



## **BLOCKING ACCESS POLICY OF UNREGISTERED PRIVATE ELECTRONIC SYSTEM OPERATORS IN HUMAN RIGHTS PERSPECTIVE**

**Rinalvin Achmad Wiryawan<sup>1</sup>, Istislam<sup>2</sup>, Dhia Al Uyun<sup>3</sup>**

<sup>123</sup>Faculty of Law Universitas Brawijaya

Corresponding E-mail: <sup>1</sup>[rinalvinaw@student.ub.ac.id](mailto:rinalvinaw@student.ub.ac.id)

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### **Abstract**

The decision of the Panel of Judges in the State Administrative Court Decision at the Jakarta State Administrative Court Number 424/G/TF/2022/PTUN.JKT, contradicts with many human rights law, especially related to the right to communicate and obtain information and economic rights. The right to communicate and to access and obtain information is a right guaranteed and recognized by the Indonesian Constitution as stipulated in Article 28F of the 1945 Constitution, and regulated in Articles 14 of the Human Rights Act. In addition, the right to communicate and obtain information is also regulated internationally in the provisions of Article 19 of the Universal Declaration of Human Rights, and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified in the provisions of the Law Number 12 of 2005 concerning the Ratification of the ICCPR (KIHSP Law). The right to economy and employment is a human right guaranteed in the Indonesian constitution, as stipulated in Article Article 27 paragraph (2) UUD NRI Tahun 1945, and regulated internationally in the provisions of Article 1 Number 2, Article 5 paragraph (2), and Article 6 of International Covenant on Economic, Social, and Cultural Rights (ICESCR) that 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 (KIHESB Law).

**Keywords:** *Blocking Access, Private Electronic System Operators, Human Rights.*

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### **1. INTRODUCTION**

On July 30, 2022, the government through the Ministry of Communication and Information Technology (Kominfo) blocking access to several internet sites and platforms on the grounds that these sites have not been officially registered with the Private Electronic System Operators. 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 Electronic System Operators (Permenkominfo PSE LP), requires registration of all services on digital platforms to register with the Online Single Submission (OSS) system. The Minister of Communication and Information Technology has the authority to carry out access blocking against Private PSEs that have not registered.

The government through took action to blocking 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 blocking PSE access, in terms of carrying out the procedure, the government issued Kominfo 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. According to a report by the Lembaga Bantuan Hukum Jakarta (LBH Jakarta), There were a total of 213 public complaints that were counted in 7 (seven) days, starting from July 30, 2023 to August 5, 2022 related to the unilateral blocking policy carried out by the government against the Private Scope PSE. The complaint consists of 47 complainants who have suffered losses and 20 proof of financial losses. The pattern of complaint problems in the Private Electronic

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System Operators access blocking 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.

In its development, the citizens who felt aggrieved by the policy of blocking access to unregistered Private Electronic System Operators 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 blocking of access to the Private 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 blocking 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 blocking access was in accordance with the applicable legal provisions both from the substance and the underlying regulations. The panel of judges was of the opinion that the government action taken by the defendant regarding the blocking 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 Private Electronic System Operators in the Private Sphere and administrative sanctions for violators.

Blocking access to electronic information can threaten the human rights of citizens affected by the Government's access blocking policy. It should be noted that the number of internet users in Indonesia, in 2021-2022 there were around 210 million users with a comparison of the total population of Indonesia in 2022 of 275 million people. With the large number of internet users in Indonesia, legal protection is needed for citizens as internet users. The government basically has an obligation to protect the human rights of its people, which includes the right to communicate and obtain information and economic rights. Blocking 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 blocked by the Government. The author wants to explain about the concept of human rights, explain the rights of citizens to obtain human rights and economic rights on the policy of blocking access to unregistered Private Electronic System Operators.

## **2. RESEARCH 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 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.

## **3. RESULTS AND DISCUSSION**

### **Concept of Human Rights**



Human rights are normative elements that serve as guidelines for behavior, protecting freedom. The definition of rights is the power or authority over everything that we can get, while rights are the most basic and fundamental things. The definition of Human Rights is the most basic right owned by humans that must be respected, upheld and protected by the rule of law. According to the provisions of Law Number 39 of 1999 concerning Human Rights, it explains that:

"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 everyone 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.

According to Jimly Asshidiqie, human rights are universal rights inherent in every human being due to the nature of human beings who enjoy the rights to freedom from all forms of oppression, servitude, enrichment, and treatment that causes humans to be unable to live or live unworthily as human beings. Human rights according to Bagir Manan, are divided into several types, namely:

- 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.

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 government has the 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 law on human rights 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."

According to Eko Riyadi, there are generally three obligations of the state towards human rights, which are explained as follows:

- 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 is the obligation of the state to be fulfilled to the fullest;

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- 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 refers to the obligation not to "intervene" or act unlawfully in violation of human rights.

In a state based on the principles of constitutional democracy, the constitution or the Basic Law has a function that aims to limit power so that the exercise of power is not arbitrary, it aims to protect the rights of citizens.

**The Rights to Communicate and Accessing Information on Unregistered Private 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. The right to access information is a derogable right, its mean that rights can be reduced. The right to access to 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 human rights of others. 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. In a democratic state of law, the protection of human rights for citizens is fundamental.

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. 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. The development of technology and information is accompanied by state policies that impose restrictions on access to electronic information. Internet restriction includes: internet shutdown/blackout, internet throttling, and internet blocking. Access restrictions are carried out with the aim of tackling the misuse of electronic information that violates legal norms in a country. The right to communicate and accessing information is a right guaranteed and recognized by the 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*). The government unilaterally blocking electronic or internet access can have an impact on human rights law, especially on the right to communicate, the right to obtain, own, process, convey information and even the right to communicate. Citizens have right to express opinions that should have been guaranteed by Article 28 UUD NRI Tahun 1945, explains 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, that Article 28F UUD NRI Tahun 1945, explains 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 to access and obtain information are regulated in human rights law in Indonesia. 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."

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."

The state is obliged to fulfill its obligations which include three things, namely: (1) obligation to fulfill, namely the state plays a role in taking legislative, judicial, and administrative steps related to taking policies to ensure that the rights of its citizens are fulfilled, (2) obligation to protect, namely the state must play an active role in protecting human rights and ensuring that no human rights violations occur against its citizens, (3) obligation to Respect, namely the state is obliged to respect human rights by not intervening illegally which can lead to human rights violations against its citizens.

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."

Regulations related to 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:

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- 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. The Siracusa principle explains that restrictions must be formulated strictly in the interests of the right protected and consistent with the objectives of the provisions of the ICCPR, so that the restrictions should not be imposed arbitrarily and without legitimate grounds. 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 (necessary in democratic society), as well as the action must be proportional. In addition, the public can exercise their rights under the law, which aims to monitor and ensure government actions in a democratic state.

**Economy Rights of Citizens Against the Policy of Blocking Access to Unregistered Private Electronic System Operators**

The Ministry of Communication and Information Technology blocked access to sites such as CounterStrike, Dota, and Paypal, preventing individuals who relied on these sites from receiving payment for their work or accessing payments they had received. Blocking Access of Paypal through the use of Permenkominfo PSE LP. The Plaintiffs In the Jakarta State Administrative Decision Number 424/G/TF/2022/PTUN.JKT, allege that they 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.

Blocking access to unregistered PSEs even takes away the economic rights of the people who depend on these applications. This illustrates that the legal aspect plays a role in organizing the security of human rights in the digital realm in the territory of Indonesia. Users of related applications are completely unable to access the rights they have worked for and should have obtained from the application without clear notification by the ministerial regulation and can lead to violations of commercialization of economic rights of creation which refers to violations of Human Rights. The right to economy and employment is a human right guaranteed in the Indonesian constitution, as stipulated in Article Article 27 paragraph (2) UUD NRI Tahun 1945, explains that:

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

By blocking access to unregistered Private Electronic System Operators, its also violated obligations under International Covenant on Economic, Social, and Cultural Rights (ICESCR) that



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 (KIHESB Law). The state shall not deprive a person of his or her occupation and means of livelihood, as stipulated in the provisions of Article 1 number 2 ICESCR, which states:

"All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

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) of the ICESCR, which explains:

"No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent."

State commitments to impose restrictions must be based on legal provisions 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 those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society."

This policy can impacts independent workers from diverse backgrounds, including Indonesian citizens working with agencies overseas, unable to access and use the most basic of financial resources. This is a direct violation of the right to economic and employment rights.

#### 4. CONCLUSION

The decision of the Panel of Judges in the Decision of the State Administrative Court at the Jakarta State Administrative Court Number 424/G/TF/2022/PTUN.JKT, contradicts many human rights laws, especially related to the right to communicate and obtain information, as the government policy stipulated in the provisions of Permenkominfo PSE LP, in blocking access to Private Electronic System Operators that have not been registered. In fact, unilateral blocking of access by the government is detrimental to people who use the services of Private Electronic System Operators, such as the right to communicate and obtain information and economic rights. The right to communicate and to access and obtain information is a right guaranteed and recognized by the Indonesian Constitution as stipulated in Article 28F of the 1945 Constitution, and regulated in Articles 14 of the Human Rights Act. In addition, the right to communicate and obtain information is also regulated internationally in the provisions of Article 19 of the Universal Declaration of Human Rights, and Article 19 of the ICCPR which has been ratified in the provisions of the Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (KIHSP Law).

The right to economy and employment is a human right guaranteed in the Indonesian constitution, as stipulated in Article Article 27 paragraph (2) UUD NRI Tahun 1945, and regulated internationally in the provisions of Article 1 Number 2, Article 5 paragraph (2), and Article 6 of International Covenant on Economic, Social, and Cultural Rights (ICESCR) that 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 (KIHESB Law). The blocking policy can impacts independent workers from diverse backgrounds, including Indonesian citizens working

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with agencies overseas, unable to access and use the most basic of financial resources. This is a direct violation of the right to economic and employment rights.

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