CHAPTER I

INTRODUCTION

1.1 Background

The different conception of gender, sex, and sexual orientation is a problem for many to understood. While gender refers to the internal experience of individual, which might or might not related to their sex that is assigned at birth (adapted from International Commission of Jurists, 2007, p6). Gender, or gender expression, is commonly expressed through several ways, including but not limited to name, clothe, hairstyle, attitude, voice, or any other expressions. On the other hand, sex refers to the differences based on biological characteristics which can be seen from the difference of chromosome on one individual, and/or another physical attributes such as genital. Lastly, sexual orientation refers to one attraction towards certain sex or gender, both sexually and/or emotionally (The United Nations Statistics Division, 2017, pp. 1–3).

In the real world, an individual whose sex, gender expression, and sexual orientation identities are fall under those consider minority, can be referred to gender minority, are more prone towards discrimination. The 2015 Eurobarometer on discrimination shows that just about 60 percent of EU citizens see discrimination on the basis of sexual orientation and gender expression are widespread. Gender minority individuals still suffer from widespread discrimination, hate speech and hate crimes within the European Union. Study by the European Fundamental Rights Agency (2013), forty seventh percent of gender minority individuals report to have experience certain kind of harassment or discrimination within the year (European Commission, 2018).

These days, with the advancement of technology, cyberspace is already part everyone's everyday lives. This advancement does not only bring betterment towards the society, but it also come at a cost. The gender-based discrimination is also coming towards, or from, the realm of cyberspace.

Cyberspace is shorthand for the net of electronic devices, computers, and communication networks, be that software or hardware, that interconnects the globe. hunting through this net is data, that is helpful for our day to day life such as telephones, radios, televisions, pagers, faxes, satellite dishes, and laptop networks. The revolution in our communications infrastructure, especially the ultimate growth of the internet, has essentially reworked the way we produce, acquire, publicize, and use data (Kang, 1998, p. 1195).

These days, the information of one's individual can be looked through not only in real world but also in cyberspace. This information will then turn into a form of data, and if it's regarding one's personal information European Union later categorized them as personal data and sensitive data. Personal data is all information that is linked to an individual, at the time when the collection of the information is gathered can identify a specific individual (European Commission, n.d.). While sensitive data is information that is related to an individual's ethnicity, political choice, religious or philosophical beliefs, health, sexual life and gender, and also genetic and biometric data (A&L Goodbody, 2016). These categorizations are beneficial in determining the limitation and additional protection that can be given toward the protection of data through regulation.

Limitation and protection are an important aspect in the protection within the cyberspace, because unlike in real world where things are tangible, those within cyberspace often be very vague. The purpose of the web and therefore the cyberspace is to extend the accessibility of individuals and information. Moreover, traveling within cyberspace makes the user at risk of tracking and tracing by national governments, business sectors, and employers. Still, several conditions of relative unavailability shield key aspects of laptop users' identities from unwanted revealing to others (Allen, 2000, p. 1186). The relative unavailability, or in other words limitation, gives an extra level of clarity on what an actor can and cannot do with one's information or data. While both personal data and sensitive data have certain level of protection, sensitive data requires an actor to give an extra protection while handling them.

The use of human security concept is beneficial in determining whether or not an extra layer of protection is actually able to secure an individual's sensitive data in cyberspace. The definition of security is the inexistence of threat or insecurity. For it to be secure it should free from any kind of fear, either physically or non-physically, while also free from any shortcomings. Human security focuses on individual, and not state, thus the rights of individual including but not limited to physical safety, freedom, and access to sustainable well-being. (Liotta & Owen, 2006, p. 87).

Previous research still connects the concept of human security with traditional issues, where most discuss how the use of human security concept by the European Union, to the European Union's foreign policy which has the basic principles of human security. For example, one research discussed how the discourse on the Common Security and Defense Policy (CSDP) in the European Union was linked to the concept of human security (Christou, 2014). Other research discussed how European Union try to integrate the human security concept towards their agenda as a way to show their soft and hard power (Kotsopoulos, 2006).

Another research that connects the concept of human security and policy usually is talking about foreign policy. One of the example is how the concept of human security is applied by European Union in their relationship with West Balkan States, such as Slovenia and Kosovo (Heynen, 2015). The concept of human security also used to explained how European Union's foreign policy in relation to the migrant crisis which started back in 2014, and now become one of the biggest migrant movements since World War II (Tamminen, 2016).

Based on the previous researches, the discussion about the concept of human security and its relations towards the data protection within cyberspace by European Union, especially about the processing and using of sensitive data such as information about an individual's sex, gender, and sexual orientation, is still lacking. Therefore, this research will try to complement the previous researches.

Discrimination and harassment are form of insecurity, thus making the life of an individual not secure. While many of the discrimination and harassment are happening in the real world, this research will look at the other part of the world that might also cause an insecurity towards the gender minority individuals which is through the cyberspace. This research also will analyze how European Union's policy regarding the protection of these individuals, and whether or not the current policy has protected them.

1.2 Research Question

1) How does European Union's data protection policy in protecting gender minority individual?

1.3 Conceptual Framework

1.3.1 Data Protection Concept

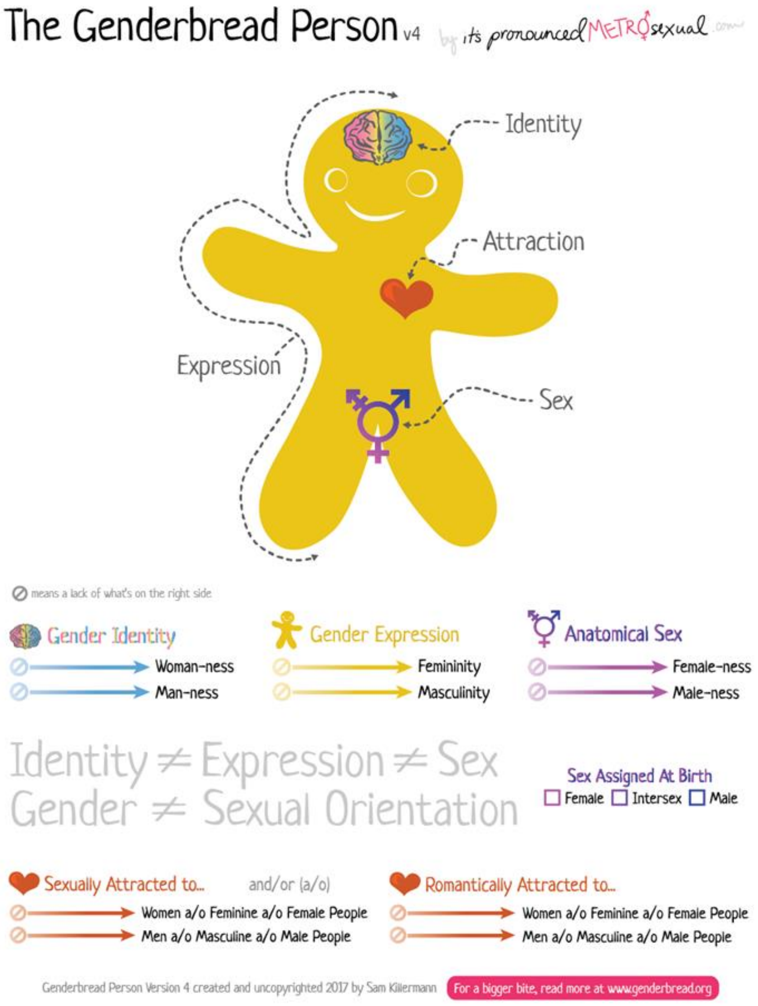
Before talking about how EU's data protection policy, it needs to be clarified first what are the differences between data protection and cybersecurity as both are sometimes being used intertwined with each other by the public. National Initiative for Cyber Security Careers and Studies defines cybersecurity as a strategy, policy, and standards regarding the security of an operations in cyberspace (Vishik et al., 2016, pp. 221–222). On the other hand, data protection means rules that regulate on how an individual's data can be accessed and used, including the protection of an individual's data from unintended modification, destruction or disclosure (Blume, 2015; experian, 2020).

When we're talking about cybersecurity, it is also about the whole safety and resiliency of physical manifestation that makes cyberworld could work properly such as the cables, computers, data centers, and etc. While the data protection is a narrower concept where it specifically talking about the safety and resiliency of an individual's data from unintended access and use. Thus, in this research, author will focus on how EU's policy in the area of data protection.

1.3.2 Gender-Minority

In order to characterize what considers gender minority, this research will use the definition in accordance with the European Commission. Gender minority usually be referred with the acronym LGBTI that stands for Lesbian, Gay, Bisexual, Transgender and Intersex (European Commission, 2018). In broader sense, gender minority is an umbrella term encompassing all individual that are self-identified as a non-heterosexual and other non-gender conforming individuals.

Picture 1.3.3.1


The Genderbread Person v4
by its pronounced METROsexual .com
Identity
Attraction
Expression
Sex
⊘ means a lack of what's on the right side
Gender Identity
Woman-ness
Man-ness
Gender Expression
Femininity
Masculinity
Anatomical Sex
Female-ness
Male-ness
Identity ≠ Expression ≠ Sex
Gender ≠ Sexual Orientation
Sex Assigned At Birth
□ Female □ Intersex □ Male
Sexually Attracted to...
and/or (a/o)
Romantically Attracted to...
Women a/o Feminine a/o Female People
Men a/o Masculine a/o Male People
Women a/o Feminine a/o Female People
Men a/o Masculine a/o Male People
Genderbread Person Version 4 created and uncopyrighted 2017 by Sam Killermann
For a bigger bite, read more at www.genderbread.org

Source: Its Pronounced Metrosexual, 2018

As shown above, there are distinction with the term of gender, sex, and sexual orientation. Gender is commonly expressed through several ways, including but not limited to, name, clothe, hairstyle, attitude, voice, or any other expressions. Sex, on the other hand, refers to the differences based on biological characteristics which can be seen from an individual's chromosome or genital. While sexual orientation refers to one attraction towards certain sex or gender, both sexually and/or emotionally. These three definitions are helpful in determining whose falls under the category of gender minority and who does not (European Union Agency for Fundamental Rights, 2014).

1.3.3 Citizen Personal Security Concept

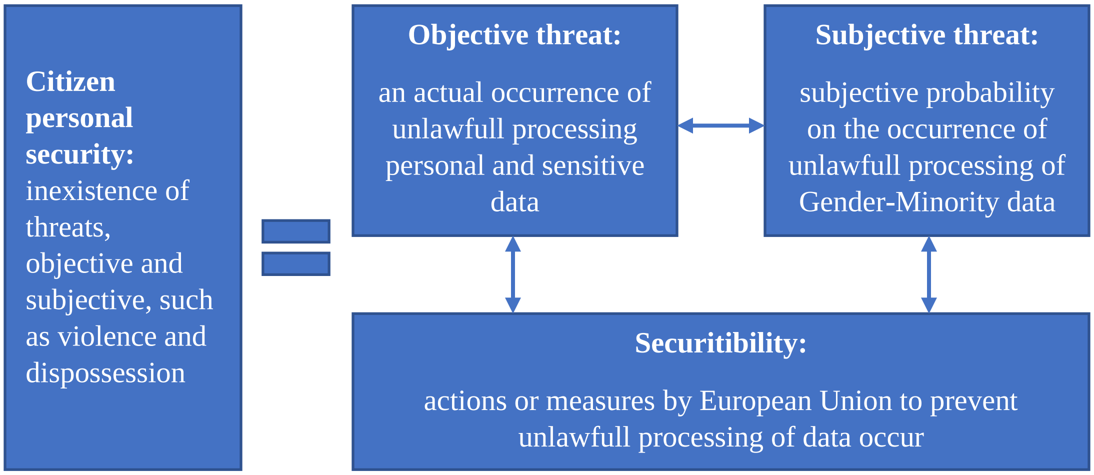
In order to answer the problem above, author will use the concept of citizen personal security, which is one of the dimensions from the main human security introduced by United Nations Development Programme (UNDP). Human Security is introduced because the traditional concept of security could not answer the security of an individual and just emphasizing on the security of a state (Peou, 2014). While on the other hand, Henk (2005) as cited from UNDP stated that human security is a people-centered that tries to protect an individual from chronic threats such as famine, illness, political repression, and also protection from any sudden and destructive disruption in one's live. This people-centered concept resulting in several dimensions that human security tries to cover, Shinoda (2004) citing the Report stated that the concept of human security has seven essential dimensions: economic security, food security, health security, environmental security, personal security, community security, and also political security.

to help answer how European Union's regulation in handling sensitive data of gender minority individuals, the personal security of human security concept is helpful in defining insecurity of an individual personal. As such, author will focus on the definition of citizens personal security brought by Costa Rican Human Development Report (HDR) as the personal, objective and subjective conditions of being free from violence or from the threat of intentional violence or dispossessions by others. In essence, it refers to effective protection of the right to life and personal integrity, as well as other inherent rights of personal privilege, such as the inviolability of the home, freedom of movement and the enjoyment of patrimony (Gasper & Gómez, 2015, p. 12; UNDP Costa Rica, 2005, p. 15).

As explained above, there are objective and subjective threat. Objective threat means the actual occurrence of acts of violence and dispossession. Dispossession means depriving an individual's property or rights, while in this era of advancement an individual's property no longer only means to something that is tangible such as house, land, or car but also something that the eyes can't see such as data in cyberspace. Also, an individual's rights not only something that we (should be) able to do in real life such as to organize ourselves or our rights to freedom of speech but also to something such as our rights to knowing what our data is being used (European Union, 2012). Subjective threat means probability attributed to the occurrence of such acts according to specific individuals or group of people, here in this case is Gender Minority individuals. Lastly, the securitibility means the actions taken by state institution that should more evidently contribute in preventing threats to citizen security and protecting the population. The diagram of the framework will be shown below (UNDP Costa Rica, 2005).

Figure 1.3.3.1

Citizen Personal Security Framework


Citizen personal security: inexistence of threats, objective and subjective, such as violence and dispossession
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Objective threat: an actual occurrence of unlawfull processing personal and sensitive data
Subjective threat: subjective probability on the occurrence of unlawfull processing of Gender-Minority data
Securitibility: actions or measures by European Union to prevent unlawfull processing of data occur

1.4 Research Methodology

According to the literature review that author has been done, the use of human security concept as an analytical tool has been done by a student from Leiden University that researched about how cybercrime and other cyberthreats is disturbing the human security. In her research, she argued that the concept of human security has not been widely used in analyzing phenomena occurring in cyberspace, so she developed her own conceptual definition and carried out identification and interpretation according to her research needs. The results of the study are that there are several types of cybercrime that can disrupt human security. Cybercrime which is categorized as very detrimental to human security is one that is categorized as a crime with the form of personal attacks (targeting certain individuals) and preventable attacks (Ossip, 2017). In other research, they discussed the digitalization in European High North and how the concept of human security is helpful in deciding whether the digitalization is the source of insecurity and vulnerability (Salminen & Hossain, 2018).

Different with those researches, author will try to look at how citizen personal security concept, as one of dimension from human security, is actually beneficial in analyzing how EU's data protection is actually the securing the gender minority individuals data in cyberspace. Objective and subjective threats, and also securitibility are going to be the tool in helping answering author's research question.

1.4.1 Research Scope

The scope of the research will be between 1995–2019. The selection of the scope before is because in 1995 European Union is firstly enacted its policy regarding sensitive data protection in cyberspace with its Data Protection Directive. While in 2019 is chosen because the new policy of sensitive data protection namely General Data Protection Regulation, applied effectively since 25 May 2018. But it does not rule out the possibility that author will also take some data from different years if it is necessary in perfecting the research.

1.4.2 Data Processing Technique

Data that is collected and processed are from secondary data. The collection of data will be done through literature study from previous researches, articles, journals, and books that discuss the same topic with this research. Furthermore, the data will be analysed using the citizen personal security concept in order to determine whether or not gender minority individuals' sensitive data is secured enough from the threats that may occur.

1.4.3 Data Analysis Technique

Data analysis will be done through qualitative study. The purpose of qualitative study is to explained the causality by describing and explaining (Moleong, 2000). Creswell (2014) explained that there are several steps in qualitative analysis: (1) collecting and processing of data; (2) creating general sense of all the data; (3) coding and segmenting data; (4) re-narrate the data; lastly (5) interpreting data.

1.5 Research Systematic

CHAPTER I: Contains an introduction consisting of background, research problem, literature review, research objectives, conceptual framework, research methodology, range of research, data processing technique, data analysis technique, and research systematic.

CHAPTER II: Contains an explanation of the condition of personal data in cyberspace, sensitive data in cyberspace, the European Union's policy in data protection within cyberspace, gender-minority within European Union and issues concerning them.

CHAPTER III: Contains the main core of this research which is about research analysis, namely how does European Union protecting personal and sensitive data in cyberspace using the citizen personal security, and whether or not European Union

Member States has actually protect and secure an individual's sensitive data regarding the information about their sex, gender, and sexual orientation.

CHAPTER IV: Is a closing, which contains conclusions and suggestions for the future research.