

COMPARATIVE STUDY OF THE EUROPEAN UNION'S DIGITAL SERVICES ACT (DSA) AND ELECTRONIC INFORMATION AND TRANSACTION LAW NO. 1 OF 2024 ON ALLEGED VIOLATIONS OF CHILD PROTECTION ON THE *TIKTOK* PLATFORM

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ABSTRACT

This research discusses the fundamental differences between the European Union's Digital Services Act (DSA) and the Electronic Information and Transaction Law No 1 of 2024 in the context of child protection. The European Union's Digital Services Act regulates online platforms with a holistic and comprehensive approach, while the Electronic Information and Transaction Law No. 1 of 2024 focuses more on the Indonesian context. This research uses a qualitative method with a normative juridical approach. The normative juridical approach is an approach that is carried out based on the main material by examining laws and regulations, theories, concepts, legal principles related to differences in regulatory approaches, implementation, and their impact on child protection on the *TikTok* platform with descriptive-analysis. The difference between this article and previous research lies in the comparative study of data review. The objectives of this study are (1) to examine the fundamental differences between the European Union's Digital Services Act and the Electronic Information and Transaction Law No. 1 of 2024 in the context of child protection, (2) to describe the impact of these regulations on *TikTok*'s policies and practices in protecting children from the risks that may arise on the platform. The results of this study are that the European Union's Digital Services Act regulates online platforms with a holistic and comprehensive approach, while the Electronic Information and Transaction Law No. 1 of 2024 focuses more on the Indonesian context. The differences between the two include the definition of child protection, platform obligations, complaint mechanisms, sanctions, and content monitoring approaches. However, both aim to protect children from risks in the digital environment. The impact of both regulations on *TikTok*'s policies and practices includes increased platform obligations and responsibilities, transparency, stricter content monitoring, implementation of effective complaint mechanisms, and closer cooperation with government and relevant agencies.

Keywords: Comparative Study, Digital Services Act, *Tiktok*, Child Protection.

INTRODUCTION

The world's tech giants are back in Goanta 2022, the object of tightened regulatory scrutiny after the European parliament and European Union members agreed on a Digital Services Act (1). This law is the answer to the failure of tech giants to fight illegal content on their platforms. Companies face fines of up to 6 percent of total global annual sales once the law takes effect in 2024 at the earliest. According to a report, US e-commerce major Amazon could even face fines of up to 26 billion euros (US\$28 billion) if it is found not to have complied with the Digital Service Act(2). Meanwhile, Buri 2021 Google is threatened with 14 billion euros (US\$15 billion). In Indonesia, the supporting law for the Digital Services Law is the Electronic Information and Transaction Law No. 1 of 2024(3).

Despite the role of this law as a supporting medium, there are still pros and cons. Issues that arise in relation to the European Union's Digital Services Act and the Electronic Information and Transaction Law may cover several aspects, including: (a) Privacy Protection and Data Security Provisions, Prasetyo's Opinion 2018 There is debate about the extent to which the two regulations can provide adequate protection of user privacy and personal data security in an increasingly complex digital era (4); (b) Platform Liability: Issues arising from the liability of digital platforms for content uploaded by users, including how regulations govern platform liability for content that violates the law or harms users(5) ; (c) Child Protection: Both regulations may face challenges in addressing child protection on online platforms, including the regulation of content that is unsuitable or harmful to children; (d) Law Enforcement: Enforcement issues may also arise in relation to the effectiveness of the enforcement mechanisms provided by the European Union's Digital Service Act and the Electronic Information and Transaction Law in addressing offenses that occur in the digital environment; (e) Legal Limitations and Interpretation: There are concerns that some aspects of both regulations may be ambiguous or inadequate in addressing the evolving challenges in the digital realm, which may result in unclear application of the law; (f) International Harmonization and Compliance: In the context of globalization and digital cross-border, it is important to ensure that existing regulations are adaptable and comply with international standards, and facilitate cross-border cooperation in addressing issues that cross borders.

Child protection violations according to Sudrajat 2023, on the *TikTok* platform under the Digital Service Act could include content containing violence, harassment, or exploitation of children(6)(7)(8). With the Digital Service Act, platforms like *TikTok* are required to take steps to

prevent such content from appearing and respond to reporting quickly and effectively. Information and Electronic Transactions is a law in Indonesia that also regulates online platforms, including *TikTok*(9)(10). Under the Electronic Information and Transaction Law, child protection violations on the *TikTok* platform could include the dissemination of child pornography, sexual harassment, or exploitation of children. *TikTok* parties and users may be subject to severe sanctions if found in violation of child protection provisions under the Electronic Information and Transaction law(11)(12).

Based on the description of these problems, the researcher will focus the research topic on points number two, three, four, and six. The purpose of choosing this topic is that the Digital Service Act creates a safe and accountable online environment, the Digital Service Act can also be a representation of the global gold standard for regulating social media companies. Some of the rules in the Digital Service Act are a ban on using sensitive data such as race or religion to target advertisements, a ban on targeting advertisements to children, and a ban on using dark patterns that are specifically a tactic to capture people to be tracked online.

In addition to having clearly defined objectives, it is important to consider the benefits that may be derived from any given research project. The benefits of undertaking this research project can be classified into two distinct categories: theoretical and practical. The theoretical benefits include insights into the philosophical differences, principles, and legal approaches between the European Union's Digital Services Act regulation and the Electronic Information and Transaction Law No. 1 of 2024 in the context of child protection. It can pave the way for a deeper understanding of the evolution of internet regulation and child protection law across different jurisdictions. It may trigger a broader discussion on how the law can respond to the challenges that arise in an ever-evolving digital environment. A comparative study between the Electronic Information and Transaction Law No 1 of 2024 and alleged child protection violations on the *TikTok* platform could involve several aspects. First, according to Purwoharjo 2018 a comparison of the provisions in the Electronic Information and Transaction Law relating to child protection with the policies and practices implemented by *TikTok* in protecting child users from harmful or inappropriate content(13). Second, it analyzes the law enforcement conducted against child protection violations on *TikTok* based on the Electronic Information and Transaction Law. The conclusion of this study can provide insight into

the compatibility of existing regulations with the challenges faced in protecting children from the risks that arise on digital platforms such as *TikTok*.

Based on the background that the researcher has explained earlier, the researcher wrote the title “*Comparative Study of the European Union’s Digital Services Act and the Electronic Information and Transaction Law No. 1 of 2024 Against Alleged Violations of Child Protection on the TikTok Platform*”. The problem statements in the research in this study is as follows: (1) What are the fundamental differences between the European Union’s Digital Services Act and the Electronic Information and Transaction Law No. 1 of 2024 in the context of child protection? (2) What impact do these regulations have on *TikTok’s* policies and practices in protecting children from risks that may arise on the platform?

RESEARCH METHOD

This research design is comparative research between the European Union’s Digital Services Act and the Electronic Information and Transaction Law No. 1 of 2024. This research uses a qualitative method with a normative judicial approach. The normative judicial approach is an approach that is carried out based on the main material by examining laws and regulations, theories, concepts, legal principles related to differences in regulatory approaches, implementation, and their impact on child protection on the *TikTok* platform with descriptive-analysis according to Afifah 2018 (12)(14)(15). There are three areas used by researchers in compiling this research, here are the three areas in question: Internet regulations in the European Union and Indonesia, Child protection in the digital environment, *TikTok* policies and practices in child protection and regulatory enforcement.

The data collection technique in this research utilizes a literature study to understand theories and best practices in internet regulation and child protection. Document analysis to evaluate the content of the European Union’s Digital Services Act and the Electronic Information and Transaction Law No 1 of 2024(16)(17). Analyze *TikTok* content and user data to evaluate the platform’s level of regulatory compliance and its impact on child protection.

This research employs data collection techniques and literature review instrument development to gain insight into the theories and best practices associated with internet regulation and child protection. A document analysis will be conducted to evaluate the content of the European Union’s Digital Services Act and the Electronic Information and Transaction Law No. 1 of 2024. An analysis

of *TikTok* content and user data is conducted to evaluate the platform's level of compliance with regulations and its impact on child protection.

The data analysis technique used by researchers in this research is comparative analysis, document content, qualitative. Comparative analysis between the European Union's Digital Services Act and the Electronic Information and Transaction Law No 1 of 2024 in terms of approaches, provisions, and enforcement mechanisms relating to child protection on the *TikTok* platform. Content analysis of documents to identify patterns, themes, and similarities or differences between the two regulations(1). Qualitative analysis of interview data to explore stakeholders' views and experiences related to the implementation of *TikTok* regulations and policies(18)(19)(20).

RESULTS AND DISCUSSION

Differences between the European Union's Digital Services Act and the Electronic Information and Transaction Law No. 1 of 2024 in the context of child protection.

The Digital Service Act is a European Union regulation that aims to regulate digital services and strengthen the rules applicable to online platforms in the European Union. The Digital Service Act regulates various aspects including the liability of online platforms, transparency, advertising, and the protection of users, including children. In the context of child protection, the Digital Service Act may establish additional obligations for platforms to protect children from harmful content and harmful behavior(2). Digital Services Act of the European Union and Electronic Information and Transaction Law No 1 of 2024 in the context of child protection. This involves analysing the provisions of each regulation in relation to child protection. Although it does not specifically mention child protection, the Electronic Information and Transaction Law No 1 of 2024 may provide a legal basis for the Indonesian government to take action against harmful content on digital platforms.

As in the case of child protection violations on the *TikTok* platform, the Irish Data Protection Commission (DPC) fined *TikTok* EUR 345 million or around 5.6 trillion. The sanction was given because TikTok was deemed to have violated the European Union's General Data Protection Regulation (GDPR) related to handling children. The investigation began in September 2021 and the Data Protection Commission examined how TikTok processed personal data belonging to children aged between 13 years and 17 years starting in the period from 31 July to 31 December 2020. In the investigation, the findings were:

- a. By default, content uploaded by children will be included in public content, which can pose a great risk to children.
- b. Lack of transparency of information to child users.
- c. Implementation of dark patterns to direct users to select privacy-invading options during the registration process when uploading videos.
- d. Weaknesses in Family Sharing settings that allow adult users to attach their accounts to those of underage children.

In addition to the financial fine according to Indrajit 2022, the Data Protection Commission also ordered *TikTok* to improve the processing mechanism within three months. The company researched re-registration for new users aged 16 and 17, which immediately became personal accounts. *TikTok* was also previously fined in relation to French data in January 2023 for cookie violations and problems with the opt-out mechanism. The case reflects that protecting data privacy and protecting children requires increased attention in the digital world, as well as efforts by regulatory authorities to ensure that technology companies comply with regulations and safeguard user privacy.

The above case has violated the Digital Services Act, which in the Digital Services Act, the Digital Service Act has prohibited the *TikTok* platform from advertising and individual marketing techniques to children who are minors, while minors must get protection of all their rights and as described in Law No. 23 of 2002 concerning child protection, which was later amended to Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning child protection. Article 1 point 1 of the Child Protection Law explains that “A child is a person who is not yet 18 (eighteen) years old, including children who are still in the womb”, then in Article 1 paragraph 2 it is explained that “All activities to ensure and protect children and their rights so that they can live, grow and develop, and participate optimally in accordance with the dignity of humanity, and receive protection from violence and discrimination.”

The two regulations encompass a multitude of policies and notable discrepancies between each rule. In the context of child protection, these regulations are designed to safeguard children from exposure to negative influences. Additionally, Wiyono posits that child protection is a form of service that must be carried out by law enforcement officials to provide a sense of justice, both in terms of physical protection and mental protection. (21)

The fundamental differences between the European Union's Digital Services Act and the Electronic Information and Transaction Law No 1 of 2024 in the context of child protection may include:

1. **Regulatory Approach**

The European Union's Digital Service Act may adopt a more comprehensive and holistic approach to regulating child protection on digital platforms, taking into account the standards and best practices applicable in European Union member states. Concurrently, the Electronic Information and Transaction Law No. 1 of 2024 may prioritize contextualization within the Indonesian context, adapting regulations to align with local needs and conditions.

2. **Definition and Scope of Child Protection**

The European Union's Digital Service Act may establish a broader and more comprehensive definition of who is considered a child and the scope of child protection. In contrast, the Electronic Information and Transaction Law No. 1 of 2024 may have a more specific definition and scope in accordance with the Indonesian context.

3. **Platform Obligations**

The European Union's Digital Service Act may set stricter obligations for digital platforms to protect children from harmful content and harmful behaviour, including possibly the obligation to implement more sophisticated monitoring and control technologies. On the other hand, the Electronic Information and Transaction Law No 1 of 2024 may have more general obligations that are not as stringent as the Digital Service Act.

4. **Complaint and Handling Mechanism**

The European Union's Digital Service Act may establish a more structured and transparent complaint and redress mechanism for reporting harmful content to children and other acts of misconduct, while the Electronic Information and Transaction Law No. 1 of 2024 may have mechanisms that are not as comprehensive or standardized.

5. **Sanctions and Law Enforcement**

The European Union's Digital Service Act may stipulate heavier sanctions and stricter enforcement of child protection violations on digital platforms, while the Electronic Information and Transaction Law No. 1 of 2024 may have more varied and case-specific sanctions.

The researcher's analysis in the case of the *TikTok* platform Digital Service Act in underage protection aims to protect minors from falling into negative content. With the Digital Service Act, consumers can protect their rights online by setting clear and firm rules. This encourages innovation, growth and competitiveness, and provides facilities to scale up small-scale platforms and is balanced with European values, by setting citizens as the library. As with the case of child protection that has been violated by the *TikTok* platform, *TikTok* is considered less selective in classifying adult-only content, and which is specifically for children so that content made by children is included in public content that can endanger children. Because with adult content entering the content, it will cause children to imitate activities carried out by adults, while in that case the Digital Service Act gave a fine of EUR 345 million or around 5.6 trillion to tiktok. In addition, in Law No. 23 of 2002 concerning child protection, which was later amended to Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning child protection. Article 1 number 1 of the Child Protection Law explains that children must be protected when they are not yet 18 years old and including children who are still in the womb, all children's activities must be limited so that they do not violate regulations made by law and regulations in their religion. The protection of minors on the *TikTok* platform is regulated in two regulations, namely the Digital Service Act and the Electronic Information and Transaction Law regarding child protection. These discrepancies are a consequence of the disparate regulatory frameworks that govern the European Union and Indonesia, as well as the distinct methodologies employed by each in safeguarding children in digital settings.

The impact of the EU Digital Services Act and the Information Act on TikTok's policies and practices in protecting children

The impact of the European Union's Digital Services Act and the Electronic Information and Transaction Law on *TikTok*'s policies and practices to protect children may vary depending on how they are implemented and enforced by the government and the platform(10). Nevertheless, in general, both regulations could have a considerable impact on TikTok's policies and practices with regard to child protection, including:

1. Increased Platform Liability and Responsibility:

Both regulations have the potential to prompt *TikTok* to adopt a more proactive approach to safeguarding children from harmful or inappropriate content and other forms of negative behavior on

their platform. Such measures could include enhanced content monitoring, the establishment of more efficacious complaint procedures, and the formulation of more rigorous child protection policies.

2. Transparency and Monitoring:

The European Union's Digital Service Act and the Electronic Information and Transactions Act may necessitate greater transparency on the part of *TikTok* regarding the policies and practices that govern the protection of children. This may entail the provision of reports to the public on the actions taken to address content that is harmful to children and the preventive measures implemented.

3. Sanctions and Law Enforcement

Both regulations could serve as a basis for the imposition of more severe sanctions against *TikTok* in the event of a violation of the child protection provisions. Such non-compliance could result in the imposition of substantial financial penalties or even operational limitations on *TikTok*.

4. Cooperation with Government and Related Parties

TikTok may need to increase their cooperation with the government and relevant agencies to ensure that their policies and practices comply with applicable child protection regulations. This could include sharing information, providing regular reports, and participating in cooperative programs with the government on child protection.

The researcher's analysis is that with strict regulations related to child protection, such as the European Union's Digital Service Act and the Electronic Information and Transaction Law, *TikTok* and other platforms will be encouraged to increase their efforts to create a safe and appropriate digital environment for users, including children. It is anticipated that these regulations will prevent children from developing unfavourable digital footprints and mitigate the potential adverse consequences of technological advancement.

CONCLUSION

The European Union's Digital Services Act and the Electronic Information and Transaction Law No. 1 of 2024 have fundamental differences in their approach and implementation regarding child protection in the digital environment. The European Union's Digital Service Act employs a more comprehensive and rigorous approach to regulating child protection on digital platforms, whereas the Electronic Information and Transaction Law No. 1 of 2024 is more tailored to the Indonesian context, incorporating regulatory adaptations to align with local requirements and circumstances. These

discrepancies encompass the definition of child protection, the obligations of digital platforms, the mechanisms for lodging complaints, the sanctions that may be imposed, and the approaches to content monitoring. Nevertheless, both regulations are ultimately aimed at safeguarding children from potential dangers and adverse effects within the digital realm. The enactment of the Digital Service Act and the Electronic Information and Transaction Law has resulted in heightened expectations regarding *TikTok*'s policies and practices for safeguarding children from harmful content and harmful behavior on their platform. This includes increased transparency, stricter monitoring of content, implementation of effective complaint mechanisms, and closer cooperation with the government and relevant agencies. With strict child protection regulations in place, it is expected that *TikTok* and other platforms will take proactive steps to create a safer and more appropriate digital environment for users, including children.

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