

The Termination Access of Unregistered Private Scope Electronic System Operators in Human Rights Perspective

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Abstract

The policy of terminating access to Private Scope Electronic System Operators, to several internet platforms including: Paypal, Yahoo, Epic Games, Steam, Dota, Counter Strike, Xandr.com, and Origin, which occurred on July 30, 2022. The government's policy in terminating access to unregistered private scope electronic system operators has resulted in material and immaterial losses to citizens who use the platform of unregistered private scope electronic system operators. This research uses normative legal research method, that using a statutory, conceptual, and cases approach to analyze issues related to the termination of access to unregistered Private Scope PSEs. This research concludes that the government's policy of terminating access to unregistered private electronic system operators is contrary to human rights regulation. These rights include the right to access, communicate and obtain information and the right to an economy for citizens who are harmed by the termination of access to unregistered private scope electronic system operators.

Keywords: Termination of Access, Private Scope Electronic System Operators, Human Rights

INTRODUCTION

On July 30, 2022, 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) (PTUN.JKT, 2022). The government through the Ministry of Communication and Information Technology (Kemkominfo) cut off access to several internet sites and platforms that have not registered based on Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions/Peraturan Pemerintah tentang Penyelenggara Sistem dan Transaksi Elektronik (PP PSTE) and the Minister of Communication and Information Technology Regulation Number 5 of 2020 concerning Private Electronic System Operators/Permenkominfo tentang Penyelenggara Sistem Elektronik Lingkup Privat (Permenkominfo PSE LP) (Jingga, 2023). Through the Permenkominfo PSE LP, 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 explanation of Electronic System Operator is regulated in the provisions of Article 1 number 4 of PP PSTE, which reads:

"Electronic System Operator is every person, state administrator, business entity and community that provides, manages, and/or operates Electronic Systems individually or jointly to electronic system users for their needs and or the needs of other parties."

Private Scope Electronic System Operator (Private Scope PSE) is explained in the provisions of Article 1 point 6 of PP PSTE, which reads:

"Private Scope Electronic System Operator, which is called Private Scope PSE, is the implementation of Electronic Systems by individuals, business entities, and the community."

Regulations related to Electronic System Operator are regulated in the provisions of ministerial regulations, as explained in the provisions of Article 6 paragraphs (3) and (4) of PP PSTE as follows:

"(3) Registration of Electronic System Operator as referred to in paragraph (1) shall be submitted to the Minister through an electronically integrated business licensing service in accordance with the provisions of laws and regulations.

(4) Further provisions regarding the registration of Electronic System Operator as referred to in paragraph (3) refer to the norms, standards, procedures, and criteria regulated by Ministerial Regulation."

According to the provisions of the Permenkominfo PSE LP, the Minister can impose administrative sanctions in the form of termination access against Private Scope Electronic System Operators that do not register as referred to in the provisions of Article 7 paragraph (2) Permenkominfo PSE LP, as follows:

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

The termination access (access blocking) referred to refers to the provisions of Article 1 number 15 of the Permenkominfo PSE LP, as follows:

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

Internet access termination according to 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 is only intended for parties who commit violations of the law. Meanwhile, termination of internet access according to the provisions of the Permenkominfo PSE LP, authorizes the Ministry of Communication and Information to terminate access to Private Scope Electronic System Operators that has not been registered.

According to a report by the Lembaga Bantuan Hukum Jakarta (LBH Jakarta), there are around 213 public complaints related to the government's unilateral termination policy on Private Scope Electronic System Operators. 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 Electronic System Operators, and 62 complainants attached evidence of material losses. The pattern of complaint problems in the Private Scope Electronic System Operators access termination policy includes: loss of access to services obtained by the complainant, loss of income due to the inaccessibility of blocked sites, which eliminates the income of the complainant, and loss of work due to the blocking of the Paypal site, which results in loss of clients and failure to make work agreements (LBH Jakarta)

Termination of access to information carried out by the government against unregistered Private Scope PSEs has an impact on human rights (Firdaus, 2022), which include the right to communicate and access information (Ridho Rahardjo, 2022) and the right to economic rights to economic losses for citizens who use the services of unregistered Private Scope PSEs (Jingga, 2023). The citizens sued the government for terminating access to unregistered Electronic System Operator had filed a State Administrative lawsuit at the Jakarta State Administrative Court Number 424/G/TF/2022/PTUN.JKT. The case of the termination of access to the Private Scope Electronic System Operators 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. In their lawsuit, the plaintiffs suffered material and immaterial losses due to the termination of access to unregistered electronic system

operators. The panel of judges decided to reject the plaintiffs' lawsuit, and ordered the plaintiffs to pay court costs (PTUN.JKT, 2022).

Termination of access to information on unregistered Private Electronic System Operators raises legal issues related to the rights of citizens to communicate and obtain information on internet users, especially service users of Private Electronic System Operators whose access is terminated by the Government. The author wants to explain the concept of human rights, the right to communicate and access information and the right to economy to citizens affected by government policies in terminating access to unregistered private scope electronic system operators

RESEARCH METHODS

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 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, 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, and The case approach in normative research aims to study the application of legal norms or rules that are carried out in legal practice done in legal practice (Marzuki, 2021). 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.

RESULT AND DISCUSSION

Concept of Human Rights

Human Rights etymologically comes from the word rights which has a normative element that serves as a guide for behavior, protects freedom and guarantees the protection of human dignity. Meanwhile, human rights means something that is basic or fundamental, so human rights are the most basic rights owned by humans that must be upheld, respected, and protected by the state, law, and everyone in order to honor human dignity (Sadi Is, 2021).

In Indonesia, there is a special regulation related to human rights which is regulated in the provisions of Law Number 39 of 1999 concerning Human Rights (Human Rights Law). The definition of human rights according to Article 1 number 1 of the Human Rights Law is as follows:

"Human Rights are a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and every person for the sake of honor and protection of human dignity."

Meanwhile, the explanation of the principles of human rights is explained in the provisions of Article 2 of the Human Rights Law, which reads:

"The State of the Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights that are inherently inherent in and inseparable from humans, which must be protected, respected, and upheld for the sake of increasing human dignity, welfare, happiness, and intelligence and justice."

Through this explanation, it explains that human rights are a set of rights inherent in every individual (human) existence that must be respected, upheld, and protected by the state, law, government, and everyone for the protection of human dignity.

The legal basis for human rights is that government power must be derived from the applicable laws and regulations. Government power is not absolute or limitless, but government power is limited by human rights law. This is intended so that the government does not act arbitrarily when carrying out state administration (Sadi Is, 2021). The government has a responsibility to fulfill human rights. According to Article 71 of the Human Rights Law, which states:

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

Furthermore, Article 72 of the Human Rights Law states that:

"The obligations and responsibilities of the Government as referred to in Article 71, include effective implementation measures in the legal, political, economic, social, cultural, national security defense, and other fields."

There are generally three obligations of the state towards human rights, which are explained as follows (Eko Riyadi):

- 1) Obligation to fulfill: An obligation that aims to take steps that include legislative, administrative, judicial and practical policy steps in ensuring the fulfillment of rights to be the state's obligation to be fulfilled to the fullest;
- 2) Obligation to protect: Obligation that aims for active action from the state. The state is obliged to ensure that human rights violations do not occur;
- 3) Obligation to respect: The obligation to respect human rights, which refers to the obligation not to "interfere" or act unlawfully in violation of human rights.

Human rights according to Bagir Manan, are divided into several types, namely (Bagir Manan):

- a) Civil Rights, namely rights that include: equal treatment under the law, the right to be free from violence, special rights for certain groups, and the right to life and life.
- b) Political Rights, which include: the right to freedom and assembly, the right to freedom of thought both in oral and written form, and the right to express opinions in public.
- c) Economic Rights, which include: social security rights, employment protection rights, trade rights, and sustainable development rights.
- d) Socio-cultural Rights, which include: the right to education, intellectual property rights, health rights, and the right to housing and settlement.

Civil and political rights are regulated in the provisions of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified in Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights. The regulation of economic, social and cultural rights is regulated in the provisions of (ICESR) which has been ratified in the provisions of Law Number 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social, and Cultural Rights.

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.

The Right to Communicate and Obtain Information of Citizens affected by Termination of Access to Unregistered Electronic System Operators

The right to internet access is the right to freedom of access to the internet, therefore the right to internet access contains elements of the right to freedom of expression and information. The right to access information is a derogable right, meaning a right that can be reduced. The right to access information can be restricted or reduced by the state in certain circumstances, such as in emergencies 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 (Atmadja, 2015).

A democratic rule of law makes the protection of human rights for citizens fundamental. The foundation of human rights is necessary 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 (Qamar, 2020). The human rights foundation means that power must be based on the law, and that state authorities do not act arbitrarily against their subjects. The right to communicate and access information is a right guaranteed and recognized by the article 28F of 1945 Constitution of the Republic of Indonesia, which states that:

"Everyone has the right to communicate and obtain information to develop his or her personal and social environment, and has the right to seek, obtain, possess, store, process, and convey information by using all available channels."

Every human being is entitled to the freedom to seek information, obtain information and convey information, this right is the right to freedom of expression and obtaining information which is a human right.

The government's policy in terminating access to unregistered private scope electronic system providers has resulted in material and immaterial losses to citizens who use the platform of unregistered private scope electronic system providers. The government's policy of terminating access to unregistered private electronic system operators is contrary to human rights regulation. These rights include the right to access, communicate and obtain information as well as the right to an economy for citizens who are harmed by the termination of access to unregistered private scope electronic system operators.

The right to communicate and obtain information is a human right guaranteed by the Constitution. The protection, respect and enforcement of human rights is one of the manifestations of a democratic state of law (*demokratische rechtsstaat*) (Prasetyo, 2023). The right to communicate and to access and obtain information is regulated in human rights law in the provisions of Article 14 of Law Number 39 of 1999 (Human Rights Law) which explains that:

"(1) Everyone has the right to communicate and obtain information to develop their personal and social environment.

(2) Every person has the right to seek, obtain, own, store, process and convey information using all available channels."

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 (Sri Winarsi, 2023). The right to freedom of expression and information, apart from being regulated in the provisions of Indonesian legislation, is 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 to hold opinions without interference and to seek, receive and impart information and opinions 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 and express opinions without interference;
(2) Everyone shall have the right to freedom of opinion and 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."

Regulations related to the ICCPR have 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).

According to the provisions of Article 19 paragraph (3) of the ICCPR, explaining the restrictions:

"(3) The exercise of the rights set forth 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 the moral health of the community."

The provisions of this article explain that the government in carrying out certain restrictions must fulfill 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.

The Siracusa Principle explains that restrictions must be formulated strictly in the interests of protected rights and consistent with the objectives of the provisions of the ICCPR, so that restrictions may not be carried out arbitrarily and without valid reasons (Ade Adhari, 2021). According to the Siracusa Principle regarding the provision of restrictions on human rights in the ICCPR, this can be done if it fulfills three things which are explained as follows:

- 1) Prescribed by law: state action 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 legitimate aims: 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 of rights, including the right to information, must at least meet three conditions, namely that it is prescribed by law, for a legitimate purpose, and the measure is strictly necessary (required in a democratic society), and

must be proportionate. In addition, people can exercise their rights under the law, which aims to monitor and ensure the actions of the government in a democratic state.

Economic Rights of Citizens affected by Termination of Access to Unregistered Electronic System Operators

The Ministry of Communications and Technology blocked access to sites such as Paypal, Yahoo, Epic Games, Steam, Dota, Counter Strike, Xandr.com, dan Origin (EA), leaving individuals who rely on these sites unable to receive payment for their work or access payments they have received. The Plaintiffs in Jakarta State Administrative Court Decision Number 424/G/TF/2022/PTUN.JKT, argued that they lost income due to the inaccessibility of the blocked sites, which deprived the complainants of income, and lost their jobs due to the blocking of the Paypal site, which resulted in the loss of clients and the failure of work agreements (PTUN.JKT, 2022).

Blocking access to unregistered PSEs even deprives people who depend on these applications of their economic rights. This illustrates that legal aspects play a role in organizing human rights security in the digital realm in Indonesian territory. Users of related applications are completely unable to access the rights they have worked for and should get from the application without clear notification through ministerial regulations and can lead to violations of commercialization of economic rights to creation which refers to human rights violations. The right to work relates to economic human rights, which are rights to work (Mustari, 2016).

In the state administrative decision, the government party violated the provisions related to the right to work, which include the following provisions The right to economy and work is a human right guaranteed in the Indonesian constitution, as stipulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, explaining that:

"Every citizen has the right to work and a livelihood worthy of humanity."

The right to work is also regulated in the provisions of Article 38 paragraph (4) of the Human Rights Law, which explains as follows:

" Every person, whether male or female, engaged in work commensurate with his or her human dignity shall be entitled to a fair wage commensurate with his or her achievements and capable of securing the maintenance of his or her family."

This provision explains that all forms of protection and actions that need to be taken by the state in fulfilling its obligations on the fulfillment of the right to wages for work must have interrelated elements.

The parties suing the government suffered material and non-material economic losses, such as not being able to access Private Scope PSEs services, which resulted in not being able to access banking services in Paypal services, as a means of paying wages. The defendants also suffered losses to their right to decent work to improve their welfare (PTUN.JKT, 2022).

Based on the ICESCR commentary, the right of everyone to enjoy the just and favorable results of his labor is recognized as a right that shall not be diminished. The enjoyment of the right to wages is a precondition for the security of an adequate livelihood, and results from the enjoyment of other Covenant rights, for example, the right to the highest attainable standard of physical and mental health, the avoidance of occupational accidents and diseases and an adequate standard of living through adequate remuneration (Jingga, 2023). States may not deprive people of their jobs and livelihoods, as stipulated in the provisions of Article 1 number 2 of the ICESCR, which states:

"All peoples may, for their own purposes, freely use their natural wealth and resources without prejudice to any obligations arising from international economic cooperation, based on the principle of mutual benefit, and international law. In no case shall any nation be deprived of its right to earn a living."

States are not allowed to limit or reduce human rights that have been recognized and based on the provisions of the ICESCR covenant, as stipulated in the provisions of Article 5 paragraph (2) ICESCR, which explains:

"No restriction or derogation from fundamental human rights recognized or existing in a country by law, convention, regulation or custom shall be accepted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent."

A state's commitment to impose restrictions must be based on the rule of law in a democratic society. According to the provisions of Article 6 of the ICESCR, it explains that:

"The States Parties to the present Covenant recognize that, in the enjoyment of the rights granted by the State in accordance with the present Covenant, they shall be subject only to such limitations as are prescribed by law, in so far as they are consistent with the nature of those rights and solely for the promotion of the general welfare in a democratic society."

General Comment Article 6 of the ICESCR states that all forms of wages and all actions that need to be taken by the state in order to fulfill its obligations for the fulfillment of the right to wages must pay attention to interrelated and important matters, including availability, accessibility, acceptability and quality (Jingga).

This policy could impact independent workers from diverse backgrounds, including Indonesian citizens working with agencies abroad, who are unable to access and utilize the most basic financial resources. This is a direct violation of the right to economic rights and the right to work.

CONCLUSION

The government's policy of terminating access to unregistered private electronic system operators is contrary to human rights regulation. Citizens who are affected by the termination of access to the unregistered private scope electronic system operators, experience material and non-material losses, which include not being able to access the services of the unregistered private scope electronic system operators used for the purposes of communicating and accessing information, and have an impact on economic losses, namely the loss of decent work to improve their welfare.

These rights include the right to access, communicate and obtain information as well as stipulated in the provisions: 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 ICCPR. The right to an economy for citizens who are harmed by the termination of access to unregistered private scope electronic system operators, which is regulated in the provisions: Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Article 38 paragraph (4) of the Human Rights Law, Article 1 paragraph 2, Article 5 paragraph (2), and Article 6 of the ICESCR.

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