

Legal Reconstruction of the Right to be Forgotten Based on the Electronic Information and Transactions Law

I Putu Carlos Dolesgit^{1*}, Putu Gede Arya Sumerta Yasa², I Gusti Agung Mas Rwa Jayantari³, Sagung Putri M.E Purwani⁴

Universitas Udayana, Indonesia

Corresponding Author: I Putu Carlos Dolesgit carlosdolesgit@gmail.com

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ABSTRACT

The Right to Be Forgotten (RTBF) is a fundamental embodiment of the right to privacy to control and erase outdated personal digital traces. In the Indonesian context, the RTBF regulation contained in Article 26 of Law Number 1 of 2024 concerning the Second Amendment to the ITE Law raises profound legal problems. This study identifies two main problems: the vagueness of norms (the absence of clear criteria regarding "irrelevant information") and procedural inefficiency due to the mandatory court-ordered mechanism that limits public access to substantive justice. This study uses a normative juridical method supported by empirical data, with a comparative approach of legislation, cases, and comparisons (especially the European Union), aiming to reconstruct a just RTBF legal model for the future. The research concludes: First, the Reconstruction of Norms, by requiring the formulation of detailed criteria regarding irrelevance, based on the Test of Time and the Test of Public Interest. Second, the Reconstruction of Procedural Mechanisms, by transitioning from a slow judicial path to a Fast and Efficient Administrative Mechanism, giving the Personal Data Protection Commission (KPDP) primary authority to decide on RTBF applications. This reconstruction model is a novelty of research that aims to create a responsive legal system, balancing the protection of individual human rights with press freedom, and ensuring certainty and accessibility of justice in the digital era.

INTRODUCTION

The right to be forgotten (RTBF) is defined as the realization of a data subject's privacy right to request the deletion of irrelevant personal information, even if the information was posted lawfully. This concept is a response to massive online media coverage that has the potential to violate privacy rights. Legally, RTBF in Indonesia is regulated in Article 26 Paragraphs (3) and (4) of Law Number 1 of 2024 concerning the Second Amendment to the ITE Law. There is a tension between the right to privacy (a human right) to not always be associated with a dark past, against the right to information and freedom of expression.

The norms in Article 26 Paragraphs (3) and (4) of the ITE Law are still vague and unclear, especially regarding the qualifications of the applicant subject, the substance that can be requested, and the mechanism for determining the right to be forgotten through the courts.

The right to be forgotten can be defined as an embodiment of the right to privacy that regulates the right of data subjects to request the deletion of personal information that is no longer useful automatically or through a request, posted by the data owner himself, or another person/ third party, even if the information was posted lawfully." "Every Electronic System Organizer is obliged to delete irrelevant Electronic Information and/or Electronic Documents under its control at the request of the Person concerned based on a court ruling." (Article 26 Paragraph 3 of Law No. 1 of 2024)

"The ambiguity of the norms in Article 26 paragraph (3) and paragraph (4) of Law Number 19 of 2016 in conjunction with Law Number 1 of 2024 lies in the norms which only formulate the obligation of every Electronic System Organizer to delete irrelevant Electronic Information and/or Electronic Documents which are under its control at the request of the person concerned based on a court decision.

The failure of current norms to provide clarity, certainty, and ease in accessing this right demonstrates a gap between the ideal of the law (*das sollen*) and the reality of its implementation (*das sein*). Therefore, this study seeks to reconstruct the law to:

Realizing Substantive Justice: Creating norms that not only guarantee legal certainty, but also truly protect human rights (privacy and reputation) in the digital context.

Creating an Efficient Mechanism: Formulate a simpler and faster legal mechanism perhaps through an Independent Institution (such as the Personal Data Protection Commission) or non-court administrative procedures without neglecting the right to object and freedom of the press. Integrating International Principles: Building legal constructions that are in line with the principles of international law and the experiences of other countries (such as the European Union) that are more advanced in implementing RTBF.

LITERATURE REVIEW

The theoretical framework and basic concepts that will guide the analysis and reconstruction of the Right to Be Forgotten (RTBF) law. This research is based

on three layers of theory, starting with the foundation of the Rule of Law as the Grand Theory, continuing with the Theory of Legal Protection as the Middle Theory, and ending with the Theory of Human Rights as the specific Applied Theory.

1. Theory of the Rule of Law

As a Grand Theory, the Rule of Law Theory serves as an analytical umbrella that demands that every legal product in Indonesia, including the RTBF provisions in the ITE Law, must be based on the principles of the supremacy of law, equality before the law, and protection of human rights. The application of this theory will critically examine whether the existing RTBF norms have fulfilled the elements of certainty, clarity, and effectiveness. An ideal rule of law must be able to formulate regulations that are not only formally valid but also substantively fair, guaranteeing citizens' rights to equal treatment without being overshadowed by immutable digital records. Therefore, the proposed legal reconstruction must align with the basic constitutional values and principles of the Indonesian rule of law.

2. Legal Protection Theory

At the Middle Theory level, Legal Protection Theory is used to evaluate the extent to which the law is able to protect individual interests from threats in the digital world. This protection is analyzed through two dimensions: Preventive Protection and Repressive Protection. Preventive protection highlights the need for the formulation of much more detailed norms, particularly in defining the criteria for "irrelevant information" so that Electronic System Operators (ESE) can act quickly and proactively. Meanwhile, repressive protection examines the effectiveness of established rights restoration mechanisms, namely through court decisions. This analysis is crucial for identifying why existing mechanisms are considered too bureaucratic and expensive, as well as for formulating alternative mechanisms that are simpler, faster, and more accessible to the public.

3. Human Rights Theory

As a focused applied theory, Human Rights Theory (HAM) provides philosophical legitimacy for the existence of RTBF. The right to be forgotten is positioned as an essential derivative of the Right to Privacy and the Right to Reputation/Respect in the digital era. The concept of privacy has evolved from simply "the right to be left alone" to the right to control personal data (the right to data control). However, the application of this theory requires the principle of balancing rights, where an individual's right to be forgotten must be carefully weighed against the Right to Freedom of Expression and the Public's Right to Obtain Information. Thus, this theory becomes a tool for determining fair boundaries: when individual interests should be prioritized, and when the information has historical, archival, or public interest value that requires it to remain accessible.

4. The Right to Be Forgotten (RTBF) Concept

The Right to Be Forgotten concept is defined as an individual's right to request that search engines or data managers deindex (remove links from search results) personal information that has become irrelevant, inaccurate, or

redundant over time, even if the information was originally published lawfully. This concept first emerged globally through the European Court of Justice's ruling in *Google Spain v. Mario Costeja González* in 2014, which emphasized the responsibility of ESOs as data controllers to balance their economic interests with users' privacy rights. It is important to distinguish the Right to Erasure (RTBF), which focuses on removing links (making them difficult to access), from the Right to Erasure (Right to Erasure), which focuses on deleting source data. This study analyzes how Article 26 of the Indonesian ITE Law attempts to adopt and integrate these two concepts, while facing significant implementation challenges, ranging from issues of legal territoriality on the internet to the technical difficulties of enforcing a global ESO without violating the principle of freedom of information.

METHODOLOGY

This research uses a Normative Juridical approach as the main method, supported by empirical data. The normative method focuses on the analysis of related laws and regulations, especially Article 26 of the ITE Law which regulates the Right to Be Forgotten (RTBF), as well as the underlying legal principles (Rule of Law, Legal Protection, and Human Rights). This research uses four main analytical approaches: Legal Concept Analysis to examine the philosophical foundation of RTBF; Legislation Approach to identify norm ambiguity; Case Approach to understand RTBF implementation through case studies in the field; and Comparative Approach that compares RTBF regulations in Indonesia with other jurisdictions, such as the European Union and Common Law countries, to find an ideal model of legal reconstruction. Legal material sources include primary materials (Laws, court decisions), secondary (legal literature), and tertiary (dictionaries and mass media), collected through library research and interviews with expert sources.

The analysis of legal materials was conducted qualitatively using the Descriptive-Analytical method, which aims to describe the applicable norms, evaluate their effectiveness, and test them against the established theoretical framework. To ensure the validity and reliability of the proposed legal reconstruction results, this study applies the Triangulation technique. Triangulation is carried out by comparing the findings from various methods (literature and interviews), different data sources, and consistency with various legal theories (Rule of Law, Legal Protection, and Human Rights). The final result of this methodology is the formulation of a just RTBF legal construction in the future, which not only guarantees legal certainty but also protects Human Rights substantively and efficiently.

RESEARCH RESULTS AND DISCUSSION

This research aims to provide substantive answers to the third research question, namely formulating a just legal reconstruction model for the Right to Be Forgotten (RTBF) in the future. This chapter is a manifestation of the research's novelty, moving from a critical analysis of the weaknesses of existing norms in Article 26 of the ITE Law to the formulation of a progressive legal solution. The

philosophical foundation that underpins this reconstruction is the principle of Substantive Justice rooted in the values of Pancasila, demanding that the law is not merely formalistic, but is capable of providing real and efficient restoration of human rights (privacy and reputation) for every citizen.

This reconstruction first focuses on resolving the issue of normative ambiguity regarding the definition of "irrelevant Electronic Information and/or Electronic Documents." The current norm is considered too general and open to broad interpretation, which actually hinders Electronic System Operators (ESE) from acting quickly. Therefore, Chapter V proposes that the criteria for irrelevance be regulated in detail in Government Regulations or technical regulations of the competent Authority. These criteria should be based on the Test of Time (information that has become outdated or redundant due to the passage of time) and the Test of Public Interest (information whose public interest value has drastically decreased).

Specifically, this proposed construction defines the boundaries of what information can be deleted/deindexed and what cannot be deleted. Information that meets the criteria for deletion includes sensitive personal data that is no longer accurate, records of long-serving minor sentences for which the subject has been rehabilitated, or news of a purely private nature with no significant impact on the wider public. Conversely, information cannot be deleted if it relates to ongoing public interest, such as corruption cases, serious crimes, or data that has archival, historical, or scientific or public health value. This balance ensures that RTBF does not become a tool for censoring legitimate and important information for the public.

Furthermore, the reconstruction focuses on the biggest procedural weakness, namely the "court ruling" mechanism required by Article 26 Paragraph (3) of the ITE Law. The results of the study show that this mechanism is inefficient, time-consuming, and imposes a high cost on applicants, thus effectively limiting access to justice for lower-middle-class people or victims who need rapid digital reputation restoration. Legal logic must be responsive to the speed of technological development, and slow procedures actually negate the purpose of protecting rights.

Therefore, Chapter V proposes a transformation of the mechanism from a rigid judicial pathway to a more adaptive and expeditious Non-Court Administrative Mechanism. The most appropriate institution to carry out this task is the Personal Data Protection Commission (KPDP), which should be given full authority to receive, mediate, and issue binding decisions for ESOs regarding RTBF requests. The KPDP can function as a quasi-judicial institution capable of weighing human rights versus the public interest quickly and based on data expertise.

The binding nature of the KPDP's decisions could be the primary solution. However, to uphold the principle of the rule of law and prevent abuse of authority, every KPDP decision can still be appealed or sued to the State Administrative Court (PTUN). This hybrid model ensures a separation of functions: the KPDP resolves the majority of cases quickly and efficiently, while

the PTUN acts as a supervisor of the validity of administrative decisions, particularly in cases involving significant conflicts of public interest.

The legal reconstruction model proposed in this dissertation will be based on three main pillars. The first pillar is Institutionalized Balance of Rights, where each implementing regulation must contain clear and structured guidelines regarding the rights weighing process. The second pillar is Certainty and Clarity of Norms through the formulation of detailed criteria for abolition. And the third pillar is Accessibility of Justice through administrative mechanisms that are inexpensive, fast, and easily accessible to all levels of society.

Comparatively, this proposed reconstruction learns from the European Union's (GDPR) success in granting strong authority to data authorities (DPAs) to enforce RTBF, while simultaneously avoiding the pitfalls of the US system, which is overly dominated by Press Freedom, often at the expense of Privacy Rights. This reconstruction model aims to be a unique Indonesian RTBF model, one that respects Press Freedom as a pillar of democracy, but firmly positions Human Rights (privacy and reputation) above the economic interests of digital platforms.

The implication of this new legal framework is the creation of a more responsible digital climate for ESOs, where they can no longer hide behind vague norms or slow court mechanisms. Reputation restoration and control over personal data can be effectively achieved, supporting the fulfillment of every individual's right to move on with their lives without being haunted by an irrelevant digital footprint.

Thus, this study not only answers the question of "how RTBF law should be regulated," but also presents a concrete regulatory roadmap. This reconstruction is a significant contribution to the development of Constitutional Law and Information Technology Law in Indonesia, aiming to take cyber law a step further, from merely regulating transactions to equitable digital human rights protection.

CONCLUSIONS AND RECOMMENDATIONS

The main conclusion of this dissertation research confirms that the Right to Be Forgotten (RTBF) is a manifestation of the Human Rights to digital privacy and reputation, which must be protected by the rule of law. However, the RTBF regulation in Indonesia, particularly Article 26 of the ITE Law, still faces serious problems in the form of normative ambiguity (the absence of a clear definition of "irrelevant information") and procedural inefficiency (the obligation of expensive and slow court decisions), which practically hinders public access to justice. Therefore, a just legal reconstruction must be realized through two pillars: first, creating normative certainty by formulating the Test of Time and Test of Public Interest criteria in implementing regulations; and second, creating accessibility to justice by transforming the dispute resolution mechanism from a judicial route to a fast administrative mechanism whose authority is given to an independent data supervisory agency, such as the Personal Data Protection Commission (KPPD).

Based on these findings, this study recommends two strategic steps that must be taken immediately. The first recommendation is aimed at the legislative and regulatory realm: The government must immediately draft a Government Regulation that details the criteria for information that can be deleted/deindexed. Furthermore, Article 26 Paragraph (3) of the ITE Law is recommended to be amended to remove the absolute obligation for a court ruling. The second recommendation is aimed at the institutional realm: There is a need to strengthen the authority of the KPDP so that it can function as a quasi-judicial body capable of issuing binding decisions regarding RTBF applications. These steps aim to create a responsive RTBF legal system, ensure legal certainty for Electronic System Organizers, and guarantee the protection of digital human rights effectively and efficiently.

ADVANCED RESEARCH

Further research that can be developed from the results of this RTBF legal reconstruction should focus on the challenges of implementation and future technological developments, particularly in four crucial areas: first, conducting an in-depth implementation study of the operational model of the Personal Data Protection Commission (KPDP) as the RTBF decision-making body, including the formulation of effective standard procedures for weighing privacy rights versus public interest; second, analyzing the issue of global legal territoriality, seeking an effective model for executing decisions against foreign Electronic System Providers (PSE) that are not under Indonesian jurisdiction; third, examining the ethical and legal aspects of Artificial Intelligence (AI), including the responsibilities of AI developers when their models reproduce or replicate old data that should be forgotten; and fourth, compiling a comparative study of harmonization between the RTBF and the National Archives Law, in order to find an anonymization mechanism that can maintain the value of historical archives without sacrificing individual rights.

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