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## **Personal Data Protection in Falsification of Covid-19 Vaccination Certificates: A Juridical View**

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### **ABSTRACT**

*The obligation to show a Covid-19 vaccination card in a public place has its advantages and disadvantages. Some parties support it for the purpose of protecting the public interest, while others are questioning it because of the unequal vaccinations distribution in various regions. In addition, the need to show Covid-19 vaccination card to public through Peduli Lindungi application raises legal issues such as vulnerability to misuse of personal data and criminal activities. This research aims to know the legal regulation from government and ministry regarding the criminal case of misused personal data and falsificate Covid-19 vaccine certificates for their own profit. The research method used is normative method. The normative juridical research method is library law research which is conducted by examining library materials or secondary data. The research is used statutory approach that intended to understand and comprehensively analyze the hierarchy of laws, regulations and its principles. The civil law of government provisions regarding fake vaccine certificates circulation have been regulated, because there are many circulating fake vaccine certificates for Covid-19. The regulation also includes sanctions that will be given to perpetrators who falsify the Covid-19 vaccine certificates.*

**Keywords:** *Legal Protection, Personal Data, Regulation*

## INTRODUCTION

Health is not only free from disease and infirmity, but also a state of complete physical, mental and social well-being. As time passes, people's understanding of health has changed. The rapid technological advances allow anyone to learn, self-assess, and actively participate in health promotion exercises. Various social factors can affect your health, such as individual behavior, social status, genetics, health and physical environment. Health is a very valuable asset for humans. In this case, everyone tries to stay healthy and avoid factors that cause disease (health problems) as much as possible. On the other hand, when someone sick, he tries to cure his illness.

The Covid infection that currently occurring worldwide causes the main symptoms in the form of respiratory problems. This disease has become world attention since its occurred in Wuhan, China at the end of 2019. The place where it first appeared also made Covid known as Wuhan disease. The corona infection that occurred for about 2 years in Indonesia also caused a long-lasting pandemic and has a negative impact on all Indonesian people. Various government efforts to reduce the transmission of corona infections, one of it is PSBB (Large-Scale Social Restrictions) in public facilities, shopping centers, places of worship, and people mobility.

Some people are take advantage of current pandemic. The coronavirus vaccine certificates issued by government are one of crime targets from irresponsible people. Many people are falsificate and theft the personal data on corona vaccine certificate. This fake vaccine certificate is also linked to Pedulilindungi application made by government. In addition to counterfeiting the fake vaccine certificates, victims who buy and sell fake vaccine certificates must be prepared with its risks that will occur, called the possibility of misused the personal data in victim's ID card. This crime done by several people since these individuals saw the opportunity to get their own benefits because many of them are lost their livelihoods due to pandemic and it was difficult to find the new jobs. These petpetrators are commit crimes without pay attention to people need. The government and its staff are currently working to eradicate online forgery of vaccine certificates and the illegal use of personal information. The community is expected to be active in helping the government to overcome this problem by reporting when there is any activity of buying and selling vaccine certificates on social media without having a vaccinate. This research aims to know the legal regulation from government and ministry regarding the criminal case of misused personal data and falsificate Covid-19 vaccine certificates for their own profit.

## RESEARCH METHODOLOGY

The research method used is normative method. According to Soerjono Soekanto, normative legal research is used to analyze the concepts of law and regulations that are closely related to the subject matter of the research.<sup>1</sup> The normative juridical research method is library law research which is conducted by examining library materials or secondary data.<sup>2</sup> The research is used statutory approach that intended to understand and comprehensively analyze the hierarchy of laws, regulations and its principles. The statutory approach is conducted by reviewing all laws and regulations related to handle the legal issues.

The sources of primary legal materials are consisting of statutory regulations, such as Article 32 Permenkominfor 20/2016, Number 5 letter E SE 56/2021 which regulates the land transportation, Law 11 of 1008 concerning Information and Electronic Transactions which was changed to Law 19/2016, Number 5 letter G SE Menhub 42/2021, Number 5 letter M SE Menhub 43/2021, and the Regulation of Health Minister Republic Indonesia Number 10 2021 concerning the Implementation of Vaccination in overcoming the Corona Virus Disease. Meanwhile, the secondary sources of legal materials are books/literature, newspapers/magazines and the Information quoted from internet.

The researchers are classified, read, research, clarify, and analyze secondary issues related to research subject from books, literature articles, academic papers and journals based on the research subject. The method of collecting legal materials used in this research is library research by submitting the data by reading laws, regulations, official documents, and literature related to discussed issues.<sup>3</sup> Then, the data is analyzed and formulated as supporting data for this research. Whereas the method of processing legal materials is conducted deductively by drawing conclusions from general problem to the concrete problems.

The analysis of legal materials is a further step that aims to process research that will become a report. In normative study, data processing is essentially an activity to systematically organize the written legal materials is easy to analyze. The inductive reasoning is a way of thinking based on specific events to confirm general theories, laws and concepts. The inductive reasoning begins with expressing a theory that has exclusive limitations when making a statement and ends with a statement that has a general character.

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<sup>1</sup> Helwan Kasra, "KRITIK TERHADAP SISTEM PENYELESAIAN PERSELISIHAN HUBUNGAN INDUSTRIAL DI INDONESIA : STUDI UU NO 2 TAHUN 2004 TENTANG PENYELESAIAN PERSELISIHAN HUBUNGAN INDUSTRIAL PERSPEKTIF TEORI SISTEM HUKUM," *SOL JUSTICIA* 5, no. 1 (June 30, 2022): 97–112, <http://ojs.ukb.ac.id/index.php/sj/article/view/484>.

<sup>2</sup> Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (May 2016): 201–207, <https://linkinghub.elsevier.com/retrieve/pii/S1877042816300660>.

<sup>3</sup> Shahrul Kresna Imansyah, "Trading in Influence as a Crime in Indonesia Criminal Law System: A Juridical Study," *YURIS, Journal of Court and Justice* 1, no. 2 (2022).

## RESULT AND DISCUSSION

### **The Regulations Regarding the Circulation of Vaccine Certificates**

The stipulation for the circulation of vaccine certificate is regulated in Regulation of Health Minister of Republic Indonesia Number 10, 2021 concerning the Implementation of Vaccination in countermeasures the 2019 Corona Pandemic. The vaccination certificate received by a person is only issued by the government through official website or by requesting a protector under government supervision after vaccination. The vaccination certificate will appear no later than one day after a person has vaccinated through official website or a request supported by several related parties.

The Ministry of Health also issued an International Coronavirus vaccine certificate that complies with WHO (World Health Organization) standards. The government is providing Covid-19 vaccine certificates to eliminate the issue of unknown vaccines in Indonesia and to make them recognizable in countries abroad. The Coronavirus vaccine certificate has been made according to WHO standards including the QR code listed in it, then it can be detected and read. International vaccine certificates can be used for Overseas Travelers (PPLN) and Indonesian Migrant Workers (PMI) as proof that they have received complete vaccinations. Also, the international vaccination certificates can be accessed through Peduli Lindungi application.

### **The Regulations Regarding Counterfeit Vaccine Certificates**

From a legal perspective, it is necessary to know that counterfeiting vaccination cards, RT-PCR test certificates and rapid antigen tests used as travel requirements is a criminal act of forged letters which are prohibited in Criminal Code. This applies to both perpetrators who falsify the user documents can be subject to criminal penalties. The false Results of RT-PCR Test, Rapid Antigen Test, Covid-19 Vaccination Card and Certificate are stipulated in Number 5 Letter G SE Menhub 42/2021 Jo. Number 5 letter M SE Menhub 43/2021 Jo. Number 5 letter G SE Menhub 44/2021 regarding falsification of vaccine cards, RT-PCR test certificates and rapid test antigens used as travel requirements documents will be subject to sanctions in accordance with the provisions of law. Another decision that regulates the manage of counterfeit shares has been regulated in Law no. 11 of 2008 concerning information and electronic transactions (ITTE Law) which was modified in Law no. 19, 2016.<sup>4</sup>

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<sup>4</sup> Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, Ed. 1. (Jakarta: Rajawali Pers, 2019).

## Legal Protection

Legal protection is an act to protect legal subject with applicable laws and regulations along with their implementation can be enforced with a sanction.<sup>5</sup> Legal protection is one of important elements in a state of law, because the state formation will also formulate the laws to regulate its citizens. A country will have reciprocal ties to each of its citizens and created a right and obligation between the government and citizens. When it is associated with Republic Indonesia, the legal protection for Indonesian people must based on the principles, recognition and protection of human dignity obtained in Pancasila. As a legal status, Indonesia must provide legal protection for all citizens without an exception since the legal protection is human property owned by each Indonesian citizen.

Legal protection is considered important because law protection and enforcement is a guarantee for legal subjects to have their rights. Then, when there is a violation of these rights, the existence of legal protection can provide complete protection to its legal subject.<sup>6</sup> The legislative protection efforts have been implemented by developing the laws and policies, although the protection provided has not been ideal. The legal protection will not be achieved when law enforcement is not conducted since the two are interdependent and cannot be separated. The legal protection contained in law is a tool, and it required the law enforcement as a way to realize it.

Legal protection is important to protect and ensuring legal subjects in every rule. Then, when there is a violation of these rights, legal protection can provide full protection to victims. The legal protection efforts have been implemented by formulating a number of laws and policies eventhough the protection provided is not ideal. This is related to law enforcement efforts. The legal protection will not be realized when law enforcement is not implemented since the two are interrelated and cannot be separated. The realization of legal protection in law is an instrument and law enforcement as a way to achieve it

Legal protection institutions are divided into two types, preventive legal protection and oppressive legal protection. Preventive legal protection providing an opportunity for legal entities to file an objections or comments before final decision of the government to avoid conflict. The existence of preemptive legal protection is encourages the nation in having prudent decisions based on discretion. In Indonesia, there is no specific regulation regarding preventive legal protection.

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<sup>5</sup> Ibnu Arly, "Legal Protection Against Workers Which Is Terminated by Entrepreneurs without Any Agreement," *Budapest International Research and Critics Institute (BIRCI-Journal)* 4, no. 4 (2021).

<sup>6</sup> Miksan Ansori, "Nilai-Nilai Hak Asasi Manusia Dalam Prinsip Penyelenggaraan Dan Tujuan Pendidikan Di Indonesia," *Didaktika Religia* 4, no. 1 (April 14, 2016): 159–186, <http://jurnalpascasarjana.iainkediri.ac.id/index.php/didaktika/article/view/3305>.

### **Consumer Protection**

A consumer is a person or organization who buys a product or service. It also refers to rent the goods and services. Besides, they don't sell the things that they buy and become the last users in goods and services' distribution chain. In fact, sometimes consumers may not be buyers. The consumers are people or economic entities that buy or rent products for their personal use. In other words, they don't buy it for production or resale. When non-business media talk about consumers, they are usually referring to people. Specifically, people who are involved in evaluating, acquiring, and using products to satisfy their needs and wants. The definition of business actor according to Article 1 point 3 of Law Number 8, 1999 concerning Consumer Protection is every individual or business entity, whether in the form of a legal entity or not, which established and conducting activities within the jurisdiction of Republic Indonesia, either individually or jointly through agreements to conduct the business activities in various economic fields. Consumer are still entitled to legal protection in accordance with Customer Protection Law even though the bussines actors are rake cover behind a disproportionate contractual relationship.<sup>7</sup>

### **The Misuse of Personal Data**

The Misuse of personal data is a criminal act of theft, fraud and other criminal acts both in objective elements and subjective elements. With the fulfillment of these elements, the administrative sanctions, civil sanctions and criminal sanctions are not sufficient to accommodate the misuse of personal data which is a perfect crime.

### **The Consumer Protection against Misuse of Personal Data**

Personal data protection generally refers to the protective practices and binding rules imposed on protecting personal data and ensuring the data subjects are still control their own data. In short, data owners must be able to decide when to share their information, who has access, for how long, for what reasons, and can modify the data. The personal data and data protection are two different aspects but people are often equated them as the same thing, they are closely related to each other at personal data protection. The businesses actors need both of it to prepare and implement the ideal data control mechanisms. Personal Data Protection Law (PDP) has not been ratified yet, on the other hand, the cases of personal data leakage are remain occur in Indonesia.

Regarding the legal protection of personal data in Indonesia is still not ideal, there are cases in using someone's personal data without the owner's permission which causes a lack of security and strict supervision from data users. When the individual completed a request at bank, create an account on a social network,

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<sup>7</sup> Wahda Zainal Imam, "Consumer Protection Law Study: A Case Study of Ternate City," *International Journal of Multicultural and Multireligious Understanding* 7, no. 11 (2020).

download an application on PlayStore and AppStore, indirectly, they agreed that the service user accesses their personal information.

Personal information is defined as a collection of data that can be explained the particular individual's identity such as names, addresses, lifestyle, interest, shopping preferences and purchase histories of identifiable individuals.<sup>8</sup> Personal information is specific unique information to an individual, can be identified directly or indirectly, and is protected by confidentiality. Therefore, personal data is defined as certain personal information that must be kept, maintained, honest and confidential. Personal data is accessible from the individual's birth to death. The personal data concerned will be recorded, stored, and maintained by many institutions during its lifetime. In fact, the protection of personal data already exists in each sector's regulations. For example, in bank secrecy, personal data should not be disclosed to other parties except for law enforcement apparatus. The same applies to issue of prohibiting the use of an unauthorized group of population data.

Therefore, every individual need to protect their own data. Personal data and data protection are different, but they are closely related to personal data protection, data protection is an aspect that needs to be protected by data protection. In order to establish and implement the appropriate data protection control mechanisms, it is not enough for companies and data management to conduct one of personal data or data protection, both of them must be actualized. The right to privacy is recognized as a human right in Article 12 of Universal Declaration of Human Rights and Article 17 of International Covenant on Civil and Political Rights.<sup>9</sup> Unfortunately, this right is a fundamental, but the implementation of this right is not optimal. As mentioned above, personal data has been lost or misused. In Indonesia, the protection of personal data is regulated by many laws and regulations, but the most important thing is how the information management system for personal data runs safely. The enforcing of leaked private information is more difficult than preventing it.

### **Factors that Supporting the Misuse of Personal Data**

Recently, the leak of personal information and private information have become more common and make people are worry about how often this case happened. The data violation are affects to personal data held by businesses and government ministries. Meanwhile, the companies and institutions only informed the community by simply providing explanations as if the theft of personal information is free to conduct this action and it is legally free to buy the personal information. On the other hand, the case of information leakage may be an act of disclosure of the organization itself, and it does not only occur by external attacks.

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<sup>8</sup> Minjung Park, "The Value of Personal Information : An Exploratory Study for Types of Personal Information and Its Value," *Asia Pacific Journal of Information System* 28, no. 3 (2018).

<sup>9</sup> Guglielmo Verdirame, "HUMAN RIGHTS IN POLITICAL AND LEGAL THEORY," *The Dickson Poon School of Law* (2014).

To clarify this, the evidence is needed and must be proven by the judgment of other party or relevant. The government through departmental agencies in accordance with its authority, functions conferred by law to supervise the protection of public private information. The concern is that the general public will determine that businesses and related agencies do not have the legal awareness to protect their personal information. The rapid development of technology and information has brought changes in people needs and lifestyles that increasingly dependent on technology.

Technological advances in everyday life are experienced in various activities, especially in this pandemic situation which cannot be separated from technology. Therefore, with the increasing use of electronic documents and web networks, the protection of personal data is crucial in developing countries. People are depending on social network to do their work, study and entertain themselves. The use of technology and its useful information in certain areas, such as education and business, with easy access to vision-related issues in science allows people to receive billions or even trillions of information quickly. In business sector, the information management is organized very well, quickly, efficiently and effectively with minimal errors. In economic sector, the promotion and potential to improve people's welfare are rapidly developed without regional boundaries and reach all levels of society nationally and internationally at the same time.

### **The Provisions of Governing Personal Data**

Personal data protection arrangements aim to protect consumer interests against misuse of personal data. There are several rules governing the protection of personal data in Indonesia, such as Law Number 19, 2016 concerning Amendments to Law no. 11, 2008 concerning Information and Electronic Transactions, the Regulation of Minister of Communication and Information No. 20, 2016 concerning the Protection of Personal Data, and Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions.<sup>10</sup>

### **Law No. 11/2008 concerning Information and Electronic Transactions**

The protection of personal data in an electronic system in this Law includes protection from unauthorized use, protection by electronic system administrators and protection from illegal access and intervention. 23 Article 26 of Law Number 19, 2016 concerning Amendments to Law No. 11, 2008 concerning Information and Electronic Transactions stipulates that:

1. Unless stipulated otherwise by laws and regulations, the use of any information through electronic media concerning a person's personal data must be conducted with the consent of person concerned.

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<sup>10</sup> Mochamad Faishal Hafizh, "Role of Criminal Law in Falsification of Covid-19 Vaccine Certificates," *Jurnal Ilmiah Wahana Pendidikan* 8, no. 12 (2022): 190–197.

2. Any person whose rights are violated as referred in paragraph (1) may file a lawsuit for the losses incurred under this law.
3. Every electronic system operator is obliged to delete the irrelevant Electronic Information and/or Electronic Documents under his control based on the request of the person concerned according to court order.
4. Every Electronic System operator is obliged to provide a mechanism for deleting Electronic Information and/or Electronic Documents that are no longer relevant in accordance with the provisions of the legislation.
5. Provisions regarding the procedure for deleting Electronic Information and/or Electronic Documents as referred to in paragraph (3) and paragraph (4) shall be regulated in Government regulation.

This means that the use of any information through media or Electronic Systems concerning a person's personal data must be conducted with the consent of the person concerned. For this reason, it is necessary to guarantee the fulfillment of personal data protection by requiring each Electronic System Operator to delete irrelevant Electronic Information and/or Electronic Documents based on the request of the person concerned according to court order. In this law, any person who suffers a loss can file a lawsuit in a representative manner against the party that operates Electronic System and/or uses Information Technology. In addition, the parties can also resolve disputes through arbitration or other alternative dispute resolution institutions in accordance with statutory provisions.

### **The Regulation No. 20, 2016 concerning Personal Data Protection**

In the Regulation of Minister of Communication and Information Technology No. 20, 2016 concerning the Protection of Personal Data, personal data is certain data that stored, maintained, protected its originality and its confidentiality. In this regulation, the protection of Personal Data in Electronic Systems is implemented in the process of acquisition and collection, processing and analysis, storage, appearance, announcement, delivery, dissemination and/or opening of access, and extermination. In conducting its process, each Electronic System Operator must have internal rules for the protection of Personal Data as a form of preventive measure to avoid failures in protection of managed Personal Data. In addition, Article 5 paragraph (4) stipulates that “other preventive measures to avoid failures in protection of managed Personal Data must be implemented by every Electronics System Operator with these actions:

1. Increasing the awareness of human resources to provide protection for Personal Data in Electronic Systems; and
2. Conducting the training on prevention of protection failure of Personal Data in Electronic System for human resources

In terms of obtaining and collecting personal data, the Electronic System Operator must be based on laws and regulations. Then, the Electronic System Operator must respect the to personal data owner for his private data that conducted by providing options in Electronic System for Personal Data Owner to:

1. Confidentiality or non-confidentiality of personal data, and
2. Changes, additions, or updates of Personal Data.

This regulation also administrates the rights and obligations of personal data owner as well as the rights and obligations of Electronic System Operator. The Article 26 stipulates that the owner of personal data has the right to:

1. On the confidentiality of his Personal Data;
2. File a complaint in context of resolving a Personal Data dispute over the failure to protect the confidentiality of its Personal Data by Electronic System Operator to Minister;
3. Have an access or opportunity to change or update their personal data without disturbing personal data management system, unless otherwise stipulated by law provisions;
4. Have an access and opportunity to obtain historical submitted personal data to Electronic System Operator as long as it is still in accordance with the legislation provisions, and
5. Request the destruction of his/her certain individual data in Electronic System managed by Electronic System Operator, unless otherwise stipulated by laws and regulations provisions.

Then article 27 stipulates that users are obliged to:

1. Maintain the confidentiality of obtained, collected, processed, and analyzed personal data;
2. Use Personal Data in accordance with their needs only
3. Protect the personal data along with its documents from misuse; and
4. Responsible for personal data, both organizational control under their authority and individuals in the act of abuse.

Meanwhile, the obligations of Electronic System Operator are:

1. Perform the Electronic System certification which it manages in accordance with the laws and regulations provisions;
2. Maintain the truth, validity, confidentiality, accuracy and relevance and suitability that aims in obtaining, collecting, processing, analyzing, storing, displaying, publishing, transmitting, disseminating and destroying Personal Data;
3. Notify in writing to personal data owner when there is a failure in protect the confidentiality of personal data in Electronic System Managements, as follows:

- a. Must be accompanied by causes of failure in personal data confidential protection;
  - b. Can be conducted electronically when the personal data owner has given the consent which was stated at his personal data acquisition and collection;
  - c. It must be ensured that it has been received by personal data owner when the failure contains a potential loss for the person concerned; and
  - d. Written notification is sent to personal data owner no later than 14 (fourteen) days after the failure is known;
4. Have internal rules related to personal data protection in accordance with the provisions of laws and regulations;
  5. Provide an audit track record of all Electronic System operations Management;
  6. Provide an options to personal data owner regarding personal data management that can/or cannot be used and/or displayed by/to third parties upon approval as long as it is still related to purpose of obtaining and collecting personal data;
  7. Provide access or opportunity to personal data owner to change or update their personal data without disturbing personal data management system, unless otherwise stipulated by provisions of laws and regulations;
  8. Delete personal data in accordance with the provisions in this Ministerial Regulation or other laws and regulations that specifically guide the respective Supervisory and Sector Regulatory Agencies, and
  9. Provide a contact person who is easily contacted by personal data owner regarding his personal data management.

This regulation it is also guides regarding the dispute resolution in protection failure of personal data user confidentiality. In this regulation, any personal data owner or Electronic System Operator may submit a complaint to Minister as an effort to resolve disputes amicably or through other alternative settlement efforts. When the dispute resolution by deliberation or other alternative settlements has not been able to resolve the dispute, each personal data owner and Electronic System Operator may file a lawsuit in the form of personal lawsuit in a protection failure of personal data user confidentiality which is submitted in accordance with the legislation provisions.

## **CONCLUSION**

The decision or stipulation is a written determination issued by a state administrative agency or official contains of concrete, individual, and final state

administrative legal actions based on applicable laws and regulations that have legal consequences for a person and entity. The civil law of government provisions regarding fake vaccine certificates circulation have been regulated, because there are many circulating fake vaccine certificates for Covid-19. The regulation also includes sanctions that will be given to perpetrators who falsify the Covid-19 vaccine certificates. Legal protection is designed to protect violation of human rights, it given to public to enjoy all the rights granted by law. The legal protection is a variety of legal efforts that must be implemented by law enforcement officers to provide peace for all citizens from all parties and various threats. The personal data protection regulations are not regulated in law yet, but there are many other regulations regarding the protection of such data that are not specific. In the regulations regarding information protection, there are sanctions that will be given to perpetrators who misuse someone's personal data because the data is privacy.

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