

# Personal Data Protection Related to Operation of Unmanned Aircraft (Drone) in Indonesia

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## ABSTRACT

The development of transportation technology at this time is unmanned transportation technology. One of the most popular unmanned technologies is the Unmanned Aerial Vehicle (UAV), more popularly known as the drone. The use of drones is ubiquitous and is used by various groups, both the government and the wider community. However, in practice, various problems can harm the community, one of which is violating the right to privacy. The research method used in this study is descriptive legal research, which explains the aspects of personal data protection in the operation of drones in Indonesia. Concerning this issue, the government has issued a legal instrument that regulates the operation of drones in Indonesia. However, the regulation on the operation of drones is still not sufficient to accommodate the community's interests, especially those that protect against violations of privacy rights.

**Keywords:** Drone, Privacy, Personal Data Protection.

## 1. INTRODUCTION

The era of globalization has placed technology and information in a strategic position where it also affects people's daily lives. The development itself describes human life in this era of globalization. Naturally, humans tend to desire to have a good and decent life, so the idea arises that humans must make changes to get a decent life. Human life currently is in the era of the use of very sophisticated technology. If humans only thought about how to survive in ancient times, now with changing times and technological developments, these thoughts have developed, and there is a desire to plan for life in the future.

Humans make discoveries that aim to penetrate the existing space in the world, one of which is by creating various technologies in the field of transportation that can facilitate the movement of people from one place to another. Suppose in the past, humans with conventional conveyance had to travel long distances and time, now with the development of technology in transportation. In that case, humans can move from one place to another in a relatively fast time. One of the most widely used types of transportation is air transportation. Airfreight is considered fast and efficient. In addition, air transportation has the characteristics; able to reach the destination quickly, use high technology, know no national borders, and have a higher level of security and safety than other types of transportation.[1]

The faster the development of technology, the newer discoveries are found to support human needs. The direction of the development of transportation technology is transportation technology without using a controlling crew, such as an autonomous vehicle and the most popular today, an unmanned aerial vehicle (UAV), which is more popularly known as a drone. The use of drones is rife and used by various groups, both the government and the wider community. The government uses drones for various purposes, especially in the military, to carry out reconnaissance and missions in dangerous areas. However, at this time, the use of drones is not only for military activities, but the wider community also uses them because drones themselves are relatively easy to obtain and freely sell in the market. In terms of community use, drones are used, among others, for shooting, filming, and other activities.

Drones can be categorized as air transportation, but in Law no. 1 of 2009 concerning Aviation which regulates Air Transportation, no provisions govern drones. Regulations regarding drones are regulated in the Minister of Transportation Regulation No. 180 of 2016 concerning Control of Unmanned Aircraft Operations in Indonesian Airspace. One of its provisions prohibits drones in Prohibited Air Areas, Restricted Air Areas, and Aviation Operation Safety Areas of an Airport. Although it has been regulated regarding the prohibition of the use of drones in certain areas, drones that have a remote pilot system can harm third parties and violate one's privacy.

Drones have cameras and voice recorders that can be used to take pictures and record motion pictures. This capability can potentially invade privacy if image capture and recording are not authorized by the person concerned.

Regulation of drones, specifically in Indonesia, is needed considering the widespread use of drones mainly by civil society. Drones are not officially controlled under In-Law Number 1 of 2009 regulating Aviation. As a result, there is no clarity about the status of drones. If drones are considered aircraft, they must have the same credentials as planes, such as airworthiness certificates, nationality certificates, and so forth. In addition, neither the Law Number 1 of 2009 concerning Aviation nor the Minister of Transportation's Regulations Number 180 of 2015 nor the Minister of Transportation's Regulations Number 47 of 2016 clearly restrict the obligation of drone operators to third parties. Furthermore, if there is a violation of privacy in drone use, what should the victim do? Or what is the operator's responsibility for privacy violations? The lack of clarity regarding the drone operator's responsibility system has not yet been regulated. Of course, it will create legal uncertainty. Therefore, with the great potential for privacy violations, according to the author, it is vital to debate drone operators' liability to third parties.

## **2. METHOD**

Peter Mahmud Marzuki said "Legal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced".[2] Therefore, the research type used is normative juridical research, which has a descriptive nature, which explains the aspects of personal data protection in the operation of drones in Indonesia.

## **3. RESULT AND DISCUSSION**

### **3.1 Study Regarding Drones**

Drones are unmanned aircraft that can be controlled remotely. Drones have an aircraft control system that relies on an outside pilot (a computer system programmed to manage the drone).[3] Drones are equipped with cameras, specific sensors, communication equipment, and several other technologies that make them useful for various purposes, including taking pictures.[4] In various parts of the world, drones are used by members of the military who are used for various purposes, one of which is shooting enemy territory, conflict areas, or spying on the enemy. Meanwhile, drones may be used for remote mapping, volcano monitoring, traffic monitoring, and civilian shooting in post-disaster situations.

Drones offer significant benefits over conventional military aircraft technology in carrying out military missions. Various activities, such as reconnaissance, seeking suspected terrorists, carrying out operations in

difficult locations, conducting normal military patrols, and supporting police, may all be completed accurately and promptly. Drones are more commonly utilized as military instruments in practice. Drones are widely used in the military because they provide a lesser risk of carrying out risky missions, have a high degree of efficiency, and have cheaper production costs than human aircraft. These benefits have led to drones being widely employed and developed in a variety of countries. Drones, on the other hand, are now employed for military objectives including shooting. Drones are now employed for military objectives, as well as shooting, filmmaking, and other activities.

### **3.2 Review of Privacy**

Warren and Brandeis, in a Harvard University law journal article titled "The Right to Privacy," were the first to develop the notion of privacy. [5] According to the essay, technological advancements have increased public awareness of the right to enjoy life. According to Warren and Brandeis, with the advent and development of technology, there has been a general understanding that a person's right to enjoy life has been recognized. The right to enjoy life is described as a person's right to be free from interference in his or her personal life, whether by other individuals or the government. As a result, the right to privacy must be recognized and protected by the law.

This right states that a person has the right not to be bothered in his private life by others or the government. As a result, the government must control and acknowledge this. There are reasons why privacy must be protected. First, in interacting with other individuals, an individual must cover his personal life to protect his position in certain circumstances. Second, there is the time one needs to be alone (solitude), which of course, requires privacy. Third, because privacy is a right that exists independently of other rights, it will be violated if someone discloses personal information to the public. Fourth, privacy also includes a person's right to have domestic relations, including how a person maintains a marital relationship, raises his family, which is not a public assumption, and other people should not know these things, this right by Warren identified as the right against the world. Fifth, if this right is violated, it will be difficult to judge where the loss lies because a person's personal life has been disturbed; of course, the victim needs to receive compensation for the loss he has suffered.[6]

In the case of taking pictures through the camera, images can occur in the form of people and/or other objects. If the image is a person, we refer to Law Number 28 of 2014 concerning Copyright (UUHC), especially Article 12 to Article 15, which regulates economic rights to portraits. Article 12 paragraph (1) and paragraph (2) of the Copyright Law states that:

- a) Without the express agreement of the person being photographed or their heirs, commercial duplicating, publicizing, distributing, and/or transmitting

photographs taken for commercial ads or advertising is banned.

- b) Portraits may be used commercially, reproduced, announced, distributed, and/or communicated as referred to in paragraph (1) containing portraits of 2 (two) or more persons must seek approval from the persons in the Portraits or their heirs.

### **3.3 Rules regarding Privacy Rights**

Taking pictures through drones has created problems, especially with constitutional rights such as privacy. In the United States, there have been various cases of using drones that violate privacy, one of which is the case of taking pictures near a hospital. As a result, the operator was fined \$85.

Regulations regarding privacy rights themselves have been regulated by various countries, including Britain, Germany, and America. In the United Kingdom, the right to privacy is regulated in the Data Protection Act 2018. According to this law, personal data must be processed fairly and have the valid consent of the person concerned. According to this law, operators must consider the privacy impact of the people recorded in the UAV data before carrying out operations. Furthermore, the operation of the UAV must be fit for purpose and inform the subject that they are being recorded. However, these arrangements only apply to commercial uses.

In Germany, arrangements regarding personal data protection can be found in the Act concerning Copyright in Visual Arts and Photography. According to this law, recorded images may be distributed without permission, provided they depict a public event, parade, or similar event.[7] In addition, images taken from civilian UAVs are not allowed to infringe on the image rights of others.[8]

In the United States, privacy rights in data regulations can be explicitly found in the FAA Small UAS Rule. According to this regulation, the UAV cannot be operated on any person who is not directly involved in the flight of the UAV unless these people are in a protected or closed place. In addition, if the purpose of operating the UAV is known to violate privacy matters, a warrant from the authorized official to carry out the operation of the UAV is required.

### **3.4 Legal Aspects of Unmanned Aircraft Based on International Law and National Law**

Drone operation is not specifically regulated under the Chicago Convention of 1944. The Convention simply clarifies the categorization of aircraft, which is divided into civil and military aircraft. This Convention also exclusively governs civilian aircraft's usage of the air. [9] So that there are no provisions regarding the use of air by state aircraft causes the rules regarding state aircraft to be determined by the laws and regulations in each country and the safety of civil aviation must be prioritized. As a result, the Chicago Convention's signatory nations must enact rules and regulations that coordinate the operations

of civil aircraft and the state in order to maintain flight safety.

Talking about the legal aspects of drones, it is very influential from the classification of drones themselves. If it is classed as a state aircraft, it is exempt from the Chicago Convention's restrictions. However, if it is classified as a civil aircraft, it must comply with the Chicago Convention. Consequently, it must fulfill several essential elements that fall within the scope of the Chicago Convention itself, such as drone design, registration mark, ownership, and type of operation. In terms of drone operation, specific requirements have been set by the Convention in terms of safety. One of the requirements is aircraft registration because the primary function of aircraft registration is to determine the aircraft's nationality, considering that drone operations, mainly in the military field, can cover areas between countries. Another requirement that must be met is related to airworthiness, in accordance with Article 31 of the Chicago Convention, which states, "Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered."

Meanwhile, the Minister of Transportation Regulation No. 180 of 2016 on Control of Unmanned Aircraft Operations in Indonesian Airspace addressed national legal issues in Indonesia. The rule governs the standards, regulations, and permissions for the operating of unmanned aircraft, among other things. A drone is defined in this regulation as a flying vehicle that can be controlled remotely by the operator (pilot) or can control itself using aerodynamic rules. This regulation also prohibits drones in Restricted Air Areas, Restricted Air Areas, and Aviation Operation Safety Areas of an Airport.

### **3.5 Rights to Privacy**

The capacity of unmanned aerial vehicles (UAVs) to fly at certain altitudes without being seen or identified by the human eye frequently infringes on a person's right to privacy. Privacy is a fundamental human right that is protected by international and state law, and it is one of the most basic human rights that must be preserved. The state is obligated to defend its people's private rights.

Warren and Brandeis, in a Harvard University law journal article titled "The Right to Privacy," were the first to develop the notion of privacy. [10] According to the essay, technological advancements have increased public awareness of the right to enjoy life. According to Warren and Brandeis, with the advent and development of technology, there has been a general understanding that a person's right to enjoy life has been recognized. The right to enjoy life is described as a person's right to be free from interference in his or her personal life, whether by other individuals or the government. As a result, the right to privacy must be recognized and protected by the law.

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In Indonesia, cases of violation of the right to privacy have not occurred, but that does not mean that the protection of one's right to privacy is not protected. If someone feels disturbed by the operation of the UAV in the surrounding environment, then that person can sue based on the legal grounds mentioned above. Based on Cooley's scope of privacy, the operation of a UAV may violate the right to privacy if it results in the following:

- a) The passing UAV has given a threat so that it creates a feeling of insecurity, discomfort, and insecurity, both for himself and his family.
- b) The operator or owner of the UAV takes pictures or records someone's activities without that party's permission.
- c) The data generated by the UAV is distributed without the permission of the people in it.
- d) The data has the potential to damage the reputation of the parties contained in it.
- e) The data contains matters that are confidential for the aggrieved party.

### ***3.6 Responsibilities of Drone Operators Against Privacy Breach***

When it comes to responsibility, there are three theories: the theory of responsibility based on the element of error (fault liability theory), the theory of responsibility based on presumptions (presumption of liability theory), and the theory of absolute responsibility (strict liability theory).

In the event of a risk of invasion of privacy in the operation of the drone, the theory of responsibility that can be used is absolute responsibility. This principle focuses not on the fault. The drone operator must be responsible for any losses it causes without having to be proven guilty first. According to this principle, drone operators cannot be free from liability for any reason regarding the occurrence of losses. This principle can be

formulated with the sentence: the carrier is responsible for any losses that arise due to any event in the operation of the drone. This is regulated in Article 1365 of the Civil Code concerning illegal acts generally. Violation of privacy rights by drones can be subject to criminal sanctions based on article 167 paragraph (1) of the Criminal Code and be sued civilly based on article 1356.

## **4. CONCLUSION**

Based on the analysis that has been submitted previously, the authors put forward the conclusions in this paper as follows:

1. The Minister of Transportation No. 180 of 2016 about Control of Unmanned Aircraft Operations in Indonesian Airspace reflects unmanned aircraft regulations. The rule governs the standards, regulations, and permissions for the operating of unmanned aircraft, among other things. The current regulations regarding the operation of UAVs are not sufficient because the content is only limited to air space usage limits, permits, and permit requirements. The provisions in the Regulation of the Minister of Transportation are only limited to setting altitude limits. Moreover, protected areas are only national strategic areas, but how low a UAV can pass in one's private area has not been regulated.
2. Considering the practice of other countries such as the United States, England, and Germany, other relevant laws and regulations can apply and serve as a legal basis to avoid a legal vacuum. Through the integration of existing UAV regulations with other related regulations, it can be in the form of new regulations.
3. In the event of a risk of invasion of privacy in the operation of the drone. The drone operator must be responsible for any losses it causes without having to be proven guilty first. Violation of privacy rights by drones can be subject to criminal sanctions based on article 167 paragraph (1) of the Criminal Code and be sued civilly based on article 1356.

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