

**PRIVACY
INTERNATIONAL**



**FINAL REPORT
PRIVACY : PERSONAL DATA PROTECTION IN
INDONESIA**

***GLOBAL UNDERSTANDINGS AND
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PROJECT**

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Challenges on Privacy Protection in Indonesia : A Perspective of

Crosscultural Communications

What makes Indonesian become one of the world largest cell phone consumers and Facebook users, is due to the characteristic of our nation as one of the so called collectivism nation. We feel more comfortable being in a group or community, and put less appreciation upon self as well as other's personal privacy. Cell phones mostly used for social communications, chatting about various things, making rumors, and the like. We easily let others know our cell phone number, unlike the European and American who keep their cell phone number as a private property, and pass them only for business purpose or any other important purposes.

An effort to develop and enforce a legal system as to protect personal privacy is conducted based upon the assumption that human culture and

the values therein contained is universal. This assumption may be deemed something understandable. Notwithstanding, it is not easy to implement since in the reality it is found that culture is not something universal, even every culture and its sub-cultures keep remain changing and growing.

Another constraint is that legal thought and its practices tend to have the quality of positivistic-deductive based upon linear and mechanistical frame of thinking, assuming that human behaviour just like the behaviour of nature or machinery (robot), where all is conducted by the same regularities and permanent rules. In fact, human act, instead of behave and its action is symbolic, different from animal behaviour which is driven by stimulus respond. It means, any human action is not easy to simply interpret, and often has subjective characteristics. Two persons may make similar actions but driven by quite different motives respectively, or, two persons may make two different actions while both having similar motives.

Therefore, Indonesian people may have different or even contradiction point of view with regard to the privacy issues. For instance, Mr. A put high appreciation on his and other's privacy; Ms B also put appreciation on privacy eventhough not as a high as Mr A; while, to the contrary, Mr. C

pay no attention at all to his and other's privacy as he learned from his culture that privacy is not something important.

Privacy as a Value of Individualism Culture

As shown by Gudykunst and Kim (1992) and Hofstede et. Al (2010), world culture generally divided into Individualism Culture (Europe and North America) and Collectivism Culture (Asia, Africa, South America and Pacific Rim). Both individualism and collectivism culture derive their respective variants. Despite many different cultural patterns in a collectivism society, there also similarities found among those patterns. It is recognized the possibility for both individualism and collectivism tendencies to exist within a country without arising out any contradiction, but one of them will tend to be dominant. In Indonesia, collectivism is dominating especially in the rural area, and furthermore, it is noted that some ethnic groups, or some professions tend to be more collectivist than others'.

The privacy rights which has long became a central theme in individualism society has no similar appreciation in collectivism society, where the collectivist deem it is normal to do the somewhat intervention to other's privacy at any time. By having no specific phrase for word

“privacy” in Indonesian language as well as in its ethnical languages, it indicates that the Indonesian put less appreciation on privacy. Sapir-Worf hypothesis has beckoned that if a language has no specific phrase on a phenomenon, action, situation, characteristic or tendency, it is assumed that the thing is deemed less important.

In collectivism society, individual (self) is not considered as something unique or fully independent, but integrated in, or being an integral part of its own group (family, clan, working group, ethnic group, etc). Hence, individual behaviour significantly influenced by its group. Moreover, it is not recommended for a person to be an outstanding figure individually within its group. It is a common practice for Indonesian to use the word “we” instead of “I” when delivering a speech. In terms of competition, it occurs among groups instead of among individuals.

Collectivism culture considers individual success as group success and individual failure as group failure as well. Consequently, once an individual make a remarkable success, then the whole members of the group will be proud. On the contrary, disgraceful action made by an individual will make the whole members of the group feel ashamed.

Compare to individualism society, collectivism has less group but its commitment to the group is stronger and last longer, totally, in both

domestic and public circles. On the other way, groups in individualism society usually a sort of activities oriented group such as sports club, church, school, neighborhood, etc, without having any strong commitment nor lifetime involvement.

Driven by strong identification of its community, collectivist pay high attention toward happenings related to its community. This leads to make chatting, gossiping and exchanging rumors become a habit. Collectivist tend to remain staying in its community, making social calls, visiting each other as well as other communality activities.

Collectivism is also characterized by unclear individual purpose, where it is difficult to make distinct separation between individual purpose and its community purpose. In the event it can be explicitly separated, the community purpose will be more prioritized and shall prevail. They learn to believe that to be survive they have to depend on their community and not on themselves individually. Collectivist prefer vertical relationship rather than horizontal relationship (equality), and this vertical relationship is built upon moral values instead of mutual benefits purpose. As to keep living in harmony, collectivist tend to avoid open confrontation as they are not familiar with conflict management. In case a conflict arising out, then an independent third party is required to settle the

dispute amicably and to keep face saving of those conflicting persons. In individualistic society, people common quarreling, shouting or even hitting, but they will soon be reconciled as if such conflicts never happened. It just because they have become accustomed to manage conflicts.

The concept of extended family is also a characteristic of collectivism society, by which they are obliged to give a hand to their relatives and group of people like family. They help their close and distant relatives financially, assist them in getting jobs even the qualification does not match with the job requirements. As stated by Hofstede (1996), in collectivism society it is not an acceptable manner if a wealthy member of a family live in a luxurious life while other members live in poverty. In this case, such wealthy person is obliged to pay attention to those unlucky members by providing them with money and/or jobs to get money, and it makes him/her feel satisfy as he/she can fulfil the groups needs.

This indicates that there is no distinct separation between kin relationship and business relationship in collectivism society. So, it can be concluded that nepotism is a manifestation of the collectivism culture.

American privacy versus Indonesian community mutual help

As to see how different culture leads to different point of view on concept of privacy, it seems relevant to compare American culture with Indonesian culture. In Indonesia, community is considered to be more important than in America, where respect and status obtained by an individual is also determined by its relationship with family or clan. One will be worthy of respect and higher social status as he or she has kin relations with royal family, or, his/her father or uncle is a high functionary. Then, whichever values to follow, either individualism or collectivism will have an implication to other values which derived from such main values. For instance, collectivism culture put emphasize on community, collaboration, mutual interest, harmony, tradition, mutual goodness, respectfulness, and avoiding of being embarrassed. More specifically, in Indonesia the important collectivism values are familial relationship, mutual help, courtesy to guest, put high respect toward parents, teacher and lecturer by avoiding of debating them, etc. On the other hand, individualism culture emphasizing individual rights, responsibility, privacy, expressing personal opinion, freedom, innovation and self expression (Andersen et al. , 2002:93).

An individualist tend to be more independent than a collectivist, although such independency does not always provide more advantage in

every situation. An American, for example, whom offered to be helped by an Indonesia to do something that such American can do that by himself, maybe will feel strange or offended. In his opinion, he will go to ask somebody to help if he need some help.

Individualism is also concerning with obtaining immediate access and space utilization. There is an important emphasis on private property, keeping distance with others, limiting the five senses stimulations, and arranging access toward privacy. Nine most individualist countries are : USA, Australia, United Kingdom, Canada, New Zealand, Italia, Belgium and Denmark. While, on the other side, nine most collectivism countries are : Venezuela, Colombia, Pakistan, Peru, Taiwan, Thailand, Chile and Hongkong (Andersen et al., 2002:93). Although Indonesia is not mentioned in such nine most collectivist countries, in fact actually Indonesia is included in these countries, either after or before Hongkong. The necessity upon privacy reflected by closed doors in the USA, soundproof and double doors in Germany, wide doors in Norwegia, and high trees alongside the properties boundary in the UK and Canada (Andersen et al., 2002:92).

In the most individualism culture like America, individual rights and obligations are highly prioritized. They put emphasize on merit system in

every competition, just like a proverb says that “the early birds gets down the worm”. Individual evaluation is made based upon its own qualification individually, and not by its relationship to others even to one who is in the power circle. Hence, they will be treated equally, and the basic principle of ‘pay related performance’ is applied. Also, reward and punishment system is well implemented here, where in general, collectivists mostly do not like this. An individualist is not too impressed by functionary rank held by a collectivist who expects to be respected by the individualist visitors (Gallois and Callan, 1977 : 24-25). In British culture, focus on individual instead of community is reflected in phrases like : ‘everyman for himself’ , don’t judge a book by its cover’ , let’s make sure we have a level playing field’ (Gallois and Callan, 1977 : 15).

Western culture (individualism), commonly put more emphasize on what is being done . That is why an American oftenly express his/her greetings by saying “How are you doing?” when he/she meet friends or even to someone he/she just met. On the other side, collectivist as in the eastern culture emphasizing on who is doing something instead of what is being done . In collectivism culture, someone belongs to to several groups, which one out of them more important than others, for instance,

in Japan business enterprise, in India family, and in China country (Mc Laren, 1998 : page 23).

In collectivist society, interpersonal communications much more complicated compare to individualist society. As to keep living in a harmony, a collectivist tend to make an unnecessary polite question such as 'where are you going" to his neighbor for example, even actualy he/she knows where that neighbor is going to. Without having a proper understanding towards this easterns style of communications, a westerner will face difficulty in understanding and making communication with either Chinese, Japanese, Cambodian or Indonesian, even he/she speaks such local language.

In Indonesia, positive influences of collectivism such as close familial relationship, collaboration and community mutual help are undoubtedly admitted. These tendencies are found spread out throughout Indonesia, not only in Javanese and Sundanese ethnics only, but also found in Minahasa ethnic (in North Sulawesi), Dayak (in West Kalimantan), in Maluku, etc. It is regretted that from time to time these positive values seems disappeared .

Prospect of Implementation of Privacy Protection Law in Indonesia

Although privacy is not a value rooted in Indonesian culture, but it does not mean that law on privacy can not be developed and implemented in Indonesia. “Panta Rei” , said Heraklitus, or everything change. Hence, privacy in certain aspects of life may become a value in Indonesia , as long as it can improve the happiness and spirituality of Indonesian people.

In fact, part of the Indonesian especially well educated people who living in big cities, have put appreciation upon their as well as others’ privacy in certain aspects of their life. Times change along with the rapid growth of communications technology has changed the social order of society indeed. So, it is admitted that part of our society living in big cities tend to be more individualistic, where they live their life individually and yet they are not acquainted with their neighbors.

Therefore, changes in social order of society must be anticipated as to keep it is running orderly on the right track. However, it would not be easy to implement law on privacy in Indonesia especially in lower class society, less educated people and traditional community living in rural areas. It obviously requires serious efforts in various context of life (family, community, institution, education, etc) as to socialize the implementation

of law on privacy in Indonesia. In this relation, I am of the opinion that Faculty of Law of the Padjadjaran University shall bear a heavy task for that.

Culturally, privacy comes from individualist (western) culture indeed. However, it must be taken into account that not all values of western culture having destructive characteristics, as such as, not all values of Indonesian and other eastern cultures having constructive characteristics. As mentioned by WS Rendra, regardless where a culture comes from, we will accept it as long as it can improve our human dignity. The challenge is, especially for legal officers and judges for more, whether or not we can utilize a legal system which has more humanize, *holistic* and contextual characteristics instead of *reductionist* (?) and *atomistics* (?). Therefore, we need judges with humanistic thoughts, conscience, *interpretative* and *progressif*, as the characteristic of Prof Satjipto Rahardjo. Therefore, it is not the time for judges with deductive thoughts and just rely only on legal facts without considering that values and human actions (including the so called “privacy”) are not static, but instead, related to space context, time, social and culture. Yet, this is the biggest challenge for our legal thinkers and practitioners. -----

International Instruments concerning Right to Privacy and Their Implementation in Indonesia

I. Introduction

The use of smart phones and other mobile devices has created a lenient communication between individuals across the world. Consequently technology is growing at an exponential rate, with millions of new users going on line each year. It is unfortunately not followed by the growing awareness on the importance of the Internet access security. It can be seen from the majority of social media users who disclose their private information including telephone number or address. Furthermore, the absence of legislation or act concerning the protection of the right to privacy in Indonesia has resulted to trading data information (data breach) by insurance company or bank for the purpose of telemarketing. This situation has created distrust among community and of public authority in Indonesia.

Privacy is a fundamental (though not an absolute) human right recognised in a range of international human rights law instruments such as Universal Declarations of Human Rights (UDHR) and International Covenant of Civil and Political Rights (ICCPR). The right to privacy may be described as a right that prevents public authority