

The Legality of Tiktok in Indonesia

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Abstract: The 21st century marks a significant communication and information exchange shift, making it progressively more effortless, cost-effective, and efficient. Consequently, conventional communication and information media are gradually marginalized, often perceived as less effective and efficient. TikTok, a short-form video platform designed to foster user creativity through content creation and sharing, was launched in September 2016. It gained a global presence before expanding into Indonesia in 2018. However, concerns regarding the spread of negative content led to a temporary block by the Indonesian Ministry of Communication and Information Technology. The block was lifted on the condition that TikTok adheres to existing Indonesian regulations. This research employs a legal research methodology, utilizing both a statutory and a conceptual approach. The operation of TikTok in Indonesia with a user base exceeding 112.9 million, without adopting the Limited Liability Company (LLC) structure, warrants further investigation as it undoubtedly impacts its economic activities in the country. In this instance, TikTok, operating as an Electronic System Operator and offering paid services to users through its electronic system, must be recognized as a business entity. In Indonesia, the Ministry of Communication and Information legally obligates all digital platforms and social media to register as Electronic System Operators (ESOs). The regulations concerning Electronic System Operators (ESOs) are outlined in Law Number 19 of 2016 regarding Electronic Information and Transactions, Government Regulation Number 71 of 2019 regarding the Implementation of Electronic Systems and Transactions, and Regulation of the Minister of Communication and Informatics Number 5 of 2020 concerning Private Electronic System Operators.

Keywords: Electronic System Organizer (ESO); TikTok; Foreign Business Entity (FBE)

1. Introduction

The advancements in communication and information technology have consistently driven periods of revolutionary societal change. In the 21st century especially, individuals focus on innovations or advancements in these sectors. Communication and information exchange have become notably more convenient, cost-effective, and efficient. Consequently, conventional communication and information media are gradually marginalized due to perceived inefficiencies and ineffectiveness. Furthermore, this ongoing technological evolution promises even more significant advancements in the years to come.

Social media embodies a significant development within the broader field of information and communication technology. Consider Facebook, a leading social media platform with the slogan "helps you connect and share with the people in your life," signifying its role in facilitating connections and sharing among users. However, social media's function extends beyond mere communication; it has become an integral information medium deeply connected with human life.

The success of Facebook, Snapchat, and Instagram in the social media field spawned yet another competitor in this area. However, despite their common core function of social interaction, each platform needs unique characteristics and constant updates to attract users.

ByteDance launched TikTok to address the shortcomings of the previous platform, Musical.ly, which had failed to gain success. Presently, TikTok stands as one of the most widely used platforms globally. Further, nearly all major social media has adopted the concept introduced by TikTok, successfully keeping users glued to their screens for extended periods. For instance, Facebook and Instagram have introduced the Reels feature, while YouTube has launched the Shorts feature. Both Reels and Shorts mirror TikTok's signature short-form smartphone video format.

TikTok is a social media platform designed to encourage user creativity through the creation and sharing of short-form videos. It was launched in September 2016 by ByteDance, a China-based company, initially under the name Douyin. Douyin experienced significant growth, driven by positive user feedback, reaching 100 million users, and achieving one billion daily video views¹. This early success prompted ByteDance's international expansion strategy. In 2017, the company acquired Musical.ly, a similar short-form video platform based in the US. This strategic move allowed them to merge functionalities and rebrand the combined platform as TikTok, facilitating its entry into global markets, including Indonesia, where it operates under TikTok, Pte. Ltd.

TikTok entered the Indonesian market in 2018, but it encountered restrictions from the Ministry of Communication and Information of the Republic of Indonesia due to allegations of promoting negative content². However, this ban was temporary, and TikTok was required to comply with applicable Indonesian laws. Despite the temporary restriction, TikTok swiftly regained popularity in Indonesia by 2020. According to Statista data from April 2020, Indonesia ranked as the world's 23rd largest user base for TikTok, trailing only the United States with 99.07 million users³. Additionally, Brazil came in third with 73.58 million users, followed by Russia (51.3 million) and Mexico (50.52 million). The popularity of TikTok as a platform in Indonesia, operating as a Pte. Ltd. entity, raises questions about the legal compliance in the country. This discussion is crucial considering that the establishment of a social media platform within a nation carries legal implications affecting both private and public entities. These implications encompass agreements, breaches, and the handling of personal data occurring within the platform.

2. Method

This research adopts a legal research methodology, employing both a statutory and a conceptual approach.

3. Results and Discussion

3.1 Registration and Establishment of Electronic System Operators in Indonesia

Regulations governing the implementation of the Electronic System are addressed, in part, within Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). According to Article 1 paragraph (6) of this law, Electronic System Operators (ESO) are defined as entities utilizing Electronic Systems, including state officials,

¹ Intan Nirmala Sari, "Sejarah TikTok dari Aplikasi Negeri Panda Hingga Mendunia", *Katadata.co.id*, Maret 6, 2023, <https://katadata.co.id/ekonomedia/profil/6404f5c3ce775/sejarah-tiktok-dari-aplikasi-negeri-panda-hingga-mendunia>

² Daon001, "Kominfo: Blokir Tiktok hanya sementara", *kominfo.go.id*, April 07, 2018, https://www.kominfo.go.id/content/detail/13332/kominfo-blokir-tik-tok-hanya-sementara/0/sorotan_media

³ Iip M Aditiya, "Indonesia Jadi Negara Pengguna TikTok Terbanyak Ke-2 di Dunia", *Goodstats.id*, Januari 18, 2023, <https://goodstats.id/infographic/indonesia-jadi-negara-pengguna-tiktok-terbanyak-ke-2-di-dunia-P5Hi2>

individuals, business entities, and/or the public. Meanwhile, as per Article 1 paragraph (5) of the ITE Law, an electronic system is defined as a set of electronic devices and processes designed to prepare, gather, process, analyze, store, display, announce, transmit, and/or distribute electronic information. Moreover, Article 16 paragraph (1) of the ITE Law governs the minimum requirements for the operation of electronic systems. These requirements include:

- a. can re-display Electronic Information and/or Electronic Documents in their whole according to the retention time established by the Legislative Regulations;
- b. can ensure the availability, integrity, authenticity, confidentiality, and accessibility of Electronic Information within the Electronic System's operation.
- c. can operate according to the procedures or instructions in the Electronic System Operation;
- d. are equipped with procedures or instructions announced with language, information, or symbols that can be comprehended by the parties involved in the operation of the electronic system; and
- e. possess a sustainable mechanism to ensure the currency, clarity, and enforceability of the procedures or instructions.

Once all the specified conditions are met, the Electronic System Operator may proceed to the registration stage. The registration process is administered by the Ministry of Communications and Information Technology, acting under the authority vested by the President of the Republic of Indonesia, as outlined in Presidential Regulation Number 22 of 2023 concerning the Ministry of Communication and Information Technology. Government Regulation Number 71 of 2019, which pertains to the Implementation of Electronic Systems and Transactions (PP PSTE), categorizes electronic system operators into two distinct types based on their scope: public and private electronic system operators. Public electronic system operators include government or state administrative agencies, designated entities, and/or governmental institutions entrusted with providing electronic systems for public service purposes.

Additionally, private electronic system operators, as defined in Article 1 paragraph (6) of PP PSTE, are individuals, businesses, and communities who organize electronic systems. Private Electronic System Operators (Private ESO) can be domestic, established under the sovereignty of another country, or permanently located in another country. In Indonesia, legal operation as an electronic system necessitates registration with the Ministry of Communication and Information, as articulated in Article 4 of Regulation of the Minister of Communication and Informatics Number 5 of 2020 regarding Private Electronic System Operators (Permenkominfo 5/2020)⁴. Domestic private electronic system operators may complete their registration through the Online Single Submission page⁵, whereas foreign private electronic system operators are required to fill out a designated form. Based on Article 3 paragraph (3) of Permenkominfo 5/2020, this form includes:

⁴ Hendrawan Agusta, "Telaah Yuridis Aplikasi Zoom Dalam Mengumpulkan Data Pribadi Ditinjau Dari Peraturan Pemerintah No. 71 Tahun 2019 Tentang Penyelenggaraan Sistem Dan Transaksi Elektronik," *Krtha Bhayangkara* 16, no. 1 (2022): 177–96, <https://doi.org/10.31599/krtha.v16i1.1076>

⁵ Kominfo, "Panduan Pendaftaran Penyelenggara Sistem Elektronik Lingkup Privat, *kominfo.go.id*, Agustus 06, 2022, <https://www.kominfo.go.id/content/detail/42389/panduan-pendaftaran-penyelenggara-sistem-elektronik-lingkup-privat-domestik/0/pengumuman>

- a. overview of the Electronic System's operation;
- b. obligation to maintain information security in accordance with legal regulations;
- c. responsibility to safeguard Personal Data in compliance with legal regulations; and
- d. requirement to perform a feasibility test of the Electronic System in accordance with legal regulations.

The form must also be accompanied by accurate information regarding:

- a. name of legal entity, address of legal entity, form of legal entity, company deed, and latest amendment deed; nomor pokok wajib pajak;
- b. tax identification number;
- c. name, national identification number, and telephone number; and
- d. confirmation that the Private Scope Electronic System Operator (Private ESO) has obtained legal authorization to carry out business activities from the relevant Ministry or Institution in accordance with applicable legal regulations, supported by relevant documents.

Considering the vast majority of Electronic System Operators are commercial enterprises, their activities are naturally aimed at generating profit. There are several types of commercial activity institutions in Indonesia. One of the entities conducting business operations is a Limited Liability Company (LLC) structured as a capital partnership. LLCs offer advantages compared to other forms of capital partnership institutions, notably their status as recognized legal entities with the capacity to undertake legal actions on behalf of the company. This results in the responsibility within the company being borne by the limited liability company as a legal entity, rather than by the individuals involved, except for specific matters outlined in statutory regulations.

Indonesia presents significant opportunities for both domestic and foreign business entities. The Investment Law (Law Number 25 of 2007) categorizes these entities into Domestic Investment (PMDN) and Foreign Investment (PMA). Foreign investors are attracted to Indonesia's demographic structure and relatively low minimum wages, which create a favorable investment environment. Consequently, many foreign investors engage in economic activities within Indonesia, either directly or indirectly. As a constitutional state, established by Article 3 of the 1945 Constitution of the Republic of Indonesia, foreign business entities are obligated to comply with Indonesian legislative regulations governing business activities. Specifically, Article 1 Paragraph 3 of the Investment Law outlines these obligations:

“Foreign Investment shall be any investing activity for running business within the territory of the Republic of Indonesia, made by any foreign investor using either foreign capital entirely or joint capital with domestic capital.”

Following up on the point about TikTok, it operates as an electronic system operator under the corporate entity named TikTok Pte Ltd (Private Limited). Pte Ltd holds the legal status of a Limited Liability Company (LLC) based in Singapore. Indonesia allows for the formation of business entities involving foreign investor involvement, provided that these entities are organized as LLCs and comply with certain criteria, including a compulsory minimum investment of domestic capital.

The establishment of TikTok in Indonesia, with a user base of 112,970,000, without adopting the LLC structure, warrants further investigation into its business operations, given its undeniable impact on the country's economy. In this instance, TikTok, operating as an Electronic System Operator and offering paid services to users through its electronic system,

must be recognized as a business entity. Aside from that, Stefan Koos suggests that in the digital era, data comprises valuable assets of comparable or even greater worth than money. Setting up an LLC as a Foreign Investment Company (PMA) entails a lengthy process, attributed to the requirement of satisfying specific legal and regulatory criteria. Therefore, an option for foreign business operators is to open a representative office in Indonesia.

Nonetheless, as time elapses and revenue accumulate, foreign businesses are required to form a legal entity in accordance with statutory laws to secure legal certainty in their business activities. Article 5 paragraph (2) of the Investment Law states that:

“Foreign investment shall be in the form of a limited liability company based on Indonesian law and domiciled within the territory of the Republic of Indonesia, unless otherwise determined by law”

Forming a limited liability corporation is an essential step for business actors to ensure legal certainty in their operations. Upon establishment, limited liability companies must secure trade sector approval, including a business permit and operational authorization. As stated in Article 4 Paragraphs 1 and 2 of the Regulation of the Minister of Trade Number 8 of 2020 on Electronically Integrated Business Licensing Services in the Trade Sector:

- 1) Categories of businesses in the trade industry include: business permit and commercial and operational permits.
- 2) Every business actor who conducts business or engages in trade-related activities must possess a business license.

In addition to the mandatory business license, the Business Identification Number (NIB) serves as another essential legal requirement for conducting business activities in Indonesia. The NIB acts as evidence of a business actor's registration to operate their business, as specified in Article 176, paragraph (4) of Government Regulation Number 5 of 2021 on the Implementation of Risk-Based Business Licensing. This regulation defines the NIB as the official identity for business actors to engage in business activities.

3.2 Legal Status of Tik Tok in Indonesia

TikTok, originally launched as Douyin in 2016, is owned by the Chinese company ByteDance. A year later, in 2017, ByteDance acquired a similar application called Musical.ly and integrated its functionalities into TikTok by 2018. TikTok's growth rapidly accelerated, propelling it to become the second most downloaded application on the Android Play Store and the fifth on the Apple Store⁶. The United States leads with the highest number of TikTok users, totaling 116.49 million as of April 2023, while Indonesia ranks second with 112.97 million users⁷.

In 2018, TikTok surged in popularity in Indonesia. However, the Indonesian government intervened on July 3, 2018, through the Ministry of Communication and Information of the Republic of Indonesia, temporarily halting TikTok. This action was driven by apprehensions regarding the spread of harmful content, notably pornography, posing risks to underage users. Despite this temporary setback, TikTok regained its popularity in Indonesia, particularly starting in 2021⁸.

⁶ Katie Elson Anderson, “Getting acquainted with social networks and apps: it is time to talk about TikTok,” *Library Hi Tech News* 37, no. 4 (1 Januari 2020): 7–12, <https://doi.org/10.1108/LHTN-01-2020-0001>

⁷ Cindi Mutia Annur, “Pengguna TikTok di Indonesia Terbanyak Kedua di Dunia per April 2023, Nyaris Salip AS?,” *Databooks*, Mei 24, 2023, <https://databoks.katadata.co.id/datapublish/2023/05/24/pengguna-tiktok-di-indonesia-terbanyak-kedua-di-dunia-per-april-2023-nyaris-salip-as>

⁸ Kominfo, “Banyak Alasan di Balik Buka Tutup Blokir Tik Tok,” *Kominfo.go.id*, Agustus 03, 2018, https://www.kominfo.go.id/content/detail/13716/banyak-alasan-di-balik-buka-tutup-blokir-tik-tok/0/sorotan_media

All digital and social media platforms are legally obligated to register as Electronic System Operators (ESOs) with the Ministry of Communication and Information. The regulations pertaining Electronic System Operators (ESOs) are outlined in Law Number 19 of 2016 regarding Electronic Information and Transactions, Government Regulation Number 71 of 2019 regarding the Implementation of Electronic Systems and Transactions, and Regulation of the Minister of Communication and Informatics Number 5 of 2020 concerning Private Electronic System Operators. The classification of Electronic System Operators includes two types, namely Public ESOs and Private ESOs⁹. Public scope ESOs are government-owned electronic systems providers, such as the PeduliLindungi application. Conversely, private ESOs include privately held social media platforms such as Facebook, Google, WhatsApp, and TikTok. TikTok PTE Ltd applied for ESO registration on May 24, 2022. Additionally, some of its systems, such as TikTok Shop, TikTok Music, and TikTok for Business (TT4B), were also registered with ESO.

Article 3 paragraph (5) of Regulation Number 5 of 2020 by the Minister of Communication and Informatics requires private ESOs to submit a statement verifying their legal status in conducting business activities for registration. This statement, issued by the Ministry or relevant governing institution authorized under applicable laws and regulations, must be substantiated with relevant documentation. However, TikTok does not yet have legal standing in Indonesia as of October 2023, and the company is still operating as TikTok Pte. Ltd¹⁰. "Pte. Ltd." (Private Limited) denotes a Singaporean business entity characterized by distinct ownership and responsibilities apart from its owner¹¹. Teten Masduki, the Minister of Cooperatives and Small and Medium Enterprises (SMEs) in Indonesia, disclosed that TikTok has not sought authorization to establish a legal entity office in the country, a decision he deems regrettable considering the significant market presence of TikTok in Indonesia¹².

Categorizing a foreign company like TikTok Pte. Ltd., which operates its electronic system within Indonesia, as a legal entity is somewhat impractical. The company has not established a legal entity in Indonesia and has not acquired approval from the Ministry of Law and Human Rights. As a result, the registration of TikTok as an Electronic System Operator with the Ministry of Communication and Information cannot be deemed valid. TikTok's registration as an ESO is grounded on Article 4 paragraph (1) of Permenkominfo 5/2020, which states:

The requirement for registration also extends to a Private ESO **established under the laws of another country** or permanently domiciled elsewhere, if it:

- a. offers services in Indonesia;
- b. conduct business activity in Indonesia; and/or
- c. the Electronic System is used and/or offered within the territory of Indonesia.

⁹ PPID Pemerintah Kabupaten Bogor, "Apa Beda PSE Badan Publik dan Privat", *PPID Pemerintah Kabupaten Bogor*, Agustus 19, 2022,

[https://ppid.bogorkab.go.id/index.php?p=308&page_title=Apa Beda PSE Badan Publik dan Privat](https://ppid.bogorkab.go.id/index.php?p=308&page_title=Apa%20Beda%20PSE%20Badan%20Publik%20dan%20Privat)

¹⁰ TikTok, "Ketentuan Layanan", *TikTok*, 2020, <https://www.tiktok.com/legal/page/row/terms-of-service/id>

¹¹ Ayu Diah Callista, "Macam-macam Badan Usaha dan Perbedaannya," *Akseleran*, Mei 03, 2023, <https://www.akseleran.co.id/blog/macam-macam-badan-usaha/>

¹² Ghita Intan Indra Yoga, "TikTok Shop Resmi Ditutup, Akankah UMKM Merugi?", *VoaIndonesia*, Oktober 05, 2023, <https://www.voaindonesia.com/a/tiktok-shop-resmi-ditutup-akankah-umkm-merugi-/7296703.html>

The inclusion of the phrase "according to the law of another country" in Article 4 paragraph (1) of Permenkominfo 5/2020 contradicts the regulations outlined above it. Specifically, Article 38 of Law Number 11 of 2008 regarding Electronic Information and Transactions states that individuals are prohibited from operating an Electronic System or utilizing Information Technology in a manner that harms society, in compliance with existing laws and regulations. Under Indonesian law, lower regulations must not contradict higher regulations, as per the principle of *Lex Superior Derogat Legi Inferiori*. Therefore, Electronic System Operators are obliged to adhere to Indonesian positive law and must not violate it.

3.3 The Legal Implications for Unincorporated Foreign Electronic System Operators in Indonesia

In accordance with industry standards, TikTok, like any electronic system provider, implements a user agreement. Sudikno defines an agreement as a legal relationship between two or more parties that is built on a mutual agreement to have legal implications. According to Article 1320 of the Civil Code, an agreement is considered lawful if it fulfills the following criteria¹³:

- a. agreement of those who bind themselves;
- b. capacity to form a contract;
- c. a specific subject matter;
- d. a legitimate cause.

Agreement entails the mutual consent and concurrence of the involved parties on the principal terms of the contract¹⁴. Capacity to act refers to the capability to undertake legal actions that result in legal ramifications, in this case an agreement¹⁵. The specified legal subject outlined in the terms of service agreement are TikTok and the User. In executing a legal action, each party must fulfill the requirements of legal capacity. The Civil Code, in Article 1329, presupposes legal capacity to contract for all individuals, except for those judicially declared incompetent.

Indonesian law requires contracting parties to have legal capacity. However, due to its unincorporated status within these regulations, TikTok lacks the capacity to bind agreements with third parties. The terms of service agreement for TikTok specifies that users must be at least 13 years old. This contradicts with Article 330 of the Civil Code, which sets the competency requirement at 21 years old, later amended by Article 47 paragraph (1) of Law Number 1 of 1974 regulating Marriage, which states the age at which competency conditions are met as 18 years. If the User fails to meet the capacity requirements, the agreement may be terminated due to an inability to attain the subjective standards. However, if neither TikTok nor the User raises any objections to this matter and continues to consent to the terms of the agreement, it may still be regarded as legitimate.

All terms of service agreement, without exception, must satisfy the fourth condition of a valid contract - a legitimate cause (*causa*). Referring to Chapter 11, point e on Age Limits of TikTok's Terms of Service, it indicates that the service is exclusively accessible to individuals aged 13 and above. The minimum age requirements set forth in TikTok's Terms of Service conflict with Article 47 paragraph (1) of the Marriage Law, which sets the minimum age at 18 years old. Therefore, this discrepancy violates the fourth criterion, particularly the requirement for a legitimate cause.

¹³ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1985), 187.

Article 1337 of the Civil Code explains that a cause is prohibited if it is against the law or is harmful to good morals or public order. The age restriction outlined in Chapter 11, Other Terms, point e of the Terms of Service, limiting services to individuals aged 13 years and above, constitutes a prohibited cause as it contradicts Article 47 paragraph (1) of Law Number 1 of 1974 concerning Marriage. This article expresses that children under the age of 18 or those who are unmarried remain under the authority of their parents unless they are emancipated. If the fourth term, which is having a legitimate cause, is not met, the agreement will be considered unenforceable because the objective conditions of the agreement are not satisfied. When an agreement is unenforceable, it is considered as if it never existed from the start¹⁶.

The first two terms of a contract, mutual agreement and the legal capacity of the parties, are considered subjective as they deal with the legal subject of the contract. On the other hand, the third and fourth terms, a specific subject matter and a legitimate cause, are referred to as objective, as they concern the content and purpose of the agreement. In the absence of objections from either party, an agreement with unmet subjective conditions is voidable. Termination means that one of the parties who object may seek to withdraw from the agreement. Failure to meet the objective conditions renders the agreement null and void. Essentially, the agreement is presumed to have never occurred.

Business transactions are one of the agreement's outcomes, and they can be conducted both conventionally and electronically via e-commerce platforms. As time progresses and technology advances, these transactions enable people to meet their basic needs more easily. However, alongside the convenience, several concerns can arise within this sector. These concerns primarily focus on business matters, including discrepancies between advertised products and actual items, deviations from agreed-upon delivery methods, intellectual property rights, and various other related issues.

In traditional business transactions, consumers can typically resolve issues more easily due to direct interaction with the seller. In contrast, electronic business transactions involve connecting consumers with multiple parties, demanding thorough investigation to determine the party liable for any issues experienced by consumers.

Online business transactions, as defined in Article 1 paragraph (2) of Government Regulation Number 80 of 2019 concerning Trading via Electronic Systems (PMSE), refer to trading conducted through electronic devices and procedures. Through this electronic system, trading activities bind consumers with business actors via a standardized contract;

if the consumer rejects the standard contract, business activities on the platform cannot proceed¹⁷. Such occurrences undoubtedly create implementation challenges, particularly in the event of unfavorable incidents, as conventional agreements solely bind customers to the platform or electronic system organizer, omitting other parties involved in electronic commerce transactions.

¹⁴ Lukman Santoso Az, *Hukum Perjanjian Kontrak: Panduan Memahami Hukum Perikatan & Penerapan Surat Perjanjian Kontrak*, (Yogyakarta: Cakrawala, 2012), 27.

¹⁵ Firman Floranta Adonara, *Aspek-Aspek Hukum Perikatan* (Bandung: Mandar Maju, 2014), 84.

¹⁶ Abdul Wahid, Rohadi, dan Siti Malikhatun Badriyah, *Serba-Serbi Memahami Hukum Perjanjian Di Indonesia* (Yogyakarta: Deepublish, 2022), 27

¹⁷ Muhammad Ali Hasan, "Penyelesaian Sengketa Dalam PMSE", *Hukum Online*, September 30, 2020, https://www.google.com/url?q=https://www.hukumonline.com/berita/a/penyelesaian-sengketa-dalam-pmse-lt5f742a59ed59c?page%3Dall&sa=D&source=docs&ust=1710996974333493&usg=AOvVaw0cDww4k_fHveG1PQWi-Is

Electronic system organizers typically facilitate trading through electronic systems, such as e-commerce platforms or social commerce. While most business platforms offer a mechanism for resolving issues or disputes, one concern is that these mechanisms often rely on foreign law. Nonetheless, the law affords parties the freedom to determine this matter in an agreement.

TikTok is an electronic system operating platform in Indonesia. As an ESO, TikTok has procedures and terms of service that users must be informed of and agree to. These procedures and user agreements govern user behavior and outline mechanisms for addressing future contractual breaches or disagreements. Similar to several other platforms, TikTok entrusts the Singapore International Arbitration Centre (SIAC) to settle breaches or disagreements involving users. The terms of service, under the "Other Provisions" section, require that any dispute arising from or related to these provisions, including those involving their existence, validity, or termination, be resolved through arbitration administered by the SIAC. Under SIAC regulations, arbitration proceedings are held in Singapore and utilize the English language.

TikTok's Terms of Service, which include dispute resolution through SIAC arbitration, appear to comply with Article 118 paragraph (4) of the Revised Indonesian Regulations (H.I.R.). This provision states: "If a place of domicile is chosen and determined by legal letter, the plaintiff may if he so desires, file the action with the chairman of the district court whose jurisdiction includes the chosen domicile." This is further supported by Article 18 paragraph (4) of the ITE Law, which affirms "the parties' authority to determine the court forum, arbitration, or other alternative dispute resolution institutions authorized to handle disputes that may arise from international Electronic Transactions they conduct."

4. Conclusion

TikTok Pte. Ltd., the entity behind the widely used social media platform, is duly registered as an Electronic System Operator (ESO) in Indonesia under Government Regulation No. 71 of 2019 (PP 71/2019). However, this registration raises questions about the legality of its operations. A key legal concern arises due to TikTok's status as a foreign entity without a domicile within Indonesia. Considering the large number of TikTok users in Indonesia and the nature of its business activities, establishing a legal entity in Indonesia, like other large ESOs, would be a prudent course of action. There exists a discrepancy between the Limited Liability Company Law and Government Regulation Number 71 of 2019, alongside insufficient regulations on the business activities conducted by ESOs. Consequently, TikTok, acknowledged solely as a legitimate Electronic System Operator, might lack the capacity to engage in legal actions in Indonesia. TikTok must create a legal entity in Indonesia to comply with applicable Indonesian laws and regulations. Additionally, establishing clear legal regulations governing the operations of business entities within electronic systems is necessary to create a secure and protected online environments for all Indonesian citizens.

References

Journal article:

- Intan Nirmala Sari, “Sejarah TikTok dari Aplikasi Negeri Panda Hingga Mendunia”, *Katadata.co.id*, Maret 6, 2023, <https://katadata.co.id/ekonopedia/profil/6404f5c3ce775/sejarah-tiktok-dari-aplikasi-negeri-panda-hingga-mendunia>
- Daon001, “Kominfo: Blokir Tiktok hanya sementara”, *kominfo.go.id*, April 07, 2018, https://www.kominfo.go.id/content/detail/13332/kominfo-blokir-tik-tok-hanya-sementara/0/sorotan_media
- Muhammad Ali Hasan, “Penyelesaian Sengketa Dalam PMSE”, *Hukum Online*, September 30, 2020, https://www.google.com/url?q=https://www.hukumonline.com/berita/a/penyelesaian-sengketa-dalam-pmse-1t5f742a59ed59c?page%3Dall&sa=D&source=docs&ust=1710996974333493&usg=AOvVaw0cDww4k_fFHveG1PQWi-iS
- TikTok, “Ketentuan Layanan”, *TikTok*, 2020, <https://www.tiktok.com/legal/page/row/terms-of-service/id>
- Ayu Diah Callista, “Macam-macam Badan Usaha dan Perbedaannya”, *Akseleran*, Mei 03, 2023, <https://www.akseleran.co.id/blog/macam-macam-badan-usaha/>
- Ghita Intan Indra Yoga, “TikTok Shop Resmi Ditutup, Akankah UMKM Merugi?”, *VoaIndonesia*, Oktober 05, 2023, <https://www.voaindonesia.com/a/tiktok-shop-resmi-ditutup-akankah-umkm-merugi-/7296703.html>

Book:

- Abdul Wahid, Rohadi, dan Siti Malikhatus Badriyah, *Serba-Serbi Memahami Hukum Perjanjian Di Indonesia* (Yogyakarta: Deepublish, 2022), 27
- Firman Floranta Adonara, *Aspek-Aspek Hukum Perikatan* (Bandung: Mandar Maju, 2014), 84.
- Lukman Santoso Az, *Hukum Perjanjian Kontrak: Panduan Memahami hukum Perikatan & Penerapan Surat perjanjian Kontrak*, (Yogyakarta: Cakrawala, 2012), 27.