

## Legal Protection for Citizens Affected by The Termination of Access Policy of Unregistered Private Scope Electronic System Operators

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### ABSTRACT

On July 30, 2022, the government's policy in terminating access to unregistered private scope electronic system operators (PSE LP) to several internet platforms, has resulted in material and immaterial losses to citizens who use the services of PSE LP. The government's policy in terminating access or blocking access to PSE LP, harms the digital rights of citizens. Blocking has an impact on the inaccessibility of services and loss of revenue due to termination of PSE LP access. Citizens are eligible for legal protection, which includes preventive and repressive legal protection. Preventive protection includes the right to communicate and access information guaranteed in human rights provisions. Repressive protection includes the right to legal guarantees for legal remedies in filing state administrative court lawsuits.

**Keywords:** Legal Protection, Citizens, Termination Access, Private Scope Electronic System Operators.

### INTRODUCTION

The termination access to Private Scope Electronic System Providers (PSE LP) carried out by the Ministry of Communication and Information Technology (Kominfo) occurred on July 30, 2022. The disconnection is carried out on internet sites and platforms that are not registered in the PSE LP, which include: Paypal, Yahoo, Epic Games, Steam, Dota, Counter Strike, Xandr.com, and Origin (EA).

Kominfo through Press Release Number 308/HM/Kominfo/07/2022, stated that PSEs that do not register on July 29, 2022, with a deadline of 23:59 WIB, will have their access terminated. The termination of PSE LP access is an administrative sanction against PSE LP's that do not register before conducting business activities registered in the Online Single Submission (OSS). The administrative sanctions are given in stages, starting from written warnings, administrative fines, to access termination or access blocking. The regulation related to the termination of PSE LP access is regulated in 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 LP).

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. Meanwhile, the definition of PSE LP 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.

Electronic System Operator is regulated in the provisions of Article 2 paragraph (1) and (2) of PP PSTE, which explains:

"(1) The implementation of the Electronic System is carried out by the Electronic System Operator.

(2) Electronic System Operator as referred to in paragraph (1) includes:

- a. Electronic System Operator for Public Scope; and
- b. Private Scope Electronic System Operator."

Furthermore, the explanation regarding the Private Scope PSE registration policy is a mandate that has been regulated in the provisions of Article 6 of PP PSTE, which reads:

"(1) Every Electronic System Operator as stipulated in Article 2 paragraph (2) must register.

(2) The obligation to register for Electronic System organizers is carried out before the Electronic System begins to be used by Electronic System Users"

(3) Registration of Electronic System Operator as referred to in paragraph (1) shall be submitted to the Minister through an integrated electronic 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."

The provisions of Article 6 paragraph (4) of PP PSTE refer to the provisions of the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2020 concerning Private Scope Electronic System Operator which is amended in the provisions of the Ministerial Regulation (Permenkominfo PSE LP).

Access termination is regulated in the provisions of Article 1 point 15 of Permenkominfo PSE LP, as follows, access Termination is an action of blocking access, closing accounts and/or deleting content. The Minister has the authority to impose administrative sanctions in the provisions of Article 7 paragraph (2) 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). Further provisions are regulated in the provisions of Article 8 Permenkominfo PSE LP, as follows:

"(1) The Minister may impose administrative sanctions on Private Scope PSE based on requests from Ministries or Institutions on the basis of violations of laws and regulations in the field of Ministries or Institutions that have the authority in accordance with statutory provisions.

(2) In the event that the administrative sanction given to the Private Sphere PSE as referred to in paragraph (1) is Termination of Access to Electronic Systems (access blocking), the Minister shall normalize based on the submission of recommendations by the Ministry or Institution on the basis of private sphere PSE services that have fulfilled the provisions of laws and regulations."

Administrative sanctions for terminating access to PSE are based on violations of laws and regulations in the field of ministries or institutions against Private Scope PSEs that violate the provisions of the law. As a result of the termination of access to unregistered PSE LP, the government was sued by citizens who felt aggrieved by the government's policy, which was submitted in the State Administrative Court Decision Number 424/G/TF/2022/PTUN.JKT. In the verdict, the panel of judges stated that they rejected all of the plaintiff's claims.

According to a report from the Jakarta Legal Aid Institute (LBH Jakarta), it recorded losses due to disconnection through the Legal Aid Post channel opened by LBH Jakarta. In total, there were around 213 public complaints that were counted in for 7 (seven) days, starting from July 30, 2023 to August 5, 2022 related to the unilateral disconnection policy carried out by the government against Private Scope

PSE. According to LBH Jakarta, the consequences of the policy of terminating access to PSE LP resulted in disconnection of access to PSE LP services, loss of income for workers who use PSE LP services, loss of jobs due to termination of access to PSE LP (LBH Jakarta, 2022).

The government's policy in terminating access or blocking access to PSE LPs, harms the digital rights of citizens. Blocking has an impact on the inaccessibility of services and loss of revenue due to termination of PSE LP access. The author would like to explain how the regulation related to preventive and repressive legal protection is related to the government's policy in terminating access to unregistered PSE LPs.

## METHOD

This research uses a normative legal research method which is a legal research process that aims to find truth and conformity based on legal provisions with legal norms to answer legal issues. This research approach uses the statute approach method which examines legal issues focusing on laws to answer normative legal issues. In addition, the author also uses a conceptual approach that explains concepts that refer to legal principles, doctrines or legal expert opinions to answer legal research issues (Marzuki, 2021). Legal material collection techniques are carried out through literature studies based on primary and secondary legal sources. Primary legal sources consist of laws and regulations, court decisions, international conventions, while secondary legal sources consist of legal research journals, books, news, and so on to assist the author's research.

## RESULTS AND DISCUSSION

### 1. Concept of Legal Protection

Legal protection, according to Satjipto Rahardjo, is an effort to protect the human rights interests of legal subjects when their rights are violated by others (Satjipto, 2000). Legal protection is intended so that people can enjoy the rights protected and granted by law. According to C.S.T Kansil, legal protection is a protection provided by law, in which there are rights and obligations for legal subjects in carrying out a legal action (Kansil, 1980).

According to Philipus M. Hadjon, the theory of legal protection for the people explains that legal protection for the people is legal protection for individuals against government administrative actions. Government action as an important thing in the context of legal protection for the people, distinguishes legal protection into 2 (two) types consisting of preventive and repressive legal protection (Hadjon, 1987).

The principle of legal protection of the people from the government is based on the concepts of recognition and protection of human rights because historically in the West, the birth of the concept of recognition and protection of human rights was directed at limiting and placing obligations on the community against the government. Legal protection is the dignity and recognition of human rights owned by human subjects based on the law against arbitrariness. In principle, legal protection has the following objectives (Hadjon, 1987):

- a. Legal protection that aims to ensure the fulfillment of the rights of citizens.
- b. Legal protection that aims to prevent actions that harm the rights of citizens.
- c. Legal protection that aims to provide citizens with access to stop acts of violation, obtain compensation or remedial action for violations of their rights.

- d. Legal protection that aims to ensure the occurrence of compensation or remedial action against the rights of citizens who have been harmed.

## **2. Preventif Legal Protection**

Legal protection of the people which aims to prevent the occurrence of a legal dispute. Legal subjects or people are given the opportunity to sue the government if a dispute occurs that is considered detrimental to the people (Hadjon, 1987).

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

Citizen have 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).

In a democratic rule of law, the respect and protection of human rights related to the right to communicate and obtain information (Prasetyo, 2023). This arrangement is regulated in the provisions of Article 28F of the 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."

In addition, the rights to communicate and obtain information it is regulated in the provisions of Article 14 of Law Number 39 of 1999 concerning Human Rights (Human Rights Law). Internationally, it is also regulated in Article 19 of the Universal Declaration of Human Rights which states that,

"everyone has the right to freedom of opinion and expression; this right includes freedom to hold and express opinions without interference, and the right to seek, obtain, receive and convey information by any means whatsoever."

The right to internet access is a human right that is protected, respected and upheld by the state in relation to the right to freedom of expression and the right to access information (Sri Winarsi, 2023). The provisions of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified in the provisions of Law Number 12 of 2005 (KIHSP Law), regulate freedom of expression and seeking, obtaining and processing information. As set out in the provisions of Article 19 of the ICCPR, which explains as follows: yan

- "(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."

In addition, Article 19 paragraph (3) of the ICCPR states that:

"(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 provision stipulates that the state in imposing restrictions must be based on certain conditions that are based on the interests of society and the protection of citizens' human rights.

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

The government's policy in terminating access to unregistered PSE LP has resulted in material and immaterial losses to citizens who use the internet platform whose access was terminated by the government. The government's policy of terminating access to unregistered PSE LP 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 PSE LP.

The Ministry of Communications and Technology blocked access to sites such as CounterStrike, Dota, and Paypal, leaving individuals who rely on these sites unable to receive payment for their work or access payments they have received. Blocking of Paypal Access by using Permenkominfo PSE LP. 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).

Blocking access to unregistered PSE LPs 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). 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.

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.

### **3. Repressive Legal Protection**

Legal protection of the people in order to provide a guarantee provided by the state which aims to implement the legal rights and interests owned by the legal subject. Repressive legal protection in its implementation is based on the concept and principles of the protection of human rights in a state of law (Hadjon, 1987).

#### **Administrative Remedies**

Administrative remedies are efforts that originate from the government's authority to impose or impose administrative sanctions and/or take certain actions on the community. The mechanism of administrative remedies is divided into administrative objections and appeals which are legal protection for the community.

Citizens who feel aggrieved in the decision of the Jakarta State Administrative Court Number 424/G/TF/2022/PTUN.JKT, related to government action in terminating access to unregistered PSE LPs, can submit administrative remedies as stipulated in Article 1 number 16 of Law Number 30 of 2014 concerning Government Administration (AP Law) which reads, Administrative remedy is a dispute resolution process carried out within the Government Administrative environment as a result of the issuance of adverse Decisions and/or Actions.

The definition of Public Citizen is regulated in the provisions of Article 1 point 15 of AP Law, explaining the public citizen as follows, a citizen is a person or civil legal entity related to the Decision and/or Action. The regulation of citizens in the provisions of the AP Law is basically intended as legal protection for citizens, as stipulated in the provisions of Article 3 letter e, which states, the objectives of the Law on Government Administration are, to provide legal protection to citizens and government officials.

In addition, according to the provisions of the AP Law, it aims to serve as a means of legal protection to citizens if their rights are violated. Citizens can file administrative

remedies if they are aggrieved in a government decision or action, as stipulated in the provisions of Article 75 paragraph (1) of the AP Law, which reads:

"Citizens who are aggrieved by a Decision and/or Action may file an Administrative Action with the Government Official or the superior of the Official who makes and/or carries out the Decision and/or Action."

Administrative efforts are a settlement process carried out within the government administrative environment as a result of the issuance of decisions and/or actions that are detrimental to citizens, as stipulated in the provisions of Article 75 paragraph (1) AP Law. Administrative efforts according to the provisions are divided into administrative efforts of objection and administrative appeal, as stipulated in the provisions of Article 75 paragraph (2) of the Government Administration Law, which reads:

"(2) Administrative efforts as referred to in paragraph (1) consist of:  
 a. Objection; and  
 b. Appeal"

According to Tedi Sudrajat, the administrative efforts of objections and administrative appeals are explained as follows (Tedi Sudrajat, 2020):

- 1) Objection: Settlement of government administration disputes carried out by the authorized official who issues and/or disputed actions. Administrative efforts objections can be submitted as stipulated in the provisions of Article 77 of the Government Administration Law.
- 2) Administrative Appeal: Settlement of government administration disputes carried out by the official authorized to review the disputed decision and/or action that determines the constitutive decision. Administrative appeals can be submitted as stipulated in the provisions of Article 78 of the Government Administration Law.

The implementation of administrative remedies can be carried out if the State Administrative Decision is not otherwise stipulated in the law and causes substantial losses. as stipulated in the provisions of Article 75 paragraph (3) of the Government Administration Law, which explains as follows:

"(3) Administrative efforts as referred to in paragraph (2) do not delay the implementation of Decisions and/or Actions, except:  
 a. Specified otherwise in the law; and  
 b. Causing greater harm."

Government agencies and/or Officials are authorized to resolve administrative remedies, as stipulated in the provisions of Article 76 of the Government Administration Law, as follows:

- "(1) Government agencies and/or Officials are authorized to resolve objections to Decisions and/or Actions stipulated and/or carried out submitted by Community Citizens.
- (2) In the event that the Public Citizen does not accept the resolution of objections by the Agency and/or Government Official as referred to in paragraph (1), the Public Citizen may file an appeal to the superior of the Official.
- (3) In the event that the Community Citizen does not accept the settlement of the appeal by the Superiors of the Official, the Community Citizen may file a lawsuit to the court.
- (4) The settlement of Administrative Remedies as referred to in Article 75 paragraph (2) relates to the nullity or invalidity of the Decision with or accompanied by a claim for compensation and administrative charges."

Based on these provisions, it is known that an administrative dispute that is detrimental to citizens caused by government actions can be carried out administrative remedies.

The citizens in demanding their rights by submitting administrative efforts, namely filing objections and appeals against the State Administrative Decree at the Jakarta State Administrative Court Number 424/G/TF/2022/PTUN.JKT, which was

decided to be rejected by the panel of judges. The plaintiff in the Jakarta State Administrative Court Decision Number 424/G/TF/2022/PTUN.JKT, has filed an appeal which was decided in the Jakarta State Administrative High Court Decision Number 218/B/TF/2023/PT.TUN.JKT. The panel of judges stated that in the appeal court, the panel of judges agreed with the consideration of the decision of the first level court.

### **State Administrative Court Legal Remedies**

Legal remedy is the right of the defeated party to not accept the court's decision, which is in the form of resistance or appeal or cassation or the right to submit a request for judicial review in terms of demanding the method stipulated in the law. A legal remedy against a court decision is an attempt to seek justice at a higher court level than the court that handed down the decision. If the plaintiffs' petition is rejected on appeal, the plaintiffs may file an appeal for cassation as stipulated in the provisions of Article 51 paragraph (4) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts (Peratun Law), which reads:

"Against the decision of the High Administrative Court as referred to in paragraph (3), a cassation petition may be filed."

A cassation petition may be filed against the decision of the final court level, namely the Supreme Court, as stipulated in the provisions of Article 131 paragraph (2) State Administrative Court Law, which reads:

"Against the decision of the last level of the Court, a cassation examination may be requested to the Supreme Court."

The reason for filing a cassation is aimed at annulling the decision or court decision of all levels of courts of all judicial circles, due to:

- a) lacking authority or exceeding the limits of authority
- b) Misapplied or violated the applicable law
- c) Failure to fulfill the conditions required by laws and regulations that threaten the negligence with the annulment of the decision concerned.

The plaintiff in Jakarta Administrative Court Number 424/G/TF/2022/PTUN.JKT who has filed an administrative appeal in the decision of Jakarta Administrative Court Decision Number 218/B/TF/2023/PT.TUN.JKT., can file a cassation appeal against the previous lawsuit.

### **CONCLUSION**

The government's policy in terminating access or blocking access to PSE LP, harms the digital rights of citizens. Blocking has an impact on the inaccessibility of services and loss of revenue due to termination of PSE LP access. Citizens have the right to preventive and repressive legal protection.

Preventive legal protection, its means Citizens are protected in their human rights, which include the right to communicate and obtain information as stipulated in Article 28F of the 1945 Constitution of the Republic of Indonesia, Article 19 of the Human Rights Law, and internationally in Article 19 of the UDHR and Article 19 of the ICCPR. In addition, citizens have economic rights as stipulated in the provisions of Article 28 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as well as internationally regulated in the provisions of Articles 1, 2, 5 and 6 of the ICESCR. Such preventive protection aims to ensure that the human rights of citizens are not violated in relation to the policy of terminating access to unregistered PSE LPs.

Repressive legal protection, its means citizens who feel aggrieved in the PTUN decision Number 424/G/TF/2022/PTUN.JKT, related to government actions in terminating access to unregistered PSE LPs, can submit administrative remedies as stipulated in Article 1 number 16 of the AP Law and Administrative efforts according to the provisions are divided into administrative efforts of objection and administrative appeal, as stipulated in the provisions of Article 75 paragraph (2) of the AP Law. In its development, the citizens have filed an administrative remedy in the Jakarta PTTUN decision, then the citizens can file a cassation appeal to the Supreme Court against the rejection of the appeal. If the plaintiffs' petition is rejected on appeal, the plaintiffs may file an appeal for cassation as stipulated in the provisions of Article 51 paragraph (4) and Article 131 paragraph (2) of the Peratun Law.

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