SINOMICS JOURNAL
International Journal of Social Science, Education, Communication and Economics
ISSN (e): 2829-7350 | ISSN(p): 2963-9441

# Service Arrangements Colocation Data Center in Indonesia

**Fira Nurul Jannati[1]*, Atik Winanti[2], Aurora Jillena Meliala[3]**
Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta, Indonesia
**E-mail correspondence:** firajanr@gmail.com[1], atikwinanti@upnvj.ac.id[2], aurora@upnvj.ac.id[3]

**Abstract**

*This research aims to identify, know, and understand arrangements related to agreements Colocation Data Center between Service Provider Companies and Service Users and arrangements related to service services Colocation Data Center in Indonesia. This research uses a normative method with a conceptual approach and a comparative approach sourced from statutory regulations, expert thoughts, and other library materials, supported by interviews, and processed using qualitative data analysis techniques. So, we can conclude that the arrangement is related to an agreement Colocation Data Center engender to a new type of agreement because there is a mixture of 2 (two) rental agreements and goods custody agreements which are not recognized in the Civil Code and have not yet been regulated related to services Colocation Data Center in Indonesia. Related to obligations for personal data protection, the position of Service Provider Company is not as a Personal Data Processor due to the hardware on which the data is processed, namely the server not owned by him as reviewed from Law Number 27 of 2022 concerning Protection of Personal Data as well as references for comparative regulations from GDPR and The Digital Personal Data Protection Act. 2023 (No. 22 of 2023).*

Keywords colocation data center, agreement, protection of personal data.

## INTRODUCTION

It cannot be denied that technology has developed rapidly and is increasingly sophisticated, capable of producing opium for the needs of every human being. They are forced to continue to innovate in developing technology, which is now a basic need. Indonesia itself has carried out many technological reforms and developments in various fields, one of which is developments in technology in the form of Data Center (from now on in this writing referred to as Data Center). As is known, the Data Center has transformed into one of the brightest industries in the business world. It can be seen by the large number of foreign investors interested in playing directly by investing their capital in Indonesia. In 2023, there will already be around 94 Data Center in Indonesia; some belong to technology giants such as Alibaba in China and Google Cloud in United States. There are also facilities owned by the state-owned company PT. Telkom Indonesia (The Conversation, 2024). In line with research conducted by Mordor Intelligence, a business consulting company domiciled in India, the market-mentioned Data Center in Indonesia in 2022 will be worth US$ 1.67 billion, and of course, this value will continue to grow with an estimated value of US$ 3.43 billion in 2027.

A Data Center is a facility or room to place a computer system belonging to a company through which Data Center companies can organize, process, and send large-scale data to support their business performance. Delve deeper into business development at the Data Center in Indonesia. Currently, these businesspeople can open up various business opportunities based on the type of business Data Center itself, one of them being a custody server in the data center room (from now on in this writing, referred to as Colocation Data

Center). A Colocation Data Center is a service Data Center that allows other parties to entrust it to a server of Data Center and can also be said to be a place that provides services for storing or entrusting things server in Data Center that have physical and infrastructure security standards, such as stability of electric current, flooring, *UPS*, power, generator, air temperature control, stability of internet access, CCTV and personnel security who will work every day in monitoring server (Bekasi Regent Regulation Number 78 of 2018 concerning Standard Operational Procedures for Data Center). This business is designed to provide robust and reliable infrastructure by offering server space (server room) either in a separate room (dedicated Colocation) or in shared rooms (share Colocation) with rack server for Service Users Colocation Data Center (hereinafter in this writing referred to as Service Users) which is used to store server which contains applications and databases, network devices, and other devices related to operational systems every day from a Data Center like UPS *(Uninterruptible Power Supply)*, PAC *(Precision Air Conditioning)* with security standards that protect the devices inside starting from maintaining air temperature, humidity, anticipating fire, high-speed internet connections with multiple ISP *(Internet Service Provider)* links that ensure consistent network availability and offer Service Users a choice of operators for flexibility and cost effectiveness, as well as access from non-interested parties as provided by the Service Provider Company Colocation Data Center. Business opportunities Colocation Data Center It can be pretty tasty, especially for companies that do not have the land, funds, and human resources to make an Enterprise Data Center. You can use this service to support your business. This is one of the foundations for operating services at the Colocation Data Center in Indonesia, for example, company X (from now on referred to as *Service Provider Company*). According to sources from Service Provider Companies, now the company has 6 (six) locations Colocation Data Center in Medan, Jakarta, Surabaya, Bali, Palembang, and Batam, with hundreds of service users consisting of government institutions, private television, educational institutions, startup companies, etc. Concerning the basis for implementing services, Colocation Data Center at the Service Provider Company, The Service Provider Company will make a letter of agreement with the type of rental agreement entitled *"Lease Agreement Rack Colocation"* because the services provided by the Service Provider Company are rent rack colocation along with the facilities. One of the obligations of the Lessor in a lease is to hand over the leased goods to the Lessor. However, in the Rental Agreement Rack Colocation, The Service Provider Company (which in the agreement acts as the Renting Party) does not provide physical services Rack Colocation or a special shelf, which is a storage area server to Service Users (who in the agreement act as Renting Parties). This is the background for the Author to conduct further research regarding arrangements related to agreements Colocation Data appropriate center between the Service Provider Company and the Service Users as reviewed from the Rental Agreement Rack Colocation.

On the other hand, it is one of the primary obligations of Service Provider Companies to provide the best security facilities in every guard server that Service Users entrust to prevent unauthorized access to Service Users' data. Personal data itself is any reliable and accurate information that is attached and can be identified, either directly or indirectly, to

SINOMICS JOURNAL
International Journal of Social Science, Education, Communication and Economics
ISSN (e): 2829-7350 | ISSN(p): 2963-9441

each individual whose use is in accordance with the provisions of applicable laws and regulations (Andriyanto Adhi Nugroho, Atik, Winanti, Surahmad, 2020 ). The prevention efforts are to anticipate losses that will arise both materially and non-materially. An example of unauthorized access is a foreign party entering the room server, leakage, theft, changes to Service User data, and other actions that could threaten the security of Service User data and equipment. So, there is a need for further study regarding service arrangements in Indonesia because, as previously stated, this business is concerned with the security of Service Users' data. Based on the description of this background, the Author is interested in raising this problem in legal research entitled "Service Arrangements Colocation Data Center in Indonesia"

## METHOD

This type of research is included in the category of normative legal research, which examines the systematic legal regulations relating to issues as a solution to the problem formulation in this research. Normative legal research or library legal research examines library materials or secondary data (Soerjono Soekanto and Sri Mamudji, 2010). The subject of the study is law, which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior (Abdulkadir Muhammad, 2004). Therefore, normative legal research focuses on the inventory of positive law, legal principles and doctrine, legal findings in concrete, systematic law cases, level of synchronization, comparative law, and legal history (Abdulkadir Muhammad, 2004).

## RESULT AND DISCUSSION

### Arrangement Related Agreement of Colocation Data Center between Service Provider Companies and Service Users

Agreements are crucial in implementing business transactions at Colocation Data Center because an agreement containing good and correct rights and obligations can provide legal certainty and protection for the Parties. In agreeing to this business transaction, the Parties are free to agree as stipulated in Article 1338 paragraph (1) of the Civil Code, which states that all legal agreements are legal for those who make them. The interpretation of the word "all" in this article shows that the Parties in this business can make agreements with any content and form. This principle gives freedom to the Parties to make new agreements that are not yet regulated in the Civil Code in order to be able to keep up with the needs due to developments over time. However, the operation of this principle is limited by the provisions of Article 1337 of the Civil Code, which states that the substance of the agreement made must not conflict with the law, public order, and morality. The rental agreement was created when an agreement was reached between the Renting Party and the Lessee. Therefore, this agreement is a consensual agreement that can be made in writing, unwritten, or verbal without certain formalities.

In practice, the Service Provider Company has prepared a Rental Agreement text Rack Colocation to be reviewed and renegotiated before drafting the Rental Agreement Rack Colocation signed by the Parties. Once the process is complete, the Rental Agreement Rack

Colocation is made in 2 (two) copies, 1 (one) each for the Service Provider Company and Service User and affixed with a stamp IDR 10,000-. After that, the Parties will add their signatures as proof that there has been an agreement on the contents and provisions of the agreement. Thus, the Rental Agreement Rack Colocation must be done in writing and cannot be done orally. The Rental Agreement Rack Colocation explains that the Service Provider Company will provide its services in the form of rental rack colocation with operational support facilities using infrastructure and high-security standards, both physical and non-physical, available at the Service Provider Company. Rack colocation is a facility in the form of a particular place used for storage servers, which contain applications and databases, network devices, and other devices related to operational systems daily from the Data Center. The Service User will bring and store a device as a server to be placed inside rack colocation belonging to the Service Provider Company. Talking about implementing the lease Rack Colocation According to resource persons, service users have a special place to leave their items on the server. Other Service Users cannot use them. Lease agreement Rack Colocation itself includes the qualifications of a rental agreement, and as previously discussed, the elements of a rental agreement include 3 (three), namely:

1. The parties have agreed upon a lease agreement rack colocation between the Lessor and the Tenant.
2. The Lessor hands over an item to the Lessor for enjoyment; that is, if you look at Article 1550 Paragraph (1) of the Civil Code, there is an obligation on the Lessor to hand over the rented item to the Lessor. After further research in the Rental Agreement Rack Colocation, the Service Provider Company does not submit rack colocation to Service Users to enjoy directly. Rack Colocation remains at the Service Provider Company's premises to be used as a storage device in the form of a server belonging to the Service User. Then, the Service User will hand over a device in the form of the server to be placed or entrusted inside rack colocation where the Service Provider company is not allowed to access the deposited content server. Regarding the object in the Lease Agreement Rack Colocation, namely rack Colocation, a glance can create ambiguity. However, it is in accordance with what is stated in Article 1550 Paragraph (1) of the Civil Code, where the Renting Party has fulfilled the obligation to hand over the goods in the form of material rights that provide enjoyment or possess on usage rack colocation. If traced in Article 529 of the Civil Code, possess can also be interpreted as the right to a position of authority, namely where a person can control an object either for himself, which means that the object can be used and enjoyed by him directly or through the intermediary of another person by renting/loaning/entrusting the item to another person under his control. as if it were your own. Hence, you are not necessarily the valid owner of the object (Iwan Erar Joesoef, S.H., Sp.N., M.Kn., 2022). So, the substance that Service Users can receive enjoyment from an item they rent according to the purpose means that Service Users do not have to control the item they rent physically.
3. This enjoyment takes place for a certain period and at a specific price; the rental relationship between the Service Provider Company and the Service User has a specified

SINOMICS JOURNAL
International Journal of Social Science, Education, Communication and Economics
ISSN (e): 2829-7350 | ISSN(p): 2963-9441

minimum period of 1 (one) year and can be extended. Service users are charged a rental fee as a form of payment for the goods they have rented.

However, the Author thinks that the Rent-to-Rent Agreement Rack Colocation can be qualified as a Goods Custody Agreement. In essence, custody occurs over possession of an item that is only temporary, and there is no transfer of ownership rights to the object. Thus, the entrusted object must be returned by the Party Receiving the Deposit to the Party Entrusting It. Article 1725 of the Civil Code itself regulates that goods entrusted must be returned to the Entrusting Party immediately if requested, even though another period has been stipulated in the agreement for their return unless the goods in the hands of the entrusted person have been confiscated. As for reviewing the Rental Agreement Rack Colocation into the elements of a goods custody agreement, namely:

1. A goods custody agreement occurs when someone receives goods from another person, namely the Service Providing Company Colocation Data, who receives a device in the form of a server to be placed or entrusted inside rack colocation belonging to the Service User.
2. There is an obligation that the Party receiving the deposit will keep it, namely because the act of storing or safekeeping the device in the form of server carried out by Service Users gives rise to the responsibility of the Service Provider Company to maintain the goods stored as stated in the Rental Agreement clause Rack Colocation, The Service Provider Company is responsible for maintaining or looking after the facilities Colocation and its physical network and is obliged to maintain and maintain the space Colocation in a safe condition and repair it if damage occurs which could cause operational disruption server. This form of responsibility gives rise to the opinion that it is a Rental Agreement Rack Colocation; not only does it contain provisions in the rental agreement, wherein the provisions of Article 1551 Paragraph (2) of the Civil Code, the Renting Party is responsible for carrying out repairs to the items being rented, minor repairs and daily repairs, which has been charged to the Renter because the responsibility for maintenance and care does not necessarily lie solely with the renter rack colocation just but more to server which has been placed or entrusted.
3. The Party receiving the deposit is obliged to return the goods at a later date in their original form. That is, if the agreement expires or is terminated unilaterally, the Service-Provider Company is responsible for returning server Service Users in their original form.

As for other considerations, this agreement does not fully include the qualifications of the rental agreement because one of the reasons the agreement is void by law is because it exists force majeure does not apply Lease Agreement Rack Colocation This. Article 1553 of the Civil Code states that if something unintentional happens, the rental agreement will be null and void, and there will be no liability or compensation that can be claimed due to unintentional or force majeure the said. However, in the lease agreement, Rack Colocation does not make this a factor that can invalidate the agreement; the Service Provider Company includes it in the article concerning Limitations on Service Guarantees.

Then related to the responsibilities borne by the Service Providing Company, as regulated in the provisions of the rental agreement in Article 1551 Paragraph (2) of the Civil

Code, the Renting Party is responsible for making repairs to the goods being rented, repairs light and daily repairs which the Lessee has born. In the Rental Agreement Rack Colocation, in this case, it is clearly stated that the Service Provider Company only maintains operational support facilities using infrastructure with high-security standards, both physical and non-physical, which are available for operational activities. The server belongs to the Service User and is traced in the Rental Agreement Rack Colocation; the Service Provider Company abdicated its responsibility for:

1. Any indirect consequences of special damage or accidents, including if the Service User has warned the Service Provider Company of the possibility of loss or damage.
2. In the event of disruption or non-functioning of the Service Provider Company's services to Service Users for any reason, the loss of income arising from the service interruption exceeds the amount of fees paid by the Service User to the Service Provider Company for the period of the disruption, and
3. Service Users agree to protect, indemnify, and defend the Service Provider Company from and against all forms of claims, losses, responsibilities, and costs (including attorney's fees) related to or arising as a result of the use of services provided by the Service Provider Company for Service Users in accordance with the agreement, including claims made by third parties (including Customers of Service Users) in connection with error claims advertising, claims of liability for products/services sold by Service Users, claims of infringement of patents, copyrights or trademarks made by Service Users, claims by customers of Service Users due to disruption or non-functioning of services provided by the Service Provider Company, or for any form of content submitted by Service Users to be published by the Service Provider Company, but does not include matters resulting from the negligence of the Service Provider Company.

The responsibility of the Service Provider Company arises to maintain the goods in the form of a server which has been placed or entrusted in rack colocation belongs to the Service User Company so that no service interruption causes operational disruption to the server, for the following reasons:

1. No periodic tests or concurrent tests for maintenance that are deemed appropriate and necessary by the Service Provider Company.
2. Damage or non-functioning of Customer Devices and all other related facilities not provided by the Service Provider Company.
3. Actions that do not include negligence on the part of Service Users in carrying out their obligations under the Rental Agreement Rack Colocation.

Due to the service disruption, the Service Provider Company is obliged to compensate Service Users for the service disruption where the service disruption exceeds 4 (four) hours. So basically, the liability actions of the Service User Company above can also be reviewed from the side of the goods custody agreement because there are actions that focus on maintaining goods in the form of a server that has been placed or entrusted in rack colocation belongs to the Service User Company, not to rack Colocation Alone.

Therefore, if we look at the elements of the legal relationship between the Service Provider Company and the Service User as outlined in the Rental Agreement Rack

ISSN (e): 2829-7350 | ISSN(p): 2963-9441

Colocation, this can be called a rental agreement and a goods custody agreement. Lease agreement Rack Colocation has given birth to a new type of agreement because there is a mixture of 2 (two) rental agreements and goods custody agreements that are not recognized in the Civil Code.

**Service Arrangements of Colocation Data Center in Indonesia**

In Indonesia's regulations, Data Center are first mentioned in Chapter IX, The Role of the Government and the Role of the Community, in Article 40 Paragraph 4 of Law Number 11 of 2008 concerning Information and Electronic Transactions; in this paragraph, it is stated that agencies or institutions, as intended in paragraph (3), must create Electronic Documents and electronic backup records and connect them to specific Data Center for data security. What is meant by Paragraph 3 of the Law is that the Government determines agencies or institutions that have strategic electronic data which must be protected and is mentioned again in Article 40 Paragraph 6 of Law Number 19 of 2019 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions which states that provisions regarding the need for data protection regarding the role of the Government are further regulated in government regulations. (Regarding Law Number 19 of 2019 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, it has been amended again by Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions).

Remembering to implement the provisions of Law Number 11 of 2008 concerning Electronic Information and Transactions, one of which helps provide protection and ensure security (Diani Sadiawati, et al., 2024). The Government issued Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions. Then, in 2016, the Ministry of Communication and Information of the Republic of Indonesia issued Ministerial Regulation Number 20 of 2016 concerning the Protection of Personal Data in Electronic Systems. This Ministerial Regulation does not explain much about the Data Center itself, but rather on regulations related to Personal Data. Then, in 2018, the Government issued Presidential Regulation Number 95 of 2018 concerning Electronic-Based Government Systems, which is part of the implementation of the development of Data Center National, which is used on a shared basis by Central and Regional Government agencies and is interconnected and aims to increase efficiency in utilizing national Data Center resources by Central Agencies and Regional Governments. As well as a draft of the Regulation of the Minister of Communication and Information of the Republic of Indonesia concerning the Standardization of Data Center Infrastructure. This draft ministerial regulation discusses matters that need to be considered in designing, building, maintaining, and carrying out audits of Data Center, as well as sanctions for violations of the ministerial regulations. It is just that until this research was carried out, the draft had not been ratified as a Regulation of the Minister of Communication and Information of the Republic of Indonesia, and in general, business actors in this service use the provisions of ANSI/TIA-942B:2017 *Telecommunications Infrastructure Standards for Data Center*, *The Uptime*

*Institute Certification*, and SNI 8799-1:2019 concerning Guidelines for Technical Specification of Data Center.

In 2019, the Government again issued regulations in the form of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions as a revision of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions to provide clarity and certainty to business actors in this service. In this Government Regulation, service business actors in the field of Data Center are categorized as Electronic System Operators. This Electronic System Operator is divided into 2 (two) scopes: Public and Private. As for the essence of Government Regulations, Public Electronic System Operators can manage, process, and/or store Electronic Systems and Electronic Data outside the territory of Indonesia if the storage technology is not available domestically, and this also applies to Private Electronic System Operators who can carry out processing management, and /or storage of Electronic Systems and Electronic Data in the territory of Indonesia and/or outside the territory of Indonesia, each of which is required to ensure the effectiveness of supervision by Ministries or Institutions and Law Enforcement.

It should be noted that services in the field of Data Center are closely related to the protection and security of data, including personal data. A Data Center is a central place of centralized storage where a number of servers are grouped together to accommodate a number of applications, store large amounts of data, and share files between users. The implementation of this service must ensure that the data is contained in its server. Service users are protected from leaks, theft, loss, and unauthorized access because data has high economic value. This is in line with what was conveyed by one of the British mathematicians, Clive Humby (2006), who said data is the new oil, which means the same as oil, data cannot be used in its raw state; there needs to be a processing process so that the data becomes something useful because the economic value of data lies in its potential. As an example, it can be seen through cases that occurred in Indonesia in 2021, as many as 279 million user data from BPJS Health, including data from users who have died, consisting of Population Identification Numbers (NIK), names, addresses, telephone numbers, e-mail, photos, even nominal salaries are sold on the hacker forum Raid Forums for the equivalent of IDR 70,000,000 to IDR 80,000,000. Then, the alleged leak of voter data managed by the General Election Commission (KPU) was allegedly leaked due to hacking by an anonymous person named Jimbo. The data hacker admitted having hacked the KPU website and obtained voter data. In his upload, it was revealed that of the 252 million data obtained, some were duplicated. Filtering yielded 204,807,203 unique records. This figure is almost the same as the number of voters in the KPU's permanent voter list, which reached 204,807,222 voters from 514 districts and cities in Indonesia and 128 representative countries (Juniar Laraswada Umagapi, 2023). Regarding this case, as quoted from the news portal pagelah.com, the Executive Director of the ICT Institute, Heri Sutadi, revealed that the kpu.go.id domain hosting is at one of the service companies. Colocation Data Center, namely Moratel meanwhile sirekap-web.kpu.go.id located in Alibaba Cloud Singapore. This shows that the KPU uses vary services colocation Data Center. According to Alfons Tanujaya, on the same

ISSN (e): 2829-7350 | ISSN(p): 2963-9441

portal page source, the physical location of the data center, whether at home or abroad, has equal risks if data is stored on third-party infrastructure. Reflecting on this case, proving that data has informational value for an organization is crucial, as it exceeds the value of the device where the data is stored (Lia de Vega, 2012). Therefore, if the data is leaked, stolen, or changed without the data owner's knowledge, this will also result in financial losses.

Regarding data storage and protection, service provider companies have obligations, one of which is to have rules regarding security systems so that data stored at service provider companies is protected from leaks, theft, loss, and unauthorized access. This is in line with the theory of actual reasonable expectation privacy, which protects the data of personal data subjects. Theory Actual Reasonable Expectation Privacy explains that a person has the right to receive protection from the Government unless there is an interest in law enforcement to investigate the tapping of telecommunications facilities used by a person. Any disclosure of information in public regarding things that can be accessed directly by the public, such as information about activities carried out by someone, is no longer private. Theory Actual Reasonable Expectation Privacy This provides a protection concept such as consumer data stored by telecommunications service providers is not a public space, so telecommunications service providers must maintain the confidentiality of consumer privacy data, telecommunications service providers do not provide consumer personal data to third parties for use without the consent of the consumer as the data owner. Relating to data security system rules apart from the Standard Operating Procedures (SOP) owned by the Service Provider Company, Service Provider Companies must also pay attention to the provisions in Law Number 27 of 2022 concerning Personal Data Protection. This is because the enactment of Law Number 27 of 2022 concerning Personal Data Protection has become a new legal instrument and encourages businesspeople in this field to review and evaluate the contents of their agreements with their customers in order to meet the standards contained in Law Number 27 of 2022 concerning Data Protection Personal. Apart from that, it is hoped that it will also positively impact the growth of this business. The legal standards for protection and detailed mechanisms for processing personal data provide legal certainty regarding personal rights and obligations. Business to business between the Data Center and its users.

Then, how is it related to regulations related to services Colocation Data Center in Indonesia. Unfortunately, Law Number 27 of 2022 concerning Personal Data Protection, which is expected to be able to accommodate personal data protection, does not comprehensively regulate data protection rules, both in terms of physical security (physical security) as well as non-physical security (cyber security) which one server Service users are entrusted to the infrastructure Data Center property of a Third Party or provisions for Data Center type Colocation Data Center. Law Number 27 of 2022 concerning Personal Data Protection only regulates the processing and protection of Personal Data of types Enterprise Data Center reason, for type Data Center are under the control of the Personal Data Controller and Personal Data Processor. In short, the Personal Data Controller is the Party who controls the processing of personal data for himself. At the same time, the Personal Data Processor is the Party who processes personal data on behalf of the Personal Data Controller. If seen in the service practice Colocation Data Center, Service Provider Companies provide

supporting facilities in the form of operational support facilities using infrastructure and with high-security standards, both physical and non-physical, available at the Service Provider Company. The Service Provider Company does not have access as a Personal Data Processor to process Personal Data because it has direct access to the device server, which is the User of the Service.

It is also important to note that in its preparation, Law Number 27 of 2022 concerning Personal Data Protection uses the *General Data Protection Regulation* or GDPR as a reference. The European Union adopted GDPR on 27 April 2016 and came into force on 25 May 2018 in 27 member states and countries in the European Economic Area (EEA). GDPR consists of 99 Articles and 173 Paragraphs, referred to as the toughest data protection law in the world because of its strictness, heavy sanctions, and scale of application. Therefore, GDPR is a reference for many countries to modernize their privacy rules and personal data protection, such as Brazil, India, Chile, South Korea, Kenya, Taiwan, and even Indonesia. Those who can process personal data in this provision are:

1. Data Controller
   The natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of processing personal data.
2. Data Processor
   A natural or legal person, public authority, agency, or other body that processes personal data on behalf of the Data Controller.

When considering the implications of GDPR for Colocation Data Center services, it's important to note the position outlined by Gowling WLF, a reputable law firm from England. According to their stance, the Service Provider Company offering Colocation services is not considered a Data Processor under GDPR. This determination is based on the fact that the hardware used for data processing, such as servers, is not accessible to the Service Provider Company. Then another opinion was conveyed by Mark Bailey (partners of Bailey Law Firm) where the applicability of the GDPR to the Service Provider Company depends on whether the company only provides servers for Service Users or whether the Service Provider Company provides more “direct” services that make it more directly connected to the Service User's data. The Service Providing Company can be considered a Data Processor if the Service Provider Company can access, manipulate, or disseminate customer data or if the Service Provider Company provides data storage, encryption, or analysis, even if the data is anonymized. Suppose the Service Provider Company can interact with and/or release the hard drive or have access to the server to do a reboot. In that case, The service-providing company is also considered a Data Processor. According to Datatilsynet, the National Data Protection Authority for Norway, the final opinion states that it is basically a Service Provider Company Colocation Data Center usually not considered a Data Processor for Users of their Services because they offer services that differ from the processing of personal data. In particular, Datatilsynet notes that service provider companies only provide physical infrastructure, including internet and electricity. More specifically, Datatilsynet explains that the Service Provider Company does not access the personal data stored on the server that they host, especially when Users of the Service use the server, they and the Service Provider

ISSN (e): 2829-7350 | ISSN(p): 2963-9441

Company do not have exclusive access to the cupboard server, which is locked. However, Datatilsynet highlights the following activities that may designate a Service Providing Company to be said to be a Data Processor when accessing personal data on a server, replacing or handling hardware components such as hard drive or memory in the server at the hosting, managing, restart, or handle server, or providing additional services beyond the physical infrastructure, for example providing firewall, backup, or other security measures. However, Datatilsynet states that the Service Provider may also act as Data Controller when processing personal data for their physical security measures, including when recording key fobs or conducting video surveillance from CCTV, so that he has an obligation as Data Controller to ensure that the physical security measures implemented by the Service Provider Company can address the risks associated with specific data processing activities. Again, GDPR does not describe any specific technology but instead discusses, in general terms, "adequate" technical and organizational means to protect data on these services. This is the same as the implied provisions of Law Number 27 of 2022 concerning Personal Data Protection, which states that if the Service Provider Company has access to process data, the Service Provider Company acts as a Personal Data Processor and is obliged to comply with its obligations as a Data Processor. Personal data is regulated in Articles 51 to 52 in Chapter VI concerning Obligations of Personal Data Controllers and Personal Data Processors in Processing Personal Data Law Number 27 of 2022 concerning the Protection of Personal Data. However, because Law Number 27 of 2022 concerning Personal Data Protection does not regulate the service practices of Colocation Data Center in Indonesia, no regulations provide a legal umbrella for carrying out this business.

In addition to comparing the settings of the Colocation Data Center reviewed from the GDPR, the Author also compares the settings of the Colocation Data Center from India. As is known, the increase in data consumption has accelerated company growth. Data Center there, Indians will consume the most data in the world by 2028 at 62 GB per User per month, beating developed countries such as the United States, countries in Western Europe, South Korea, and China. This is further proven by the fact that this country has more than 700 million internet users by the end of 2022, almost 2 (two) times as many as in the United States. This makes India an attractive market for the industry Data Center worldwide. With 138 Data Centers, India is currently the 13th largest market globally. Apart from that, as reported by one of the news portals, The Times of India (The Times Of India, 2024), stated that because of the cheapest internet, better connectivity, and affordable smartphones, Data Center in India is expected to receive investments of around USD 200 billion per year by 2025. Market value Data Center India is expected to grow from $4.35 Bn in 2021 to $10.09 Bn in 2027 at a compound annual growth rate (CAGR) of 15.07% over 2022-2027. The growth rate of the data center has driven the need for greater regulation. The Ministry of Electronics and Information Technology (MEITY) introduced a draft of the Data Centre Policy (draft Data Center Policy) in 2020 to facilitate the capabilities of Data Center that are effective in India.

The draft proposes a policy framework for various structural and regulatory interventions and requirements regarding approval for the operationalization of the Data

Center. This policy also sets a specified time limit for incorporation Data Center and location Data Center. In addition, it also stipulates requirements relating to the formation of joint ventures (joint venture) and partnerships in establishing a Data Center. Regardless of this plan, the Data Center in India is also regulated by The Digital Personal Data Protection Act. 2023 (No. 22 of 2023). This law was approved for use on 11 August 2023, which marked the beginning of establishing a comprehensive and dedicated data protection regime in India. Even though this law results from the state's efforts to wait for more than 15 (fifteen) years, there is no doubt that this law will impact all economic sectors, one of which is industry. Data Center in India. Several provisions in the law support Data Center as a depiction of the roles and responsibilities of the entity that determines the purposes and means of processing personal data (data fiduciary) and the entity that processes the personal data and the risks involved in storing the data. This law establishes 3 (three) essential parties whose provisions can be applied, namely Data Fiduciaries (Personal Data Controllers), Personal Data Processors, Data Subjects, and Data Protection Officers. This law defines processing as any automated action carried out throughout the life cycle of digital personal data, including collection, recording, organization, storage, adaptation, modification, and so on. After the Author searches, the same as with GDPR, The Digital Personal Data Protection Act. 2023 (No. 22 of 2023), nor does it set any further if position Service Provider Company not as a Personal Data Processor under the authority of the Personal Data Controller because it is deemed not to have permission to access data from Fiduciary Data (Personal Data Controller) except, position Service Provider Company Colocation requires them to act as Personal Data Processors with permission from Fiduciary Data (Personal Data Controller).

There are no special regulations regarding internal data protection in Data Center, especially data protection in the use of service Colocation Data Center, Service Users must remain ever-vigilant in monitoring systems, especially in non-physical security, by monitoring hardware and software performance, allowing them to identify and address any inefficiencies immediately to protect their data to create an additional layer of defense on top of security measures server as well as them must propose their data routinely, both using storage cloud, use hard drive additional, or other backup systems, safeguard data from potential loss due to hardware failure, cyberattacks, or other disruptions.

## CLOSING

### Conclusion

Starting from the background of the problem and the description of the research discussion that has been presented in the previous chapters, the following conclusions can be drawn:

1. Agreement-related arrangements Colocation Data Center between the Service Provider Company and Service Users on the Rental Agreement Rack Colocation does not fully qualify as a rental agreement because force majeure does not cancel this agreement. The Service Provider Company is more responsible for maintaining goods in the form of servers placed or entrusted in rack colocation from keeping rack Colocation itself. Therefore, the substance of this agreement has given birth to a new type of agreement

because there is a mixture of 2 (two) rental agreements and goods custody agreements that are not recognized in the Civil Code.

2. Existing regulations have not accommodated arrangements related to the services of the Colocation Data Center In Indonesia. The Government has drafted a regulation for the Ministry of Communication and Information of the Republic of Indonesia regarding Data Center Infrastructure Standardization. However, the draft has not been ratified. Regarding the obligation to protect personal data, the position of the Service Provider Company is not as a Personal Data Processor due to the hardware on which the data is processed. Namely, the server was not owned by him as reviewed by Law No. 27 of 2022 concerning the Protection of Personal Data and references to comparative regulations from GDPR and The Digital Personal Data Protection Act. 2023 (No. 22 of 2023).

**Suggestion**

From the results of the research discussion and conclusions, the Author puts forward the following suggestions:

1. Lease Agreement Rack Colocation is an inappropriate title because the title briefly raises problems regarding the rental object, namely rack Colocation. After all, rack Colocation has not been submitted to the Service User. Until then, the title of the Leasing Agreement Rack Colocation should be changed to a Service Agreement Data Center to be more precise in accordance with its function. As for other suggestions, Service Provider Companies can draft a new agreement with the qualifications of a goods custody agreement with the object of safekeeping of goods in the form of a server because the qualifications of this agreement are more in line with the scope of this business.
2. The Government, in this case, the Minister of Communication and Information of the Republic of Indonesia, is continuing the drafting and discussion regarding the Regulation of the Minister of Communication and Information of the Republic of Indonesia concerning Standardization of Data Center Infrastructure so that there is legal certainty for these business actors. As for other suggestions, the Government can accommodate needs related to data protection regulations both in terms of physical security and non-physical security in terms of storing data with third parties (in this case, Colocation Data Center) because it does not rule out the possibility that the Service Provider Company can access, manipulate, or distribute customer data, or the Service Provider Company provides data storage, encryption, or analysis, even though the data is anonymized.

**REFERENCES**

A. S. Oliver, B. Ravi, R. Manikandan, A. Sharma, and B. G. Kim, “Heuristic green computing-based energy management with security enhancement using hybrid greedy secure optimal routing protocol,” Energy Reports, vol. 9, pp. 2494–2505, Dec. 2023.

Jafar, W., Zulfikri, Z., Sadiqin, A., Jayadi, U., & Suriyani, I. (2023). The Childfree Phenomenon Based on Islamic Law and Its Respond on Muslim Society. Al-Istinbath: Jurnal Hukum Islam, 8(2 November), 389-406. doi:http://dx.doi.org/10.29240/jhi.v8i2.7865

Joesoef, Iwan Erar. 2022. *Hukum Perjanjian (Asas, Teori, & Praktik)*. Bandung: PT. Citra Aditya Bakti.

Muhammad, Abdulkadir. 2004. *Hukum dan Penelitian Hukum*. Cetakan 1, Bandung: PT. Citra Aditya Bakti.

Nurdiansyah, H. ., Risdhianto, A. ., & Mualim, M. . (2022). Spatial Planning of the East Java Provincial Government during the Covid-19 Pandemic in Supporting State Defense. International Journal of Social Science, Education, Communication and Economics (SINOMICS JOURNAL), 1(5), 581–592. https://doi.org/10.54443/sj.v1i5.66

Nugroho, Andriyanto Adhi, Atik Winanti, Surahmad. 2020. *Personal Data Protection in Indonesia: Legal Perspective.* International Journal of Multicultural and Multireligious Understanding (IJMMU*)*, Vol. 7 No. 7. Faculty of Law UPN Veteran Jakarta, Indonesia.

Robi, A. ., Saleh, M. ., & Hegia Sampurna, R. . (2024). Implementation of Public Service Innovation Through the OK3S System (One Click Three Services) In the Muhammadiyah Sukabumi University Library. LAW&PASS: International Journal of Law, Public Administration and Social Studies, 1(2), 211–232. https://doi.org/10.5281/zenodo.12617141

Sadiawati, Diani *et al*,. 2024. *Polemik UU ITE, Kontroversi Pelaksanaan Dan Pembatasan Kebebasan Pendapat Menciptakan Ketidakstabilan Paham Demokrasi di Indonesia*, Quantum Juris: Jurnal Hukum Modern Fakultas Hukum Volume 06, No. 1, Januari 2024 Universitas Pembangunan Nasional "Veteran" Jakarta.

Soekanto, Soerjono dan Sri Mamudji. 2010. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers.

The Times Of India, *Digital personal Data Protection Bill 2022 and Its Impact on India's Booming Data Centre Industry*, Diakses melalui: https://timesofindia.indiatimes.com/blogs/voices/digital-personal-data-protection-bill-2022-and-its-impact-on-indias-booming-data-centre-industry/.

Umagapi, Juniar Laraswada. 2023. *Kebocoran Data Pemilih Pemilu 2024.* Kajian Singkat Terhadap Isu Aktual dan Strategis Vo. XV, No. 23/I/Pusaka/Desember/2023.

Vega, Lia de. 2012. *Analisis Risiko Kualitatif Studi Kasus Pada PT. "X" Perusahaan Penyedia Jasa Data Center.* Skripsi. Fakultas Ilmu Sosial Ilmu Politik: Universitas Indonesia.

Widhaningroem, S. ., & Widowaty, Y. . (2024). Juridical Study on Investigation of Fraud Crime Cases in E-Commerce in Indonesia. LAW&PASS: International Journal of Law, Public Administration and Social Studies, 1(2), 150–161. https://doi.org/10.5281/zenodo.11653601