THESIS

COMPARATIVE LEGAL SYSTEM ANALYSIS REGARDING CONSUMER ONLINE DATA PROTECTION IN GERMANY, MALAYSIA AND INDONESIA

By:

RAFLY ZAHRANDIKA NOVIANTO

NIM. **B011191392**

BACHELOR OF LAW PROGRAM

FACULTY OF LAW HASANUDDIN UNIVERSITY

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Arranged and submitted by

Rafly Zahrandika Novianto

NIM. **B011191392**

BACHELOR OF LAW PROGRAM

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Arranged and Submitted by:

RAFLY ZAHRANDIKA NOVIANTO

B011191392

Has been defended before the Examination Committee formed in order to complete the Study of Undergraduate Program of Criminal Law Department, Faculty of Law, Hasanuddin University.

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Approved,

Leader	**Secretary**
Prof. Dr. Juajir Sumardi, S.H., M.H.	**Prof. Dr. Maskun, S.H., LL.M.**
NIP. 196310281990021001	NIP. 197611291999031005

On behalf of the Dean
Head of the Bachelor of Law Studies Program

Dr. Muhammad Ilham Arisaputra S.H., M.Kn
NIP. 198408182010121005

SUPERVISOR APPROVAL

Hereby explained that the thesis of:

Name	: Rafly Zahrandika Novianto
Student Number	: B011191392
Major	: Law Science
Department	: International Law
Thesis Title	: **COMPARATIVE LEGAL SYSTEM ANALYSIS REGARDING CONSUMER ONLINE DATA PROTECTION IN GERMANY, MALAYSIA AND INDONESIA**

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Main Supervisor	Co-Supervisor
Prof. Dr. Juajir Sumardi SH., M.H	Prof. Dr. Maskun S.H., LL.M
NIP. 196310281990021001	NIP. 197611291999031005

KEMENTERIAN PENDIDIKAN, KEBUDAYAAN,
RISET, DAN TEKNOLOGI
UNIVERSITAS HASANUDDIN
FAKULTAS HUKUM
Jln. Perintis Kemerdekaan KM.10 Kota Makassar 90245, Propinsi Sulawesi Selatan
Telp : (0411) 587219,546686, Website: https://lawfaculty.unhas.ac.id

PERSETUJUAN MENEMPUH UJIAN SKRIPSI

Diterangkan bahwa skripsi mahasiswa :

Nama	: Rafly Zahrandika Novianto
N I M	: B011191392
Program Studi	: Ilmu Hukum
Departemen	: Hukum Internasional
Judul Skripsi	: Comparative Legal System Analysis Regarding Consumer Online Data Protection in Germany, Malaysia, and Indonesia

Memenuhi syarat untuk diajukan dalam ujian skripsi sebagai ujian akhir program studi.

Makassar, Oktober 2023

Dekan,

Prof. Dr. Hamzah Halim ,SH.,M.H.,M.A.P.
NIP. 19731231 199903 1 003

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saya yang bertanda tangan di bawah ini :

Nama	: Rafly Zahrandika Novianto
Nomor Pokok	: B011191392
Program Studi	: S1 - ILMU HUKUM
Judul Naskah Tugas Akhir	: Comparative Legal System Analysis Regarding Consumer Online Data Protection in Germany, Malaysia, and Indonesia

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ABSTRACT

RAFLY ZAHRANDIKA NOVIANTO (B011191392) *"Comparative Legal System Analysis Regarding Consumer Online Data Protection In Germany, Malaysia And Indonesia".* Supervised by **Juajir Sumardi** and **Maskun**

This study aims to compare and analyze the provision of international law and the implementation of those international law in some of the state domestic law regarding the protection of consumer data protection and the state practices of the domestic law in their region.

This research uses normative legal research using Comparative approach, Analysis approach and statute approach. Types of legal material that is used in the research are primary legal sources, secondary legal sources, and tertiary legal sources collecting those material using literature review method.

The result of this research is 1) there are some international instruments regarding data protection such as GDPR, COE 108+, ASEAN Framework on Data Protection, OPEC Framework on Data Protection that are being implemented in Germany, Malaysia, and Indonesia and 2) the practices of each state domestic data protection regulations can be seen in the duties of national bodies on data protection, some cases and the implementation of their national regulations.

Keywords: Data Protection, Legal System, Privacy

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CHAPTER I

INTRODUCTION

A. Background

Privacy is an essential human right that has been recognized by many international laws and treaties. It is defined as the ability to keep personal information and activities free from public scrutiny and interference. The importance of privacy cannot be overemphasized as it enables individuals to maintain their autonomy, dignity, and personal space.[1] Privacy is crucial for protecting individual freedom, autonomy, and dignity. It ensures that people may continue to be autonomous and self-determining despite the widespread exposure of their private information and actions. Numerous international treaties and declarations guarantee citizens the right to privacy. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights are all examples. The right to privacy has been recognized as fundamental by these laws and treaties, which is why it is protected by both.[2]

The emergence of digital era, privacy become more essential than ever. It's made people worried about their privacy online. Personal information is more accessible than ever because of the proliferation of

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[1] Warren, S. D., & Brandeis, L. D., 1890, *The Right to Privacy*. Harvard Law Review Volume 4 Number 5, 193-220, Harvard University, Cambridge, p. 195

[2] Nissenbaum, H., 2004, *Privacy as contextual integrity*. Washington Law Review Volume 79 Number 1, 119-157 University of Washington, Washington, p. 120

social media, cellphones, and other technology. The abundance of publicly accessible digital information poses a significant threat to individual privacy in the modern day. The advent of social media sites like Facebook and Twitter has simplified the process of communicating with loved ones and acquaintances online. However, this information can also be accessed by others, including advertisers, hackers, and government agencies. In addition, many people are not aware of the privacy settings on these platforms and may unknowingly share personal information with a wider audience than intended.[3]

Another issue with privacy in the digital era is the widespread practice of data collecting by businesses and government agencies. Companies like Google and Amazon, for instance, gather massive quantities of customer data to refine their offerings and better target their advertising. When it comes to matters of national security and law enforcement, governments gather similar data. Concerns regarding monitoring and the possible abuse of personal information are nonetheless raised by the collecting of such data.[4]

Individuals and institutions may take several measures to safeguard their privacy in the face of these threats. One important step is to use strong

[3] Acquisti, A., & Gross, R., 2006, *Imagined communities: Awareness, information sharing, and privacy on the Facebook. Privacy Enhancing Technologies*, PET 2006. Lecture Notes in Computer Science, vol 4258, 36-58, Springer, Berlin, p. 36

[4] Gross, R., Acquisti, A., & Heinz, J., 2017, *Information revelation and privacy in online social networks (the Facebook case*), Journal of Privacy and Confidentiality Volume 1 Number 1, 71-104, Carnegie Mellon University, Pittsburgh, p. 73

passwords and regularly update them. This can help prevent unauthorized access to personal information, such as online bank accounts and social media profiles. Using privacy-enhancing technology like encryption and virtual private networks (VPNs) to shield data from eavesdropping and other forms of monitoring is another crucial step.

In addition, individuals and organizations can be more mindful of the personal information they share online. They may, for instance, check their social media privacy settings and adjust the level of exposure they allow. They can also be more selective about the websites they visit and the apps they download, as some of these may collect personal information without their knowledge.[5]

Unauthorized data collection is a potential risk to the safety of people everywhere. One of the most extensive worldwide legal instruments for data protection, the EU's General Data Protection Regulation (GDPR), which was passed in 2016, will take effect in 2018. The General Data Protection Regulation (GDPR) is an all-encompassing regulation that spells out the responsibilities of companies that collect and manage personal data as well as the rights of the individuals whose data is being collected. Any company that deals with the personal information of EU citizens is subject to this regulation, regardless of its location.

[5] Zuboff, S., 2015, *Big other: surveillance capitalism and the prospects of an information civilization.* Journal of Information Technology Volume 30 Number 1, 75-89, Macmillan Publishers, Stuttgart, p. 76

There is now a globally accepted set of data protection principles and regulations thanks in large part to the General Data Protection Regulation (GDPR). Increased accountability and openness in data protection practices are two further outcomes of the regulation's effect on how businesses gather and manage personal information.

Many countries have implemented laws and regulations regarding data protection, Indonesia is still in its early stages of regulating data protection. Indonesia is still premature to regulate data protection, exploring the key issues and discussing the implications for individuals, businesses, and society as a whole.

There is a serious problem in Indonesia due to the absence of a well-developed legislative framework for data protection. While Indonesia has a number of sector-specific legislation governing data security, such as those governing banking and telecommunications, the country lacks a comprehensive legislative framework for data protection.

The widespread misunderstanding of the need of keeping one's own information secure is a further challenge in Indonesia. The hazards involved with data breaches and cyber assaults, as well as the duties and rights of people and organizations, remain poorly understood. The lack of awareness and education can result in individuals and businesses failing to take adequate measures to protect their data, such as using strong passwords

or encrypting sensitive information.[6] This lack of awareness and education can also result in a lack of demand for data protection services and products, which can hinder the growth and development of the data protection industry in Indonesia.

The new Indonesian regulation on Personal Data Protection (Law Number 27 of 2022) provide a more specific regulation regarding personal information. However, this new law still has to improve from every aspect regarding the enforcement and the way the Indonesian citizen now how it will protect their right regarding their data in cyberspace. In contrast to data protection laws in Germany, they were met a long time ago and remain applicable today. According to a survey by the German Federal Association for Information Technology, Telecommunications, and New Media (BITKOM), following the passage of the General Data Protection Regulation (GDPR), businesses in Germany became more cognizant of their data protection responsibilities, with 74% reporting that they had implemented new data protection measures. The same survey also found that 65% of companies in Germany believed that the GDPR had helped to increase data protection awareness among their employees.[7]

[7] German Federal Association for Information Technology, 2019 Telecommunications, and New Media (BITKOM), *Umfrage zur Umsetzung der Datenschutz-Grundverordnung (DSGVO) in deutschen Unternehmen,* available on: https://www.bitkom.org/sites/default/files/2019-05/190515_Bitkom-Research_DSGVO_Survey.pdf, accessed on March 26, 2023 at 11.05 PM

On the other hand, Malaysia which is the country that already established their data protection regulations and had a lot of similarity with Indonesia. That is why the author come up with the idea of writing a thesis about **"COMPARATIVE LEGAL SYSTEM ANALYSIS REGARDING CONSUMER ONLINE DATA PROTECTION IN GERMANY, MALAYSIA AND INDONESIA"**

B. Research Question

There are also problems formulation of the research, namely:

1. How the State Legal System Implement International Regulations Regarding Consumer Personal Data Protection?
2. How does State Practices Regulate Consumer Data Protection with Their National Legal System?

C. Research Purposes

There are some purposes that I have in mind regarding this research, namely:

1. To know what international law regulate Online Data Protection.
2. Learn how the international law protecting personal information online is being implemented in three major economies: Germany, Malaysia, and Indonesia.
3. To have a comparison of each state national legal system in handling similar Online Data Protection Cases.

D. Research Benefits

With this research the benefits it can give are:

1. Can give a description on how each international agreement regulate Online Data Protection.
2. Can give a general description on the implementation of the international law in each chosen states.
3. Can give a general description about the comparison result of each state, such as the plus and minus of each national legal system.

E. Originality of the Research

The research was originally carried out by authors in searching of the comparison of Consumer Online Data Protection regulation between both states. Based on the author's analysis regarding the research and to provide a comparative picture regarding the research, author will provide the previous research as a comparison for this research:

1. Jurnal Hukum dan Pranata Sosial Islam Vol. 4, 2 (Desember, 2022), this research was carried out by Namrysilai Buti Anjawai, F. Yudhi Priyo Amboro, and Rufinus Hotmaulana Hutauruk. With a title of "Perbandingan Perlindungan Hukum Terkait Data Pribadi di Indonesia dan Jerman". The authors of the journal examine the national law of both German and Indonesia as a legal comparison of each state law, however the authors of the journal mainly talked about GDPR and Indonesia Information and Electronic Transaction Law and doesn't talked about the new Indonesia Personal Data Protection as the law

has not yet legalized, and it doesn't do another comparison such as this thesis, where author also compare Malaysia data protection law as another ASEAN state that doesn't follow any International Agreement on Personal Data Protection.

2. Iuris Studia Jurnal Kajian Hukum Vol. 2, Nomor 2 (Juni 2021), with a title of "Analisis Hukum General Data Protection Regulation (GDPR) Terhadap Data Pribadi Konsumen Dalam Melakukan Transaksi Online" the authors of the journal are Yahya Ziqra, Sunmari, Mahmul Siregar, and Jelly Leviza. In the journal the authors talked about the protection of Data Protection on Online Transaction. The Journal mention above talked about comparison between GDPR and Indonesia Law regarding Data Protection. It also talked about Indonesia Data Protection law but at the time it wasn't legalized yet. In this thesis author talked about the Indonesia Personal Data Protection Regulation that has been legalized and also compared it to Malaysia as a neighboring state to Indonesia as another comparison of the law.
3. Thesis from Bertus Calvin with the title "Perlindungan Hukum Terhadap Data Pribadi Konsumen Yang Melakukan Belanja Secara Online" in the thesis the author writes has a research question, namely how is the legal protection of personal data of consumers who shop online. The difference with this research is that it does not use the Personal Data Protection Act of 2022, where the previous article was written in 2019 which has not yet taken effect in law number 27 of

2022, apart from that the research did not compare it with other countries.

F. Research Method

1. Research Type

   This study is an example of normative legal study. Legal normative research is based on a conceptualization of law as what is codified in statutes and as standards or norms that serve as a standard for what constitutes acceptable human conduct.[8]

2. Research Approach

   Methods like the Comparative Approach, the Analytical Approach, and the Statute Approach will be used to carry out this study. In a comparative approach, the laws of one nation are compared to the laws of another country or countries. If the study's focus is on analyzing how a particular legal word is used in actual legal practice and in judicial judgements, then an analysis approach will be used.[9] Statute Approach is carried out by analyzing regulations that is relevant with the legal issues.[10]

3. Types and Sources of Legal Materials

   a. Primary Legal Material

      Primary Legal Material relies on texts with binding legal force. Regulations and court judgements might be considered the basic

[8] Amiruddin, Zainal Asikin, 2014, *Pengantar Metode Penelitian Hukum*, RajaGrafindo Persada, Jakarta, p. 118

[9] *Ibid*, p. 152

[10] *Ibid*, p. 133

legal materials. In this research primary sources consist of international law instrument, Domestic Regulations, and Judicial Decision.

b. Secondary Legal Material

Secondary Legal resources include not only interpretations of main legal resources including research findings, textbooks, legal journals, and legal dictionaries, but also citations to these works.[11]

c. Tertiary Legal Material

Guides and explications of primary and secondary legal sources are examples of tertiary legal documents. Tertiary legal materials used materials on the internet in accordance with the issues discussed.[12]

4. Collection of Legal Materials

a. Primary Legal Sources

Conducted with the approach of laws and conventions. The author looks for international regulations or legislation relating to the protection of personal data.

b. Secondary Legal Sources

[11] Amiruddin, Zainal Asikin, *Op.cit.,* p. 119.
[12] *Ibid.*

Conducted with a library approach. The author looks for books, journals, and other scientific articles that have a relationship and can help this research.

c. Tertiary Legal Sources

Conducted by tracing various things that can be a source of information to strengthen primary legal materials and secondary legal materials.

5. Analysis of Legal Materials

The author uses comparative legal analysis, namely by attempting to resolve a legal issue,[13] after collecting primary, secondary, and tertiary legal sources. The results of this analysis will then present information and answers to the problems to be solved. to be solved.

[13] *Ibid.* p. 6

CHAPTER II

LITERATURE REVIEW AND ANALYSIS ON INTERNATIONAL REGULATIONS ON CYBERCRIME AND DATA PROTECTION AND LEGAL SYSTEM

A. Cybercrime and Data Protection International Regulations

The second major component of the research requires the same kind of analysis that was performed on Comparative Law, the Common Law Legal System, and the Civil Law Legal System. There are three discussions about this research that need to be talked about. The first one is Cybercrime, as the act of crime that endangered data and information of consumer that is stored in a system. Second, Data Protection needed to be discussed as a regulation that protect data and information that is stored in a system.

1. Cybercrime

Cyber have a definition of "connected with electronic communication networks, especially the internet", meanwhile Crime has a definition of "activities that involve breaking the law", therefore Cybercrime have a definition of "crime that is committed using the internet".[14] That definition is based on the definition of each word in Cybercrime, the definition can also be an unlawful act where the computer is either be the tool, the target or

[14] Oxford Learner Dictionaries, available at: https://www.oxfordlearnersdictionaries.com/definition/english/cybercrime?q=Cybercrime, accessed on February 20th, 2023,8.54 PM,

both. It also has a definition of a form of crime that uses computer and/or internet as a medium to commit crime.[15]

The term cybercrime currently refers to an activity that is crimes related to cyberspace and computers based on the sophistication of technological developments. computers based on the sophistication of technological developments internet as the main medium for perpetrating crimes.[16] Cyberspace is a term used to describe the digital domain that is created by computer networks and the internet. It refers to the virtual world that exists beyond physical locations, where people can connect and interact with each other through online platforms. Ben Buchanan defines cyberspace as "a domain of information systems, of code and data, of networks and connectivity, and of the people and organizations that inhabit them."[17] Understanding cyberspace is crucial for addressing issues such as cybercrime and cybersecurity, as well as for the development of online platforms and digital technologies.

The person who committed cybercrime are called cybercriminal, these cybercriminals can be anyone that have connection to internet and computer. These Cybercriminals constitute of various group namely:[18]

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[15] Sampath Nagi, 2019 *CYBER CRIME – AN OVERVIEW*, International Journal of Information and Computing Science Volume 6 Number 6, 382-390, IJICS, India, p. 383

[16] Dikdik, Elisatris, 2009, *Cyber Law Aspek Hukum Teknologi Informasi*, Refika Aditama, Bandung, p. 8

[17] Ben Buchanan, 2017, *The Cybersecurity Dilemma: Hacking, Trust, and Fear Between Nations*. Oxford University Press, United Kingdom, p. 16.

[18] Osman Goni & Md. Haidar Ali & Showrov, & Md Mahbub Alam & Md Abu Shameem. *Loc. Cit.*

1. Children and Adolescents, Children's natural desire to learn about and investigate the world around them is often cited as the root cause of this delinquent behavior pattern.
2. Organized Hacker, most hacking groups of this kind work together to achieve a certain goal. It could be because they want to show how politically biased or fundamentalist they are.
3. Professional Hacker/Cracker, Money drives the activity of these hackers, who are often hired to get into the websites of their competitors in order to steal sensitive data.
4. Disconnected Employees, those who have been let go from their jobs or are otherwise unhappy in their workplace make up this category.

Cybercrime have a field of scope around crime on cyberspace, this crime can be pirating, fraud, stealing, pornography, sexual abuse, slander, and even forgery.[19] Cybercrime act can also be divided into multiple branches, these branches is categorized according to the form of crime cybercriminals committed. Ari Juliano Gema inside Maskun Book explained about the form of cybercrime, those are:[20]

1. Intrusion into a Protected Computer System or Network, one must get unauthorized access to another user's computer system in

[19] Maskun, 2013, *Kejahatan Siber, CYBER CRIME, : Suatu Pengantar*, Kencana, Jakarta, p. 51

[20] *Ibid.,* p. 51-53.

order to perform this kind of cybercrime. The reasons behind this crime are to stole or sabotage a personal information, but sometimes the cybercriminal just want to test their skill.

2. Illegal Contents, is a form of cybercrime that insert content or information that are false, inappropriate, and can be considered against the law.
3. Data Forgery, this type of cybercrime is done by faking information or data in a document that is stored online, usually this crime is done to benefit the criminal.
4. Cyber Espionage, in this type of crime the cybercriminal used computer or internet to spy on other to gain a certain private information that can be beneficial.
5. Cyber Sabotage and Extortion, in this type of crime the cybercriminal used a virus or a certain program to tamper, break, or destroy a data or information on a certain computer or a server.
6. Offense Against Intellectual Property, an act towards intellectual property right on the internet. By doing this crime a certain intellectual property is used illegally by someone who doesn't have the right to gain advantage.
7. Infringements of Privacy, this crime is towards an information that can be very confidential and private. This crime collected private information that is stored online, private information can be

Identity Card Number, Social Security Number, Address, ATM PIN, Bank Information, and many more.

There are many different types of cybercrime, including hacking, cyberstalking, virus distribution, pornographic content dissemination, cyber terrorism, cyber defamation, online fraud and cheating, phishing, electronic mail spoofing, forgery, electronic mail bombing, data tampering, salami attacks, internet time thefts, logic bombs, and trojan horses.[21]

Cybercrime, as defined above, involves the use of a computer or the internet in some way, either as a tool or a victim. Cybercrime is committed in a space called cyberspace, a domain of information, data, network and connectivity. the perpetrators of the crime can be called cybercriminals, and the perpetrators can be varied from curious child and teenagers that want to test their skill, to organization that want to gain something out of the crime. There's also branches of the crime according to the type of crime committed. Almost all of the cybercrime committed is to gain something to use either for personal or group advantage.

2. Data Protection

Information and communication technology (ICT) advancements have resulted in profound shifts in many facets of human existence. In reality, it has caused shifts in how we categorize the development of human civilization over time. The transformation in technology that now underpins

[21] Sampath Nagi, *Op. Cit.*, p. 384-386

human life is the reason for the existence of postindustrial civilization. The transition from highly mechanized to highly digitalized systems. An epoch-defining change in human history has occurred.[22] Globally, people's habits and way of life have been altered by the spread of information technology. The rapid pace at which social, cultural, economic, and law enforcement developments have occurred may be directly attributed to the advancements in information technology.

From the earliest wave of technology to the most current, there has always been accompanying legal frameworks. Advances in information technology have caused a global change in people's routines and practices. Changes in the world's social, cultural, economic, and regulatory tendencies have occurred quickly in recent years, and this may be ascribed to the development of information technology. From the earliest wave of technology to the most current, there has always been accompanying legal frameworks. Furthermore, modern computer technology has become a double-edged sword since, although it has helped advance human happiness, development, and civilization, it is also a potent tool for criminal enterprises.[23]

Everything about being human has changed as we reach the 4.0 era of the industrial revolution. All walks of life were affected by the 4.0 Industrial

[22] Ahmad Ramli, et all, 2008, *Laporan Perencanaan Pembangunan Hukum bidang Teknologi Informasi dan Komunikasi*, BPHN Press, Jakarta, p.2

[23] *Ibid*

Revolution, which was characterized by the widespread use of digital technologies. The widespread usage of computers and other electrical devices has been automated, marking the beginning of the third wave of the industrial revolution. In reality, the revolution will keep turning in tandem with scientific and technological progress right up to the emergence of the cyber-physical system. This system requires interaction between humans that is integrated with computers and their physical abilities (digitalization). Digitalization was the beginning of the industrial revolution era 4.0.[24]

The idea of privacy is related to the safeguarding of sensitive information. In and of itself, privacy is about respecting one's own autonomy and independence. The ability to control who sees and uses one's personal data is an important part of the right to privacy. People should have the right to decide for themselves whether or not to share certain pieces of personal information, in accordance with data protection rules. People should have control over the security and privacy of their data transmissions. Moreover, keep private details protected. As the concept of privacy has developed, it has been used as a springboard for the drafting of consumer data protection rights under international law.

[24] Much. Maftuhul Fahmi, 2017, *Inspirasi Qur`Ani Dalam Pengembangan Fintech Syariah: Membaca Peluang, Tantangan, Dan Strategi Di Era Revolusi Industri 4.0*, https://pionir.uinmalang.ac.id/assets/uploads/berkas/ARTIKEL%2029.pdf, accessed date February 22, 2023, on 00.54 AM

With the threats of many unlawful act of cybercrime, especially on cybercrime threat on personal data, the way to combat the unlawful act is to provide regulation regarding cybercrime and regulation regarding the protection on personal data protection. In the aspect of international law that are some laws that address those related matters.

3. International Regulations

Universal Declaration on Human Rights

Article 12 of the UDHR states that no one has the right to be treated disrespectfully in regard to his or her home, family, mail, or communication, or to have his or her honor or reputation violated in any way. Everyone has the right to be free from this form of infringement or violation under the law. While Article 12 does not include any language specifically addressing personal data, it serves as an "umbrella term" in this context due to its link to other Articles.[25] The Universal Declaration of Human Rights (UDHR) has 30 articles that protect everything from political and civil liberties to economic and cultural expression. The article states that the right to privacy is one of the most basic human rights, and that as such, private information must be safeguarded and cannot be disclosed without the individual's permission.

[25] Elizier Nathaniel, I Gede Putra Ariana, 2021, *Aspek Perlindungan Hukum Internasional Data Pribadi Pengguna Layanan Jejaring Sosial Dan Kewajiban Korporasi Penyedia Layanan,* Jurnal Kertha Desa Volume 9 Number 7, 88-103, Fakultas Hukum Universitas Udayana, Bali, p. 92

International Covenant on Civil and Political Right

While the UDHR guarantees the protection of private information, Article 17 of the International Covenant on Civil and Political Rights does not. The article mentions that.[26]

> *"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
>
> *2. Everyone has the right to the protection of the law against such interference or attacks."*

As personal data can be considered as a private information it is protected and cannot be attack nor be interfered with. Paragraph 2 added that if the violation did occur, it would be entitled to legal protections.

Council of Europe Convention for the Protection of Individuals with Regard to Processing of Personal Data

To protect individuals against infringements on their privacy while handling personal information, the Council of Europe created Convention 108 (COE 108) in 1981. As more and more people's personal information is processed by computers, this historic agreement aims to safeguard people's right to privacy. Convention 108 has been an essential building block for the evolution of data protection regulations all around the world, not only in Europe. It was the first legally binding international document to address the issues of data processing, paving the way for individual nations to enact their own data protection laws.

[26] International Covenant on Civil and Political Rights, article 17

COE108 was the first legally binding personal data protection regulations created by the Council of Europe, the signatories of the treaty is mainly the state of EU but there are other state outside the EU that become signatories member of the convention.[27] In convention 108 it regulated about the obligation of every party of the convention, the quality of processed data, categorization of special data, the security of processed data, and other securities measure to process data safely and securely.[28] COE 108 later on amended in 2018 by the council of Europe in CETS 223 and called COE 108+. The major reasons for the legislative shifts were to reinforce the Convention's effective implementation and to address problems caused by the widespread use of new forms of electronic communication.[29] The new COE 108+ mandates the establishment of an independent supervisory authority by all treaty signatories and requires data controllers to notify and give feedback to that authority whenever there is a violation of the privacy of data subjects.[30]

[27] Chart of Signatories and Ratification of Treaty 108, available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=108, accessed on July 22, 2023 on 18.13 PM

[28] Elizier Nathaniel, I Gede Putra Ariana, *Op.Cit.* p. 95

[29] Council of Europe, Modernisation of Convention 108, available at: https://www.coe.int/en/web/data-protection/convention108/modernised, accessed on July 27, 2023 on 21.49 PM

[30] Federal Ministry of the Interior and Community, 2018, Germany Sign Protocol on Data Protection, available at: https://www.bmi.bund.de/SharedDocs/kurzmeldungen/EN/2018/10/eu-data-protection.html, accessed on: July 28, 2023, on 16.41 PM

European Union General Data Protection Regulation

The General Data Protection Regulations (GDPR) were implemented by the European Union to safeguard individuals' private data. As a regional international legislation, the General Data Protection Regulation (GDPR) only has legal force inside the European Union. In Article 3 of GDPR, the scope of the regulations is laid forth as follows:[31]

> *"1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.*
>
> *2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:*
>
> > *a. the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or*
> >
> > *b. the monitoring of their behavior as far as their behavior takes place within the Union.*
>
> *3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law."*

The GDPR that applied all across European Union divided into a 11 chapter that consist of 99 articles. Those chapter are:

1. Chapter 1 regarding General Provisions (art. 1-4)
2. Chapter 2 regarding Principle (art. 5-11)

[31] General Data Protection Regulation, article 3

3. Chapter 3 regarding the right of data subject (art. 12-23)
4. Chapter 4 regarding Controller and Processor (art. 23-43)
5. Chapter 5 regarding Transfer of Personal Data to Third Countries or International Organizations (art. 44-50)
6. Chapter 6 regarding the independent supervisory activities (art. 51-59)
7. Chapter 7 regarding Cooperation and Consistency (art. 60-76)
8. Chapter 8, regarding Remedies, Liability, and Penalties (art. 77-84)
9. Chapter 9 regarding Provisions Relating to specific Processing Simulation (art. 85-91)
10. Chapter 10 regarding Delegated Acts and Implementing Act (art. 92-93)
11. Chapter 11 regarding Final Provision (art. 94-99)

The General Data Protection Regulation (GDPR) protects personal data that is controlled by or being processed by a processor situated in the European Union (EU), regardless of where the processing takes place physically.

Whether the controller or processor is located in the EU or not, personal data of EU persons is similarly protected. Both completely automated and partly automated procedures protect sensitive data.[32]

In Protecting Personal Data, GDPR give obligation to controller and processor to fulfill. In GDPR the Controller and Processor of Data have definition stated in article 1 paragraph 7 and 8. Those definition is:[33]

"'controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law"

"'processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller"

Both the Controller and the Processor have duties under the General Data Protection Regulation (GDPR) when processing personal information about live persons. Articles 24 and 25 of the General Data Protection Regulation provide that the controller is responsible for ensuring that personal data is processed in a manner that is both lawful and adequately protected. The data processor may only make necessary uses of the data it controls. The terms "protection by design" and "protection by default" are often used to describe these obligations. "Privacy by Design" promotes emphasizing or implementing privacy protection at each step of

[32] General Data Protection Act, article 1-3.
[33] General Data Protection Regulation, article 17, and article 18,

development for digital systems to maintain users' anonymity.[34] In article 28(1) of GDPR stated another obligation of the controller, it says that:[35]

"…, the controller shall use only processors providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject."

By those words it can be defined that controller have to make sure that the processors assign to processed the data have to carried out their duty with appropriate measurement. Processors that worked according to controller have to make sure the security of the data that is being processed, article 32 of GDPR talked about the security of processing. In that article it gives obligation to give appropriate security to personal data and secure it from unlawful destruction, loss, etc. it also gives obligation to controller and processors to ensure confidentiality, restore any personal data in time of accident, and they have to regularly test their effectiveness of their data processing. It also stated that controller and processors to not process any personal data except with the instruction of controller or union/Member State Law.[36]

Both the controller and the processor of personal data are subject to the scrutiny of a government official known as a Data Protection Officer (DPO). A Data Protection Officer's (DPO) duties include communicating

[34] Agus Sudibyo, 2019, *Jagat Digital, Pembebasan dan Penguasaan*, Gramedia, Jakarta, p. 190

[35] General Data Protection Regulation, article 28(1,

[36] General Data Protection Regulation, Article 32

with the applicable supervisory authority, educating and advising controllers, processors, and their staff, and monitoring and offering advice on data protection problems. Data processing carried out by the processor and controller was also needed to be certified in order to assure the security of processing personal data. The certification is issued in accordance with EN-ISO/IEC 17065/2012 and the additional requirements established by the supervisory authority in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council.[37]

Inside of GDPR, it also stated about data subject rights. Rights that belong to data subject under this article include:[38]

1. Right to Access, Information on whether or whether personal data is being collected and managed, as well as the sources of such data, the purposes for which such data is used, and the methods by which such data is processed, should be provided upon request by the Data Subject to the Data Controller. If the Data Controller is doing any kind of profiling using the information. This option should be straightforward to exercise within an acceptable time frame.

2. Right to Rectification, any inaccuracies in personal data should be rectified without undue delay, since this is a fundamental right

[37] General Data Protection Regulation, Article 42 and 43
[38] Agus Sudibyo, *Op. Cit.*, p. 188-189

of data subjects. The processing purpose also affects the right to have missing data completed.

3. Right to Erasure (Right to be Forgotten), The Data Subject has the right to have their information deleted without undue delay.

4. Right to Restriction of Processing, Subjects of personal data have the right to request processing restrictions under certain circumstances. At the Data Subject's request, processing may be restricted when there are reasonable grounds to believe there are problems with the accuracy of the data being processed. Data subjects have the right to have their data transferred to another person who can assist them where the data has been improperly processed but the data subject does not want the data erased.

5. Right to Data Probability, Data subjects have the right to receive from Data Controllers their data in a structured, generally used, and machine-readable format that may be easily transmitted to third parties. instantly switched to a new target.

6. Right to Object, The Subject has the right to raise a specific situational objection to data processing. You have the right to object when the Data Controller processes your personal information to comply with a legal obligation or to exercise official duty. This right is protected by law This safeguard applies in cases when discrimination is based on legally protected traits.

The Data Controller must cease all management and use of the data unless there is a compelling justification for continuing such use or management.

As a data protection legislation, GDPR imposes mutual obligations and rights on all parties involved. Those whose personal information is being processed by the controller or a subcontractor must be made aware of their rights and given the opportunity to do so. Both the Controller and the Processor have equal legal obligation under the General Data Protection Regulation (GDPR) to safeguard Subject Data. Processing must be lawful, fair, and transparent, as well as suitable, well-organized, and certified.

Convention on Cybercrime

The first multinational treaty with a binding instrument to govern cybercrime is the treaty on Cybercrime, often known as The Budapest Convention. The Council of Europe drafted this agreement, and countries outside the EU are free to sign it. As of its entry into effect on July 22, 2023, the Budapest Convention on Cybercrime has been available for signatures since November 23, 2001. The Budapest Convention has been broken down into a number of sections, each of which focuses on a different set of goals.[39]

[39] Jonathan Clough, 2014, *A World of Difference: The Budapest Convention on Cybercrime and The Challenges of Harmonisation*, Monash University Law Review Volume 40 Number 3, Monash University, Australia, p. 700

The four chapters of the agreement cover the following topics: terminology, domestic measures (including substantive and procedural laws), international cooperation, and closing clauses. The nine offences covered by the substantive law section include: unauthorized access, unauthorized interception, data interference, system interference, misuse of equipment, and computer-related forgeries. Forgery, child pornography, and IP law infractions are all examples of crimes committed with the use of computers.[40]

Each state party must adopt, implement, and apply domestic legislation to defend and protect human rights and freedoms, as required by the convention's procedural norms. Computer data at rest and traffic data at least in part are also preserved and partially disclosed for security purposes. If any data or traffic data is susceptible to loss or change, the member of the convention is obligated by the preservation to preserve it.[41] Article 19 of the convention requires parties to search and seize stored computer data in order to acquire evidence for the purposes of criminal investigations or procedures, with the goal of harmonizing domestic legislation on searching and seizing data for this purpose.[42] Articles 20 and 21 of the conventions require members to implement measures to ensure

[40] CETS 185 Explanatory Report to the Convention on Cybercrime, available at: https://rm.coe.int/16800cce5b, accessed on July 25, 2023 on 18.12 PM, paragraph 18

[41] CETS 185 Convention on Cybercrime 2001, article 15, 16 and 17

[42] CETS Explanatory Reports to the Convention on Cybercrime paragraph 14

the secure and lawful acquisition of traffic data and the interception of content data by a competent authority and service providers, respectively.

ASEAN Framework on Personal Data Protection

The Association of Southeast Asian Nations (ASEAN) Framework on Personal Data Protection is an international pact aimed at ensuring the privacy of individuals across the region. The 2016 framework provides a set of recommendations for protecting individuals' private data. The ASEAN Framework on Personal Data Protection will facilitate regional collaboration and integration, bringing ASEAN closer to a safe, sustainable, and innovative digital economy. Since this allows for the free movement of information and commerce across ASEAN nations, it is acknowledged that preserving people' privacy is crucial to attaining this aim. [43]

The agreement in the ASEAN PDP framework is more voluntary in accordance with its form as a "framework", not an "agreement." The framework is more unbinding in that it does not have a target of implementing data protection laws in all ASEAN countries. Therefore, the ASEAN PDP is more of a roadmap, not an agreement. Activities in the ASEAN PDP so far have revolved more around sharing experiences in drafting and implementing PDP laws at the national level. Related to this, there have actually been efforts to increase political awareness about the importance of this agreement. Among others, by bringing the issue to the

[43] GSMA, 2018*, Regional Privacy Framework and Cross Border Data Flow How ASEAN and APEC can Protect Data and Drive Inovation*, London. p. 13

ASEAN Interparliamentary Assembly in 2018, one of the recommendations was to encourage ASEAN member countries to increase the exchange of ideas on PDP legislation.[44]

In ASEAN Framework on Data Protection, it stated some principles to be recognize by the member of the framework to protect and to prevent any misuse of someone personal data, those principles consist of:

1. Consent, Notification, and Purpose
2. Accuracy of Personal Data
3. Security Safeguard
4. Access and Correction
5. Transfer to another Country
6. Retention
7. Accountability

In accordance with the principles specified in the framework, all members are urged to collaborate, implement and promote the principles in their own laws and regulations, and facilitate the free flow of information between them.[45]

[44] Trisa Monika Tampubolon, Rizki Ananda Ramadhan, 2020, *ASEAN Personal Data Protection (PDP): Mewujudkan Keamanan Data Personal Digital pada Asia Tenggara*, Padjajaran Journal of International Relations Volume 1 Number 3, Fakultas Hubungan International Padjajaran, Bandung, p.274

[45] GSMA, *Op. Cit.*, p. 58

Asia-Pacific Economic Cooperation (APEC) Privacy Framework

In 2005, the nations of the Asia-Pacific area ratified the APEC Privacy Framework, which seeks to standardize the region's approach to protecting individual privacy. The goal of this framework was to promote economic growth and development in the area by removing barriers to the free flow of information. There are nine guiding principles that make up the Privacy Framework. The principles outlined here apply to anybody in charge of data collection, storage, processing, or usage, whether they operate in the public or private sector.[46] those nine principles are:[47]

1. Preventing Harm, the idea behind this is to prevent damage caused by the misuse of private information.
2. Notice, the idea behind this is to make the process of collecting and using private information clearer.
3. Collection Limitations, the idea states that just the necessary information should be acquired about an individual.
4. Use of Personal Information, Under the Principle, data may not be used in ways that are incompatible with the purposes for which they were gathered.
5. Choice, The Choice Principle states that people should have a say in how their personal information is gathered, utilized, transferred, and disclosed.

[46] *Ibid*.,p. 44
[47] APEC Privacy Framework, part 3 regarding APEC information privacy principles

6. Integrity of personal information, the concept requires that all records containing personally identifiable information be kept accurate and complete.
7. Security Safeguards, the data controller's duty is to protect the confidentiality of any information provided by the data subject.
8. Access and Correction, Specific constraints, such as those pertaining to time, costs, and the method and form in which access is granted, are recognized as being acceptable by this Principle.
9. Accountability, this principle is aiming for the controller who is accountable to complying with the other principles.

The APEC Cross-Border Privacy Rules (CBPR) was released in 2015 as one of the implementing measures of the Privacy Framework since the Framework itself does not directly address the problem of cross data movement. It was endorsed by APEC Leaders and plays a crucial role in the region as a policy framework to support the ongoing free flow of personal information across borders while also offering considerable protection for the privacy and security of personal information. Organizations that fall under the CBPR System are required to have procedures and policies for international data transfers that are at least as comprehensive as the APEC Privacy Framework.[48]

[48] Ellyce R Cooper, Alan Charles Raul, Sehri Porath Rockwell, *Op. Cit.*, p. 47

Organization of Economic Co-Operation and Development (OPEC) Privacy Framework

It is feared that one of the principles of personal data regulation in Europe will be to restrict the flow of personal data and prevent personal data from leaving Europe if the third country does not have laws that are equivalent to those in Europe. To avoid this, the OECD "The Organization for Economic and Cooperation Development" issued a guideline known as the "Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data". [49]

The Organization for Economic Cooperation and Development (OECD) works to foster worldwide economic cooperation and development. "Organization for Economic Cooperation and Development" is what the Indonesian translation of OECD reads. The OECD's founding mission was to promote long-term economic stability among its member states via enhanced cooperation and development. [50]

A few developing countries are among the OECD's 35 members, despite the fact that the bulk of its members are industrialized nations. Safeguarding Individual Privacy, The OECD's contribution was to publish a

[49] Rizal Saiful, 2019, *Perbandingan Perlindungan Data Pribadi Indonesia dan Malaysia,* Jurnal Cakrawala Hukum Volume 10 Number 2, 218-227, Fakultas Hukum Universitas Merdeka Malang, Malang, p. 5

[50] *Ibid*

set of principles for protecting individuals' privacy online that may be used as a basis for regulation. Here are some of the most fundamental rules: [51]

1. The Limitation of Collections Principle The collecting of personal information must be done so lawfully, fairly, with the knowledge and agreement of the individual whose information is being collected.
2. Basic Guidelines for High-Quality Data Information on an individual should only be gathered for legitimate purposes, should be as complete and accurate as possible, and should be updated quickly as necessary.
3. Purpose Specification Principle, Data collection is restricted to what is necessary to achieve the stated goal, which must be decided upon at the time of collection at the latest.
4. Use Limitation Principles, Disclosure, availability, or use of personally identifiable information for any reason apart from that for which it was originally obtained requires the express agreement of the data subject.
5. Principles of Security Measures Data breaches may occur when personal information is lost, destroyed, misused, disclosed, or accessed by an unauthorized party.

[51] *Ibid,* p.6

6. Theory of Openness The fundamental purpose of data consumption, identification, and data control must be defined before a policy on openness can be formed about the development or administration of personal data.
7. Principle of Individual Involvement The goal of this concept is to allow users to remove, modify, or verify their data by giving them access to do so.
8. Principle of Accountability The aforementioned principles should be enforced by the measures that the data controller is accountable for.

B. Legal System

1. Comparative Legal System

Talking about the International and National Law regarding Data Protection of each state, it is good to mentioned that every state that want to be compared have differences in their legal systems. While talking about legal system it is best to defined the meaning of legal system and why the difference in legal system impact the outcome of the law in each state.

The three pillars of Lawrence M. Friedman's philosophy of law are the law's substantive rules, its institutional framework, and its cultural

norms.[52] By those components it can be seen the meaning of those components such as:

1. Legal Structure, the foundations of every functioning legal system are the institutions of law. system. In this part, we'll discuss the processes and results of the legal order, the legal institutions, the authorities of law enforcement, the legal instruments, and the processes and results of law enforcement.[53]
2. Legal Substance, to put it simply, legal content is anything that is utilized as a guide by the community and the government in accordance with the law, whether that legislation is codified or not. judgements handed down by the courts that serve as precedents for citizens and policymakers.[54]
3. Legal Culture, means of behavior and thought that influence the direction of societal forces towards or away from the rule of law.[55]

Legal systems from various countries may be compared using Friedman's three-part theory of legal systems, which includes the Legal Substance, the Legal Structure, and the Legal Culture. The phrase

[52] Lawrence M. Friedman, 1975, *The Legal System: A Social Science Perspective*, Russel Sage Foundation, New York, p. 16

[53] Farida Sekti Pahlevi, 2022, *Pemberantasan Korupsi Di Indonesia: Perspektif Legal System Lawrence M. Freidman*, Jurnal El-Dusturie, Volume 1 Number 1, p. 23-42, Hukum Tata Negara Fakultas Syariah IAIN, Ponorogo, p. 32

[54] *Ibid.*

[55] Lawrence M. Friedman, *Op. Cit,* p. 15

"Comparative Law" refers to the discipline of comparing different legal systems in order to gain insight that may be used either in practice or theory. Talking about Comparative Law of a legal issues doesn't mean it comparing the subject of what the law regulates, it is more of comparing a law of two or more countries with a view of finding their law similarities and differences.[56] Due to the impossibility of anticipating all of the possible ends and scopes of legal comparison, the area of comparative law is vast and its subject-matter can never be treated in a comprehensive manner.[57]

From the perspective of comparative law, it may be broken down into the following:[58]

1. Comparative Law as a method;
2. Comparative Law as science.

According to Soejono Soekarno, the point of view of comparative law as a method is that comparative is simply an activity to identify similarities and/or differences between two or more symptoms.[59] By comparing and contrasting the underlying principles, norms, and historical development of legal systems in two or more countries, comparative law provides a thorough analysis of international law. Also, comparative law as a method is viewed no more than a method to reach a purpose, that's why it is used

[56] George Mousourakis, 2019, *Comparative Law and Legal Traditions: Historical and Contemporary Perspectives,* Springer, Switzerland, p. 1.
[57] *Ibid.*
[58] Michael Bogdan, 1994, *Comparative Law*, Translated by Derta Sri Widowatie, 2019, Nusa Media, Bandung, p. 10
[59] Soerjono Soekanto, 1979, *Perbandingan Hukum*, Alumni, Bandung, p. 10

a comparative method is used as base of every comparative law as a subject.[60]

In the meanwhile, if comparative law is considered a science, then Van Apeldoorn's claim that "Laws differ according to place and time, but There is no law of a time, a nation, or a country that stands alone" is an argument for the validity of comparative law as a scientific discipline. According to the study of comparative law, there are parallels between the legal systems of different countries despite their numerous variances. Of course, the science of comparative law strives not only to document differences and similarities but also to provide an explanation for them.[61] Comparative law as a science is a legal comparison that has been carried out systematic, analytical, with methods and scopes that can be scientifically accounted for in examining a certain law between two countries or more.

When looking at the differences between two bodies of law from diverse perspectives, it becomes clear that comparative law is beneficial. Romli Atmasasmita by quoting several experts opinions stated the objective of comparative law, namely:[62]

2. Law reform and developing policy;

[60] George Mousourakis, *Op.Cit*, p.4

[61] L.J. van Apeldoorn, 1982, *Pengantar Ilmu Hukum*, Pradnya Paramita, Jakarta,p. 434.

[62] Romli Atmasasmita, 1989, *Asas-Asas Perbandingan Hukum Pidana*, Yayasan Lembaga Bantuan Hukum Indonesia, Jakarta, p. 31.

3. As a research tool to reach a universal theory of law;
4. As an aid to practice in international relations or an aid to international practice of the law;
5. Unification and harmonization (of law) or international and harmonization - common core research;
6. A tool in the judiciary or a gap filling device in law courts.

By definition, comparative law can be said to be an effort to study law by making comparisons, both similarities and differences in the applicable law.[63] It is true that comparative legal studies have been around for as long as legal science itself since comparing laws is an integral part of the study of law.[64] Comparative legal studies began to develop in the 19th century as a special branch of the study of law and if viewed based on the object, the study can be carried out on:

1. legal systems;
2. legal conception;
3. legal sources;
4. causes or socio-cultural background of various countries;
5. legal comparison between certain fields of law, and so on.

[63] Irwansyah, 2020, *Kajian Ilmu Hukum*, Mirra Buana Media, Yogyakarta, p.250
[64] Muhammad Hadyan Yunhas Purba, Hasim., & Purba, 2019, *Dasar-Dasar Pengetahuan Ilmu Hukum,* Sinar Grafika, Jakarta, p.103

2. Germany Legal System

Talking about German legal system, it follows Civil Law Legal System or European Continental Legal System. The principle of Germany Civil Law system is influenced by the teaching legist, which was the dominant teaching in the 19th century. This teaching assumes that legislative products, especially those in the form of codification is the only source of law and outside the codification there is no law.[65] the codification of Germany law makes law in Germany have a hierarchy, those hierarchy are:[66]

1. The top of Germany law is Germany Constitution, the name for Germany's written constitution is "Basic Law of Germany's Federal Republic" (Grundgesetz).
2. Moving on to the next list in the hierarchy, law or Legislation in the form of codification or regulations that are poured into a form of law in a complete and systematic manner about a legal material and contains universal legal principles;
3. Regulations from government agencies that are not legislative bodies (state administrative bodies), namely regulations formed to implement laws that essentially only regulate basic matters;

[65] Manotar Tampubolon, Putu George Matthew Simbolon, 2022*, Perbandingan Sistem Hukum Inggris Dengan Jerman (Refleksi Terhadap Sumber Hukum Dan Penerapan Hukum Indonesia),* Yurispruden Volume 5, Number 2, 141-162, Fakultas Hukum Universitas Islam Malang, Malang, p. 150

[66] *Ibid.* p. 150-151

4. Lastly, Written regulations consisting of administrative instructions and circulars regarding the interpretation of legal regulations and mechanisms for monitoring the implementation of law.

Other than those regulations Germany also recognize other sources of law, such as customary law, jurisprudence, legal science, legal principles and legal interpretation. Customary law has a non-dominant position in the German legal system. Despite its non-dominant position, the German legal system still applies customary law. This is due to the historical school from the 19th century that influenced Germany, which viewed the law as a result of development in the midst of community life. Although the significance of the common law has been substantially diminished due to developments in German law, it is nevertheless often used in the process of law discovery in Germany.[67]

The German legal system consists of the Federal Supreme Court and the Federal Constitutional Court. The Bundestag appoints half of the Constitutional Judges on the Federal Constitutional Court, while the Bundesrat appoints the other half. The federal German constitutional court resolves constitutional issues, hears constitutional complaints, and interprets the fundamental law.[68] The Federal l Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labor Court, and the Federal Social Court shall each be supreme courts of ordinary,

[67] *Ibid.*
[68] *Grundgesetz,* article 93

administrative, financial, labor, and social jurisdiction, and their judges shall each be independent and subject only to the law. [69]

3. Malaysia Legal System

In Malaysia there are many influences on the Legal System they used, starting form Customary Influence, Islamic Law influence and also the influence from British Colonization that interfere with the Legal system at the time. As a former of British colony, Malaysia retains the English common law legal system (Anglo-Saxon Legal System). This tradition stands at the center of the Islamic and customary law systems. Indirectly, Malaysia uses a pure Common Law System without mixing with other systems.[70]

Customary law was in effect throughout the Malaysian Peninsula before the arrival of British colonists. The Temenggong tradition served as the basis for this customary rule, which was followed over the peninsula with various modifications, while the Perpatih custom served as the basis for this law in Negeri Sembilan and a small portion of Malacca.[71] After the British Influence the Islamic and Customary Law become more inferior compared to the Common Law System they brought. In reaction to the British intrusion into the control and administration of the State and the law, the rulers of Malaysia strengthened institutions that were still within their authority,

[69] Grundgesetz, article 95 article 97

[70] Basar Dikuraisyin, 2017, *Sistem Hukum Dan Peradilan Islam Di Malaysia*, Terateks Volume 1 Number 3, 1-11, Sekolah Tinggi Agama Islam Muhammadiyah, p. 3

[71] Siti Zuliyah, 2021, *Comparison of Indonesian and Malaysian Legal Systems in Rules, Traditions, and Community Behavior*, Journal of Transcendental Law Volume 3 Number 1, 15-29, Universitas Muhammadiyah, Surakarta, p. 23

including those related to Islam and Malay customs. The sultans began to strengthen institutions such as religious assemblies, muftis and religious courts.[72]

The history of Malaysia on the development of their legal system with many of the influence of the sources of law in the past created Malaysia Judicial System. in Malaysia judicial system have a hierarchy system, the judicial system is as follows:

1. There are three levels of courts in Malaysia: the Federal Court, the Court of Appeal, and the High Court. 1. The Superior Court is at the very top of the court system in Malaysia.
    a. As the highest court in the country, the Federal Court hears and decides appeals from the Court of Appeal and the High Court, mediates conflicts between the states and the federal government, determines whether or not a law passed by Parliament or the Legislature is in accordance with the Constitution, and interprets any provision of the Federal Constitution.[73]
    b. Appeals from judgements made by the High Court or a judge thereof (with the exception of decisions made by a registrar or other officer of the Court that are appealable to a judge of the

[72] Basar Dikurisin, *Op.Cit.*, p.4
[73] Malaysia Federal Constitution Article 128

Court under federal law) are heard and decided by the Court of Appeal.[74]

c. High Court, In Malaysia, there are two different high courts: the Malaya High Court, which has jurisdiction over the peninsula, and the Borneo High Court, which has authority over Sabah and Sarawak. Appeals from the lower courts (Session Court and Magistrate Court) are heard by the High Court, which has jurisdiction over both civil and criminal cases.

2. The Subordinate Court, which includes the Session Court and the Magistrate Court, is the lowest level of the judicial system. All crimes short of those warranting the death penalty or a sentence of life in prison are within the Session Court's purview. For civil cases, this court can hear cases involving amounts of money not exceeding RM100,000.[75] When it comes to criminal cases, the Magistrate Court handles sentences of up to ten years in prison or a fine of up to ten thousand Malaysian ringgit (RM10,000), and when it comes to civil cases, the Magistrate Court handles amounts of dispute of up to ten thousand Malaysian ringgit (RM100,000).[76]

[74] Malaysia Federal Constitution Article 121B

[75] Deaf Wahyuni Ramadhini, Salsabila Eriko, 2022, *Studi Perbandingan Sistem Peradilan Pidana Indonesia dan Malaysia*, Rechtstaat Nieuw: Jurnal Ilmu Hukum volume 7 Number 1, 1-11, Fakultas Hukum Universitas Surakarta, Surakarta, p. 8

[76] Office of the Chief Registrar Federal Court of Malaysia, *Jurisdiction of Session Court and Magistrate Court,* Available at: https://www.kehakiman.gov.my/en/jurisdiction-session-court-and-magistrate-court, accessed on July 14, 2023 on 15.47 PM

The Federal Constitutions is one of the many sources of law in Malaysia, and it is often regarded as the country's highest legal authority. After Malaysia's independence, the country's written constitution took precedence over all other laws; all preexisting laws were then altered or modified to conform to the Federal Constitution.[77] Other than the Federal Constitution, each state 13 state in Malaysia have their own constitutions outside of the federal constitution. Other than that Malaysia also have Federal Laws that is made by the parliament of Malaysia and enacted nationwide.

It is recognized that the Court must break with precedent where a prior judgement is erroneous, unclear, unfair, or otherwise cannot be applied to the current situation, and the Malaysian judicial system is founded on the common law principle of precedent, which requires courts to abide with earlier rulings in similar cases.[78]

4. Indonesian Legal System

Moving on to Indonesia Legal System, there are several Legal System that Indonesia used, those legal system is grown alongside the society in Indonesia. The Civil Law Legal System, the Islamic Law Legal System, and the Customary Law Legal System all fall within this category. During the Dutch colonial era, Indonesia established a civil legal system

[77] Sharfah Suhanah Syed Ahmad, 2012, *Introduction to the Sources of Law in Malaysia,* International Journal of Legal Information Volume 40 volume, 1-2, 174-190, Cambridge University, Cambridge, p. 183

[78] *Ibid.* p. 186

based on a body of "written law" that has since influenced the country's legal framework. There are still sign of the Dutch Colonization in legal system in Indonesia such as the Criminal Code and the Civil Code is still in effect to this day.[79]

Islamic Legal System is used in Indonesia due to the spread of Islamic religion in Indonesia. The effect of the spreading islamic religion in Indonesia at the time caused some influential kingdom at the time to convert their beliefs to Islam.[80] Islamic Legal System that has been adopted by kingdoms in Indonesia grows and develop though out the year in Indonesia and become of the law used in Indonesia. The founding fathers of Indonesia also used Islamic law in formulating the preamble of the Indonesian constitution at the time of its independence, which was agreed upon and known as the Jakarta Charter, which was later amended and removed the elements of Islamic law in the preamble because it was considered intolerant of the Indonesian people at large.[81] In today's time, islamic law is still being used in Indonesia with some of its principle being used in making

[79] Zaka Firma Aditya, Rizkisyabana Yulistyaputri, 2019, *Romantisme Sistem Hukum Di Indonesia: Kajian Atas Konstribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum di Indonesia*, Jurnal RechtVinding volume 8 Number 1, 37-54, Badan Pembinaan Hukum Nasional Kementriam Hukum dan Hak Asasi Manusia, Jakarta, p. 39

[80] Achmad Irwan Hamzani, 2020, *Hukum Islam: Dalam Sistem Hukum di Indonesia*, Kencana, Jakarta, p. 7

[81] Ariesman, Iskandar, 2020*, Histori Piagam Jakarta: Spirit Perjuangan Penerapan Nilai Islam Secara Yuridis Konstitusional, Bustanul Fuqaha*, Jurnal Bidang Hukum Islam Volume 1 Number 3, 458-471, Sekolah Tinggi Ilmu Islam dan Bahasa Arab, Makassar, p. 464-467

regulation and eve Indonesia have a Syariah Court specialized for islamic law.

Customary Law based on the legal traditions of Indonesia's indigenous peoples is another legal framework used there. The Constitution of 1945 recognized the validity of communities governed by customary law. Article 18B (2) of the 1945 Constitution states that the state recognizes and respects the unity of customary law communities and their traditional rights so long as they are still alive, in accordance with the development of society and the principle of a unitary state of the Republic of Indonesia, which is governed by law.[82]

The evolution of Indonesian law is influenced by those legal systems. The civil law adopted by Indonesia, whose primary concept is to produce legislation in the form of written regulations or laid forth in the form of laws, theoretically does not recognize unwritten law, which has a significant impact on Indonesian Regulation.[83] Therefore, in Indonesia the regulation has a hierarchy where the law cannot overlap the law above it.

Regulations at the regional level are further subdivided into provincial regulations and district/city regulations, with the latter representing the lowest level of regulation in accordance with Law No. 12 of 2011 on the Formation of Legislation, which establishes a statutory framework for the

[82] Undang-Undang Dasar Negara Republik Indonesia, article 18B(2)
[83] Zaka Firma Aditya, Rizkisyabana Yulistyaputri, *Op.Cit.* p. 52

formation of laws and regulations. Here are some categories and orders of laws and regulations:[84]

1. The 1945 Constitution of the Republic of Indonesia;

2. Decree of the People's Consultative Assembly;

3. Law / Government Regulation in lieu of Law;

4. Government Regulation;

5. Presidential Regulation;

6. Provincial Regional Regulations; and

7. Regency/City Regional Regulations.

Indonesia's judicial government organizations use a hierarchical justice system to enforce the country's legal codes. The jurisdiction of Indonesian courts is laid forth in Article 24 of the Indonesian Constitution. The Supreme Court (Mahkamah Agung), the Constitutional Court (Mahkamah Konstitusi), and the Judicial Commission (Komisi Judicial) are the three judicial bodies established under the Constitution of Indonesia.[85]

In accordance with subparagraph 2 of article 24 of the Indonesian Constitution, the Supreme Court and the Constitutional Court are

[84] Kahirul Fahmi, 2017, *Penataan Jenis Dan Hierarki Peraturan Perundang-Undangan Dalam Perspektif Pembagian Dan Pemisahan Kekuasaan Menurut Uud Nri 1945,* Penataan Ulang Jenis dan Hierarki Peraturan Perundang-Undangan Indonesia, p. 209

[85] Undang-Undang Dasar Negara Republik Indonesia 1945, Article 24A, 24B, 24C.

responsible for the administration of justice in the country. On the same page, you'll find a list of the courts that sit below the Supreme Court and answer to it: the Religious Court, the Military Court, the State Administrative Court, and the General Court.[86] Article 25 of statute no. 48 of 2009 specifies the authority and powers of each court subordinate to the Supreme Court, which are as follows:[87]

> *"1. The General Courts are authorized to examine, hear, and decide criminal and civil cases in accordance with the provisions of laws and regulations.*
>
> *2. Religious courts are authorized to examine, hear, decide, and settle cases between people of the Muslim religion in accordance with the provisions of laws and regulations.*
>
> *3. Military courts are authorized to examine, hear, and decide on military criminal cases in accordance with the provisions of laws and regulations. Military courts are authorized to examine, hear, and decide military criminal cases in accordance with the provisions of laws and regulations.*
>
> *4. State administrative courts are authorized to examine, hear, decide, and settle state administrative disputes in accordance with the provisions of laws and regulations."*

The general court, the religious court, and the state administrative court all have their own subordinate courts, known as the district court and the high court, respectively.[88] Also, there is a Combat Military Court and a Main Military Court within the military justice system.[89] In addition to the

[86] Undang-Undang Dasar Negara Republik Indonesia 1945, article 24 paragraph

[87] Ihat Subihat, 2019*, Sistem Peradilan di Indonesia Berdasarkan UUD Negara Republik Indonesia Tahun 1945*, Jurnal Yustitia volume 5 Number 1, 27-52, Fakultas Hukum Universitas Wiralodra, Indramayu, p. 29

[88] Tuti Harwati, 2015, *Peradilan di Indonesia*, Mataram, Sanabil, p. 43, p. 59, and p. 101

[89] *Ibid.*, p. 80

regular courts and the state administrative courts, there are additional specialized courts, such as juvenile courts, commercial courts, human rights courts, corruption courts, industrial relations courts, and fisheries courts.[90]

The Constitutional Court is distinct from the Supreme Court in that it has additional powers. These powers include reviewing legislation for violations of the 1945 Constitution of the Republic of Indonesia, ruling on challenges to the authority of state institutions, dissolving political parties, and settling disputes over election outcomes.[91] There are 9 judges in Constitutional Court, 3 judges is chosen by Supreme Court, the other 3 is chosen by the president, and the last 3 bodies is chosen by the parliament.

According to Article 13 of Law No. 18 of 2011 on the Judicial Commission, the Judicial Commission is the highest judicial body in Indonesia. The Judicial Commission has the authority to make recommendations for the appointment of Supreme Court justices and special justices. It also has various powers to protect and defend judges' honor, credibility, and professionalism. Among these include working with the Supreme Court to create a set of ethical guidelines for judges to follow, as well as monitoring the profession to make sure they are followed.[92]

[90] Explanation of Article 27 paragraph (1) of Law Number 48 of 2009 on Judicial Power

[91] Law Number 48 of 2009 on Judicial Power, article 29 paragraph 1

[92] Law Number 18 of 2011 on the changes of law number 22 of 2004 on Judicial Commission article 13

C. Analysis of the Implementation of International Agreement Regarding Consumer Data Protection in State Practices

The international law that protects personal data is a multilateral agreement that applies on a regional scale, and not used on a global scale like many international conventions, as can be seen by those international laws pertaining to the protection of personal data.

1. International Agreement Implementation in Germany

Domestic legislation in Germany reflects the international agreement's safeguards for personal information. Specific laws that Germany follows include the aforementioned General Data Protection Regulation (GDPR), the International Covenant on Civil and Political Rights (ICCPR), and the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data. (COE108).

In accordance with the ICCPR and the UDHR, Article 10 of the German constitution protects the privacy of all citizens. Article 10 ensures the privacy of all communications, including those conducted through phone or the Internet. The BDSG, Germany's data protection law, also acknowledges the significance of individual privacy. Only within the bounds of the BDSG may personal data be handled. Data about an individual's

identity might be deemed sensitive since piecing together different bits of information can reveal that person's true identity.[93]

The implementation of GDPR can be seen in Germany BDSG, where the BDSG is changed from the old BDSG that was promulgated on 1977[94] by the parliament of Germany at the time was changed in 2017 to change accordingly to fit the GDPR provisions. In 2018, Germany's new BDSG data protection law went into force. The BDSG is the primary legislation in Germany for protecting personal data, although the TTDSG is equally important. TTDSG is Germany telecommunication and Telemedia data protection act, the law come into effect in late 2021. The same as BDSG it also implemented the provision in GDPR regarding the collection of personal data, especially in the context of personal data collected by the provider of telecommunication and telemedia, where all the providers need to maintained the privacy and the secrecy of its user and also ask for the user consent to collect and to utilize the collected data.

Regarding the implementation of COE 108 about data processing by automatic processing, Germany was a signatory and ratified the treaty. after the amendment of the treaty in 2018, Germany signs the newly revised

[93] European Commission, *What is Personal Data*, available at: https://commission.europa.eu/law/law-topic/data-protection/reform/what-personal-data_en, accessed on July 27th, 2023 on 14.39 PM

[94] Lee Riccardi, 1983, *The Germany Federal Data Protection Act of 1977: Protecting the Right to Privacy?* Boston College International & Comparative law Review Volume 1 Number 1, Boston, p. 248

regulations on data protection but did not ratify the treaty yet. In October 5th 2021 Germany finally ratified COE 108+.[95]

2. International Agreement Implementation in Malaysia

Implementing worldwide agreements to protect personal information is crucial. According to Article 5(1) of the Federal Constitution, no Malaysian citizen may be deprived of life or personal liberty unless in accordance with the law. A further programmed implemented by Malaysia is the ASEAN Personal Data Protection Framework. There has been a three-year lag between the establishment of the ASEAN Framework on Personal Data Protection in 2016 and Malaysia's own domestic legislation covering the protection of personal data, which has been on the books since 2010 (with enforcement commencing in 2013). The ASEAN Framework on Personal Data is identical to the 2017 Malaysian Personal Data Protection Act Code of Practice.[96]

Personal Data Protection Act (PDPA) of Malaysia is an example of OECD's privacy framework being put into practice; the PDPA's principles are based on those of the OECD, and the PDPA itself outlines the principles of protecting individuals' private information. The right to privacy of its residents is explicitly protected by this Act. The Malaysian Penal Code states that violators might face up to an RM5,000 fine and/or 5 years in jail,

[95] Council of Europe, Newsroom: Germany ratifies Convention 108+, available at: https://www.coe.int/en/web/data-protection/-/german-ratifies-convention-108-, accessed on July 27th, 2023, on 21.41 PM

[96] The Personal Data Protection Code of Practice, Part 1 paragraph 1.1

or both, for invading the personal space of others. The Personal Data Act of Malaysia spells out in detail the rights of data owners, the processes for transferring data, and the responsibilities of those who keep data.[97]

In addition to having its own privacy framework and Cross-Border Privacy Rules (CBPR), with which Malaysia agrees, Malaysia is also a member of the Asia-Pacific Economic Cooperation (APEC). Malaysia has not yet joined the CBPR, but has shown interest in doing so and plans to file an application.[98] Other than that Malaysia did not follow any other international agreement regarding privacy nor personal data protection.

3. International Agreement Implementation in Indonesia

For Indonesia, the Implementation of Right of Privacy can be seen in Indonesia Constitution article 28G that stated personal protection, which can include the right to privacy of an individuals. It also stated in Human Right Regulation in article 29(1) that also stated about personal protection. Many laws in Indonesia that control access to private information also protect individuals' right to privacy. In Indonesia, several laws safeguard individuals' right to privacy online.

[97] Lia Sautunnida, 2018. *Urgensi Undang-Undang Perlindungan Data Pribadi di Indonesia; Studi Perbandingan Hukum Inggris dan Malaysia*. Kanun: Jurnal Ilmu Hukum. Vol 20, p.11.

[98] CIPL, 2023, *Cross Border Privacy Rules, Privacy Recognition for Processor, and Global CBPR and PRP: Frequently Asked Question*, available at: https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_cbpr_prp_faq_updated_july23.pdf, Accessed on July 28, 2023, on 18.38 PM

Although Indonesia is not a member of the EU and, as a result, is not required to comply with GDPR, the country's new Personal Data Protection Regulations are heavily inspired by the EU regulation. Some of the data subject rights that are stated in GDPR, such as the right to be forgotten and the right to gain information about the processing of data, are also stated in Indonesian PDP regulation, as are the rights and responsibilities of the controller and the processor of data. Article 16(2) of the Data Protection Law of Indonesia is deemed to be equal to Article 5 of the General Data Protection Regulation.

Indonesia's rule on Personal Data Protection reflects the ASEAN Framework's stated principles, demonstrating the framework's incorporation into Indonesian domestic law. The framework is an international legal instrument that is not binding, so the member of the state does not have to follow the framework. The framework is more of a multilateral statement of the member, and does not give obligations to the member to obey and adopt its provision. Principles that Indonesia implement in personal data protection regulations are the safeguard, accuracy of personal data, retention, and accountability, those principle is stated in article 16(2) of Indonesia personal data protection.