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CYBER LAW IN INDONESIA'S LEGAL SYSTEM

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Abstract

The phenomenon of information technology crime is a relatively new form of crime when compared to other forms of crime that are conventional in nature. Information technology crimes emerged at the same time as the birth of the information technology revolution. In addition, it is also characterized by social interaction that minimizes physical presence, which is another characteristic of the information technology revolution. With the rapid development of information technology, information technology regulation is not enough only with conventional laws and regulations, but special arrangements are needed that describe the actual state of the condition of society so that there is no gap between the substance of legal regulations and the reality that develops in society. Cyber law itself is a law that specifically applies in the cyber world and cannot be released within the scope of the legal system in Indonesia, therefore it is necessary to study by prioritizing its main principle that the law has binding force. Because it is in the form of regulations in the form of laws that are systematically arranged in codification.

Keywords: Cyber Law, Information Technology, Law.

INTRODUCTION

Advances in information and communication technology have opened a new stage for people to obtain information autonomously. The barriers of information automatically disappear by the strong initiative of individuals who want to know more about what is happening around them. People have access to sources of information wherever they are. Consequently, society becomes critical and responsive to many things that develop.

The development of information and communication technology (ICT) is something that must exist and be followed by modern society today. Its development is considered a solution to existing problems. The contribution of information and communication technology to human civilization and welfare is undeniable. As we know that in the modern era like today, the role of information technology in daily life is certainly very influential. This is inseparable from our activities which are often supported by information technology itself which is able to answer the demands of work that is faster, easier, cheaper and saves time. Technological advances are the answer to the progress of globalization that is increasingly enveloping the world. A progress that will certainly have an impact on the civilization of society.

Cyber Law is a legal term related to the use of information technology. Other terms that are also used are the Law of Information Technology, Virtual World Law and Mayantara Law. These terms were born considering internet activities and the use of virtual-based information technology.

Cyber law itself is a law that specifically applies in the cyber world. Broadly speaking, cyber law not only covers crimes on the internet, but also rules that protect e-commerce, e-learning, copyright holders, trade secrets, patents, e-signatures and many more. Cyber law is closely related to the world of crime. This is also supported

by globalization. Times are constantly changing and people follow the changes of the times. The change was followed by positive impacts and negative impacts. There are two most important elements in globalization. First, with globalization humans are influenced and second, with globalization people influence each other. On the other hand, the development of Information Technology (IT) and the Internet, has also greatly influenced almost all businesses in the world to be involved in the implementation and implementation of various applications. There are many benefits and advantages that can be achieved by businesses in this regard, both in the internal context (increasing the efficiency and effectiveness of the organization), and external (improving data and information communication between various suppliers, manufacturers, distributors), and so on.

Cyber law will not succeed if the jurisdictional aspect of the law is ignored. Because the mapping that regulates cyberspace also concerns relations between regions, between regions, and between countries, the determination of clear jurisdiction is absolutely necessary. It is also a concern that information technology that gives birth to cyber law also affects and changes in the legal system in Indonesia.

The legal system can be seen from Sudikno Mertokusumo as a unit consisting of interconnected parts that work to achieve a goal. This statement emphasizes cross-sectoral cooperation to achieve the goals that have been set. Meanwhile, according to Miriam, the legal system is a set of principles that are integrated into the foundation of an organized society. This statement shows that the legal system is the foundation for the realization of an orderly and law-abiding society. With the rapid development of information technology, the regulation of information technology is not enough only with conventional laws and regulations, but special arrangements are needed that describe the actual state of the condition of society so that there is no gap between the substance of legal regulations and the reality that develops in society. For example, for cyber activities. Even though they are virtual, cyber activities can be categorized as real legal actions and acts. Juridically, cyberspace is no longer in place to categorize something with the size and qualifications of conventional law to be used as objects and deeds, because if this method is taken, there will be too many difficulties and things that escape the legal snare. Cyber activities are virtual activities that have a very real impact even though the evidence is electronic. Thus, the subject of the perpetrator must also be qualified as a person who has committed a real legal act.

METHODS

The normative legal approach is used in an effort to analyze legal materials by referring to legal norms outlined in laws and regulations.

RESULT & DISCUSSION

1. Development of Cyber Law in Indonesia's Legal System

a. Legal system

Lawence M. Friedman, who explained that a legal system can be divided into three components, namely structural components, substance components and legal culture components. These three components are interconnected and interdependent. In general, the definition of a national legal system is a set of rules and principles applied by a country to regulate the behavior and actions of its citizens.

The national legal system consists of various types of laws, including:

In the national legal system, everyone is considered equal before the law and has the same right to be processed and tried fairly. Compliance with national laws is essential for maintaining security, order, and stability in a country. The state is responsible for enforcing the law and sanctioning those who violate it.

The national legal system is also related to the relationship between the government and citizens. The government plays a role in making, interpreting, and enforcing national laws, while citizens must comply with the rules and regulations that have been set by the government.

Overall, the national legal system is an important basis of a country's social and political life, which serves to provide legal certainty and legal protection for all citizens, as well as regulate the relationship between the government and citizens.

b. Development of Cyber Law in Indonesia

The development of science, knowledge, technology, and art, has led humans to enter the "digital era" which gave birth to the internet as a network, and also a "symbol of exclusivity". As a network, the internet is able to connect between network subsystems into one super-large network that can be interconnected (online) all over the world. Even internet technology is able to converge data, information, audio, and visuals that can affect human life. The internet is said to be a symbol of exclusivity, because only people who do not "stutter technology" (gaptek) can directly enjoy the era. The better the quality of the person's mastery of information technology and its application in the field of the internet, the more exclusivity these people feel. Therefore, currently many virtual communities are very well versed in the information technology application system.

Basically, every technology is created to meet a specific human need. Once created, technology is developed to be more effective and efficient to meet the intended needs, and the old technology will be abandoned. However, once the technology is created and developed, the use of the technology can be in accordance with the purpose for which it was created and developed or beyond its original purpose, as known as the double-edged sword. Likewise with information and communication technology. The information and communication technology that exists today is the result of the development of previous technologies, especially computer technology, telecommunications, and the internet. Currently, the technology in question has been incarnate in laptops, PC computers, mobile phones, tablets, or other gadgets that make it easier for people around the world to interact and make transactions. As has happened today, various information and communication technology products and services have flooded the market, both conventional and virtual markets, both official and black markets. Even in the future, almost all of our lives will be facilitated by (even depends) on information and communication technology, be it personal, corporate, governmental, or military life. So, inevitably, in accordance with the capacity of each of them, all activities in the world of information and communication in the cyber world need to be known as general knowledge, both by users and programmers in information and communication technology.

Currently, the form of computers as the basis of information technology, is not only in the form of conventional computers (for example, Personal Computers – PCs), but also includes other portable equipment that has characteristics as a computer. The

social order in this digital era is increasingly diverse. Interaction and communication are often only using high-tech devices, so that often the law as a regulator of social life lags behind with technological sophistication. However, the law must still exist in the digital era, because it can be a means of social change, a means of control, and a means of protecting the community in achieving welfare.

Cyberspace, cybercrimes, and cyberlaws are an inseparable part of today's information and communication technology. These terms are increasingly popularly discussed in various print and electronic media, by observers in newspapers, academics in various scientific journals, and also by the government in the formation of laws and regulations that regulate all activities in the cyber world. The legal aspects in the cyber legal regime are quite broad, namely in administrative, civil, and criminal law. These three areas of cyber law can be referred to as cyberlaw.

Cyberspace talks about the electronic world, a virtual space where people can be present without having to exist/need to exist physically, where human existence and activities can be realized through the language 0 and 1. A person's thoughts, intentions, and emotions can be realized through bits. However, just like the real world, there are also many crimes in cyberspace, which are more often referred to as cybercrimes. Crimes in this virtual space can be in the form of conventional crimes or the actions of people who are then criminalized as a new form of crime that is only possible in virtual space. Therefore, cyberlaw, rules or legal norms applied in cyberspace are needed to maintain public order, including sanctioning criminals.

The definition of crime in the field of information technology, which is in cyberspace (which can be equated with the term cybercrime) always refers to crime in a juridical sense, namely human activities (in the sense of doing or not doing) that are expressly prohibited in laws and regulations. These actions include human activities that make computers a target, for example, destruction of data and unauthorized access to systems, and also human activities that use computers as a means to commit crimes, such as computer fraud and copyright piracy. The definition of crime in this context is not the same as the term crime as regulated in laws and regulations, which distinguishes between actions in the qualification of crime (misdrift) and forms of actions in the qualification of violations (overtrading). However, crime in this context is a human activity that is qualified as a criminal crime (criminalized) by laws and regulations.

In society, there are often parties who equate cybercrime with computer crime and internet crime. The three terms are both computer-based, but different modes and scopes. Computer crime is cybercrime in a narrow sense, namely human activities that make computers the target of crime. Internet crime is a crime that occurs in or with internet facilities. Meanwhile, cybercrime includes a very broad definition, namely computer crime, internet crime, including activities that use computers as a means to commit crimes. Thus, every computer crime and internet crime in a narrow sense is cybercrime. Therefore, cybercrime in a broad sense is often called computer-related crime. Whatever the name, form, and mode, cybercrime needs to be regulated by laws and regulations (cyberlaw) so that legal certainty, order, and justice are created in society.

The characteristics of cybercrime, which is loaded with the use of computers and the internet as well as across countries, require handling that cannot always be done based on conventional methods or methods. In various cases, the resolution of

cybercrimes requires cooperation from various parties, including law enforcement officials from other countries. This cooperation can be carried out effectively if it is supported by legal instruments, both regional and international, that are in line with the national laws of each party.

For this reason, a law and regulation was created aimed at regulating all activities/crimes in cyberspace. The Convention on Cybercrime is a regional legal instrument that has indirectly been accepted as a guideline used internationally. The United Nations has also long discussed the handling of cybercrime and also provided guidelines for member states. Likewise, the United Nations Southeast Asia regional regional organization. Furthermore, a detailed discussion of the regulation of cybercrimes and cyberlaw in Indonesia is regulated in Law No. 11 of 2008 concerning Information and Electronic Transactions, hereinafter referred to as the ITE Law. The ITE Law is a law that specifically regulates cyber crimes, both criminal law and criminal procedure law. The legal arrangements in the ITE Law adopt the provisions of the Convention on Cybercrime.

The application of law must be based on the general principles of law enforcement to protect human rights and the authority of the state in creating justice.

The Convention on Cybercrime (CoC) has been ratified or acceded to by 30 countries, both from the European Union and outside the region, and has been signed by 16 other countries, although it has not yet been ratified. Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) is a law that adopts this CoC.

The Draft ITE Law has been discussed since March 2003 by the State Ministry of Communication and Information Technology under the name of the Draft Law on Information, Communication and Electronic Transactions. Initially, this bill was a union of two bills drafted by two ministries, namely the Ministry of Transportation and the Ministry of Industry and Trade, in collaboration with the Institute for Legal and Technology Studies of the University of Indonesia, a team from the Faculty of Law, Padjajaran University and an assistance team from ITB. Then, based on the Presidential Letter of the Republic of Indonesia No. R./70/Pres/9/2005 dated September 5, 2005, the text of the ITE Law was officially submitted to the House of Representatives of the Republic of Indonesia. On April 21, 2008, this law was passed.

c. Legal Provisions of the Convention

Sometimes there are difficulties in applying conventional legal provisions in computer-based cases, especially those related to determining where the crime occurred (criminal – locus delicti) and when the crime (criminal – tempus delicti) occurred. However, it turns out that the jurisdiction of cybercrime law is also basically the same, only differing in the technicalities of investigation, investigation, and examination. These legal principles are the principle of legality, the principle of territoriality, the principle of active nationality, the principle of passive nationality, and the principle of universality.

Therefore, a special law that regulates cybercrime as a whole is needed as a complement to the ITE Law. There are many similarities in the regulation of cybercrime in the ITE Law with the Convention on Cybercrime, namely illegal access, intercepting, data interference, interference with computer systems, misuse of devices, computer-related forgery, pornography, "conventional/traditional" crimes that use computer. Based on historical studies, the Convention on Cybercrime has been agreed by the

majority of countries and international organizations to be used as a reference for the minimum rule for cybercrime regulation in criminal law in their respective countries. However, in order to exercise sovereignty in each country, legislators are still free to develop regulations on the forms of crime and their criminal threats in detail. Since 1983, courts in Indonesia have tried cybercrime cases based on the provisions of the Criminal Code by making extensive interpretations of the provisions in the Criminal Code.

This interpretation, for example, is carried out by expanding the meaning of "goods", so that intangible goods are considered goods.6 In addition, the word "counterfeiting" is expanded to include the meaning of falsifying electronic data through the internet. Currently, the form of cybercrime in Indonesia is very sophisticated and even exceeds several other countries. The proof is that in 2009, Indonesia was allegedly the largest place for credit card counterfeiting (carder) in the world, and the following year Indonesia was ranked 11th as the country with the most software piracy. Since before the enactment of the ITE Law, the provisions of sanctions outside the Criminal Code and

6 Intangible goods in this case have the meaning of not having a tangible form, but having a fixed form, this is because in the virtual and digital space, goods are described/embodied in the form of binary codes (1 and 0), so that the intangible goods are also tangible goods before the Criminal Code.

The Criminal Code has also been used in adjudicating cybercrime cases, as long as it has been specifically regulated (for example, the Telecommunications Law to adjudicate defacing cases, the Business Competition Law to prosecute "piracy" of domain names. After the ITE Law takes effect, all legal provisions, both in the Criminal Code, the Criminal Code, the ITE Law, and other laws have been used in adjudicating cybercrime, including in cases of illegal access, insult through online media, hacking, and defacing. In some cases, fraud through the internet has many variations, some are in the form of fraud in buying and selling, fraud with prostitution mode, cases of defamation and insults, some use social networking facilities on the internet - Facebook, Twitter, and some use SMS. Unfortunately, there are also many cases that should be adjudicated under the ITE Law, the process can have a negative impact on the authority of cybercrime law enforcement in Indonesia, and the quality of justice obtained by the community is reduced.

In some recent facts, one of the main types of crimes in Indonesia is the death penalty which is imposed on defendants who are threatened with the death penalty, by being shot to death (Law Number 2/PNPS/1964 concerning Death Penalty Procedures). Although the existence of the death penalty has always been controversial,7 Indonesia continues to selectively impose the death penalty.

In relation to efforts to prevent criminal acts and suppress criminal acts, cybercrime law will be the legal basis in the law enforcement process for crimes that use electronic and computational means or media, including terrorism crimes and crimes caused by the development of the times and according to those who are pro to cybercrime law, it is time for Indonesia to have a cybercrime law, Considering that traditional laws are no longer able to anticipate the increasingly rapid development of cyberspace. Many judges have tried cybercrime cases based on the results of research. Because many judges already have an adequate understanding of the legal aspects in the field of information technology so that they make legal breakthroughs in order to prioritize the

value of justice rather than the value of legal certainty. However, there are also judges who still use a legal mindset so that they prioritize the value of legal certainty by understanding legal provisions textually in accordance with the teaching that "law is command".

These differences in thinking both have a justification. Those who have progressive thinking always see the law as a contextual means of regulating human beings, so that in order to create justice, as well as reconstruct sociological thinking so that cybercrime can be eradicated by using existing laws.

Those who tend to use textual thinking patterns argue that in criminal law, analogy interpretation should not be used. While the meaning of analogy interpretation with extensive interpretation is to expand the meaning or words or legal terms in the regulations so that an event that does not match the regulations is considered appropriate, then it is feared that it violates human rights.

d. Unique Characteristics

The issuance of new laws that can be used as a complement to the ITE Law must be accelerated, or at least be able to include new provisions in the Criminal Code in the future. Because of the fact, the provisions in the Criminal Code, the ITE Law, and other laws that regulate crimes in the field of information technology, and the existing criminal procedure law, are still often considered imperfect in dealing with cybercrime that continues to develop and has unique characteristics. The lack of understanding of some law enforcers about the cybercrime law paradigm needs to be solved by continuing to conduct socialization and training. The lack of complete law enforcement facilities and infrastructure in the field of information technology also needs to be improved in order to be able to facilitate the law enforcement process. The legal culture in the community also needs to be improved in order to support law enforcement.

The legal term in the field of information technology is a juridical term, meaning that the term has been stated in the laws and regulations, namely in Article 43 paragraphs (1) and (2) of Law No. 11 of 2008 concerning Information and Electronic Transactions, which is then referred to as the ITE Law. In these provisions, it is regulated about Civil Servant Investigators and investigations in the field of Information Technology. Based on the ITE Law, Article 1 number 3, the definition of Information Technology is a technique for collecting, preparing, storing, processing, announcing, analyzing, and/or disseminating information. In the legal context in the field of information technology, the definition of information technology leads to the use of computer-based information and communication technology.

The scope of information technology is not only limited to computer technology consisting of hardware hardware and software frames, which are used to process and store information, but also includes communication technology to transmit information. This information technology is a technology that combines computers with high-speed communication networks that collect, prepare, store, process, announce, analyze, and/or disseminate information in the form of data, audio, and visuals.

The information technology is a convergence between computer technology and telecommunication technology. Meanwhile, the definition of a computer based on Article 1 number 14 of the ITE Law is a tool for processing electronic, magnetic, optical, or system data that performs logic, arithmetic, and storage functions. The definition of computer in this context includes computer networks as the network base of electronic

systems. Electronic systems are also used to explain the existence of information systems which are the application of information technology based on telecommunication networks and electronic media, which functions to design, process, analyze, display, and transmit or disseminate electronic information.

Thus, the definition of criminal law in the field of information technology is criminal provisions that can be applied to computer-based human activities and in computer networks in cyberspace (virtual) in terms of collecting, preparing, storing, processing, announcing, analyzing, and/or disseminating information in the form of data, sound, and images.

2. Cyber Legal Regulation in Indonesia

a. Telematics Crime

It relates to individuals or legal subjects who use and utilize internet technology that begins when they start online and enter the cyber or virtual world. Cyber Law itself is a term derived from Cyberspace Law.

The term cyber law is interpreted as the word equivalent of Cyber Law, which is currently internationally used for legal terms related to the use of IT. Other terms that are also used are IT Law (Law of Information Technology), Virtual World Law and Mayantara Law.

Academically, the terminology "cyber law" has not yet become a common terminology. Other terminology for the same purpose such as The law of the Internet, Law and the Information Superhighway, Information Technology Law, The Law of Information, etc.

In Indonesia itself, there does not seem to be a single term that has been agreed. Where the term intended as a translation of "cyber law", for example, Information Systems Law, Information Law, and Telematics Law (Telecommunications and Informatics) Juridically, cyber law is no longer the same as the size and qualifications of traditional law. Cyber activities, even though they are virtual, can be categorized as real legal actions and acts. Cyber activities are virtual activities that have a very real impact even though the evidence is electronic. Thus, the subject of the perpetrator must also be qualified as a person who has committed a real legal act.

b. Tujuan Cyber Law

Cyberlaw is urgently needed, in relation to efforts to prevent criminal acts, or handle criminal acts. Cyber law will be the legal basis in the law enforcement process against crimes with electronic and computer means, including money laundering crimes and terrorism crimes.

c. Scope of Cyber Law

The discussion of the scope of "cyber law" is intended as an inventory of legal issues or aspects that are estimated to be related to the use of the Internet. Broadly speaking, the scope of "cyber law" is related to legal issues or aspects of:

1) E-Commerce,
2) Trademark/Domain Names,
3) Privacy and Security on the Internet,
4) Copyright,

5) Defamation,
6) Content Regulation,
7) Disptle Settlement, and so on.

Broadly speaking, there are five topics of cyberlaw in each country, namely:

1) Information security, concerns the authenticity of the sender or receiver and the integrity of messages flowing through the internet. In this case, the issue of confidentiality and validity of electronic signatures is regulated.
2) On-line transactions, including bidding, buying, selling, payment, and delivery of goods via the internet.
3) Right in electronic information, about copyright and rights that arise for users and content providers.
4) Regulation of information content, the extent to which legal instruments regulate content that is streamed over the internet.
5) Regulation of on-line contact, karma in communicating and doing business through the internet including taxation, export-import restriction, criminality and legal jurisdiction.

d. Fundamentals of Cyber Law

In relation to the determination of the applicable law, several principles are commonly used, namely:

1) Subjective territoriality, which emphasizes that the enforceability of the law is determined based on the place where the act was committed and the settlement of the crime was carried out in another country.
2) Objective territoriality, which states that the applicable law is the law where the main consequence of the act occurs and has a very detrimental impact on the country concerned.
3) Nationality determines that the state has jurisdiction to determine the law based on the nationality of the perpetrator.
4) Passive nationality which emphasizes jurisdiction based on the nationality of the victim.
5) The protective principle that states the enactment of the law is based on the desire of the state to protect the interests of the state from crimes committed outside its territory, which is generally used when the victim is the state or government,
6) Universality. This principle deserves special attention related to the legal handling of cyber cases. This principle is also referred to as "universal interest jurisdiction". Initially, this principle stipulated that every country had the right to arrest and punish pirates. This principle was later expanded to include crimes against humanity, such as torture, genocide, air piracy, and others. Although in the future this principle of universal jurisdiction may be developed for internet piracy, such as computer, cracking, carding, hacking and viruses, it is worth considering that the use of this principle is only applicable to very serious crimes based on developments in international law.

Therefore, for cyberspace, a new law is needed that uses a different approach to the law made based on territorial boundaries. Cyberspace can be likened to a place that is only limited by screens and passwords. Radically, cyberspace has changed the relationship between legally significant (online) phenomena and physical location.

e. Teori-teori cyberlaw

Based on the special characteristics contained in the cyber space, several theories can be put forward as follows:

1) Based on this theory, a country can prohibit within its territory, uploading and downloading activities that are expected to be contrary to its interests. For example, a country may prohibit everyone from uploading gambling activities or other destructive activities within the country's territory, and prohibit everyone within its territory from downloading such gambling activities. Minnesota was one of the first states to use this jurisdiction.

2) The Theory of Law of the Server. This approach treats the server where the webpages are physically located, i.e. where they are recorded as electronic data.

According to this theory, a webpage located on a server at Stanford University is subject to California law. However, this theory will be difficult to use if the uploader is in a foreign jurisdiction. The Theory of InternationalSpaces. Cyberspace is considered the fourth space. The analogy lies not in physical similarity, but in international nature, namely sovereign quality.

f. Laws Governing Cyber Crime

Responding to the demands and challenges of global communication via the Internet, the expected law (ius constituendum) is a legal tool that is accommodating to developments and anticipating problems, including the negative impact of Internet abuse with various motivations that can cause victims such as material and non-material losses. Currently, Indonesia does not have a special law / cyber law that regulates cybercrime even though the draft law has existed since 2000 and the last revision of the draft law on crimes in the field of information technology since 2004 has been sent to the State Secretariat of the Republic of Indonesia by the Ministry of Communication and Information and sent to the House of Representatives but returned to the Ministry of Communication and Information for improvement. However, there are several other positive laws that are generally applicable and can be imposed on cybercrime perpetrators, especially for cases that use computers as a means, including:

1) Criminal Code

a) Article 362 of the Criminal Code is imposed for carding cases where the perpetrator steals someone else's credit card number even though it is not physically because only the card number is by using card generator software on the Internet to make transactions in e-commerce. After the transaction is made and the goods are delivered, then the seller who wants to withdraw his money at the bank is rejected because the cardholder is not the person who made the transaction.

b) Article 406 of the Criminal Code can be applied to cases of deface or hacking that makes someone else's system, such as a website or program, malfunction or can be used as it should.

c) Articles 282 and 311 of the Criminal Code can be imposed on the case of distributing a person's personal photo or film that is vulgar on the Internet.

2) Law No. 19 of 2002 concerning Copyright

According to Article 1 number (8) of Law No. 19 of 2002 concerning Copyright, a computer program is a set of instructions that are manifested in the form of language, code, schema or other forms that when combined with media that can be read by a computer will be able to make the computer work to perform special functions or to achieve special results, including preparations in designing these instructions.

3) Law No. 36 of 1999 concerning Telecommunications

According to Article 1 number (1) of Law No. 36 of 1999, Telecommunications is any transmission, transmission, and/or reception and any information in the form of signs, signals, writings, images, sounds, and sounds through wire, optical, radio, or other electromagnetic systems.

4) Law No. 8 of 1997 concerning Company Documents

With the issuance of Law No. 8 of 1997 dated March 24, 1997 concerning Company Documents, the government seeks to regulate the recognition of microfilm and other media (information storage devices that are not paper and have a level of security that can guarantee the authenticity of transferred or transformed documents. For example, Compact Disk - Read Only Memory (CD - ROM), and Write - Once - Read - Many (WORM), which are regulated in Article 12 of the Law as valid evidence.

5) Law No. 25 of 2003 concerning Amendments to Law No. 15 of 2002 concerning Money Laundering

This law is the most powerful law for an investigator to obtain information about suspects who commit fraud through the Internet, because it does not require a long and time-consuming bureaucratic procedure, because fraud is a type of criminal act that is included in money laundering (Article 2 Paragraph (1) Letter q).

6) Law No. 15 of 2003 concerning the Eradication of Terrorism Crimes In addition to Law No. 25 of 2003, this Law regulates electronic evidence in accordance with Article 27 letter b, namely other evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices or similar to it.

g. Cyber Law of Indonesia:

The emergence of Cyber Law in Indonesia began before 1999. The main focus at that time was on the generic "legal umbrella" and little about electronic transactions. Cyber Law is used to regulate various legal protections for activities that use the internet as a medium, both transactions and the use of information. The Cyber Law also regulates various kinds of punishments for crimes through the internet.

The ITE Law was first passed through Law No. 11 of 2008 before finally being revised with Law No. 19 of 2016. Based on the ITE Law, electronic information is one or a set of electronic data, including but not limited to writing, sounds, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed that have meaning or can be understood by people who are able to understand them.

Meanwhile, electronic transactions are legal acts carried out using computers, computer networks, and/or other electronic media. This rule applies to every person who commits a legal act as regulated by the ITE Law, both in the jurisdiction of Indonesia and outside the jurisdiction of Indonesia, who has legal consequences in the jurisdiction of Indonesia and/or outside the jurisdiction of Indonesia and is detrimental to the interests of Indonesia.

1) Benefits of the ITE Law

One of the considerations for the formation of the ITE Law is that the government needs to support the development of information technology through legal infrastructure and its regulation so that the use of information technology is carried out safely to prevent its misuse by paying attention to the religious and socio-cultural values of the people of Indonesia.

Meanwhile, in general, the presence of the ITE Law has several benefits if implemented correctly. As a law that regulates information and electronic transactions in Indonesia, here are some of the benefits of the ITE Law:

Ensuring legal certainty for people who conduct electronic transactions

Encouraging economic growth in Indonesia

One of the efforts to prevent crimes committed through the internet

Protecting the public and other internet users from various online crimes.

Prohibited Acts of the ITE Law

Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions explains in detail what are prohibited acts. For those who violate the ITE Law, they have the potential to receive punishment in the form of fines and imprisonment. Here are some of the acts prohibited by the ITE Law:

a) Spreading Immoral Videos

The first act prohibited in the ITE Law is a person who deliberately and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that have content that violates morality. This is regulated in article 27 paragraph (1) of the ITE Law.

Every person who violates morality as referred to in article 27 paragraph (1) shall be sentenced to imprisonment for a maximum of 6 years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

b) Online Gambling

Furthermore, article 27 paragraph (2) of the ITE Law contains a prohibition on acts containing gambling. The punishment for those who violate is imprisonment for a maximum of 6 years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

c) Defamation

Article 27 paragraph (3) of the ITE Law also regulates defamation. Perpetrators charged with this article will be sentenced to a maximum of 4 years in prison and/or a maximum fine of Rp750,000,000.00 (seven hundred and fifty million rupiah).

Furthermore, in the revision of Law No. 19 of 2016, it is explained that the provisions in article 27 paragraph (3) are complaint offenses.

d) Extortion and Intimidation

People who commit extortion and threats also have the opportunity to be charged with article 27 paragraph (4) of the ITE Law. The punishment is imprisonment for a maximum of 6 years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

e) Fake News

Fake news is also prohibited in article 28 paragraph (1) of the ITE Law which reads that every person deliberately and without rights spreads false and misleading news that results in consumer losses in electronic transactions.

For perpetrators of spreading fake news, they will be sentenced to a maximum of 6 years in prison and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

f) Hate speech

People who disseminate information with the aim of causing hatred or hostility to certain individuals and/or groups of people based on ethnicity, religion, race, and intergroup (SARA) are also prohibited acts in article 28 paragraph (2) of the ITE Law.

The punishment for the perpetrator of hate speech as explained in article 28 paragraph (2) is punishable by imprisonment for a maximum of 6 years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

g) Online Terror

Article 29 of the ITE Law regulates prohibited acts of online terror. This article will ensnare everyone who intentionally and without the right to send electronic information and/or electronic documents that contain threats of violence or intimidation aimed at individuals.

The punishment for online terror perpetrators who scare others is a maximum of 4 years in prison and/or a maximum fine of Rp750,000,000.00 (seven hundred and fifty million rupiah).

Other Acts Prohibited by the ITE Law;

Accessing, retrieving, and hacking into another person's electronic system in any way (article 30)

Intercepting or intercepting other people's electronic systems from public to private and vice versa (article 31)

Altering, damaging, moving to an unauthorized place, concealing information or electronic documents, and disclosing confidential documents or information (article 32)

Disrupting electronic systems (article 33)

Provide hardware or software, including computer passwords and access codes for violators of the mentioned prohibitions (article 34)

Forgery of electronic documents by means of manipulation, creation, alteration, elimination, and destruction (article 35).

Implementation of the ITE Law in Community Life

All transactions and electronic systems and supporting devices are protected by law

The community is able to maximize the economic potential digitally

Increasing tourism potential through E-tourism by making it easier to use information technology

The internet traffic available in Indonesia is used for the betterment of society by creating educational content and other useful content

Export products are received on time which makes the creative potential of the community more maximized to compete with other countries.

2) Negative Impact of the ITE Law

According to a study from the Research Center of the House of Representatives of the Republic of Indonesia Vol. XII No.16/II/Puslit/August/2020, at least 271 cases have been reported to the police after the passage of Law No. 16 of 2016 which revised Law No. 11 of 2008 concerning ITE. The existence of multi-interpretation articles is one of the main causes of the rampant reporting.

There are 3 articles that are most often reported, namely articles 27, 28, and 29. These articles are considered to contain unclear formulations so that they have the potential to curb people's freedom of expression and are used for revenge so as to injure the legal purpose of the ITE Law.

Referring to the Supreme Court registration website, there are 508 cases in court that use the ITE Law during 2011-2018. The most cases are crimes related to insult and defamation, as regulated in article 27 paragraph (3) of the ITE Law. Next is the case of hate speech stated in article 28 paragraph (2) of the ITE Law.

These articles are known as rubber articles. The rubber article is interpreted as an article whose interpretation is very subjective from law enforcement or other parties so that it can give rise to various interpretations, aka multiple interpretations. In the end, the freedom of expression of the Indonesian people is threatened. Here are some of the negative impacts of the ITE Law:

Restricting freedom of opinion, especially in expressing opinions and giving criticism.

It causes arbitrariness of law enforcers in determining people who stumble on the ITE Law are guilty and deserve to be punished, without sorting and choosing which elements of the article are violated.

It has become an instrument for some groups in the context of revenge, and even a weapon to trap political opponents.

It is not enough to guarantee legal certainty because decisions related to multi-interpretation articles are diverse and even opposite.

Triggering public unrest and disputes that are easily reported to law enforcement and adding to the source of conflict between the ruler and members of the community.

It is ineffective because some articles are duplications of the rules of the Criminal Code, such as Article 27 paragraph (3) of the ITE Law related to insult and defamation has been regulated in Articles 310 and 311 of the Criminal Code.

CONCLUSION

Currently, Indonesia has a cyber-law to regulate cyberspace along with sanctions if cybercrime is studied both in Indonesia and outside Indonesia's jurisdiction as a result of which is felt in Indonesia. Cybercrime continues to evolve along with the information technology revolution that reverses the old paradigm of conventional crime towards virtual crime by utilizing electronic instruments but the consequences can be felt in real life. Cybercrime countermeasures by law enforcement officials are greatly influenced by the existence of laws and regulations. There are several laws related to information technology, especially crimes related to the Internet.

In addition to various positive things that have been taken from the advancement of information technology and transactions that change human life activities in various fields that have directly affected the birth of new forms of legal acts. Information globalization has placed Indonesia as part of the world's information society so that it requires the establishment of regulations regarding the management of Information and Electronic Transactions at the national level so that the development of Information Technology can be carried out optimally, equitably, and spread to all levels of society to educate people's lives. And also see Law No. 19 of 2019 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions and Law No. 14 of 2008 concerning Public Information Disclosure.

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