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The Dilemma and Solution of Informed-consent Rule in Personal Information Protection—On the Relevant Provisions of the Personal Information Protection Law (Draft)

HAN Xuzhi

Abstract: Personal information protection based on the principle of informed-consent will inevitably face many difficulties. It is difficult for the data subject to read “privacy policy” and to exercise the right of rejection. It is difficult for the data processor to obtain effective consent in big data processing. As an accountability mechanism, informed-consent still cannot achieve its effectiveness. The informed-consent mechanism is derived from the theory of personal information

³⁹ See Woodrow Hartzog, p.157–193.

, Harvard University Press, 2018,

self-determination and privacy rights. However, from the perspective of private law, equating consent with authorization is a misunderstanding of the public law nature of the personal information protection system. In personal information protection system, informed-consent has never been a basic principle, but one of the specific rules. China's personal information protection legislation must properly manage the relationship between informed-consent and other data processing rules. On the one hand, the law needs to further refine the informed-consent rule, and restrict "privacy policy" with contract law. On the other hand, the law needs to establish data circulation rules, and introduce "Privacy by Design".

Keywords: Personal Information Protection; Informed-consent Mechanism; Right of Personal Information Self-determination; Data Circulation Rules; Data Utilization