

THE URGENCY OF PERSONAL DATA PROTECTION LAW IN THE DIGITAL TECHNOLOGY ERA

*Orasi Ilmiah Fakultas Hukum Universitas Ahmad
Dahlan, Yogyakarta, 11 December 2021*

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Agenda

- 01 The Foundation: Right to Privacy
- 02 The Trigger: Global Trade
- 03 The Pressure: Data Breach Cases
- 04 The Core: Data Protection Principles
- 05 The Mechanism: What to Prepare?

RIGHT TO PRIVACY

THE FOUNDATION

Right to Privacy



Right to Life, to Enjoy Life with Dignity



"Leave me Alone" – Right to Solitude



Right to be Anonymous, under no Scrutiny



Informational Privacy: Identity, Communications, lifestyle, etc



84%

of the global consumers care about privacy, care for their own data, care about the data of other members of society, and they want more control over how their data is being used.

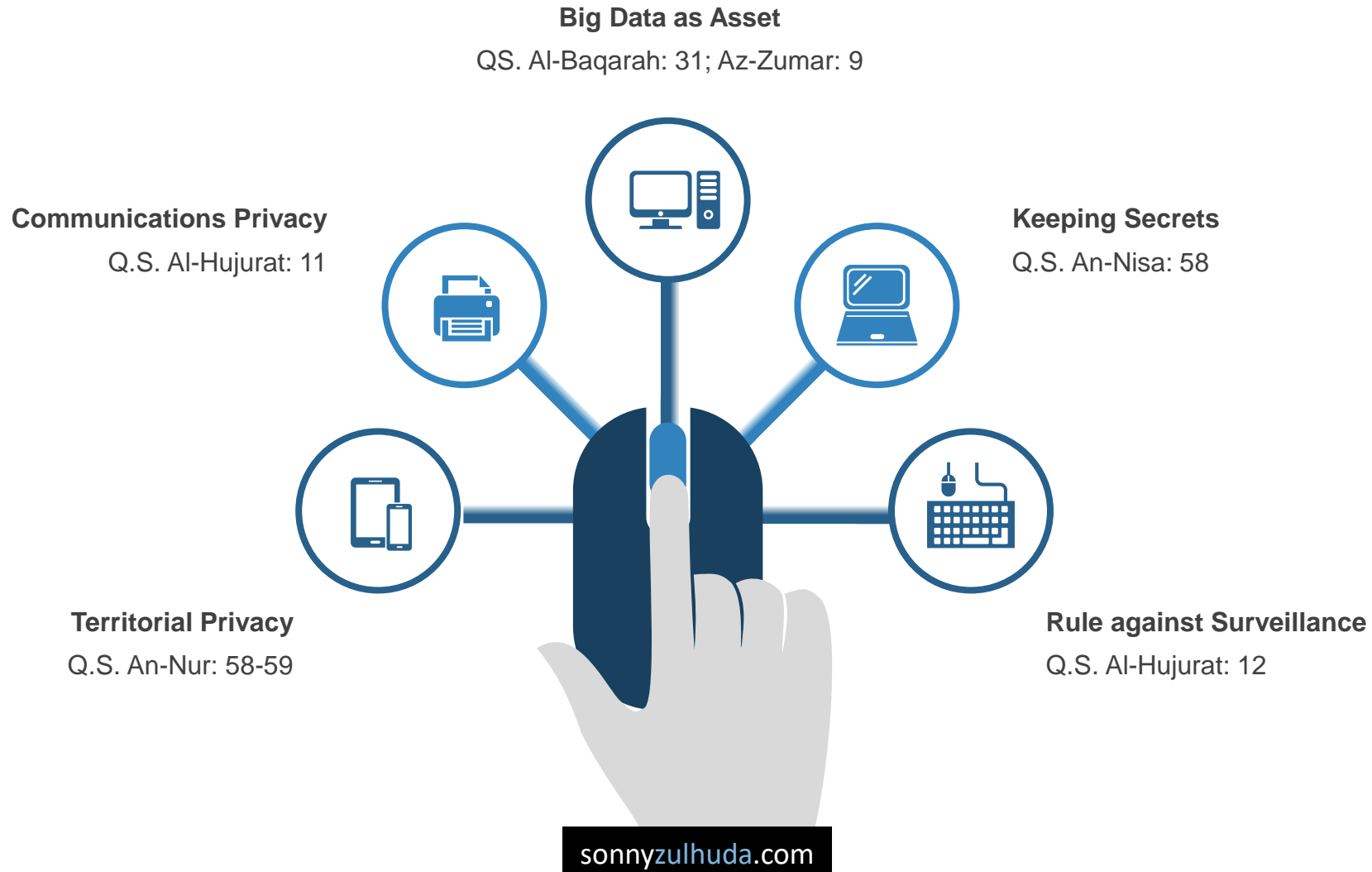
Cisco Consumer Privacy Survey 2019

Right to Privacy



- **Right to be left alone**, away from intrusion and interference
- **Respect and dignity**: Respect to private life, family life, home, communications, activities, acquaintance, identities, etc.
- It is about a general **prohibition on interference**
 - Interference is contextual; thus privacy can be also contextual. Exception or justifications may apply, eg public interests.
- **Scope of Privacy**: Bodily privacy, Territorial privacy, Communications privacy, Informational privacy

Privacy & Data Protection: The Quranic Perspective

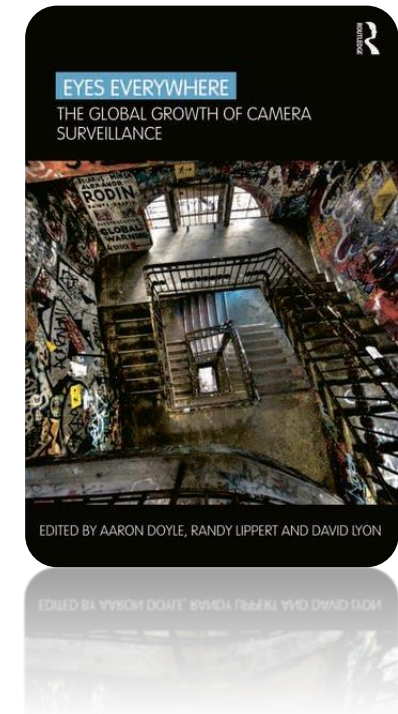


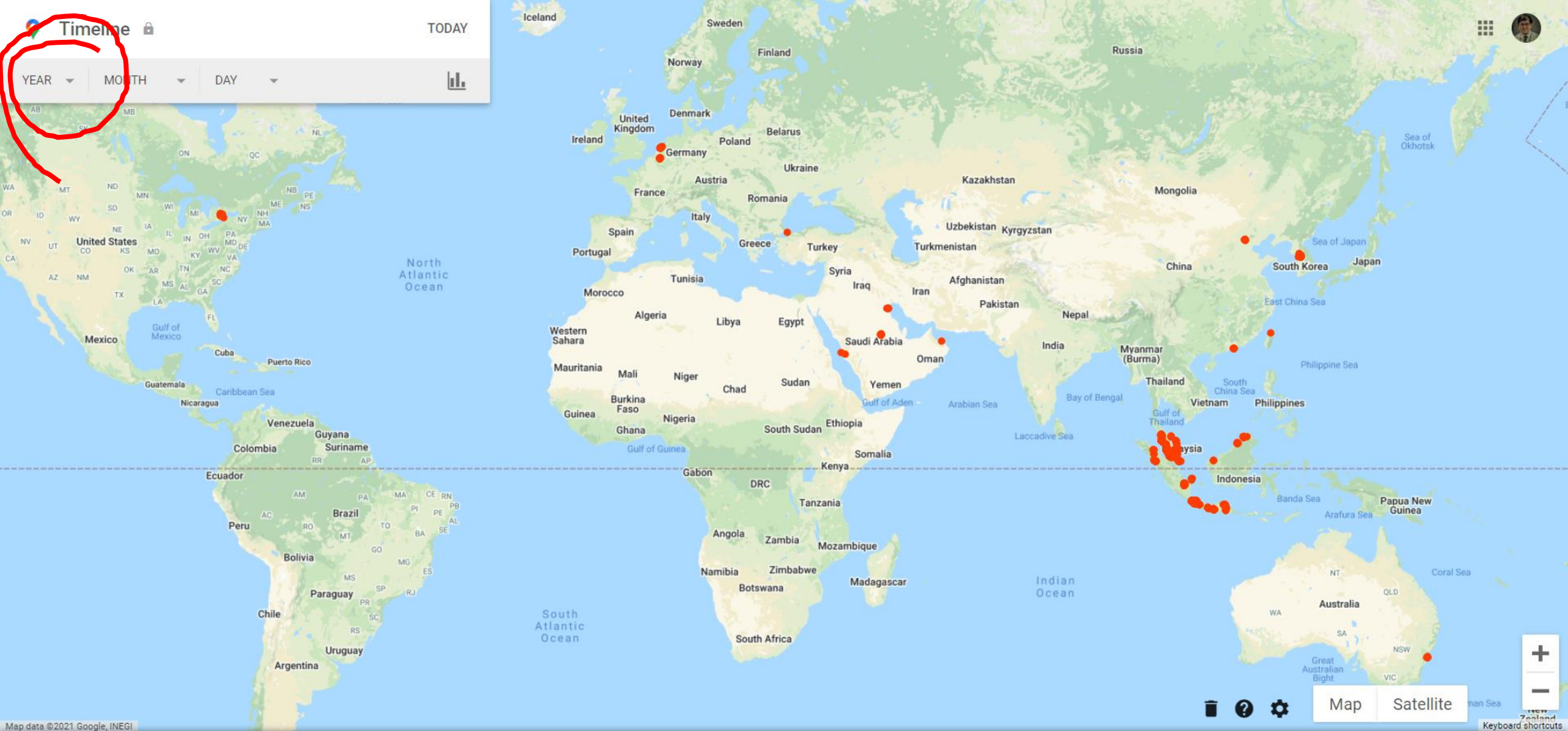
Privacy Today....

“**MALAYSIANS** are concerned about their **privacy**. If a comprehensive poll of Malaysian's view about privacy is to be taken, surely large section of Malaysian people would express concern about their privacy and some might view the computer as a threat to their private lives.”

“At the same time the younger generation are increasingly willing to **disclose private feelings, information and photograph** everyday on a social networking websites and through other technological websites and through other technological medias such as smart phones.”

Abdul Wahab Bin Mohamed JC in *Toh See Wei v Teddric Jon Mohr & Anor* [2017] High Court (Penang).





DATAFICATION

What Google Knows

Google compiles enough data to build comprehensive portfolios of most users—who they are, where they go and what they do—and the information is all available at [google.com/dashboard](https://www.google.com/dashboard). Here are just a few things WSJ reporter Tom Gara found out about himself.

GOOGLE SEARCH 64,019

Google thinks Tom performs most of his searches around 8 a.m. ET, but this is probably skewed by years spent outside the U.S.

ANDROID DEVICES 3

Google knows all of Tom's synched Android phones, including the old Nexus S phone that he gave to his mom.

WALLET 3

Credit cards (two expired) saved in Google Wallet, plus two shipping addresses and 13 itemized purchases since June 2009.

DOCS 855

Documents Tom has created, plus the 115 he has opened that belong to other people.

EMAIL 134,966

All of Tom's emails since he first got a Gmail account in 2004. Google also stores his 6,147 chats.

CONTACTS 2,702

Google knows the people that Tom emails the most. At the top is a friend in Egypt.

YOUTUBE 9,220

Videos Tom has watched, listed in chronological order, including a series viewed in June about canoes.

GOOGLE PLAY 117

That's how many apps Tom has downloaded from Google's store.

PASSWORDS 35

Number of website passwords saved in Google's Chrome browser.

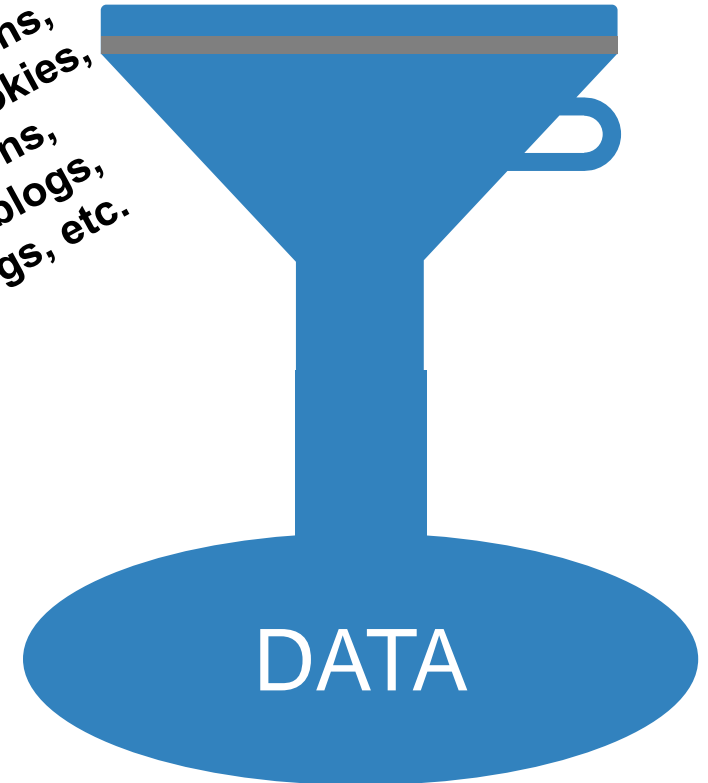
LOCATION Willunga, South Australia

Due to an unknown glitch, Google bases Tom's location from one of his old Android phones, which he gave to his mother in Australia.

Social media posts,
likes, loves,
mentions, threads,
shares, comments,
follows, subscribes,
emojicons, etc.

Travels, locations,
wearables, cookies,
transactions,
pictures, blogs,
vlogs, logs, etc.

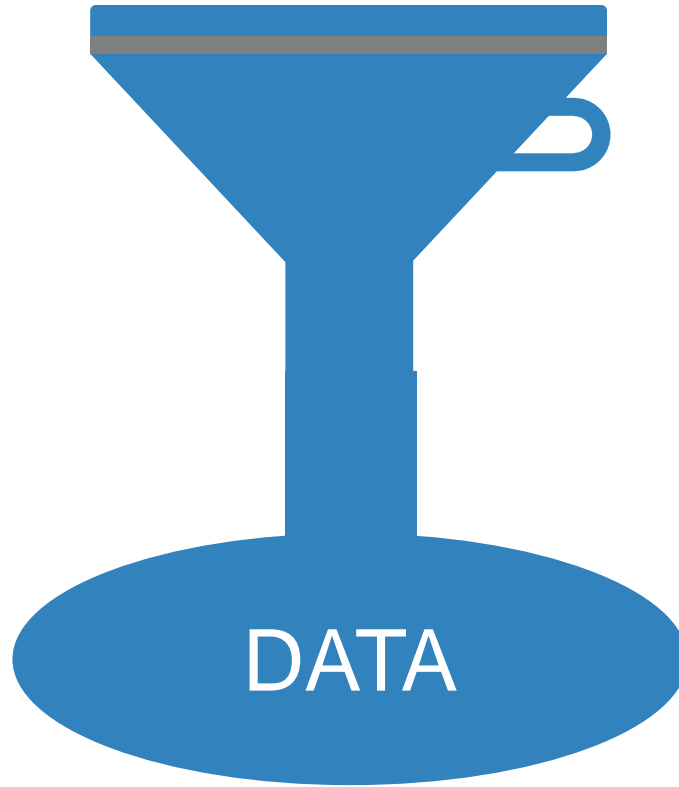
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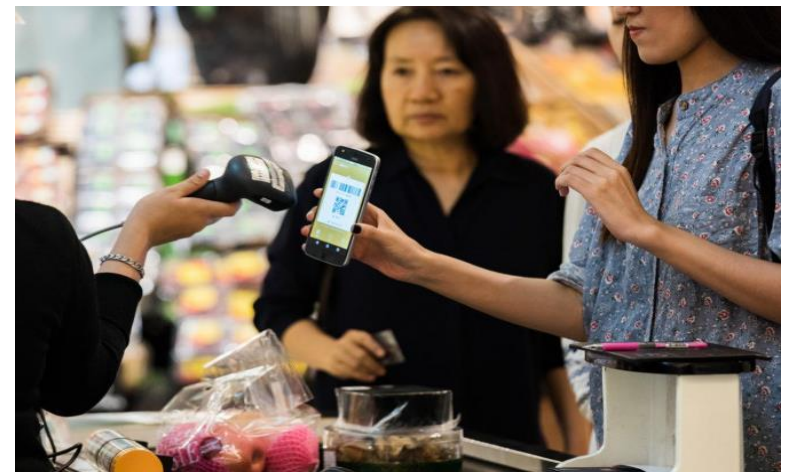
DATAFICATION



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sonnyzulhuda.com





“Datafication”

The process by which subjects, objects, and practices are transformed into digital data.

The process of **quantifying** all information around us: our location, movement, communications, usage of devices, etc. which will allow us to use such information in new ways, such as in predictive analysis.

This will help us further to unlock the implicit, latent value of the information

V. Mayer-Schonberger and K. Cukier, **Big Data: A Revolution That Will Transform How We Live, Work and Think** (2013).

The image features a person in a dark suit holding a silver smartphone. The background is a solid blue color with several white and grey diagonal lines crossing it. A large white square frame is positioned around the text.

DATA BREACH CASES

THE PRESSURE

Data Breach Incidents – in the past two years*



BPJS Kesehatan
Badan Penyelenggara Jaminan Sosial



**komisi
pemilihan
umum**



eHAC Indonesia
Health Quarantine MoH Indonesia



Lazada

facebook
Indonesia

BRIlife



tokopedia



bukalapak

BHINNEKA



RedDoorz

kreditplus



PT. KB FINANSIA MULTI FINANCE

<https://nasional.kompas.com/read/2021/09/03/18445501/deretan-kasus-kebocoran-data-pribadi-dalam-dua-tahun-terakhir>

125 Ribu Lebih Data Mahasiswa UNDIP Bocor

Selasa, 5 Januari 2021 15:00
Reporter : [Merdeka](#)



Dugaan Kebocoran Data, Bank Jatim: Data Penting Nasabah Dipastikan Aman

Kompas.com - 29/10/2021, 18:38 WIB

Data 815 Guru SMA di Kabupaten Tangerang Bocor, Nomor Rekening Terpampang hingga Ada yang Diteror

Kompas.com - 07/11/2021, 21:09 WIB

28.000 Data Polri Disebut Bocor, Ini Analisis Pengamat

Kompas.com - 19/11/2021, 17:45 WIB

Pakar: Data Jokowi Bocor Bukan karena Diretas, tapi Fitur PeduliLindungi Tak Aman

Kompas.com - 04/09/2021, 12:00 WIB

Hacker Malaysia Pro-Palestina Bocorkan Data Pribadi 280.000 Mahasiswa Israel

Kompas.com - 28/06/2021, 11:44 WIB

The Highest EU-based Fines (2020-2021)



AMAZON

- \$877 million
- Offence? Cookie consent



WHATSAPP

- \$255 million
- Failed to properly explain its data processing practices in its privacy notice



GOOGLE

- \$56.6 million
- Privacy notice & consent for personalized advertising, etc



H&M

- \$41 million
- Monitoring of employees

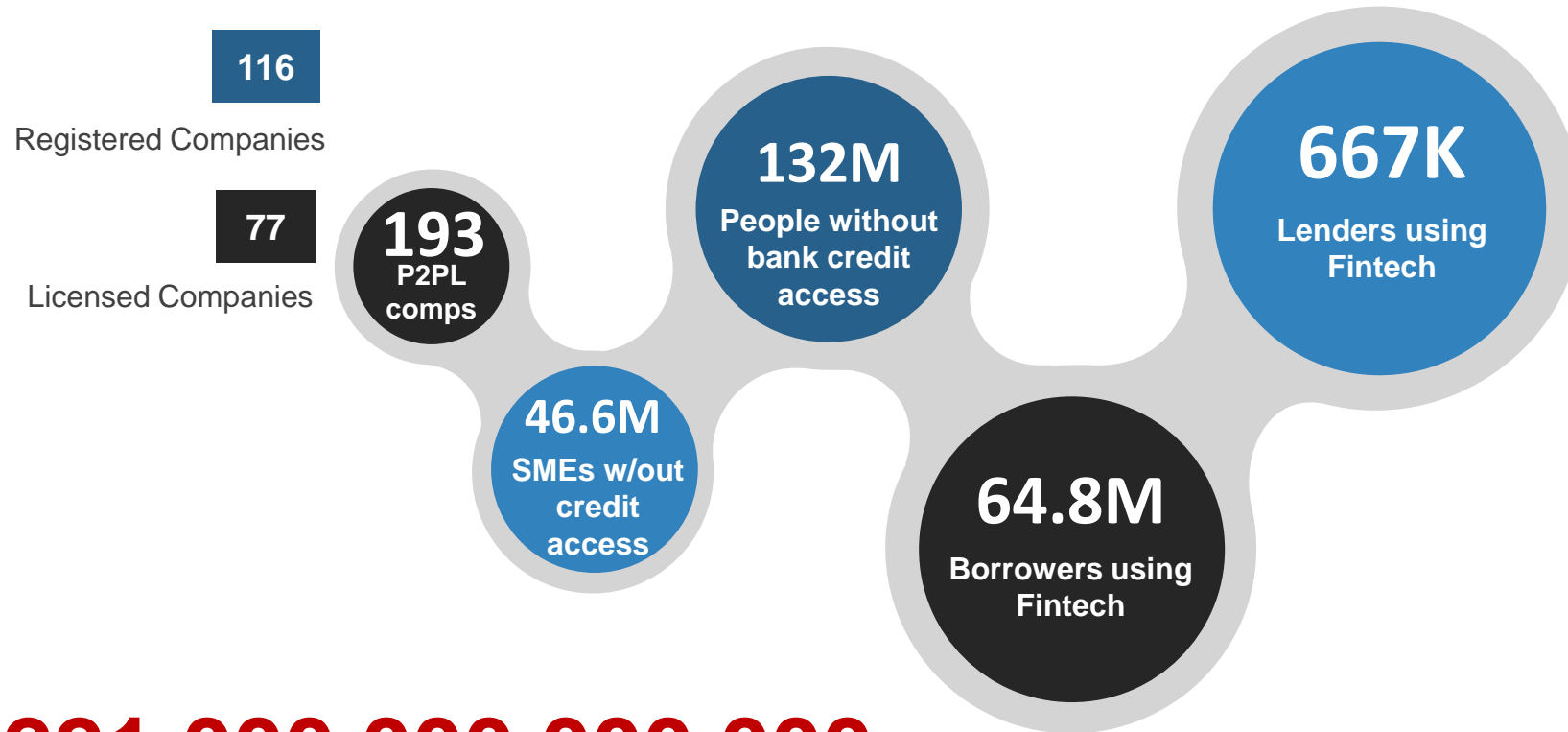


TIM

- \$31.5 million
- Series of violations accumulated over the last several years.



Fintech Lending Landscape in Indonesia



Rp 221,000,000,000,000

Successfully distributed loan (Jun 2021)

Source: OJK, AFPI



Fintech Lending Data Anarchy



LINDUNGI DATA PRIBADI NASABAH PINJAMAN ONLINE

Catatan LBH Jakarta:

- 1.330 laporan korban pinjaman online (pinjol) dari 25 provinsi
- 89 fintech melanggar hukum dengan menyebar data pribadi nasabah
- 25 fintech yang melakukan penyebaran data pribadi terdaftar di OJK
- Akibat persebaran data, korban menerima ancaman, fitnah, hingga pelecehan seksual

PRIVACY CONCERNS AROUND THE COVID-19 APPS MEASURES

- ✓ The **disclosure of Covid-19 patients** information without consent or necessary procedure.
- ✓ **Discreet collection of information** from Covid-19 tracking apps.
- ✓ Failure to **notify the detailed purposes** and usage of personal information collected from the Covid-19 tracking apps.

Aarogya Setu: Why India's Covid-19 contact tracing app is controversial

By Andrew Clarence
BBC News, Delhi

© 15 May 2020



India coronavirus lockdown



Israeli Supreme Court bans unlimited COVID-19 mobile phone tracking

By Maayan Lubell

3 MIN READ



JERUSALEM (Reuters) - Israel's Supreme Court on Monday banned the government from sweeping use of mobile phone tracking of coronavirus carriers, calling the measure a grave infraction of civil liberties.



Moscow's Covid-19 tracking app prompts outcry over fines and glitches

Thousands launch legal appeals claiming platform wrongly accused them of quarantine violations



WHEN PDP LAW IS ABSENT...



- ✓ Uninterrupted exploitation: Businesses continue monetize unfairly, leaving the gap of economy widens.
- ✓ Threat to civil society: Governments handle citizens' data without legal check and balance to the rights of individuals.
- ✓ Individuals subject to a lost privacy, exploited resources, threat to safety, harassment, constant surveillance and reduced quality of life.
- ✓ Growing distrust over digital platforms, hence the threat to national economy.
- ✓ The country loses international credibility – thus creates a reputation as a safe-heaven for data criminals and hostile trade country.



GLOBAL TRADE AND CROSS-BORDER DATA FLOW THE TRIGGER

Data Privacy as Epicenter of Global Disputes



NSA SURVEILLANCE
OVER THE US AND
GLOBAL INTERNET
USERS (SNOWDEN
SAGA)

2013



FACEBOOK UNDER
GLOBAL PRESSURE
AFTER DATA MISUSE BY
CAMBRIDGE ANALYTICA

2018



EU COURT ANNULLED
EU-US AGREEMENT
ON DATA TRANSFER

2020



PRES TRUMP BANNED
CHINA-OWNED WECHAT
AND TIKTOK IN THE US
OVER PRIVACY
CONCERNS

2020



NSA SURVEILLANCE OVER THE US AND GLOBAL INTERNET USERS (SNOWDEN SAGA, 2013)

Edward Snowden revealed to the US massive surveillance programs on Internet users across the world

12:40 p.m. ET, May 22, 2018

Mark Zuckerberg apologizes to European lawmakers



FACEBOOK UNDER GLOBAL PRESSURE AFTER DATA MISUSE BY CAMBRIDGE ANALYTICA (2018)

Trans-Atlantic Trade Issue (July 2020)

The **EU Court of Justice** decided that the **EU-USA** Privacy Shield Agreement, which allows 3000 US companies to repatriate European personal data to US, is null and void, putting trans-Atlantic trade in a halt



Sino-American Trade Issues (August 2020)

The US Government banned Chinese platforms **TikTok** and **Wechat** from operating in the US **due to data security and data privacy concern**.



APEC Privacy Framework (2015)



**Preventing
Harm**



Notice



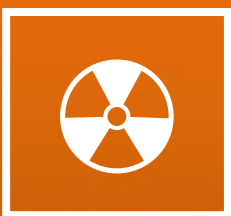
**Collection
Limitations**



**Uses of
Personal
Information**



Choice



**Integrity of
Information**



**Security
Safeguards**



**Access and
Correction**



Accountability

European Union (EU) General Data Protection Regulation 2016



Privacy & Data Protection Rules on the Global and Regional Timeline



1948

- UN UDHR

1953

- ECHR

1976

- ICCPR

1980

- OECD Guidelines

2007

- Lisbon Treaty

2000

- CFREU

1995

- EU Directive

1981

- CoE Conv. 108

2015

- APEC Privacy Framework

2016

- EU GDPR

2016

ASEAN Framework on PDP

2020

RCEP Agreement

G-20: Osaka Track on Data Free Flow with Trust (DFFT) - 2019

G20 OSAKA SUMMIT
2019



G-20 Summit 2019: Looking Back



- The World Economic Forum (Davos 2019): 76 WTO countries signed the Joint Statement on Electronic Commerce. However, **Indonesia abstained** from the Davos outcome out of concern on of “personal data security”.
- G-20 Summit (Osaka, 2019): 18 members of G20 signed the Osaka Declaration on the Digital Economy, but Indonesia **chose to abstain** from the Osaka Declaration launched during the G20 Summit.

G-20 Summit 2022: What to expect?



“Ini adalah sebuah kepercayaan dan kehormatan bagi Indonesia menerima **Presidensi G20**.”

G-20 Summit 2022: What to expect?

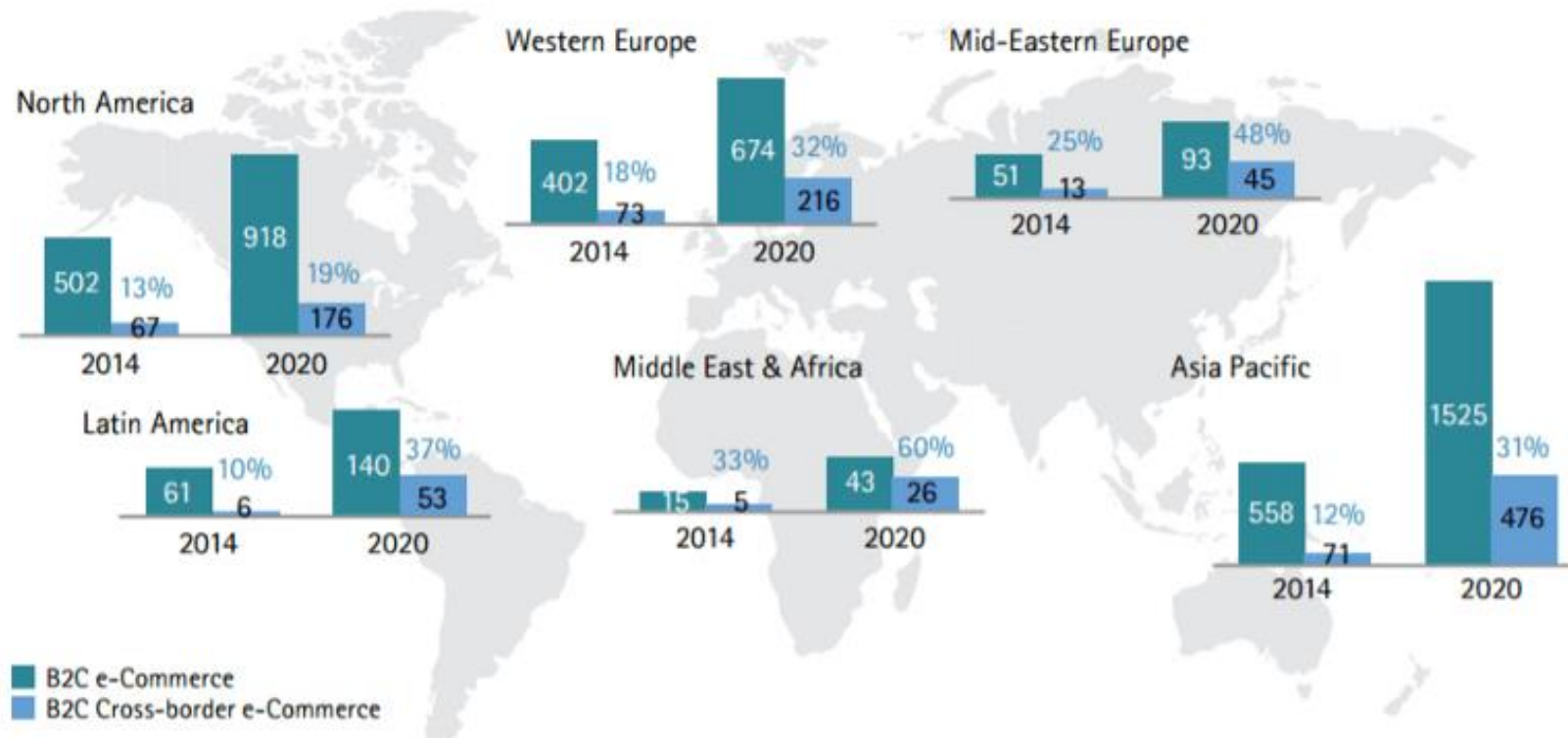
“Kepercayaan ini adalah kesempatan bagi Indonesia untuk berkontribusi lebih besar bagi pemulihan ekonomi dunia, untuk membangun **tata kelola dunia yang lebih sehat, lebih adil dan berkelanjutan** berdasarkan kemerdekaan, perdamaian abadi dan keadilan sosial.”

“Dan dalam Presidensi G20 Indonesia akan fokus untuk mengerjakan tiga hal: Pertama, penanganan kesehatan yang inklusif. Kedua, **transformasi berbasis digital**. Ketiga, transisi menuju energi berkelanjutan.”

G20
INDONESIA
2022

Joko Widodo, 1 Dec 2022

Global cross-border B2C e-Commerce transaction value (US\$ billion)

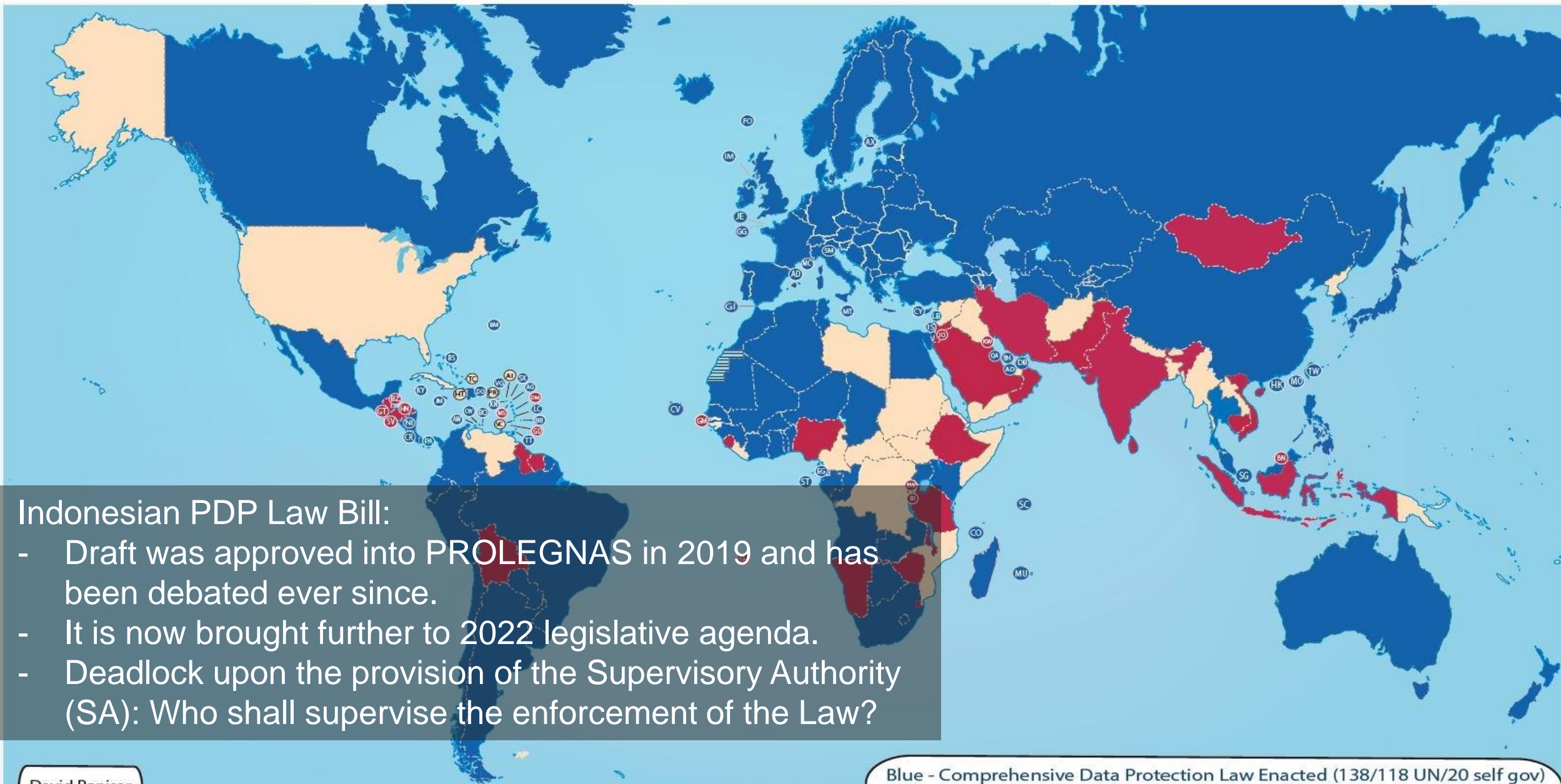


Source: <<https://ecommerce-platforms.com/articles/cross-border-ecommerce-future-ecommerce>>

“Pergaulan internasional Indonesia turut menuntut adanya perlindungan atas Data Pribadi. Pelindungan tersebut dapat memperlancar perdagangan, industri, investasi yang bersifat transnasional.”

Rancangan Penjelasan RUU Pelindungan Data Pribadi

National Comprehensive Data Protection/Privacy Laws and Bills 2021



DATA PROTECTION LAW & PRINCIPLES

THE CORE

The Scope of PDP Law

Based on RUU PDP RI (August 2021)

“Bahwa perlindungan data pribadi merupakan salah satu **hak asasi manusia** yang merupakan bagian dari perlindungan diri pribadi, perlu diberikan landasan hukum yang kuat untuk memberikan keamanan atas data pribadi, berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945”

HAK-HAK
PEMILIK DATA
PRIBADI



KETENTUAN
UMUM DAN
SKOP UNDANG-
UNDANG



PEMROSESAN
DATA PRIBADI DAN
KEWAJIBAN
PENGENDALI-
PROSESOR



PERBUATAN
DILARANG, SANKSI,
PIDANA, GUGATAN
PERDATA

“Bahwa perlindungan data pribadi ditujukan untuk **menjamin hak warga negara atas perlindungan diri pribadi** dan menumbuhkan kesadaran masyarakat serta menjamin pengakuan dan penghormatan atas pentingnya perlindungan data pribadi”



INSTANSI
PENYELENGGARAAN
/ OTORITAS
PENGAWAS



Data Protection Principles in Indonesian Draft PDP Law – Article 17(2)

- a. The **collection** of personal data shall be limited, specific, lawful, fair and transparent.

- b. Personal data shall be processed only for the **purpose** it is collected.

- c. Data is processed with ensuring **rights of data subjects**.

- d. Personal data processed shall be **accurate, complete**, etc.

- e. Personal data shall be protected from **unlawful access**, etc. and against misuse..

- f. Data subject must be **informed** of the processing activities and of any breach..

- g. Personal data shall be **deleted** after the end of retention time

- h. Personal data processing shall be conducted **responsibly** in compliance..

SPECIFY YOUR PURPOSE OF DATA COLLECTION:

Personal data shall be processed only for the purpose it is collected



- In September 2021, a restaurant owner in **Spain** was fined EUR 3,000 (Rp 49 million) for distributing a CCTV images through **WhatsApp and online media** which shows an accident that involved one customer of the restaurant.
- The CCTV was **meant for security purposes**, therefore the images/videos shall not be distributed publicly as it is not in line with the security purpose.
- As the publication of the images was not related to the purpose of the video surveillance, the restaurant owner as data controller violated the Purpose Limitation principle under the GDPR.

DO NOT DISCLOSE DATA BEYOND THE PURPOSE:

Data shall be processed and disclosed only for the purpose it is collected.

In April 2014, a **Malaysian** actress sued Malaysia Airlines over the publication of her flight details on a Facebook account. The posting of their boarding passes caused them to suffer emotional stress.

In an out-of-court settlement, the couple received an undisclosed amount of compensation.

Legally, this would have potentially amounted to a violation of the purpose limitation principle (section 6) and disclosure principle (section 8) of the PDP Act (Malaysia).



SECURITY OF PERSONAL DATA:

To be protected from unlawful access, modification, etc.



A third party training vendor to **Singapore** Armed Forces was fined SGD 35,000 (Rp 367 million) in June 2021 for their **failure to apply security measures** to the data of more than 110,000 people in total.

- The database was affected by ransomware which locks up the data
- The vendor only applies a single, simple password, which was shared between few employees.
- Insufficient authentication method to protect the account from unauthorised log-ins.

A person in a dark suit is holding a silver smartphone. The background is a solid blue color with some white geometric lines. The text 'WHAT TO PREPARE?' is written in white, and 'THE MECHANISM' is written in a lighter blue color.

WHAT TO PREPARE?

THE MECHANISM

What to Prepare to Comply?



Comprehend the law and its implication to you and your organisation

Define your personal data processing, scope objectives and put them on a comprehensive personal data policy

Plan your compliance roadmap and appoint data protection officer

Continue learning and embrace the new norm

Prepare for the Future Law Game-changer: PDP Law



- **More innovations depend on the sustainability of data protection:** social media, digital payment, fintech, electronic voting, criminal enforcement, digital surveillance, Internet of Things medical services, smart city.
- **Prepare the champions of digital rights:** privacy, free speech, freedom of information, digital literacy.
- **New skill set, new syllabus, new academic program:** Personal Data Protection is a new skill set, marrying law, technology and data governance.
- **We need people for both education and advocacy!**

D A T A
P R O T E C T I O N
I S A B O U T
A C C O U N T A B I L I T Y

“

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ إِنَّ السَّمْعَ
وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَئِكَ كَانَ عَنْهُ
مَسْئُولًا

*Do not follow that of which you have
no knowledge. Surely the hearing, the
sight, the heart - each of these shall
be called to account
(Al-Isra', Chap. 17:36)*

”

THANK YOU

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