International Journal of Law
ISSN: 2455-2194; Impact Factor: RJIF 5.12
Received: 14-06-2019; Accepted: 17-07-2019
www.lawjournals.org
Volume 5; Issue 5; September 2019; Page No. 150-156

The application of Article 26 Section (3) law number 19 of 2016 concerning amendment to law number 11 of 2008 concerning information and electronic transactions on right to be forgotten on personal information of victims of criminal act connected to law number 40 of 1999 concerning press

Eko Susanto Tejo[1], Dewi Rohayati[2]
[1] Bachelor Program of Law, Faculty of Law, Langlangbuana University, Bandung, West Java, Indonesia
[2] Law Faculty Lecturer, Faculty of Law, Langlangbuana University, Bandung, West Java, Indonesia

Abstract
The rapid development of information technology has shifted conventional mass media towards online mass media. As the adage "*Das Recht wird nicht gemacht, est ist und wird mit dem Volke*, then the concept of right to be forgotten is born. This concept was born from the desire to restore the control function of personal information circulating on the internet to each person's personal. In This concept was adopted in Article 26 section (3) of Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions. By using electronic mass media, everyone can easily search and read news that happened in the past. However, sometimes the organizers of electronic systems can harm those reported in presenting such news. However, Law Number 40 of 1999 Concerning Press has given freedom of press guarantees as citizen's human rights.
The results concluded that right to be forgotten can be applied to the news containing personal data and/or personal information of victims of crime, because there is a right for each victim to be free from any negative stigma. Provisions in Article 26 section (3) Amendment to the ITE Law is a form of restriction on press freedom sourced from public authority. Until now the concept of right to be forgotten is still ineffective and cannot be applied because there are no government regulations that govern the procedure for deleting electronic information and/or electronic documents.

Keywords: information and electronic transactions, victims, freedom of press, right to be forgotten

1. Introduction

The development and utilization of information technology, media and internet-based communication have changed the behavior of people and human civilization globally. These developments make the relationship become unlimited space and time. There have been many developments in the digital era conducted by Indonesia and have influenced many fields, including the mass media in Indonesia, which has changed in conveying information. Online mass media in this era has shifted conventional mass media. Even though Indonesia has been late in adopting a communication technology, especially the internet for almost a decade, the digital culture of Indonesian people is very fast in accepting the development of the technology. Indonesian people in general are enthusiastic about adopting digital life, mainly triggered by internet penetration and the use of smart phones which continues to increase every year. Some influences on the development of information technology in the legal field, including the recognition of digital evidence/electronic evidence as legal evidence, the application of e-Court, etc.

Many people prefer to read and search for information or news using electronic mass media rather than conventional mass media, such as newspapers and magazines, because using electronic mass media is felt to be easier and more practical and can be done anywhere and anytime. In addition news that can be accessed through electronic mass media is not only limited to the news that occurred at that time, but by using electronic mass media, one can search and read news that happened in the past easily. However, sometimes the organizers of electronic systems can harm those reported in presenting such news.

Information technology itself also changes people's behavior, so it can be said that information technology is now a double-edged sword, because in addition to contributing to the improvement of human welfare, progress and civilization, it is also an effective means of acting against the law. To prevent misuse in the rapidly developing information technology sector, Law Number 11 of 2008 Concerning Information and Electronic Transactions or better known as the ITE Law.

As the adage said by Carl Von Savigny "*Das Recht wird nicht gemacht, est ist und wird mit dem Volke* (the law was not made, but grew and developed with the community)", then one of the concepts in the field of cyber law developed, namely the concept of rights to be forgotten. This concept itself was born from the desire to restore the control function of personal information circulating on the internet to each person's personal. This concept began to develop in the European Union in 2010, where Viviane Reding, who was then serving at the European Commission, emphasized that "internet users must have effective control over the content they share online and must have the power to be able to improve, retract and delete the content as he wishes." [1] The concept of right to be forgotten has also been applied in the European Union. Where in 2010, Mario Costeja González, a Spanish citizen, together with Agencia Española de Protección de Datos (Spanish Data Protection Agency, AEPD) filed a complaint against La Vanguardia Ediciones SL (publisher of daily newspapers in Spain) and against Google Spain and Google Inc. Because when

internet users enter their names in the Google search engine, the results list will display links to two pages of La Vanguardia newspaper specifically published an announcement for Mario Costeja González's real-estate auction, but the news was no longer relevant to Mario Costeja González's current condition. Following the trial process, in the end the European Union high court decided that internet search engine operators were responsible for the processing carried out from personal data that appears on the site page published by a third party.

In 2016, the ITE Law was amended to Law Number 19 of 2016 Concerning Amendment to Law Number 11 of 2008 Concerning Information and Electronic Transactions (hereinafter referred to as Amendment to the ITE Law). In the Amendment to the ITE Law, there are 7 points of change and new things, one of which is the adoption of the concept of right to be forgotten in Article 26 section (3) Amendments to the ITE Law, which states that “every electronic system organizer is required delete irrelevant electronic information and/or electronic documents that are under their control at the request of the person Concerned based on a court decision.” Thus, the Indonesian government has adopted right to be forgotten as a function of control over personal information circulating on the internet to each person's personal information. However, there are differences in the scope of right to be forgotten in the European Union and in Indonesia. Right to be forgotten in Indonesia, not only on search engines that have to delete electronic information and/or electronic documents, but on every electronic system organizer, meaning on the search engine and on every internet site.

The first case example is the case of persecution that happened in 2017 in Tangerang. Where there are a couple of lovers who are suspected of being perverted somewhere, then they are paraded around the village and also videotaped also by local residents. The video has been spread on several internet sites and coverage of this incident has also been spread in several mass media, both online mass media and conventional mass media. The second case example is the case of pornographic videos involving 3 young children as the cast that happened in 2017 in Bandung. Until now, news of this case is still on the internet, both in the form of news in the form of text, images and videos.

Some of the content is presented in the form of online media coverage. Some news and videos of these cases are still available on several internet sites to date and can still be downloaded. In addition, news about the case is still widely circulated in the internet media. In the world of cyberspace, the dissemination of electronic information and/or electronic documents can be done very quickly, by anyone, through various kinds of media domiciled both within Indonesia and outside Indonesia. This can indeed have a major impact on victims, ranging from psychological disorders, defamation, to being ostracized from the community.

If seen from the news in the mass media, Law Number 40 of 1999 Concerning Press (hereinafter referred to as the Press Law) has guaranteed freedom of press as citizen’s human rights. In addition, the national press also has the right to seek, obtain, and disseminate ideas and information. The freedom of press guaranteed by this law is freedom accompanied by responsibility, because it involves the information it brings, it can cause and effect for other parties. This means that the information must be held accountable before the public, regarding its truth, concerning its tendency to other parties, concerning its objectivity, concerning the stigma that arises, which is caused by information that appears in the media.

2. Research Method

2.1 Approach Method

The author uses the normative juridical approach because the research objective is law or method. Understanding the method includes the principle of law, the method in the strict sense (value), concrete legal regulations. According to Soerjono Soekanto, a normative juridical approach is legal research conducted by examining library materials or secondary data as a basic material to be investigated by conducting a search of regulations and literature relating to the problem under study [2].

2.2 Research Specifications

This research uses descriptive analytical specifications. Descriptive method is a method that serves to describe or give a description of the object under study through data or samples that have been collected as they are without analyzing and making conclusions that are applicable to the public [3]. In other words, descriptive analytical research takes a problem or focuses on the problems that are found at the time the research is carried out, which is then processed and analyzed to draw conclusions.

2.3 Stages of Research

Stages of research used in this study is the study of literature. Literature study is related to theoretical studies and other references relating to values, culture and norms that develop in the social situation under study, besides library studies are very important in conducting research, this is because research will not be separated from scientific literature. Literature study to obtain secondary data. Secondary data is data obtained by studying library materials in the form of legislation and other literature relating to the issues discussed. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials i.e.:

a. Primary legal materials, namely binding legal materials in the form of laws and regulations.
b. Secondary legal materials, namely legal materials that provide an explanation of primary legal materials obtained from the study of literature in the form of literature relating to research problems.
c. Tertiary legal material, which is legal material that provides instructions and explanations for primary and secondary legal materials related to this research.

2.4 Data Collection Technique

The data collection technique used in this research is the study of documentation. According to Sugiyono, documentation is a method used to obtain data and information in the form of books, archives, documents, writing numbers and pictures in the form of reports and information that can support research. Study documentation in this research is to collect data and information about cases that are subject to study in this research.

2.5 Data Analysis

Analysis of the data used in this study is qualitative normative. According to Abdulkadir Muhammad, normative research is research conducted through library research in

finding data and sources of theory that are useful for solving problems [4]. In this research, the documents will be examined, namely using various secondary data such as statutory regulations, court decisions, legal theories, and can be in the form of opinions of scholars. This type of normative research uses qualitative analysis, namely by explaining existing data with words or statements rather than with numbers.

3. Literature Review

3.1 Electronic Information and Electronic Documents

According to Article 1 section (1) of the ITE Law, the definition of electronic information is one or a collection of electronic data, including but not limited to text, sound, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand it. In words the information itself has a definition of data that is processed into a form that is more useful for those who receive it [5].

Electronic documents have actually begun to be known in Law Number 8 of 1997 Concerning Company Documents (Law on Corporate Documents), precisely in Article 12 section (1) which states that company documents can be transferred to microfilm or other media. It's just that in the Law on Corporate Documents it isn't explicitly stated with the electronic document phrase.

According to Article 1 section (5) of the ITE Law, an electronic system is a series of electronic devices and procedures whose functions are to prepare, collect, process, analyze, store, display, announce, send and/or disseminate electronic information. Tata Sutabri provides a definition that the system is a collection or set of elements, components, or variables that are organized, interact with each other, are interdependent and integrated [6].

According to Article 1 section (4) of Government Regulation Number 82 of 2012 Concerning Electronic System and Transaction Operation, the definition of electronic system organizer is every person, state operator, business entity, and community that provides, manages, and/or operate electronic systems individually or jointly for electronic system users for their own needs and/or the needs of other parties. Regarding electronic system operators that are required or able to register, it is regulated by Regulation of the Minister of Communication and Information Number 36 of 2014 Concerning Procedures for Registration of Electronic System Organizer, precisely in Article 3 section (1), it is stated that electronic system organizer for public services are required to register; and Article 3 section (2) states that electronic system organizer for non-public services may register.

3.2 Criminal Law and Criminal Acts

To be able to understand the meaning of a criminal offense, it must first be understood about the term criminal law, which is a translation of the Dutch term *strafrecht*, *straf* means criminal, and *recht* means law. Moeljatno [7] give definition that :

Criminal law is a part of the whole applicable law in a country, which establishes the basics and rules for:

a. Determine which acts are not allowed, which are prohibited, and which include specific criminal sanctions or sanctions for those who violate the prohibition.
b. Determining when and in what circumstances those who violate the prohibition can be punished or punished as threatened.
c. Determine how the crime can be carried out if someone is suspected of violating the prohibition.

Furthermore Moeljatno explained from the definition of criminal law mentioned above that what was mentioned in point a was regarding criminal act. What is mentioned in point b is regarding criminal liability or criminal responsibility. What is mentioned in points a and b is a substantive criminal law, because it concerns the contents of the criminal law itself. What is referred to in point c is about how or the procedure for prosecuting people suspected of committing a criminal act, therefore criminal procedure. Commonly called just criminal law is material criminal law.

Cyber crime is one of the new forms or dimensions of contemporary crime that has received widespread attention in the international [8]. In addition, cyber crime is also one of the dark sides of technological advances that have a very broad negative impact on all fields of modern life today. The term cyber crime shows that this form of crime can only be carried out with devices or devices that produce cyber reality such as systems and computer circuits connected to the internet. This concept has caused some legal experts to have different views about what should be interpreted as cyber crime [9]. The Wikipedia site provides a definition of cybercrime is a term that refers to criminal activity with a computer or computer network being a tool, target or place of crime [10]

There are several terms delict (crime) in foreign languages such as "*strafbaar feit*" (Dutch language), "*delictum*" (Latin language), "*criminal act*" (English) [11]. Moeljatno gives the definition of a criminal act as an act that is prohibited in the law and threatened with criminal whoever violates the prohibition [12]. Another definition of criminal action (crime) presented by Simons is that an act which is by law threatened with punishment, contrary to law, is committed by an offender and that person is held responsible for his or her actions. It appears that the definition of a criminal act (a crime) put forward by Simons is a translation of "*strafbaarfeit*" include criminal acts themselves and criminal liability. While Pompe's opinion regarding *strafbaarfeit* is *strafbaarfeit* can be formulated as a violation of the norm intentionally or unintentionally by the perpetrator.

Restrictions on the basis of criminal provisions, civil provisions, and provisions of administrative law, or other laws. In every crime, it is always closely related to the victim of a crime. The definition of a victim (a criminal offense) in Article 1 section (3) of Law Number 31 of 2014 Concerning Amendment to Law Number 13 of 2006 Concerning Protection of Witnesses and Victims, is persons who suffer physical, mental, and/or economic losses. which results from a crime. Whereas Government Regulation Number 3 of 2002 Concerning Compensation, Restitution, and Rehabilitation of Victims of Serious Human Rights Violations, the definition of a victim is an individual or group of people who suffer physical, mental or emotional suffering, economic loss, or experience neglect, reduction or deprivation of basic rights, as a result of gross violations of human rights, including the victim is his heir.

The principle of law is the general basis contained in the rule of law, the general basis is something that contains

ethical values [12]. Furthermore, Satjipto Rahardjo said that the principle of law is the heart of the rule of law because it is the broadest basis for the birth of the rule of law or it is the ratio of legis to the rule of law [13]. In order to be convicted of a despicable act there must be provisions in the criminal law that formulate an act that constitutes a criminal offense and provide sanctions against the act. This principle of legality is considered as a manifestation of the agreement between the ruler and the individual. In that sense, individual freedom as a legal subject is guaranteed contractual protection through the principle of legality.

The principle of legality in criminal law is so important, considering that this principle is the first door of the criminal law to determine whether or not there is a criminal act as well as accountability for offenders. *Het legaliteitbeginsel is een van de meest fundamentale beginselen van het strafrecht* (The principle of legality is a very fundamental principle in criminal law) [14]. The principle of legality was coined by Paul Johan Anselm von Feuerbach (1775-1833), a German Bachelor of Criminal Law in his book : *Lehrbuch des penlichen recht* in 1801. What Feuerbach formulated contains a very basic meaning that in Latin reads: *nulla poena sine lege* (no criminal without criminal provisions according to law); *nulla poena sine crimine* (there is no criminal without a criminal act); *nullum crimen sine poena legali* (there is no criminal act without the law). These three phrases then become adage *Nullum delictum, nulla poena sine praevia legi poenali.*

System Traditions *civil law* has four aspects of the principle of legality that is applied strictly, i.e.: *lex scripta, lex certa,* non-retroactivity, and analogy.

The principle of legality is regulated in Article 1 section (1) of the Criminal Code, which states that: "An act cannot be convicted, except based on the strength of existing criminal law provisions." Based on the principle, there are seven aspects produced, namely:

a. Cannot be convicted except under criminal law
b. There is no law enforcement based on analogy
c. Cannot be convicted only based on habit
d. There should be no clear formulation of offense (*lex certa*)
e. There is no retroactive power from criminal provisions
f. There are no other crimes except those determined by law
g. Prosecution is only in the manner prescribed by law

Law enforcement is the activity of harmonizing the values relationships that are set out in solid rules and attitudes to act as a series of translation of the final stages of value to create, preserve and maintain peaceful social relations.

In law enforcement there are main problems that lie in the factors that might influence it. These factors have a neutral meaning, so the positive or negative impact lies in the contents of these factors. These factors are as follows:

a. The legal factor itself, which in this paper will be limited to the law only.
b. Law enforcer factors, namely those who form and apply the law.
c. Factors of facilities or facilities that support law enforcement.
d. Community factors, namely the environment in which the law applies or is applied.
e. Cultural factors, namely as the results of works, inventions, and tastes based on human initiative in the association of life.

3.3 Press and Privacy

According to Article 1 section (1) of the Press Law, the definition of press is a social institution and a mass communication vehicle that carries out journalistic activities including searching, obtaining, possessing, storing, processing, and conveying information in the form of text, sound, pictures, sounds and pictures, as well as data and graphics and in other forms using print media, electronic media, and all types of available channels.

Freedom of press is not defined directly in the Press Law. Wikipedia uses the term "freedom of the press" which means that the rights granted by constitutional or legal protection relating to the media and published materials such as disseminating, printing and publishing newspapers, magazines, books or in other materials without any government intervention or censorship [15]. In Article 2 of the Press Law it is emphasized that press freedom is a form of popular sovereignty based on the principles of democracy, justice and the rule of law.

In an orderly arrangement, such as democracy, there is no freedom or unlimited freedom, neither does press freedom. Limitation of press freedom can be divided into freedom that comes from the press environment itself (self-censorship) and restrictions from outside the press environment that comes from the public authority. Restrictions from within the press environment itself are restrictions that are self-restraint or self-censorship, either on the basis of a code of ethics or the Press Law. According to Bagir Manan [16], There are 5 restrictions that come from public power, namely:

a. Restrictions on the basis of public orders, namely on the grounds of public order, the authorities are justified to take preventive or repressive measures that are restrictive. An independent press must seriously consider public order as a basis for restrictions, so as not to become mines for themselves.
b. Restrictions on the basis of national security.
c. Restrictions to guarantee political and social harmony.
d. Restrictions on the basis of the obligation to respect privacy.

In Guidelines for Media News Coverage, point 5 letter a states that news that has been published cannot be revoked due to reasons of censorship from outside editors, except for issues related to racial intolerance, decency, children's future, traumatic experience of the victim or based on other special considerations determined by the Press Council.

This guarantee of privacy protection refers to the mandate of Article 28G of section (1) of the Constitution of 1945, which states that "every person has the right to the protection of his personal, family, honor, dignity, and property under his control and the right to security and protection from the threat of fear for doing or not doing something that is human rights." Wikipedia provides a definition of privacy as the ability of one or a group of individuals to close or protect their personal lives and affairs from the public, or to control the flow of information about themselves. Privacy can be considered as an aspect of security.

The concept of privacy rights became popular in 1890 when Samuel Warren and Louis Brandeis wrote an essay entitled, "*The Right to Privacy*", published by Harvard Law Review. They propose recognition of individual rights "*right to be let alone*" and also believes that this right must be protected by existing law as part of human rights issues. Thus, the

concept of privacy rights has been recognized but is still difficult to define. Privacy, as part of human rights, identifies the protection of personal data as an important right [17].

In the Explanation of Amendments to the ITE Law Article 26 section (1) it is emphasized that in the use of information technology, protecting personal data is one part of personal rights (*privacy rights*). Personal rights contain the following meanings:

a. Personal rights are the rights to enjoy private life and are free from all kinds of distractions.
b. Personal rights are the right to be able to communicate with others without spying.
c. Personal rights are the right to supervise access to information about one's personal life and data.

4. Result and Discussion

Right to be forgotten concept merely mentions the removal of irrelevant electronic information and/or electronic documents. However, there is no detailed explanation of what is meant by irrelevant information. The unclear formulation of the phrase “irrelevant information” also has the potential to interfere with the public's right to know. In some cases that caught the public’s attention, the perpetrators were public figures and officials who were very interested in the clause “erasing irrelevant information”, as stipulated by Article 26 section (3) of the Amendments to the ITE Law. The unclear boundaries and definitions of the phrase “irrelevant information” have the potential to be used as a means of self-cleansing of the alleged crimes. If this situation occurs, it will certainly also affect the fulfillment of the public’s right to information, including journalists in their capacity to carry out press work as regulated by the Press Law, where the press assignments are: search, obtain, possess, store, process, and convey information in the form of text, sound, images, sound and images, as well as data and graphics as well as in other forms using print media, electronic media, and all types available channels. Therefore, if this problem is not formulated in detail and proportionally, the exercise of the right to be forgotten is feared to interfere with the fulfillment of the public's right to know.

Criminal law in Indonesia adheres to the principle of legality (legism), therefore to be able to impose criminal sanctions against a crime, there must be provisions in the criminal law that formulate an act that constitutes a criminal offense and provide sanctions against the act. In a crime, of course there are the interests and rights of the injured parties, both individuals, organizations/companies, communities, and the state. Therefore, when there is a crime, the criminal law will play a role in enforcing the rule of law and protecting the public.

In the first case is persecution case that occurred on Ryan Aristia and Mia Audina. Ryan and Mia not only suffered losses as victims of persecution, but also suffered losses on content on internet sites that display personal data and/or personal information such as photos and videos of victims who contained pornographic elements. In addition, there is also content that is presented in the form of news in online mass media which also displays personal data and/or personal information in the form of writing (clearly listing the full names of the victims), pictures (displaying pieces of images during events that contain pornographic elements), or video. This persecution case occurred in 2017, but the contents are still accessible by all internet users until now.

In the second case is a porn video involving 3 underage children as victims. There is an identity (personal data) of the victims appearing on various contents on the internet site. Some of the content is presented in the form of online mass media coverage, in the form of written news, pictures (photos), to videos. This case has occurred 2 years ago, the perpetrators have also been sentenced and have permanent legal force, but content that contains personal data and/or personal information against the victims is still appearing on the internet and can be accessed by all internet users.

News that is presented in electronic information and packaged in the form of news by the online mass media already has a special arrangement if you want to be removed, regulated in the Guidelines for Media News Coverage. The guidelines have regulated several matters regarding the exclusion of news verification obligations as well as limitations, the provisions regarding user generated content, copyright, errata provisions, corrections, and right of reply, up to the revocation of the news. In this guideline the term deletion is not known but the revocation of news. Between deletion and revocation actually has the same meaning which is either no longer published or no longer contains information. An electronic information which is packaged in the form of online news may be revoked based on the provisions in the Cyber Media News Guideline in number 5 letter a.

Seeing the provisions on the revocation of news in the Guidelines for Media News Coverage, it is possible for information to be revoked in the mass media. However, the revocation is only limited to news that contains elements of racial intolerance, decency, children's future, traumatic experience of the victim, or based on other special considerations determined by the Press Council. This guideline can be directed at the principle of protecting the privacy of citizens who do not have the essence of the public interest. As long as a story that publishes matters concerning the privacy of citizens can be revoked.

In general, the guarantee of protection of one's personal rights (privacy) refers to the mandate of the Constitution of 1945, specifically in Article 28G of section (1) of the Constitution of 1945. However, until now Indonesia does not yet have a single reference (a legal rule) that clearly defines the scope of the scope of personal rights that must be protected. As for references regarding personal information contained in existing legislation, the contents that can be submitted for deletion are those containing:

1. Population information
2. Health history information (medical records)
3. Financial, banking and tax information
4. Information about one's personal self, especially relating to decency, child protection
5. Information that contains slander content towards a person, which has been proven to be slander according to a court decision which has permanent legal force.

Based on the description above, the content and reporting of victims of crime in pornographic videos involving young children and victims of criminal acts of persecution are included in the qualification of news that can be requested for deletion. Because in the content there are personal data and/or personal information of a person (victim) relating to decency which must be protected by privacy. In addition there is also the right for every victim to be free from any negative stigma or as a way to clear his name from the news

that contains elements of pornography and is already widespread on the internet.

In the democratic order, there is no unlimited freedom, neither does press freedom. From the internal scope of the press already has provisions regarding the removal or retraction of news based on elements as mentioned in number 5 letter a Guidelines for Media News Coverage, which is a form of restriction on press freedom which is sourced from the internal press (self-censorship). Whereas the provisions of Article 26 section (3) of the Amendments to the ITE Law constitute a limitation on the independence of the press which springs from public power authority, which one of them is a limitation on the basis of the obligation to respect privacy. Accordingly, all Electronic System Operators (PSEs), including PSEs in the press must comply with the provisions of Article 26 section (3) of the Amendments to the ITE Law regarding right to be forgotten.

Reflecting on these two case examples, the actual existence of the concept of right to be forgotten is a very good, innovative legal concept that aims to protect one's personal data and personal information (privacy). However, the existence of the concept of right to be forgotten which is listed in Article 26 section (3) Amendments to the ITE Law cannot be independent, but also very dependent on factors that affect the effectiveness of law enforcement. Broadly speaking, there are 5 factors that influence the effectiveness of the application of Article 26 section (3) Amendments to the ITE Law related to the Press Law on reporting on victims of criminal acts, can be analyzed as follows:

a. The legal factors themselves

The legislators have enacted a new concept of right to be forgotten in Indonesia since November 25, 2016, as stated in Article 26 section (3) Amendments to the ITE Law. The application of this new concept is an innovation in the field of law which is a means to achieve spiritual and material welfare for both society and individuals. However, up to now the concept of right to be forgotten has not been implemented because a government regulation has not been established as a mandate from Article 26 section (5) Amendment to the ITE Law or as a derivative regulation from an Amendment to the ITE Law. There is also no clear definition of the phrase “irrelevant information” that can cause confusion in its interpretation and application. Therefore, until now the concept of right to be forgotten is still not applicable, so the legal factor itself is still ineffective.

b. Law enforcer factors

The role of law enforcer (judges, prosecutors, police, advocates) in the application of the concept of right to be forgotten has not been seen, because until now there has not been a single case that can be processed by law enforcers. This is due to incomplete legislation governing the procedures for deleting electronic information and/or electronic documents as mandated in Article 26 section (5) Amendments to the ITE Law. Therefore, from law enforcer factors are still not effective.

c. Facility factors or facilities that support law enforcement

Associated with facilities or facilities that support law enforcement, especially in terms of the implementation of the concept of right to forgotten, which is available, namely the court (judicial institution). However, to date no judicial institution has ever carried out this process of requesting right to be forgotten. Therefore, the factor of facilities or facilities that support law enforcement is still not effective.

d. Community factors

The development of society is very closely related to the development of law. However, until now the community seems to not believe in the law as the only solution to the problems that occur around it. Moreover, Indonesian society is diverse and spread in various regions, so that people's understanding of law will be different, where the majority of Indonesian people's understanding of law is still ordinary. In reality, money also becomes a main thing in solving legal problems. In addition, the degree of public compliance with Article 26 section (3) is still very minimal. Therefore, the effectiveness of applying the concept of right to be forgotten from the community factor is still ineffective.

e. Cultural factors

Cultural diversity in Indonesia is very influential on the development of law and legal culture formation. Cultural factors are very influential on the substance of law and legal structure in Indonesia. People who have different cultures, will surely accept a substance or different rules of law as well, according to their respective cultures. Therefore the concept of right to be forgotten can be conservative, moderate, to aggressive. This is because no matter how good the substance or rule of law, if it is not supported by a good community legal culture, then the substance or rule of law will not function optimally. At present, issues relating to ITE are more dominated by people who live in big cities or in the capital and from the middle and upper classes (public figures, artists, officials, etc.). Therefore, cultural factors are still not effective.

The law will have meaning if the law can serve the interests of humans, and provide benefits to humans. If there are still disturbances or obstacles to the factors that affect law enforcement, then law enforcement is not working properly and cannot respond to the various needs of the community.

5. Conclusion

5.1 Based on the results of the analysis and discussion several conclusions can be drawn as follows

a) The application of the concept of right to forgotten can be applied to victims of criminal acts whose personal information is spread in online media (the internet) because there is a right for each victim to be free from any negative stigma or as a way to clear his name from the news that contains pornographic elements;

b) This concept is a good and innovative concept, but the application of the concept of right to forget is not yet effective and cannot be applied because there are no government regulations that govern the procedure for deleting electronic information and/or electronic documents, and the ineffectiveness of the other factors, such as the legal factors themselves, law enforcer factors, facility factors or facilities that support law enforcement, cultural factors, and community factors.

5.2 From the results of the analysis and conclusions drawn from this study, the authors provide the following suggestions

a) Immediately make government regulations governing

the procedure for deleting electronic information and/or electronic documents as mandated by Article 26 section (5) Amendments to the ITE Law and its derivative regulations so that the concept of right to be forgotten can be immediately applied and can benefit the community;

b) Clarifying the meaning and limits of the phrase “irrelevant information” contained in Article 26 section (3) Amendments to the ITE Law, so that the phrases are not multiple interpretation.

6. References

1. Building Trust in Europe's Online Single Market. http://europa.eu/rapid/pressReleases Action. do? Reference=SPEECH/10/327. 21 October, 2018.
2. Soerjono Soekanto, Sri Mamudji. Penelitian Hukum Normatif Suatu Tinjauan Singkat. Rajawali Pers, Jakarta, Indonesia, 2001, 13-14.
3. Sugiyono. Metode Penelitian Kuantitatif, Kualitatif dan R&D. Alfabeta, Jakarta, Indonesia, 2009, 29.
4. Abdulkadir Muhammad. Hukum dan Penelitian Hukum. Citra Aditya Abadi, Bandung, Indonesia, 1999, 133-134.
5. Jogiyanto HM. Analisis dan Desain Sistem Informasi (Edisi Kedua). Penerbit Andi, Yogyakarta, Indonesia, 2004, 8.
6. Tata Sutabri. Analisa Sistem Informasi. Penerbit Andi Offset, Jakarta, Indonesia, 2012, 3.
7. Moeljatno. Asas-Asas Hukum Pidana. Rineka Cipta, Jakarta, Indonesia, 2002, 1.
8. Barda Nawawi Arief. Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan. Kencana Prenada Media Group, Jakarta, Indonesia, 2010, 244.
9. Agustinus Pohan. Hukum Pidana Dalam Perspektif. Pustaka Larasan, Denpasar, Indonesia, 2012, 128.
10. Kejahatan dunia maya. https://id.wikipedia.org/wiki/Kejahatan_dunia_maya, 1 December, 2018.
11. Yahman. Karakteristik Wanprestasi & Tindak Pidana Penipuan, Prenadamedia Group, Jakarta, Indonesia, 2014, 109.
12. Eddy OS. Hiariej. Prinsip-Prinsip Hukum Pidana Edisi Revisi, Cahaya Atma Pustaka, Yogyakarta, Indonesia, 2015, 121.
13. Dudu Duswara Machmudin, Pengantar Ilmu Hukum Sebuah Sketsa, Refika Aditama, Bandung, 2013, hlm. 68.
14. Satjipto Rahardjo. Ilmu Hukum. Alumni, Bandung, Indonesia, 1986, 81.
15. Komariah Emong Sapardjaja. Ajaran Sifat Melawan Hukum Materiil dalam Hukum Pidana Indonesia: Studi Kasus tentang Penerapan dan Perkembangannya dalam Yurisprudensi, Alumni, Bandung, Indonesia, 2002, 6.
16. Kebebasan pers. https://id.wikipedia.org/wiki/Kebebasan_pers, 20 November, 2018.
17. Bagir Manan. Menjaga Kemerdekaan Pers Di Pusaran Hukum. Dewan Pers, Jakarta, Indonesia, 2011, 75-76.
18. Sinta Dewi. Konsep Perlindungan Hukum Atas Privasi Dan Data Pribadi Dikaitkan Dengan Penggunaan Cloud Computing Di Indonesia. Yustisia Vol. 5 No. 1, 2016, 25-26.