INDONESIA
LRWD
Law Reform Weekly Digest

Edisi VII/Feb/2013

Legal Discourse

Is Privacy Law A Necessary?

On two consecutive days this week, Kompas daily headlines is on the topic of personal data protection; is there a need to regulate how an institution should manage their possession of personal data belong to others? Such regulations are non-existent in Indonesia.

Right now in Indonesia we already had the Freedom on Information Law No. 14/2008 that regulates exception concerning access to private personal data. However the law only regulates public bodies and it does not concern about personal data held by private institutions.

All these times people voluntarily gave private institutions like banks, schools, hospitals and telecommunication provider access to their basic personal information like home address, email and telephone numbers. In many numbers of transactions we witness that other party could gain access to our personal data; debt collectors are first come to mind.

Today, Indonesia does not have law on the protection of personal data. We need vigorous studies whether the protection mechanism of personal data in existent law and regulations are sufficient enough. In legislation context, members of Parliament on the current 2009-2014 has their term less than one year and facing other legislative priorities, since the bill are not in the list of National Legislation Program 2010-2014. (RR)

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Indonesia LRWD is published by Indonesian Centre for Law and Policy Studies (*www.pshk.or.id*). This weekly newsletter provides info, updates, and analysis on law reform in Indonesia. To subscribe, please contact *lrwd@pshk.r.id*.

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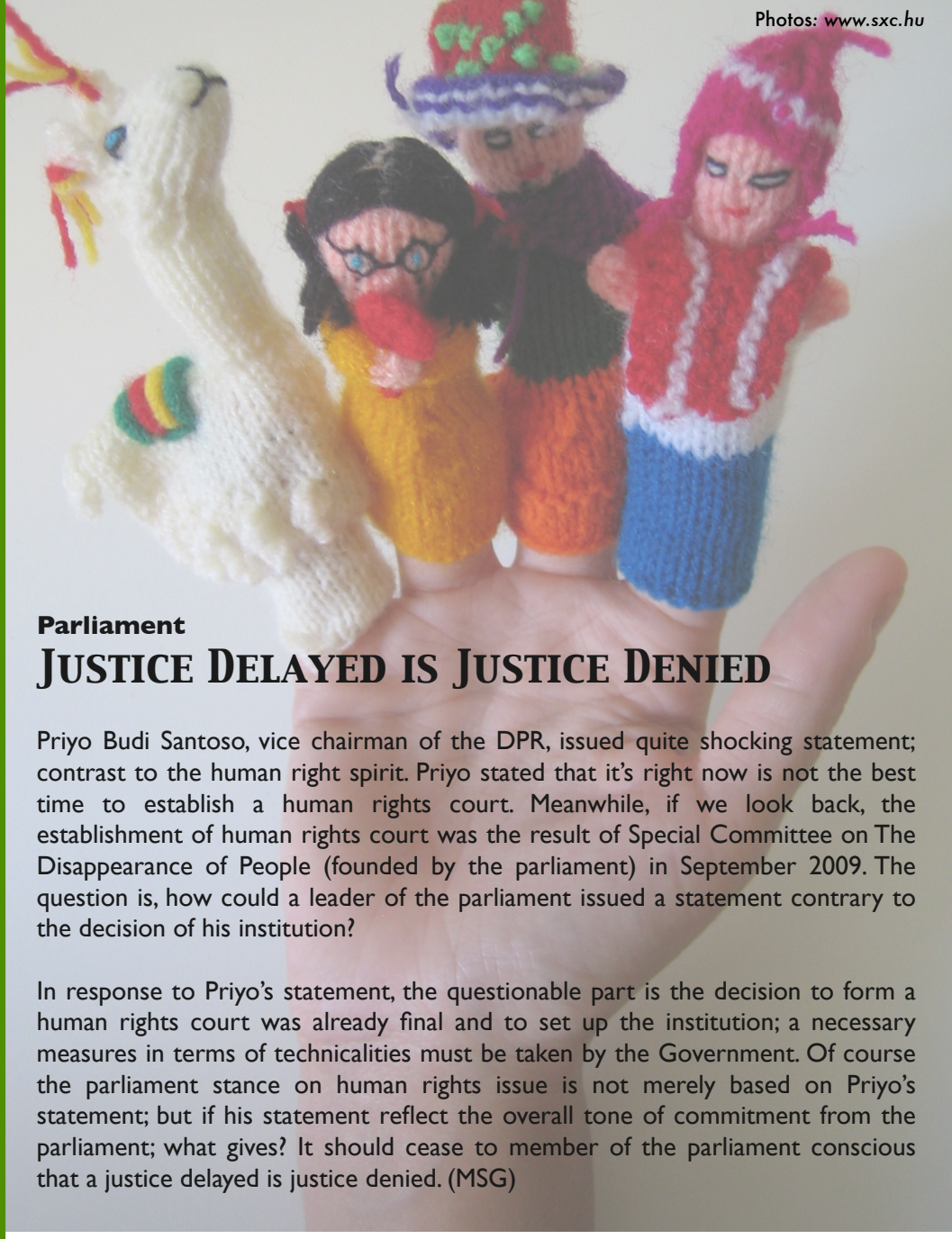

Court

Telkomsel Curator Fee

The Commercial Court of Central Jakarta issued a controversial ruling regarding curators' fee of Telkomsel, a leading telecommunication company in Indonesia. On 31 January 2013, the court stipulated Telkomsel must pay a fee 0.5 % of total asset value of Telkomsel; approximately IDR 146.8 billion; quite shocking for Telkomsel. The court gave deadline to Telkomsel until 15 February 2013. However, until this article is written, Telkomsel refuses to pay the sum.

We assume the court has used the incorrect regulation to specify curators fee. It still uses the Ministry of Justice Decree No. 9/1998 which has been revised with the Regulation of Ministry of Law and Human Rights No. 1/2013 dated 11 January 2013. The new regulation stated that the curator fee should be charged to bankruptcy petitioner PT Prima Jaya due to Supreme Court decision that cancel bankruptcy decision issued by the Commercial Court of Central Jakarta.

In normal procedure, incorrect ruling by the court is usually cancelled by Supreme Court base on cassation file suited by the losing party. However, Articles 17 and 18 of Bankruptcy Law No. 37/2004 restricts legal effort against courts stipulation on curators fee. Although the Bankruptcy Law says so, it does not mean that the court stipulation cannot be cancelled. The Supreme Court, based on a party request, has competency to cancel that stipulation trough a review. This is according to Article 67 of the Supreme Court Law No. 14/1985. The article says that a party can submit a review request to the Supreme Court if there is an erroneous part from the judge. Telkomsel can use such effort against the Commercial Court of Central Jakarta stipulation regarding curators' fee. (MFA)

Parliament

Justice Delayed is Justice Denied

Priyo Budi Santoso, vice chairman of the DPR, issued quite shocking statement; contrast to the human right spirit. Priyo stated that it's right now is not the best time to establish a human rights court. Meanwhile, if we look back, the establishment of human rights court was the result of Special Committee on The Disappearance of People (founded by the parliament) in September 2009. The question is, how could a leader of the parliament issued a statement contrary to the decision of his institution?

In response to Priyo's statement, the questionable part is the decision to form a human rights court was already final and to set up the institution; a necessary measures in terms of technicalities must be taken by the Government. Of course the parliament stance on human rights issue is not merely based on Priyo's statement; but if his statement reflect the overall tone of commitment from the parliament; what gives? It should cease to member of the parliament conscious that a justice delayed is justice denied. (MSG)

Supreme Court

Susno Duadji's Case and Constitutional Court Decision on Criminal Procedur Code

The Supreme Court (MA) has rejected the cassation in Susno Duadji's case and declared him guilty. Susno Duadji requested a postponement of the execution because the decision was not eligible under Article 197 paragraph (2) letter k of the Criminal Procedure Code. The article is about the sentencing decision to include a requirement that when a defendant is arrested, kept in custody, or released; there should be a part from the sentence to confirm the status of the defendant whether he/she is guilty and should be punished.

That article had through judicial review and Constitutional Court (MK) already stated Article 197 paragraph (2) letter k Criminal Procedure Code is conditionally unconstitutional. The Constitutional Court confirmed the sentencing decision should includes a requirement that the defendant should be arrested, kept in custody, or released as part of the clause to confirm the status of the defendant is guilty and should be punished. Susno stated that in the cassation ruling there's no statement that there's should be any arrest necessary. Despite his statement and the absence of arrest notion, the execution should proceed nonetheless. (RMF)