

CHAPTER I

INTRODUCTION

A. Background

Federal Trade Commission or usually called as FTC is an authority of U.S. government whose principal missions are about the enforcement of civil (non-criminal) U.S. law and the promotion of consumer protection. The FTC was formed on September 26 in 1914. Moreover, this agency was starting to work on March 16, 1915. The headquarter located in Washington, D.C, named the Federal Trade Commission Building. For maintaining the competitive marketplace for both consumers and businesses. FTC handle over Juris dependence especially on the law to avert unfair methods of competition in commerce as part of the competition to “*bust the trusts*”¹ (Federal Trade Commission, 2019).

Federal Trade Commission created many laws in charge of protecting and strengthening free and open markets and promoting informed consumer choice. It performs by a variety of mechanisms, such as law enforcement, rulemaking, research, studies on marketplace trends and legal developments, and consumer and business education (Federal Trade Commission, 2019). In this issue, FTC is concern about children online privacy right inside social media.

The internet is a wild place, and children are its most vulnerable users. Federal Trade Commission consider children who are under 13 years old can easily get overreached by marketers and will not recognize the safety and privacy issues. So, if there any groups or company who collected children online privacy illegally nor without consent from their parent, FTC as the protector of US consumer, has responsibility to prevent this action happened to children.

¹ Government activities aimed at breaking up monopolies and trusts. (Dictionary.com 2020)

Not only in United States, United Nations Convention on the Rights of the Child (CRC) – also makes clear that children have specific rights to privacy and freedom of expression². In Article 16 states that

“[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. the child has the right to the protection of the law against such interference or attacks”.

In the Article 18 states that,

“Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must support parents by creating support services for children and giving parents the help, they need to raise their children.”

Then in Article 19 states that,

“Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them.”

This means that US government should implement the international law since it already signed for this value however it does not ratify the convention. US government has its own national law that working in protecting of children’s online privacy right. It is called COPPA Law. Children Online Privacy Protection Act or COPPA, established in 1998, is a law that impose certain requirements on operators of websites or online services directed to children under 13 years old (Federal Trade Commission, 2019). The purpose of this law is to place parents in control over personal information of their children in online which prevent operator websites or

² The author gets this information from UNICEF’s footnote on children’s online privacy and freedom of expression.

online services illegally collected personal information from them. This law took effect in April 2000. According to Melissa Campanelli who wrote in *Entrepreneur*, COPPA law is the first US privacy law written for the internet³. From time to time, COPPA conducts some investigations and gives fines to any business violate the children's right. Until now, FTC has more than 30 cases that related to children's issue. Such as fining Vtech on February 5, 2018, because they collected children data information without parents' permission. (PRIVO, 2021) COPPA law can be applied to foreign business if they are targeting US children.

Among all social media that exist on the internet and extremely popular among children, it is called YouTube. It is the second the world's most visited websites which based an online video-sharing platform whom public frequently use every day⁴. According to data from Pew Research cited by the Indonesian news portal site CNN February 2015, there were around 300 million videos uploaded every minute and watched approximately 2 billion each month (Setiawan, 2017). The founders of YouTube, Chad Hurley, Steve Chen, and Jawed Karim has opened the service since February 2015 with headquarter in San Bruno, California. In November 2006, together they built YouTube as it is. (Hopkins, 2006) On October 9, 2006, Google bought You Tube for US\$1.65 billion and today become Google's subsidiaries (The Age, 2006).

Unfortunately, parents seem worried about their children who watch videos from YouTube. From KPRC 2 Click2Houston's YouTube channel, some people created disturbing cartoons and appeared in children family friendly. This issue made parents in United States afraid that their children might watch some inappropriate videos inside YouTube while they do other activities such as working and cleaning the house. From the outside, it does look like a children content. In reality, however, the content is not recommended for children to watch such as bullying, nonsense

³ Campanelli, Melissa. "The Wizard of Laws." *Entrepreneur*. February 2001.

⁴ Alexa's ranking of the world's most visited websites based on the number of visitors and total page views |"Info for YouTube.com". *Alexa.com*. July 26, 2006. Retrieved March 5, 2020.

story, propaganda, 18+ jokes, nudity, violence, sexual harassment and many more. (KPRC 2 Click2Houston, 2018).

Not only in inappropriate content issue, but YouTube was also presumed by people in United States has collected personal information from children without their parent consent. The reason is YouTube declared themselves as the leader in reaching children aged 6-11 against well-known TV channels like Cartoon Network, Disney Channel, and Nickelodeon in 2015 (Youtube Complaint Exhibit, 2019). This statement is taken when Google presentation to Mattel Insights on Families Online⁵. It can be shown that there is a collection of children's online privacy by YouTube so they can conduct a business relation to Mattel.

Therefore, parents in the New York, represented by the consumer groups, demand Federal Trade Commission to take an investigation on YouTube regarding they violated COPPA rule for collecting online personal information and targeting children under 13 years old into their business area. In this thesis, the author is highly interested in finding out on the Federal Trade Commission's action to make YouTube behave to COPPA Law.

B. Research Question

Based on the background and some of the above description, the following research question formulated: **How does Federal Trade Commission enforce YouTube to obey the right of children online privacy?**

C. Theoretical Framework

According to Fred Kerlinger, by specifying relations among variables with the aim of explaining and predicting the phenomena, theory is also a collection of interrelated constructs (concepts), definitions, and propositions that present a

⁵ Mattel is one of famous toys factory in United States who produce Barbie, Hot Wheels, and etc.

scientific view of phenomena (Rahkmat, 2004). Therefore, theoretical framework could be a group of theory and concept which will answer the research question.

In order to answer the research question above, author will answer the question above with two concept and one theory, first is a concept of law by Roscoe Pound, a concept of international law, theory of political system by David Easton.

1. The Concept of Law by Roscoe Pound

According to Roscoe, Law is based on *legal reality* or public interest instead of the position and function of law in society. It is a compromise between written law as the needs of the legal community for the creation of legal certainty (positivism law) and living law as a form of appreciation for the important role of the community in the formation of law and legal orientation (Rasjidi & Rasjidi, 2007).

The function is to protect the interests of the people. There are three things that should be protected, i.e., public interest, social interest, and private interest. In public interest, law should make a priority on the importance of the state as a body of law and become a protector of the public interest. In social interest, law should prioritize peace and order protection of social institutions, prevention of moral degeneration, prevention of violations of rights and social welfare. The last in private interest, law should guarantee individual interests, family importance, and the importance of ownership. If the interests are arranged as an unchanging arrangement, then the arrangement is no longer a social engineering but a political statement (political manifesto) (Pound, 1996).

In this thesis, the author will use this term to explain more of the law from Federal Trade Commission on protecting the children's online privacy right in United States, COPPA Law. FTC will solve the issue by using COPPA Law as the interest from the nations that want to prevent children fall into the adult's world such as business matter and violation in YouTube.

2. The Concept of International Law

International law is the rule that agreed upon by countries and used as a reference in the implementation of relations between countries. This rule is rooted in (a) international treaties; (b) international customs; and (c) general principles in the field of law recognized by the international community. In its development, international law also regulates the relationship between states and non-state actors such as international organizations and individuals (Ashari, 2015).

International law regulates various aspects of international relations such as prohibiting the use of military force in resolving conflicts between countries, human rights, and protection of individuals in situations of war and armed conflict, and relations between countries in various fields such as the environment, trade, development, telecommunications, and transportation. States that have agreed to international law must comply with these rules as members even customary the international law (Ashari, 2015).

In this thesis, the author is going to use United Nations Convention Right of the Child as the international law. This concept will guides the author to describe and analyze on how international law works in international scope. International law has a power to encourage all nations to promote a value within in daily life or in social media.

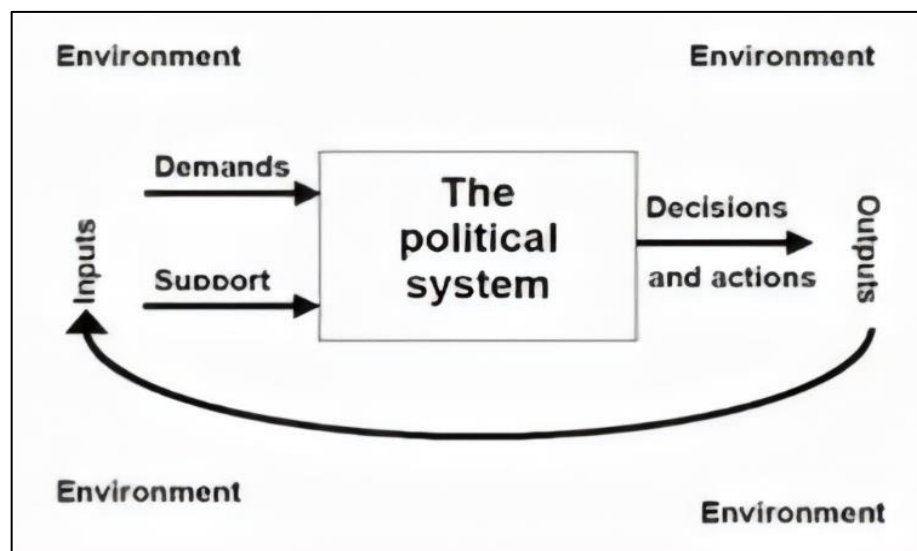
3. Theory of Political System by David Easton

According to David Easton, political system happened when there is a continuous flow from input to output and back and forth. Input consists of demands and support from the environment. Consists of decision-makers and other political actors, receive this input and influence consider the reaction to its policies. The information is converted into a black box consisting of political institutions and produces output in the form of regulations and authoritative decisions. This output returns to the feedback loop, and this becomes a new input for the political system. There is always a process of finding an equilibrium. This process continues, and the political

system can survive through a dynamic process. Afterwards, David Easton admitted that the government did not only accept pressure from outside, but also from the system itself which was called with input, for example, pressure from political parties or cabinet departments. (Budiardjo, 2008).

Almond stated that there is a four-input function and three output function. Input is political socialization and recruitment, articulation of interests, interest aggregation, and political communication. Then in its development, Almond changed the term into three functions, namely the function of capacity, the function of conversion and maintenance, and function of adaptation. Then for output functions, they are rulemaking, rule-application, and rule-adjudication (Budiardjo, 2008).

Figure 1 Theory of Political System by David Easton



Source: David Easton, *A System Analysis of Political Life* (New York: John Wiley 1965), pg.32.

In this thesis, parents represented by the coalition of consumer groups in the United States demand FTC to protect their children online privacy right inside YouTube. The consumer groups demand is categorized as input while the investigation is a form of the black box in political system using the COPPA Law. Then the

environment is from international law which is UNCRC. Thus, it also influences the political decision of FTC.

D. Hypothesis

In this thesis, Federal Trade Commission enforce YouTube to obey the Children Online Protection Act, by

1. Imposing penalties \$170 million with the aim for make YouTube deterrent.
2. Inserting COPPA law into YouTube system with the aim to decrease any video that targeted directly to children from domestic or internationally and make parent be able to control their children in YouTube.

E. Aim of Research

This research has several purposes to conduct, they are

1. Understanding the role of Federal Trade Commission and its nation policy
2. Understanding the threats of violating the children's online privacy right
3. Finding the action of Federal Trade Commission regarding the children's online privacy right issue in YouTube

F. Research Methodology

In this methodology research, the author uses qualitative research. The technique for this research is using library research. By searching data from books, journals and websites regarding the news and laws of FTC in online cases. The data is a second data because the issue has been uploaded on their official website. After gathered all the data, it will be used for analyzing the issue. After getting all the data, the author will process the data by using inductionist analysis where the unit analysis is bigger than the unit explanation.

G. Scope Research

The scope of research for this thesis is limited in the year of 2019/2020. The issue was happened before 2019 but the FTC was collecting some data first then do some action on 2019 and affecting until 2020. Thus, it will be focused on FTC's act of law on online issue especially in YouTube case toward children.

H. Organizing of Writing

This proposal thesis will have five chapters that will be arranged as follow:

Chapter I: Contains by background, research question, theoretical framework, hypothesis, research methodology, and scope of research which can guide the author to the next chapter.

Chapter II: This chapter gives explanation about Federal Trade Commission as a nation state of United States and Children Online Privacy Protection Act (COPPA) as the domestic law, United Nations Convention on the Rights of the Child (UNCRC) as the international law of children online privacy right and analyze the collaboration between COPPA Law and UNCRC.

Chapter III: This chapter explains about YouTube as International Corporation that works under Google, the children privacy and violation issue, and threats impact for international from the perspective of UNCRC as international law and COPPA law as domestic law in United States.

Chapter IV: This chapter lays out the results of the hypothesis which explain the action of Federal Trade Commission to solve the children's online privacy right inside YouTube.

Chapter V: This chapter concludes all the previous chapters that written above.

