesia Media Law Review* 1, no. 2 (2022): 99-122.

¹⁷ Fauzy, Elfian, and Nabila Alif Radika Shandy. "Hak Atas Privasi dan Politik Hukum Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi." *Lex Renaissance* 7, no. 3 (2022): 445-461.

power.¹⁸ The concept of protecting privacy rights inherent in each person can be formulated into several types, namely: ¹⁹

- 1) Privacy of Information
This contains privacy concerning various personal information owned by each person, such as data, medical records, electronic mail, electronic data encryption, and others.
- 2) Physical Privacy
This contains privacy regarding the right not to be pressured, searched, and arrested by the government which applies to individuals using the right to freedom of speech in public.
- 3) Privacy to Find Identity
This privacy determines the identity of an individual, enabling freedom to make autonomous choices without interference from other parties, such as abortion, suicide, changing religion, transgender, and others.
- 4) Privacy of Property
This aspect contains the right to property ownership, which includes the freedom of every individual to possess and protect an identity, intellectual, and physical property.

The concept of protecting the right to privacy inherent in each person can be divided into several types, namely:²⁰

- 1) Personal Information
This contains information related to a person, such as name, date of birth, school, parents' names, physical characteristics, and others.
- 2) Private Information
Private information is related to an individual but is not generally known and protected by law, such as grades on

¹⁸ Budhijanto, Danrivanto. *Hukum Telekomunikasi, Penyiaran dan Teknologi Informasi: Regulasi & Konvergensi*. (Bandung: PT Refika Aditama, 2010), page. 4.

¹⁹ Budhijanto, Danrivanto. "The Present and Future of Communication and Information Privacy in Indonesia." *Jurnal Hukum Internasional Universitas Padjadjaran* 2, no. 2 (2003).

²⁰ Nugraha, Rahadian Adi. "Analisis Yuridis Mengenai Perlindungan Data Pribadi dalam Cloud Computing System Ditinjau dari Undang-Undang Informasin dan Transaksi Elektronik". *Thesis*. (Depok: Universitas Indonesia, 2012).

academic transcripts, banking transaction records, diplomas, and others.

- 3) Personally Identifiable Information
Personally identifiable information is derived from an individual, such as habits, favorite things, political views, religion, and others.
- 4) Anonymized Information
Anonymized information refers to personal data that has been altered or transformed, rendering the available information non-identifiable and unrelated to the original data.
- 5) Aggregate Information
Aggregate information contains statistical information and is a combination of various information owned by an individual.

Despite the gap in the international order, the protection of privacy rights is an integral part of human rights. The UDHR set the *command standard of achievement for all peoples and all nations*. Specifically, Article 12 of the UHDR regulates the protection of privacy rights, namely “*No one shall be subjected to arbitrary interference with his privacy, family, or correspondence, nor to attack upon his honors and reputation. Everyone has the right to the protection of law against such interference or attacks.*”²¹ This article explains that privacy is an *umbrella term* connected to the protection of other rights, such as family, residence, correspondence on honor, and reputation.²² Moreover, the UHDR provides very broad protection regarding the protection of privacy rights, namely:²³

- 1) Physical Privacy, which aims to provide protection related to an individual's residence. Key protection includes the right to exclude others from entering another person's house without the owner's permission, protection against unwarranted search and seizure by the state, and freedom of unauthorized surveillance, such as wiretapping within the residence.

²¹ Morsink, Johannes. "The Universal Declaration of Human Rights: A Commentary." *Human Rights Quarterly* 17, no. 2 (1995): 398-402.

²² Morsink.

²³ Morsink.

- 2) Decisional Privacy aims to protect an individual's autonomy to make choices regarding personal life, including matters related to family. For example, an individual has the right to determine and manage the household without interference from others.
- 3) Dignity Privacy aims to protect the self-esteem of an individual, including good name and reputation.
- 4) Informational Privacy provides protection for individuals to control, manage, and safeguard personal data.

The concept of privacy rights protection in Indonesia has been included as part of human rights, as specified in Article 28G paragraph (1) of the 1945 Constitution of Indonesia and Law Number 39 of 1999 concerning Human Rights. The "*right to privacy*" is an intersection of the right to personal data and information protection, which has gone through a long evolution since the recognition of human rights.²⁴ The protection of privacy rights is mentioned in Article 17 of the ICCPR and was further reinforced by the Decision of the Constitutional Court (*Mahkamah Konstitusi*, MK). This decision stated that interference with personal, family, or home affairs is impermissible, and everyone has the right to legal protection.²⁵ Therefore, in contemporary times, the protection of privacy rights cannot be avoided. In the context of electronic transactions, the adequacy of existing protective regulations necessitates further examination.

C. Regulating of Privacy Rights Protection in Electronic Transactions

Discourse continues to surround the protection of privacy rights and personal data. As previously explained, the protection of privacy rights and personal data have the same objective, namely safeguarding the inherent right to privacy and personal data, which is an integral component of human rights. However,

²⁴ Ayu, Ananthia, Titis Anindyajati, and Abdul Ghoffar. "Perlindungan Hak Privasi atas Data Diri di Era Ekonomi Digital", *Report*. (Jakarta: Pusat Penelitian dan Pengkajian Perkara, dan Pengelolaan Perpustakaan, Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, 2019).

²⁵ Fauzy, and Shandy. "Hak Atas Privasi dan Politik Hukum Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi."

the concept in ITE and PDP Laws shows a distinction between the protection of privacy rights and personal data.

ITE Law serves as a foundation in Indonesia, providing a framework for protecting electronic data, as well as general and personal information. Therefore, ITE Law still does not contain regulations that specifically address the protection of privacy rights. ITE Law regulates the protection of privacy rights in an electronic system consisting of protection from unauthorized use, electronic system organizers, illegal access, and intervention.²⁶

The explanation of electronic data that forms the basis of privacy rights is in PP PSTE. According to PP PSTE, personal data refers to any information related to an individual, whether identified and identifiable, either, directly or indirectly through an electronic or non-electronic system. Through ITE Law, the protection of privacy rights requires that the use of personal data in electronic transactions should obtain the consent of the owner and whoever violates the provisions can be sued for the losses incurred. Therefore, to provide a sense of security for users of electronic transactions, ITE Law regulates the protection of privacy rights in Article 26 paragraph (1) of the 2016 ITE Law, as follows:

- 1) Personal rights are the right to enjoy a private life and be free from all kinds of interference.
- 2) Personal rights are the right to communicate with others without spying.
- 3) Personal rights are the right to monitor access to information about an individual's private life and data.

As stated in Article 26 of ITE Law and its explanation, the efforts and obligations to protect privacy rights that are required of relevant parties such as electronic system organizers or the government are not yet included in ITE Law.²⁷ Efforts to protect privacy rights should be realized immediately with the presence of PDP Law being a concrete step taken by the government to protect privacy rights. Although the primary focus is on personal

²⁶ Sinaga, Erlina Maria Christin, and Mery Christian Putri. "Formulasi Legislasi Perlindungan Data Pribadi dalam Revolusi Industri 4.0." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (2020): 237-256.

²⁷ Sinaga, and Putri.

data, PDP law shares a common underlying principle with ITE, namely the protection of privacy rights.

PDP Law is the answer to the demand for protecting individual privacy rights in the digital era, including in electronic transactions. PDP Law considers that the protection of privacy rights is intended to guarantee citizens's personal protection and foster community awareness, as well as guarantee recognition and respect for the importance of protecting privacy rights. Therefore, this law was formulated to protect individual rights in the community regarding the processing of personal data, both electronically and non-electronically.²⁸

The existence of PDP has indirectly provided adequate protection. Protection of privacy rights fosters community trust, thereby enabling individuals to share personal data for various public interests without being misused or violated. This regulation causes a balance between individual rights and the community represented by the state. Therefore, the rules on the protection of privacy rights contribute to the creation of order and progress in the community related to information technology. According to a previous study, PDP Law has indirectly accommodated the protection of privacy rights in electronic transactions.²⁹

The protection of privacy rights has been fulfilled by PDP Law using the concept of human rights, which is divided into two, namely:³⁰

- 1) *Non-Derogable Rights* (Absolute Rights) cannot be limited or restricted in implementation, fulfillment, and implementation by the state.³¹ Examples include the *right to life, freedom from torture, slavery, and retroactive criminal penalties, as well as the right to be a legal subject, freedom of thinking, belief, and religion*.
- 2) *Derogable Rights* may be reduced or limited in fulfillment and implementation by the state. These include freedom of peaceful assembly and association, the right to receive and

²⁸ Fauzy, and Shandy. "Hak Atas Privasi dan Politik Hukum Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi."

²⁹ See General Explanation of PDP Law Indonesia.

³⁰ Fauzy, and Shandy. "Hak Atas Privasi dan Politik Hukum Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi."

³¹ Marzuki, Suparman. *Hukum Hak Asasi Manusia*. (Yogyakarta: PUSHAM UII, 2007), p. 71.

provide information without regard to limits (either in writing or orally), and to express opinions. Therefore, the right to privacy is included in *derogable rights* whose fulfillment and implementation can be limited or reduced according to Article 15 of PDP Law.

The legal provisions on the protection of privacy rights are still partial and have not been able to provide optimal and effective protection. In addition to this explanation, the right to privacy can be understood as the right of every individual to control the disclosure and sharing of personal data, including the authority to regulate the terms and conditions for the implementation. Therefore, the concept of data protection is associated with protecting privacy rights.³²

The existence of privacy protection provisions in ITE and PDP Laws has not prevented numerous instances of personal data breaches in Indonesia. In April 2021, a massive data leak exposed the personal information of 533 million Facebook users worldwide, including Indonesians, with compromised data including full names, dates of birth, genders, passwords, locations, email addresses, and username identity (ID). A significant data breach occurred in the banking sector in July 2021, affecting approximately two million BRI Life insurance customers. The leaked data included sensitive information, such as ID card photos, bank account details, laboratory test results, and tax information.

In August 2021, the personal data of approximately 1.3 million e-Hac users was compromised, including full names, date of birth, occupations, personal photos, National Identity Numbers (NIK), passport numbers, COVID-19 test results, and telephone numbers.³³ The existence of cases of personal data leaks, the intensity of which was quite frequent during 2021, shows that the regulation of privacy rights protection is not strong enough. A thorough analysis of this regulation through the

³² Sinaga, and Putri. "Formulasi Legislasi Perlindungan Data Pribadi dalam Revolusi Industri 4.0."

³³ Jemadu, Liberty and Dicky Prastya, "Daftar Kasus Kebocoran Data di Indonesia selama 2021, Termasuk Sertifikat Vaksin Jokowi", *Online News*, <https://www.suara.com/tekno/2022/01/01/015822/daftar-kasus-kebocoran-data-di-indonesia-selama-2021-termasuk-sertifikat-vaksin-jokowi?page=all>, (January 1, 2022).

lens of existing legal theory may be necessary for the fundamental objectives of the law, as expressed by Roscoe Pound.

D. Harmonization with Roscoe Pound's Legal Principle

Roscoe Pound conceptualized law as a form of social engineering, based on the binding, coercive, and sanctioning nature. This enabled the law to shape the behavior of a community. Roscoe Pound's legal principle recognizes two interrelated and reciprocally influential conditions, namely social and legal change.³⁴

Roscoe Pound's thinking is consistent with the school of thought known as "Sociological Jurisprudence." This method focuses on "Legal Reality," which prioritizes the law's role in society over the formal structure. The perspective implies that legal reality reflects the public will. Sociological Jurisprudence facilitates a legitimate discourse between written law, which serves the needs of the community, and the realization of legal certainty through the intersection of "positivism law" and "living law." This discourse recognizes the role of community participation, specifically the public in shaping the formation and orientation of law.³⁵

According to Roscoe Pound, social control is essential as this reinforces community civilization, enabling regulation of anti-social behavior that contravenes established social order rules. Law is an instrument of the state that functions as a mechanism of social control. Roscoe Pound further stated that law alone was insufficient, requiring support from institutions, such as family, education, morality, and religion.³⁶ Law is a system of teachings consisting of ideal and empirical elements, which combines natural and positivistic law theories.³⁷

³⁴ Fuadi, Munir. *Teori-Teori Besar (Grand Theory) dalam Hukum*. (Jakarta: Kencana Prennamedia Group, 2013), p. 248.

³⁵ Fuadi.

³⁶ Pound, Roscoe. *Social Control through Law*. (London: Routledge, 2017).

³⁷ Lathif, Nazaruddin. "Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat." *PALAR (Pakuan Law Review)* 3, no. 1 (2017): 73-94.

A memorable concept from Roscoe Pound is the theory that court decisions can contain “balance” or reconcile conflicting social interests. One use of Roscoe Pound’s theory is in protecting privacy rights.³⁸ Therefore, Roscoe Pound’s legal principle is quite relevant when used to analyze the protection of privacy rights in electronic transactions.

An important aspect of Roscoe Pound’s legal principle is “*The Concept of Law as a Tool of Social Engineering*”. In this principle, Roscoe Pound argues that law should be used to achieve greater social objectives.³⁹ Indirectly, Roscoe Pound agrees that the main idea of law is not only maintaining regulations and punishing violators but also developing a good legal system for the community.⁴⁰

Roscoe Pound’s concept of law as social engineering implies that law should serve as a tool for community improvement and change. Law must adapt to social and economic shifts, rather than remaining stagnant or rigid. Roscoe Pound stresses the importance of “*Jural Postulates*”, fundamental assumptions, and “*The Concept of Law*”, which views law as a regulatory tool for human behavior in society. The legal principle has spawned a broader theory and perspective, which recognizes law as more than just a set of regulations. However, the law should function as a dynamic, socially useful tool that balances competing interests and keeps pace with progress.⁴¹

Roscoe Pound’s legal principle of law as a social engineering tool does not focus on justice as it is not considered an ideal form of social relations. The purpose is the adjustment of social relations, returning to the concept of social control, and the arrangement of behavior. This serves as a tool to satisfy human

³⁸ Di Filippo, Terry. "Pragmatism, Interest Theory and Legal Philosophy: The Relation of James and Dewey to Roscoe Pound." *Transactions of the Charles S. Peirce Society* 24, no. 4 (1988): 487-508; Archbold, Patricia. "Roe v. Wade and in Re Quinlan: Individual Decision and the Scope of Privacy's Constitutional Guarantee." *University of San Francisco Law Review* 12, no. 1 (1977): 111-153.

³⁹ McManaman, Linus J. "Social Engineering: The Legal Philosophy of Roscoe Pound." *St. John's Law Review* 33, no. 1 (2013): 1-47.

⁴⁰ Martinelli, et.al. "Perlindungan Hak Privasi dalam Era Digital: Harmonisasi Undang Undang Informasi Transaksi Elektronik dengan Prinsip-Prinsip Filosofi Hukum Roscoe Pound dalam Hukum Perikatan."

⁴¹ Martinelli, et.al.

desires and avoid "tension," such that its essence is in the concept of "interest."

Legal order, as discussed in Roscoe Pound's concept, is the recognition of various interests while adhering to established limitations. The legal rules developed and applied through judicial processes had positive outcomes by respecting interests in the acknowledged and established boundaries.⁴² The next principle is the theory of balance of interests, which was based on Roscoe Pound's statement that law should change the community and solve social problems. This theory focuses on the importance of determining the right balance between the different interests in a legal case.⁴³ Subsequently, the interests that should be protected by law were classified by Roscoe Pound, namely:⁴⁴

- 1) Public Interest
 - a. The interests of the state as a legal entity.
 - b. The interests of the state as a guardian of the interests of the community.
- 2) Community Interest
 - a. Interests in peace and order.
 - b. Protection of social institutions.
 - c. Prevention of moral decline.
 - d. Prevention of violations of rights.
 - e. Social welfare.
- 3) Private Interest
 - a. Individual interests.
 - b. Family interests.
 - c. Property rights interests.

According to Mochtar Kusumaatmadja, the concept of law as social engineering is broader in scope and applicability than in the United States. This occurs because legislation plays a more prominent role in the process of legal reform in Indonesia, with jurisprudence also contributing. The rejection of the mechanism method is widely opposed in Indonesia rather than the concept

⁴² Lathif, "Teori Hukum Sebagai Sarana Alat untuk Memperbaharui atau Merekayasa Masyarakat."

⁴³ Martinelli, et.al. "Perlindungan Hak Privasi dalam Era Digital: Harmonisasi Undang Undang Informasi Transaksi Elektronik dengan Prinsip-Prinsip Filosofi Hukum Roscoe Pound dalam Hukum Perikatan."

⁴⁴ Lathif, "Teori Hukum Sebagai Sarana Alat untuk Memperbaharui atau Merekayasa Masyarakat."

of legalism. Mochtar Kusumaatmadja prefers the term "*means*" over "*tool*" in describing Roscoe Pound's legal principle. Consequently, Kusumaatmadja proposes the concept of law as a means of social reform, manifesting in legislation, jurisprudence, or a combination of both. Examples of legislation functioning as a means to reform traditional communities' mental attitudes towards modernity include the prohibition on using *Koteka* in Papua, the requirement for certificate issuance, and others.⁴⁵

The balance of interests is a theory that elaborates on Roscoe Pound's argument that personal and state interests must be equalized. In this context, individual interests can be considered as part of the broader community when viewed from a perspective. Therefore, assessing conflicts of interest must consider the perspective of the community to achieve harmony. According to Roscoe Pound, community interests are significant and judges must maintain balance to achieve social justice.⁴⁶ Examples include the renewal and creation of new laws, which adapt to changes in the times and pay attention to the needs of the community in each era.

Harmonizing the protection of privacy rights in electronic transactions is significant, incorporating the principle of law as a means of social reform. ITE Law serves as a representation of the rules governing electronic transactions in Indonesia. This law is used for social reform, aiming to improve the welfare of the community. Electronic transactions must prioritize developing a safe, productive, and beneficial internet environment, rather than solely punishing violators. The concept of social reform focuses on the need for laws that adapt to social and technological progress. These changes can only be accommodated by dynamic laws. The protection of privacy rights is regulated by PDP Law. However, Article 5 of the PDP Law limits the protection of privacy rights. From Roscoe Pound's perspective, ITE and PDP Laws can serve as state agents directing the community toward achieving stated objectives.

⁴⁵ Putra, Marsudi Dedi. "Kontribusi Aliran Sociological Jurisprudence Terhadap Pembangunan Sistem Hukum Indonesia." *Likhitaprajna* 16, no. 2 (2014): 45-59.

⁴⁶ Al Alawi, Moh Nauval Karim. "Implementasi Teori Law as a Tools of Social Engineering Mahkamah Konstitusi sebagai Instrumen Kontrol Sosial dalam Sistem Hukum Indonesia." *Indonesian Journal of Law and Justice* 2, no. 2 (2024): 1-7.

These laws aimed to develop a sense of security through the protection of privacy rights in electronic transactions, thereby fostering a secure Internet environment.

The theory of balance of interests suggests that electronic transactions must be consistent with public, community, and personal interests. Policymakers, including the government, are expected to balance the interests of the state, community, and individuals. The state provides a framework for electronic transactions, and every level of interest must be considered. The theory of balance of interests also plays a significant role in safeguarding privacy rights. In this context, the interests of the state as a legal entity and as a guardian of the community must be considered. Community interests, including maintaining peace and order, are also relevant. This implies that the community desires regulations protecting privacy rights. There is also an expectation that the evolving culture will not be hindered by the protection of privacy rights as stipulated in PDP Law. The existence of regulations related to protecting privacy rights in electronic transactions, as listed in ITE and PDP Laws, provides a form of legal certainty in Indonesia. From the perspective of Roscoe Pound's legal principle, both the law as a means of social reform and the balance of interests have been fulfilled. However, this concept raises the question of whether Roscoe Pound has fulfilled its primary purpose, namely directing the community toward a mutually agreed-upon objective. This inquiry needs to be further explored, focusing on the achievement of the law purpose in protecting privacy rights in electronic transactions.

E. Conclusion

In conclusion, ITE Law had regulated the implementation of privacy rights protection but not implicitly. The regulation of exclusive privacy rights protection was contained in the PDP Law. In this context, there were two regulations for privacy rights protection in electronic transactions in Indonesia. International protection of privacy rights was regulated through (1) UHDR, (2) ICCPR, (3) ECHR (4), Council of Europe Convention for the Protection of Individuals with Regard to Processing of Personal Data (5), Charter of Fundamental Rights of the European Union (6), GDPR, and (7) OECD.

Harmonization of privacy rights protection in electronic transactions with Roscoe Pound's legal principle was analyzed in ITE and PDP Laws. Based on Roscoe Pound's legal perspective, these regulations could represent the objectives of the legal concept of social engineering and balance of interests. The remaining question was how the government could implement these regulations appropriately and correctly. Successful execution would fulfill the primary purpose of the law, as articulated by Roscoe Pound. Recommendations for policymakers were important, as policies were designed to achieve peace and order in the community. As the community evolves, policies must be continually updated to remain effective. To address this, policymakers should take concrete steps to conceptualize and implement policies that balance the interests of the state, community, and individuals, which could be a prospect for future studies.

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