

The Right To Be Forgotten In Public Domain Arrangements In Social Media In Indonesia

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Abstract: This study aims to analyze how Law no. 19 of 2016 on Information and Electronic Transactions (UU ITE) regulates the position of new norms regarding the right to be forgotten in Indonesia. Indonesia became the first Asian country to apply the concept. The right to be forgotten is a norm in the field of cyber law. It was born out of a desire to restore the control function of personal information circulating on the internet to the personalities of each person. Although this concept is adopted from EU countries, it is not the same application in Indonesia. Deletion of content in the EU or Russia or other countries that apply only limited to the search engine (search engine), in Indonesia is not like that. It is expressly referred to in Article 26 paragraph (3) of the revision of the ITE Law: "Every Operator of Electronic System shall remove Electronic Information and / or irrelevant Electronic Documents under its control at the request of the Person concerned pursuant to the court's determination". The results obtained 1). In Indonesia one can request a direct removal of irrelevant content, while in many countries the implementation of the right to be forgotten is limited to search engines, 2) content that can be applied for removal not only of content relating to personal data, but more broadly . 3) to irrelevant information or electronic documents, one may request removal pending judicial appointment.

Index Terms: internet media, right to be forgotten, Indonesia.

1 INTRODUCTION

Everyone has a past and maybe those events are irrelevant to his life now. Internet and information technology make it difficult for people to bury the past. This is one factor in the emergence of 'the right to be forgotten' and is a development of the natural dynamics of law in this digital age. Law No. 19 of 2016 on Amendment to Law Number 11 Year 2008 on Information and Electronic Transactions (ITE Law) not only alters the criminal threat in Article 27 paragraph (3) is lighter, but there is also the addition of new norms regarding the provisions of the right to be forgotten or better known as "The Right to Be Forgotten". In this context, Indonesia should be proud because it became the first Asian country to apply the concept. Although this legal norm is adopted from the EU countries, but its implementation is not exactly the same in Indonesia. The constitutional basis of "the right to be forgotten" comes from the Constitution of 1945 listed in Article 28 F which states: "Every person shall have the right to communicate and obtain information to develop his or her personal and social environment, and shall have the right to seek, obtain, possess, store, process and convey information using any available channels". The constitutional basis of "the right to be forgotten" comes from the Constitution of 1945 listed in Article 28 F which states: "Every person shall have the right to communicate and obtain information to develop his or her personal and social environment, and shall have the right to seek, obtain, possess, store, process and convey information using any available channels". While Article 14 of Law Number 39 Year 1999 on Human Rights (HAM) states, "Everyone has the right to communicate and obtain the information necessary to develop their personal and social environment. Everyone also has the right to seek, obtain, possess, store, process, and convey information by using all available means".

In addition, under such human rights instruments, such restrictions or exclusions shall be permitted to the fullest extent regulated by law, carried out in the interest of legitimate objectives and objectives, and carried out with legitimate products and not in an arbitrary manner. Therefore, the revocation of rights or restrictions imposed for violating or violating the right to be interfered with in the personal affairs of a person shall be governed by a rule equivalent to the guarantee of that right. The right to be forgotten has been a conversation in the EU since 2006. According to Mantelero Alessandro, professor of Civil Law of Italy, the right to be forgotten departs from individual desires to independently define their autonomous developmental direction, without being constantly subjected to stigma as a consequence of action certain that they did in the past. This right came into effect when a Spaniard feels the news about a debt in his past is no longer relevant to be reported, because he has paid off the debt. He sued Google to remove all the news links from the search result as a form of his right to be forgotten. Google defends itself from the request because they want to be a neutral information platform. But Google lost and the right to be forgotten is a precedent that applies to all data controllers in the European Union (<http://klikonsul.com/hak-untuk-dilupakan-manfaat-perlindungan-dan-potensi-penyalahgunaan/>). The debate over the right to be forgotten is essentially a conceptual and legal philosophy. When it is revealed to be the discourse between the right to be forgotten and the right to freedom of expression, human rights can become a double-edged sword. Both rights are human rights. Not a few criticize the right to be forgotten as a form of censorship and rewrite history.

2. METHODOLOGY

This research uses combination of approach of Law Science and Communication Science. Legal research here applies socio-legal research. Sociolegal research puts law as a social phenomenon that is the relationship of legal problems with social problems, the effectiveness of the rule of law and compliance with the rule of law (Marzuki, 2011: 128-130). This research is also commonly called the Sociological Yurisdik approach which attempts to analyze the problems that arise in society that require an answer as soon as possible (Nasution, 2008: 125-127). While on the aspect of Communication

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Science, this research uses descriptive qualitative research methods that attempt to describe a social phenomenon comprehensively and profoundly (Cresswel: 2009; Sugiyono: 2012; Kriyantono: 2008). To complement the data, this study uses primary legal material is a legal material that is authoritative in the form of legislation. In addition, this study also uses secondary legal materials that are usually legal opinions, doctrines, theories derived from legal literature, research results, scientific articles, and websites related to research (Marzuki, 2011: 181-183). Data type used in this research is primary data, that is data related to regulation and regulation. In this case, among others, Law Number 11 of 2008 as amended to Act No. 19 of 2016 on Electronic Information and Transactions (UU ITE) and Law Number 19 of 1999 on Human Rights (Human Rights Law).

2.1. Application in Indonesian

Article 26 of Law Number 19 Year 2016 on Amendment of Law Number 11 Year 2008 on Information and Electronic Transactions (Act on ITE) is set out the right to be forgotten. But in it is not explained who can use the right. But the right to be forgotten can only be used by those who are victims of the ITE Law. While those who were found guilty of corruption or other crimes could not use it. The application of the right to be forgotten in Indonesia will be different from other countries. Removal of content in the EU in Russia or other countries that apply, the right to be forgotten is limited to search engines. In Indonesia will not be like that. In Europe as well as Argentina, the required removal is the search engine. It differs the right to be forgotten in Indonesia with other countries. Implementation of the right to be forgotten in Indonesia is not on search engines. The removal of content that is deemed irrelevant by court decisions is made directly by the organizers of an electronic system that is in direct control of a particular content. It is expressly referred to in Article 26 paragraph (3) of the revision of the ITE Law: "Every Operator of Electronic System shall remove Electronic Information and/or irrelevant Electronic Documents under its control at the request of the Person concerned pursuant to the court's determination". The phrase 'under his control' becomes an affirmation of where implementation in Indonesia is not just on search engines. Article 26, content under its control. Because not all content is under operator control. In addition, the different application of the right to be forgotten is the extent of the scope of information or electronic documents that a person may request for removal. In the revision of the ITE Act, content that can be applied for removal is not just about content related to personal data, but more broadly than that. Whatever information or electronic documents as long as it is deemed irrelevant, then the concerned may request removal by awaiting judicial appointment. The scope of implementation of the right to be forgotten in EU countries is very narrow, specifically on content related to personal data. Such application is in line with the classification of the right to be forgotten in the personal data protection regime.

2.2. Google Must Be Submitted

On this occasion, Hasanuddin from Commission I of the House of Representatives (DPR) asked Google and other internet search engines to submit to the right to be forgotten. According to Hasanuddin, if a person with an ITE-specific legal dispute has declared his or her innocence by the court, he has the right to be rehabilitated his good name on the internet. So

Google has to participate. (<https://inet.detik.com/cyberlife/d-3382568/hak-for-disabled-not-published-for-corrutors>). The DPR and the government are currently working on additional instruments to regulate this matter. When the future is already hammered, but Google does not heed the rules, the government will give sanctions. Added Hasanuddin, Google must follow the rules of the right to be forgotten that will be run by Indonesia, otherwise the Indonesian government asked Google to close its operations in Indonesia.

2.3. The right to be forgotten and the right to information

The right to be forgotten is not the same as privacy. The right to privacy is the right to personal information that can be used to identify an individual's identity and potentially jeopardize the individual's safety, such as an address, telephone number, medical record, and so on. While the right to be forgotten in connection with information will be a subject on the internet at a certain time period (Adami: 2008). Regardless of the controversy, the right to be forgotten can be exploited for good things. A victim of a porn revenge or immoral act may use this right to discontinue, or at least limit, the distribution of content about himself on the internet. Adolescent Gen Z or babies who already have their own Instagram account because their parents, who regretted the existence of their digital content, can also take advantage of the same rights to remove the content (<http://klikonsul.com/hak-to-disabled-protection-and-potential-abuse/>). Although the right to be forgotten is different from the ethical position with the right to privacy, but two things are interrelated and even overlapping. This is apparent in the explanation given by Louis Alvin Day in his *Ethics in Media Communications: Cases and Controversies* (2006) as follows: The forgiveness is the oldest of privacy. The forgiveness consists of using a person's name, image, or likeness without the person's permission, usually for commercial exploitation. This is a field of privacy law that is at least ambiguous and designed to protect the rights of individuals, both public and private, to exploit their personal identities for commercial and commercial purposes (p. 36). However, what about a doctor who has done malpractice or treatment that could be in the spotlight? The doctor could have used the right to be forgotten in order to bury information about his malpractice in the past. The biggest disadvantage is certainly for consumers who need to make decisions with thorough information. On a smaller scale, if we have ever been reported to commit a crime or have embarrassing content on a public account or site, and we do not want the information to make it difficult for us to find work, is it worth the right to be forgotten to use in this regard? Is the employer entitled to know this information, even if we feel the information is irrelevant? The right to be forgotten is already being used by Dejan Lasic, a pianist from the European Union, to remove bad reviews about his music on the internet. The application of the right to be forgotten is very real in public life on the internet and has a direct effect on the need for public information.

2.4. Application in other countries

The application of the right to be forgotten in EU countries does not remove content from its original provider of electronic systems. In a sense, the content that the right entitled to oblivion is made is difficult to access by anyone if searched through search engines. Meanwhile, the content remains or is stored in the directory of an electronic system owned by the

provider concerned. Implementation of the right to be forgotten in this latest revision of the ITE Act does not seem to adopt the concept of EU countries where it is strict only on the content of personal data protection. Take for example in some states of the United States, for example, the prevalence of United States state regulation exists that extends the scope of the right to be forgotten, eg for defamation cases. America has no Personal Data Protection Law. Personal data is the context of the European Union. Globally, which already has a Personal Data Protection Act there are 105 countries. Lastly Turkey, they adopted the approach of the EU (European Union). The right to be forgotten is in the EU (European Union). In fact, the personal data protection regime with defamation is different. Protection of personal data is information that is really about a person but should not be exposed for violating his / her convenience. Meanwhile, defamation is information that is not easy proof in court. Examples are defamation offenses, lies, or lowering one's reputation. So, these are indeed two completely different regimes. But, since this is already included in the ITE Act, this will inevitably extend the right to be forgotten.

3. RESULTS AND DISCUSSIONS

The issue of "the right to be forgotten" arises from the desire of individuals to "determine their autonomous development of life, without continual or stigmatization as a consequence of specific actions done in the past. There is controversy about the practicality of establishing the right to be forgotten by the status of human rights international human beings in connection with access to information, in part because of the uncertainty of current decisions that seek to exercise that right. Privacy is a right to be protected constitutionally under now has become more complex with the use of computers and the internet extensively. Every computer in the world has a unique identification number, usually invisible (Bagdikian, 2004: 62). The right to be forgotten is different from the right to privacy because privacy rights are information that the public does not know, while the right to be forgotten involves the deletion of information known to the public at a certain time and does not allow third parties to access information. Limitations of application in jurisdiction include the inability to require the removal of information held by companies outside jurisdiction. There is no global framework to allow individuals to control their online imagery. However, Professor Viktor Mayer-Schönberger, an expert from the Oxford Internet Institute, University of Oxford, said that Google can not escape compliance with French law applying a European Court decision in 2014 about the right to be forgotten. Mayer-Schönberger says that countries, including the United States, have long maintained that their local laws have "extra-territorial effects" (Expert: Google Can Not Escape French Law on Right to Delist. To train the right to be forgotten and request removal from search engines, one must complete the form through the search engine's website. The Google move request process requires applicants to identify their country of residence, personal information, list of URLs to be deleted along with their respective brief descriptions, and attachment of legal identification. (https://support.google.com/legal/contact/lr_eudpa?product=websearch).

4. CONCLUSIONS

- a) In Indonesia one can request immediate removal of irrelevant content, while in many countries the implementation of the right to be forgotten is limited to search engines.
- b) The removal of content that is deemed to be irrelevant based on a court decision directly conducted by the providers of an electronic system that is in direct control of a particular content. This is expressly mentioned in Article 26 paragraph (3) of the revision of the ITE Law.
- c) According to regulations in Indonesia any information or electronic documents that are spread in the internet media, as long as considered irrelevant, then the concerned can request removal by awaiting the determination of the court.

The norm of "the right to be forgotten" must be criticized for at least some reasons. First, so far the search engines on the internet, such as Google, are useful for finding out the track record of a person or legal entity or other entity. As a citizen, information on a person's track record, especially public officials, former officials, candidates, public and private entities, both domestically and internationally, is essential. This is to know how the track record is concerned in many ways, such as human rights, the environment, and corruption.

5. RECOMMENDATIONS

1. With that information, the public can know the quality and integrity of the concerned so that it can be used, for example, to determine the right to vote in the general election. The provision of the "right to be forgotten" may be exploited by certain parties to remove information of a public nature to know, or in other words used to conceal information about itself so that its bad track record can not be accessed or unknown to the public.
2. Thus, the provisions on what information is eligible to be abolished must be decided carefully, thoroughly, and objectively, through the determination of the courts. The government should immediately formulate the provision of this "right to be forgotten" with careful and careful elaboration and analysis based on human rights principles and norms by involving public participation in its formulation for a transparent and participatory process.

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