

# The Right to be Forgotten: Regulation of Personal Data Deletion in Indonesia

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**Abstract :** *The purpose of this paper is to analyze the regulation of personal data deletion in Indonesia as a form of protection for the right to be forgotten, and subsequently, the process of personal data deletion that exists in Indonesia. This paper discusses in detail the right to be forgotten. The research method used in this paper is normative legal research. It employs a conceptual approach and a legislative approach. The exploration of legal materials is conducted through document studies. The analysis in this paper is qualitative. The results of this research explain that the concept of the "right to be forgotten" refers to the individual's ability to request the deletion of their personal data from public databases, particularly information that could harm their reputation, privacy, or even social life. In the context of the European Union, this concept is outlined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. Article 7 emphasizes the importance of respecting private and family life, which is a fundamental aspect of human rights. Meanwhile, Article 8 asserts the protection of personal data, stating that data must be processed fairly and for specific purposes, based on consent or a legitimate legal basis. The process of personal data deletion in Indonesia currently lacks specific regulations, thus relying on agreements between personal data owners and data controllers, in accordance with the principle of *pacta sunt servanda*.*

**Keywords :** *The Right to Be Forgotten, Personal Data, Deletion;*

**Abstrak :** Tujuan tulisan ini adalah menganalisis tentang pengaturan penghapusan data pribadi di Indonesia sebagai bentuk perlindungan terhadap hak untuk dilupakan, dan selanjutnya mengenai proses penghapusan data pribadi yang ada di Indonesia. Tulisan ini membahas secara rinci tentang hak untuk dilupakan. Metode penelitian yang digunakan dalam tulisan ini adalah metode penelitian hukum normatif. Dengan menggunakan pendekatan konseptual, dan pendekatan perundang-undangan. Penelusuran terhadap bahan hukum dilakukan dengan studi dokumen. Analisis pada tulisan ini adalah kualitatif. Hasil dari penelitian ini menjelaskan bahwa Konsep "right to be forgotten" merujuk pada kemampuan individu untuk meminta penghapusan data pribadi mereka dari basis data publik, terutama informasi yang dapat merugikan reputasi, privasi, atau bahkan kehidupan sosial mereka. Dalam konteks Uni Eropa, konsep ini dituangkan dalam Pasal 7 dan Pasal 8 dari Charter of Fundamental Rights of the European Union. Pasal 7 menekankan pentingnya penghormatan terhadap kehidupan pribadi dan keluarga, yang merupakan aspek fundamental dari hak asasi manusia. Sementara itu, Pasal 8 menegaskan perlindungan data pribadi, yang menyatakan bahwa data harus



diproses secara adil dan untuk tujuan tertentu, berdasarkan persetujuan atau dasar hukum yang sah. Proses penghapusan data pribadi di Indonesia belum memiliki aturan khusus, sehingga dalam proses penghapusan didasari dengan perjanjian antara pemilik data pribadi dan penguasa data pribadi hal ini sesuai dengan asas *pacta sunt servanda*.

**Kata kunci :** Hak untuk Dilupakan, Data Pribadi, Penghapusan

## I. INTRODUCTION

In today's era, as technology rapidly develops, personal privacy has certainly become a vital issue. We can see that personal data can easily be exposed on social media. According to the announcement from the Indonesian Internet Service Providers Association (APJII), the number of internet users in Indonesia in 2024 reaches 221,563,479 people. This figure represents 78.19% of Indonesia's total population of 275.77 million people. This clearly indicates that the internet is used by the majority of our population in Indonesia.<sup>1</sup>

The history of privacy rights can be traced back to an important article written by Samuel D. Warren and Louis D. Brandeis, published in the *Harvard Law Review* on December 15, 1890. This article marked the beginning of conceptualizing the right to privacy as a legal right worthy of protection. In the context of a society experiencing social and technological changes, particularly with the emergence of print media and photography, Warren and Brandeis felt the need for protection of individuals' private lives from unauthorized surveillance.<sup>2</sup> The article explained that privacy is a fundamental right that must be recognized and protected by law, ensuring that no one can interfere with another person's private life without consent. This concept gained widespread attention and formed the foundation for the development of privacy law in many countries.

The concept of privacy rights has increasingly gained recognition at the international level through the Universal Declaration of Human Rights adopted in 1948. Specifically, Article 12 states that

"no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence."

This article reflects the universal acknowledgment of the importance of privacy and the need for protection of individuals from unreasonable intrusion. This declaration has become a reference for many countries in formulating regulations related to human rights, including the right to privacy, which is considered an integral part of human dignity.<sup>3</sup>

In Indonesia, the protection of privacy rights is clearly regulated in the constitution. Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that everyone has the right to personal, family, honor, dignity, and property protection that is

<sup>1</sup> Asosiasi Penyelenggara Jasa Internet Indonesia, "APJII Jumlah Pengguna Internet Indonesia Tembus 221 Juta Orang," *Apji.or.Id*, last modified 2024, <https://apji.or.id/berita/d/apji-jumlah-pengguna-internet-indonesia-tembus-221-juta-orang>.

<sup>2</sup> Warren and Brandeis, "The Right to Privacy," *Harvard Law review* IV, no. 5 (1890).

<sup>3</sup> Denda Ginanjar and Arief Fahmi Lubis, "Urgensi Perlindungan Data Pribadi Dalam Menjamin Keamanan Data," *Jurnal Hukum dan HAM West Science* 01, no. 01 (2022): 21–26.

under their control. This affirmation indicates that privacy rights are recognized as an important part of human rights in Indonesia. In this context, the state has the responsibility to guarantee and protect its citizens' privacy rights from various forms of violations, whether by the state or third parties.<sup>4</sup>

The right to be forgotten is one form of privacy right. The right to be forgotten is a legal concept that gives individuals the right to request the deletion of their personal data from databases or online services, especially when the data is no longer relevant, accurate, or desired.<sup>5</sup>

The concept of the "right to be forgotten" first emerged in a landmark ruling by the Court of Justice of the European Union (CJEU) in the case of *Mario Costeja Fernández and Agencia Española de Protección de Datos (AEPD) (Spanish Data Protection Agency) against Google Spain SL and Google Inc.* This case began when Spanish entrepreneur Mario Costeja requested the removal of online information regarding debts he had in the past, which appeared in Google search results. Costeja felt that this information was no longer relevant and harmed his reputation, disrupting his daily life.<sup>6</sup>

The ruling determined that individuals have the right to request the deletion of personal data that could be harmful to them, especially if the data is no longer relevant or necessary. This decision affirmed that information available on the internet does not have to be permanent and that individuals have the right to protect their privacy. In this context, the right to be forgotten is considered an important step in protecting individuals from the negative impacts that outdated information can have, which no longer reflects their current circumstances.

This decision has wide-ranging impacts on how technology companies, particularly search engines, manage personal data. Following this ruling, Google and other companies are required to consider requests for information deletion from users and assess whether the data should be removed based on relevance and public interest. While the right to be forgotten provides additional protection for individuals, its implementation also presents challenges, especially in balancing privacy rights with freedom of expression and public access to information.

The case of Mario Costeja marked a historical milestone in the development of privacy law in Europe and around the world, prompting further discussions on how information is managed in the digital age. This ruling not only serves as a foundation for data protection policy in the European Union but also inspires other countries to consider similar regulations in the context of individual privacy protection online. Thus, the concept of the right to be forgotten is becoming increasingly relevant in maintaining a balance between individual privacy and other rights in this information era. This ruling laid the groundwork for the right

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<sup>4</sup> Alga Soraja, "Perlindungan Hukum Atas Hak Privasi Dan Data Pribadi Dalam Prespektif HAM," *Prosiding Seminar Nasional Kota Ramah Hak Asasi Manusia* (2021): 20–32.

<sup>5</sup> Moira Paterson and Maeve McDonagh, "Data Protection in an Era of Big Data: The Challenges Posed by Big Personal Data," *Monash University Law Review* 44, no. 1 (2018): 1–31, [https://www.monash.edu/\\_data/assets/pdf\\_file/0009/1593630/Paterson-and-McDonagh.pdf](https://www.monash.edu/_data/assets/pdf_file/0009/1593630/Paterson-and-McDonagh.pdf).

<sup>6</sup> Vagelis papakonstantinou Hert, Paul De, "Right to Be Forgotten," *Elgar Encyclopedia of Law and Data Science* (Elgar Encyclopedia of Law and Data Science, 2022).

to be forgotten as outlined in Article 17 of the General Data Protection Regulation (GDPR) in the European Union.<sup>7</sup>

Currently, Indonesia has regulations in place for the protection of personal data, aimed at safeguarding individual privacy in the digital age. The two main regulations that form the basis for this protection are Law No. 1 of 2024 on Information and Electronic Transactions and Law No. 27 of 2022 on Personal Data Protection. These laws provide a comprehensive legal framework to protect citizens' personal information and establish individuals' rights concerning their data. In this context, one important aspect to consider is the regulation regarding the right to be forgotten, which empowers individuals to request the deletion of personal data that is no longer relevant or harmful.

Law No. 27 of 2022 regulates various rights held by data subjects, including the right to access, correct, and delete their personal data. In its articles, this law states that individuals have the right to request the deletion of personal data if it is no longer necessary for its processing purposes, or if the individual withdraws their previously given consent. This aligns with the fundamental principle of the right to be forgotten, which emphasizes that information that is no longer relevant or accurate should not be published permanently.<sup>8</sup> Although the concept of the right to be forgotten has not yet been fully explicitly regulated in existing regulations, the provisions in the Personal Data Protection Law provide a legal foundation in Indonesia. The background outlined above is important to understand how the regulation of personal data deletion in Indonesia serves as a form of protection for the right to be forgotten and how the process of personal data deletion works in Indonesia.<sup>9</sup>

The personal data deletion referred to in this study specifically concerns the deletion of personal data that appears on various websites and online platforms available on the internet, including but not limited to information published on social media, blogs, forums, and other websites. The focus of this research is to explore the procedures and policies related to the deletion of such information, with the aim of providing a deeper understanding of how individuals can manage and protect their personal data in an increasingly complex and rapidly evolving online environment as an effort to understand the right to be forgotten.

This research has a similar topic to previous studies on the right to be forgotten. The fundamental difference between this study and the research conducted by Karunia Fitri Rahmadani and M. Darin Arif Mu'allifin lies in the focus of the analysis. This study specifically emphasizes the regulation of personal data deletion as a form of the right to be forgotten in accordance with the latest provisions of Law No. 27 of 2022 on Personal Data Protection, aiming to understand how this regulation applies in the context of personal data deletion as a means of fulfilling the right to be forgotten. Meanwhile, the research by

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<sup>7</sup> CYMONE GOSNELL, "The General Data Protection Regulation: American Compliance Overview and the Future of the American Business," *Journal of Business & Technology Law* 15, no. 1 (2019): 165–187, <http://search.ebscohost.com/login.aspx?direct=true&db=buh&AN=142055261&site=ehost-live>.

<sup>8</sup> Hendrawan Agusta, "Keamanan Dan Akses Data Pribadi Penerima Pinjaman Dalam Peer to Peer Lending Di Indonesia," *Krtha Bhayangkara* 15, no. 1 (2021): 11–38.

<sup>9</sup> Siti Yuniarti, "Perlindungan Hukum Data Pribadi Di Indonesia," *Business Economic, Communication, and Social Sciences (BECOSS) Journal* 1, no. 1 (2019): 147–154.

Rahmadani and Mu'allifin discusses the basis of Law No. 19 of 2016, which is an amendment to Law No. 11 of 2008 on Electronic Information and Transactions.<sup>10</sup>

The subsequent research conducted by Hartanto, Rudad Noferani, and Muhamad Afghan Ababil, titled "The Problematic Nature of the Right to be Forgotten in the Electronic Information and Transactions Law (Human Rights and Public Transparency Perspective)," differs in focus and scope of regulation being studied. This study specifically highlights the regulation of personal data deletion as a form of the right to be forgotten within the framework of Law No. 1 of 2024 on Electronic Transactions and Information, as well as Law No. 27 of 2022 on Personal Data Protection, and how the process of personal data deletion works. In contrast, Hartanto and colleagues focus more on the problematic nature of the right to be forgotten in the context of the Electronic Information and Transactions Law (ITE Law), with an approach leaning more towards the perspective of human rights and public transparency.<sup>11</sup>

The purpose of this writing is to analyze the regulation of personal data deletion in Indonesia as a form of protection for the right to be forgotten, and subsequently, the process of personal data deletion in Indonesia. This writing discusses in detail the right to be forgotten, particularly concerning the deletion of personal data as viewed from Law No. 1 of 2024 on Electronic Transactions and Information and Law No. 27 of 2022 on Personal Data Protection. Additionally, it covers the concept of the right to be forgotten and, thirdly, the process of personal data deletion that exists in Indonesia.

## II. RESEARCH METHOD

This research employs a normative legal research method, which includes various approaches: conceptual, legislative, and analytical. In this study, the process of searching for legal materials is conducted through document studies, allowing the researcher to collect and analyze various relevant legal sources. The analysis used in this research is qualitative, focusing on an in-depth understanding of the context and meaning of the obtained data.<sup>12</sup> According to Peter Mahmud Marzuki, normative legal research is a process designed to identify and discover existing legal regulations, doctrines, and applicable legal principles. The aim of this approach is to address legal issues arising in society by referring to existing legal foundations. Therefore, this research seeks not only to gather information but also to provide a broader understanding of how the law functions in resolving issues faced by society. Through this approach, the researcher can examine various legal aspects in depth and systematically. By using the normative legal method, this research aims to make a significant contribution to the development of understanding regarding law and related policies, as well

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<sup>10</sup> Karunia Fitria Ramadaani and M. Darin Arif Muallifin, "Analisis Yuridis Pengaturan Hak Untuk Dilupakan (Right To Be Forgotten) Dalam Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," *Legacy: Jurnal Hukum dan Perundang-Undangan* 3, no. 1 (2023): 18–41.

<sup>11</sup> Hartanto Hartanto, Rudad Noferani, and Muhamad Afghan Ababil, "Problematika Hak Untuk Dilupakan Dalam Undang-Undang Informasi Dan Transaksi Elektronik (Perspektif Ham Dan Transparansi Publik)," *Justitia et Pax* 39, no. 2 (2023): 365–388.

<sup>12</sup> I Made Pasek Diantha, *Metode Penelitian Hukum Normatif Dalam Justifikasi Teori* (Jakarta: PT. Karisma Putra Utama, 2016).

as to provide solutions to issues faced in a social and legal context.<sup>13</sup> Thus, the results of this research are expected to provide useful recommendations for the development of better regulations and legal practices in the future.

### III. RESULT AND DISCUSSION

#### The Concept of The Right to be Forgotten

The concept of the "right to be forgotten" has become an increasingly important global concern in today's digital era, where information can spread rapidly and is difficult to delete. This right refers to the ability of individuals to request the deletion of their personal data from public databases, especially information that could harm their reputation, privacy, or even social life. In the context of the European Union, this concept is articulated in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union.<sup>14</sup> Article 7 emphasizes the importance of respect for private and family life, which is a fundamental aspect of human rights. Meanwhile, Article 8 reinforces the protection of personal data, stating that data must be processed fairly and for specific purposes, based on consent or legitimate legal grounds.

Paul de Hert, a legal expert focusing on privacy and data protection, explains the concept of the right to be forgotten as part of efforts to protect individuals from the negative impacts caused by information circulating online. According to de Hert, the right to be forgotten functions not only as a mechanism for deleting personal data but also as an acknowledgment of individuals' changing identities over time. In the digital context, where information can be easily accessed and disseminated, it is essential for individuals to have control over information related to themselves.<sup>15</sup>

De Hert emphasizes that the right to be forgotten is a response to the challenges posed by the permanent and easily accessible nature of information on the internet. Thus, this right provides individuals with the opportunity to remove information that is no longer relevant or that could harm their reputation. This right applies not only to outdated data but also to data that may have once been valid for publication but is now considered harmful.<sup>16</sup>

In his view, the right to be forgotten also serves to balance the individual's right to protection with the public's right to access information. De Hert points out that while there is a public interest in accessing information, the individual's right to maintain their privacy and personal integrity should take precedence, especially when the information no longer reflects reality or has become a source of discrimination. In a legal framework, de Hert refers to the General Data Protection Regulation (GDPR) adopted in the

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<sup>13</sup> Jonaedi Efendi and Prasetyo Rijadi, *Metode Penelitian Hukum Normatif Dan Empiris*, Edisi Kedu. (Jakarta: Penerbit Kencana, 2022).

<sup>14</sup> Sintong Arion Hutapea, "Right To Be Forgotten Sebagai Bentuk Rehabilitasi Bagi Korban Pelanggaran Data Pribadi," *Jurnal Jurisprudencia* 1, no. 1 (2021): 1–10.

<sup>15</sup> Hert, Paul De, "Right to Be Forgotten."

<sup>16</sup> Ibid.

European Union, which includes provisions on the right to be forgotten.<sup>17</sup> He argues that the GDPR provides a clear legal basis for submitting data deletion requests and creates an obligation for data controllers to consider such requests seriously. However, he also notes the challenges in implementing this right, including a clear definition of the types of data that can be deleted and the processes that must be followed to do so.<sup>18</sup>

The right to be forgotten is highly relevant amid the rapid development of information and communication technology. Information uploaded to the internet is often accessible to anyone and can spread without limits. This creates significant challenges for individuals who may have been involved in unfortunate or controversial events. For example, someone who has faced legal issues in the past may continuously be reminded of that because the information remains available online. This can negatively impact their professional and personal lives, leading to prolonged social stigma. In this context, the right to request the deletion of such information becomes an important tool for protecting individual dignity and providing a second chance.

Furthermore, the right to be forgotten also reflects the importance of individual control over their personal data. In an increasingly connected world, where personal data is often processed by large companies and digital platforms, empowering individuals to control information related to themselves is essential. When personal data is processed without clear consent or legitimate purposes, it not only violates privacy rights but can also lead to serious violations of human rights. Therefore, Article 8 of the Charter of Fundamental Rights emphasizes the need for fair and transparent data processing, allowing individuals to feel safe and protected in their use of personal information.

However, the implementation of the right to be forgotten is not without challenges. One of the main issues is the balance between the individual's right to protect their privacy and the public's interest in knowing information. For instance, information related to legal violations or actions harmful to society may be considered important to remain accessible to the public. In this context, there is a risk that the application of the right to be forgotten could be used to conceal information that should be known by the public. Therefore, there needs to be clear criteria regarding when and how this right can be applied. This also presents a challenge for legal institutions and regulators to ensure that the implementation of this right is not misused while maintaining the necessary transparency in a democratic society.<sup>19</sup>

The concept of the "right to be forgotten" is becoming increasingly relevant in the context of the International Covenant on Civil and Political Rights (ICCPR), established by the United Nations General Assembly on December 16, 1966. The ICCPR governs

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<sup>17</sup> Shaun G Jamison, "Creating a National Data Privacy Law for the United States," *Cybaris: An Intellectual Property Law Review* 10, no. 1, Article 2 (2019): 1–42, <https://open.mitchellhamline.edu/cybaris/vol10/iss1/2>.

<sup>18</sup> Bradyn Fairclough, "Privacy Piracy: The Shortcomings of the United States' Data Privacy Regime and How to Fix It," *Journal of Corporation Law* 42, no. 2 (2016): 461.

<sup>19</sup> Wolfgang Kerber, "Digital Markets, Data, and Privacy: Competition Law, Consumer Law, and Data Protection Joint Discussion Paper Series in Economics by the Universities of Wolfgang Kerber Digital Markets, Data, and Privacy: Competition Law, Consumer Law, and Data," no. 14 (2016).

various fundamental civil and political rights, including the right to personal freedom and security. Within this framework, the right to be forgotten can be understood as part of the protection of individual privacy and dignity.<sup>20</sup> In a digital era characterized by the rapid and widespread dissemination of information, individuals often face challenges related to their personal data being publicly available. Information that could be harmful, such as legal records or unpleasant past events, can be continually accessed by others, potentially damaging their reputation and personal life.<sup>21</sup>

The right to be forgotten provides individuals with greater control over their personal data, allowing them to request the deletion of irrelevant information or information that may have negative repercussions. This aligns with the principles contained in the International Covenant on Civil and Political Rights (ICCPR), where everyone has the right to be protected from information that could disrupt their security and personal freedom. In this context, the right to be forgotten not only protects individual privacy but also serves to reduce the social stigma that can arise from publicly circulated information. With this right, individuals who have experienced mistakes or difficult situations in the past can have the opportunity to start anew without the burden of intrusive information.<sup>22</sup>

Personal data protection in Indonesia is regulated by several regulations that emphasize the importance of respecting individual privacy. One of the main legal foundations is Article 29 of Law Number 39 of 1999 on Human Rights, which states that:

“Everyone has the right to personal protection, family, honor, dignity, and property rights.”

In this context, personal data protection is not only a legal issue but also an integral part of respecting human rights. This article affirms that individuals have the right to be protected from the misuse of personal data that may harm them, and ensures that information relating to a person's identity and private life is managed properly and not misused.

Additionally, in the 1945 Constitution, Article 28G Paragraph (1) explicitly states that:

“Everyone has the right to personal data protection.”

This explanation shows Indonesia's constitutional commitment to protecting individual privacy amid rapid advancements in information technology. The protection provided by these two regulations emphasizes that the right to privacy is one of the fundamental pillars in upholding human dignity. Thus, every individual has the right to

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<sup>20</sup> Nahuel Maisley, “The International Right of Rights? Article 25(a) of the ICCPR as a Human Right to Take Part in International Law-Making,” *European Journal of International Law* 28, no. 1 (2017): 89–113.

<sup>21</sup> *Ibid.*

<sup>22</sup> Oriola O. Oyewole, “Navigating the Waters: International Law, Environment and Human Rights,” *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 6, no. 1 (2021): 1–12.



know how their personal data is collected, used, and stored.<sup>23</sup> These regulations also serve as a foundation for developing policies and practices aimed at ensuring that personal data is not only protected but also managed with principles of transparency and accountability.

Article 26 Paragraph (1) of Law Number 1 of 2024 on Information and Electronic Transactions (ITE Law) states that the use of personal information through electronic media must be done with the consent of the individual concerned, unless otherwise specified by legislation.

Article 17 of the General Data Protection Regulation (GDPR) in the European Union, which came into effect on May 25, 2018, represents a significant effort to protect individual privacy amid rapid developments in information technology. Article 17 grants data owners the right to request data controllers to delete their personal data without undue delay. The concept of the right to be forgotten emerged in response to public concerns about the dissemination of inaccurate or harmful information that may remain available online. In the digital age, information about individuals—whether positive or negative—is often stored in databases that are widely accessible. This has the potential to damage an individual's reputation, career, and personal life, especially if the information relates to past mistakes or situations. By granting the right to request data deletion, the GDPR provides individuals with greater control over the information related to them, allowing them to restore their dignity and reputation.<sup>24</sup>

Article 17 of the GDPR outlines several conditions under which data owners can request the deletion of their personal data. First, if the personal data is no longer necessary for the purposes for which it was collected or processed. This means that when the data is no longer relevant or useful, individuals have the right to request its deletion. Second, if individuals withdraw their consent and there is no other legal basis for processing the data, they are entitled to request deletion. Third, if individuals believe that their personal data is being processed unlawfully, they can request that the data be deleted. Fourth, if the data needs to be deleted to comply with applicable legal obligations, individuals have the right to apply for deletion.

It is important to note that the right to be forgotten is not absolute. There are exceptions where data controllers are not required to delete data, such as when processing is necessary to comply with legal obligations or for public interest, such as in cases related to public safety or freedom of expression. Therefore, while the right to be forgotten gives individuals greater control over their personal data, it also requires a balance between individual rights and broader public interests.<sup>25</sup>

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<sup>23</sup> Julian Schneider, "The Origins and Future of International Data Privacy Law: The Origins and Future of International Data Privacy Law," *UC Law SF International Law Review* 47, no. 1 (2024): 1–32.

<sup>24</sup> Komal Batool Syed Khurram Hussain Naqvi, "A Comparative Analysis between General Data Protection Regulations and California Consumer Privacy Act," *Journal of Computer Science, Information Technology and Telecommunication Engineering* 4, no. 1 (2023): 326–332.

<sup>25</sup> Yahya Ziqra, Mahmul Siregar, and Jelly Leviza, "Analisis Hukum General Data Protection Regulation (GDPR) Terhadap Data Pribadi Konsumen Dalam Melakukan Transaksi Online," *Iuris Studia: Jurnal Kajian Hukum* 2, no. 2 (2021): 330–336.

The case involving Google Spain SL and Google Inc. against the Agencia Española de Protección de Datos (AEPD) and Mario Costeja González at the European Court is a landmark case that defines the understanding and implementation of the concept of the "right to be forgotten" in Europe. In its ruling on May 13, 2014, the European Court stated that individuals have the right to request the deletion of their personal data from search results indexed by search engines if the information is deemed harmful, irrelevant, or no longer relevant to current circumstances. Mario Costeja González, as the plaintiff, felt harmed by the inclusion of information about his past bankruptcy published online and argued that it did not reflect his current circumstances.<sup>26</sup>

The court emphasized that although the information was published lawfully, search engine operators have a responsibility to protect individual privacy. This ruling refers to Directive 95/46/EC, which governs the protection of personal data and the rights of individuals regarding the processing of their data. Articles 12 and 14 of the directive grant data subjects the right to access their personal data and to object to harmful data processing. In this context, the court highlighted that when searches are conducted based on an individual's name, the resulting information can provide a comprehensive picture of that individual's private life, which may potentially harm their privacy.

One crucial element of this decision is the emphasis on balancing the right to information with the right to privacy. While society has an interest in accessing information, the individual's right to protect their privacy must be prioritized, especially when the information in question is no longer relevant or harmful. The court also established that search engine operators are considered data controllers, responsible for ensuring that their activities comply with the data protection provisions set forth in European law.<sup>27</sup>

This decision paves the way for data owners to submit requests for the removal of information deemed inappropriate. If a court or local data protection authority determines that the information is indeed no longer relevant, the search engine operator is required to remove the links from search results. This creates challenges for search engines in deciding which information should be deleted and which should remain accessible to the public. In this context, the court asserted that although the information had been published lawfully, its impact on individual privacy rights must be taken into account.<sup>28</sup>

### **The Process of Deleting Personal Data in Indonesia**

In Indonesia, the deletion of personal data is only regulated in Article 8 of Law No. 27 of 2022 on Personal Data Protection, which states that:

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<sup>26</sup> Hutapea, "Right To Be Forgotten Sebagai Bentuk Rehabilitasi Bagi Korban Pelanggaran Data Pribadi."

<sup>27</sup> Irene Kull, "Withdrawal from the Consent to Process Personal Data Provided as Counter-Performance: Contractual Consequences," *Law: Journal of the University of Latvia*, no. 13 (2020): 33–49.

<sup>28</sup> Sinta Rosadi, "Protecting Privacy On Personal Data In Digital Economic Era : Legal Framework In Indonesia," *Branjaya Law Journal* 5, no. 2 (2018): 143–157.

"Data Subjects have the right to terminate the processing, delete, and/or destroy their Personal Data in accordance with the provisions of applicable laws and regulations."

This explanation lacks further detail due to the absence of government regulations to implement this rule. As a result, the process of deleting personal data in Indonesia is based on agreements made by the parties involved.

According to Article 1313 of the Civil Code, a contract is "an act by which one or more persons bind themselves to one or more other persons." R. Subekti also defines a contract as an event where one person promises to another, or where both parties promise to do something. The contract that is formed creates rights and obligations for the parties who bind themselves to it.<sup>29</sup>

The agreements made by the parties must consider several legal requirements, which are outlined in Article 1320 of the Civil Code. The valid requirements for a contract include:

a) Mutual Consent

The mutual consent mentioned here must not occur due to error or coercion, as stated in Article 1321 of the Civil Code. An error in the contract does not void the agreement unless the error concerns the nature of the item that is the subject of the agreement, as stated in Article 1322 of the Civil Code.

b) Capacity to Act

The capacity referred to means that the individual is considered an adult or, due to their position, can be deemed an adult. This explanation aligns with Article 330 of the Civil Code, which states that a person is not considered an adult until they have reached the age of 21, or if they marry before that age.

c) Specific Subject Matter

The specific subject matter refers to the item being contracted, which must be clearly identifiable. Article 1333 of the Civil Code explains that a contract must have a specific object, at least identified by its type. This article clarifies that the existence of the item must be certain or determinable, whether it is movable or immovable property.

d) Lawful Cause

A lawful cause means that the contents of the contract do not contradict laws, morals, or public order. A contract is null and void if its content contains an unlawful cause, and it is considered as if it never existed, returning the parties to their original state as if the contract had never occurred.

In the legal context of agreements in Indonesia, there are several essential elements that must be fulfilled for an agreement to be considered valid and binding. These elements

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<sup>29</sup> Aan Handriani, "Keabsahan Perjanjian Jual Beli Secara Tidak Tertulis Berdasarkan Hukum Perdata," *Rechtsregel: Jurnal Ilmu Hukum* 1, no. 2 (2019): 275–304.

are the mutual consent of the parties, legal capacity, a specific subject matter, and a lawful cause. All four of these elements are regulated in the Civil Code (KUHPer) and are fundamental requirements for the validity of an agreement.

First, the mutual consent of the parties is a crucial element in any agreement. This consent must not only exist but must also be obtained without any error or coercion, as stipulated in Article 1321 of the Civil Code. The error referred to here is the unawareness or mistake that occurs during the agreement process. However, Article 1322 of the Civil Code states that an error does not invalidate the agreement unless it concerns the nature of the object that is the subject of the agreement. This means that if the error touches on the essence of the contracted item, the agreement may be deemed void or invalid.

Second, legal capacity is another important requirement. According to Article 330 of the Civil Code, legal capacity refers to an individual's ability to perform lawful legal actions, specifically those who are considered adults or who have legal standing that permits them to act in a legal capacity. An individual is deemed an adult when they reach the age of 21 or have married before that age. Without this legal capacity, a person cannot validly bind themselves to an agreement, and any agreement made by someone who lacks legal capacity can be considered invalid or void.

Third, a specific subject matter in the agreement refers to the item or matter that is the focal point of the agreement. Article 1333 of the Civil Code emphasizes that an agreement must have a clear object, meaning that the item's existence must be determinable or its type must be clear. The subject matter of the agreement can be either movable or immovable property, but it must exist or be identifiable. Without a clear subject matter, the agreement cannot be executed and is considered invalid.

Fourth, a lawful cause is the final important element. A lawful cause means that the content of the agreement must comply with the law, not contradict morals, and not violate public order. If an agreement contains an unlawful cause, it is void by law, as if the agreement never existed. In this case, the parties are returned to their original state, as they were before the agreement was made.

Article 1338 of the Civil Code (KUHPerdata) and the principle of *pacta sunt servanda* are also relevant. Article 1338 emphasizes that all valid agreements are binding as law for the parties that create them and must be performed in good faith. In this context, the agreement between the user and the platform provider includes the privacy policy as part of the agreement. Users are expected to comply with these provisions if the parties choose to continue using the platform or providing their personal data. The principle of *pacta sunt servanda* stresses that agreements must be honored according to the terms agreed upon by both parties.<sup>30</sup> Thus, if users continue to access or provide personal data after reading the privacy policy, they are deemed to have agreed to the existing terms and,

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<sup>30</sup> Endi Suhadi & Ahmad Arif Fadilah, "Penyelesaian Ganti Rugi Akibat Wanprestasi Perjanjian Jual Beli Online Dikaitkan Dengan Pasal 19 Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Inovasi Penelitian* 2, no. 7 Desember (2021): hal. 1968-1969.

therefore, are obligated to comply with them. This illustrates the application of both principles: users actively bind themselves to the terms of the privacy policy as part of their agreement with the platform provider, and the platform provider adheres to the obligation to comply with the agreed provisions according to Article 1338 and the principle of *pacta sunt servanda*.

Satjipto Rahardjo's theory of legal protection offers an important additional perspective. Rahardjo argues that legal protection aims to safeguard human rights and ensure that individual rights are well protected. In this context, legal protection relates to users' privacy rights as governed by the privacy policy. The statements in this policy grant users the right to choose whether or not to provide their personal data. If they disagree with the existing terms, they can choose not to use the platform, thereby ensuring that their privacy rights remain protected.<sup>31</sup> This aligns with Rahardjo's view that the law should protect human rights and ensure that society can enjoy the rights granted by law. By providing users with the option to refuse the processing of their personal data, this policy seeks to uphold individual rights while ensuring that the obligations of the agreement are fulfilled.

The principle of legal certainty according to Lon Fuller emphasizes that law must meet a number of principles to be considered valid and effective. Fuller argues that legal certainty depends not only on the existence of clear rules but also on how those laws are applied consistently. The statements in the privacy policy reflect this principle by providing clear instructions to users about what to do if they do not agree with the privacy policy.<sup>32</sup> Users are explicitly informed that they must stop using the platform or refrain from providing personal data if they do not agree with the terms. This offers legal certainty because users have clear guidance regarding the consequences of their decisions and the steps they should take to avoid terms they do not accept. By providing clear and transparent information, this policy helps ensure that the law is applied consistently and effectively, in line with the principles put forth by Fuller.<sup>33</sup>

Overall, the statements in the EasyCash privacy policy demonstrate an integration of the principle of *pacta sunt servanda*, Article 1338 of the Civil Code, Satjipto Rahardjo's theory of legal protection, and the principle of legal certainty according to Lon Fuller. The principle of *pacta sunt servanda* and Article 1338 ensure that agreements, including privacy policies, must be adhered to by the involved parties. Rahardjo's theory of legal protection emphasizes the need to safeguard human rights, in this case, users' privacy rights. Fuller's principle of legal certainty ensures that rules are applied clearly and

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<sup>31</sup> Hanifan Niffari, "PERLINDUNGAN DATA PRIBADI SEBAGAI BAGIAN DARI HAK ASASI MANUSIA ATAS PERLINDUNGAN DIRI PRIBADI Suatu Tinjauan Komparatif Dengan Peraturan Perundang-Undangan Di Negara Lain," *Jurnal Hukum dan Bisnis (Selisik)* 6, no. 1 (2020): 1–14.

<sup>32</sup> Mega Sonia Putri, "Perlindungan Data Pribadi Bagi Pelanggan Jasa Telekomunikasi Terkait Kewajiban Registrasi SIM," *Universitas Bramijaya* (Universitas Brawijaya, 2018), <https://doi.org/10.1016/j.jns.2018.09.022><http://dx.doi.org/10.1016/j.ejphar.2009.04.058><http://dx.doi.org/10.1016/j.brainres.2015.10.001><http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2854659&tool=pmcentrez&rendertype=abstract><http://w>

<sup>33</sup> *Ibid.*

consistently, providing users with certainty regarding their rights and obligations. Thus, this privacy policy functions to ensure that users' rights are protected, contractual obligations are fulfilled, and the law is applied consistently and effectively, reflecting the integration of essential legal principles in the regulation of personal data processing.

### **Regulation of Personal Data Deletion in Indonesia**

In Indonesia, Article 8 of Law No. 27 of 2022 on Personal Data Protection states that:

"data subjects have the right to terminate processing, delete, and/or destroy personal data about themselves."

This provision aligns with the evolving concept of the "right to be forgotten" in various countries, including Europe. In this context, the "right to be forgotten" gives individuals control over their personal information circulating in cyberspace, including the right to request the deletion of data that is no longer relevant or harmful.

More specifically, this right empowers data subjects to take necessary steps to ensure that their personal data is no longer processed or accessed by third parties. In practice, this means individuals can request the deletion of data that has been collected and processed by data controllers, especially if the data is no longer necessary for the originally agreed processing purposes. For example, if someone has filled out a registration form for a particular service and then wishes to delete that data because they no longer use the service, this right provides them with a legal basis to do so.

The importance of this right lies in protecting individual privacy in the digital age, where personal data can be easily accessed and used by various parties, including companies and government institutions. Through this provision, individuals not only gain recognition of their privacy rights but also protection against potential data misuse that could negatively impact their reputation and personal lives.

Additionally, Article 8 emphasizes that the deletion and destruction of personal data must be conducted in accordance with applicable regulations. This indicates that while data subjects have the right to delete their data, the deletion process must still operate within the established legal framework. Consequently, data controllers are required to have clear procedures in place to handle data deletion requests, ensuring that individual rights can be effectively fulfilled.

Article 15 of Law No. 27 of 2022 provides several exceptions to the rights of data subjects, including the right to delete personal data as stipulated in Article 8. These exceptions are designed to protect broader interests, such as public safety and welfare. The following is an explanation of each of these exceptions:

- a. National defense and security interests. In this context, the right to delete personal data may be limited if the data relates to national interests. This is important for safeguarding information that could impact national security. For example, data related to intelligence or defense strategies cannot be deleted if its removal would potentially harm the stability or security of the country.

- b. Law enforcement interests. This exception applies when personal data is needed for legal processes, such as investigations or prosecutions. Data relevant to criminal cases, for instance, cannot be deleted to ensure that law enforcement can be carried out effectively. Thus, although individuals have the right to delete their data, legal interests may prioritize access to that data.
- c. Public interest in governance. This exception includes situations where the deletion of personal data could disrupt public functions or broader policies. For example, data used for public programs or services essential to the wider community cannot be deleted, as it may affect the services provided by the government.
- d. Oversight interests in the financial services sector and financial system stability. In the financial sector, personal data may be necessary for monitoring and regulation to maintain economic stability. Information required to track financial activities and prevent fraudulent practices is an example where the right to delete data may be excluded. This is crucial for ensuring the integrity and security of the financial system.

Overall, these exceptions to the right to delete personal data indicate that while personal data protection is vital, there are times when greater interests require access to or processing of data. With these exceptions, Law No. 27 of 2022 aims to create a balance between individual rights and the collective needs of society. However, it is important to ensure that each exception is implemented transparently and responsibly, so that the rights of data subjects remain protected within reasonable limits.

Article 8 of Law No. 27 of 2022 on Personal Data Protection in Indonesia emphasizes the rights of personal data subjects to terminate processing, delete, and/or destroy personal data about themselves. This provision is highly relevant in the context of the "right to be forgotten," which underscores the importance of individual control over their personal information. According to the theory of personal protection proposed by Satjipto Rahardjo, legal protection serves as a safeguard for human rights, including the right to privacy and the management of personal data.<sup>34</sup> In this context, the right to be forgotten is not merely an individual's right to erase information about themselves, but also reflects protection against potential harm caused by unethical or unlawful data processing.

Rahardjo's theory emphasizes the crucial role of law in providing guarantees to individuals that their human rights will not be violated. In an increasingly complex digital world, where personal data can easily be disseminated and misused, the existence of this article is vital.<sup>35</sup> The right to be forgotten provides individuals with a means to respond to the negative impacts of the publication of unwanted personal information, whether on social media, news sites, or other platforms. This becomes increasingly important considering the numerous cases where personal information, which may no longer be

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<sup>34</sup> Endah Pertiwi et al., "Analisis Yuridis Terhadap Penyalahgunaan Data Pribadi Pengguna Media Sosial," *Jurnal Rechten : Riset Hukum dan Hak Asasi Manusia* 3, no. 3 (2022): 10–16.

<sup>35</sup> Ni Nyoman Ari Diah Nurmantari and Nyoman A Martana, "Perlindungan Hukum Terhadap Data Pribadi," *E-Journal Ilmu Hukum Kertha Wicara Fakultas Hukum Universitas Udayana* 8, no. 12 (2019): 1–14.

relevant or may be harmful, continues to circulate on the internet, disrupting individuals' personal and professional lives.<sup>36</sup>

In conclusion, Article 8 of the Personal Data Protection Law in Indonesia reflects efforts to recognize and protect individual rights to privacy and the management of personal data. In the context of the personal protection theory proposed by Satjipto Rahardjo, legal protection becomes an essential instrument in safeguarding human rights from violations caused by unethical data processing. Although the right to be forgotten has limitations and challenges, its proper implementation will provide justice for individuals and help build a society that values personal rights in the digital era.

#### IV. CONCLUSION

The concept of the "right to be forgotten" has become an increasingly important global concern in today's digital era, where information can spread rapidly and be difficult to erase. This right refers to an individual's ability to request the deletion of their personal data from public databases, particularly information that could harm their reputation, privacy, or even social life. In the context of the European Union, this concept is articulated in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. Article 7 emphasizes the importance of respecting private and family life, which is a fundamental aspect of human rights. Meanwhile, Article 8 asserts the protection of personal data, stating that data must be processed fairly and for specific purposes, based on consent or legitimate legal grounds. The process of deleting personal data in Indonesia currently lacks specific regulations, so any deletion process is based on agreements between the personal data owner and the data controller, in accordance with the principle of *pacta sunt servanda*.

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<sup>36</sup> W A Dairobby, "Perlindungan Hukum Terhadap Penyalahgunaan Data Pribadi Dalam Layanan Transportasi Berbasis Aplikasi Online," *Universitas Islam Riau*, 2020, <http://repository.uir.ac.id/id/eprint/9721>.



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