

Evaluation of Electronic Information and Transaction in the Perspective of Criminal Enforcement in Indonesia

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Abstract: This progressing technology is marked by the birth of a variety of social media, such as; Facebook (2004), Twitter (2006), WhatsApp (2009), Path (2010) and Instagram (2010) as an inseparable part of the development of internetization in various parts of the world. In order to protect consumers (the public) in the use of technology through the plenary session of the Indonesian Parliament ratified the ITE Bill into law, namely Law Number 11 of 2008 and revised again in 2016 with the birth of Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE Law). 10 years since the ITE Law was passed, according to data released by the Southeast Asia Freedom of Expression Network (SAFEnet) until October 2018 there have been 245 cases reported in Indonesia. North Sumatra is one of the areas where many people are entangled in the ITE Law, which are 12 cases. The problem is the duplication of criminal acts regulated in the ITE Law also contained in the criminal provisions in the Criminal Code (KUHP), namely Article 156 of the Criminal Code concerning hatred and contempt for race, country of origin, religion, place, origin, descent, nationality or position according to state law with the threat of 5 years imprisonment as well as Article 310 of the Criminal Code and Article 311 of the Criminal Code concerning defamation with the threat of 5 years imprisonment which makes this law inclined towards the rubber article. The research method is qualitative with a normative juridical approach with observation as primary data and international and national journals and books as secondary data triangulated data to those considered representative in answering this issue. The research output is expected to be an international journal, international proceedings and textbooks for students.

1 INTRODUCTION

The development of information and communication is growing rapidly along with advances in technology and science. This progressing technology is marked by the birth of a variety of social media, such as; Facebook (2004), Twitter (2006), WhatsApp (2009), Path (2010) and Instagram (2010) as an inseparable part of the development of internetization in various parts of the world (Siddiqui and Tajinder Singh, 2015: 71-75), including Indonesia. The impact of this digitalization era has resulted in a shift in community activities from the real world to the virtual world. Mainly the activities of individual people who share (*share*) their daily activities, discuss, communicate with friends to become a container in conducting criticism of government policy (Ghulam, et al., 2014).

Seeing this phenomenon in March 2003, through the State Ministry of Communication and Information (Communication and Information), the Ministry of Transportation and the Ministry of

Industry and Trade began to form teams and collaborate with campuses in an effort to draft the Draft Law on Electronic Information Transactions. The spirit is all activities that are electronic and occur in cyberspace which began to be out of control can protect consumers (the public) in the use of technology (Juwenie, 2016). Not only that, legal certainty related to electronic transaction activities was also considered important at that time. In an effort to encourage economic growth due to the sale and purchase of goods transactions until the business began to shift from manual activities to the internet. Until March 25, 2008, through a plenary session of the Indonesian Parliament passed the ITE Bill into law, namely Law Number 11 of 2008 and revised again in 2016 with the birth of Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE Law).

Empirically, in the 10 years since the enactment of the ITE Law, according to data released by the *Southeast Asia Freedom of Expression Network*

(*SAFEnet*) until October 2018 there have been 245 cases reported in Indonesia. Where almost 49.72 percent of them were snared by the complaint of defamation of the rest of the good name related to the expression of hatred and blasphemy (Tempo, 29 November 2018). If we rearrange the regions which have the most reports related to ITE Law issues, namely DKI Jakarta (88 cases), East Java (22 cases), Central Java (16 cases), West Java (15 cases), NTB (14 cases) and Sumatra North (12 cases), the remainder of which is spread throughout Indonesia (data from *SAFEnet 2018*)

Furthermore, the articles in the ITE Law that are often used to prosecute such cases are Article 27 paragraph 3 regarding defamation and / or defamation. Article 28 paragraph (3) juncto Article 45 paragraph (2) of the ITE Law related to the spread of SARA-based hatred then Article 28 paragraph 2 juncto Article 45 paragraph 2 of Law Number 11 Year 2008 concerning Information and Electronic Transactions (ITE) due to deliberate or without the right to disseminate misleading information and article 29 paragraph (1) concerning Extortion and Threats (Lubis and Maulana, 2010: 13-20)

The problem is the duplication of criminal acts stipulated in the ITE Law also contained in criminal provisions in the Law Code of Law Criminal Code (KUHP), namely Article 156 of the Criminal Code concerning hatred and contempt for race, country of origin, religion, place, origin, ancestry, nationality or position according to state law with the threat of 5 years imprisonment and Article 310 of the Criminal Code and Article 311 of the Criminal Code concerning defamation with the threat of imprisonment of 5 years (Moeljatno, 2007: 23)

Herein lies the problem where legal translation is vulnerable to multiple interpretations. Because the position of expert witnesses is very influential on the interpretation of violations of the ITE Law which is also contained in the Criminal Code (KUHP). This multi-interpretation article has the potential to be misused to threaten freedom of expression because it depends on the opinion of expert witnesses in court. This condition certainly has the potential to impede the freedom of expression of citizens regulated in article 28 of the 1945 Constitution concerning freedom of opinion. Therefore, a study entitled "*Evaluation of the Information and Electronic Transaction Law (ITE) in the Perspective of Criminal Law Enforcement in Indonesia*" needs to be done for the sake of improving the law in Indonesia.

2 METHOD

This research is a qualitative research with a critical paradigm. The researcher collected data using the observation method as primary data. Then secondary data from interviews, international journals of books, and media coverage. Collecting research data is then carried out through a review of documents or reports relating to the focus of research relating to the law, information law and electronic transactions and criminal law in Indonesia. Furthermore, the results of this study are then triangulated.

3 RESULT

3.1 The Process of Internetization in Indonesia

The development of the internet has had an impact on changes in the political, economic, social and cultural fields. One of the developments in science and technology that is progressing very rapidly is the development in the field of information technology. This is marked by the birth of the internet, which is scientifically referred to as *cyberspace*.

Linked to the internationalization of the sovereignty dimension of the state, it then expands, which no longer consists of land, sea, and air-space, but also virtual space. Ter-virtual space image of the Internet has created a new legal regime, known as Internet law (*the law of the internet*), law-virtual space (*cyberspace law*), or the telecommunications law. Thanks to the internet, information exchange takes place faster and faster. The internet and its supporting technological devices seem to want and have made the world almost. Beware of the growing internet technology and the number of users, the Government of Indonesia through the Ministry of Communication and Information has prepared a number of regulations to regulate various types and models of information. One of them is the Law of the Republic of Indonesia Number 11 Year 2008 concerning Information and Electronic Transactions (UU ITE). The ITE Law, in addition to being a sign of changing orientation, models and information systems in Indonesia, also marks the return of state restrictions on information, including information received through the internet (Atmajan, 2014).

According to Zain Noval, Head of Medan City Information and Communication Office:

"Social media is an online media where users can engage in various activities including communicating with each other, seeking

information, and adding new friends, with all the features it has. Communication in social media becomes very easy because communicating using social media is no longer limited by distance, time, and space. Communication can occur anywhere, anytime, and even without having to meet face to face."

This means that the use of massive communication technology can be found in various places and situations, we can easily meet people who are interacting with other parties who are connected through its gadgets. In the domestic sphere, from the living room to the bedroom, communication technology is scattered side by side with human life. The more prominent the role of communication technology in our midst, it can be seen clearly that lifestyle changes that occur apply in almost all circles, children, adolescents and adults.

3.2 Law in Indonesia

Law enforcement in Indonesia has difficulty in dealing with the phenomenon of electronic crime (cybercrime). This is because there are still very few law enforcement officers who understand the ins and outs of information technology (internet). Then, law enforcement officials in the regions were not ready to anticipate the rise of this crime because there are still many law enforcement officials who have not been literate about technology. Then there are still many law enforcement institutions in the regions that are not yet supported by the Internet network. Throughout 2018 there were 292 cases related to the ITE Law. This number has doubled compared to the previous year with a total of 140 cases. Defamation is the most favorite criminal case with 149 cases. Followed by hate speech cases with 81 cases. The case of violating decency was in third place with 71 cases. As many as 35.92 percent of people who reported cases of the ITE Law were state officials, including regional heads, agency / department heads, ministers, and security forces. Lay reporters accounted for 32.24 percent (Kominfo 2019) The

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The problem is the duplication of criminal acts regulated in the ITE Law is also contained in the criminal provisions in the Criminal Code (KUHP), namely Article 156 of the Criminal Code concerning hatred and contempt for race, country of origin, religion, place, origin, ancestry, nationality or position according to the constitutional law with the threat of imprisonment for 5 years as well as Article 310 of the Criminal Code and Article 311 of the Criminal Code concerning defamation with the threat of imprisonment of 5 years (Moeljatno, 2007: 23) Herein lies the problem where the legal translation is vulnerable to multiple interpretations. Because the position of expert witnesses is very influential on the interpretation of violations of the ITE Law which is also contained in the Criminal Code (KUHP). This multi-interpretation article has the potential to be misused to threaten freedom of expression because it depends on the opinion of expert witnesses in court. This condition certainly has the potential to impede the freedom of expression of citizens regulated in article 28 of the 1945 Constitution concerning freedom of opinion.

3.3 Revision of the ITE Law

The birth of the ITE Law cannot be avoided from the protest movement of social media users throughout Indonesia. Especially in the defamation article which invited strong reactions from netizens who felt that their freedom of opinion on social media was limited and unsettled by various 'victims' who reported using ITE Law article 27 paragraph 3. Therefore, detainees must monitor their own behavior as if they are being watched. Even though social media users are not being directly monitored, these controls are internalized by each individual social media user to discipline themselves through cyber bodies.

Specifically, there are a number of articles of Law Number 19 of 2016 concerning Information and Electronic Transactions (UU ITE), namely 27 paragraph (1) and paragraph (3), article 28 paragraph (2), and article 29 of the ITE Law (PDF). In addition, the reporter also ensnared the reported party with article 156 of the Criminal Code and articles 310-311 of the Criminal Code. The most widely used article is 27 paragraph 3 related to defamation.

Technically there are duplications in the laws that appear in article 349 paragraph (1) of the Criminal Code Bill and article 28 paragraph 2 of the ITE Law. Article 349 paragraph (1) of the Criminal Code Bill reads:

"Everyone who broadcasts, displays, attaches writings or pictures, or plays a recording, including

disseminating through information technology facilities that contain criminal offenses as referred to in Article 348, with the intention that the contents of the writing, the image or recording is known or better known to the public, sentenced to a maximum imprisonment of five years (..) ".

This is duplicated with Article 28 paragraph 2 of the ITE Law reads: *"Everyone intentionally and without the right to disseminate information intended to incite hatred or hostility of certain individuals and / or groups of people based on ethnicity, religion, race and intergroup (SARA) "*

Furthermore, this situation also occurred on December 19, 2016, MUI Tanjungbalai City held a meeting and decided to request a fatwa from the North Sumatra Province MUI DP, for blasphemy of the religion. On January 4, 2018, the MUI Fatwa Commission of North Sumatra Province produced a fatwa containing legal provisions, namely the Adhan that was announced in the Mosque is the Islamic Sharia which was announced as a sign of entry in prayer times and/or ordered Muslims to perform prayers.

This was explained by the Tanjung Balai Sukiman community leader who explained:

"The delivered by Meliana for the call to prayer coming from the Al-Maksum Mosque Jalan Karya Kota Tanjungbalai are considered as blasphemy against an Islamic religion."

Words This means that in the case of Meliana in accordance with the rules and regulations the applicable invitation imposed is a Criminal Code article which is also contained in the ITE Law until Meiliana was sentenced to 1 year 5 months in prison.

4 CONCLUSION

The presence of the internet as a form of technological development in the field of communication is a matter that is familiar to modern society in Indonesia. Previously, internet technology was only used to send electronic messages via email and chat, but it was also often used to search for information through browsing. But along with the times, the internet is able to give birth to a new network commonly known as social media.

Based on this situation it is concluded that the policy efforts in the formulation of the ITE Law in the future must be made for legal certainty. The importance of setting limits, juridical qualifications and regarding what is meant by criminal defamation and what acts are the reasons for justifying a criminal defamation based on comparative study Ideas for formulating renewal of criminal acts both in the

future, both in the revision of the Act ITE is expected to no longer harm community rights. This is where the role of law as a bridge to cause the principle of usefulness and justice for the community to protect the right to freedom of opinion and expression in terms of delivering fair comments, criticism and public opinion.

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