

Criminal for Leaking Administs Data of PDDIKTI and PSD-PTU According to Number 19 Year 2016 Concerning ITE

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ABSTRACT

Protection for every citizen wherever they are is a obligation that must be fulfilled by a country. Th is in accordance with the Preamble to the 194 Constitution of the Republic of Indonesia in the 4t (fourth) paragraph. One form of recognitio guarantee, protection, and fair legal certainty a well as equal treatment before the law is th existence of adequate arrangements that are ver close between the protection of confidential dat from individual PDDikti admins and PSD-PTU Lecturer, both at universities State Universitie (PTN) and Private Universities (PTS). Priva secrecy is very essential, especially related to th PDDikti and PSD-PTU data of a Lecturer, both State Universities (PTN) and Private Universitie (PTS), because that is where there are individu rights that must be protected by the State. Th protection of personal data in the digital era ha been regulated and stated in the form of Ministeri Regulation (Permen) No. 20 of 2016 concernin Personal Data Protection (PDP) stipulate November 7, 2016, promulgated and effective sinc December 1, 2016. The regulation states th Personal Data is data certain individuals who ar kept, cared for, and the truth is protected and the confidentiality is protected because that is wher there are individual rights that must be protecte by the State which should be kept secret except fo the interests of the State.

INTRODUCTION

Indonesia is a constitutional state according to the 1945 Constitution. This is stated in the 1945 Constitution article 1 paragraph 3, which reads: "The Indonesian state is a state of law." The state of law or having the term *rechtsstaat* or the rule of law is a state that in carrying out an action, all based on the regulations or in accordance with applicable law. If there is someone who violates the rules, then he has the right to get punishment because he is considered to have violated the laws of the rule of law. These characteristics include the existence of a systematic administrative system, the rule of law, the protection and recognition of human rights, an impartial judicial system, a clear division of power, the existence of criminal and civil courts, and legality in the sense of law itself.

The state of Indonesia has established itself as a state of law. The rule of law is a state concept that relies on the belief that state power must be exercised on the basis of just and reasonable regulation. The practice of law requires that every action of the state must aim to uphold legal certainty, be carried out equally, be an element that legitimizes democracy, and fulfill the demands of reason. The realization of Indonesia as a state of law is undoubtedly very good to be supported and upheld. Because in the effort to become a legal state, there are good elements, including respect for human rights and human dignity, the division, and separation of powers, the government is run based on the state constitution, the existence of administrative justice in disputes between the people and the state. This shows that there is no absolute freedom for the people, state administrators, and state institutions in carrying out their lives. A state with good and correct laws will certainly regulate how its people must act as good citizens and obey the law, and regulate how the government must carry out its duties and responsibilities.

The realization of Indonesia as a legal state that is good and right in regulating all things in the country cannot be separated from its citizens. The existence of obedient citizens and obeying applicable laws will make the Indonesian state increasingly a state of law that should be because the law is an order or rule that must be upheld by the people in a country. Every citizen must realize that Indonesia is a country based on law, not on power, so everything done in this nation and State must be carried out based on applicable laws and regulations. If the government and all citizens are obedient to the laws adopted by the State, then the realization as a state of the law will be more accurate. And if the rule of law goes well, it will create conditions that are ideal for the development and progress of the nation.

Protection for every citizen wherever they are is an obligation that must be fulfilled by a country. This is in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia in the 4th (fourth) paragraph. Because the protection provided is one of the rights of citizens, which is embodied in the Body of the 1945 Constitution of the Republic of Indonesia Article 28D paragraph (1), which states that "Everyone has the right to recognition, guarantees, protection, and legal certainty that is fair and equal treatment before the law." Law Number 14 of 2008 concerning Public Information

Disclosure is intended to regulate information matters relating to the public and state interests¹.

The protection of personal data in the digital era has been regulated and stated in the form of Ministerial Regulation (Permen) No. 20 of 2016 concerning Personal Data Protection (PDP) stipulated November 7, 2016, promulgated and effective since December 1, 2016. The regulation states that Personal Data is data. Certain individuals are kept, cared for, and kept the truth, and their confidentiality is protected because that is where there are individual rights that must be protected by the State, which should be kept secret except for the interests of the State².

Although this Law focuses on information disclosure, it is still within the framework of national security interests. So that not all Information can be accessed in general, as stated in Article 2 paragraphs (2) and (4), namely: (2) Public Information that is exempt is strict and limited; (4) Public Information that is exempted is confidential following the Law, decency, and the public interest based on an examination of the consequences that arise when Information is provided to the public and after careful consideration that closing Public Information can protect a greater good than opening it or vice versa.

It is explained that what is meant by "consequences that arise" is a consequence that endangers the interests protected under this Law if Information is disclosed. Information that is categorized as open or closed must be based on the public interest. If the more significant public interest can be protected by closing an Information, the Information must be kept confidential or closed and/or vice versa.

As stated in the explanation, the existence of the Law on the Disclosure of Public Information is very important as a legal basis relating to (1) the right of every person to obtain Information; (2) the obligation of the Public Agency to provide and serve requests for Information quickly, on time, at low/proportional costs, and in a simple way; (3) exceptions are strict and limited; (4) the obligation of the Public Agency to fix the system of documentation and information services.

By opening public access to information, it is hoped that the Public Agency will be motivated to be responsible and oriented to the best public service. Thus, it can accelerate the realization of open government, which is a strategic effort to prevent the practice of corruption, collusion, and nepotism (KKN) and the creation of good governance (good governance). It is permissible (with the exception of exceptions and with the permission of the owner/relevant agency) as regulated in the legislation to disclose or leak secrets in the public sphere either through electronic or non-electronic media within the framework of national security and greater interests, to classified information as secret and/or limited in its possession, Public Agency has the right as stated in Law Number 14 of 2008 concerning Openness of Public

Information, article 6 as follows: (1) Public Agency has the right to refuse to provide exempt information in accordance with the provisions of the legislation; (2) Public Agency has the right to refuse to provide Public Information if it is not in accordance with the provisions of the legislation; and (3) Public Information that cannot be provided by a Public Agency, as referred to in paragraph (1), includes information relating to personal rights.

Although the disclosure of the information in Article 17 is exempted from disclosure to the public, it can also be accessed for other purposes, as in Article 18, paragraph (2). It does not include exempted information as referred to in Article 17 letters g and h, among others, if:

The party whose secret is disclosed gives written consent; and/or Disclosure relates to a person's position in public positions. Law of the Republic of Indonesia, Number 39 of 1999 concerning Human Rights (HAM) in Chapter II Basic Principles Article 2 The Republic of Indonesia recognizes and upholds human rights and fundamental human freedoms as rights that are naturally attached to and inseparable from human beings, which must be protected, respected and maintained for the sake of increasing human dignity, welfare, happiness, intelligence, and justice.

Article 3 paragraph (2) Everyone has the right to recognition, guarantee, protection, and fair legal treatment as well as legal certainty and equal treatment before the law. Paragraph (3) Everyone has the right to protect human rights and fundamental human freedoms without discrimination. Part Four Right to Justice Article 17 of the Law of the Republic of Indonesia, Number 39 of 1999 concerning Human Rights "Everyone, without discrimination, has the right to obtain justice by submitting applications, complaints, and lawsuits, both in criminal, civil and administrative cases and tried through a judicial process that is free and impartial, following procedural law which guarantees an objective examination by an honest and fair judge to obtain a proper and correct decision.

Article 29 paragraph (1) Everyone has the right to personal protection, family, honor, dignity, and property rights. Paragraph (2) Everyone has the right to recognition before the law as a person wherever he is. Article 30 Everyone has the right to feel safe and secure and protected against the fear of doing or not doing something.

One form of legal protection is the existence of adequate arrangements that are very close between protecting confidential data from unscrupulous PDDIKTI Admin employees and PSD a Lecturer, both at State Universities (PTN) and Private Universities (PTS). Criminal Punishment for PDDIKTI and PSD-PTU Admin Personnel who abuse their authority according to Law Number 19 of 2016 concerning ITE, by leaking lecturer secrets (lecture secret) or also known as undisclosed information through print media (Newspapers), magazines, bulletins), or online (TV, Instagram, YouTube, Snapchat (WhatsApp, SMS), Ti-Tok, Facebook and Twitter)) without the permission of the owner, except for the interests of the University/Campus where he teaches/devotes, the nation, and the state, the contents of which contain insults and defamation according to Law Number 19 concerning ITE, then subject to

criminal penalties based on article 27 paragraph (3) in conjunction with article 42 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, that: *“Everyone intentionally and without rights distributes and transmits and/or makes electronic information accessible online and/or electronic documents containing insults and/or defamation.”*

If the actions of PDDIKTI and PSD-PTU Admin Personnel who leak secrets through the media (print, online, social media) without written permission (syrah) which are very closely related to Lecturer Secrets (lecture secret) or also known as undisclosed information) opened by PDDIKTI and PSD-PTU Admin Personnel whose contents contain insults and defamation will be subject to criminal penalties based on Article 27 paragraph (3) in conjunction with Article 42 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2016 2008 pertaining to Information and Electronic Transactions (ITE).

THEORETICAL REVIEW

Definition of Confidential and Electronic Information Secret According to Islam

Before a law regulating the protection and prohibition that governs the disclosure of confidential personal data, agencies, state institutions, and others without rights and against the law (harming other people, agencies, state institutions, and others), Islam has regulated it first. Imam Al-Ghazali discussed the spread of this secret from a religious perspective. Disclosure of secrets is a betrayal that is difficult to accept. Al-Ghazali quotes the Prophet's hadith about the status of a person's story/conversation. The Law of Opening Other People's Secrets. It means, "Opening secrets (others) is prohibited (in religion) because it hurts and plays with the rights of acquaintances and friends. The Prophet Muhammad said, 'When someone tells a story, then turns around, it is a trust³."

The Prophet Muhammad said that conversation is trust. Therefore, leaking (conversation) secrets is a form of betrayal. "The Prophet Muhammad said, 'The conversation between you is a trust' (Narrated by Ibn Abid Duniya). Imam Al-Hasan said, 'One form of betrayal is the disclosure of your brother's secret. Imam Al-Ghazali said that revealing other people's secrets is forbidden when endangering others. But ethically, disclosing secrets, whether family, friends, relatives, or households, is a despicable character that should be shunned. *الصحبة* Meaning, "It is forbidden to leak the secret of conversation when it brings harm, and it is a disgraceful act if it does not cause damage. We have already mentioned it in the chapter regarding closing secrets on social etiquette. Disclosure of this secret is prohibited according to the Shari'a without any emergency interests, such as the court's interests for the law. The revelation of secrets is also reprehensible according to Islamic morality because it violates the rights (secrets) of others that should be fulfilled.

According to Wikipedia

Confidentiality (English: secrecy) is the practice of exchanging information between a group of people, which can only be as many as one person and hiding it from other people who are not members of the group. What is hidden is called a secret. Confidentiality is often controversial. Many people claim that, at least under some circumstances, it is better for everyone if everyone knows all the facts and there should be no secrets. Other related English terms, perhaps even synonyms, are confidentiality and privacy. William Penn wrote, "*It is wise not to seek a secret; and honest, not to reveal one*")

Electronic Information

According to Article 1 paragraph (1) and paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, in this Law, what is meant by: Electronic Information is one or a set of electronic data, including but not limited to writing, sound, pictures, maps, designs, photographs, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, processed letters, signs, numbers, Access Codes, symbols, or perforations that have meaning or can be understood by people who can understand them.

Electronic Transaction is a legal action carried out using a computer, computer network, and other electronic media.

Guaranteed Protection of Personal Data

Guarantees for personal data are regulated in legislation and regulations, namely Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE, 2008) and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Transactions Electronic (UU ITE, 2016) Article 26 Paragraph 1 that unless stipulated otherwise by laws and regulations, the use of any information through electronic media concerning a person's data must be carried out with the consent of the person concerned. Minister of Communication and Informatics Regulation No. 20 of 2016 concerning Protection of Personal Data in Electronic Systems (PM 20/2016), which has been in effect since December 2016, the protection of personal data includes protection against the acquisition, collection, processing, analysis, storage, display, announcement, transmission, dissemination, and destruction of data personal⁴.

According to Ministerial Regulation Number 20 of 2016, the electronic system that can be used in the personal data protection process is an electronic system that has been certified and has internal rules regarding the protection of personal data, which must pay attention to aspects of technology application, human resources, methods, and costs.

The owner of personal data, according to Ministerial Regulation Number 20 of 2016, has the right to the confidentiality of his data; has the right to file a

complaint in the context of resolving personal data disputes; has the right to have access to personal historical data, and has the right to request the destruction of specific personal data belonging to him in the electronic system. Matters related to this right are regulated in Article 26 PM 20/2016.

Every electronic system operator is obliged to notify the Personal Data Owner in writing in the event of a failure to protect the confidentiality of personal data. The information that must be submitted includes: the reason or cause of failure to protect the confidentiality of personal data can be done electronically;

it must be ensured that it has been received by the Personal Data Owner if the failure contains a potential loss for the person concerned; written notification is sent to the Personal Data Owner no later than 14 (fourteen) days after the failure is known.

The protection of personal data in the digital era has been regulated and stated in the form of Ministerial Regulation (Permen) No. 20 of 2016 concerning Personal Data Protection (PDP) stipulated November 7, 2016, promulgated and effective since December 1, 2016. The regulation states that Personal Data is data. Specific individuals are kept, cared for, and kept the truth. Their confidentiality is protected because that is where there are individual rights that must be protected by the State, which should be kept secret except for the interests of the State.

Although this Law focuses on information disclosure, it is still within the framework of national security interests. So that not all Information can be accessed in general, as stated in Article 2 paragraphs (2) and (4), namely: (2) Public Information that is exempt is strict and limited; (4) Public Information that is exempted is confidential following the Law, propriety, and the public interest based on an examination of the consequences that arise when Information is provided to the public and after careful consideration that closing Public Information can protect a greater interest than opening it or vice versa.

It is explained that what is meant by "consequences that arise" is a consequence that endangers the interests protected under this Law if Information is disclosed. Information categorized as open or closed must be based on the public interest. If the more significant public interest can be protected by closing an Information, the Information must be kept confidential or closed and vice versa.

As stated in the explanation, the existence of the Law on the Disclosure of Public Information is essential as a legal basis relating to (1) the right of every person to obtain Information; (2) the obligation of the Public Agency to provide and serve requests for Information quickly, on time, at low/proportional costs, and in a simple way; (3) exceptions are strict and limited; (4) the obligation of the Public Agency to fix the system of documentation and information services.

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strategic effort to prevent corruption, collusion, and nepotism (KKN) and create good governance (good governance).

It is permissible (except for exceptions and with the permission of the owner/relevant agency) as regulated in the legislation to disclose or leak secrets in the public sphere either through electronic or non-electronic media within the framework of national security and more special interests, to classified information as secret and limited in its possession, Public Agency has the right as stated in Law Number 14 of 2008 concerning Openness of Public Information, article 6 as follows: (1) Public Agency has the right to refuse to provide exempt information following the provisions of the legislation; (2) Public Agency has the right to refuse to provide Public Information if it is not following the provisions of the legislation; and (3) Public Information that cannot be provided by a Public Agency, as referred to in paragraph (1), includes information relating to personal rights.

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Criminal Theory

According to Muladi and Barda Nawawi Arief, according to Kant, punishment is a demand for decency. Kant views crime as a categorical imperative; a judge must convict a person because he has committed a crime. Crime is not a means to an end but reflects justice.

Criminal Purpose

In retaliation against criminals. Although this tendency to retaliate is, in principle, a normal phenomenon, retaliation must be seen as a strong emotional reaction and, therefore, irrational; punishment is given because the perpetrator must accept the sanction for his fault⁶. The punishment becomes fair retribution for the losses that have been caused. Therefore this theory is also known as the proportionality theory. For that reason, punishment is morally justified ⁷. Related to this retributive school, Karl O. Christiansen ⁸ identifies five main characteristics of retributive theory, namely. The purpose of punishment is just retribution; 2. Just retribution is the ultimate aim, and not in itself a means to any other aim, as for instance social welfare which from this point of view is without any significance whatsoever; 3. Moral guilt is the only qualification for punishment; 4. The penalty shall be proportional to the moral guilt of the offender; 5. Punishment point into the past, it is pure reproach, and its purpose is not to improve, correct, educate or resocialize the offender.

Unlocking Secrets According to the Law

The Public Information Disclosure Act (KIP) or Law Number 14 of 2008 concerning Public Information Disclosure is intended to regulate information matters relating to public and state interests. Although this Law focuses on information disclosure, it is still within the framework of national security interests. So that not all Information can be accessed in general, as stated in Article 2 paragraphs (2) and (4), namely: (2) Public Information that is exempt is strict and limited; (4) Public Information that is exempted is confidential following the Law, propriety, and the public interest based on an examination of the consequences that arise when Information is provided to the public and after careful consideration that closing Public Information can protect a greater interest than opening it or vice versa.

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Modus Operandi

The modus operandi is carried out by PDDIKTI and PSD-PTU Admin personnel. They abuse the authority to leak confidential lecturer data (lecture secret) or also known as undisclosed information, by: Opening information via electronic data, via writing, sound, pictures, maps, designs, photos, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, numbers, codes Processed access, symbols or perforations that have meaning or can be understood by people who can understand them. Opening information via Electronic Transactions conducted using a computer, computer network, or other electronic media.

Criminal sanctions

Therefore, the Criminal Punishment for PDDIKTI and PSD-PTU Admin Personnel who abuse the authority to leak confidential lecturer data (lecture secret) or also known as undisclosed information, through print media (newspapers, magazines, bulletins) and online (TV), Instagram, YouTube, Snapchat (WhatsApp, SMS), Ti-Tok, Facebook, and Twitter)) whose contents contain insults and defamation according to Law Number 19 concerning ITE, then be subject to criminal penalties based on article 27 paragraph (3) in conjunction with Article 42 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, that: "Everyone intentionally and without rights distributes and/or transmits and/or makes electronic information and / or electronic documents containing insults and / or defamation."

In addition to administrative sanctions, following UU ITE 2008 jo. The 2016 ITE Law, if it is proven that there is a violation of misuse of personal data by a third party and fulfills the criminal element of misuse of personal data information and causes a loss, it can be sentenced to a maximum imprisonment

of 12 (twelve) years and a maximum fine of Rp. 12,000,000,000. ,00 (twelvebillion rupiahs).

METHODOLOGY

Data collection technique

This research was obtained from various sources. Online Data Search / Internet searching is a data collection technique through the help of technology in the form of tools/search engines on the internet where all information from various eras is available. Internet searching is straightforward to help researchers find a file/data where the speed, completeness, and availability of data from different years are available. Searching for data on the internet can be done by searching, browsing, surfing, or downloading.

Types of Data and Data Collection Techniques

Data Type

Secondary Data

Secondary data is obtained from a second source other than field data, such as literature from books, magazines, the internet, and results of previous research. Secondary data is used as a complement to primary data. The secondary data in this study are in the form of data that the authors found from various sources, journals, books, online news, websites, media reviews, and other relevant sources.

Research methods

This research method uses normative juridical methods through literature study by examining secondary data in the form of primary and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia and various laws and regulations related to the writing of this paper.

Data analysis

Data analysis was carried out qualitatively, and the data were presented descriptively and prescriptively.

DISCUSSION

Protection for every citizen, wherever they are, is an obligation a country must fulfill. This is in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia in the 4th (fourth) paragraph because the protection provided is one of the rights of citizens, which is embodied in the Body of the 1945 Constitution of the Republic of Indonesia Article 28D paragraph (1) which states that "Everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law.

One form of recognition, guarantee, protection, and fair legal certainty as well as an equal treatment before the law is the existence of a very close

adequate arrangement between the protection of confidential data from unscrupulous PDDIKTI Admin employees and PSD-PTU a Lecturer, both at State State Universities (PTN) and Private Universities (PTS).

Private secrecy is essential, especially related to PDDIKTI and PSD data of a Lecturer, both at State Universities (PTN) and Private Universities (PTS), because that is where there are individual rights that must be protected by the State.

The protection of personal data in the digital era has been regulated and stated in the form of Ministerial Regulation (Permen) No. 20 of 2016 concerning Personal Data Protection (PDP) stipulated November 7, 2016, promulgated and effective since December 1, 2016. The regulation states that Personal Data is data. Certain individuals are kept, cared for, and kept the truth, and their confidentiality is protected because that is where there are individual rights that must be protected by the State, which should be kept secret except for the interests of the State.

CONCLUSIONS AND RECOMMENDATIONS

From the description above, it can be concluded: Legal protection against confidential data of lecturers at PDDIKTI and PSD-PTU (Lecture Secret) or also known as undisclosed information carried out by PDDIKTI and PSD-PTU Admins intentionally and without the right to distribute and transmit and/or make accessible electronic information and electronic documents containing insults and defamation can be punished; If the PDDIKTI and PSD-PTU Admin Personnel have disclosed or leaked the Lecturer's secret (Lecture Secret) or also known as undisclosed information, that should be kept secret except for the interests of the state, in any way, primarily through print media, and illegally (officially without the permission of the owner/leader) is a violation of law that falls within the scope of a crime, so that it can be subject to criminal penalties, both under the Criminal Code, the Trade Law, and the ITE Law, including these sanctions, namely: If the act of leaking company secrets is carried out by unscrupulous employees, employees who leak company secrets (Corporate Secrets) through print media (newspapers, magazines, bulletins), or online (TV, Instagram, YouTube, Snapchat (WhatsApp, SMS), Ti-Tok, Facebook and Twitter)) whose contents contain insults and/or defamation, shall be subject to criminal penalties based on article 27 paragraph (3) to Article 42 of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000, 00 (one billion rupiah).

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<https://www.kominfo.go.id/> personal data protection in the digital era

<https://islam.nu.or.id/syariah/> the law of revealing other people's secrets-rA1ts

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