

*Research Article***Measuring The Effectiveness of Private Electronic System Organizers Regulations In Developing Social Media Equilibrium¹****Tundjung Herning Sitabuana^{1*}, Ade Adhari², Leony Sondang Suryani³, Dixon Sanjaya⁴, Ibra Fulenzi Amri⁵**^{1,2,5} Faculty of Law, Universitas Tarumanagara, Indonesia³ SHAPE-SEA, The Institute of Human Right and Peace Studies, Mahidol University, Thailand⁴ Faculty of Law, University Indonesia, Indonesia

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ABSTRACT

Technological developments, especially social media, potentially have a negative impact that pretend to social disintegration and instability. To prevent and create a healthy and conducive digital space, the Government issued the Minister of Communication and Information Regulation No.5/2020 concerning Private ESOs. This regulation gives the government authority to supervise Private ESOs and protect social media content. This research aims to examine ministerial regulation effectiveness in realizing social media equilibrium and its impact on digital democracy in Indonesia. This is a sociolegal research. The data was obtained from observation, expert interviews, and literature studies which were analyzed qualitatively. Normatively, restrictions and supervision to the right to use social media through private ESOs can be carried out to be in line with *Pancasila's* Spirit. However, there are fundamental errors in ministerial regulation: (1) multiple interpretations norm; (2) unclear parameters of supervision; and (3) weak legal position of ministerial regulations in law enforcement. Sociologically, the presence of ministerial regulations is weak and ineffective because they are: (1) rejected by stakeholders; (2) easy to change; and (3) slowly responded in socialization process and community compliance. More comprehensive implementation regulation is required with, supervision through an electronic system approach to increase the role and participation of community.

Keywords: Private Electronic System Organisers; Regulation Effectiveness; Social Media Equilibrium.

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A. INTRODUCTION

The era of the industrial revolution 4.0 towards 5.0 and the flow of globalization of information based on the Internet of Things (IoT) cannot be avoided. The process of digitization that allows everyone to be connected to the internet and digital devices has affected all aspects of human life. Digital space has become a free space for forms of self-expression, thoughts, values, and ideas for everyone.

At the beginning of its emergence, the presence of digital technology changed the work culture and people's lives. According to Savitri (2019), the way humans live, work, and relate to one another has changed radically with technological developments. This development is marked by the development of internet networks and social media which make life easier for modern humans in all fields. In the context of being a state, the development of social media and technology facilitates community participation, encourages improvements in transparency, accountability, and co-production of ideas and policies with citizens to direct and transform society towards the ideals of a state (Sitabuana, 2022).

Technology and social media do not only provide convenience for modern society but also cause irregularities in their uses. This is likened to a "double-edged sword" because, in addition to the positive impact, it also brings a negative impact. Over time, the development of technology and social media has caused concern and anxiety because the side effects have resulted in a crisis of

public ethics and social values, decadence, moral and mental decline, and weakened ability of human critical thinking. It is generally found that the uses of digital technology and social media recently have been distorted by various negative and illegal content and information such as the issues of SARA (Ethnicity, Religion, Race, and Intergroup), slander, hate speech, fake news (hoax), fraud (fraud action), violation of information security (information security threat) to information or content that is troubling the public (Siagian, Budiarto, & Simatupang, 2018).

These harmful behaviors in social media eventually lead to more serious consequences because the intensity of using social media has uprooted people's character from the original reality in the real world and changed people's behavior on social media which is sometimes not in line with any ethical and moral values (Anonim (d), 2023; Hasan, 2023). In addition, social media has turned out to be a means of propaganda that can endanger the unity and integrity of the nation, instability in national security and defense, disrupt public order, pit members of society against each other, and cause conflict in society that triggers the emergence of social unrest. These conditions have very far deviated from the initial goal expected; social media can be a means and medium for spreading messages of unity, as well as embracing and uniting the strength of the nation to realize the goals of the state.

One of the clearest examples of the role of social media in national disunity is what happened

in the Arab Spring case when social media became a tool to mobilize politics and create public opinion to influence the ruling government. From this incident, four heads of government in power were successfully brought down, such as the heads of government of Tunisia, Egypt, Libya, and Yemen while other Arab countries were forced to change state policies due to demonstrations carried out by their people (Gunawan, & Ratmono, 2021).

The great influence of social media causes problems for Indonesian people. As it is known that the large population, high penetration rate of the internet, and very high use of social media have led people to an unlimited space for information, ideas, and association. According to We Are Social data, in Indonesia in 2022, there were 191.4 million or 68.9% of the 277.7 million population who were active users of social media (Kemp, 2022). Judging from the age group, the largest number of internet users was dominated by the age group of 13-34 with a total of 98.64% users (Shamil, 2023). This negative content can be a boomerang that will damage the intelligence, morality, ethics, and mentality of a generation of people who are cultured and have noble characters. The high number of social media users makes society a very vulnerable target for crime and, conversely, society becomes the perpetrator of crime, especially in relation to data mining carried out by every stakeholder, including the government, business actors and criminals. Meanwhile, the existing laws have not been optimal enough to provide protection for the community (Yudiana, Rosadi, & Priowirjanto, 2022).

All this time, the regulation and protection for the public in the use and utilization of technology have been regulated through Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions ("EIT Law"). This regulation serves as a guideline for the implementation of electronic systems, namely the use of electronic systems or devices to obtain, collect, process, and/or distribute information carried out by state administrators, individuals, business entities, or the public. Article 15 of the EIT Law requires an obligation for Electronic System Organisers (ESOs) to operate electronic systems reliably, safely, and responsibly. The arrangements regarding the operation of electronic systems are further regulated in Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions ("Government Regulation on IEST"). The Government Regulation on IEST differentiates ESOs into two groups: (1) Public ESOs are the ESOs by state administrators or institutions appointed by state administrators, for example, a website with the domain "go.id"; and (2) Private ESOs are the ESOs by people, business entities, and the community, for example, other than the "go.id" domain such as WhatsApp, Google, Instagram, and others (Nurhanisah, 2022). Article 6 of the Government Regulation on IEST contains an obligation for Public and Private ESOs to register their respective electronic systems.

To comply with the provisions in the EIT Law and Government Regulation on IEST, the government regulates the procedures for electronic system registration. Initially, the government only regulated the procedures for registering electronic systems organized by Public ESOs through the Minister of Communication and Informatics Regulation Number 10 of 2015 concerning Procedures for Registration of Electronic Systems for State Administration Agencies ("Minister Regulation on Public ESOs"). Furthermore, concerning the significance of the adverse effects, the influence of social media on national unity and integrity, the stability of national security and defense, and public order has encouraged the government to make a law or regulation to build an equilibrium (balance) in the implementation of the electronic system, especially concerning social media activities in society. With these laws or regulations, the public as users of technology (information) and social media (users of electronic systems) receive protection, can supervise each other, and carry out various activities on social media in a responsible manner. Therefore, the Government issued the Regulation of the Minister of Communication and Informatics Number 5 of 2020 concerning Private Electronic System Operators ("Minister Regulation on Private ESOs"). Bearing in mind that the Minister Regulation on Private ESOs relates to the interests of the wider community, so it is necessary to conduct a special study to measure the effectiveness of these

regulations in setting norms and their application in society.

Before this research, several previous studies had a relationship and relevance to this research, but the perspectives and discussions are different. First, Agusta's research (2022) discusses Government Regulation on IEST objects and phenomena that are observed as normatively related to the collection of personal data by electronic system operators.

Second, the research by Rahadjo and Afifah (2022) normatively focuses on Minister Regulation on Private ESOs related to personal data and human rights on freedom of opinion and expression. However, this normative study is still quite vague in describing problems systematically. Third, Longo's (2022) research discusses the impact of democracy due to the power of social media platforms and the consequences arising from it. This research recommends a legal approach to reach digital developments.

Fourth, the research of Chourasia, Pandey, and Keshri (2023) outline the prospects and challenges faced in industry 6.0. The development of law and information technology prioritizes correct and fast information transfer, data security, artificial intelligence-based legal analysis, and personal data protection. Therefore, the law must be able to provide significant legal protection for technological developments and their risks.

Fifth, Pöysti (2023) outlines an analysis of the risks faced by society in digital networks related to cyber security and identifies the need for laws

and regulations to protect human interests and dignity. In his article, he focused the legal information approach in overcoming digitalization problems and the regulation of cyber security and information risk management in statutory regulations and legal practice.

Unlike the previous studies as described above, this research focused on: (1) the research method in the form of an empirical juridical research method to study the Minister Regulation on Private ESOs from a normative and contextual textual perspective with the development of community dynamics; (2) the object and purpose of the research is to examine the effectiveness of the Minister Regulation on Private ESOs in realizing social media equilibrium; and (3) the theoretical basis is based on the principles of the Pancasila Law State, human rights principles, and the principle of the effectiveness of the legal system.

Based on the description and facts stated above, the main problem comprehensively analyzed and studied in this study is "How is the effectiveness of the Minister Regulation on Private ESOs in building social media equilibrium?"

B. RESEARCH METHOD

This research is a sociolegal research aimed at examining the effectiveness of the Minister Regulation on Private ESOs in building social media equilibrium. These regulations were studied by analyzing the norms and people's behavior to the norm to describe the problem as a whole

(Sulaiman, 2018). The focus of this research is divided into:

- (1) In the normative aspect, the identification of the norms of the Minister Regulation on Private ESOs (statute approach) is based on ontological, philosophical, sociological, and juridical foundations linked to theory/doctrine in normative law (Nurhayati, Ifrani, & Said, 2021);
- (2) In the empirical aspect, with a qualitative approach, an analysis was carried out regarding the effectiveness of regulations, impacts, and socialization of Minister Regulation on Private ESOs in the society (Ali, & Heryani, 2013; Benuf, & Azhar, 2020).

The data studied is in the form of primary data which is the result of observations (on social media and mass media related to public opinion on Private ESOs regulation) as well as results of interviews/focus group discussions with Dr. Andi Widiatno, S.H., M.H. (Lecturer in technology, cyber and telematics law, Trisaksi University) and Erik Wijaya S. Psi., M.Si (Lecturer in Psychology, Tarumanagara University) and secondary data in the form of literature studies. The data were selected and sorted based on their validity and reliability for further qualitative analysis (Susanto, & Irwansyah, 2021; Sonata, 2014).

C. RESULT AND DISCUSSION

1. Private ESOs in Regulation: Teleology, Norms, and the Problems

The relationship between technological advances and democratization processes has

opened new spaces for expressing and spreading narratives in the public sphere. The process of digitalization and democratization of digital space encourages everyone, groups, and countries to interact, depend on, relate to, and influence one another (Musarovah, 2017). The presence of technology (information) has contributed to influencing the formation and implementation of regulations, as well as the quality of law in a democratic government.

Advances in information and communication technology are opportunities and challenges that must be taken seriously to answer legal problems and developments in the era of revolution 4.0. This momentum must be directed properly to support and preserve national unity and integrity based on laws and regulations (Alincia & Sitabuana, 2021). Pianini and Omcini (2019) emphasized that information technology has laid the foundations for the realization of digital democracy. This is marked by the guarantee of freedom of expression and opinion as well as the opening of space for the public or citizens to participate in political process.

In this case, it must be understood that expressing opinions as a form of freedom of expression and opinion is not taboo but essential for democracy; anyone has the right to convey thoughts, opinions, attitudes, and feelings in various ways as long as they do not violate statutory regulations (Anggraini, 2023). Various contents, information, substances, or activities that occur and are spread on social media are part of freedom of expression and opinion. In the development of the

digital democratization process, the relationship between democracy and information technology tends to experience polarization. This gave rise to syntopian views or idea which on the one hand have expanded and improved the emotional and social bonds of its users and encouraged cooperation and social integration. On the other hand, technology (internet and social media) also carries various risks that need to be anticipated so that they do not become threats and dysfunctions to social life (Gunawan, & Ratmono, 2021).

Social media has the power to divide nations. This can be seen from the results of the 2022 Edelman Trust Barometer survey which shows that the government and mass media (social media) are the institutions that are considered more dominant in causing divisions than unifying the nation.

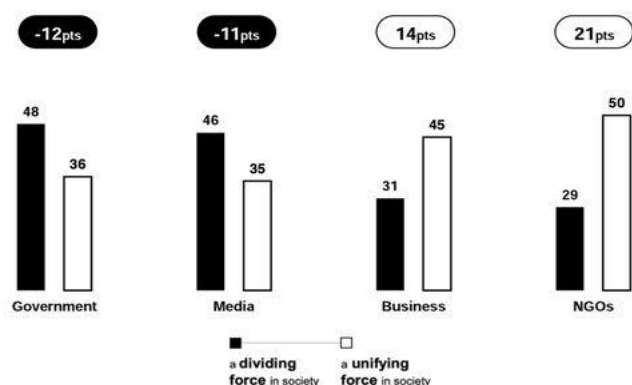


Figure 1. The Power of Dividing and Uniting the Nation in the Edelman Barometer (Supriadi, 2023).

The Indonesian people still remember how social media played a role as a means of division in the 2017 Jakarta Regional Head Election and the 2019 Presidential Election. Social media was used as a means to influence public opinion to support or

weaken one pair of candidates which caused social fragmentation and segregation (Annas, Petranto, & Pramayoga, 2019; Utami, 2018). The results of the 2019 Indonesian Telematics Society Survey (Mastel) show that social media is the biggest channel for spreading hoaxes (87.5%), chat applications (67%), websites (28.2%), and print media (6.4%).

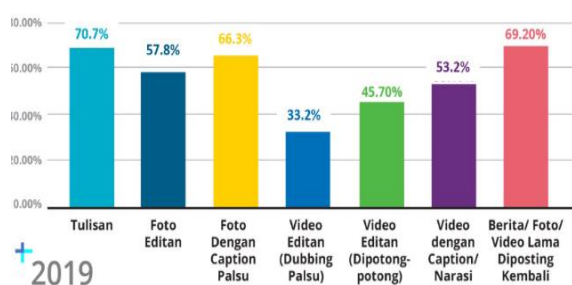


Figure 2. Various Forms of Hoaxes (Mastel, 2019)

The use of social media in Indonesia is at a quite disturbing level. This is marked by the numerous legal cases related to technology and social media. The Ministry of Communication and Informatics stated that, from 2018 to April 2021, 3,640 hate speeches had been handled, and in 2020 there were 554 fake news spread across 1,209 digital platforms, such as Facebook, Instagram, Twitter, and YouTube with a total of 89 suspects that had been established (Nafi'an, 2020). Throughout 2020, the Metro Jaya Regional Police also handled 443 cases of hate speech and the spread of hoaxes and took down 1,448 social media accounts (Ernes, 2020).

Negative records on the use of the internet and social media are also illustrated by Microsoft's survey regarding the Digital Civility Index in 2021 which shows that Indonesia is the most

disrespectful country in Southeast Asia, and this survey placed Indonesia in 29th place out of 32 countries involved. Meanwhile, Indonesia's digital literacy ranking was ranked 56th out of 63 countries based on the IMD World Digital Competitiveness survey, which shows that Indonesia's digital literacy is still quite low compared to other countries (Pakpahan, & Nararya, 2023). From the 2022 Digital Literacy Index survey, the data obtained show that 72.6% of 10,000 respondents obtained information sources from social media, and 30.8% of the respondents said that social media was the most trusted source of news even though not all information on social media is based on the correct verification process (Anonim (a), 2023).

For the record, citing the results of Ali's (2020) research on 70 countries in the 2007-2017 period, it shows the impact of developments in information and communication technology and the internet on the development of a country's democracy. There are two big dichotomies between developing and developed countries. In developed countries, the development of the internet and information technology is directly proportional to media freedom and democracy. Meanwhile, developing countries are usually autocratic political regimes in which the internet and digital content in many cases are distributed by government authorities, giving rise to a negative impact on the development of democracy. This is influenced by institutional factors that require structural.

The impacts and phenomena of social media deviations indicate the following: (1) the public's low

understanding of using social media; (2) the low ability of the community to be wise in obtaining and responding to all information available on social media; and (3) there is a tendency of segregation and polarization caused by the bad behavior of the community on social media. This condition is very worrying because the condition of Indonesia is very diverse considering the existence of various ethnicities, religions, races, classes, cultures, habits, customs, languages, and cultures. To the values of *Pancasila*, the use of social media in the context of the diversity of the Indonesian nation requires the application of a spirit of unity, kinship, deliberation, cooperation, mutual reinforcement, and mutual respect so that they can embrace and gather the strength of the nation. If this diversity is not managed and cared for, the impact of social media will turn into what has happened recently, i.e.: (1) disturbing, pitting one against another, and triggering conflict in society; (2) jeopardizing unity and oneness; (3) triggering social unrest; and (4) disturbing public order.

In today's technological era, the boundaries between public and private spheres have become very vague, exacerbated by the culture of Indonesian people who tend to consume information that is private and should not need to be known (the general term is called "nosy/kepo (knowing everything particular object)") and seeking for public attention (often called "viral") so that in a psychological aspect it will easily influence the behavior and attitudes of other individuals in using social media. The accumulation of such

psychological conditions ultimately has the potential to cause chaos in society, and its impact has begun or has been felt especially today. The problem is, in society, often the dissemination of information which in the end causes chaos considered part of the freedom of opinion and expression but is not balanced with awareness or wisdom in using social media ethically (Wijaya, 2023).

As it is known that the right to freedom of expression and opinion owned by social media users is a constitutional right as a citizen as well as human rights which are recognized and guaranteed in Article 28, Article 28C paragraph (1), Article 28E paragraph (3), Article 28F, and Article 28G paragraph (1) of the 1945 Constitution of Indonesia. In line with one of the objectives of being a state as emphasized in Paragraph IV of the Preamble of the 1945 Constitution of Indonesia that reads "to protect the entire Indonesian nation", the constitutional rights and human rights to express opinions using social media must receive protection from the state or government. Moreover, the Indonesian Law State (Article 1 paragraph (3) of the 1945 Constitution of Indonesia) is the *Pancasila* Law State. According to Hidayat (2019), *Pancasila* as the basis of the philosophy and way of life of the Indonesian nation has established basic values which are embodied in a legal state based on *Pancasila*, which has the following characteristics:

1. Family in nature by upholding human rights and prioritizing national interests; endeavors are made to create harmony and balance between individual interests and national (society)

interests by giving the state the possibility to intervene as long as necessary for the creation of an orderly national and state life, in accordance with the principles of *Pancasila*.

2. Containing certainty and justice.
3. Reflecting Indonesia as a Religious Nation State that the Indonesian nation is a nation that Believe in God.
4. Law as a means of social change and law as a mirror of society's culture.
5. The making and forming national laws are based on neutral and universal legal principles based on *Pancasila*, which has the main requirements that *Pancasila* is the glue and unifier of the nation based on the values that can be accepted by all interests and do not prioritize certain groups or classes, prioritize the principle of mutual cooperation and tolerance, as well as the existence of the same vision, mission, goals, and the same orientation accompanied by mutual trust.

With these basic values, users can enjoy freedom of expression and opinion in public through social media as long as they can create a balance of rights, unity, and harmony in living together as a nation. These characteristics become filters for various changes and developments in technology and social media so that the potential for national polarization and disintegration can be prevented and avoided. With the characteristics and values of *Pancasila*, the contents that are in line with national values can be distinguished, so it must be protected and maintained from the contents that are contrary

to national values to be limited and eliminated. What is mentioned last does not mean there is silence and violation of human rights protected by the constitution against creators, spreaders, or owners of content on social media. In the human rights doctrine, the implementation and adoption of human rights values can be divided into two forms, i.e.: (Wahyudi, 2016)

Table 1. Comparison of Universal and Particular Human Rights

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|-------------------------|--|
| Universal Human Rights | <ul style="list-style-type: none"> - This applies to all countries, - absolute, - Recognizing no boundaries, - Universally applicable. |
| Particular Human Rights | <ul style="list-style-type: none"> - Human rights can be ignored or adapted, - Relative depending on social conditions, - Upholding the sovereignty and wisdom of the state, - Applies in particular and relative. |

Human rights as a value system are influenced by the diversity of values, history, culture, political system, ideology, level of social and economic development as well as other factors that exist and are owned by a country, causing differences in the implementation of human rights. This thinking is called cultural relativism. This causes human rights to apply in a relatively particularistic manner because apart from being a universal problem, human rights are also a national problem for each country. The 1945 Constitution of Indonesia in Article 28J paragraph (2) has strictly regulated this matter by stating that in exercising human rights:

"Everyone must comply with the restrictions determined by law with the sole purpose of

guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security, and public order in a democratic society”.

On this basis, the creation, dissemination, and distribution of information and content by social media users in the context of expressing ideas, opinions, and all forms of thought constitute human rights that are particular in nature in which the implementation must be in harmony with and in accordance with the values of *Pancasila* which are internalized in the nation's life. Attempts by a person or a group of people to impose or breakthrough human rights for reasons of universalization and unification of human rights and contrary to the customs and culture of a nation will certainly cause resistance in society.

The Indonesian Constitution adheres to human rights as stated in Article 28J paragraph (2) of the 1945 Constitution of Indonesia. These restrictions are only possible to fulfill the four elements in it. In relation to the use of information and communication technology, taking certain actions carries the same consequences for protecting human rights which are not solely interpreted based on articles in international documents which tend to be universal and liberal (Jayadi, 2017).

To anticipate the worst forms that can be caused by social media, laws or regulations are needed. On the one hand, one's freedom to use social media needs to be guaranteed and protected, but it must be done responsibly. On the

other hand, it is necessary to realize that in the era of technological advances, the use of social media may create a condition or situation that threatens or disrupts order and security in the country. Therefore, the presence of a legal instrument is necessary to control and maintain security and public order while ensuring guarantees for public freedoms (Wijaya, 2023).

In line with this opinion, Heru Nugroho state that there are several strategic steps to maintain the productive nature of Indonesia's digital democracy that can be taken by building a critical mass and strengthening cyber-intelligent through improving the quality of human intelligence, technological intervention, as well as the completeness of regulations and law enforcer. These steps are needed to secure digital democracy during information disruption, especially through social media (Gunawan & Ratmono: 2021). Regulation through complete regulations is one of the efforts to regulate and control various interactions and activities on social media. The existence of laws that regulate the use of social media can function as a tool to change society (law as a tool of social engineering) to achieve the expected goals (attaining the goals of the state and embodying the values of *Pancasila*). The change may include the changes in social values, social norms, behavioral patterns, social organization, the structure of social institutions, society, power and authority, and social interaction (Matnuh, 2017).

By considering the goals of change to be achieved by regulating the implementation of ESOs,

it is expected that there will be changes in social values and processes of social interaction to maintain a healthy digital climate (especially digital business) and to overcome the contents that are contrary to *Pancasila*, the 1945 Constitution of Indonesia and various laws and regulations, disturbing the community and disrupting public order. For this reason, the government then issued the Minister Regulation on Private ESOs. The regulation regarding Private ESOs was made because there were so many and scattered number of responsibilities imposed by this regulation on Private ESOs in managing and administering electronic systems which have so far been left free and difficult to be held accountable in the event of a violation (because the only actions that can be taken are blocking or stopping of electronic systems).

The Minister Regulation on Private ESOs stipulates the obligation for Private ESOs to register electronic systems organized by persons, legal entities, and the public as contained in Articles 2-3 of the Minister Regulation on Private ESOs. Private ESOs that are subject to registration obligations are the ESOs that have portals, websites, or applications in the network via the internet that are used for:

1. Providing, managing, and/or operating the offering and/or trading of goods and/or services (e-commerce);
2. Providing, managing, and/or operating financial transaction services;
3. Sending paid digital material or content through data networks either by downloading via portals or websites, sending via electronic mail, or through other applications to Electronic System User devices;
4. Providing, managing, and/or operating communication services including but not limited to short messages, voice calls, video calls, electronic mail, and online conversations in the form of digital platforms, networking services, and social media;
5. Search engine services, services for providing Electronic Information in the form of writing, sound, images, animation, music, videos, films, and games, or a combination of part and/or all of them; and/or
6. Processing of Personal Data for operational activities serving the public related to Electronic Transaction activities.

The matters that need to be registered by Private ESOs regarding this obligation include: (a) the name of the Electronic System; (b) the Electronic Systems sector; (c) uniform resource locator (URL) website; (d) the domain name system and /or Internet Protocol (IP) server addresses; (e) a description of the business model; (f) a brief description of Electronic System functions and Electronic System business processes; (g) information on Personal Data processed; (h) information on the location of management, processing and/or storage of Electronic Systems and Electronic Data; and (i) a statement stating that Private ESOs guarantees and performs the

obligation to provide access to Electronic Systems and Electronic Data to ensure the effectiveness of supervision and law enforcement in accordance with the provisions of laws and regulations.

Based on the normative review, it can be seen that the Minister Regulation on Private ESOs contains at least six articles that have potential problems in their implementation, as follows:

| Rule | Complete Terms | Reason |
|--------------------------|---|--|
| Article 9 paragraph (4) | Electronic Information and/or Electronic Documents that are prohibited by classification: a. Violating the provisions of laws and regulations. b. Disturbing the community and disrupting public order; And c. Informing how or providing access to prohibited Electronic Information and/or Electronic Documents. | The problem in this provision is related to the definition of "disturbing the community and disturbing public order" which has a very broad meaning, and anyone can apply for termination of access. |
| Article 14 paragraph (1) | Requests for Termination of Access to Electronic Information and/or Electronic Documents that are prohibited can be filed by: a). public; b). Ministries or Agencies; c.) Law Enforcement Officials; and/or d). judiciary. | |
| Article 14 paragraph (3) | The application is urgent in terms of: a). terrorism; b). child pornography; or c). the contents that disturb the public and public order | |
| Article 12 paragraph (3) | Cloud Computing Operators are required to provide Electronic Information and/or Electronic Data regarding users of Cloud Computing | The problem with this provision is related to the obligation to provide users electronic |

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|-----------------------------------|--|---|
| | Operator services under their control for the purposes of supervision and law enforcement. | information and data for surveillance and law enforcement |
| Article 21 paragraph (1) | Private ESOs are required to provide access to Electronic Systems and/or Electronic Data to Ministries or Agencies in the framework of supervision in accordance with statutory regulations. | which has the potential to be misused and violates privacy. |
| Article 21 paragraph (3) | Procedures for granting access to Electronic Systems and/or Electronic Data for the Purpose of Supervision and Law Enforcement are carried out in accordance with the provisions in part two and part three of this Ministerial Regulation. | |
| Article 26 paragraphs (1) and (2) | Private ESOs provide access to Electronic Data requested by the Ministry or Institution if the request is officially submitted to the Private ESOs Contact Person by attaching: 1. the basic authority of the Ministry or Institution. 2. the aims and objectives as well as the interest of the request; and 3. a specific description of the type of Electronic Data requested. | The problem with this provision is related to the obligation to provide access in the form of traffic and information data, communication content, and specific personal data because they are prone to misuse in the realm of personal data. |
| Article 36 paragraph (1) | Private ESOs provide access to Traffic Data and Electronic System User Information (Subscriber Information) requested by Law Enforcement Officials in the event that the request is submitted officially to the Contact Person for Private ESOs. | |
| Article 36 paragraph | Private ESOs provide access to the | |

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| (3) | Communication Content requested by Law Enforcement Officials in the event that the request is officially submitted to Private ESOs. | |
| Article 36 paragraph (5) | Private ESOs provide access to Specific Personal Data requested by Law Enforcement Officials in the event that the request is submitted based on the provisions of paragraph (4). | |

If the Minister Regulation on Private ESOs is interpreted as part of the legal system that regulates electronic systems, in this context it is necessary to consider Lon F. Fuller's opinion which put forward eight requirements for the morality of the legal system in order to work properly, i.e.: (1) the existence general rules; (2) the rules must be published; (3) the rules are not retroactive; (4) the rules must be clearly formulated; (5) the rules must not contain contradictions; (6) the rules do not require something impossible to fulfill; (7) the rules may not be changed frequently; and (8) the government sticks to the rules (Hasib, 2016). By considering the requirements and notes in the table above, the formulation of norms in the Minister Regulation on Private ESOs contains unclear formulations because they have the potential for multiple interpretations.

The regulation also contradicts the principle of clarity of formulation in the formation of laws and regulations in which each legislation must meet the technical requirements for the preparation of laws and regulations, systematics, choice of words or

terms, and clear and easy-to-understand legal language so as not to cause various interpretations in its implementation (Article 5 letter f of Law 12/2011 and its explanation). The use of the phrases "disturbing", "disturbing public order", and "supervision" becomes biased in meaning when the parameters that can be used to measure them are not explained further. This mistake is as described by Cyras & Lachmayer (2023) in their article "Different Views on Legal Information Systems: Separate Legal Meanings and Legal Sublevels" stressing that, in designing a legal act, it must be represented based on the appropriate operational legal meaning. Different legal meanings are associated with different representations and stakeholders view the act differently, resulting in different views.

The second problem regarding the granting of authority to the government in the context of "supervision" and "law enforcement" to access the information system (personal data) of social media users is very vague because such access must be granted only based on the following reasons:

1. Basis of authority.
2. Purpose and objectives and interests.
3. A specific description of the type of data requested.
4. Criminal acts being investigated, prosecuted, or tried.

The Minister Regulation on Private ESOs as a technical regulation does not stipulate clear procedures for how the government or law enforcement officials can obtain access to the

personal data of Private ESOs. The regulation in the Minister Regulation on Private ESOs gives law enforcement officials and the government such flexible authority to access electronic device user information, which previously required a request and approval for permission from the court to open such access.

The access to information systems without going through court permission normatively contradicts Law Number 27 of 2022 concerning the Personal Data Protection (PDP Law) which guarantees privacy rights. Thus, the role of the government is not to request user data from Private ESOs but to build a mechanism so that administrators can be careful and responsible for managing data under the auspices of Private ESOs and do not need to provide consumer data (Widiatno, 2023). Therefore, the rules regarding the authorities and procedures for the government and law enforcement officials in obtaining access to information and information systems for social media users must be reviewed because they are contrary to the PDP Law and directly relate to users of electronic devices so as not to harm the public. The use of any information through electronic media relating to a person's personal data must be carried out with the consent of the person. In the use of information technology, protection of personal data is a part of personal rights (privacy rights). Personal data is a confidential matter in which not just anyone can access, share, or even leak other people's personal data to the public just like that. In this case, various regulations have

regulated it and guaranteed security (Wilona, & Purwadi, 2021).

The third problem related to Minister Regulation on Private ESOs is its nature in the form of ministerial regulation. Ministerial regulations are only implementing higher statutory provisions and cannot make or form new laws, as well as in the aspect of punishment; the highest can only be administrative penalties/sanctions. In addition, the regulation regarding private ESOs has so far only been complaints so that the Ministry of Communication and Informatics can only process alleged violations by private ESOs as long as there are complaints (the nature of the government is passive). Therefore, the existence of the Minister Regulation on Private ESOs has weak enforcement because the authorities regulated in it are only interpreted as reprimands, appeals, and mere administrative issues (Widiatno, 2023).

According to Widiatno (2023), teleologically the purpose of establishing the Minister Regulation on Private ESOs is to overcome various private sites or domains that cannot be intervened by the government regarding online gambling content, online prostitution, or other crimes carried out using electronic systems (social media) so that the Minister Regulation on Private ESOs is only an intermediary between the private and personal domains. Therefore, the state must position itself so that it does not become authoritarian because the concept of the welfare state is marked by the guarantee of freedom of speech.

As the highest authority in the formation of law, the state has sometimes inadvertently reduced the character of the *Pancasila* culture which goes hand in hand with the goals of the Indonesian people in realizing justice, peace, and happiness for the people. Formation of law must be moral based on *Pancasila* and the 1945 Constitution of Indonesia as the ideals of the state, state goals, ideology, and the nation's outlook on life. *Pancasila* has provided guidelines philosophically, ideologically, and practically in the formation of law (legislation) as follows: (Hidayat, 2019; Agus, 2016)

1. From a philosophical aspect, the law must be able to provide protection and fortification for the interests of society and the nation.
2. In the ideological aspect, law systematically and rationally realizes the values of *Pancasila* namely divinity, humanity, unity, democracy, and justice, and can reflect the realities that live and develop in society.
3. In a practical aspect, the law is a means of realizing the four basic goals of the state.

The regulation of norms in the Minister Regulation on Private ESOs as stated above is the basis for people's doubts on the applicability of these rules. The issuance of these regulations was not fully accepted by the public. According to the Edelman Trust Barometer survey, the government is one of the causes of division in society. This raise concerns that the Minister Regulation on Private ESOs is used as a basis for giving authority to the government for the purposes of supervision and law enforcement can obtain access to personal data

and oversee various private activities of the public on social media through the extension of the private ESOs which results in accusations the government is anti-criticism turned is the responsibility of digital platforms (social media). The issuance of the Minister Regulation on Private ESOs has the potential to be misused due to multi-interpretation of articles and unclear parameters for the government and law enforcement officials in obtaining access to personal data from private ESOs. The enactment of the Minister Regulation on Private ESOs has been rejected because of concerns from the public that the regulation tends to threaten the freedom of its users (community).

2. Private ESOs in Society: Effectiveness, Public Responses, and Critical Evaluation

As previously explained, social media can ideally indeed be a means of strengthening democratic culture, but lately, it has turned out to be contributing negatively and having a negative impact on democratic principles and even the elementary principles of a rule of law. Therefore, the laws governing users of technology and social media (electronic system users) must be able to provide protection for citizens' constitutional and human rights, to promote national unity and integrity, to maintain national integrity and integration, and to be based on *Pancasila* values as a distinctive noble character for the Indonesian people. To achieve this goal, the law needs to effectively regulate citizens' activities in utilizing technology and social media. Effective law will encourage people to be careful in using social

media and be able to reduce and prevent negative and illegal content on social media.

Even though the Minister Regulation on Private ESOs has been established to serve as a guideline for Private ESOs in filtering negatively charged social media content, public rejection still occurs. The resistance and rejection from the public towards the Minister Regulation on Private ESOs does not arise without reason but originates from the community's experience of several laws and regulations related to technology, the internet, and social media established by the government which have repressive tendencies that threaten freedom of expression and opinion for the community. The International Amnesty noted that in 2021 there were 84 cases with 98 victims related to violations of freedom of expression on social media (Yahya & Krisiandi, 2021). In line with that, The Economist Intelligence Unit shows that the Indonesia's Democracy Index score tends to decrease to 6.3 in 2020 and is the lowest in the last 10 years (Annur, 2021).

Same confusion, bearing in mind that the arrangements regarding electronic information and transactions in the EIT Law also contain the articles that contain summary formulations so that they become loopholes for the government's arbitrariness in regulating and criminalizing social media users other than the intended purpose by law. On that basis, when the enactment of the EIT Law, there are three important factors that cause public distrust of the government in guaranteeing freedom on social media, i.e.:

1. There are multiple interpretations of rubber articles and the granting of government authority to block or access electronic information; all of which are accommodated in the EIT Law. According to data by the Safenet, during 2008-2018, there were 263 cases related to freedom of expression online (CNN Indonesia, 2019).
2. The EIT Law does not regulate clear procedures and measures in limiting the dissemination and use of electronic information and transactions, and there are no clear parameters regarding the information on social media that can be categorized as "negative", "illegal", or "endangering the state" (Perdana & Yusuf, 2020).
3. There has been an increase in the number of cases of repression of freedom of opinion through the EIT Law, the government's failure to address various abuses of articles in the EIT Law, and the decline in the Indonesian Democracy Index (Anonim (c), 2021).

These indicators are sufficient to make the public, especially private ESOs, doubt the effectiveness of the Minister's Regulation on Private ESOs in ensuring the equilibrium of social media use. The legal system in relation to the development of technology and electronic information still has large gaps and weak monitoring mechanisms. Indonesia as a country can be categorized as quite weak in handling, developing and using information technology. Adhi and Soponyono (2021) emphasize that this condition is influenced by various law enforcement factors,

including regulatory issues in the field of information technology, the ability of legal officers, public legal awareness, and law enforcement problems in the field of information technology.

Rejection of the entry into force of the Minister Regulation on Private ESOs was put forward by several alliances or Non-Governmental Organizations (NGOs), including:

- 1) Legal Aid Institute 'The Press-Media Siber' stated that the regulation endangers freedom of opinion and expression, invades privacy, and threatens freedom of the press because it contains rubber articles, and content deletion and access to user accounts should be part of a due process of law that requires strict supervision.
- 2) The E-Commerce Association, through its general chairman, Bima Laga, said that there are unclear rules regarding the removal of sensitive content, including no explanation regarding standard procedures even though access to the system would pose a security risk, the maximum number of content requests that can be granted access, and the unclear definition of illegal content.
- 3) The Southeast Asia Freedom of Expression (Safenet), through its Director, Damar Juniarto, revealed that this regulation is problematic because it endangers the privacy of citizens and several articles can castrate freedom of expression due to the multi-interpretation of norms.

- 4) The researcher at the Institute for Community Studies and Advocacy (ELSAM), Alia Yofira, said that the mechanism for protecting user data is very lax in the regulations. For example, law enforcers do not require a court order to access electronic data against crimes that are punishable by at least two years in prison (Dongoran, 2022).

The weak public acceptance of the Minister's Regulation on Private ESOs was also influenced by the implementation of several changes to the enforcement of these rules. Lon F. Fuller in the theory put forward previously emphasized that the rules should not be changed frequently (they should be relatively constant through time). This shows the government's haste and unpreparedness, while private ESOs are urged to immediately register their electronic system. This can be seen from the changing deadlines for registration obligations, as follows:

1. The initial deadline is set from the date of promulgation on 24 November 2020 - 24 May 2021 (Article 47 of the Minister Regulation on Private ESOs)
2. The deadline was extended due to the changes in the risk-based registration model, from 2 June 2021 to 2 December 2021 (Article 47 Amendments to the Minister Regulation on Private ESOs): and
3. The deadline was extended for another six months starting from 21 January 2022 to 20 July 2022 (Number 5 point a of the Circular of

Minister of Communication and Information No. 3 of 2022).

The phenomenon of changing the deadline for registration obligations which is carried out at any time in practice is detrimental to private ESOs as the address of the regulation. In addition to being urged to register, private ESOs are threatened with sanctions when they do not or have not registered by the end of the registration deadline. The sanctions imposed are administrative in nature in the forms of:

- 1) Private ESOs who do not register are subject to sanctions of termination of access to the electronic system;
- 2) Private ESOs who do not report changes in registration information or provide incorrect information are subject to sanctions in the form of a written warning, temporary suspension of private ESOs, termination of access to the electronic system, and revocation of the private ESOs registration mark.

The threat of such sanctions makes private ESOs feel in a dilemma to register the electronic system. This can be seen from most electronic system platforms that register near the deadline for registration as follows: (Dongoran, 2022)

Table 2: Registered Private ESOs (2022)

| 8,693 Local Private ESOs | | 284 Foreign Private ESOs | |
|--------------------------|-------------------|--------------------------|-------------------|
| Name | Registration Date | Name | Registration Date |
| gojek | December 13, 2021 | Twitter | July 20, 2022 |
| Halodoc | October 26, 2021 | LinkedIn | July 28, 2022 |
| Lazada | October 4, 2021 | iCloud | July 20, 2022 |

| | | | |
|-----------|-------------------|--------------------|---------------|
| Ticket.co | June 2, 2021 | WhatsApp | July 19, 2022 |
| OVO | May 11, 2021 | Instagram | July 19, 2022 |
| Maxim | July 22, 2022 | Facebook | July 19, 2022 |
| Zalora | June 23, 2022 | Netflix | July 19, 2022 |
| Gosend | February 17, 2022 | Telegram Messenger | July 7, 2022 |

In measuring the effectiveness of the Minister Regulation on Private ESOs using five indicators of legal effectiveness according to Soerjono Soekanto, and three requirements for the effectiveness of the legal sub-system according to Lawrence M. Friedman, it was found that the Minister Regulation on Private ESOs still has several problems from legal substance factors and legal apparatus (legal structure). Romli Atmasasmita further explained that the law does not work, or the ineffectiveness of the law is not only caused by the mental attitude of law enforcement officers but also because of the socialization of the law which tends to be ignored (Itasari, 2021). This is what makes the Minister Regulation on Private ESOs experience rejection from the public.

In its development up to May 2023, there has been a significant increase in the number of private ESOs who have registered, and some have been processed and followed up by the government, as follows: (Kemenkominfo, 2023)

| Private PSE Status | Number of Domestic PSE | Number of Foreign PSE |
|---------------------|------------------------|-----------------------|
| Registered | 12,539 | 734 |
| Temporarily Stopped | 60 | 214 |
| Revoked | 14 | - |

Even though several private ESOs have registered, this has not been linear towards various negative content on social media. Throughout 2022, the Ministry of Communication and Information noted that there were 199,515 negative contents on social media, which included: 124,837 contents on Twitter, 50,440 contents on Meta Facebook, 19,603 contents via File Sharing, 1,477 contents on Telegram, 1,212 contents on Google, 1,126 contents on MiChat, 634 contents on TikTok, and 177 on Mango Live. In addition, until January 2023, the Ministry of Communication and Information has handled 1,321 contents of hoaxes or fake news related to politics, especially ahead of the 2024 simultaneous election year (Sudoyo, 2023). This does not rule out the possibility that there are still many hidden negative contents that have not been handled by the government. The conditions and implementation show that the enactment of the Minister Regulation on Private ESOs has not shown optimal changes in guaranteeing the social media climate even though private ESOs have been given the obligation to organize electronic systems in a safe, reliable, and responsible manner, and the government has been given supervisory authority over social media content.

Concerning the Ministry of Communication and Informatics data, there has been an error in the implementation of the Minister's Regulation on Private ESOs. Referring to Article 13 and Article 14 of the Minister Regulation on Private ESOs that terminates access to information or electronic documents that are prohibited are Private ESOs

while the public, ministries, agencies, law enforcement officials, and court institutions must submit requests to Private ESOs to take that action. Meanwhile, the government's authority is regulated in Article 21 to supervise the implementation of the obligations and responsibilities of private ESOs. On this basis, the authority to filter and select users' social media content lies with Private ESOs and not the government. If the government has the authority to filter the content, it will cause private ESOs to lose their function and the Minister Regulation on Private ESOs lose its dignity as a law because it is not complied with by stakeholders.

Complementing this error, several things also affect the non-optimal handling and supervision of negative contents on social media from 2020 to 2023 and the potential for the ineffectiveness of Minister Regulation on Private ESOs, i.e.:

1. The regulation regarding private ESOs is still experiencing a patchwork of arrangements to find the right and effective model from 2020 to 2022 (see the changes to the previous private ESOs registration mechanism).
2. After the entry into force of the Minister Regulation on Private ESOs, the authority to filter and block should be exercised by private ESOs, not by the government. The government only supervises the implementation of private ESOs obligations in filtering social media content, not as a technical implementer. In the article by Mar Lopez, et al. (2017), monitoring mechanisms can be carried out efficiently through computing systems to ensure privacy

protection and legal compliance. With this interaction protocol, in the event of a violation, there is information regarding the violation incident, a mechanism to correct the privacy violation, and actions that can be taken voluntarily.

3. Everyone can establish and organize their electronic system and at the same time, there is no interest (especially for small-scale private ESOs) to register the electronic system they have created. This has resulted in the number of private ESOs being very large, uncontrolled, and unregistered, while there is no system built to detect the actual number of private ESOs operating in Indonesia.

In addition to administrative-technocratic problems, public legal awareness (including private ESOs) also affects the low quality of effectiveness of the Minister's Regulation on Private ESOs. Legal awareness brings two impacts or attitudes towards law: (1) Legal conscientiousness as within the law (legal awareness as legal obedience, being within the law, in accordance with legal rules that are realized or understood); and (2) Legal conscientiousness as against the law (legal awareness in the form of opposing the law or violating the law) (Kamarudin, 2016). In this context, to determine the level of legal awareness possessed by private ESOs and the public can be seen from their adherence to fulfilling obligations under the Minister Regulation on Private ESOs. HC Kelman put forward three forms of obedience to the law, as follows: (Ali, & Heryani, 2013)

1. Obedience is compliance in nature, namely the compliance arising from a reward and trying to avoid punishment or sanctions.
2. Obedience is identification in nature, namely the compliance with the law not because of intrinsic value but to maintain good relations and group integrity.
3. Obedience is internalization in nature, namely the legal compliance based on intrinsic value, content, and purpose of law in accordance with society.

With these three factors, private ESOs compliance to fulfill obligations under the Minister Regulation on Private ESOs is compliance because it does not fully carry out obligations according to law but only to avoid government sanctions. Although this cannot show for sure whether the Minister Regulation on Private ESOs is effective or not, it is sufficient to show the low quality of effectiveness of Minister Regulation on Private ESOs and has the potential to be ineffective.

Enactment of these regulations with all their haste is very unwise and dangerous for the life of digital democracy in Indonesia. To achieve the goals of laws and regulations in order to form a social media balance, by taking into account the ease of forming and administering private electronic systems, there is an essential urgency to build control mechanisms and digital literacy so that private ESOs and the public have awareness and control over their own desires in the digital space. Compared to using a legal-punitive approach (Sugihartati, 2023). The characteristics of social

media that are easy to access, spread quickly, inexpensive, and interactive, make social media content management require its own methods and characteristics. In this case, a common view is needed, from the side of content creators, the public, and platform providers or organizers to create higher quality and useful social media content to create a positive social media equilibrium (Anonim (b), 2023).

In anticipation of various social media content that is troubling and contrary to *Pancasila* values, a technological approach and community participation can be carried out through: (Igari, 2014)

1. Using an automatic identification system machine that is automatically used to filter activity on social media using a certain algorithm. For example, the research by Yoon, Byeon, and Hee (2021) used social network analysis methods to identify, detect and classify negative comments to identify perpetrators of cyberbullying on social media. From the results of this analysis, the impact and influence as well as practical steps to prevent cyberbullying (blocking and so on) make it easier to manage healthier digital groups or communities and help the government overcome cyberbullying.
2. Monitoring manually from existing cyber teams, units, or institutions on social media content.
3. Encouraging complaint services from the community and development of user-oriented services.

4. Strong initiatives of the government (clear national strategies focusing on information and communication technology usage/utilization and ICT-promoting mechanisms and policies)

As a more synergistic-systematic step, the efforts to build a healthy digital space are not limited to the active role of the government (police and ministries), but require involvement, empowerment and community participation by building partnerships and trust to harmonize perceptions of disruption of digital security and order as well as improving the quality of life in a better digital world (Widagso, & Hariyani, 2016).

Almost in line with this opinion, Widiatno (2023) suggests several approaches that can be taken to overcome various problems related to the implementation of electronic systems, i.e.:

1. Through social engineering by which people are taught and given knowledge on the use of technology.
2. Through technological approaches such as the use of antivirus or firewalls or protection of social media content
3. Through a criminal law approach to private electronic system operators to provide clear rules of the game, to encourage the involvement of all law enforcement officials in patrolling cyber activities, to encourage the private ESOs certification process, and to ensure the maintenance of public order in the implementation of electronic systems, especially social media.

Confirming the previous opinion that an educational approach through digital literacy is required by remembering and paying attention to the low digital culture of society which is shown based on the results of a study conducted by the Ministry of Communication and Informatics, the national digital literacy index for 2022 is 3.52 points from a scale of 5.00 (an increase of 0.05 points from the year 2021). This figure shows that Indonesia's literacy level is at a moderate level. This is not significant enough to face several major challenges from advances in digital technology including social media. The indicators of digital literacy ability can be measured using four main pillars, i.e.: (1) digital skills, which is an ability to use hardware and software in digital operating systems; (2) digital ethics, which is an awareness of the use and protection of personal data; (3) digital security, which is an ability to consider the use of social media in everyday life; and (4) digital culture, which is a combination of the three previous pillars (Zuhdi, 2023)

The development of technology and social media which is very broad and difficult to reach requires a balanced approach to the system and regulations. Technological developments will certainly have consequences for legal developments. The laws that collide with technology will not be able to cover everything because cyber characteristics are anonymous and borderless. Building digital literacy intelligence empowering all available law enforcement resources to monitor social media activity and to enhance digital security

capabilities are real efforts that can be made to form a social media balance and overcome various adverse effects of the advancement of social media in this digital democracy era. This is very fundamental in a very pluralistic society like Indonesia.

D. CONCLUSION

The Minister Regulation on Private ESOs was made as a foundation that gives authority to the government to oversee the process of filtering and selecting social media content by Private ESOs. This is done so that social media content is in harmony with the values of *Pancasila* which strengthen and unite national life instead of causing disintegration, segregation, and social fragmentation. This effort is not intended to curb or threaten freedom of expression as a human right and constitutional right of citizens guaranteed and protected by the 1945 Constitution of Indonesia, but rather to protect the rights of social media users, which are relatively particular so that they are based on the noble values of *Pancasila*. By paying attention to the conditions, data, and facts, an understanding is obtained that the Minister Regulation on Private ESOs in its implementation has the potential to be ineffective or has a low quality of effectiveness due to several factors. Normatively, the Minister Regulation on Private ESOs has several fundamental weaknesses or errors: (1) the formulation of norms contains ambiguity and multiple interpretations which are vulnerable to misuse in their implementation; (2) the

absence of comprehensive parameters and criteria regarding the form of supervision that can be carried out by the government over private ESOs; and (3) the form of regulations through ministerial regulations does not have adequate legal standing in the law enforcement process (the sanctions given are only in the form of administrative sanctions and cannot create new legal rules). Meanwhile, sociologically, the implementation of Ministerial Regulations on Private ESOs has low effectiveness or is ineffective because: (1) the deadlines and implementation often change; (2) there is resistance from various community groups, especially stakeholders; (3) the government's low ability to disseminate these ministerial regulations; and (4) weak public compliance in responding to these regulations and is only limited to fulfilling obligations so as not to be subject to sanctions and not because of Private ESOs's self-awareness.

To overcome some of the problems that have occurred or have the potential to occur, the government needs to review private ESOs regulations or make implementation guidelines (explanations) for several brief articles and detailed procedures for access to electronic data or information by the government and law enforcement. In addition, in supervising the filtering and selection of social media content, three approaches can be carried out, i.e.: (1) a system-based approach using electronic technology; (2) a participatory approach involving community participation; and (3) an educational approach by providing understanding and knowledge to the

public and Private ESOs regarding the importance of maintaining digital space in order to create a national character imbued with the spirit of *Pancasila* values.

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