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ON ACCOUNT DELETION IN MARKETPLACE: A JUSTICE PERSPECTIVE

Anis W. Hermawan

Faculty of Law, Indonesian Open University, Jakarta, Indonesia. E-mail: aniswahyu524@gmail.com

Article	Abstract
<p>Keywords: data deletion, justice, lex specialist, marketplace</p> <p>History of Article: Received: April 1, 2022; Reviewed: April 11, 2022; Accepted: April 13, 2022; Published: April 14, 2022.</p> <p>DOI: https://doi.org/10.56282/sblr.v1i1.48</p>	<p>The existence of Article 59 paragraph (4) of Government Regulation Number 80 of 2019 and Article 26 paragraph (3)-paragraph (5) of Law Number 19 of 2016 has the potential to cause injustice for several other government bodies, such as tax authorities, customs and excise authorities, and local governments. This problem can be answered based on normative legal methods. Based on analysis and discussion, two conclusions were produced. First, prevailing laws governing the deletion of data and/or accounts at customers' request to the marketplace are contrary to lex-specialists of several other government agencies. Second, legal updates that have the concept of fairness are adequate in reformulating the deletion of data and/or customer accounts to the marketplace. It is recommended that there be rules on certificates from certain government agencies, for example, those related to efforts to recover state and regional financial losses, against customers who request the deletion of their data or accounts to a marketplace. In addition, it is necessary to regulate legal liability for marketplace containers that delete customer data and/or accounts without being proven by clarification letters or certificates from certain government agencies, such as implementing institutions of Law No. 8 of 1997, Law No. 17 of 2006, Law No. 1 of 2022, and KUP Law.</p>

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1. INTRODUCTION

Marketplace as a means of electronic communication used for transactions intended to conduct trading business activities electronically¹ is a business model created to reduce complex business processes to make them efficient and effective². The indicator of market

¹ Pasal 1 angka (4) Peraturan Menteri Keuangan Nomor 210/PMK.010/2018 tentang Perlakuan Perpajakan atas Transaksi Perdagangan Melalui Sistem Elektronik (E-Commerce) / Article 1 point (4) Regulation of the Minister of Finance Number 210/PMK.010/2018 concerning Tax Treatment of Trade Transactions Through Electronic Systems (E-Commerce).

² Siti Nur Aeni, "Marketplace Terbesar di Indonesia Kuartal III 2021", 23 Maret 2022, accessed on March 25, 2022, <https://katadata.co.id/agung/berita/623af52eea481/7-marketplace-terbesar-di-indonesia-kuartal-iii-2021>.

effectiveness is determined by its ability to facilitate transactions, bring together sellers and buyers, and provide infrastructure. In contrast, the efficiency indicators are related to the brief time and costs provided by the marketplace³.

Business people have widely used Marketplace as one online media as an alternative medium to do their business⁴. Based on EcomEye data on traffic estimates in 2017, there are hundreds of millions of visits in 10 marketplaces in Indonesia per month; the three most prominent visits are Lazada Indonesia as many as 88.76 million visits, Tokopedia.com, with as many as 87.23 million visits, and Bukalapak.com as many as 61.07 million visits⁵. Of course, the economic potential contained in the marketplace must be guaranteed legal certainty in terms of its users' data protection. One of the biggest concerns is the occurrence of data breaches involving customers in the marketplace, such as population and transaction data. These concerns seem to justify the marketplace and its customers to delete all personal data in the system managed by the marketplace. As stipulated in Article 59 paragraph (4) of Government Regulation of the Republic of Indonesia, Number 80 of 2019 concerning Trading Through Electronic Systems, which defines Trading Through Electronic Systems (PMSE) formulates that at the request of the owner of personal data that declares out, unsubscribes or stops using PMSE services and facilities, then Business Actors must delete all personal data concerned on the system managed by the people in business. However, Article 59 paragraph (4) of Government Regulation No. 80 of 2019 turned out to be potentially contrary to other laws and regulations that apply in Indonesia, so it is necessary to answer two formulations of problems that arise. First, how is the prevailing law potentially out of line with deleting all data at customers' request? Second, what is the concept of fair law regarding data deletion in a marketplace at customers' demand?

2. METHODS

In answering the two formulations of existing problems, this study uses normative legal methods, known in some terms as black-letter approaches to doctrinal research, which means it as a systematic study of a topic by going through the process of defining, describing, and explaining the issue of legal science dogmatically⁶.

The study of law through this systematic investigation seeks to gain legal knowledge of existing facts. The process of this method cannot be separated from the definition, collection, organization, and evaluation of qualitative data, making deductions, reaching conclusions providing recommendations⁷ or prescriptions. This prescriptive study aims

³ Rini Yustiani dan Rio Yunanto, "Peran Marketplace Sebagai Alternatif Bisnis di Era Teknologi Informasi", *Jurnal Ilmiah Komputer dan Informatika (KOMPUTA)*, Vol. 6, No. 2, pp. 43-48.

⁴ *Ibid*, p. 44.

⁵ Minz Buii, "Top 10 Indonesia ecommerce sites & apps 2021", accessed on March 28, 2022, <https://ecomeye.com/top-online-shopping-sites-ecommerce-indonesia/>.

⁶ Bernard Arief Sidharta, *Penelitian Hukum Normatif: Analisis Penelitian Filosofikal dan Dogmatikal*, dalam S. Irianto & Sidharta (Ed.), *Metode Penelitian Hukum: Konstelasi dan Refleksi*, Jakarta: Yayasan Obor Indonesia. 2009. p 142.

⁷ *Loc.cit*.

to obtain suggestions to overcome the problems posed in the research⁸, which is in line with the two objectives of this study.

3. ANALYSIS AND DISCUSSION

a. Pros and Cons in Prevailing Law on Deletion of Data in a Marketplace on Behalf of the Customer

Government Regulation Number 80 of 2019 has not been fully able to overcome various cyber challenges related directly and indirectly to related transactions in the Marketplace⁹. One of the latest facts about the crimes associated with e-commerce in Indonesia, although Chapter XI of PP No. 80 of 2019 has been regulated on "Protection of Personal Data," which, among others in Article 13 PP No. 80 of 2019, only governs the extent of the state's appeal, so that in every PMSE, business actors must provide and convey the correct information, clear, and honestly, as the formula is: "In conducting PMSE, the parties must pay attention to the principles of good faith, prudence, transparency, trust, accountability, balance, and fairness, and health." Or in other words, there is no criminal provision in PP No. 80 of 2019 that causes e-commerce crimes to be charged with laws outside E-commerce law¹⁰, such as theft of credit card numbers to carry out e-commerce transactions subject to Article 362 of the Criminal Code (CRIMINAL CODE) and fraud in e-commerce activities subject to Article 378 of the Criminal Code. Whereas marketplace activities and traditional buying and selling activities have very different characteristics, comprehensive rules regarding the administrative penal law of e-commerce in Indonesia are needed so that this is not in line with the spirit of justice that should impose specific responsibilities for certain parties who are intentionally or carelessly or negligent and should provide particular loss recovery to the victims (both consumers and the state)¹¹.

Another injustice that has the potential to minimize efforts to recover losses to victims (including the state as a victim in terms of recovery of state revenue in the tax sector) is the deletion of data at the request of customers, as stipulated in Article 59 paragraph (4) of PP No. 80 of 2019¹² and Article 26 paragraph (3)-paragraph (5) of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE) stipulates that each Electronic System Operator is obliged to delete irrelevant Electronic Information and Electronic Documents that are under his control at the request of the Person concerned based on court determination and each Electronic System Operator shall provide a deletion mechanism Electronic Information and/or Electronic Documents that are no longer relevant by the provisions of laws and regulations. These articles do not meet the justice in the implementation of sectoral laws that are strongly related to e-commerce in Indonesia, such as:

- a) Article 11 paragraph (1) of Law No. 8 of 1997 concerning Company Documents that have formulated that records, bookkeeping evidence, and financial and

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta : Penerbit Universitas Indonesia. 2010..

administrative support data must be stored for 10 (ten) years starting from the end of the company's financial year.

- b) Article 51 paragraph (3) of Law No. 17 of 2006 concerning Amendments to Law No. 10 of 1995 concerning Customs that require the storage of documents in Indonesia for ten years.
- c) Article 182 of Law No. 1 of 2022 concerning Financial Relations between the Central Government and Local Government stipulates that criminal acts in the field of regional taxation cannot be prosecuted if they have exceeded the period of 5 (five) years from the time the tax is owed or the Tax period ends or the part of the Tax Year ends or the relevant Tax Year ends.
- d) Tax expired as stipulated in Law No. 6 of 1983 concerning General Provisions and Procedures of Taxation as amended several times last by Law No. 7 of 2021 concerning Harmonization of Tax Regulations. The KUP Law has regulated tax revenues in terms of: (a) The amount of tax payable in the Taxpayer's Tax Return becomes specific and in accordance with the provisions of tax laws and regulations if within a period of five years after the time of tax payable or the expiration of the Tax Period, part of the Tax Year, or Tax Year (Article 13 paragraph (1) and Article 8 paragraph 1a of the KUP Law), (b) The right to collect taxes, including interest, fines, increases, and tax collection fees, after more than five years from the issuance of the Tax Bill (STP), SKP, and Correction Decree, Objection Decree, Appeal Decision, and Review Verdict, unless there are certain things, such as the issuance of a Forced Letter, there is a debt recognition (either directly or indirectly) from the Taxpayer, conducted an investigation of taxation crimes, (c) Prosecution of tax crimes for 10 years from the time of tax payable or expiration of the Tax Period, part of the Tax Year, or the relevant Tax Year (Article 40 of the Kup Law).

Of course, Article 59 paragraph (4) of PP No. 80 of 2019 will be very contradictory to a) the obligation to protect data as stipulated in Article 21 paragraph (1) and Article 59 paragraph (2) of PP No. 80 of 2019; b) the obligation to retain data and information (within at least ten years for transactions related to finance and five years for those unrelated to financial transactions since the data and information were obtained) for domestic PPMSE and/or it's abroad as stipulated in Article 25 of PP No. 80 of 2019; and c) the obligation of all PPMSE to provide and store valid proof of transaction as a valid and binding means of proof for the parties by applicable laws and regulations¹³.

⁹ Hermawan, A.W., & Sinaga, H.D.P. Public Benefit Principle in Regulating E-Commerce Tax on Consumer's Location in Indonesia. *International Journal of Advanced Science and Technology* 29(8), 1212-1222. Retrieved from <http://sersc.org/journals/index.php/IJAST/article/view/20137>. 2020.

¹⁰ Elvrida N. Sinaga, Binner Simanjuntak, Leo B. Barus, & Henry Dianto Pardamean Sinaga. Reconstruction of E-Commerce Law In Addressing The Challenges Of E- Commerce In Indonesia: A Fairness Perspective. *A YE R JOURNAL*, 27(2), pp. 100 - 118. 2020.

¹¹ Henry D. P. Sinaga, (2017). Pertanggungjawaban Pengganti dalam Hukum Pajak di Indonesia. *Masalah-Masalah Hukum* 46(3), pp. 206-217.

¹² Elvrida N. Sinaga, Binner Simanjuntak, Leo B. Barus, & Henry Dianto Pardamean Sinaga, *Ibid.*

¹³ *Ibid.*, p. 112.

b. Legal Reformulation on Deletion of Customer's Data in A Marketplace in Justice Perspective

The mapping that has been carried out against PP No. 80 of 2019 and the ITE Law shows that the virtues of the conception of justice are inevitable in reformulating the ideal rules in terms of data deletion and/or accounts at the request of customers on marketplaces in Indonesia, in connection with that every actor in e-commerce (platforms, buyers, sellers, and governments or regulators) must have equal access to justice as the fundamental rights of these parties¹⁴.

More comprehensive about fairness in terms of data deletion and/or accounts at the request of customers on the marketplace, even if government regulations and the ITE Law are government products, public officials in each government body do have the freedom to set or make decisions, but must still pay attention to legal corridors that limit it in the form of the original purpose of the law, namely to realize a sense of justice for the community and the state. In the context of state administration, the legal value of justice must be "material," which must be the content of the rule of law, while the rule of law is a "form" that must protect the value of justice¹⁵. The principle of propriety as a significant substantive rule in e-commerce law can be in line with the principle of technological neutrality in adapting effectively to any development of new technologies that will always accompany electronic commercial transactions in the future and can adjust the complexity of e-commerce in the form of business activities that provide accurate, reliable, accountable and auditable information, against parties who are related to each other in transactions in a marketplace¹⁶.

Responding to the presence of unfairness in certain government agencies in terms of data deletion and/or accounts at the request of customers on the marketplace as formulated in Article 59 paragraph (4) of PP No. 80 of 2019 and Article 26 paragraph (3)-paragraph (5) of the ITE Law, then one of the manifestations of a sense of justice for people who want to apply for data deletion in a marketplace can be implemented through decisions and provisions issued by the administrative department. Government in that government agency. The consideration is the use of using regulatory logic and, at the same time, the sense of social etiquette and justice logic by using government administrative actions based on several legal instruments that it has, such as regulations (regeeling), decisions (besluit), provisions (beschikking), circular letters (circulaires), instructions¹⁷. The instrument is a product of state administrative actions in written form that serves as an operational implementation of government duties and cannot change or deviate from applicable laws and regulations¹⁸. This shows that there is a need to shift in legal thinking, namely from being too pursuing legal certainty through the fulfillment of

¹⁴ Loc.cit.

¹⁵ Bernard L. Tanya, Yoan N. Simanjuntak, dan Markus Y. Hage, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*, (Yogyakarta: Genta Publishing, 2010), p. 129.

¹⁶ Elvrida N. Sinaga, Binner Simanjuntak, Leo B. Barus, & Henry Dianto Pardamean Sinaga, *Ibid.*

¹⁷ H.R. Ridwan, *Hukum Administrasi Negara*, (Jakarta : Rajagrafindo Persada, 2007), p.182.

¹⁸ Indroharto, *Perbuatan Pemerintah Menurut Hukum Publik dan Hukum Perdata*, Jakarta : Universitas Indonesia. p.129. 1992.

formal justice as long as it refers to the system of *lex scripta*, *lex certa*, and *lex stricta*, to towards legal certainty that has aspects of material justice and formal that seeks to ensure that the state has implemented the boundaries of *lex specialist* rules as a means of legal certainty and at the same time. Means to guide economic and legal development in an orderly and orderly manner¹⁹.

To realize justice for government agencies whose provisions of Article 59 paragraph (4) of PP No. 80 of 2019 and Article 26 paragraph (3)-paragraph (5) of the ITE Law are not in line with their *lex specialists*, customers who make requests for data deletion and/or accounts to the marketplace are expected to have received recommendations or certificates from these government agencies. Meanwhile, in the case of marketplace container providers who delete data and/ or accounts at the request of customers not accompanied by clarification letters or certificates from government agencies that are implementers of Law No. 8 of 1997, Law No. 17 of 2006, Law No. 1 of 2022, and KUP Law, then the marketplace platform provider should still be charged with the responsibility, for example, Article 1365 of the Civil Code (KUHPdt) regarding acts against the law²⁰.

4. CONCLUSION

This study concluded that all stakeholders' participation in implementing the DBHCHT has not yet been implemented. There are still various obstacles and challenges in implementing DBHCHT management in Indonesia. Electronic participation is a requirement of the ideal decentralization principle in the management of DBHCHT in Indonesia, which fulfills inclusiveness and effectiveness and must be carried out at least based on e-information, e-consultation, and e-cooperation. It is recommended that the central government (in this case, the DJPK) build a transparent and account-able system and data to coordinate all DBHCHT implementation by creating a DBHCHT website (process and performance) that always displays information, communication, and consultation, and the latest active participation and cooperation. Even though the private industry holds the cigarette trade, the cigarette industry's obligation to always deposit actual CHT is the mandate from the decentralization principle in the 1945 Constitution; as in the CHT, there is the DBHCHT that local governments must accept in carrying out their functions and duties to develop their regions. Indeed, there are constraints in the form of a reasonably large budget in building e-participation in DBHCHT. Still, the long-term impact of effective and efficient implementation and supervision of the DBHCHT is a pay-off that shows the virtue of e-participation in DBHCHT in Indonesia.

¹⁹ Anis W. Hermawan dan Henry D. P. Sinaga, Op.cit., p. 1219

²⁰ Andreyan Nata Giantama and Munawar Kholil, "Pertanggungjawaban Hukum Penyedia Platform Terhadap Ba-rang yang Melanggar Merek dalam Marketplace", *Jurnal Privat Law*, Vol. 8, No. 1, 2020, p. 26, pp. 21-27.

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