

Tinjauan Hukum Perdata Internasional atas Perusahaan Asing Penyedia Layanan Konten dan/atau Aplikasi melalui Internet (Over the Top) = Foreign Companies Providing Content and/or Application through the Internet (Over the Top) Services in the Context of Private International Law

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Abstrak

Perkembangan teknologi memungkinkan perusahaan asing untuk beroperasi secara digital di negara lain dan memperoleh keuntungan usaha dari masyarakat negara lain tanpa perlu hadir secara fisik di sana. Salah satu sektor yang terdampak dari digitalisasi ini adalah sektor hiburan melalui tersedianya berbagai layanan konten dan/atau aplikasi melalui internet (layanan over the top atau "OTT") yang membuat konten daring dapat diakses secara global tanpa penyedia layanannya perlu mendirikan tempat usaha di negara tersebut. Namun, pengaturan terkait layanan OTT di Indonesia cenderung masih berlandaskan kehadiran fisik untuk bisa membebaskan kewajiban dan pertanggungjawaban kepada perusahaan asing secara hukum. Penelitian ini akan menggali bagaimana hukum Indonesia mengatur penyedia layanan OTT asing seperti Prime Video, WeTV, dan iQiyi yang beroperasi tanpa mendirikan bentuk usaha tetap dan bagaimana langkah yang dapat dilakukan negara untuk memperjelas kedudukan penyedia layanan OTT asing yang tidak hadir secara fisik di Indonesia. Pengumpulan data dalam penelitian ini dilakukan melalui studi pustaka dengan metode yuridis normatif, deskriptif kualitatif, dan deskriptif analisis. Hasil penelitian menunjukkan bahwa secara umum sebagai anggota World Trade Organization, Indonesia berkomitmen melakukan liberalisasi sektor layanan digital bagi pihak asing. Secara khusus, hukum Indonesia baru mengatur dalam aspek perpajakan dan pendaftaran sebagai perusahaan digital. Jika memenuhi ketentuan kehadiran ekonomi signifikan, penyedia layanan OTT dipersamakan dengan bentuk usaha tetap sehingga dapat dikenakan pajak penghasilan. Adapun langkah yang dapat dilakukan negara adalah merevisi aturan seputar bentuk usaha tetap dan menentukan kriteria konkret dari "kehadiran ekonomi signifikan" yang dapat mengacu pada panduan yang dikeluarkan oleh Organisation for Economic Co-operation and Development dan G20 serta melakukan kerja sama antara Kementerian Komunikasi dan Informatika, Kementerian Keuangan, dan Kementerian Perdagangan dalam mengusahakan pembebanan kewajiban kepada penyedia layanan OTT asing melalui optimalisasi pangkal data ketiga lembaga.

.....Technological developments allow foreign companies to operate digitally in other countries and gain business benefits from the people of other countries without the need to be physically present there. One of the sectors affected by this digitalization is the entertainment through the availability of various content and/or application services via the internet (over the top or "OTT" services) that makes online content globally accessible without the need for its service provider to establish a place of business in said country. However, regulations related to OTT services in Indonesia still tends to rely upon physical presence for foreign companies to bear obligations and be accountable by law. This research will explore how Indonesian law regulates foreign OTT service providers such as Prime Video, WeTV, and iQiyi that operate without a permanent establishment and what the state can do to clarify the position of foreign OTT service providers who are not physically present in Indonesia. Data collection in this study was carried out through literature

study using juridical-normative, descriptive-qualitative and descriptive-analytical research methods. The research concludes that in general, as a member of the World Trade Organization, Indonesia is committed to liberalizing the digital service sector for foreign parties. Specifically, regulations surrounding OTT service providers under Indonesian law have only covered aspects of taxation and registration as a digital company. If they meet the criteria of "significant economic presence", foreign OTT service providers can be treated as a permanent establishment, hence are subject to income tax. To clarify their position, the state may have to revise the regulation regarding permanent establishment and determine concrete criteria for the concept of "significant economic presence" which can refer to the guidelines issued by the Organisation for Economic Co-operation and Development and G20. Moreover, the state, through the Ministry of Communication and Informatics, the Ministry of Finance, and the Ministry of Trade can also work together optimizing their databases in an effort to impose obligations on the foreign OTT service providers.