



September 25, 2023

GLOBAL DATA ALLIANCE COMMENTS ON DRAFT IMPLEMENTING REGULATION OF LAW NUMBER 27 OF 2022 REGARDING PERSONAL DATA PROTECTION

The Global Data Alliance (**GDA**) welcomes the opportunity to comment on the Draft Implementing Regulation of Law Number 27 of 2022 Regarding Personal Data Protection (**Draft PDP Regulation**) to the Ministry of Communication and Informatics (**KOMINFO**).

The GDA is a cross-industry coalition of companies, headquartered in different regions of the world, that are committed to high standards of data privacy and security. The GDA supports policies that help instill trust in the digital economy without imposing undue cross-border data restrictions or localization requirements that undermine data security, innovation, economic development, and international trade. Given the GDA's focus on cross-border data, we comment specifically on the cross-border data provisions of the Draft PDP Regulation.

We recommend three revisions to this aspect of the regulations:

- First, Article 185(2) of the Draft PDP Regulation specifies mechanisms for the cross-border transfer of personal data for ensuring "Adequate and binding Personal Data Protection." The GDA proposes including certifications as valid mechanisms to create more flexibility in supporting cross-border data transfers. Internationally recognized certifications such as the ISO 27701, the Global and APEC Cross Border Privacy Rules (**CBPR**) and other such certifications that would allow the transfer of personal data outside Indonesia. These certifications have proved beneficial for companies that operate across national boundaries in demonstrating their compliance with globally interoperable and trustworthy data privacy standards.
- Second, Article 187 allows the PDP Institution to determine standard contractual clauses. The GDA recommends that the PDP Institution consider recognizing other widely accepted standard contractual clauses, such as the EU Standard Contractual Clauses (**SCC**) and ASEAN Model Contractual Clauses (**MCC**). Approving the use of standard contractual clauses recognized in other jurisdictions would allow Personal Data Controllers to serve customers in Indonesia using existing contracts that create strong data protection obligations and are aligned with established international practices. The GDA further recommends that the PDP Institution carry out a public consultation to gather industry comments prior to releasing approved standard contractual clauses.

- Finally, Article 188(3) requires a Personal Data Controller to obtain approval from the PDP Institution before transferring personal data when using binding corporate rules (**BCRs**) as a cross-border data transfer mechanism. We recommend the PDP Institution recognize that BCRs that have already received approval from other data protection authorities may be considered acceptable data transfer mechanisms under the PDP Law without the need for separate approval from Indonesian authorities.

Enabling Personal Data Controllers to use different mechanisms to transfer personal data across international borders affords businesses the flexibility to determine the mechanisms that will be most optimal and relevant for them and their customers. In summary, The GDA recommends recognizing more mechanisms for cross-border personal data transfers, including certifications, standard contractual clauses from other regions, and BCRs approved in other jurisdictions.

Thank you for the opportunity to provide comments.

Sincerely,

Joseph P. Whitlock
Executive Director
Global Data Alliance
josephw@bsa.org