

Execution of The Right to be Forgotten in Indonesia: The Urgency of the Requirements for the Determination and Establishment of the Assessment Body

Trisoko Sugeng Sulisty^{1*}, Yos Johan Utama², Aju Putrijanti³

¹Doctoral Program in Law, Diponegoro University, Indonesia

^{2,3} Faculty of Law, Diponegoro University, Indonesia

Email*: trisokosugengsulisty@gmail.com

Article Info

Received: 2024-08-12

Revised: 2024-12-21

Accepted: 2024-12-31

Keywords:

Execution; The Right to be Forgotten; Determination Requirements; Assessment Body; The Right to Be Forgotten in Indonesia

Abstract

The Right to be Forgotten has been recognized in the Information and Electronic Transactions Law (ITE) and the Personal Data Protection Law (PDP), but has not been regulated in detail. The ITE Law and the PDP Law do include provisions on the right to be forgotten, but there is no specific explanation of the conditions that must be met to establish what rights can be removed as part of the Right to Be Forgotten. In addition, there is no special assessment body tasked with determining and assessing these conditions. This ambiguity causes the implementation of the Right to be Forgotten to be hampered in Indonesia.

This journal aims to provide recommendations for policymakers to improve related regulations so that the implementation of the Right to be Forgotten can run effectively in Indonesia so that it has benefits for law enforcement in Indonesia. The method used in this journal is normative juridical research with a statute approach. The results of the study show that in order for the implementation of The Right to be Forgotten to be more effective, it is necessary to prepare clearer determination requirements and the establishment of an independent assessment body that can handle applications fairly and transparently.

I. Introduction

"The Right to be Forgotten" is a concept in privacy law that gives individuals the right to request the deletion of a person's personal data from the internet and other digital archives (GDPR Advisor, n.d.). The purpose of this right is to protect the privacy of individuals and provide control over personal information that is harmful if it remains available online. Personal data is part of the right to privacy which has become very important in this all-digital era. In international law, privacy is firmly recognized as one of the basic human rights that must be protected (Lie et al., 2023).

The thought of the right to be forgotten is inseparable from the right to privacy in the context of the use of information technology (Christianto, 2020). The concept of the Right to Be Forgotten emerged as a natural response to the problem of digital footprints (Razmetaeva, 2020) thus allowing one to request the removal of information that is no longer relevant, inaccurate, or no longer necessary. The Right to Be Forgotten is important in the digital age because information published online can quickly become widespread and difficult to remove, even after the information is no longer relevant or accurate.

The history of "The Right to be Forgotten" dates back to Europe, specifically through legal cases in the European Union that led to the recognition of this right. One of the most famous cases is the case of Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González, which was decided by the Court of Justice of the European Union (CJEU) in 2014 (Hutapea, 2021).

Mario Costeja González, a Spanish citizen, filed a complaint with the Spanish Data Protection Agency (AEPD) due to Google search results that displayed information about property auctions carried out to pay off his long-settled debts. Costeja González argued that the information was no longer relevant and detrimental to his reputation.

The AEPD ordered Google to remove the link to the article from search results. Google appealed, but the CJEU ruled in favor of AEPD and Costeja González, stating that individuals have the right to request deletion of an individual's personal data if the information is no longer relevant, inaccurate, or violates an individual's privacy.

This decision became the basis for the implementation of "The Right to be

Forgotten" throughout the European Union. In 2018, this right was strengthened through the General Data Protection Regulation (GDPR) even though it has been a law since 2016 (Hoofnagle et al., 2019), which provides that individuals have the right to request deletion of personal data.

The Right to be Forgotten has a very close connection with the existence of the individual. The concept of the Right to be Forgotten in Indonesia is not explicitly included in the 1945 Constitution of the Republic of Indonesia. However, these rights are beginning to be recognized through the Electronic Information and Transaction Law (ITE) and the Personal Data Protection Law (PDP) (Christianto, 2020).

The Right to Be Forgotten which has been recognized in the ITE Law and the PDP Law has not been regulated in detail. The ITE Law and the PDP Law do include provisions on the right to be forgotten, but there is no specific explanation of the conditions that must be met to establish what rights can be removed as part of the Right to Be Forgotten.

In addition, there is no special assessment body tasked with determining and assessing these conditions. This ambiguity causes the implementation of the Right to be Forgotten to be hampered in Indonesia. The lack of detail in these regulations makes it difficult to exercise those rights, resulting in uncertainty for individuals who want to apply for deletion of their personal data from the internet.

This inadequate regulation is an urgency in this article that the execution of The Right to be Forgotten in Indonesia must be regulated in more detail and clarity, by setting specific conditions and establishing a special assessment body tasked with assessing and determining the fulfillment of these conditions before the right to be forgotten can be executed.

This journal aims to provide recommendations for policymakers to improve related regulations so that the implementation of the Right to be Forgotten can run effectively in Indonesia so that it has benefits for law enforcement in Indonesia.

2. Research Method

The method used in this journal is normative juridical research with a statute approach. This research utilizes secondary data consisting of primary legal materials and secondary legal materials. The primary legal materials in this study include the Constitution of the Republic of Indonesia in 1945 (1945

Constitution), Law No. 39 of 1999 concerning Human Rights, Law No. 11 of 2008 concerning Information and Electronic Transactions, Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions, Law No. 1 of 2004 concerning the Second Amendment to Law No. 11 of 2008 concerning Information and Electronic Transactions, and Law Number 27 of 2022 concerning Personal Data Protection. Secondary legal material in this journal includes journals that discuss The Right to be Forgotten or the Right to be Forgotten.

3. Results and Discussion

The Right to be Forgotten in Indonesia

Article 28G (1) of the Constitution of the Republic of Indonesia in 1945 stipulates that "Everyone has the right to the protection of himself, family, honor, dignity, and property under his or her authority, as well as the right to a sense of security and protection from the threat of fear to do or not to do something that is a human right". Mandate in Article 28G (1) that the state guarantees and can ensure that everyone truly enjoys protection of honor, dignity and security from threats that may arise from the dissemination of information that is no longer relevant or defamatory.

Law Number 39 of 1999 concerning Human Rights in Article 29 paragraph (1) stipulates that "Everyone has the right to the protection of personal self, family, honor, dignity and property rights". This shows that the protection of a person's privacy and property rights is an integral part of human rights that must be guaranteed by the state (Habib & Fikry, 2021). The Right to be Forgotten is one of the implementations of this human right, thus, the recognition and protection of the right to privacy and individual dignity is expected to be more effectively realized in the midst of the rapid development of information technology.

The article is actually not enough to represent The Right to be Forgotten in Indonesia. The importance of The Right to be Forgotten in this digital era, Indonesia regulates this right in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. The ITE Law emphasizes that any use of information through the media or Electronic System involving a person's personal data must be done with the consent of the individual concerned.

Based on this, it is necessary to guarantee the protection of privacy by requiring each Electronic System Operator to delete irrelevant Electronic Information and/or Electronic Documents under the control of an individual, at the request of such

individual based on a court decision.

The ITE Law regulates The Right to be Forgotten in Article 26 paragraph (3) that "Every Electronic System Operator is obliged to delete irrelevant Electronic Information and/or Electronic Documents that are under its control at the request of the Person concerned based on a court determination".

Law Number 27 of 2022 concerning Personal Data Protection (PDP) regulates The Right to be Forgotten in Article 8, Article 16, Article 43 and Article 44 (Ajiputera & Susetyo, 2024). Article 8 stipulates that "The Personal Data Subject has the right to terminate the processing, deletion, and/or destruction of Personal Data about him or her in accordance with the provisions of laws and regulations". Article 43 paragraph (1) of the PDP Law also stipulates that "The Personal Data Controller is obliged to delete Personal Data in the event that: a. Personal Data is no longer necessary for the achievement of the purpose of processing Personal Data; b. The Personal Data Subject has withdrawn the consent to the processing of Personal Data; c. there is a request from the Personal Data Subject; or d. Personal Data is obtained and/or processed in an unlawful manner".

The Problem of The Right to be Forgotten in Indonesia

The Right to be Forgotten in Indonesia has several problems in its application (Ramadaani & Muaalifin, 2023). One of the main problems is that not all people have adequate access or understanding of the mechanism for applying for determination to the court. The clause regulating the right to be forgotten in the ITE Law only mentions the deletion of "irrelevant" electronic information and/or documents without providing a more detailed explanation of the limitations or criteria governing what is considered "irrelevant" (Hartanto et al., 2023). This raises concerns about legal uncertainty for individuals and difficulties in determining whether individuals are eligible to request deletion of their personal data from digital platforms. This ambiguity can hinder wider access to effective privacy protections, as individuals are less likely to be unsure how to apply or whether they qualify for the right to be forgotten protection.

Law Number 27 of 2022 (PDP Law) has regulated the right to be forgotten, but there are also several problems that arise in its application. Article 8 and Article 43 of this Law provide the right to personal data subjects to terminate the processing, deletion and/or destruction of their personal data. The norms in Article 8 are considered too general in formulating the right to erasure of personal data. Supposedly, the terms and procedures for submitting the deletion of the data should be formulated in detail

(Achmad, 2023). The absence of details regarding the terms and procedures for the deletion of personal data causes ambiguity in the exercise of the right to be forgotten. This creates a potential conflict between the individual's right to be forgotten and other rights that may be in conflict.

The Right to be Forgotten is often considered to be contrary to the collective right to documentation, freedom of access to information, and freedom of opinion (Hartanto et al., 2023). The right to be forgotten allows individuals to request the removal of their personal information from the internet, which could impact the availability of data that is considered important by the public.

The right to document events is part of the collective right to record history and important facts that are accessible to the wider community. If the right to be forgotten is applied without restrictions, relevant and historical information could be lost from the public archives, thus damaging historical records and information that is essential for research and general knowledge. Freedom of access to information is a principle that supports transparency and accountability. Information available to the public helps in keeping an eye on the actions of governments, corporations, and other individuals. When information is deleted on the basis of the right to be forgotten, public access to data that may be important for investigation or surveillance can be hindered. Freedom of opinion involves the right of individuals to express their views and share information.

The exercise of the right to be forgotten can be considered a form of censorship if relevant or important information is deleted. It can also be associated with the right to information or the right to know which is an important element to improve the quality of democracy because it serves as the main tool in fighting corruption by encouraging transparency and accountability (Akbari et al., 2021). If this becomes limited, it can hinder healthy public discussion and debate, which is a key element of freedom of opinion.

The use of the right to be forgotten by former inmates has also caused controversy because it has the potential to be used to hide past crimes, such as sexual crimes, fraud, and human trafficking. This is clearly contrary to the purpose of the special precautionary crime, which aims to ensure that past offenders do not repeat their acts and that the public can remain vigilant against the possibility of similar crimes by such ex-convicts (Simarmata et al., 2023).

This controversy arises because the right to be forgotten can be used by ex-convicts to erase digital traces related to the crimes of ex-convicts. This can make important information about the individual's past behavior no longer available to the public,

making it difficult for the public to take preventive measures. In addition, the purpose of criminalization of special precautionary measures designed to prevent perpetrators from repeating crimes and maintain public safety could be disrupted if information about criminals is no longer accessible. There are concerns that the implementation of these rights needs to be carefully regulated to avoid abuse and ensure that the balance between individual rights and public safety is maintained.

Another example of a problem is the Constitutional Court Decision Number 42/PUU-XIII/2015 which emphasizes that only former prisoners whose political rights have been revoked by the court are prohibited from running for public office. If a former inmate who has been sentenced to prison for a serious crime does not lose his political rights, then he can still run for office. However, the former inmate is required to transparently announce his status as a former inmate to the public (Hartanto et al., 2023).

In the context of the Right to Be Forgotten, this regulation shows that there are limitations in the application of this right. The Right to Be Forgotten allows individuals to request the deletion of irrelevant or harmful personal information. However, in the case of ex-convicts who want to run for public office, disclosure regarding their status as ex-convicts is still mandatory. This shows that while the Right to Be Forgotten is important to protect individual privacy, there are certain conditions under which the right is restricted in the greater public interest, such as transparency and accountability in the electoral process. Thus, despite privacy protections, honesty about a candidate's past is still necessary to ensure integrity in government.

Urgency of Requirements for the Determination and Establishment of the Assessment Body

Indonesia is known as a country of law as stipulated in Article 1 paragraph (3) of the 1945 Constitution. This shows that all aspects of state life must be based on the rule of law, both written and unwritten. In the law enforcement process, there are three main goals that must be achieved, namely justice, utility, and legal certainty. To realize these goals, the state has the authority to formulate these rules in the form of laws and regulations that must be implemented in practice (Ruhijat, 2019).

In the context of the Right to be Forgotten in Indonesia, there are still many problems that affect the effectiveness of the Right to be Forgotten law enforcement. When viewed from the theory of legal effectiveness put forward by Lawrence M. Friedman, there are three main aspects that are the basis for the effectiveness of a legal system,

namely: 1) Legal Structure; 2) Legal Substance; 3) Legal Culture (Yusro, 2022).

a) Legal Structure

The legal structure includes institutions and mechanisms that function to implement and enforce the law. Regulations in Indonesia, although the Electronic Information and Transaction Law (ITE) and the Personal Data Protection Law (PDP) have regulated the right to be forgotten, there are still shortcomings in implementation on the ground. The absence of an assessment body that specifically handles data deletion requests adds to the complexity of this process. Thus, it is necessary to establish an independent and authorized assessment body to assess the feasibility of the right to be forgotten application and ensure that this process runs in accordance with applicable law.

b) Legal Substance

Legal substance includes rules, regulations, and norms that apply in the legal system. In the context of the right to be forgotten, the legal substance already exists in the ITE Law and the PDP Law. However, this provision is still very general and does not provide detailed guidance on the exercise of these rights. For example, the definition of "irrelevant information" is still unclear, and there are no firm guidelines on the procedures and conditions for data deletion. Therefore, more detailed and specific regulations are needed to regulate the mechanism for the implementation of the right to be forgotten so that it can be implemented effectively.

c) Legal Culture

Legal culture refers to people's attitudes, values, and perceptions towards the law and the legal system. Public awareness in Indonesia about the right to be forgotten is still relatively low. Many people do not understand how to apply for the right to be forgotten or do not even know that the right exists. In addition, there are concerns that this right could be abused by former inmates or individuals who want to erase digital traces related to illegal activities in the past. Therefore, education and socialization to the public about the right to be forgotten and the procedure for its use is very important. Increasing public understanding will help in avoiding abuse and ensuring this right is used appropriately.

Based on this analysis, it became clear that there was an urgent need for the government or the authorities to draft more detailed laws and regulations related to the right to be forgotten. This is important to ensure that these rights can be implemented effectively and fairly. Therefore, some urgent steps that need to be taken are as follows:

a) Preparation of Conditions for the Determination of the Right to Be Forgotten

More detailed implementing regulations need to be drafted to determine the conditions for the establishment of the right to be forgotten. A clearer definition of "irrelevant information" should be formulated so as not to lead to mixed and confusing interpretations. The preparation of conditions for the determination of the right to be forgotten requires a clear and strong legal basis. Article 43 paragraph (1) and Article 44 paragraph (1) of Law Number 27 of 2022 also only regulate provisions in general. In addition, the procedure for submitting an application for the right to be forgotten must be explained in detail, including what documents need to be prepared by the applicant, the mechanism for evaluating the application, and the time period for completing the application.

Clear determination requirements will provide legal certainty for all parties involved, both the applicant and the data controller. This is important to avoid confusion and mixed interpretations as to when and how the right to be forgotten can be applied. Without clear rules and conditions, there is a risk that the right to be forgotten can be abused by certain parties to delete information that is actually still relevant or necessary for the public interest. Detailed set conditions will help prevent this abuse. One of the conditions for determination is that the application must receive an assessment from the Assessment Board before being decided by a judge or court.

b) Establishment of the Assessment Body

The urgency of establishing an independent and authorized assessment body to handle applications for the right to be forgotten. This body must have the authority to assess the feasibility of each application based on the criteria that have been set out in the implementing regulations. Before the application goes to court, there must be a recommendation from the Assessment Board. The recommendation from the Assessment Body is considered by the judge to decide whether this can be implemented the Right to Be Forgotten or not. This body must also function as an institution that ensures transparency and accountability in the process of determining the right to be forgotten, and can provide the necessary legal protection for those who feel aggrieved. With the existence of an assessment body, it is hoped that legal certainty and justice can be created in the implementation of the right to be forgotten.

4. Conclusion

The regulation of The Right to be Forgotten in Indonesia is regulated in the Information and Electronic Transactions Law (ITE) and the Personal Data

Protection Law (PDP). However, the regulation has not regulated detailed and detailed procedures in submitting applications. In order to implement The Right to be Forgotten more effectively, it is necessary to prepare clearer determination conditions and the establishment of an independent assessment body that can handle applications fairly and transparently.

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