

THE RIGHT TO COMMUNICATE AND ACCESSING INFORMATION ON THE TERMINATION OF ACCESS POLICY OF UNREGISTERED PRIVATE SCOPE ELECTRONIC SYSTEM OPERATORS

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ABSTRACT

The policy of terminating access to Private Scope Electronic System Providers (Private Scope PSE), to several internet platforms including: Paypal, Yahoo, Epic Games, Steam, Dota, Counter Strike, Xandr.com, and Origin, which occurred on July 30, 2022. The termination of Private Scope PSE Access is due to the unregistered Private Scope PSE, whose provisions are regulated in the Permenkominfo PSE Private Scope. The policy of terminating access to the Private Scope PSE by the government is detrimental to citizens as users of the Private Scope PSE platform services whose access is terminated by the Government. Citizens have the right to communicate and access Private Scope PSE services which are Human Rights, as stipulated in the provisions of Article 28F of the 1945 Constitution of the Republic of Indonesia, Article 14 of the Human Rights Law, Article 19 of the Universal Declaration of Human Rights, and Article 19 of the International Covenant on Civil and Political Rights.

Keywords: *Right to Communicate, Accessing Information, Termination of Access, Private Scope Electronic System Operators*

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INTRODUCTION

The right to communicate and accessing information is a right guaranteed and recognized by the Indonesian Constitution. The importance of this right is set out in the provisions of Article 28F of the 1945 Constitution, which states that, "Everyone has the right to communicate and obtain information to develop information to develop their personal and social environment, and has the right to seek, obtain, own, store, process, and convey information using all available channels." The right to communicate and obtain information is a human right guaranteed in the Constitution. The protection, respect and enforcement of human rights is a form of realizing a democratic state of law (*demokratische rechtsstaat*) (Nurul Qamar, 2022).

On July 30, 2022, the government through the Ministry of Communication and Information Technology (Kemkominfo) cut off access to several internet sites and platforms on the grounds that these sites have not been officially registered with the Electronic System Operator (PSE) based on the Permenkominfo PSE Private Scope. Through the Permenkominfo PSE Private Scope, the Ministry of Communication and Information requires registration of all services on digital platforms to register with the Online Single Submission (OSS) system (Nathania Salsabila Marikar Sahib, Soesi Idayanti, 2023). The Ministry of Communication and Information through the provisions of Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE) and Minister of Communication and Information Technology Regulation Number 5 of 2020 concerning Private Scope Electronic System Operators (Permenkominfo PSE Private Scope), has the authority to carry out access blocking against Private Scope PSEs that have not registered (Jingga, 2023).

The government through took action to cut off access to eight platform sites including: Paypal, Yahoo, Epic Games, Steam, Dota, Counter Strike, Xandr.com, and Origin (EA) on Saturday, July 30, 2022. According to the statement from the defendant, explaining that the defendant has carried out the procedure for terminating PSE access, in terms of carrying out

the procedure, the government issued Komin.fo Press Release Number 308/HM/KOMINFO/07/2022 dated 2022, which in the press release emphasized that PSEs that did not immediately register on July 29, 2023, with a deadline of 23:59 WIB, then PSEs that did not register would have their access terminated (PTUN, 2023).

According to a report by the Lembaga Bantuan Hukum Jakarta (LBH Jakarta), there are around 213 public complaints related to the government's unilateral disconnection policy on Private Scope PSE. The complaints consisted of 211 individuals and 2 companies, around 194 of the 213 complainants experienced problems related to the impact of terminating access to Private-Scope PSE, and 62 complainants attached evidence of material losses. The pattern of complaint problems in the Private Scope PSE access termination policy includes: (1) loss of access to services obtained by the complainant, (2) loss of income due to the inaccessibility of blocked sites, which eliminates the income of the complainant, (3) loss of work due to the blocking of the Paypal site, which results in loss of clients and failure to make work agreements, (4) Doxing treatment of complainants who submit protests and rejection of the blocking policy and the implementation of Permekominfo PSE Private Scope (N, n.d.)

In its development, the citizens who felt aggrieved by the policy of terminating access to unregistered Private Scope PSEs had filed a State Administrative lawsuit at the Jakarta State Administrative Court Number 424/G/TF/2022/PTUN.JKT, but in the lawsuit the panel of judges decided to reject the plaintiffs' lawsuit, and ordered the plaintiffs to pay court costs. The case of the termination of access to the Private Scope PSE in the Jakarta State Administrative Decision Number 424/G/TF/2022/PTUN.JKT, was decided by the panel of judges who stated that the defendant's actions by terminating access to eight digital sites and platforms as in the object of the dispute were in accordance with the underlying regulations. The panel of judges was of the opinion that the government's action in terminating access was in accordance with the applicable legal provisions both from the substance and the underlying regulations (Kashyntseva, 2023). The panel of judges was of the opinion that the government action taken by the defendant regarding the termination of access was in accordance with the procedure by providing information, explanations, information, registration procedures, and so on aimed at providing information related to the obligation to register PSE in the Private Sphere and administrative sanctions for violators (PTUN.JKT, n.d.).

The Termination of access to unregistered Private Scope PSE information results in legal problems related to internet users, especially users of Private Scope PSE services whose access is cut off by the Government. The author wants to explain how the regulation related to the termination of access to unregistered Private Scope PSE, and explain how the right to communicate and access information on the policy of terminating access to unregistered Private Scope PSE. These are the problem formulations 1) What are the regulations regarding the termination of access to unregistered electronic system operators? 2) How the right to communicate and access information on the policy of terminating access to unregistered electronic system operators?

METHOD

This research uses normative legal research methods, where according to Peter Mahmud Marzuki, who explains normative legal research is a legal research process that aims to find the truth of coherence regarding the suitability of legal rules with legal norms, in order to answer legal issues. This research approach uses a statutory approach in normative legal research, namely examining or analyzing a law or regulation related to legal issues. Normative legal analysis has the character of finding legal rules, principles, and doctrines to answer legal issues at hand because of the authoritarian nature of legal science (Marzuki, P. M., & Sh, 2021). This research uses the statutory approach method (statute approach) is review or analyze a law or regulation related to legal issues in order to complete the research and the concept approach

(conceptual approach) is refers to legal principles, doctrines, or jurists' opinions that are used to find a concept that aims to answer research issues. This normative legal research materials uses sources from primary and secondary materials. The Primary legal materials contain binding legal materials derived from laws and regulations, court decisions, international convention regulations. The secondary materials contain materials that aim to help provide an explanation of primary legal materials. The secondary legal material consists of research results which include research and publications on law, textbooks, books, papers, news, and etc. The technique of collecting legal materials is through a literature study of legal materials, both primary legal materials and secondary legal materials.

RESULTS AND DISCUSSION

Regulation of Termination of Access of Unregistered Private Scope Electronic System Operators

Normatively, the government can terminate access to electronic information by preventing the dissemination of electronic information and/or electronic documents that have prohibited content in accordance with the provisions of laws and regulations. The legal basis for the government in exercising its authority related to terminating access to electronic information is regulated in the provisions of Law Number 11 of 2008 Amendment to Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE Law).

Termination of access is not regulated in the provisions of the ITE Law, but provides specific authority for the government to be able to terminate access to information and/or electronic documents as stipulated in the provisions of Articles 40, 40 paragraph (2a) and 40 paragraph (2b). According to the provisions of Article 40 paragraph (2) of the ITE Law, it explains that the government protects the public interest from all types of disturbances as a result of misuse of Electronic Information and Electronic Transactions that disturb public order, in accordance with the provisions of laws and regulations. The government has the authority to carry out access termination policies stipulated in the provisions of Article 40 paragraphs (2a) and (2b) of the ITE Law, these authorities include:

- A) The government has the authority to prevent the dissemination of electronic information or electronic documents that are considered to have content that is prohibited in the provisions of laws and regulations.
- B) The government has the authority to terminate access as well as to order PSE to terminate electronic access that is deemed to have content that is prohibited in the provisions of laws and regulations.

The explanation of the provisions of Article 40 paragraph (2a) of the ITE Law authorizes the government to prevent and block sites that contain certain information. Meanwhile, the provisions of Article 40 paragraph (2b) of the ITE Law explain that the government is preventing the spread of negative or unlawful content.

The government's object is to carry out policies to terminate access to electronic information and electronic documents. The explanation of electronic information is regulated in the provisions of Article 1 number 1 of the ITE Law, which explains that:

"Electronic Information is one or a set of electronic data, including but not limited to writings, sounds, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols or perforations that have been processed which have meaning or can be understood by a person capable of understanding them."

Shidarta explains the terminology of electronic information and electronic documents in the provisions of the ITE Law, according to him electronic information is electronic data in various

forms of electronic data which is not limited to the form of writing, sound, images, and so on that have been processed which have meaning or can be understood by people who are able to understand them (Shidarta, n.d.)

Meanwhile, the explanation of electronic documents is regulated in the provisions of Article 1 paragraph (4) of the ITE Law, as follows:

"Electronic Document is any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar form, which can be seen, displayed, and/or heard through a computer or electronic system, including but not limited to writings, sounds, images, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by a person capable of understanding them".

Termination of access or blocking of unregistered private scope Electronic System Operator (PSE) is a policy implemented by the Indonesian Ministry of Communication and Information Technology (Kominfo). This step is taken based on the Minister of Communication and Information Regulation Number 5 of 2020 concerning Private Scope Electronic System Operator (Permenkominfo PSE Private Scope), which requires every Private Scope PSE, both domestic and foreign, to register before offering or conducting digital business activities in Indonesia. Registration is done through the Electronic-based Business Licensing System/Online Single Submission (OSS) website which will be directly integrated with the Ministry of Communication and Information system (Informatika., n.d.).

Regulations related to Private Scope PSE are specifically regulated in the Permenkominfo PSE Private Scope. According to the provisions of Article 2 paragraph (1) of the Permenkominfo PSE Private Scope, it states that:

"Every Private Scope PSE must register."

This provision explains that every Private-Scope PSE is required to register. According to the provisions of Article 3 paragraphs (1) and (2) explaining the submission of registration applications to the Minister through the Online Single Submission (OSS) system, it is explained as follows:

"(1) Registration of Private Scope PSE as referred to in Article 2 paragraph (1) shall be submitted to the Minister.

(2) Submission of an application for registration of a Private-Scope PSE as referred to in paragraph (1) shall be made through OSS, except as otherwise provided by the provisions of laws and regulations."

The explanation of OSS is explained in the provisions of Article 1 number 14 of the Permenkominfo PSE Private Scope, as follows:

"Electronically Integrated Business Licensing (Online Single Submission) hereinafter referred to as OSS is a business license issued by the OSS institution for and on behalf of the minister, head of institution, governor, or regent/mayor to business actors through an integrated electronic system."

According to the provisions of Article 47 of the Permenkominfo PSE Private Scope explains the grace period for registering PSE Private Scope through the OSS system, as follows:

"Private-Scope PSEs regulated in this Ministerial Regulation must register no later than 6 (six) months after the implementation of Risk-Based Business Licensing through the OSS system becomes effective."

According to the provisions of Article 4 paragraph (1), it explains that the registration of Private Scope PSEs as stipulated in the provisions of Article 2 paragraph (1) of the Permenkominfo PSE Private Scope, applies to Private Scope PSEs established under the laws

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of other countries or permanently domiciled in other countries, but with certain conditions, as follows:

- a. Providing services within the territory of Indonesia
- b. Conduct business in Indonesia; and/or
- c. The Electronic System is used and/or offered in the territory of Indonesia.

Private Scope PSEs that have not registered into the OSS system, will be subject to administrative sanctions. The minister can impose sanctions on PSEs that do not register. According to the provisions of Article 7 paragraph (1) letter a of the Permenkominfo PSE Private Scope, states that:

"The Minister imposes administrative sanctions on Private Scope PSEs that: Does not register as stipulated in Article 2 and Article 4."

The administrative sanctions are in the form of sanctions for terminating access to electronic systems, as stipulated in the provisions of Article 7 paragraph (2) of the Permenkominfo PSE Private Scope explained as follows:

"In the event that the Private Scope PSE does not register as referred to in paragraph (1) letter a, the Minister shall impose administrative sanctions in the form of access blocking."

The access blocking referred to refers to the provisions of Article 1 point 15 of the Permenkominfo PSE Private Scope, as follows:

"Access Termination is an act of blocking access, closing accounts and/or deleting content."

Termination of internet access according to the provisions of the ITE Law, authorizes the government to terminate access to electronic information and/or electronic documents which in its implementation are only intended for parties who commit violations of the law. Meanwhile, termination of internet access according to the provisions of the Permenkominfo PSE Private Scope, authorizes the Ministry of Communication and Information to terminate access (access blocking) to PSE Private Scope that has not been registered.

The Right to Communicate and Accessing Information on Unregistered Electronic System Operators

Internet access rights are rights in the freedom to access the internet, therefore internet access rights contain elements of the right to freedom of expression and information. Every human being has the right to freedom to seek information, obtain information and convey information, this right is the right to freedom of expression and information which is a human right (Atmaja, 2015). The foundation of human rights is needed to overcome arbitrary actions that can be carried out by the interests of state power holders, the exercise of state power must be manifested in the constitution (Faiz, 2019). The foundation of human rights means that power must be based on the law, and that state authorities do not act arbitrarily towards their people (Is, M. S., & SHI, 2021).

The government unilaterally terminates electronic or internet access can have an impact on human rights, especially on the right to communicate, the right to obtain, own, process, convey information and even the right to communicate to obtain, own, process, convey information and even the right to express opinions that should have been guaranteed by the 1945 Constitution of the Republic of Indonesia to express opinions that should have been guaranteed by the 1945 Constitution of the Republic of Indonesia (Sri Winarsi, Xavier Nugraha, Angelina Regita Nathalia, 2023). The right to communicate and to access and obtain information is a right guaranteed and recognized by the Indonesian constitution as stipulated in the provisions of Article 28F of the 1945 Constitution. In addition, the public can exercise their rights under the law, which aims to monitor and ensure government actions in a democratic state (Prasetyo.,

2023). According to the provisions of Article 14 of Law Number 39 of 1999 (Human Rights Law) explains that:

"(1) Every person shall have the right to communicate and to obtain information necessary to develop his or her personal and social environment.

(2) Every person shall have the right to seek, obtain, possess, store, process and convey information by using all available means."

In addition, the government must be responsible for respecting, protecting and upholding human rights, as stipulated in the provisions of Article 71 of the Human Rights Law, which explains that:

"The government shall be responsible for respecting, protecting, upholding, and promoting the human rights stipulated in this Law, other laws and regulations, and international law on human rights accepted by the Republic of Indonesia."

Human rights related to the right to freedom of expression and information, apart from being regulated in the provisions of Indonesian legislation, are also regulated in the provisions of international law as stipulated in Article 19 of the Universal Declaration of Human Rights (UDHR), which states that:

"Everyone has the right to freedom of opinion and expression; this right includes freedom of opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Human rights related to the right to freedom of expression and information, apart from being regulated in the provisions of Indonesian legislation, are also regulated in the provisions of international law as stipulated in Article 19 of the Universal Declaration of Human Rights (UDHR), which states that: "Everyone has the right to freedom of opinion and expression; this right includes freedom of opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." In addition, it is also regulated in the provisions of Article 19 paragraphs (1) and (2) of the International Covenant on Civil and Political Rights (ICCPR) which reads:

"(1) Everyone has the right to hold opinions without interference;

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, orally, in writing, or in print, in the form of works of art or through any other media of his choice."

Juridically, the ICCPR has been ratified in the provisions of Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (KIHSP Law).

Basically, human rights have basic rights that are inherent in every individual and are universal. Human rights have the concept of derogable rights, which are rights that can still be suspended or limited by the state under certain conditions, and non derogable rights, which are rights that cannot be suspended or limited by the state. The right to access information is a derogable right, which means that access to information can be restricted or reduced by the state in certain circumstances, such as in an emergency or certain situations, but in such restrictions, the state must be based on clear laws and aim for legitimate purposes such as state security or the protection of the human rights of others. According to the provisions of Article 19 paragraph (3) of the ICCPR, explaining the restrictions:

"(3) The exercise of the rights listed in paragraph (2) of this Article gives rise to special obligations and responsibilities. It is therefore subject to

certain restrictions, but these may be imposed in accordance with the law and to the extent necessary to:

- a. Respect for the rights or good name of others;*
- b. Protect national security or public order or public moral health."*

The provisions of this article explain that the government in carrying out certain restrictions must meet certain conditions and conditions such as protecting the human rights of citizens, as well as aiming to protect national security, public order, or public health. The government in limiting or reducing the human rights of citizens must be based on the Siracusa principle. According to the Siracusa Principle regarding the provision of restrictions on human rights in the ICCPR, it can be done if it fulfills three things, which are explained as follows:

- 1) Prescribed by law: state actions must be based on clear and predictable laws. Laws must meet certain standards, such as being non-discriminatory, not contrary to human rights, and not retroactive. In this context, laws include constitutions, laws, regulations and policies;
- 2) Used to achieve a legitimate aim: State action must aim to achieve legitimate objectives, such as: public order, public health, public morals, national security, public safety, and the freedom of others. These objectives must be internationally recognized and not contradict human rights.
- 3) The existence of a pressing need (necessary in democratic society): State action must be necessary to achieve a legitimate aim, such as national security, public health, or the protection of the human rights of others. The action must be proportionate, meaning no greater than necessary to achieve the objective. The state must consider less severe alternatives in restricting human rights;

Referring to human rights principles and instruments, any restriction on rights, including the right to information, must at least fulfill three things: prescribed by law, for a legitimate aim, and the action is truly urgently needed (necessity), as well as the action must be proportional. These limitation principles should be formulated properly and strictly in the ITE Law, in order to avoid arbitrary blocking and filtering practices.

CONCLUSION

Termination of access to unregistered Private Scope PSE information results in legal problems related to internet users, especially users of Private Scope PSE services whose access is terminated by the Government. The government has the authority to carry out access termination policies regulated in the provisions of Article 40 paragraphs (2a) and (2b) of the ITE Law, authorizes the government to terminate access to electronic information and/or electronic documents which in its implementation are only intended for parties who commit violations of the law. Meanwhile, termination of internet access according to the provisions of the Permenkominfo PSE Private Scope, authorizes the Ministry of Communication and Information to terminate access (access blocking) to PSE Private Scope that has not been registered. This results in legal ambiguity regarding the authority to restrict access, which must be based on statutory provisions. The regulation of access termination applied in the provisions of Permenkominfo concerning Private Scope Electronic System Operator must be formulated properly and firmly in the ITE Law regulations, to avoid arbitrary blocking and filtering practices.

Citizens have the right to access PSE in the private sphere that has been cut off (access blocking) by the government, because the right to access information contains elements of the right to freedom of expression and information which is a human right as regulated in the provisions of Article 28F of the 1945 Constitution of the Republic of Indonesia, Articles 14 and 71 of the Human Rights Law, Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) which has been

ratified in the provisions of the KIHSP Law. In addition, it also regulates the Siracusa Principle which explains that the government in carrying out access restrictions which include termination of internet access is legal if it is prescribed by law, has a legitimate aim, and there is a necessary need to impose restrictions.

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