

# CHAPTER I

## INTRODUCTION

### 1.1 Background

In 2021, the Indonesian digital economy became the largest across the ASEAN Member States. Simultaneously, this impact on the strengthening of the digital economy after the Covid-19 pandemic. Digital economy refers to the use of information technology to create, adapt, market, and consume goods and services that are based on the use of information technology to create new jobs, which resulting money.<sup>1</sup>

Changes in people's lifestyles which are increasingly dependent on the digital economy are motivated by the ease with which buyers can access and obtain goods/services. Technological innovation led to an increase in economic changes that were associated mainly with the internet, which is a foundation for the growth of the digital economy. Through the Internet, companies can operate effectively and efficiently. The consumer also can be doing a digital transaction, which makes it easier for buyers when making transactions well-known as financial technology (fintech).<sup>2</sup>

Practically, fintech services will generally require personal information to operate the program. The most basic form of personal data requested are name, email, or cell phone number. This occurred due to the concept of fintech is adapting technological developments with the financial sector, by integrating personal data over a person.<sup>3</sup> As a result, the organization or company that manages personal data must protect the data privacy of its consumers.

The main concept of privacy is to divide the public and private matter.<sup>4</sup> In global development, international legal documents acknowledged the right to privacy as a first-generation fundamental human right.<sup>5</sup> The first-generation human rights consist of negative rights, where a person has freedom to do or not to do something.

The privacy right is one part of the fundamental right, however, this right is not an absolute right.<sup>6</sup> It remains crucial in this era as privacy rights allow individuals to have control over their personal data. There are three most critical criteria of privacy rights, which are the right to explicit consent for data collection, the right to be forgotten, and the right to data portability.<sup>7</sup>

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<sup>1</sup> Nguyen, O. (2023). *Digital Economy and its Components: A brief overview and recommendations* Munich Personal REPEC Archive. <https://mpira.ub.uni-muenchen.de/116110/>

<sup>2</sup> Rehman, F.U.; Attaullah, H.M.; Ahmed, F.; Ali, S. Data Defense: Examining Fintech's Security and Privacy Strategies. *Eng. Proc.* 2023, 32, 3. <https://doi.org/10.3390/engproc2023032003>

<sup>3</sup> *Ibid.*

<sup>4</sup> Adrienn Lukács, What is Privacy? The History and Definition of Privacy. SZTE Repository of Publication. <https://core.ac.uk/reader/80769180>

<sup>5</sup> Adruan Vasile Cornescu, The Generations of Human's Rights. *Days of Law: the Conference Proceedings*, 1. Masaryk University, 2009.

<sup>6</sup> Ananthia Ayu, Titis Anindyajati, Abdul Ghoftar.

<sup>7</sup> T. Tony Ke, K. Sudhir. *Privacy Rights and Data Security: GDPR and and Personal Data Markets*. 2020. <https://dx.doi.org/10.2139/ssrn.3643979>

Fundamental human rights were mentioned in 1974, where G. Tunkin stated that the principle of respect for human rights in international law may be expressed in three propositions, which are:

- a. All states are obliged to respect the fundamental rights and freedom of persons within their territories;
- b. States are obliged to prohibit discrimination based on sex, race, religion, or language; and
- c. States are obliged to promote universal respect for human rights and to cooperate to achieve this objective.<sup>8</sup>

Furthermore, these obligations are also mentioned in the international treaties, which are the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration of Human Rights. Here, the fundamental human rights are divided into:

- a. First generation of human rights
- b. Second generation of human rights
- c. Third generation of human rights

The first generation of human rights contains civil and political rules, which focus on political concerns, and states are restrained from limiting their actions towards or against the right holder. The second generation of human rights concerns social, economic, and cultural rights. This right is based on equality and guarantees access to essential social and economic goods, services, and opportunities. Lastly, the third generation of human rights where this right is to develop the other first rights. These rights are based on solidarity and the rights embrace the collective rights of people.<sup>9</sup>

Here, privacy rights constitute the first generation of human rights because the state cannot regulate privacy due to its inherent nature to the individual. Historically, the right to privacy was defined as the right to be left alone by Warren and Brandeis in 1890.<sup>10</sup> It means a human has the right or ability to control his information, secrecy, and other things.<sup>11</sup> Human's right to choose whether his information is made available to the public.<sup>12</sup> Warren and Brandeis presuppose that there was something ascertainable "private" to protect from the public.<sup>13</sup>

The first major case involving the right to privacy was *Griswold v. Connecticut* in 1965. The U.S. Supreme Court ruled that the Constitution implicitly guarantees a right to privacy against government intrusion. The case involved a Connecticut law

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<sup>8</sup> G. Tunkin, *Theory of International Law*, London, 1974, p. 81

<sup>9</sup> Council of Europe Portal. "The Evolution of Human Rights". <https://www.coe.int/en/web/compass/the-evolution-of-human-rights>

<sup>10</sup> Warren, S. and Brandeis, L. The right to Privacy. 1890. *Harvard Law Review*, 4(5), 193. <http://www.jstor.org/stable/1321160?origin=JSTOR-pdf>.

<sup>11</sup> Newell, P. B. (1995). Perspectives on privacy. *Journal of Environmental Psychology*, 15(2), 87–104. [https://doi.org/10.1016/0272-4944\(95\)90018-7](https://doi.org/10.1016/0272-4944(95)90018-7)

<sup>12</sup> Glancy, D. (1979). The Invention of the Right to Privacy. *Arizona Law Review*. 21(1). 2. <https://law.scu.edu/wp-content/uploads/Privacy.pdf>.

<sup>13</sup> *Op.Cit*, 17

prohibiting the use of contraceptives, and the court ruled that the law violated the right to marital privacy, as every person can control their own choices.

There is no universal and ideal definition on defining “privacy.” Generally, privacy connects with the diverse modes by which people, personal information, certain personal property, and personal decision-making can be made less accessible to others. Privacy protected not only by the law but also by cultural norms, ethics, and business or professional practices.<sup>14</sup> However, to connect the basic concept of privacy rights, the experts define this right as: the right to privacy was defined as the right to be left alone by Warren and Brandeis.<sup>15</sup> It means a human has the right or ability to control his information, secrecy, and other things.<sup>16</sup> Human’s right to choose whether his information is made available to the public.<sup>17</sup> Warren and Brandeis presuppose that there was something ascertainable “private” to protect from the public.<sup>18</sup>

American jurist and economist Richard Posner avoids giving a definition but states *“that one aspect of privacy is the withholding or concealment of information.”* From among the authors who consider privacy as a control over personal information.<sup>19</sup> Alan Westin and Charles Fried defined privacy as *“the claim of an individual to determine what information about himself or herself should be known to others”* while Fried stated that *“privacy [...] is the control we have over information about ourselves.”*<sup>20</sup> American professor Grety states that *“privacy is the control over or the autonomy of the intimacies of personal identity”*.<sup>21</sup> A Hungarian jurist, Szabó argued that *“privacy is the right of the individual to decide about himself/herself”*.<sup>22</sup> In conclusion, the privacy right refer to the right that obtained by every person, when it is subjected to any elements for identifying himself as an individual. This definition is broadly admitted and adopted under states domestic law. Usually, through using *“privacy is when a person can be identify, or a personal data where a person’s information related to an identifiable person”*.

Historically, Warren and Brandeis are the first people who created the concept of the right to privacy. The right to privacy in their study states that political, social and economic changes occur in the society, the law has to evolve and create

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<sup>14</sup> Danrivanto Budhijanto, The Protection of Information Privacy in Digital Era. Indonesian Law Journal. 2(2). December 2007. P. 108.

<sup>15</sup> *Op.Cit*, 17

<sup>16</sup> Newell, P. B. (1995). Perspectives on privacy. *Journal of Environmental Psychology*, 15(2), 87–104. [https://doi.org/10.1016/0272-4944\(95\)90018-7](https://doi.org/10.1016/0272-4944(95)90018-7)

<sup>17</sup> *Op.Cit*, 17

<sup>18</sup> *Ibid*.

<sup>19</sup> Posner, R. A.: The Right of Privacy. Georgia Law Review Vol. 12, No. 3. (1978) p. 409.; Prosser 1960. p. 389

<sup>20</sup> Westin, A. F.: Social and political dimensions of privacy. Journal of Social Issues Vol 59, No. 2. (2003) pp. 431-434.

<sup>21</sup> Gerety, T.: Redefining Privacy. Harvard Civil Rights-Civil Liberties Law Review Vol. 12, No. 2. (1977) p. 281

<sup>22</sup> Szabó 2005. p. 44. On the differences between EU and US privacy protection see more: Whitman, J. Q.: The Two Western Cultures of Privacy: Dignity versus Liberty. The Yale Law Journal Vol. 113, No. 6. (2004) pp. 1151-1221.

new rights to “meet the demand of society” and ensure the full protection of the person and the property.<sup>23</sup> They identified two issues that threatened people's privacy, which are technological development and gossip, which became a trade in newspapers.<sup>24</sup> Considering these changes, they were the first to demand the recognition of the right to privacy, which defined as “the right to be let alone” as a separate and general right, as a right that ensured protection against not the violation of property rights, but the mere emotional suffering.

Warren and Brandeis defined existing common law rights as stepping stones to the right to be left alone, such as the right to determine the extent to which an individual's thoughts, sentiments, and emotions will be communicated to others. The principle of this right is “the inviolability of personality”. The right to privacy has influenced law primarily in the United States (US), where it is considered the origin of the four privacy lawsuits that emerged from US jurisprudence.<sup>25</sup> This great success can also be attributed to social and technological changes that have led public opinion to favor the acceptance of the idea of privacy. The article has also influenced jurisprudence because of the many attempts to define privacy that have been made. Europe began to examine the right to privacy after the US, and created different types of protections.

Contemporary, privacy rights are experiencing major developments, one example of privacy rights is personal data in an electronic system. Here, personal data held by an electronic system organizer contributes to the security system and authenticity of personal data. Personal data and privacy are different but interrelated. Privacy encompasses the rights of individuals, and is a fundamental human right. Meanwhile, personal data is defined as any information that can directly or indirectly be used to identify an individual, such as name, phone number, etc. Privacy is broader than personal data, and personal data is one of the forms of information protected under privacy law.

In Minister of Communication and Informatics Regulation No. 14 of 2018 concerning Fundamental Technical Plan, the terms used are “*Penggunaan Ulang Nomor Pelanggan*” while on the official website of the Telecommunication Service Provider, the term “*daur ulang nomor Pelanggan*” in English is interpreted in two words “reuse” and “recycle”. However, the use of these two words has different definitions. Reuse and recycle are often used in the scope of environmental law. However, originally, reuse and recycle had a much broader meaning and applicability. Referring to the black law dictionary, “Reuse” is defined as a way of reusing a product, either partially or completely, without turning the product into a new item. Whereas “Recycle” is defined as a way of using products that have been used, then separated, and turned into new goods or used according to their previous

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<sup>23</sup> Warren S. D., Brandeis, L. D.: The Right to Privacy. Harvard Law Review Vol. 4, No. 5. (1890) p. 193.

<sup>24</sup> Adrienn Lukács. What is Privacy? The History and Definition of Privacy” <https://core.ac.uk/download/80769180.pdf>

<sup>25</sup> William M. Beaney. “The Right to Privacy and American Law.” *Law and Contemporary Problems*. pp. 253-271. 1966.

capacity. Therefore, this research preferred to categorize it as “Reuse” rather than “Recycle”, as the SIM Card is

Data breached due to SIM Card number also occurred in 2020, TIM a telecom provider in Italy was fined under the GDPR for reassigning a phone number. The former owner's personal data was not fully removed before the number was reassigned, and the new user was able to access the previous owner email and social media accounts. The court found that the telecom company has breached the GDPR and Data Protection Authority (*Garante*). The investigation confirmed that TIM has a lack of proper consent, improper management of consent list, excessive data retention, and data breaches. These injuries are well-known as cybercrime.

In international law, the newest legal regime used to regulate the use of information technology is cyber law. Although the legal events that occur are virtual, cyber activities can be categorized as real legal actions and deeds. In the current legal development, electronic documents have a position that is equal to documents made on paper.<sup>26</sup> Thus, cyber law has become a concern for countries to anticipate and combat acts of abuse committed in cyberspace.<sup>27</sup>

Cyber law as the part of international law started in 1990 when the United Nations committed monitoring against computer-related crime with the Eight UN Congress on the Prevention of Crime and Treatment of Offenders. One of its focuses is to improve all possible measures to protect computer security and by determining the privacy protection to protect individual human rights.<sup>28</sup>

One form of privacy protection in the digital age is the right to be forgotten, where a person is entitled to delete his personal data from the data retention owner.<sup>29</sup> Personal data means that every person has a fundamental right to privacy. Here, the proliferation of data retention and the right to be forgotten has further complicated the preservation of individual privacy, one example is the policy of reusing customer numbers.

In early 2024, a TikTok account shared her experience when someone else reused and reused her prepaid card number, then broke into the account linked to the prepaid card number. She admitted that it was her negligence because she forgot to extend the period of the prepaid card or Subscriber Identification Module Card (SIM Card). As a result, the card provider reuses cell phone numbers and sells them to new customers. However, the new buyer abused his rights by breaking into several bank accounts related to the old user of the number. The latest user used the old owner of the number's social media (*Whatsapp*) to ask several people for money.

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<sup>26</sup> Ahmad M. Ramli, *Kekuatan Akta Elektronik Sebagai Alat Bukti Pada Transaksi E-Commerce Dalam Sistem Hukum Indonesia*, Makalah disampaikan pada Kongres Ikatan Notaris Indonesia, Bandung 23 Januari 2003, hlm. 12-19.

<sup>27</sup> Sahat Maruli T. Situmeang, *Cyber Law*. Penerbit Cakra, 2020, Kota Bandung. p. 3.

<sup>28</sup> *Ibid*, p. 4.

<sup>29</sup> Ayu Riska Amalaia, Zahratul'ain Taufik, Adhitya Nini Rizki Apriliana, Hafina Haula Arsy. Right to be Forgotten: Perspektif HAM Internasional. *Jurnal Risalah Kenotariatan*, 4(2), 2023. p. 750. <https://doi.org/10.29303/risalahkenotariatan.v4i2.180>

In Indonesian positive law, the Reused of SIM Card Numbers is legal based on the Minister of Communication and Information Technology Regulation Number 14 of 2018 concerning the National Telecommunication Fundamental Technical Plan. Reselling numbers that have passed the grace period is not an unlawful act. However, in practice, reuse of SIM Card numbers triggers violations such as identity theft, embezzlement, and breached personal data of the old owners. The owner of personal data has the potential to lose access to social media accounts and bank accounts. This is contrary to the personal data protection and information as a privacy right, which is defined as the inherent right of an individual to obscure his private life from the view of the public.<sup>30</sup> Therefore, this research intends to analyze the legal review on reused SIM Card number based on personal data protection.

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<sup>30</sup> Humble, K. (2020). Human rights, International Law and the Right to Privacy. University of Greenwich. [https://gala.gre.ac.uk/id/eprint/29182/7/29182%20HUMBLE\\_Human\\_Rights\\_International\\_Law\\_and\\_the\\_Right\\_to\\_Privacy\\_%28AAM%29\\_2020.pdf](https://gala.gre.ac.uk/id/eprint/29182/7/29182%20HUMBLE_Human_Rights_International_Law_and_the_Right_to_Privacy_%28AAM%29_2020.pdf).

## 1.2 Research Questions

Based on the background described above, the author of this study took the following research questions:

1. How does the legal regulations on reusing SIM card numbers?
2. How are telecommunications providers responsible for the impacts of reusing SIM card numbers?

## 1.3 Research Objectives

Based on the problem statements above, the author has the following research objectives:

1. To find out the legal regulations on reusing SIM card numbers.
2. To find out the telecommunications providers responsibility for the impacts arise from reusing SIM card numbers.

## 1.4 Research Benefits

Moving on from the purpose of this research, it is expected to provide theoretical and practical benefits, namely as follows:

1. This research is expected to be a source of information, knowledge, and understanding for the work of Hasanuddin University towards the development of international law, especially related to concerns over the reusing of SIM Card numbers from a privacy rights perspective.
2. The findings of this research are expected to contribute to public understanding of international human rights, especially those related to the protection of personal data as part of privacy rights.

## 1.5 Research Originality

This research was conducted by the author in looking at legal issues regarding the international legal review on the reuse of SIM Card number policy in the digital era based on privacy rights. Based on the author's analysis to provide an overview of the comparison, presented with previous research on reused sim card number, the author attaches previous research as a comparison for the current author:

Author Name	: Yana
Title of the article	: Perlindungan Hukum terhadap Pengguna Nomor Telepon Seluler Daur Ulang (Studi pada PT. Telkomsel Kota Palangka Raya
Category	: Skripsi
Year	: 2022
University	: IAIN Palangka Raya
Description of Previous Research	Research Plan
Issues and Problems:	1. How does the legal regulations on reusing SIM card numbers?

1. How is the practice of using recycled mobile phone numbers in Palangka Raya City? 2. What are the disadvantages experienced by users of recycled mobile phone numbers in Palangka Raya City? 3. How is legal protection for users of recycled mobile phone numbers according to positive law and sharia economic law?	2. How are telecommunications providers responsible for the impacts of reusing SIM card numbers?
Research Methods: Normative	Research Methods: Normative
In this research, the author was analyzing maintaining the legal protection of provider consumers when their number is already reused. Based on the research conducted, the author found that there are no material damages obtained through the implementation of customer number recycling. However, losses such as WhatsApp numbers that cannot be reused, to personal data leaks are still considered to bring losses. The difference with the present research is the previous research does not contain the comparative implementation of reused number as well as the present Thesis will discuss.	

Author Name	: Henny Mulyani
Title of the article	: Perlindungan Konsumen terhadap Penggunaan Ulang Nomor Telepon Seluler
Category	: Skripsi
Year	: 2022
University	: Universitas Lambung Mangkurat
<b>Description of Previous Research</b>	<b>Research Plan</b>
Issues and Problems: 1. How is the re-use of mobile phone numbers regulated in Indonesia? 2. What are the legal consequences of mobile phone number reuse?	1. How does the legal regulations on reusing SIM card numbers? 2. How are telecommunications providers responsible for the impacts of reusing SIM card numbers?
Research Methods: Normative	Research Methods: Normative
This research aims to find consumer protection such as calls directed at old users of the number, to electronic-based terror. In the research, the author found that the reuse of mobile phone numbers in Indonesia is currently not regulated and explained specifically. The reuse of telephone numbers is only mentioned in the Numbering Chapter concerning the Regulation and Application of Telephone Customer Numbers in the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 14 of 2018 concerning the National Telecommunications Fundamental Technical Plan, whereas if you look at the Regulation of the Minister of Communication and Information Number 5 of 2021 concerning Telecommunications	



Provision, which regulates the quality standards of implementation, it states that Telecommunication Network Providers and/or Telecommunication Service Providers are required to meet the quality standards of Telecommunication Provision with one of the indicators being protecting consumer interests.

Author Name	: Putri, Nabillah Thasya Ramadhanty, Moch. Zairul Alam, and Cyndiarnis Cahyaning Putri
Title of the article	: <i>Perlindungan Hukum terhadap Data Pribadi Pelanggan atas Daur Ulang Nomor Telepon oleh Provider ditinjau dari Undang-Undang Nomor 19 tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 tahun 2008 tentang Informasi dan Transaksi Elektronik</i>
Category	: Jurnal
Year	: 2023
University	: Brawijaya Law Student Journal
Description of Previous Research	Research Plan
<p>Issues and Problems:</p> <ol style="list-style-type: none"> <li>1. What are the weaknesses in the regulation in Article 26 paragraph (3) of Law Number 19 of 2016 concerning Information and Electronic Transactions regarding the limitation of electronic information phrases that are irrelevant in protecting customers' personal data for Phone number recycling by Provider?</li> <li>2. What is the Analysis of the Regulation of the Minister of Communication and Informatics Number 14 of 2018 concerning the National Telecommunications Fundamental Technical Plan regarding legal protection of customers' personal data for recycling telephone numbers by Providers?</li> </ol>	<ol style="list-style-type: none"> <li>1. How does the legal regulations on reusing SIM card numbers?</li> <li>2. How are telecommunications providers responsible for the impacts of reusing SIM card numbers?</li> </ol>
Research Methods: Normative	Research Methods: Normative
<p>In this research, the authors analyze pertaining the legal protection of personal data concerning the UU ITE. Based on the authors' analysis, comprehensive regulations so that the obligation of Electronic System Organizers to delete electronic information that</p>	

is no longer relevant as mandated in the UU ITE cannot be implemented properly, especially in the practice of recycling telephone numbers. However, this research does not analyze the privacy right under international law, as the author will try to emphasize in this Thesis.

## **CHAPTER II**

### **RESEARCH METHOD**

#### **2.1 Research Location**

In obtaining data and information to discuss the problems in this research, the author conducted research by selecting the research location at the Faculty of Law Library, Hasanuddin University.

#### **2.2 Types and Sources of Legal Materials**

In legal research, research materials are unknown because in legal research, especially normative ones, they are obtained from the literature. In normative legal research, library source materials are part of secondary legal materials.

##### **a. Primary Legal Materials**

Primary legal materials are authoritative legal materials. In this research, primary legal materials consist of laws and regulations, conventions, statutes, and others as basic materials in conducting research.

##### **b. Secondary Legal Materials**

Secondary legal materials are materials consisting of textbooks written by influential legal scholars or legal experts, journals, legal cases, jurisprudence, and the results of recent symposia related to the research topic. In this research, secondary legal materials used are relevant reference books, journals, legal cases, jurisprudence, and symposium results.

##### **c. Tertiary Legal Materials**

Tertiary legal materials are legal materials that guide primary and secondary legal materials in the form of dictionaries, articles, and explanations accessed via the Internet.

#### **2.3 Research Approach**

This research is a study that uses normative juridical methods. Normative research is research that seeks to examine library materials in the form of legal materials, both primary, secondary, and tertiary legal materials. The research was carried out using the following research approaches:

##### **a. Statute Approach**

In this research, the statute approach will focus on legal sources that come from legislation such as laws, conventions, statutes, etc. as the basic reference material in this research.

##### **b. Conceptual Approach**

In this research, the conceptual approach will focus on giving perspective on the topic and research question under the legal concept or either from the values contained in the enactment of a regulation concerning the concepts used.

##### **c. Study Case Approach**

In this research, the study case approach will focus on giving perspective based on jurisprudence and its relevance with the present research. The cases that will be brought are from international courts such as, International Court of Justice, European Court of Human Rights, and Inter-American Court of Human Rights.

d. Comparative Approach

In this research, the comparative law between Indonesia, Europe, and several countries are conducted to find the differences regarding the law on SIM card number.

## **2.4 Legal Material Collection Technique**

The legal material collection technique in this research was carried out using 2 (two) methods of legal material search techniques, namely:

1. Literature Study

By utilizing primary, secondary, and tertiary legal materials that have been collected, analyzed to obtain explanations and solutions to the case under study. The data collection method is applied to obtain scientific information related to the discussion of theories, and concepts relevant to this research.

In addition, the author also studies and quotes legal materials from sources in the form of laws and regulations and literature related to this research. Legal materials will be obtained from the author's personal collection, the Hasanuddin University central library collection, and the Hasanuddin University Faculty of Law library collection.

2. Internet Access

The collection of legal materials is done by accessing websites and journals accessed through internet media that have relevance to the legal issues in this research. The legal materials were then systematically analyzed and formulated in accordance with the problem formulation raised in this research.

Literature study and internet access were conducted to gather relevant information, as well as to assist the author in interpreting the regulations and the impact caused by the reuse of SIM Card Number.

## **2.5 Analysis of Legal Materials**

The analysis of legal materials used in this research is a descriptive method of analysis and is carried out by grammatical interpretation techniques of laws and regulations. The descriptive method of analysis is carried out so that the author can describe thoroughly and in depth the regulation of the reuse of SIM Card Number in Indonesia and other countries' practices.

Interpretation of laws and regulations is carried out to find and apply the understanding of the arguments contained in the law in accordance with the

ordinary meaning. After conducting research with existing findings, the author will then describe systematically following the flow of systematic discussion. Then an in-depth analysis is carried out related to the legal review on the reuse of SIM card numbers based on personal data protection.