

Legal Protection of Personal Data as Listed in Court Decision: A Discourse Renewal

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Abstract

This study aims to examine and analyze the actualization of specific personal data protection, especially criminal records in the context of court decisions. In the digital era and advances in information technology, personal data protection is becoming an increasingly important and relevant issue. However, there is a need to better understand how specific personal data protection is realized and implemented in the context of court decisions. For example, the court decision related to divorce. In the case of a divorce that befell an artist, the court decision was published on the court's official website. The impact is that the public knows the cause of the divorce. This is a form of no protection of personal data, under the pretext of openness of court information. This study use a normative legal research method with a statue approach and a conceptual approach. The data used consists of primary legal materials and court decisions related to personal data protection. In addition, this study also refers to legal literature and expert views related to personal data protection and court decisions. The results of the study indicate that the actualization of personal data protection, especially criminal records listed in court decisions, is an exception due to the principle of open trials and published trial results. There needs to be a reformulation of the concept of exceptions to personal data protection related to criminal records in the context of court decisions. This reformulation is emphasized to avoid abuse in the judicial process and maintain public trust in the judicial system. The reformulation was carried out to clarify the position of criminal records listed in Court Decisions as excluded objects and the rights of Personal Data Subjects regulated in the Personal Data Protection Law are also excluded for Court Decisions. The implications of this study are expected to provide a better understanding for related parties, including courts, governments, and the general public, regarding the importance of specific personal data protection in the context of the courts.

Keywords: Legal Protection; Personal Data Protection, Criminal Records, Court Decisions

1. INTRODUCTION

Every citizen has rights guaranteed by law, which are referred to as constitutional rights. The state has a constitutional responsibility to protect all its citizens. This obligation is stated in the Opening of Paragraph 4 of the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945), which states that the state has an obligation to protect the entire Indonesian nation in improving

public welfare,¹ improving national education, maintaining world order based on independence, world peace, and social justice.² One of the 40 citizen rights regulated in the constitution is the constitutional right to personal protection.³ This right is explained in Article 28 G Paragraph (1), which generally states that every citizen has the right to protection of themselves, their families, honor, dignity, and property under their control. In this article, personal rights are assumed to be ownership rights. However, in the era of the development of information and communication technology, the understanding of personal rights⁴ should not be limited to ownership rights alone. Personal rights must also be interpreted as privacy rights.⁵ Privacy rights are more sensitive in nature and can reflect personal rights.⁶ Personal rights involve sensitive matters, especially related to personal data or a person's identity. Personal data can be defined as data which identifiable individually or in combination with other information either directly or indirectly through electronic or non-electronic systems.⁷ Meanwhile, personal data protection can be explained as the overall effort to protect Personal Data in the series of personal data processing in order to guarantee the constitutional rights of Personal Data Subjects.

The phenomenon of cybercrime, or online crime, has become a significant source of concern because it involves various activities such as carding, hacking, fraud, terrorism, and the dissemination of detrimental information. The issuance of Law Number 27 of 2022 concerning Personal Data Protection (UU PDP) provides a breath of fresh air for the public who are worried about the rampant crimes of misuse of personal data that lead to technological crimes/cybercrime.⁸ Article 4 of the PDP Law classifies protected personal data based on statutory provisions. The personal data is divided into specific personal data and general personal data. One of the specific personal data is a criminal record. However, there is disharmony regarding the regulation of 'criminal records' as an object of protected personal data.⁹ Based on the explanation of Article 4 paragraph (2) letter d, it explains that a "criminal record" is a written record of a person who has committed an unlawful or unlawful act or is in the process of trial for the act committed, including police records and the inclusion of a list of prevention or deterrence. Through this explanation, it can be concluded that the criminal record listed in the court decision is also included as an object of personal data protection. Thus, the provisions of Article 4 paragraph (2) of the PDP Law are not in line with the provisions of Article 13 of Law Number 48 of 2009 concerning Judicial Power, hereinafter referred to as the Judicial Power Law. Article 13 of the Judicial Power Law states that all court hearings are open to the public, unless the law stipulates otherwise. The next paragraph stipulates that a court decision is only valid and has legal force if it is pronounced in a trial open to

1 Khudzaifah Dimiyati et al., "Indonesia as a Legal Welfare State: A prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (2021).

2 Nurhadi Nurhadi et al., "Changing Welfare Solidarity: Social Policy and Solidarity Ventures During COVID-19 Outbreak in Indonesia," *Journal of Asian Public Policy*, 2023, 1–21.

3 Kathryn Robinson, "Islamic Cosmopolitics, Human Rights and Anti-Violence Strategies in Indonesia," in *Anthropology and the new cosmopolitanism* (Routledge, 2020), 111–33.

4 Charles A Reich, "Individual Rights and Social Welfare: The Emerging Legal Issues," in *Welfare Law* (Routledge, 2020), 255–67.

5 Jennifer King dan Adriana Stephan, "Regulating Privacy Dark Patterns in Practice-Drawing Inspiration from the California Privacy Rights Act," *Georgetown Law Technology Review* 5, no. 2 (2021): 250–76.

6 Philipp Hacker, "Manipulation by algorithms. Exploring the triangle of unfair commercial practice, data protection, and privacy law," *European Law Journal* 29, no. 1–2 (2023): 142–75.

7 Kashmir Hill, "The Secretive Company that might end Privacy as we know it," in *Ethics of Data and Analytics* (Auerbach Publications, 2022), 170–77.

8 Kiki Rezki Ramadhan dan Chandra Wijaya, "The Challenges of Personal Data Protection Policy in Indonesia: Lesson learned from the European Union, Singapore, and Malaysia," *Technium Soc. Sci. J.* 36 (2022): 18.

9 David Bright, Russell Brewer, dan Carlo Morselli, "Reprint of: Using social network analysis to study crime: Navigating the challenges of criminal justice records," *Social Networks* 69 (2022): 235–50.

the public. Failure to comply with the provisions as referred to in the provisions of paragraph (1) and paragraph (2) will result in the decision being null and void. If the criminal record listed in the decision is an object of personal data protection, then the Court Decision relating to the crime cannot be published and read in an open trial as a form of implementing the provisions of Article 13 paragraph (2) of the Judicial Power Law. The decision is not followed up as regulated in Article 13 paragraph (2) of the Judicial Power Law, then referring to Article 13 paragraph (3) of the Judicial Power Law, the decision can be declared null and void by law.

It is understandable that the PDP Law seeks to provide protection for the personal data of the public as an embodiment of Article 28G of the 1945 Constitution of the Republic of Indonesia, but it is also necessary to understand that the Judicial Power Law, especially the provisions of Article 13, aims to provide justice for suspects and the public. Through this decision, the Government can impose sanctions in accordance with the results of the trial and as an effort to remind the public of the impact of crime along with the moral sanctions that follow. Similar research has been conducted, first by Fauzi Anshari Sibarani and Sekar Ayu Diningrum¹⁰ who discussed the Regulation of Personal Data Protection Against Criminal Records from a Human Rights Perspective. The study discussed the importance of protecting criminal records based on a human rights perspective from the perspective of suspects/perpetrators who can be harmed by the misuse of these criminal records. However, it did not discuss the protection of criminal records based on the perspective of the principle of openness in the judicial process. Second, by Mochamad Januar Rizki in an article discussing the term “criminal record” and its treatment in the Personal Data Protection Law.¹¹ The article reviewed that a person’s criminal record receives different treatment compared to general data. The review does not look specifically at crime records, but at all types of specific data.

The limited number of studies discussing the protection of criminal records and the need for a comprehensive discussion. This study focuses on discussing the position of court decisions in the concept of personal data protection in Indonesia and how the ideal formulation of the concept of criminal record protection is in line with the principles of justice in Indonesia. Court decisions, in principle, must be open to the public. This means that everyone can access the decision. Everyone can clearly see what legal considerations are used by the judge in deciding the case, what evidence is used as consideration, and the chronology of the case that occurred. However, this principle, on the other hand, also raises questions and debates. To what extent can personal data related to the case be disseminated to the public? What about the person’s criminal record? Can all of it, or only part of it, be published? If all of it, how is the protection of his/her personal data? If only part of it, what can be published and what cannot? These questions will be answered in the article. The state must guarantee the openness of public information on every court decision. However, on the other hand, the state must also ensure that personal information is well protected. This article will try to create this balance.

2. ANALYSIS AND DISCUSSION

2.1. Court Decisions In The Concept Of Personal Data Protection Related To Crimi-

¹⁰ Fauzi Anshari Sibarani dan Sekar Ayu Diningrum, “Regulasi Perlindungan Data Pribadi Terhadap Catatan Kejahatan dalam Perspektif Hak Asasi Manusia,” in *Seminar Nasional Hukum, Sosial dan Ekonomi*, vol. 3, 2024, 259–67.

¹¹ Mochamad Januar Rizki dan Shobichatul Aminah, “The Rise Of Japan’s Halal Industry And Tourism Post-Covid-19,” *Journal Research of Social Science, Economics, and Management* 2, no. 12 (2023): 2845–56.

nal Records

A court decision or judge's decision is the final stage in the examination of a case in court. Basically, a judge's decision is a statement by the judge, as an authorized official, uttered in court and aimed at ending or resolving a case or dispute between the parties.¹² Not only as the end of a case, the decision functions as a "source of learning" regarding the law.¹³ Through the decision issued by the judge, the general public will know and understand how the judge behaves and interprets a legal issue that is a problem for the community through the case submitted to the trial.¹⁴ The decision also aims to create legal certainty, reflect justice and provide benefits. The decision does not only aim to provide benefits for the disputing parties but also to provide benefits for the community.

The importance of the role of court decisions in realizing legal certainty, justice and benefits¹⁵ for the parties to the case as well as for the community is strengthened by the provisions of Article 13 of the Judicial Power Law which regulates the following matters: (1) all court hearings are open to the public unless the law determines otherwise; (2) Court decisions are only valid and have legal force if pronounced in a hearing open to the public; and (3) If both elements are not fulfilled, the decision is declared null and void by law. In order to uphold the principle of openness to the public, court decisions are published to the public so that they can be used as legal learning and used for other public interests. Other public interests such as the requirements for candidacy for general elections or regional head elections.

In general, Court Decisions contain the identities of the parties to the case,¹⁶ the main case/dispute, legal considerations, and the conclusions. There are two types of personal data that are the objects of personal data protection in accordance with the provisions of Article 4 of the PDP Law contained in a decision. First, there is general personal data, namely name, address, occupation, gender, religion and so on. Second, specific data, namely criminal records described in the case, conclusions and rulings of the decision.¹⁷ As in the case of one of the famous artists in Indonesia. The divorce case was caused by allegations of domestic violence committed by the husband against his wife. In addition to the issue of violence, the facts of the trial were found that the husband rarely had sexual relations with his wife. This issue then entered the media and went viral. The artist's good name was tarnished and once again, there was no protection of personal data in the court decision. Household information and criminal records can be accessed so easily by the public.

According to the PDP Law itself, personal data protection includes specific personal data and general personal data.¹⁸ The PDP Law classifies specific personal data as follows: (1) health data and information; (2) biometric data; (3) genetic data; (4) criminal records; (5) child data; (6) personal spatial data; and/or (7) other data in accordance with the provisions of laws and regulations. Meanwhile, general personal data as referred to

12 Stephen B Goldberg et al., *Dispute Resolution: Negotiation, Mediation, Arbitration, and other Processes* (Aspen Publishing, 2020) p. 53.

13 Peter Grajzl dan Peter Murrell, "A Machine-Learning History of English Caselaw and Legal Ideas prior to the Industrial Revolution II: applications," *Journal of Institutional Economics* 17, no. 2 (2021): 201–16.

14 Irwan Sugiarto dan Hari Sutra Disemadi, "Consumers Spiritual Rights In Indonesia: A Legal Study Of Sharia Fintech Implementation In The Consumers Protection Perspective," *Jurnal IUS Kajian Hukum dan Keadilan* 8, no. 3 (2020): 437–52.

15 Muhamad Romdoni et al., "A Critique and Solution of Justice, Certainty, and Usefulness in Law Enforcement in Indonesia," *Journal of Law Science* 5, no. 4 (2023): 174–81.

16 Mark A Lemley, "The Imperial Supreme Court," *Harv. L. Rev. F.* 136 (2022): 97.

17 Hasnati Hasnati dan Puti Mayang Seruni, "Consumer's Personal Data Protection in the Digital Era," *Jurnal Ius Constituendum* 9, no. 1 (2024): 20–35.

18 Iman Imanuddin, R R Dewi Anggraeni, dan others, "Construction of Consumer Protection Against Illegal Online Loan Transactions As a Means of IUS Constituendum in Indonesia," *Jurnal IUS Kajian Hukum dan Keadilan* 11, no. 3 (2023): 539–56.

includes (1) full name; (2) gender; (3) citizenship; (4) religion; (5) marital status; and/or (6) Personal Data that is combined to identify a person. In relation to the protection of personal data, the PDP Law regulates several Personal Data Subjects as follows:

Tabel 1. Personal Data Rights

Rights	Article	Exception
complete, update and/or correct errors and/or inaccuracies in Personal Data about him/herself in accordance with the purposes of processing Personal Data	Article 6	The rights of Personal Data Subjects as referred to in Article 8, Article 9, Article 10 paragraph (1), Article 11, and Article 13 paragraph (1) and paragraph (2) are excluded for: national defense and security interests; interests of the law enforcement process; public interests in the context of state administration; interests of supervision of the financial services sector, monetary, payment systems, and financial system stability carried out in the context of state administration; or interests of statistics and scientific research.
gain access and obtain copies of Personal Data about him/herself in accordance with the provisions of laws and regulations	Article 7	
has the right to terminate processing, delete and/or destroy Personal Data about him/herself in accordance with the provisions of laws and regulations	Article 8	
withdraw consent to the processing of Personal Data about him/her that has been given to the Personal Data Controller.	Article 9	
Object to decisions based solely on automated processing, including profiling, which produces legal effects or has a significant impact on the Personal Data Subject.	Article 10 paragraph (1)	

delay or limit the processing of Personal Data in a manner proportionate to the purposes for which the Personal Data is processed.	Article 11
sue and receive compensation for violations of the processing of Personal Data about him/her in accordance with the provisions of laws and regulations.	Article 12 paragraph (1)
obtain and/or use Personal Data about him/herself from the Personal Data Controller in a form that conforms to the structure and/or format commonly used or can be read by an electronic system	Article 13 paragraph (1)
Using and sending Personal Data about him/herself to other Personal Data Controllers, as long as the systems used can communicate with each other securely in accordance with the principles of Personal Data Protection under this Law.	Article 13 paragraph (2)

Source: Research Inventory and Classification, 2024

Table 1. Shows the regulation of the rights of Personal Data Subjects regulated in the PDP Law and its exceptions. Based on the provisions of Article 15 paragraph (1) of the PDP Law, it can be seen that the rights of Personal Data Subjects are excluded for (a) the interests of national defense and security; (b) the interests of the law enforcement process (c) the public interest in the framework of state administration; (d) the interests of supervision of the financial services sector, monetary, payment systems, and the stability of the financial system carried out in the framework of state administration; or (e) the interests of statistics and scientific research.

However, Article 15 paragraph (1) of the PDP Law does not indicate that the rights of Personal Data Subjects are excluded for Court Decisions. In the event that these rights are not excluded, it can have an impact on the destruction of personal data listed in the court decision. If this possibility occurs, the Court Decision will no longer have legal certainty and will not be able to realize justice and benefits. Moreover, this can weaken the judicial system in Indonesia.

There are two articles in the PDP Law that need attention from all parties, especially those related to the principles of justice. Based on the provisions of Article 4 of the PDP Law, the criminal records listed in the verdict¹⁹ are objects of personal data protection which in their use are implemented in accordance with the provisions of laws and regulations. Furthermore, Article 15 paragraph (1) regulates exceptions to several rights of Personal Data Subjects as referred to in Article 8, Article 9, Article 10 paragraph (1),

19 Zsuzsanna Adler, *Rape on trial* (Routledge, 2022) p. 69.

Article 11, and Article 13 paragraph (1) and paragraph (2) of the PDP Law. Although Article 15 paragraph (1) letter b states that the rights of personal data subjects are excluded for the purposes of the law enforcement process, it does not mention which law enforcement process is meant. In accordance with the description that has been explained previously, there is clearly disharmony between the PDP Law and the Judicial Power Law regarding the position of court decisions containing records of individual crimes. The determination of criminal records as objects of protected personal data without regulating exceptions for criminal records listed in court decisions is considered contrary to the principle of being open to the public as referred to in Article 13 of the Judicial Power Law.

In this condition, a court decision cannot be read openly to the public and cannot be published to the public, the decision can be declared null and void.²⁰ If the decision is declared null and void, the decision can no longer provide legal certainty, justice and benefits for the parties to the case and the public in general. The absence of reformulation of these provisions can have an impact on weakening the judicial system and weakening public trust in law enforcement in Indonesia.

2.2. Reformulation Of The Concept Of Personal Data Protection With The Principles Of Justice In Indonesia

The rapid development of information and communication technology has created various opportunities and challenges.²¹ Information technology allows humans to connect with each other without recognizing national boundaries, making it one of the driving factors of globalization. Various sectors of life have utilized information technology systems, such as the implementation of electronic commerce (e-commerce)²² in the trade/business sector, electronic education (e-education)²³ in education, electronic health (e-health)²⁴ in health, electronic government (e-government)²⁵ in government, and information technology utilized in other fields. The utilization of this information technology has resulted in a person's Personal Data being very easy to collect and transfer from one party to another without the knowledge of the Personal Data Subject, thus threatening the constitutional rights of the Personal Data Subject.²⁶ Personal Data Protection is included in the protection of human rights.²⁷ Thus, regulations concerning Personal Data are a manifestation of the recognition and protection of basic human rights. The existence of a Law on Personal Data Protection is a necessity that cannot be postponed any longer because it is very urgent for various national interests. Indonesia's international relations also demand the Protection of Personal Data. This protection can facilitate transnational trade, industry and investment.

The PDP Law is mandated by Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that, "Everyone has the right to protection of themselves, their families, their honor, their dignity, and their property under their

20 Mila Sohoni, "The Power to Vacate a Rule," *Geo. Wash. L. Rev.* 88 (2020): 1121.

21 Yang Lu dan Xianrong Zheng, "6G: A survey on technologies, scenarios, challenges, and the related issues," *Journal of Industrial Information Integration* 19 (2020): 100158.

22 Saarah Hendricks dan Samwel Dick Mwapwele, "A Systematic Literature Review on the Factors Influencing E-Commerce Adoption in Developing Countries," *Data and Information Management* 8, no. 1 (2024): 100045.

23 Peng Gao, Jingyi Li, dan Shuai Liu, "An Introduction to Key Technology in Artificial Intelligence and Big Data Driven E-Learning and E-Education," *Mobile Networks and Applications* 26, no. 5 (2021): 2123–26.

24 Mehdi Letafati dan Safa Otoum, "On The Privacy and Security for E-Health Services in The Metaverse: An Overview," *Ad Hoc Networks*, 2023, 103262.

25 Suresh Malodia et al., "Future of e-Government: An Integrated Conceptual Framework," *Technological Forecasting and Social Change* 173 (2021): 121102.

26 Rowena Rodrigues, "Legal and Human Rights Issues of AI: Gaps, Challenges and Vulnerabilities," *Journal of Responsible Technology* 4 (2020): 100005.

27 Jack Donnelly dan Daniel J Whelan, *International Human Rights* (Routledge, 2020).

control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right". The issue of Personal Data Protection arises because of concerns about violations of Personal Data that can be experienced by individuals and/or legal entities. Such violations can cause material and non-material losses. The formulation of regulations on Personal Data Protection can be understood because of the need to protect the rights of individuals in society in relation to the processing of Personal Data, both electronically and non-electronically using data processing devices. Adequate protection of Personal Data will be able to provide public trust to provide Personal Data for various greater public interests without being misused or violating their personal rights. Thus, this regulation will create a balance between the rights of individuals and the public whose interests are represented by the state. This regulation on Personal Data Protection will make a major contribution to the creation of order and progress in the information society.

The correlation between personal data protection and the principles of justice in Indonesia is the disharmony between the provisions of Article 4 and Article 15 paragraph (1) of the PDP Law and the provisions of Article 13 of the Judicial Power Law. As explained in the previous sub-chapter, Personal Data that is the object of protection is data that is general and specific. One of the specific data is a crime record. It should be noted that a "crime record" is a written record that records information about a person who has committed an unlawful act or is in the process of trial for an act he has committed. This record includes details of the crime, the date, the type of violation of the law committed, and other related information.

Court decisions containing general data on perpetrators of crimes and criminal records are not included in the interests that are excluded. With the principle of open trials for the public and the results of decisions that are final and binding, it is only right that the criminal records contained in court decisions are interests that are excluded. A court decision, in the context of criminal records, refers to an official decision issued by a court after conducting a trial process against a person accused of committing a crime. Court decisions include determining whether a person is guilty or not guilty, as well as the imposition of appropriate punishment or sanctions if found guilty. Court decisions are also part of the criminal record because they reflect a person's legal status regarding the actions committed. Information regarding court decisions is recorded in the criminal record for the purpose of storing data and providing information about a person's criminal record.

Criminal records, including court decisions,²⁸ play an important role in law enforcement and legal decision-making. Information in criminal records can be used by law enforcement, the justice system, or other related parties to determine appropriate steps, such as sentencing, supervision, or rehabilitation measures. It is important to ensure that criminal records and court decisions are created and accessed while maintaining the principles of fairness, privacy, and protection of individual rights.²⁹ The principle of the presumption of innocence must be upheld, and only relevant and necessary information should be used in making decisions based on criminal records.

Court decisions are still closely related to the principle of open trials. Simply put, open trials are trials that are open and can be attended by the general public. The legal basis for open trials is explained that "For the purposes of examination, the presiding judge opens the trial and declares it open to the public except in cases concerning morality or

28 Jonathan Herring, *Criminal law: The basics* (Routledge, 2021), p. 97.

29 David Pujol et al., "Fair Decision Making Using Privacy-Protected Data," in *Proceedings of the 2020 Conference on Fairness, Accountability, and Transparency*, 2020, 189–99.

the defendant is a child”.³⁰ These provisions must be followed and implemented if these provisions are not met, then the decision will be cancelled by law. Open trials aim to ensure that all court trials are clear, clearly visible and known to the public, because trials should not be considered dark or closed and whispered in the sense of being hidden. In addition to being regulated in the Criminal Procedure Code, open trials are also regulated in Article 13 of Law Number 48 of 2009 concerning judicial power which states that (1) All court hearings are open to the public, unless the law stipulates otherwise; (2) Court decisions are only valid and have legal force if pronounced in open trials for the public; and (3) Failure to comply with the provisions referred to in paragraph (1) and paragraph (2) will result in the decision being null and void.

The provision that trials are open to the public is a legal principle that states that trials must be accessible and witnessed by the public in general, unless there are certain reasons that are legally permitted to hold closed trials. This principle aims to maintain transparency, accountability, and public trust in the judicial process. In addition, the results of court decisions are usually read openly and published to the public. This is done to provide legal clarity, provide a deterrent effect on violators of the law, and provide information about legal decisions to the public.

However, when referring to the PDP Law, there is a conflict between the principle of open trials and the protection of personal data. The PDP Law regulates the right to individual privacy related to the collection, processing, and dissemination of personal data. Information regarding criminal records is considered sensitive personal data and is protected by the PDP Law.

Therefore, adjustments to the PDP Law can be a solution to balance the principle of general trials with the protection of personal data.³¹ In this context, criminal records originating from court decisions can be exempted from the privacy protection regulated by the PDP Law. This allows the results of court decisions and relevant criminal records to remain public information and be accessible to the public.³² It is important to note that changes to the PDP Law must be made carefully and consider the principles of personal data protection and the rights of individuals involved. Appropriate legal adjustments need to consider the balance between the public interest, legal transparency, and privacy protection.

The explanation regarding the provisions on trials being open to the public and the results of court decisions being read openly and published to the public shows a conflict between the principle of general trials and the PDP Law which regulates privacy protection related to criminal records. Therefore, it is necessary to make adjustments the PDP Law to exclude criminal records originating from court decisions. Court decisions containing criminal records are expected to be excluded from personal data objects that receive protection as intended by the PDP Law. This is because the phrase criminal records which also includes court decisions in the concept of the PDP Law is contrary to the principle of trials that are open to the public. Therefore, court decisions should be excluded.

Although the provisions of Article 15 paragraph (1) letter b of the PDP Law have stated that the rights of personal data subjects are excluded for the benefit of the law enforcement process, it does not necessarily indicate the position of court decisions in

30 Susan A Bandes dan Neal Feigenson, “Virtual Trials: Necessity, Invention, and The Evolution of The Courtroom,” *Buff. L. Rev.* 68 (2020): 1275.

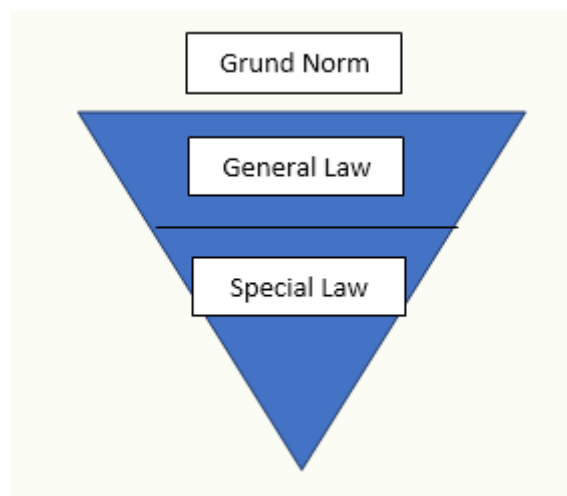
31 Zaid Zaid, “Ketika Keamanan Privasi Data Pribadi Semakin Rentan, Bagaimana Negara Seharusnya Berperan?,” *Volkgeist: Jurnal Ilmu Hukum dan Konstitusi*, 2021, 25–37.

32 Desi Ariani Sinulingga, “Legal Certainty of Aggregate Data Utilization in The Design of Personal Data Protection Bill,” *Jambura Law Review* 4, no. 1 (2022): 18–37.

the PDP Law.³³ It is necessary to clarify whether the “law enforcement process” referred to is the entire process of investigation, inquiry, prosecution, trial to verdict or other law enforcement processes.

Therefore, it is necessary to formulate a conceptualization of the regulation of court decisions containing criminal records in the concept of personal data protection. This refers to the *stufenbau* theory or positive legal theory which explains that *Stufenbeautheorie* aims to explain how the law actually originates, until it appears in positive legal regulations. *Stufenbeautheorie*³⁴ is part of legal science and not a matter of legal policy”. *Stufenbau* theory views that law must be systematic, meaning that law must be arranged from the general to the specific like an inverted pyramid. The process is called concretization. It is depicted as an inverted pyramid.

Gambar 1. *Stufenbau theorie*



Source: FX. Adji Samekto, 2019

Grundnorm³⁵ is the source of all sources of law, or legal values, in Indonesia, namely Pancasila with its five principles. The position of Grundnorm is outside the pyramid, meaning it is not a law, in the view of *Stufenbau theorie*. Furthermore, in the formation of regulations, values and principles must be considered as the basis for the formation of legislation so that the principles and values are used as abstract references that are concretized into general law, namely the 1945 Constitution of the Republic of Indonesia,³⁶ and the laws and regulations below it to specific regulations that are concrete. The law also contains legal norms, namely behavioral guidelines, the contents of which are what is allowed and what is not allowed. Therefore, the position of the principle is prioritized so that the PDP Law needs to be adjusted regarding the regulation of criminal records by excluding court decisions on the basis of consideration of the position of the principle which is fundamental rather than the Article in a law. Therefore, the form of the concept of reformulating the provisions of the Article of the PDP Law so that it is in line with the principles of Indonesian justice can be seen as follows:

33 Julius Mandjo dan Mohamad Taufik Zulfikar Sarson, “The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations,” *Jambura Law Review* 3, no. 2 (2021): 365–77.

34 Adnan Hasbullah; Hamid, “Legal Hermeneutics of the Omnibus Law on Jobs Creation: A Case Study in Indonesia,” *Beijing L. Rev.* 13 (2022): 449.

35 Laura Mai dan Emille Boulot, “Harnessing the Transformative Potential of Earth System Law: From Theory to Practice,” *Earth System Governance* 7 (2021): 100103.

36 Harisman Harisman, “Protection of Human Rights in the Amendment of the 1945 Constitution of The Republic of Indonesia,” in *1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, 2021, 384–89.

Table 2. Concept of Reformulation of Articles in the PDP Law

No	Current rules	Conceptualization of Law
1.	Article 4 paragraph (2) UU PDP Specific Personal Data as referred to in paragraph (1) letter a includes: - health data and information; - biometric data; - genetic data; - criminal records; - child data; - personal data; and/or - other data in accordance with the provisions of laws and regulations. Explanation of Article 4 paragraph (2) letter d of the PDP Law What is meant by “criminal record” is a written record of a person who has committed an unlawful act or violated the law or is in the process of being tried for an act committed, including police records and inclusion in the prevention or deterrence list.	Article 4 paragraph (2) UU PDP Specific Personal Data as referred to in paragraph (1) letter a includes: - health data and information; - biometric data; - genetic data; - criminal records; - child data; - personal data; and/or - other data in accordance with the provisions of laws and regulations Explanation of Article 4 paragraph (2) letter d of the PDP Law What is meant by “criminal record” is a written record of a person who has committed an unlawful act or violated the law or is in the process of being tried for an act committed, including police records and inclusion in a prevention or deterrence list, except for data originating from a Court Decision.
2.	Article 15 paragraph (1) UU PDP The rights of Personal Data Subjects as referred to in Article 8, Article 9, Article 10 paragraph (1), Article 11, and Article 13 paragraph (1) and paragraph (2) are excluded for: - national defense and security interests; - interests of law enforcement processes; - public interests in the context of state administration; - interests of supervision of the financial services sector, monetary, payment systems, and financial system stability carried out in the context of state administration; or - interests of statistics and scientific research.	Article 15 paragraph (1) UU PDP (The rights of Personal Data Subjects as referred to in Article 8, Article 9, Article 10 paragraph (1), Article 11, and Article 13 paragraph (1) and paragraph (2) are excluded for: - national defense and security interests; - interests of the law enforcement process; - general interests in the context of state administration; - interests of supervision of the financial services sector, monetary, payment systems, and financial system stability carried out in the context of state administration; - interests of statistics and scientific research; and/or - court decisions.

Source: Research Result Concept, 2024

The reformulation of the concept of protection of criminal records contained in the decision consists of two main points. First, the reformulation of the explanation in Article 4 paragraph 2 letter d which originally stated that “What is meant by a criminal record is a written record of a person who has committed an unlawful act or violated the law or is in the process of trial for the act committed, including police records and inclusion in the prevention or deterrence list” is changed by adding the phrase “... except for data originating from Court Decisions”. This simple reformulation can have a different impact on the harmonization of the PDP Law and the Judicial Power Law regarding criminal records contained in court decisions. The change in explanation does not negate criminal records as specific data. However, to clarify the category of criminal records³⁷ that can be used as data that should be protected.

Second, the reformulation of the provisions of Article 15 paragraph (1) of the UUPDP by adding one letter, namely letter f, which states that the rights of Personal Data Subjects are excluded for Court Decisions. The addition of this provision is necessary to emphasize that Court Decisions have an important role in realizing legal certainty, providing justice and benefits which are also the face of the Indonesian justice system. For example, in the case of the rights of personal data subjects as stated in Article 8 of the UUPDP not being excluded for Court Decisions, then the Personal Data Subject has the right to terminate processing, delete, and/or destroy Personal Data about him/herself in accordance with the provisions of laws and regulations. If this happens, then the Court Decision is no longer *incrach* and no longer has binding legal force for the parties. Thus, the purpose of the decision to provide legal certainty, justice and benefits is not achieved. More deeply, this can weaken the judicial system and weaken public trust in law enforcement in Indonesia.

This reformulation will not weaken the protection of personal data but harmonize the provisions of the PDP Law with the principles applicable in the Indonesian judicial system. Based on the reformulation found, it is hoped that the implementation of personal data protection can go hand in hand with the principle of openness in court decisions. So that the protection of personal data and court decisions can provide legal certainty, justice and benefits for all parties.

3. CONCLUSION

This article finds several important conclusion. First, the determination of criminal records as objects of protected personal data without regulating exceptions for criminal records listed in court decisions is considered contrary to the principle of openness to the public as referred to in Article 13 of the Judicial Power Law. In the context of personal data protection, it is important to consider court decisions that are freely open to the public. Second, the reformulation of the concept of protection of criminal records listed in decisions consists of two main points, namely changes to the explanation of Article 4 paragraph (2) letter d of the PDP Law and the addition of provisions in letter f to Article 15 paragraph (1) of the PDP Law. The reformulation aims to exclude criminal records originating from court decisions as objects of protected personal data and to limit the actions of personal data subjects that can have an impact on the loss of legal certainty, justice and the benefits of court decisions. The reformulation is expected to realize the harmonization of provisions on personal data protection and enforcement of the principle of openness in the judiciary.

³⁷ Alexander L Burton et al., “Beyond the Eternal Criminal Record: Public Support for Expungement,” *Criminology & Public Policy* 20, no. 1 (2021): 123–51.

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